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Tragedy of

Kashmir

The story starts in the summer of 1947 with the decision of His Majesty's Government to partition British India into two separate units to be known as India and Pakistan consisting of the contiguous non-Muslim majority areas and the Muslim majority areas.

Apart from British India, there were 584 Indian States, covering an area of 45.3% of the sub-continent, with a population of nearly 99 million persons. Some of these rulers were really powerful like the Nizam of Hyderabad who bore the honorific title of His Exalted Highness and ruled a territory about the size of Germany, with a population of 17 million inhabitants.

The position in respect of these States was that each Princely State would have the choice of acceding either to India or to Pakistan, as it might suit its interests. Theoretically, they could also remain 'independent'. That was the constitutional position. But Lord Mountbatten, the then Governor-General, advised the Princes that although, on the lapse of paramountcy, they would become 'techni-

cally and legally independent it would be in their own interests to take into account, geographical compulsions, while deciding the issue of accession.

In actual practice, it was clear that with regard to the majority of the States, no problem would arise, as the "compulsion" of their geographical position would itself determine as to which Dominion they should accede. While this was the general position, a new problem arose in the case of those States whose rulers did not subscribe to the same faith as did the majority of their subjects. Among the latter class of States might be mentioned the names of Kashmir, Junagadh, Hyderabad and Kapurthala.

The problem of Kapurthala was easily solved by its Maharajah. He had the Muslims, who were in a majority of 63% of the local population, either massacred or driven out of their homes. As a result of this diabolical coup, not a single Muslim was left to contest the State's accession to India.

The solution offered by the Government of India in such cases is contained in their White Paper on Hyderabad, dated 10th August 1948. The relevant portion runs as under:

"The Government of India are firmly of the view that whatever sovereign rights reverted to the States on the lapse of paramountcy, they vest in the people and conditions must be created in every State for a free and unfettered exercise of their rights."

Mr. Ayyangar, speaking in the Security Council on 15th July 1948, confirmed this position in these words:

"On the question of accession, the Government of India has always enunciated the policy that in all cases of disputes, the people of the State concerned should make the decision."

Again speaking on Junagadh Mr. Ayyangar stated:

"No doubt the Ruler, as the head of the State has to take a decision in respect of accession. When he and his people are in agreement as to the Dominion to which they should accede, he applies for accession to that Dominion. However, when he takes one view and his people take another view, the wishes of the people have to be ascertained. When so ascertained, the Ruler has to take action in accordance with the verdict of the people. That is our position."

In short, the principle was that in case of difference between a ruler and his people on the issue of accession, the wishes of the people were to prevail.

On the basis of this formula, when Junagadh, a Muslim State with a majority of Hindu population, acceded to Pakistan, the Prime Minister of India protested in the strongest terms. In his telegram dated 22nd September 1947, he considered Pakistan's act in accepting Junagadh's accession as 'an encroachment on Indian sovereignty and territory' and 'a clear attempt to cause disruption in the integrity of India by extending the influence and boundaries of the Dominion of Pakistan as agreed upon and effected.' Suiting the action to the words India marched its troops into Junagadh and occupied the entire State although no indication was forthcoming that the people were opposed to the wishes of the ruler. In the matter of Hyderabad, a Hindu majority State with a Muslim ruler, the conduct of the Government of India was also swayed by similar considerations. The Nizam of Hyderabad wanted to enter into special treaty relations with the Government of India in order to preserve a measure of independence for the State and was prepared to hold a plebiscite on this issue. But the Government of India would not listen to this reasonable offer and decided the issue by its infamous 'police action' of September 1948.

What happened in Kashmir? In Kashmir (a State with a Hindu ruler and 77% Muslim population) the people rose in revolt as early as 1947 against the authority of the Maharajah, because they suspected that the Maharajah was inclined to accede to India. The revolt started in August 1947, as admitted in a press note issued by the Government of the Maharajah on 12th September 1947, giving an account of the origin of the disturbances which later developed into a revolt. Sheikh Abdullah also corroborated this in his press statement in Delhi on 21st October 1947. His appraisal of the situation was as follows:

"The happenings in certain States, such as Patiala and Bharatpur and elsewhere have, naturally, caused apprehension in the minds of the Muslims in Kashmir, who form the majority of the population. They were afraid that the State's accession to India presented danger

to them. The present troubles in Poonch were because of the unwise policy adopted by the State. The people of Poonch, who suffered under their local ruler and, again, under the Kashmir Durbar, who was the overlord of Poonch, had started a people's movement for redress of their grievances. It was not communal. The Kashmir State sent their troops and there was panic in Poonch, but most of the adult population of Poonch were ex-servicemen in the Indian Army who had close connections with the people in Jhelum and Rawalpindi. They evacuated their women and children, closed the frontier, and returned with arms supplied to them by willing people. The present position was that the Kashmir State forces were forced to withdraw in certain areas."

The Maharajah sought to put down the growing resistance with a brutality born of long years of autocratic rule. Like all autocrats he turned to the army. His Dogra soldiers went to work, killing, looting, and molesting thousands of Muslims, men, women and children, until the entire composition of the population of the Eastern Jammu Province was changed. A stream of refugees started pouring into the contiguous areas of West Pakistan. The stories of cruelty and horror which they brought inflamed the hearts of all Pakistanis, particularly those of tribesmen who, by tradition and by nature, are extremely susceptible to acts of violence. They could hardly contain themselves while the forces of oppression were carrying out terrorism. They went to the rescue of their co-religionists on 22nd October 1947. Their entry into the arena raised the spirits of the freedom-fighters and the Dogra army sustained defeat after defeat. An Azad Kashmir Government was set up in the liberated areas. The Maharajah fled to Jammu and appealed to India for military assistance. On 26th October 1947 India sent Mr. V. P. Menon with an Instrument of Accession to the fugitive Maharajah, who was made to sign on the dotted line. The accession was obligingly accepted by India on 27th October 1947 with a dubious proviso to the effect that the people would be consulted on this issue at a later date. In the meantime Indian troops had already landed on the soil of Kashmir and started their offensive.

Was this not a flagrant violation of Pakistan's sovereignty and integrity in accordance with India's own thesis in the case of Junagadh and Hyderabad? Why did India try to force a military decision on a sovereign people who had started a freedom struggle and who were thoroughly opposed to the ruler's move to accede to the Indian Union? On what moral, ethical, or democratic principles did India support a Ruler who had lost all authority in his own territory and was a mere fugitive?

In spite of this grave provocation, Pakistan acted with restraint and moderation. Indeed, it could have sent its troops right into Kashmir long before the arrival of Indian troops at the very first outbreak of disturbances in the State because, under the Stand Still Agreement it had every right to adopt adequate measures for the internal and external security of the State. There was no necessity of 'inciting' the undisciplined tribesmen to rush to the rescue of their oppressed brethren in Kashmir with crude weapons and no strategy. With the arrival of foreign troops in Kashmir, Pakistan would have had greater justification for throwing out the aggressor. After all, according to India's own theory Kashmir was a part of Pakistan and any attempt to integrate it into the Indian Union amounted to 'an encroachment on Pakistan's sovereignty and integrity.' The action would have been of a purely defensive nature. The fact that Pakistan did not do so is sufficient evidence of its resolve to abide by the provisions of the United Nations Charter.

Following the unwarranted occupation of Kashmir by India, Quaid-i-Azam Mahomed Ali Jinnah invited Lord Mountbatten and the Prime Minister of India to Lahore on 29th October 1947 for a discussion of the situation. At the last minute, the conference was postponed as the Prime Minister of India happened to fall ill. Another conference was then proposed for 1st November 1947 but this too did not materialize. Finally, as a face-saving device, Lord Mountbatten went alone to attend the Joint Defence Council meeting. At this conference Quaid-i-Azam Mahomed Ali Jinnah put up the following proposals for the consideration of the Government of India:

(a) To put an immediate stop to the fighting. The two Governors-General should be authorised by their respective Governments

to issue a proclamation, giving 48 hours' notice to the opposing forces to cease-fire. Although Pakistan had no control over the Azad Kashmir forces or over the tribesmen engaged in fighting, it would warn them that in the event of their disobeying the cease-fire order, the combined forces of the two Dominions would be used against them.

(b) Both the forces of the Indian Dominion and the tribesmen should withdraw *simultaneously* and with expedition from the State.

(c) The two Governors-General should be vested with full powers by their Governments to restore peace, undertake the administration of Jammu and Kashmir and arrange for a plebiscite immediately under their joint control and supervision.

Lord Mountbatten expressed his inability to act without his Government's advice. He, however, promised to send a reply from New Delhi, but actually no reply was received. On 2nd November, the Prime Minister of India made it clear in a broadcast that the Government of India intended to force a decision by military action and to continue their occupation and the puppet administration set up by them. The plebiscite which he announced would be held after the complete subjugation of the State by the Indian armed forces was no more than a farce and was bound to result in the permanent occupation of the State by India which was what India really wanted.

All subsequent discussions between the two Dominions proved infructuous, owing to India's insistence on keeping its troops in the State and its refusal to agree to an impartial administration being set up as a *sine qua non* for a free and impartial plebiscite. On 16th November, Pakistan suggested that the whole matter including the retention of troops, the character of interim administration and the holding of plebiscite be entrusted to the United Nations, but India rejected the proposal out of hand. Instead India appeared in the guise of a complainant and requested the United Nations 'to call upon Pakistan to put an end to the giving of assistance to the raiders.' Failing this, India threatened to enter upon Pakistan territory in "self-defence." Pakistan retorted by accusing India of aggression in Junagadh, Manavadar, Mangrol, and other Kathiawar states, of fraud and violence in Kashmir, of breach of partition agreements, and of several other hostile acts.

During the debate in the Security Council in the winter of 1948, India only wanted the withdrawal of the tribesmen, so that the Indian armed forces could crush the freedom movement in Kashmir and occupy the whole of the State through military might. The Security Council, however, persistently refused to endorse that position. To begin with, in its resolutions of 17th January 1948, it appealed to the parties to improve the atmosphere and to refrain from doing anything which might aggravate the situation. Moreover, the members strongly disapproved of India's move to secure a military decision. Extracts from the statements of some of the members are given below:

Mr. Noel Baker (U.K.): "In my conception infinitely the best way to stop the fighting is to assure those who are engaged in it that a fair settlement will be arrived at under which their rights will be assured. In other words, a settlement arrived at quickly in the Security Council is the real way to stop the fighting. The whole thing, from the preliminary measures as to the fighting right up to the conduct of the plebiscite in the end, is all one problem. Only when the combatants know what the future holds for them will they agree to stop."

Senator Warren Austin (U.S.A.): "No one wants to see a superior force sent into the Kashmir area to drive out the invaders of that area. Every one, we assume, wants to see this situation so settled by an agreement that it will not be necessary to use any force to carry it into effect."

To solve this problem, six members of the Security Council co-sponsored a draft resolution on 6th February 1948. In paragraph 4(c) thereof, the parties were told that the military forces of the two Governments should seek to ensure co-operation so as to establish order and security. Unfortunately, the Indian delegation dramatically withdrew from the Council with the result that a much watered-down resolution was adopted on 21st April 1948. In paragraph 4(a) of this resolution, it is laid down that "when it is established to the satisfaction of the Commission that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, the Government of India shall 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 strength required for the support of the civil powers and the maintenance of law and order.”

Again para 5 says:

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

In keeping with its general policy, India rejected this resolution. It shows clearly how the Security Council was opposed to India’s demand for one-sided withdrawal of the freedom-fighters.

During the pendency of the debate and in utter defiance of the Security Council’s directive not to aggravate the situation, India went on making war-like preparations. On 15th March 1948, right in the middle of the debate, the Indian Defence Minister announced in the Indian Constituent Assembly that the Indian army would clear out all resistance from Kashmir’s soil in the next two or three months.

On 20th April 1948, the Commander-in-Chief of the Pakistan Army submitted an appreciation of the military situation to the Government of Pakistan in which he reported that the Indian Army had already started its offensive in Kashmir on a small scale, capturing Rajauri on 12th April and setting up a reign of terror in the area. According to him, a general-offensive would soon start in the north and the south. The occupation of Bhimber and Mirpur would bring India right up to the Pakistan border and give it control of the important Mangla Headworks. He, therefore, recommended:—

“If Pakistan is not to face another serious refugee problem with about 2,750,000 people uprooted from their home; if India is not to be allowed to sit on the door-step of Pakistan to the rear and on the flank, likely to enter at its will and pleasure; if civilian and military morale is not to be affected to a dangerous extent, and if subversive potential forces are not to be encouraged and let loose within Pakistan itself, *it is imperative that the Indian army should not be allowed to advance beyond the general line URI—POONCH—NAUSHERA.*”

It was clear that an attempt was being made by India to disrupt Pakistan’s integrity and economy in utter defiance of the

Security Council's directive. If Pakistan had stood by, and let things take their course, it would have meant suicide. In that supreme hour of peril, Pakistan decided to send in its troops to occupy certain defensive positions to ward off the threat. In doing so, Pakistan committed no aggression, because the territory in respect of which this action was taken, had at no time and in no circumstances, been under the control or military occupation of India even as a result of the bogus 'accession' on which India has been relying so much. As regards the accession itself, it was wholly invalid and inoperative, having been obtained through fraud and violence. Moreover, on 15th August 1947, sovereignty, as conceded by India, reverted to the people of the State who alone were competent to decide whether they would join India or Pakistan.

In the middle of this turmoil the U.N Commission for India and Pakistan visited the sub-continent in July 1948 in pursuance of the Security Council resolution of 21 April 1948 "to 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 with respect to the restoration of peace and order and to the holding of a plebiscite by the two Governments." On its arrival in Karachi, the Foreign Minister of Pakistan informed the Commission at the very first meeting of the recent offensive launched by India and the decision of the Government of Pakistan to send in Pakistani troops to hold^a certain defensive line. The Commission was much concerned about this new development created by India. After a series of meetings, consultations, and clarifications, the members succeeded in obtaining the acceptance of the two Governments to their resolutions of 13th August 1948 and 5th January 1949 which were subsequently endorsed by the Security Council. The resolutions, therefore, constitute an international agreement, the main provisions of which are:

- (a) A cease-fire to be followed by a demarcated cease-fire line.
- (b) A truce agreement providing for the withdrawal of the tribesmen, Pakistan nationals and Pakistan Army, on the Pakistan side of the cease-fire line and the bulk of the Indian forces on the Indian side of the cease-fire line.

- (c) A plebiscite under the supervision and control of a Plebiscite Administrator.

Pakistan accepted the resolutions on the following distinct clarifications furnished by the Commission:

- (a) That the disbanding and disarming of the Azad Kashmir forces would take place during the plebiscite stage after the completion of the operations envisaged in Parts I and II of the resolution of 13 August 1948.
- (b) That the withdrawal of the Pakistan army would be synchronized with the withdrawal of the bulk of the Indian forces.
- (c) That there would be no prejudging of the sovereignty and integrity of the state as a whole.
- (d) That no civil or military officials of the Government of Jammu and Kashmir or, for that matter, of the Government of India, would enter the area evacuated by the Pakistan troops for the purpose of administration or control.
- (e) That the Plebiscite Administrator would be deemed to have derived his powers from the authorities concerned on both sides of the cease-fire line, i.e. the Azad Kashmir Government and the Government of the State of Jammu and Kashmir, respectively.
- (f) That the 'Northern Areas' being 'evacuated territory' were under the effective control of the Pakistan High Command and as such the posting of Indian garrisons in those areas would not be allowed.

While the Commission was engaged in formulating the basic conditions for a plebiscite under Part III of the resolution of 13 August 1948, India launched a new offensive in the north and the south of Kashmir, resulting in the capture of Mendhar and other places. The representative of India, when accused of this "aggression" admitted having taken some 'defensive' action in Ladakh and in the Poonch area, but could not explain why India did so, in complete disregard of the UNCIP resolution of 19 September 1948 which required the parties to use their best endeavours to lessen the existing tension.

The situation might have developed into a major conflict but for Pakistan's desire to settle the dispute peacefully.

Following the acceptance of the UNCIP resolutions by the parties, the Governments of India and Pakistan agreed to order a cease-fire which became effective on 1 January 1949 and subsequently a cease fire line was demarcated on 27 July 1949.

Pakistan showed its bonafides by persuading the tribesmen and Pakistan nationals to withdraw from the area, although this withdrawal was to take place at the time of the truce. Pakistan has already partially carried out its obligations under Part II of the UNCIP resolution of 13 August 1948.

Having brought about cessation of hostilities, the Commission tried to evolve a plan for the demilitarization of the State as provided in Part II of the UNCIP resolution of 13 August 1948. With that end in view, it called a meeting on 9 March 1949 of the civil and military representatives of the two Governments who were to prepare, for discussion, proposals for the implementation of Part II of the UNCIP resolution of 13 August 1948. Pakistan presented a comprehensive scheme as desired, but India refused to do so, until a basis for agreement was reached. The so-called 'basis' was no more than India's insistence on the disbanding and disarming of the Azad Kashmir forces during the truce stage along with the withdrawal of the bulk of the Indian forces, although this process was to be carried out at a much later date under sub-para (b) of the UNCIP resolution of 5 January 1949 under the direction of the Plebiscite Administrator. Another excuse advanced by India was that it should be permitted to occupy certain strategic parts in the Northern areas for reasons of 'security' of the State. This, too, was untenable as no Indian civil or military official or, for that matter, an official of the State Government could enter the 'evacuated area' under the Agreement. The Commission was forced to the conclusion that "... India is not prepared to withdraw such part of her forces in Kashmir, whether measured quantitatively or qualitatively, unless agreement with Pakistan on the large scale disbanding or disarming of the Azad Kashmir forces is reached."

To resolve the deadlock, the Commission suggested to the parties to agree to refer to arbitration the points in dispute arising out

of the interpretation of the Agreement. The proposal was reinforced by President Truman and Prime Minister Attlee. But India rejected it. It was now evident that India wanted to delay the settlement of the dispute on one pretext or another. The Commission had to refer the matter back to the Security Council.

The Security Council requested General McNaughton to get in touch with the parties to see whether he could bring about a settlement. The General proceeded on the basis that the Agreement already arrived at must be preserved and that the difficulties that had arisen since that Agreement and with reference to it, should be resolved. He left aside legal technicalities and took the problem of demilitarization as a whole. Pakistan accepted his proposals, but India rejected them.

The matter came back to the Security Council and the Council then appointed Sir Owen Dixon, an eminent Australian judge and jurist, to try to bring about a settlement. Sir Owen Dixon discussed several proposals with the representatives of India and Pakistan. While Pakistan accepted all of his proposals, India rejected them all. He reported to the Security Council:

“In the end, I became convinced that India’s agreement would never be obtained to demilitarization in any such form or to the provisions governing the period of the plebiscite, of any such character as would, in my opinion, permit of the plebiscite being conducted in conditions sufficiently providing against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled.”

Thereafter, the matter was raised at the Prime Ministers’ Commonwealth Conference in January 1951. Some of the Prime Ministers brought the Prime Ministers of India and Pakistan together, heard their views on demilitarization and suggested that Commonwealth troops might hold the cease-fire line and be available for the purpose of assisting the plebiscite Administrator to carry out his duties. Pakistan accepted this suggestion; India rejected it.

The Prime Ministers then made another effort and suggested that Pakistan and Indian troops together, under a feasible arrangement might be available to the Plebiscite Administrator to assist him in the

discharge of his duties. Pakistan accepted the proposal; India turned it down.

A nother suggestion of the Prime Ministers that local Kashmir troops might be raised from both sides of the cease-fire line was also rejected by India.

The matter came up for discussion in the Security Council. In the course of the debate, Ambassador Muniz of Brazil proposed to the representative of Pakistan that the parties might accept arbitration on the disputed points as they arose out of the interpretation of the agreement and were, therefore, justiciable. Pakistan was willing to consider this proposal but India, as usual, rejected it.

The Security Council then appointed Dr. Graham as United Nations representative under its resolution of 30 March 1951 and requested him to bring about agreement of the parties on the question of demilitarization. In case of failure, he was to report the points of difference to the Council. The parties were called upon to accept arbitration upon all outstanding points of difference by an arbitrator or a panel of arbitrators to be appointed by the President of the International Court of Justice. Pakistan accepted the resolution; India rejected it. In the same resolution, the Security Council took a serious view of the attempt made by the State Government to convene a Constituent Assembly and warned that any decision of the Constituent Assembly to determine the shape and affiliation of the State would not be valid or binding on the parties.

Dr. Graham set out on his mission and started his work with patience. To begin with, General Jacob Devers, his military adviser, formulated a plan of demilitarization which was accepted by Pakistan but rejected by India.

Dr. Graham then proposed that the forces on both sides should be reduced to the minimum based in proportion to the number of the armed forces existing on each side of the cease-fire line on 1 January 1949. Pakistan accepted the principle; India rejected it.

Despite India's persistent intransigence, Dr. Graham went on with his work and produced revised proposals of 16 July which suggested for discussion bracketted figures of forces ranging from 3,000 to 6,000 on the Pakistan side of the cease-fire line and 12,000 to 16,000

on the Indian side of the cease-fire line. The numbers did not include the Jammu and Kashmir militia and the Gilgit and Northern Scouts. While Pakistan was willing to proceed on this basis, India refused to consider the figures.

The United Nations representative then suggested 6,000 on the Pakistan side of the cease-fire line and 18,000 on the Indian side. Pakistan considered the number on the Indian side rather too high but was willing to go ahead. India, however, continued to insist on the retention of 21,000 troops including the State militia on the Indian side of the cease-fire line and a civil force of 4,000 on the Pakistan side.

Since these figures did not provide the basis for an agreement Dr. Graham proposed, on 4 September 1952, principles or criteria by which the number or character of the forces could be determined. Pakistan accepted these criteria with slight modifications, but India refused to alter its position.

The U.N. representative reported the failure of his efforts to the Security Council. The Security Council adopted a resolution on 23 December 1952, urging the Governments of India and Pakistan to reach agreement on the specific number of forces, ranging between 3,000 to 6,000 on the Pakistan side of the cease-fire line and 12,000 to 18,000 on the Indian side, in accordance with the U.N. representatives proposals of 16 July 1952, keeping in view the criteria of 4 September 1952. Pakistan accepted the resolution; India rejected it.

Reaching the sub-continent, Dr. Graham renewed his efforts to resolve the deadlock. Somehow or other he increased the number of the forces on the Indian side from 18,000 to 21,000 with no corresponding increase in the number of the forces on the Pakistan side. But even this did not suit India and the negotiations fell through.

In the end, Dr. Graham appealed to the leaders of both countries to join in direct talks and thereby "light a torch along the difficult paths of the people's pilgrimage towards peace."

Acting on Dr. Graham's suggestion, Pakistan did enter into direct discussions with India as a result of which the following agreement was reached:

- (a) The dispute should be settled in accordance with the wishes of the people through a fair and impartial plebiscite.

- (b) The Plebiscite Administrator should be appointed by the end of April 1954.
- (c) Expert Committees should be set up to consider the preliminary issues.
- (d) Efforts should be made to avoid adverse propaganda and to create a favourable atmosphere.

The subsequent trend of negotiations was unfortunately not encouraging because the Indian Prime Minister put forward the new theory that the final decision about the future of the State should not be based on the results of the overall plebiscite, but rather on geographic, economic and other important considerations. This left the door open for controversy. The Indian Prime Minister also did not consider it necessary to allow the refugees to vote, which was against the express provisions of the UNCIP resolutions. Another point on which he differed from the Prime Minister of Pakistan was the appointment of Admiral Nimitz as Plebiscite Administrator. Although the proposal was most unreasonable, the Prime Minister of Pakistan reluctantly agreed to it, to avoid failure of talks. The Indian Prime Minister, however, found another pretext and brought the talks to an abrupt end. This was Pakistan's acceptance of American aid which he said had changed the entire context of the Kashmir negotiations. The result was that the good work that the Expert Committees had done went overboard and the tension increased again.

Pakistan had, therefore, no alternative but to go back to the Security Council. This it did on 2nd January 1957. The Council in its resolution of 24 January 1957 called upon the parties not to disturb the *status quo* which India was seeking to do through the 'All-Jammu and Kashmir Constituent Assembly.' As the debate proceeded Mr. Menon, instead of talking business, dwelt on wholly irrelevant topics and advanced all sorts of excuses for refusing to carry out India's part of the international agreement prominent among which was the charge of aggression against Pakistan. He further alleged that Pakistan had failed to carry out its obligations under Part I of the UNCIP resolution of 13 August 1948, particularly Sections B and E and asserted that in the changed situation it was not possible to implement the agreement.

Replying to these allegations, the Foreign Minister of Pakistan drew the Council's attention to the relevant issues and pointed out that the parties should endeavour to evolve an acceptable programme of demilitarization in terms of the international agreement to which both were committed. The Foreign Minister also denied the charge that Pakistan had augmented its war potential or created unfavourable conditions for further negotiations. He challenged Mr. Menon's insinuation that 'changed circumstances' had made the agreement difficult of implementation. In his opinion, the basic structure of the agreement was as valid and workable today as it was 9 years ago. It pained him to note the threat of genocide of Indian Muslims which the Indian delegate had held out while discussing the consequences of Kashmir's accession to Pakistan. He asked the Security Council to take cognizance of this veiled threat. The plea that the Indian Constitution did not contain any provision under which a unit could secede from the Federation did not carry conviction because, in the first instance, India had no business to treat Kashmir as one of its units and, secondly, a unit could certainly secede with the consent of the Federation. Finally, he exhorted the Council to take constructive measures to resolve the deadlock over the demilitarization of the State.

The members of the Security Council generally rejected Mr. Menon's plea for reopening the old issues. The representative of the United Kingdom reminded the Council that the Commission had taken all 'the causes of the conflict into account' before framing the resolutions of 13 August 1948 and 5 January 1949 which were now binding on both the parties. It would, therefore, be advisable to look to the future rather than the past.' The representative of the Philippines was also sure that the charge of aggression could not be entertained against Pakistan. According to him 'the charge and counter-charge ceased to be relevant' when the parties accepted the UNCIP resolutions. The Cuban delegate exploded the myth of India's sovereignty over Kashmir which he maintained 'rests only with the people of Kashmir'. The Iraqi delegate would not be drawn into a discussion of certain elements which were foreign to the basic problem. Speaking in a similar vein, the Australian delegate doubted

the wisdom of examining the 'points of controversy' between the parties. The representative of Sweden thought that certain legal aspects of case might be referred to the International Court of Justice but his view did not find favour.

The representatives of Australia, Cuba, the United Kingdom and the U.S.A. then tabled a joint resolution which contained a reference to the use of a U.N. force in the disputed area and requested the Swedish representative to examine with the Governments of India and Pakistan, proposals (within the framework of the previous resolutions of the Security Council and the UNCIP) which might break the deadlock on the question of demilitarization. Except for the Soviet Delegate who moved certain amendments, the rest of the members generally supported the resolution. The Soviet amendments suggested, *inter-alia*, deletion of all reference to a United Nations Force and to the importance of achieving demilitarization. The object was to deprive the resolution of all its effectiveness. The Soviet delegate said that in supporting the proposal that Mr. Jarring should make efforts to promote a settlement of the existing dispute between India and Pakistan he desired a settlement with regard to the territories under the administration of Pakistan and not with regard to the Indian-occupied zone. The Columbian delegate suggested a reference to the International Court of Justice and a mention of the Indian Prime Minister's letter dated 20 August 1948 to the Chairman of the Commission. The Indian representative opposed the resolution with great vigour and said it would hinder the process of bettering Indo-Pakistan relations. The amendments were put to the vote and lost. The resolution in its original shape was then voted upon and lost because of the veto exercised by the Soviet delegate. The rest of the delegates supported it. Immediately after, another draft resolution, deleting all mention of a United Nations Force, was tabled by the representatives of the U.K., the U.S.A., Australia and Cuba. It was adopted by 10 votes in favour with 1 abstention (USSR). Pakistan accepted it; India rejected it.

Pursuant to this resolution, Mr. Jarring visited the sub-continent on 14th March 1957 and held talks with the representatives of the two Governments. The Indian representatives again raised the

question of aggression, but Mr. Jarring told them plainly that it was not for him to question the UNCIP resolutions which constituted a binding international agreement both for India and Pakistan. He was further told that Pakistan had violated Part I Sections B and E of the resolution of 13 August 1948 by augmenting its war potential and by carrying on adverse propaganda. This breach of the agreement, the Indians asserted, absolved India from proceeding with the questions of demilitarization and plebiscite. Pakistan emphatically denied the charge. To end the deadlock, Mr. Jarring proposed that the parties should agree to refer the disputed points to arbitration. Pakistan accepted the suggestion but India rejected it on the plea that it would be inconsistent with the sovereignty of Jammu and Kashmir and the rights and obligations of India in respect of that territory. Moreover, it was pointed out that there was the additional risk that the acceptance of the proposal might be construed as a recognition of Pakistan's *locus standi* in the matter.

The matter went back to the Security Council. In his lengthy statements Mr. Menon charged Pakistan with fomenting trouble in the Indian zone of Kashmir and constructing the Mangla Dam which he considered a violation of the sovereignty of the State of Jammu and Kashmir, opposed to all rules of humanity. He also referred to the Northern Area and insisted on Indian garrisons being posted there. Finally, he propounded the preposterous theory that India was the sole successor of British authority in India and the only inheritor of the rights and liabilities of the former Government of undivided India.

The Foreign Minister of Pakistan repudiated the charge that Pakistan was engaged in subversive activities in the Indian-held zone of Kashmir. He attributed them to local agents who did it on purpose to influence the Security Council and to justify the tightening of repressive measures against the freedom-fighters. As regards the Mangla Dam, it was a purely utility project which would improve the economy of Azad Kashmir. Pakistan had agreed to co-sponsor the scheme at the request of the Azad Kashmir Government. The Project did not constitute 'consolidation' of the territory to the detriment of the State as a whole or a change, tending to aggravate the situation. The Northern Areas, Mr. Noon pointed out, had all along remained under

the effective control of the Pakistan Army and there was no question of allowing India to establish garrisons in that area which, as the Commission had rightly observed, would only increase tension. With regard to India's claim to have inherited the rights and liabilities of the former Government of India, Malik Firoz Khan Noon quoted the relevant portions of the Indian Independence Act and the Privy Council rulings to prove that two separate Dominions, namely, India and Pakistan had come into being on 15th August 1947 and that the rights and liabilities of the former Government of India had devolved on both the Dominions and not only one of them. Consequently it was absurd for India to suggest that it would have been fully justified in sending in its troops to the rescue of the Maharaja even if there had been no accession. Mr. Noon also demolished Mr. Menon's argument that constitutionally India could not be a party to any move which contemplated the ^{5e}cession of Kashmir from the Federation. The Foreign Minister of Pakistan drew attention to article 13 of the Draft Declaration of the Rights and Duties of States adopted unanimously by the General Assembly of the United Nations at its fourth session in 1949. The Chairman of the Commission which drafted the Declaration was the Indian jurist Sir B. N. Rao. Under the above Article, no State could invoke provisions in its constitution and its laws as an excuse for failure to perform its duty to carry out in good faith its obligations arising from treaties and other sources of international law. Mr. Noon also rejected Mr. Menon's plea that the arbitration proposed by Mr. Jarring affected the questions of the sovereignty and integrity of India. He explained that the arbitration was not designed to affect any basic issues between the parties, but only to clarify the position with regard to the implementation or otherwise of certain parts of the agreement in the light of different versions put forth by the disputants. That was certainly a matter falling within the purview of international law.

The members of the Security Council did not like to be involved in technical issues which had long since been settled. They disapproved of Mr. Menon's unwarranted attacks on Pakistan for having joined S.E.A.T.O. and the Baghdad Pact and for having accepted American military aid. Such attacks, in their opinion, amounted to an attempt at interfering in the foreign and defence policies of sovereign

nations. Similarly, it was their considered opinion that no changes, political, economic, or strategic, could absolve India from fulfilling its obligations vis-a-vis the Kashmir dispute. On the contrary, these changes underlined the necessity for an early settlement of the dispute. The basic structure of the agreement remained unaffected. They rejected the Indian pleas that on the lapse of paramountcy on 15 August 1947, the sovereignty of the State had passed to India through the action of the Maharajah. There was nothing on the record of the Security Council to warrant such an assumption. Indeed, the whole question of the State's sovereignty and integrity had been left open. With regard to the implementation or non-implementation of Part I of the resolution of 13 August 1948, it was considered futile to reopen this issue and that the time had long since come to implement Part II of the resolution, which implementation would in any case do away with the Indian complaint wrongly made that Part I had remained unimplemented owing to the "augmentation" of Pakistan military potential in the State of Jammu and Kashmir. Moreover, India, by its own conduct in taking up discussions of Part II, had in effect already conceded that all the process connected with the ceasefire order had been fully implemented. The Soviet delegate thought that the people of Kashmir had definitely settled their destiny by throwing in their lot with India and, therefore, it was no use reopening the question.

As a result of this discussion, a draft resolution was co-sponsored by the representatives of Australia, Columbia, the Philippines, the United Kingdom and the United States of America requesting the U.N. representative to make any recommendation to the parties for further action which he considered desirable in connection with Part I of the UNCIP resolution of 13 August 1948, having regard to the previous resolutions and to enter into negotiations with the Governments of India and Pakistan in order to implement Part II of the resolution and in particular to reach agreement on the reduction of the forces to a specific number. It called upon the parties to maintain a peaceful atmosphere which was essential for the promotion of further negotiations. The Indian delegate opposed it vehemently as being "retrogressive" and opening the way to trouble. The Soviet delegate

called it as something 'out of time and out of space' and deprecated the attempt of the co-sponsors to impose upon the parties a settlement which was not acceptable to one of them. He threatened to use his negative vote if the position was not rectified. Under the shadow of this threat, the Swedish representative suggested amendments which gave wide discretion to the U.N representative to bring about a settlement. The resolution so amended was adopted by the Council by 10 votes in favour and 1 abstention (USSR). India did not accept even this diluted version of the previous resolution. Pakistan, however, accepted it and promised to co operate with the U.N. representative Dr. Graham who was being sent out to resume his mediatory efforts to end the deadlock.

In pursuance of the resolution of 2 December 1957, Dr. Graham visited the sub-continent and held talks intermittently with the two Governments from 12 January to 15 February 1958. In the course of his talks he presented the following five recommendations to the parties:

- (i) That they should appeal to their respective people to assist in creating and maintaining an atmosphere favourable to further negotiations and should themselves refrain from all statements and actions which might aggravate the situation.
- (ii) That they should reaffirm that they would respect the integrity of the cease-fire line and should refrain from violating it in any way.
- (iii) That a prompt study should be undertaken, under his auspices, of how the territory evacuated by the Pakistan troops could, pending a final settlement, be administered, in accordance with the provisions of the resolution of 13 August 1948. In the interest of the security of the area to be evacuated, the U.N. representative recommended the stationing of U.N. troops on the Pakistan side of the border, following the withdrawal of the Pakistan Army from the State.
- (iv) That the Prime Minister of India and Pakistan in their joint communique of August 1953 had recognized that the

plebiscite should be so held as to cause 'the least disturbance to the life of the people of the State.' The U.N. representative wanted to discuss with the two Governments the means and timing under which agreement might be sought on these questions.

- (v) That In order to facilitate progress towards further negotiations on the above questions it would be advisable to hold talks at ministerial level under his auspices. If this was not agreeable to either or both Governments, the parties were requested to hold the conference at the earliest date, keeping the general proposal or any variation thereof under consideration.

The Government of Pakistan accepted all these recommendations and were willing to hold a conference at ministerial level or any variation thereof. On the other hand, the Government of India rejected every one of these proposals on one or another pretext. Their main objection was that the approach adopted by Dr. Graham sought to by-pass the preliminary question with regard to Pakistan's failure to implement the resolution of 17 January 1948 and Sections B and E of Part I of the resolution of 13 August 1948. They considered that a new appeal to the masses to create and maintain a peaceful atmosphere 'might denote a displacement of the previous engagements and thereby result in the condonation of the breaches committed by Pakistan.' In their opinion, a study concerning the administration of the area to be evacuated by the Pakistan army, would cut right across the main issue, viz: the 'illegal' occupation of the Indian territory. Moreover, the study would be repugnant to the UNCIP resolutions and the assurances given to the Government of India with regard to the sovereignty and integrity of the State as a whole. The Indian representatives regretted their inability to discuss the questions connected with the holding of a plebiscite in the manner suggested in the Prime Ministers' joint communique of August 1953. They also refused to entertain any proposal for the holding of a conference at ministerial level on the ground that it would be placing the aggressor and the aggressed on the same footing.

With the failure of the latest mission of Dr. Graham, India has once again flouted the directives of the Security Council for the settlement of the Kashmir dispute. The re-arrest of Sheikh Abdullah, less than four months after he was released, is another proof that India has made up its mind to retain Kashmir by force and to crush all opposition directed against such a move. Sheikh Abdullah's only crime was that he refused to be a party to India's plot to deny the right of self-determination to the people of Kashmir. All attempts to change his mind having failed, the Bakhshi regime, acting in concert with the Government of India, imprisoned him again. This was done with the object of overawing the masses into submission and thereby making things "safe" for himself and for his masters in New Delhi. But the will of the people to throw off the foreign yoke cannot be and has not been suppressed. The action of the Bakhshi regime has made the situation more explosive. In Pakistan, too, the people are growing more restive and have lost all faith in India's sincerity to solve the dispute according to the provisions of the international agreement. They feel that time has now come for the Security Council to implement its decisions by drawing up a programme of demilitarization in consultation with the United Nations Representative. The parties should be called upon to co-operate with him. Failing this, action should be taken against the party at fault under the enforcement machinery of the U.N. Charter. Then alone this long-standing dispute can be solved.

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