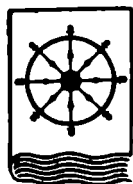


# THE KASHMIR QUESTION



A. G. NOORANI



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## PREFACE

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THIS BOOK is neither a history of Kashmir nor a definitive study of the Kashmir question. The writer is fully aware of its limitations and shortcomings: the omission of the sorry course of events in Azad Kashmir is one of them, the inadequate treatment of Indo-Pakistan negotiations is another. Nor does this book seek to apportion blame.

All that it seeks to stress is, that while Kashmir's accession to India is perfectly legal and valid, it is provisional. In other words, the State's future still remains to be decided by agreement among the three parties concerned; namely, the Governments of India and Pakistan and the people of Kashmir.

It is hoped that this little work may help in making available the facts on a knowledge of which, the understanding and a solution of this vexed problem can be based.

I should also like most sincerely to thank Mr. V. B. Karnik for the pains he took to edit the manuscript and to see the book through the press.

BOMBAY,  
*August 7, 1964.*

A. G. NOORANI



## INTRODUCTION

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IT IS NOT difficult to understand and appreciate the bewilderment and resentment of the people over the reopening of a "closed chapter" which, they feel, is happening over the Kashmir problem after the release of Sheikh Abdullah and his talks with the late Prime Minister and other Indian leaders. For over ten years it had been dinned into their ears that the Kashmir problem had been solved, that the people of Kashmir had voluntarily decided to merge themselves into India, that they were contented and happy and that the little difficulty that remained was on account of the evil intentions of Pakistan and the machinations of England and America. The utterances of Sheikh Abdullah therefore came to them as a rude shock. The speeches were also unpleasant as they destroyed the pretty illusion that they had been persuaded to hug to their hearts as a reality.

There is no attempt even today to tell the people the truth. They are still being fed on slogans, halftruths and lies. Most of the leaders of the Government and political parties, in power or in opposition, vie with each other in asserting and reasserting that the accession of Kashmir is final and irrevocable, that the people of Kashmir have voluntarily decided to throw in their lot with the Indian people and that there was nothing to be discussed or done with respect to that issue. With just a few honourable exceptions the press as a whole has

joined the same chorus. The natural popular reaction is that Sheikh Abdullah is a traitor and betrayer and an ungrateful person who deserves to be locked in jail.

The fact of the situation, however, is that what Sheikh Abdullah is stating happens to be largely the truth. The truth is that the problem of Kashmir is not solved. The truth is that the people of Kashmir never had the opportunity of expressing their views on the issue of accession. And the truth is that there will never be peace and stability in Kashmir as long as India and Pakistan continue to quarrel over the issue. These truths may be inconvenient and unpleasant but, as long as they are ignored, Kashmir will continue to be a festering sore in the body politic of India.

The problem of Kashmir cannot be regarded as solved as long as the people do not get a government which they can consider as their own and which is at the same time clean and efficient. Since the dismissal of Sheikh Abdullah, Kashmir has been ruled by persons and cliques who are regarded by the people of Kashmir more as the agents of New Delhi than their representatives. The Bakshi regime was moreover extraordinarily corrupt and inefficient. That it did not enjoy even an iota of popular support became crystal clear when the authority of the Government, led then by Mr. Shamsuddin, a nominee of Bakshi Ghulam Mohammed, collapsed like a pack of cards after the theft of the sacred relic from Hazratbal. Mr. Sadiq who succeeded Mr. Shamsuddin is in power only for a short while, but he enjoys little support in the State and in the legislature and is clearly a nominee of the Government of India. The National Conference, the ruling party, enjoys that status only because no other party is allowed to function and because the people are denied all political rights. Elections were, no doubt,



held twice, but they were more a formality than an opportunity to the people to elect their rulers.

At the moment things appear to be quiet and normal in the State. But it is a very deceptive picture. Any time the situation may get out of hand and any cause may be enough for a general flare-up. What happened after the Hazratbal incident should not be dismissed as a rare occurrence which will not be repeated. Dispassionate observers who have seen things for themselves are generally of the view that things are not going well for India in the Valley. India has poured a large amount of money in the State, but she has not been able to win any goodwill. In the first place, the money did not reach the common man and, in the second place, bounty is no substitute for self-rule. What the people of Kashmir desire is self-rule. The present arrangements do not give them the feeling that they have got it. The feeling may be justified or unjustified; the important point to note is that it exists, and as long as it exists the problem of Kashmir will remain unsolved.

On the issue of accession it is necessary to remember a few facts. The accession of Kashmir is not of the same type as the accession of other States. It took place when the State was in imminent danger of being overrun by tribal raiders acting under the instigation of the Government of Pakistan. It is a limited accession restricted only to three subjects: defence, foreign affairs and communications. India accepted it as a provisional accession as will be clear from the following sentence from a letter written by Lord Mountbatten, the then Governor-General of India, to the Maharaja: "it is my Government's wish that, as soon as law and order have been restored and the soil is cleared of the invader, the question of the State's accession should be settled by a refer-

ence to the people.” On numerous occasions India made clear her determination to give an opportunity to the people of Kashmir to express their views on it by holding a plebiscite. The assurance was given to the people of Kashmir as well as to the United Nations. The assurance given by Mr. Gopaldaswami Ayyangar, the leader of the Indian delegation, to the Security Council in February 1948, may be quoted here. He said: “We accepted Kashmir’s offer of accession at a time when she was in peril, in order to be able effectively to save her from extinction. We will not, in the circumstances, hold her to this accession as an unalterable decision on her part. When the emergency has passed and normal conditions are restored, she will be free, by means of a plebiscite, either to ratify her accession to India or to change her mind and accede to Pakistan or remain independent. We shall not stand in the way if she elects to change her mind.” Similar assurances were given many a time by the late Prime Minister and other accredited leaders of our country.

We are now refusing to hold the plebiscite on the ground that the Constituent Assembly and the two subsequent general elections have already ratified the accession. In the case of the Constituent Assembly it is necessary to remember that the resolution ratifying accession was passed after the arrest and imprisonment of Sheikh Abdullah. It is his complaint that after his arrest members of the Assembly were bribed and coerced into adopting the resolution. Whatever the truth of the complaint, the resolution is not in any case binding upon Sheikh Abdullah and he cannot be blamed if he still regards the issue as open. It is desirable also to remember what Sir B. N. Rau told the Security Council. He said: “Some members of the Council appear to fear that in the process

the Kashmir Constituent Assembly might express its opinion on the question of accession. The Constituent Assembly cannot be physically prevented from expressing its opinion on this question if it so chooses. But this opinion will not bind my Government or prejudice the position of this Council."

The argument regarding ratification through two general elections is equally weak. In the first place, accession was never an issue in the elections, and, in the second place, the elections were neither free nor fair. Except in the Jammu area there was no rival political party. Kashmir was a one-party State and both general elections were a one-party affair. In the 1957 election in the case of 59 seats out of 72 secured by the National Conference there was no contest. In 1962, 34 were uncontested. There were several complaints about illegal rejection of nomination papers and of the use of bribery and force to compel candidates to withdraw from contests. The well-known political commentator, Mr. B. Shiva Rao, has written the following about these election results: "These figures have been claimed as 'overwhelming evidence' of support for the State's accession to India. But they are too overwhelming and create an element of suspicion, since such massive majorities are not normally known in truly democratic countries." Moreover, the people did not enjoy any political rights. Repression has been all along a constant feature of the political life in Kashmir. Even under Sheikh Abdullah, when he was the Prime Minister, there was repression. It rose to new heights under Bakshi Ghulam Mohammed when there was not even an excuse of an emergency.

The occupation of a part of the State by Pakistan is a much stronger argument. It is true that Pakistan should have removed her troops from the area of Kashmir

held by her. Pakistan has failed to carry out her part of the relevant resolution of the Security Council. But is it legitimate to penalize the people of Kashmir and deny them the right that belongs to them for a misdeed of Pakistan? We are entitled to ask for a vacation of her aggression by Pakistan, but the latter's default will not justify our going back on a solemn promise that we made to Kashmiris and to the nations of the world.

There may be difficulties and dangers in holding a plebiscite; and a plebiscite may not be the only way of ascertaining the will of the people. Sheikh Abdullah is aware of this position and that is why he is prepared to consider other ways and methods. But it is one thing to suggest alternatives and an entirely different thing to deny the necessity of giving people an opportunity. We have repeated *ad nauseam* the trite formula that accession is final and irrevocable. It is time we devote some attention to finding out a solution that will be acceptable to the people of Kashmir.

Ordinarily it should be self-evident that there will be no peace and no progress in Kashmir as long as any solution that may emerge is not acceptable to both India and Pakistan. One should not forget that two-fifths of Kashmir is under the occupation of Pakistan and that it is only through an agreement with the latter that that area will be reunited with the other three-fifths of the State. Moreover, as long as the quarrel continues, Pakistan will miss no opportunity to create and foment trouble and discontent in the Indian part of the State. As a result Kashmir will be in a state of perpetual instability. This will be harmful to Kashmir and will also be a constant danger to communal harmony in both countries. It is the realization of this fact that has persuaded Sheikh Abdullah to insist that a long-term and

satisfactory solution of the Kashmir problem will not be possible without an agreement between India and Pakistan. In emphasizing this position he has kept in mind the interests not only of Kashmir but of the sub-continent as a whole and more particularly of minorities in both countries. He must be complimented on adopting such a broad, cosmopolitan and humanist point of view.

As against such a broad, cosmopolitan and humanist point of view, we have been adopting so far mainly a technical and legalistic point of view. Kashmir is legally a part of India, Pakistan is therefore an aggressor and must be asked to vacate her aggression; having become a part of the country, Kashmir cannot claim self-determination; her accession is final and irrevocable as there is in law no such thing as a provisional accession—has been the burden of our song for the last fifteen years. Whatever its legal merits, we must admit that it has failed to carry conviction to most nations. Even if we discount the indifference and opposition of the major Powers of Europe and America, how do we explain our failure to win support amongst a large number of Asian and African countries?

The present position is that we have to rely mainly upon the veto of Russia and the support of her satellites. This position in which we find ourselves landed should give us some food for thought.

If some dispassionate thought is given to the matter, it will be realized that such broad issues as a people's claim to self-determination appeal to the world conscience more than the assertion of a legal right. As a party aggrieved by the aggression of Pakistan, the sympathy of the world ought to have been with us. But it is not with us because we do not appear to be behaving in a just and equitable manner with the people of Kashmir. The

sooner this position is rectified the better will it be for the international reputation of India.

Apart from reputation, even the security and the integrity of the country are at stake in the quarrel over Kashmir. It is the unanimous opinion of all military experts that the sub-continent must be defended as a whole and not as two mutually antagonistic parts. The armies of the two countries are today ranged against one another and not against the northern neighbour who threatens the security of both. There are many differences which separate India and Pakistan, but the Kashmir problem is the most important amongst them.

It is desirable to solve that problem so that the relations between the two countries may improve. An improvement in those relations is also necessary for the safety of the minorities. We are a secular State and we afford all possible protection to our minorities, but we cannot always stop, or prevent reactions to, what happens in Pakistan. It is possible that even after the solution of the Kashmir problem Pakistan may not change her attitude towards India. Even then an attempt should be made so that the world may see and realize that India has done all that is humanly possible to improve the relations.

The Swatantra Party has put forward a point of view in this connection which deserves thoughtful consideration. At a meeting of its Parliamentary Board held in Madras it adopted a resolution on Kashmir which states *inter alia*: "This Board is of the view that, whether the accession of Kashmir to India be considered in the light of the statements made by India's Representatives before the Security Council in February-March 1948 as provisional or, as a result of what has happened later, a completed accession to India, it should not stand in the way of a re-consideration and re-adjustment in order to attain

Indo-Pakistan amity, thereby strengthening India's security against foreign aggression and helping the progress and prosperity of both India and Pakistan." The resolution further states: "No decision in politics, particularly when it relates to matters which involve India's security against foreign aggression, should be deemed final or irrevocable, so as to prevent re-thinking and revision for advancing the welfare and security of the country."

We are a secular State and we do not believe in the "two-nation" theory. But is it necessary for that purpose to retain Kashmir in India against the will of her people? We have already given convincing proof of our secularism by giving equal rights to our Muslim citizens and by refusing to allow considerations of religion, caste or community to have any influence on our public policy. Will it not be a greater triumph of secularism and a more effective repudiation of the two-nation theory if Kashmir is reunited and enabled to exist and grow as a secular State with its Muslim and Hindu residents living together in amity and equality, if necessary, even as a separate entity? Will it not be a greater ideal to strive for? It is difficult to say if it will be attained, for much depends on Pakistan and it is not possible to predict her reaction.

It is clear, however, that the *status quo* cannot continue. It is full of dangerous possibilities. One course of action that is suggested by some is the full integration of Kashmir through the abrogation of Article 370 of the Constitution. Those who advocate this course appear to have forgotten the circumstances under which the Article came to be included in the Constitution. It was drafted to make provision for the special position enjoyed by the State of Jammu and Kashmir. The Article is of a provisional character but it cannot be abrogated or altered unilaterally or as stated in proviso to clause (3)

without a recommendation of the Constituent Assembly of the State. In a speech delivered at the Constituent Assembly in August 1952 Sheikh Abdullah, who was then the Prime Minister, explained the significance and import of the Article. He said: "Here I would like to point out that the fact that Article 370 has been mentioned as a temporary provision in the Constitution does not mean that it is capable of being abrogated, modified or replaced unilaterally. In actual effect, the temporary nature of this Article arises merely from the fact that the power to finalize the constitutional relationship between the State and the Union of India has been specifically vested in the Jammu and Kashmir Constituent Assembly. It follows that whatever modifications, amendments or exceptions that may become necessary either to Article 370 or any other Article in the Constitution of India in their application to the Jammu and Kashmir State are subject to the decision of this sovereign body." This view of the Article was not challenged then and has not been challenged so far. The full speech appears as an appendix in the book.

Curiously enough, Communists and Socialists have joined the Hindu Mahasabha and the Jan Sangh in putting forward that demand! It must be conceded that it enjoys a measure of support in the country. The course is not, however, easy. It may provoke violent reactions in Kashmir. Pakistan on its part will not remain a silent spectator. Clandestinely and otherwise, she may give all possible support and encouragement to those in Kashmir who are opposed to the Indian decision. It cannot be denied that there are many in Kashmir who will find themselves in that position. They have made clear on numerous occasions their opposition to integration. It is likely, therefore, that an attempt to impose integra-



tion may involve us in large-scale repression and suppression which will not reinforce internal stability or add to our reputation abroad.

The other course could be to devise, in consultation with the accredited leaders of Kashmir, an appropriate method for ascertaining the desire of the people and to give effect to it. This could be done, if necessary, on a regional basis so that the people of the different regions of the State get an opportunity to give expression to their particular desires. Once the will of the people is ascertained, it should be given effect to irrespective of questions of prestige or legal technicalities about sovereignty and accession. It will be necessary, in case the Kashmir Valley decides to remain separate, to provide safeguards for our lines of communications and defence and to secure international guarantees for the preservation of the integrity and autonomy of the separate territory. With goodwill on both sides it should not be difficult to get the safeguards as well as the guarantees. The most important point, however, is that we must realize that the Kashmir issue is, as stated by Mr. Jayaprakash Narayan, "a moral and political issue" and not a quarrel over legal technicalities. The two weighty and thought-provoking articles written by Mr. Jayaprakash Narayan on the problem are appended to the book. It may be also remembered that the position that Kashmir enjoys under the Constitution is not the same as that of other States of the Union. A perusal of Article 370 will make it clear as also all the special provisions made for the State during the last sixteen years.

The fact that the talks with Sheikh Abdullah are continuing, that the latter has found some "basis" for continuing them and that he is hopeful of finding a solution "that would be equally acceptable to India and

Pakistan and would assure the Kashmiri people a 'place of honour' without weakening India's secular basis" should give some comfort to those who are anxious to find an early solution to the problem. It is regrettable that Pandit Jawaharlal Nehru did not live long enough to solve it himself. There can be no dispute, however, about his keen desire to secure its solution. His successor, Mr. Lal Bahadur Shastri, is known to be equally anxious. It is possible therefore to entertain the hope that the problem may not remain unsolved too long.

Communal forces are, however, getting stronger. They are making themselves attractive and are securing support in unexpected quarters by wearing the mantle of nationalism and secularism and anti-imperialism. They are making full use of all the crimes and misdeeds of Pakistan in order to mobilize public opinion against any reconsideration of the Kashmir problem. A curious unity has developed between the communal forces on the one hand and Socialists and Communists on the other hand. Very few are the voices of sanity like those of Rajaji and Jayaprakash Narayan and a few others. Unless the Government takes the situation boldly in hand, they may prove voices in the wilderness and the country may slide down the path of communalism.

Mr. Noorani has tried in this book to place before the public the facts of the situation in an objective and unbiased manner. A perusal of these facts will, it is hoped, help a reconsideration of the problem. A dispassionate student of the question need not plead for any particular course of action. He will plead only for a re-thinking on the issue. He will also plead that moral considerations should not be subordinated to considerations of prestige and legal formalities.

## I. GENESIS OF THE QUESTION

---

ON AUGUST 14, 1947, the State of Jammu and Kashmir was one of the 562 Indian States under the suzerainty of the British Crown. Its territory was not part of British India and its people were subjects of the British Crown. The Cabinet Mission's Memorandum of May 12, 1946, defined the status of these States and the legal consequences which the transfer of power would have on them, in these words: "His Majesty's Government will cease to exercise powers of paramountcy. This means that the rights of the States which flow from their relationship with the Crown will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States. Political arrangements between the States on the one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them."<sup>1</sup>

Thus, on the lapse of paramountcy consequent on the transfer of power, the Indian States became independent and were free to accede to either of the two Dominions, India and Pakistan, or to remain independent. Under Section 7(1)(b) of the Indian Independence Act, 1947, the suzerainty of the British Crown over the Indian

<sup>1</sup> *White Paper on Indian States*, p. 153.

States lapsed and with it all treaties and agreements in force between them. As Lord Mountbatten, the British Viceroy, told the Princes on July 25, 1947, "the Indian Independence Act releases the States from all their obligations to the Crown. The States have complete freedom—technically and legally they are independent." He however proceeded to say that "the States are theoretically free to link their future with whichever they may care. But when I say they are at liberty to link up with either of the dominions may I point out that there are certain geographical compulsions which cannot be evaded?" He further added, "You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible."<sup>2</sup> Lord Mountbatten put forward before the rulers two documents: (1) the Instrument of Accession and (2) a Standstill Agreement for the continuance for the time being of agreements and arrangements in matters of common concern between the States and the Dominion of India.

The stand which the leaders of the two Dominions took at this time may be mentioned. In a statement issued on July 30, Mr. M. A. Jinnah, the Governor-General-Designate of the Dominion of Pakistan, said:

The legal position is that with the lapse of paramountcy on the transfer of power by the British all Indian States would automatically regain the full sovereign and independent status. They are therefore free to join either of the two Dominions or to remain independent.

<sup>2</sup> *White Paper on Indian States*, p. 161.

The All India Congress Committee, in a resolution dated June 15, 1947, held " that the lapse (of paramountcy) does not lead to the independence of the States " and said " it is clear that the people of the States must have a dominating voice in any decisions regarding them. . . ." <sup>3</sup> In keeping with this stand, the Government of India objected when the ruler of Jodhpur was negotiating accession with Pakistan. Mr. V. P. Menon's book, *The Integration of Indian States* shows how the Government of India acted on the A.I.C.C. Resolution. Lord Mountbatten is quoted as having " made it clear that from a purely legal standpoint there was no objection to the ruler of Jodhpur acceding to Pakistan; but the Maharaja should, he stressed, consider seriously the consequences of his doing so, having regard to the fact that he himself was a Hindu; that his State was populated predominantly by Hindus and that the same applied to the States surrounding Jodhpur. In the light of these considerations if the Maharaja were to accede to Pakistan his action would surely conflict with the principle underlying the partition of India on the basis of Muslim and non-Muslim majority areas, and serious communal trouble inside the State would be the inevitable consequence of such affiliation." <sup>4</sup>

Soon after Independence, all States acceded to one Dominion or the other, except for Hyderabad and Junagadh.

Two days after Independence a report appeared in the newspapers that Junagadh had acceded to Pakistan. Mr. Menon writes: " On 21st August I was instructed to address a letter to the High Commissioner of Pakistan in India pointing out the considerations of Junagadh's

<sup>3</sup> *The Times of India*, June 16, 1947.

<sup>4</sup> V. P. Menon, *The Integration of Indian States*, p. 117.

geographical contiguity, the composition of its population and the need for consulting the views of the people with regard to the accession. . . ." On September 12, Nehru suggested that a telegram be sent to Liaquat Ali Khan, Prime Minister of Pakistan, indicating the Government of India's willingness to accept and abide by the verdict of the people of Junagadh in respect of the accession of the State to either of the Dominions. In the course of the telegram sent to the Prime Minister of Pakistan, Nehru said :

The population of Junagadh, according to the 1941 census, is 6.71 lakhs, of which no less than 5.44 lakhs, or 80 per cent, are Hindus. This large majority of the population of the State has made it clear to the ruler of Junagadh in no uncertain terms that they are opposed to Junagadh acceding to the Dominion of Pakistan and that they wish that the State should accede to the Dominion of India.

He went on to say :

The Dominion of India would be prepared to accept any democratic test in respect of the accession of the Junagadh State to either of the two Dominions. They would accordingly be willing to abide by a verdict of these people in this matter, ascertained under the joint supervision of the Dominion of India and Junagadh. If, however, the ruler of Junagadh is not prepared to submit this issue to a referendum and if the Dominion of Pakistan, in utter disregard of the wishes of the people and the principles governing the matter, enter into arrangement by which Junagadh is to be part of the Federation of Pakistan, the Government of

India cannot be expected to acquiesce in such an arrangement.<sup>5</sup>

On September 22, the Governor-General of India wired to the Governor-General of Pakistan: "Acceptance of accession to Pakistan cannot but be regarded by the Government of India as an encroachment on Indian sovereignty and inconsistent with friendly relations that should exist between the two Dominions. This action of Pakistan is considered by the Government of India to be a clear attempt to cause disruption by extending the influence and boundaries of the Dominion of Pakistan in utter violation of the Principles on which partition was agreed upon and effected."<sup>6</sup>

In a communique issued on September 25, 1947, the Government of India set out their views and said that the "relationship of Junagadh to either of the two Dominions" should be "determined by a free expression of the will of the State. To ascertain these wishes the Government of India have suggested a referendum. They adhered to the suggestion."<sup>7</sup>

On October 4, the Government of India considered the Junagadh situation. "It was decided to inform the Prime Minister of Pakistan that the only basis on which friendly negotiations could start and be fruitful was the reversion of Junagadh to the *status quo* preceding the accession of Junagadh to Pakistan and that the alternative to negotiations was a plebiscite."<sup>8</sup>

In a statement on October 5, 1947, the Government of India recalled that the Governments of India and

<sup>5</sup> Proceedings of Security Council of March 6, 1951.

<sup>6</sup> *Ibid.*

<sup>7</sup> *The Times of India*, September 26, 1947.

<sup>8</sup> V. P. Menon, *op. cit.*, p. 140.

Pakistan had declared their determination in the Joint Statement issued on September 20 to rule out war. The Government set out their views in regard to the accession of Junagadh and said that they would not accept it "in the circumstances in which it was made."<sup>9</sup>

The Statement said: "Any decision involving the fate of large numbers of people must necessarily depend on the wishes of these people. This is the policy which the Government of India accept in its entirety and they are of the opinion that a dispute involving the fate of the people of any territory should be decided by a referendum or plebiscite of the people concerned. This is a method at once democratic, peaceful and just. They suggest, therefore, that the issues regarding Junagadh should be decided by a referendum or plebiscite of the people of the State. Such a referendum or plebiscite should be held under impartial auspices to be determined by the parties concerned."<sup>10</sup>

Two days later, the Government of Pakistan issued a statement setting out their views on the accession of Junagadh. The statement suggested the withdrawal of troops by the Government of India from Sardargarh and Batva and by Junagadh from Babariawad. "The Pakistan Government have also informed the Government of India of their willingness to discuss the conditions and circumstances in which a plebiscite should be taken by any State or States."<sup>11</sup> In the light of events that happened later, it is a matter of regret that the two Governments did not explore this avenue to which both were then moving.

Meanwhile, in Bombay a Provisional Government of

<sup>9</sup> *The Times of India*, October 6, 1947.

<sup>10</sup> *Ibid.*

<sup>11</sup> *The Times of India*, October 8, 1947.



Junagadh headed by Mr. Samaldas Gandhi was set up and it proceeded to Junagadh. In a letter dated October 3, 1947, published in *The Times of India* Sir Chimanlal Setalvad, an eminent lawyer, said: "The Junagadh Government has acted unwisely in acceding to Pakistan ignoring the geographical considerations and the wishes of its subjects, but that affords no justification for what is being done. The 'Provisional Government' was formed and functioned for some days in Bombay with the avowed object of overthrowing by force the established Government in Junagadh. The Government of Bombay were, I venture to say, bound not to allow the 'Provisional Government' to start its hostile activities against a State which is at peace with the Government of Bombay and with the Government of India who are at peace with Pakistan to which Junagadh has acceded. Their permitting this to be done amounts to an unfriendly act against Junagadh and Pakistan. The Government of India should not have allowed passage over their railways to a body proceeding to Rajkot with the proclaimed object of overthrowing the established Government of Junagadh."

On November 9, 1947, Indian Armed Units moved into Junagadh.<sup>12</sup> A telegram sent the same date by the Prime Minister Jawaharlal Nehru to the Prime Minister of Pakistan mentions a request made by Major Harvey Jones, Senior Member of the Junagadh State Council, appealing to the Government of India to take over the Junagadh administration. "This request was made in order to save the State from complete administrative breakdown and pending an honourable settlement of several issues involved in Junagadh's accession."

<sup>12</sup> *The Times of India*, November 10, 1947.

The Government of Pakistan lodged a protest and contended that in view of the accession of Junagadh to Pakistan it continued to remain a part of Pakistan territory. When the Kashmir question came up before the Security Council in 1948 Pakistan raised the question of Junagadh but after a few inconclusive debates in March, April and May 1948 the question was never raised again.

In February 1948 the Government of India held a referendum in Junagadh and by an almost unanimous vote the people showed their preference for India.

The events concerning Junagadh have been set out only to show the stand of the Governments of India and Pakistan with regard to cases of disputed accession, and are very relevant to an understanding of the Kashmir problem.

The State of Jammu and Kashmir had concluded a standstill agreement with the Government of Pakistan in regard to the maintenance of the existing arrangement in respect of posts, telegraphs, etc. In a statement issued at Mussoorie on May 28, 1947, Sardar Patel had said: "Kashmir remains within the Indian Union even if a division of India and partition of Punjab takes place."<sup>13</sup> It was open to Kashmir to accede to either Dominion.

Lord Mountbatten visited the State in July 1946. He told the Maharaja that he was authorized by the Indian leaders to tell him that he could accede to either Dominion and that they would not object if he acceded to Pakistan. Gandhiji visited the State in August 1947. Tendulkar reports his speech in these words: "British paramountcy would terminate on the 15th. The real paramountcy would then commence. He referred to the paramountcy of Kashmiris. They had one language, one culture and, so far as he could see, they were one people.

<sup>13</sup> *The Times of India*, May 29, 1947.

He added that without going into the intricacies of Law which he had no right to dilate upon, commonsense dictated that the will of the Kashmiris should decide the fate of Jammu and Kashmir. The sooner it was done the better. How the will of the people would be determined was a fair question. He hoped that the question would be decided between the two Dominions, the Maharaja and the Kashmiris. If the four could come to a joint decision, then much trouble would be saved.”<sup>14</sup>

Sheikh Abdullah was released from jail in September 1947. Soon after release he said: “If the 40 lakhs of people living in Jammu and Kashmir are by-passed and the State declares accession to India or Pakistan, I shall raise the banner of revolt and we face a struggle.” There was local revolt in the Poonch province of Jammu and Kashmir State against the ruler. Movements of refugees through the State also led to communal trouble. Armed tribesmen entered the State with the connivance and support of the Pakistani authorities and set on a campaign of loot and carnage. The events with regard to the communal trouble are set out in Mr. Pyarelal’s book, *The Last Phase* while the Poonch revolt is mentioned in Joseph Korbel’s *Danger in Kashmir*. Mr. Menon’s book describes authoritatively the events leading to accession.

Mr. V. P. Menon says: “On the evening of October 24, the Government of India received a desperate appeal for help from the Maharaja. They also received from the Supreme Commander, information regarding the raiders’ advance and probable intentions. On the morning of October 25, a meeting of the Defence Committee was held, presided over by Lord Mountbatten. This Committee considered the request of the Maharaja for

<sup>14</sup> D. G. Tendulkar, *Mahatma Gandhi*, Vol. 9, p. 78.

arms and ammunitions and for reinforcements of troops. Lord Mountbatten emphasized that no precipitate action should be taken until the Government of India had fuller information. It was agreed that I should fly to Srinagar immediately in order to study the situation on the spot and to report to the Government of India.”<sup>15</sup>

Accordingly, Mr. Menon flew to Srinagar where he met the Maharaja. On October 26, the Maharaja and Mr. Menon left Srinagar. Mr. Menon reported to a meeting of the Defence Committee. What transpired there is thrashed out in Mr. Menon's words: “Lord Mountbatten said that it would be improper to move troops into what was at the moment an independent country, as Kashmir has not yet decided to accede to either India or Pakistan. If it were true that the Maharaja was now anxious to accede to India, then Kashmir would become part of Indian territory. This was the only basis on which Indian troops could be sent to the rescue of the State from further pillaging by the aggressors. He further expressed the strong opinion that in view of the composition of the population, accession should be conditional on the will of the people being ascertained by a plebiscite after the raiders have been driven out of the State and law and order have been restored. This was readily agreed to by Nehru and other ministers.”<sup>16</sup> Mr. Campbell Johnson's memoirs *Mission with Mountbatten* also contain an account of this meeting. Lord Mountbatten “considered that it would be height of folly to send troops into a neutral State where we had no right to send them, since Pakistan could do exactly the same thing, which could only result in a clash of armed forces and in war. He, therefore, urged that if indeed they

<sup>15</sup> V. P. Menon, *The Integration of Indian States*, p. 397.

<sup>16</sup> *Ibid.*, p. 399.

were determined to send in troops the essential prerequisite was accession, and unless it was made clear that this accession was not just an act of acquisition, this in itself might touch off a war. He therefore urged that in the reply his Government asked him to send on their behalf to the Maharaja accepting his accession offer he should be allowed to add that this (accession) was conditional on the will of the people being ascertained as soon as law and order were restored." Soon after the meeting of the Defence Committee, Mr. Menon flew to Jammu to meet the Maharaja. He writes:

I woke him up and told him what had taken place at the Defence Committee meeting. He was ready to accede at once. Then he composed a letter to the Governor-General describing the plight of the State and reiterating his request for military help . . . with the instrument of accession and the Maharaja's letter I flew back at once to Delhi. Sardar was waiting at the aerodrome and we both went straight to the Defence Committee which was arranged for that evening. There was a long discussion, at the end of which it was decided that the accession of Jammu and Kashmir should be accepted, subject to the proviso that a plebiscite would be held in the State when the law and order situation allowed. . . . This decision had the fullest support of Sheikh Abdullah.

The Maharaja's <sup>17</sup> letter to Lord Mountbatten, which recorded what had been agreed upon is unique since it is the only instance of an instrument of accession being accompanied by a letter. The terms of the letter are therefore of crucial importance.

<sup>17</sup> See Appendix II.

The Maharaja said: "Geographically my State is contiguous to both the Dominions. It has vital economic and cultural links with both of them. Besides my State has a common boundary with the Soviet Republics and China. In their external relations, the Dominions of India and Pakistan cannot ignore this fact." He added, "I wanted to take time to decide to which Dominion I should accede, whether it is not in the best interests of both the Dominions and my State to stand independent, of course, with friendly and cordial relations with both." He mentioned that under the Standstill Agreement, the Pakistan Government was operating posts and telegraph system in the State, that Pakistan had tried to put pressure on the State to accede culminating in the communal tribal raids and said: "With the conditions obtaining at present in my State and the great emergency of the situation as it exists I have no option but to ask for help from the Indian Dominion. Naturally, they cannot send the help asked for by me without my State acceding to the Dominion of India. I have, accordingly, decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to free-booters."

In his reply dated October 27, 1947, Lord Mountbatten said: "In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that, in the case of any State where the issue of the accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be

settled by a reference to the people." He accepted the appeal for military aid and said that Indian Army would be sent to Kashmir "to help your own forces to defend your territory and to protect the lives, property and honour of your people."

Commenting on this, the Government White Paper on Jammu and Kashmir (1948) says (p. 3) that, "in accepting the accession the Government of India made it clear that they would regard it as purely provisional until such time as the will of the people could be ascertained."

In a public statement issued on October 30, the Government of India, while setting out the events leading to the accession of the State, announced: "It is desirable to draw attention to the conditions on which the Government of India have accepted Kashmir's accession" and proceeded to mention the decision that the "people of the State should decide the question of accession." In a communique of the same date the Pakistan Government said that in its opinion "the accession of Kashmir to the Indian Union is based on fraud and violence, and as such cannot be recognized."<sup>18</sup>

It is necessary at this point to stress two clear issues, first the legality of the accession and secondly its provisional, conditional character. Pakistan questioned the very legality itself, a contention which is demonstrably unsound. However, an accession even if legal could be either permanent and irrevocable, as in the case of most States of the Indian Union and of Pakistan, or it may be provisional or conditional. In the case of Kashmir, the letters exchanged between the Maharaja and the Viceroy, itself a unique instance of the Instrument of Accession being accompanied by collateral documents, and the pronouncements made then would suggest that

<sup>18</sup> *The Times of India*, October 31, 1947.

the accession was provisional and conditional. We have already quoted the comments made in the Government of India's White Paper.

The later statements were in the same tenor. Even before the accession, in a telegram dated October 25, 1947, addressed to the Prime Minister of the United Kingdom and repeated the next day to the Prime Minister of Pakistan, Mr. Nehru said: "I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view which we have repeatedly made public is that the question of accession in any disputed territory or State must be decided in accordance with the wishes of the people and we adhere to this view."<sup>19</sup>

In a telegram dated October 28, 1947, to the Prime Minister of Pakistan, Mr. Nehru again said: "In regard to accession also it has been made clear that this is subject to reference to people of the State and their decision. Government of India have no desire to impose any decision and will abide by people's wishes but these cannot be ascertained until peace and law and order prevail."<sup>20</sup> In a telegram dated October 31, 1947, to Mr. Liaquat Ali Khan, Mr. Nehru again said: "Kashmir's accession to India was accepted by us at the request of Maharaja's Government and the most numerous representative popular organization in the State which is predominantly Muslim. Even then it was accepted on the condition that as soon as the invader has been driven from Kashmir soil, and law and order restored, the people of Kashmir would decide the question of accession. It is open to them to accede to either Dominion then." He proceeded to say: "Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are

<sup>19</sup> *White Paper on Jammu & Kashmir*, p. 45.

<sup>20</sup> *Ibid.*, p. 48.



restored and leave the decision about the future of the State to the people of the State is not merely a pledge to your Government but also to the people of Kashmir and to the world.”<sup>21</sup> Broadcasting to the nation on November 2, Mr. Nehru said:

Let me make it clear that it has been our policy all along that where there is a dispute about the accession of a State to either Dominion, the decision must be made by the people of that State. It was in accordance with this policy that we added a proviso to the Instrument of Accession of Kashmir.<sup>22</sup>

Mr. Nehru was clearly referring to the collateral exchange of letters between the Maharaja of the State and Lord Mountbatten that accompanied the Instrument of Accession. He said: “We have declared that the fate of Kashmir has ultimately to be decided by the people. That pledge we have given, and the Maharaja had supported it, not only to the people of Kashmir but to the world. We will not, and cannot, back out of it. We are prepared when peace and law and order have been established, to have a referendum held under international auspices like the United Nations. We want it to be a fair and just reference to the people, and we shall accept their verdict.” The next day in a telegram to Mr. Liaquat Ali Khan, Mr. Nehru drew his attention to his broadcast the previous evening: “I further stated that we have agreed to an impartial international agency like the United Nations supervising any referendum. This principle we are prepared to apply to any State where there is a dispute about accession.”<sup>23</sup>

Once again in a telegram dated November 8, 1947,

<sup>21</sup> *Ibid.*, p. 51.

<sup>22</sup> *Ibid.*, p. 53.

<sup>23</sup> *Ibid.*, p. 55.

to Liaquat Ali Khan, Mr. Nehru, in reply to the Pakistan proposals for a settlement, made a counter offer suggesting *inter alia* a joint request to U.N.O. to undertake a plebiscite in Kashmir at the earliest possible date, and said:

The above conclusions relate only to Kashmir but it is essential in order to restore good relations between two Dominions that there should be acceptance of the principle that where the ruler of a State does not belong to the community to which the majority of his subjects belong, and where the State has not acceded to that Dominion whose majority community is the same as the State's the question whether the State should finally accede to one or the other of the two Dominions should be ascertained by reference to the will of the people.<sup>24</sup>

On November 21 Mr. Nehru said: "I have repeatedly stated that as soon as the raiders have been driven out of Kashmir or have withdrawn and peace and order have been established, the people of Kashmir should decide the question of accession by plebiscite or referendum under international auspices such as those of the United Nations." In a statement on Kashmir in the Constituent Assembly on November 25, 1947, Mr. Nehru referred to the events prior to the tribal raid and said: "We made it clear to both of them (Sheikh Abdullah and representatives of the Maharaja) that while we would welcome the accession of Kashmir, we did not want any hurried or forced accession and we would rather wait for the people to decide. Sheikh Abdullah was himself of this opinion."<sup>25</sup>

<sup>24</sup> *Ibid.*, p. 62.

<sup>25</sup> *Ibid.*, p. 69.

## 2. KASHMIR AT U.N.O.

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MR. NEHRU REPEATED here his offer of plebiscite " under the supervision of an impartial tribunal such as the U.N.O." On December 11, 1947, at a meeting of the Joint Defence Council a formula was practically agreed upon as a basis for settlement providing for the withdrawal of tribesmen and the bulk of Indian forces and for a plebiscite by the United Nations. As Mr. Campbell Johnson says, Lord Mountbatten felt then " that only the introduction of a third party with international authority acting in an agreed capacity could now break it (the deadlock)." Mountbatten suggested that the U.N. should fill that role and Mr. Liaquat Ali Khan welcomed the proposal. " Mr. Nehru wanted to know under what section of the Charter any reference to the U.N. could be made." The writer added: " Mountbatten has seen Gandhi and Vallabhbhai Patel who are both favourably inclined to the invocation of the U.N." It may be mentioned here that earlier Gandhiji had said: " The Indian Government sent troops by air to Kashmir telling the Maharaja that the accession was provisional upon an impartial plebiscite being taken of Kashmiris irrespective of religion." Thus Gandhiji supported the despatch of aid to the Kashmiris and the reference to the U.N. The complaint to the U.N. was intended not only to stop the tribal raid and put an end to aggression on Kashmir, but also to bring about a settlement on the

basis of plebiscite. This is very apparent from Mountbatten's remarks quoted above. The Indian complaint of December 31, 1947, to the U.N. itself says:

In order to avoid any possible suggestion that India had taken advantage of the State's immediate peril for her own political advantage, the Dominion Government made it clear that once the soil of the State had been cleared of the invader and normal conditions were restored, the people would be free to decide their future by the recognized democratic method of plebiscite or referendum, which, in order to ensure complete impartiality, may be held under international auspices.<sup>1</sup>

The later impression that the Security Council went on to the plebiscite proposal of its own is, therefore, erroneous.

Mr. N. Gopaldaswami Ayyangar presented the Indian Case to the Security Council. Addressing the Security Council on January 15, 1948, he said: "In accepting the accession they refused to take advantage of the immediate peril in which the State found itself and informed the Ruler that the accession should be finally settled by plebiscite as soon as peace has been restored. They have subsequently made it clear that they are agreeable to the plebiscite being conducted if necessary under international auspices."

He also added: "The question of the future status of Kashmir *vis-à-vis* her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India and either accede to Pakistan or remain independent, with a right to claim admission as a member of the United Nations—all this

<sup>1</sup> *White Paper on Jammu & Kashmir*, p. 77.

we have recognized to be a matter for unfettered decision by the people of Kashmir after normal life is restored to them."

Mr. Ayyangar traced the history of the dispute and said that on August 15, 1947, "Jammu & Kashmir like other States became free to decide whether she would accede to one or the other Dominion or remain independent."

On January 25, 1948, Mr. M. C. Setalvad, a member of the Indian Delegation, addressing the Security Council, said: "The Indian Government was careful, even though the request came from both (the Maharaja and Sheikh Abdullah) to stipulate that it was accepting the accession only on the condition that later, when peace had been restored, the expression of popular will should be ascertained in a proper manner. It was on that condition, and that condition alone, that the Indian Government accepted the accession."

In a speech on February 6, 1948, the leader of the Indian Delegation, Mr. Gopaldaswami Ayyangar, said: "We accepted Kashmir's offer of accession at a time when she was in peril, in order to be able to effectively save her from extinction. We will not, in the circumstances, hold her to this accession as an unalterable decision on her part. When the emergency has passed and normal conditions are restored, she will be free, by means of a plebiscite, either to ratify her accession to India or to change her mind and accede to Pakistan or remain independent. We shall not stand in the way if she elects to change her mind."

The *White Paper on Jammu & Kashmir*, Part 4, entitled "India's Objectives" says: "In Kashmir, as in other similar cases, the view of the Government of India has been that in the matter of disputed accession the will of the people must prevail. It was for this reason that

they accepted only on a provisional basis the offer of the ruler to accede to India, backed though it was by the most important political organization in the State. The question of accession is to be decided finally in a free plebiscite; on this point there is no dispute. It is, however, impossible to hold a plebiscite so long as the State is infested by free-booters from outside. The only purpose for which the Indian troops are operating in Kashmir is to ensure that the vote of the people will not be subject to coercion by tribesmen and others from across the border who have no right to be in Kashmir.”<sup>2</sup>

The Security Council passed a resolution on January 20 establishing a Commission consisting of three members, one to be selected by each State and the third to be elected by the two. The Commission was invested with full powers to investigate the facts and exercise mediatory influence. On further debate, the Security Council passed another resolution on April 21, 1948, expanding the membership of the Commission to five, “noting with satisfaction that both India and Pakistan desire that the accession of Jammu and Kashmir to Pakistan or India should be decided by the democratic method of a free and impartial plebiscite.” The Commission was directed to proceed to the sub-continent to offer its good offices “with a view to facilitating the taking of necessary measures, both with respect to the restoration of peace and order and to the holding of a plebiscite by the two governments, co-operating with one another and with the Commission.” The resolution laid down detailed provisions for the withdrawal of troops and the holding of a plebiscite. The Government of India objected to certain parts of the resolution and said that it was not possible for them to implement them.

<sup>2</sup> *White Paper on Jammu & Kashmir*, p. 45.

A similar stand was taken by the Pakistan Government which also objected to various portions of the resolution. However, both the Governments agreed to confer with the Commission.

The United Nations Commission for India and Pakistan came to the sub-continent. It adopted a resolution on August 13, 1948. This resolution, together with the later resolution of January 5, 1949, it is admitted, constituted a binding agreement between India and Pakistan. It is therefore of vital importance. The resolution of August 13 is in three parts: Part 1 provides for the cease-fire and its consolidation. Part 2 provides for a Truce Agreement, Para B-1 of Part 2 is of crucial importance in the light of the later controversy about the withdrawal of Pakistani troops. It reads as follows:

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

Part 3 reads as follows:

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

accepted this resolution. The Government of Pakistan also accepted the resolution but subject to the conditions that "the Government of India accept the conditions laid down in Part B (paragraphs 6 to 15 both inclusive) of the Security Council Resolution of April 21, 1948, as explained by the sponsors, for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan." The Commission rightly held that this was not an unreserved acceptance of its resolution of August 13, 1948. However, Parts 1 and 2 of the resolution were already agreed upon and the disagreement centred on the details for a plebiscite. The Commission, in its own words, "approached representatives of the two Governments to explore the possibilities of an agreement on principle for a plebiscite in the State, supplementing Part 3 of the 13th August resolution. As a result of these talks, the Commission on 11th December 1948 submitted to both parties proposals to serve as the basis for a plebiscite."

The Governments of India and Pakistan by their letters dated December 23 and December 25, 1948, respectively, notified to the Commission their acceptance of the Commission's proposals of December 11, which were now embodied in a resolution of the Commission on January 5, 1949. Mr. Krishna Menon stated in the Security Council on February 8, 1957, that "the only international engagements that exist are two resolutions of the UNCIP dated 13th August 1948 and 5th January 1949. These are the engagements. If they were of a formal character, they might be treaties, but, at any rate, they are the engagements we have entered into—the resolution of 13th August 1948 and 5th January 1949." Thus the rights and contentions of both sides arising from events in the past were now merged into solemn



agreements. The sole question that now remained was the implementation of these agreements.

The U.N. Commission returned to India. The task before it obviously now was to acquire a truce agreement as contemplated in Part 2 of August 13, 1948. It put forward two proposals, one on April 15, 1949, and the other on April 28, 1949. Both Governments rejected these proposals. Their differences centred on the disbandment of Azad Kashmir Forces. While the Commission had originally dealt with their disbandment at the plebiscite stage, and not at the truce stage, the Government of India now contended that, having regard to the increase in the size of these forces, the disbandment should take place at the truce stage itself. Nor was agreement possible on the definition of the "bulk of the Indian forces." The Commission also tried unsuccessfully to arrange a ministerial joint meeting of the two Governments but their views on the agenda were so very wide apart that the Commission cancelled the meeting. This cancellation, it must be mentioned, surprised both the Governments, who were willing to meet despite their disagreements. The cancellation was also criticized by Dr. Oldrich Chyle, the Czechoslovakian member of the Commission, in his minority report. The Commission thereafter submitted to the two Governments a Memorandum dated August 26, 1949, proposing that they "submit to arbitration the differences existing between them concerning all questions raised by them regarding the implementation of Part 2 of the resolution of 13th August 1948. The Arbitrator to decide these questions according to equity and his decision was to be binding on both the parties." Admiral Chester W. Nimitz of the United States Fleet, who was appointed as the Plebis-

cite Administrator under the resolution of January 5, 1949, was to be the arbitrator.

President Truman and Mr. Attlee sent joint messages to both the Governments urging acceptance of the arbitration proposals. Mr. Nehru in a public speech criticized the Anglo-American intervention and India rejected the arbitration proposals. It is worthy of note that neither in its letter of September 8 nor in that of September 15, 1949, rejecting the arbitration proposals, did India argue that arbitration violated Indian sovereignty over Kashmir.<sup>3</sup>

The U.N. Commission reported failure of its efforts and opined, "the sequences for the demilitarization of the State as contained in the Commission's resolution of 13th August 1948 and 5th January 1949 is not adequate to solve the present situation." It recommended "a modification in the original plan of demilitarization. Such a modification must treat the problem of demilitarization as a whole, eliminating all distinction, and comprising all questions concerning the final disposal of all armed forces in the State of Jammu and Kashmir." The Commission also recommended that in place of the Five-man Commission a single individual should be appointed to mediate between the parties.

In 1949, there took place two developments which are of crucial importance to the legal position of Kashmir in the Indian Union. One was the admission of Kashmir's representatives to the Constituent Assembly; the other was the adoption of the Constitution, including its present Article 370, by the Constituent Assembly with the participation of those representatives.

When Pakistan protested against the Indian decision

<sup>3</sup> See Annexures 36 and 39/1430, Interim Report of the UNCIP to the Secretary-General, December 9, 1949.

to admit Kashmir's four representatives to the Constituent Assembly, the Commission felt, "it is difficult to oppose this measure of the Indian Government on the purely legal grounds. The Commission did not consider that there was any useful purpose to be served in approaching the Government of India in this matter." The Commission apparently saw no inconsistency between an accession which is valid but conditional on a plebiscite which it was the Commission's duty to arrange. The Commission forwarded Pakistan's protest to the Government of India. The Secretary-General of the External Affairs Ministry's letter dated November 21, 1949, sets out the Indian position. In view of the crucial importance of this letter the relevant portion is reproduced *in extenso*: "While the Constitution of India which *inter alia* provided for the relation of acceding States to the Government of India was under consideration it would have been unfair to the Government and the people of the State of Jammu and Kashmir to deny them the opportunity of participating in the discussion of that Constitution. Such participation was not intended to, and does not, in fact, alter the Government of India's determination to abide, in the matter of accession, by the freely declared will of the people of Jammu and Kashmir. Should that will be against the State continuing to be part of India, if and when it comes to be expressed in a constitutional way under conditions of peace and impartiality, the representation of the State in Indian Parliament would automatically cease and the provisions of the Constitution of India that govern the relations of the State of Jammu and Kashmir with the Union of India will also cease to operate."

This letter correctly set out the legal position which was that the accession was legal and valid but was pro-

visional and conditioned on a free plebiscite being taken. Needless to say, it was a position to which an impartial body like the UNCIP could hardly have objected.

Equally worthy of notice is the debate in the Constituent Assembly when Article 370 was moved for consideration. It was put forth in the Assembly as Article 306A. Moving the adoption of the Article in the Constituent Assembly on October 17, 1949, Shri N. Gopalswami Ayyangar justified the special treatment given to Kashmir. "In the first place there has been a war going on within the limits of Jammu and Kashmir. There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on. But the conditions in the State are still abnormal. It is, therefore, necessary that the administration of the State should be geared to these unusual conditions until normal life is restored as in the case of other States. Part of the State is still in the hands of rebels and enemies. We are still entangled with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free from this entanglement. *That can only take place when the Kashmir problem is satisfactorily settled.* Again the Government of India have committed themselves to the people of Kashmir in certain respects. They have committed themselves to the position that an opportunity would be given to the people of the State to decide for themselves whether they will remain with the Republic or wish to go out of it. We are also committed to ascertaining the will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that the will of the people through the instrument of the Constituent

Assembly will determine *the Constitution of the State as well as the sphere of Union jurisdiction over the State.*

“ At present, the legislature which was known as the Praja Sabha in the State is dead. But neither that legislature nor the Constituent Assembly can be convoked or can function until complete peace comes to prevail in that State. We have, therefore, to deal with the Government of the State which, as represented in its Council of Ministers, reflects the opinion of the largest political party in the State. Till a Constituent Assembly comes into being only an interim arrangement is possible and not an arrangement which could at once be brought into line with the arrangements existing in the case of other States. Now, if you remember the viewpoints that I have mentioned, it is an inevitable conclusion that, at the present moment, we could establish only an interim system. *Article 306A is an attempt to establish such a system.*”<sup>4</sup>

Shri Ayyangar's speech highlights two features which are worth recalling today. First, that Article 370 was not intended to and did not rule out a plebiscite. Secondly, that the Constituent Assembly, which he mentioned, was meant only to give a representative Government to Kashmir and was not intended, likewise, to be an alternative to plebiscite.

Following the Commission's failure the Security Council once again took up the matter. On December 22, 1949, the President of the Council, General A. G. L. Macnaughton, formulated certain proposals for demilitarization preparatory to plebiscite, and submitted them to both the States.

Both sides suggested amendments to the Macnaughton Plan and Gen. Macnaughton's efforts ended in failure,

<sup>4</sup> *Constituent Assembly Debate.*

as he reported finally on February 7, 1950. Eventually, the Security Council passed a resolution on March 19, 1950, terminating the U.N. Commission and appointing a U.N. Representative. India accepted this resolution of the Council. Sir Owen Dixon was appointed U.N. Representative by the Security Council on April 12 and he proceeded to the sub-continent. There is little doubt that of all the reports published so far, Sir Owen's has been the most enlightening. He made certain observations which are worth recalling today. "The first matter which I raised was the necessity, in the event of agreement, of ensuring that each party felt full confidence that whatever steps a settlement might make incumbent on the other party would in fact be taken more particularly in the withdrawal of troops and the reduction of military strength, and I suggested that, independently of other reasons for confidence which I emphasized, this could be secured by avoiding indefinite undertakings and by stipulating that no cause for refusal or failure to do what the party undertook to do should suffice unless an appropriate authority of the U.N. so certified. To this there appeared no specific objection." In other words, neither side could avail of a breach by the other as an excuse for not performing its own obligations. Sir Owen Dixon then referred to India's contention that Pakistan should be declared an aggressor. He recalled, "I took up the positions, first that the Security Council had made no such declaration, secondly, I had neither been commissioned to make nor had I made any judicial investigation of the issue; but thirdly, that without going into the causes or reasons why it happened which presumably form part of the history of the sub-continent, I was prepared to adopt the view that when the frontier of the State of Jammu & Kashmir was crossed on, I believe 20th

October 1947, by hostile elements, it was contrary to international law and that when, in May 1948, units of the regular Pakistani forces moved into the territory of the State that too was inconsistent with international law. I, therefore, proposed that the first step in demilitarization should consist in the withdrawal of Pakistani regular forces commencing on a named date. After a significant number of days from the named day the other operations on each side of the cease-fire line should take place and as far as practicable, concurrently." Sir Owen Dixon brought about a joint meeting of the Prime Ministers of India and Pakistan under his auspices from July 20 to 24, 1950. No objection was then taken by India that this amounted to equating the aggressor and the victim, or that it violated Indian sovereignty, as was done eight years later when Dr. Frank Graham made a similar proposal. Sir Owen Dixon suggested various proposals for demilitarization of the State but all were rejected by the Prime Minister of India. So also was his suggestion for an interim administration preparatory to plebiscite. "None of the suggestions commended themselves to the Prime Minister of India. In the course of the conference, I mentioned very briefly one or two other possible ways of reaching a plebiscite. In the end, I became convinced that India's agreement was never to be obtained to demilitarization in any such form or to 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 guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled." <sup>5</sup>

Sir Owen turned to the idea of a regional plebiscite

<sup>5</sup> *Third Interim Report of UNCIP*, p. 166.

whereupon the Prime Minister of Pakistan protested while the Prime Minister of India promised to intimate his views later. At this stage the Prime Ministers' Conference was adjourned. The Prime Minister of India thereafter put forth his plan for a regional plebiscite which provided for a plebiscite in the Valley of Kashmir including part of Muzaffarabad, and further provided that the Province of Jammu east of the cease-fire line and the district of Ladakh should remain with India, while Gilgit and Jammu west of the cease-fire line should go to Pakistan. "I was told that the Prime Minister of India would be prepared to attend another conference with the Prime Minister of Pakistan and me so that the possibility of arriving at a settlement could be discussed. The territorial demands which the foregoing information disclosed appeared to me to go much beyond what according to my conception of the situation was reasonable and I so stated to the Indian authorities."

Sir Owen then went to Karachi. Pakistan refused to attend such a conference and maintained its objection to arranging a plebiscite.

Sir Owen contemplated a plan for holding a partial plebiscite in a limited area consisting of the Valley of Kashmir and partitioning the remainder of the State. He intended to hold a conference of Prime Ministers before which he would put forward these proposals. Sir Owen was at last able to assure the Indian Government that he had succeeded in obtaining Pakistan's agreement to attending another conference notwithstanding the fact that it would discuss an alternative to an overall plebiscite. When Pakistan imposed the condition that Sir Owen should obtain India's agreement to specific practical measures which would ensure the freedom of the plebiscite, Sir Owen thought of applying for



a plebiscite in the Valley the same measures which he had contemplated for an overall plebiscite and he sent a telegram to Mr. Nehru on August 15, 1950, regarding Pakistan's willingness to attend the conference and putting forth proposals for a peaceful plebiscite. Mr. Nehru sent a telegram the next day rejecting these proposals for the plebiscite.

Sir Owen returned to New Delhi, but he failed to secure Indian agreement on measures for a plebiscite. Referring to Indian arguments he said: "These arguments appear to overlook the real nature of a proposal for a partition and a partial plebiscite or else to make it completely impossible. The question whether or not Pakistan had or had not been an aggressor had, to my mind, nothing to do with the results of a partition and the fairness and freedom of a partial plebiscite. To agree that Pakistan should take under a partition part of the State must be to agree that, independently of any such question, she took not merely an interest in but sovereignty of the territory; again, as I saw the matter, to agree that the territory not immediately divided between India and Pakistan should pass to one or the other according to the vote of the inhabitants at a plebiscite conducted by the U.N. must be to agree to an equal interest in both countries in the results." He held: "I am inclined to the view that no method of allocating the Valley to one or the other of the contending parties is available except a poll of the inhabitants." Some method of allocating Kashmir Valley to one party or the other is essential before any plan of partition.

"Great areas of the State are unequivocally Muslim, other areas are predominantly Hindu. There is a further area which is Buddhist. No one doubts the sentiments of the great majority of the inhabitants of these

areas.” Thus Sir Owen Dixon threw up his hands in despair.

At the Commonwealth Prime Ministers Conference on January 16, 1951, an informal meeting of the Premiers was arranged at the initiative of the Australian Prime Minister, Mr. Menzies, in which Australia, U.K., Ceylon, Canada, New Zealand, India and Pakistan took part. What transpired there has been recorded in a note which was read out by Mr. Krishna Menon at a meeting of the Security Council on January 24, 1957. Various proposals were made, but none were found acceptable to India.

The Security Council then took up for consideration the Kashmir issue. At this time there was a proposal for convening a Constituent Assembly for the State.

The Security Council passed a resolution on March 30, 1951, appointing a U.N. Representative in succession to Sir Owen Dixon and asking him to continue mediatory efforts. The following parts of the resolution are pertinent. The Security Council

“ Observing that on October 27, 1950, the General Council of the All Jammu & Kashmir National Conference adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the future shape and affiliation 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 mooted in the Security Council’s resolutions and the UNCIP resolutions that a

final disposition of the State of Jammu and Kashmir will be 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 by the General Council of All Jammu & Kashmir National Conference and any action that the 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.”

The A.I.C.C. Resolution on Foreign Policy passed in Delhi on October 19, 1951, contained this para with regard to Kashmir which correctly sets out the scope of the plebiscite and of the Constituent Assembly: “The Congress would welcome an early plebiscite in Jammu and Kashmir State under proper conditions which have been clearly stated by the Government of India. The Congress welcomed the Constitution of a Constituent Assembly in the Kashmir State and hoped that through its efforts the State will make even greater progress than it has done during the last two or three years.”<sup>6</sup> Needless to say, it would be hardly possible for the A.I.C.C. to welcome both the Constituent Assembly and plebiscite if they were mutually exclusive alternatives.

Replying to his critics, Mr. Nehru said at a Press Conference in New Delhi on March 13, 1951: “During the last three years or so we have naturally thought of giving some kind of organized expression to the Government there, some popular legislature or something. Because

<sup>6</sup> *The Background of India's Foreign Policy*, published by the A.I.C.C., p. 102.

of the troubles in Kashmir, that could not be done. Ultimately, the Kashmir Government decided, quite rightly, that they should have elected representatives out of whom their Cabinet might be chosen and which could also decide many other questions. If your question is whether this comes in the way of the Security Council or any decision, then it does not come in the way. We have said that quite clearly." Mr. Nehru told Parliament on March 28: "We have made it perfectly clear that the authority of the Security Council is not challenged in any way by the proposal to have a Constituent Assembly in Kashmir. This follows naturally and inevitably from our Constitution and our general policy all over India. It is intended to regularize the position in Kashmir whereby the authority does not flow from an absolute sovereign or from a political party, but is derived from the people." He mentioned, "From the very beginning it has been our declared wish that the people of Kashmir should themselves decide their future. We will continue to adhere to our policy whatever happens. In pursuance we agree to hold a plebiscite provided conditions necessary for its peaceful conduct are fulfilled. The conditions which we consider necessary for a plebiscite are contained in the resolution of the Security Council [*sic*] resolution of August 1948 and January 1949."

Sir B. N. Rau, Leader of the Indian Delegation to the Security Council, also dealt with this question. On March 9, 1951, he told the Security Council, "Provision was made in the Indian Constitution for a Constituent Assembly for settling the details of Kashmir Constitution. Will that Assembly decide the question of accession? My Government's view is that, while the Constituent Assembly may, if it so desires, express an opinion on this

question, it can take no decision on it." On March 29, 1951, he again said, "Some members of the Council appear to fear that in the process the Kashmir Constituent Assembly might express its opinion on the question of accession. The Constituent Assembly cannot be physically prevented from expressing its opinion if it so chooses. But this opinion will not bind my Government or prejudice the position of this Council."

Similarly, Mr. Krishna Menon told the Security Council years later on January 23, 1957, "It is quite clear that the function of this Constituent Assembly is to make a Constitution for Kashmir." Indeed, Mr. Menon characterized the Constituent Assembly as a "Sub-sovereign" body.

In 1948 Shri Ayyangar told the Security Council, "Both the question of the future Government of Kashmir and the question of its accession to either of the two Dominions are matters requiring decision by the people of the State."

On January 27, 1948, Shri Ayyangar presented proposals to the Security Council which provided for the convening of a National Assembly on the basis of adult suffrage, the formation of a National Government based upon the National Assembly. Para 5(b) of the proposals provided: "A National Government based upon the National Assembly should then be constituted." Para 5(c) provided: "The National Government will then proceed to have a plebiscite taken on the question of accession. The plebiscite will be taken under the advice and observation of persons appointed by the United Nations." The convening of the National Assembly under these proposals was to be in aid of and for the purpose of holding a plebiscite and not as an alternative to it. On March 5, 1948, Maharaja Hari Singh issued

a proclamation establishing "A Constitutional Government with a Council of Ministers, a legislature with a majority of elected members and an independent judiciary." Para 4 of the proclamation provided: "My Council of Ministers shall take appropriate steps, as soon as the restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should as far as practicable be proportionate to the population of that area." Para 5 reads thus: "The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing freedom of conscience, freedom of speech and freedom of assembly." Para 6 reads: "The National Assembly shall, as soon as the work of framing a new constitution is completed, submit it through the Council of Ministers for my acceptance."

On May 1, 1951, Yuvaraj Karan Singh made a proclamation convening the Constituent Assembly. Its Preamble read: "WHEREAS it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a constitution for the State; WHEREAS it is commonly felt that the convening of this Assembly can no longer be delayed without detriment to the future well-being of the State; AND WHEREAS the terms of the Proclamation of His Highness dated 5th March 1948 in regard to the convening of the National Assembly as contained in clauses 4 to 6 of the Operative Part thereof do not meet the requirement of the present situation." The proclamation then proceeded to set up a Constituent Assembly and laid down a specific manner for its election.

It will be seen that the Constituent Assembly was

nothing but the National Assembly contemplated earlier, not as an alternative to but as a forerunner of the plebiscite. Moreover, it was specifically laid down in the proclamation that its task was to frame a constitution for the State of Jammu and Kashmir.

On May 29, 1951, Mr. Rajeswar Dayal gave an assurance to the Security Council on behalf of India in these terms: "I reaffirm that so far as the Government of India is concerned the Constituent Assembly for Kashmir is not intended to prejudice the issue before the Security Council or come in its way." The Security Council, however, empowered its President on May 29, 1951, to write to the Governments of India and Pakistan drawing attention to reports that, according to Sheikh Abdullah, one of the functions would be to decide the future shape and affiliation of the State. "It is the sense of the Security Council that these reports if correct would involve procedures which are in conflict with the commitments of the parties to determine the future accession of the State by a fair and impartial plebiscite conducted under U.N. auspices." At a press conference on June 11, 1951, Mr. Nehru was asked: "What will happen if the Constituent Assembly in Kashmir decides in favour of acceding to India?" He replied: "We have made it perfectly clear that the Constituent Assembly of Kashmir was not meant and is not meant to come in the way of any decision which might flow ultimately from the Security Council's decisions." <sup>7</sup>

Dr. Frank Graham, the newly appointed mediator, came to India and Pakistan. His efforts at mediation extended from 1951 to 1953 and he submitted five reports in all to the Security Council. The following is a résumé of his mediatory efforts:

<sup>7</sup> *The Times of India*, June 12, 1951.

Dr. Graham presented a twelve-point proposal to the two Governments on September 7, 1951, of which eight were found acceptable. On the remaining four, dealing with the quantum and disposition of the troops on either side of the cease-fire line and the timing of the induction into office of the Plebiscite Administrator, no agreement could be reached despite prolonged negotiations and many conferences. Two conferences at the ministerial level were held under Dr. Graham's chairmanship in Geneva, one from August 26 to September 10, 1952, the other from February 4 to 9, 1953. On March 27, 1953, Dr. Graham submitted his fifth report to the Security Council intimating the failure of his efforts.

Meanwhile, elections to the Constituent Assembly of Kashmir were over. Of the 75 seats the nominees of the All Jammu & Kashmir National Conference were declared elected unopposed to seven. With regard to Jammu, however, the Praja Parishad threatened to boycott the Constituent Assembly elections as a protest against irregularities. The results naturally failed to carry conviction abroad and the London *Times* in an editorial in its issue of September 7, 1951, entitled "No Fair Vote" characterized the results as "farcical."

The Constituent Assembly met on October 31, 1951. Speaking in the Constituent Assembly on November 5, Sheikh Abdullah said that there were three issues before the Kashmir Constituent Assembly, namely, accession to India, accession to Pakistan or remaining independent. He ruled out the last two and expressed his own preference for accession to India and said: "I have now put the pros and cons of the three alternatives before you. It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these with scales of our national good and pronounce where



the true well-being of the country lies in future." But the Government of India would not countenance the Assembly pronouncing her opinion on this issue. Soon after his release, recently, Sheikh Abdullah speaking at Batote on April 15, 1964, said: "I sought to ratify the accession and other commitments of mine through the Constituent Assembly. It was the Government of India which contested in the Security Council as well as in Parliament the Assembly's right to do so." He has revealed, since, that at a meeting when this was being suggested Mr. Nehru angrily told him and Mr. N. Gopalaswami Ayyangar that he would never repudiate his international commitments.

Sheikh Abdullah's claim is fully borne out by Mr. Nehru's remarks at a press conference in New Delhi on June 21, 1952. "When the Constituent Assembly met in Kashmir for the first time I might inform you that it was its intention to pass a resolution forthwith confirming the State's accession to India. We asked it not to do it so as not to be embarrassed before the United Nations." In the same press conference Mr. Nehru said: "When Security Council asked us about it we made it clear to the Council again that the Kashmir Government had every right to have a Constituent Assembly to frame the internal constitution but so far as we were concerned we would not be bound by their decision on the question before the Security Council." <sup>8</sup>

The Government of India and the Government of Kashmir arrived at the famous Delhi Agreement of July 24, 1952, which clarified the constitutional position giving Kashmir a special position within the Indian Union. At a Press Conference the same day at which Sheikh Abdullah and Mr. Afzal Beg were present, Mr. Nehru

<sup>8</sup> *The Times of India*, June 22, 1952.

was asked whether the arrangement reached with the Kashmiri leaders violated India's assurances to the United Nations. Mr. Nehru replied: "The Government of India's assurances to the United Nations do not deal with the internal conditions or arrangements governmental or the other, or our relations with each other. The United Nations deals with certain basic problems. We have given an assurance that the people of Kashmir will decide about their future and that a plebiscite should be held to decide that. We stand by that." <sup>9</sup> This was in keeping with Mr. Nehru's entire approach during that period.

Thus the Government of India's stand was that Kashmir was an open question. This is very clear from the very important speech delivered by Mr. Nehru in the Lok Sabha on June 26, 1952. "We have not got a clean slate to write upon, we are limited, inhibited by our commitments to the United Nations by this, by that. But, nevertheless, the basic fact remains that we have declared and even if we had not declared the fact would remain—that it is the people of Kashmir who must decide. And I say with all respects to our Constitution that it just does not matter what your Constitution says, if the people of Kashmir do not want it, it will not go there. . . . Let us suppose there was a proper plebiscite there—and the people of Kashmir said, 'We do not want to be with India,' well we are committed to it, we would accept it. It might pain us but we would not send an army against them; we might accept that, however much hurt we might feel about it, and we would change our Constitution about it." In another important speech in Parliament on August 7, 1952, Mr. Nehru said, *inter alia*: "It is an international problem. It would be an

<sup>9</sup> *The Times of India*, July 7, 1952.

international problem anyhow if it concerned any other nation besides India and it does. It became further an international problem because a large number of other countries also took interest and gave advice. . . . So while the accession was complete in law and in fact, the other fact which has nothing to do with the law also remains, namely, our pledge to the people of Kashmir—if you like, to the people of the world—that this matter can be reaffirmed or cancelled or cut out by the people of Kashmir if they so wish. We do not want to win people against their will and with the help of armed force, and if the people of Jammu and Kashmir State so wish it, to part company from us, they can go their way and we shall go our way. We want no forced marriages, no forced unions like this. . . .

“ It is inevitable that we should do so if you bear in mind this past history of 4 or 5 years, the assurances we had given and the fact that Kashmir has become an international issue, apart from being a national one. So we have to treat it on a somewhat separate footing. . . . So, we accept this basic proposition that this question is going to be decided finally by the goodwill and pleasure of the people of Kashmir, not, I say, by the goodwill and pleasure of even this Parliament if it so chooses, not because this Parliament may not have the strength to decide it—I do not deny that—but because this Parliament has not only laid down in this particular matter that a certain policy will be pursued in regard to Jammu and Kashmir State but it has been our policy. . . .

“ Therefore, we must be clear in our minds that this question in regard to the future of Jammu and Kashmir State can ultimately only be decided by the people of Jammu and Kashmir State. Having come to that conclusion then let us fashion our other policies accordingly,

then let us not find fault with something here and there because it does not fit in with our wishes. . . .

“ But whether it is a pain and a torment, if the people of Kashmir want to go out, let them go because we will not keep them against their will however painful it may be to us. That is the policy that India will pursue and because India will pursue that policy people will not leave her, people will cleave to her and come to her. Because the strongest bonds that bind will not be the bonds of your armies or even of your Constitution to which so much reference has been made, but bonds which are stronger than the Constitution and laws and armies—bonds that bind through love and affection and understanding of various peoples. . . .

“ The way out may not be completely logical; it may not be completely reasonable from the point of view of this law or that Constitution, but if it is effective, then it is a good way out, whether it offends against some legalistic arguments or logical arguments or not. . . .”

It should be borne in mind that these speeches were made well after Pakistan's aggression, after the accession, after the Constituent Assembly had been convened and well after the Constitution of India with Article 370 came into force. Inevitably, the Government of Kashmir took the cue from these speeches. They were oppressed by the sense of uncertainty which had singled out their State in the entire sub-continent. Sheikh Abdullah took his colleagues into confidence and placed the matter before the Working Committee of the Kashmir National Conference which met in May 1953 under his Presidency. The Working Committee after prolonged discussions came to the conclusion that it was impossible to have internal stability so long as its future was uncertain. It accordingly appointed a Committee consisting of the

following eight members to explore avenues of a settlement :

Sheikh Abdullah	G. M. Sadiq
Maulana Masoodi	Sardar Budhsingh
Mirza Afzal Beg	Pandit Girdharilal Dogra
Bakshi Ghulam Mohammed	Pandit Shamlal Saraf

Mr. Nehru who had come to Kashmir when the Working Committee was in session was informed about its deliberations. Here is an extract from the minutes of the Committee's final session held on June 9, 1953 :

As a result of the discussions held in the course of various meetings, the following proposals only emerge as possible alternatives for an honourable and peaceful solution of Kashmir dispute between India and Pakistan :

- (a) Overall plebiscite with conditions as detailed in the minutes of the meeting dated 4th June 1953 (this apparently was a reference to Maulana Masoodi's suggestion that the choice of independence be offered in the plebiscite).
- (b) Independence of the whole State.
- (c) Independence of the whole State with joint control of foreign affairs.
- (d) Dixon Plan with independence for the plebiscite area.

“ Bakshi Saheb was emphatically of the opinion that the proposal (d) above should be put up as first and the only practicable, advantageous and honourable solution of the dispute. Maulana Saeed, however,

opined that the order of preference as given above should be adhered to.”<sup>10</sup>

What Mr. G. M. Sadiq then said is worth recalling :

If an agency consisting of India, Pakistan, Afghanistan, Soviet Russia and China could be created to supervise and conduct the plebiscite, I would suggest that we should immediately ask for an overall plebiscite. Failing this, we may ask for a supervision Commission representing all the Members of the Security Council for ensuring free and fair plebiscite in the State.

In June 1953 Maulana Abul Kalam Azad, Union Minister for Education, visited Kashmir and was apprised of these developments. Early in July 1953, Mr. Nehru was informed about the decision. He was shortly going to have a meeting with the Prime Minister of Pakistan, Mr. Mohammedali Bogra, to discuss and find out an early solution of the Kashmir question.

Mr. Nehru in his talks disapproved of the independence idea but, apparently, not the deliberations themselves about the future of the State, for he met Mr. Mohammedali Bogra from July 25 to 27, 1953, to decide the future of the State. It will be recalled that early in August 1953 Sheikh Abdullah called a meeting of the Working Committee of the General Council in the 3rd and 4th weeks in order to review the whole situation. On August 8, 1953, just two days before the scheduled Cabinet meeting, Sheikh Abdullah was arrested at the dead of night, and so were a number of his colleagues.

<sup>10</sup> Quoted by Sheikh Abdullah in his letter from jail to Mr. G. M. Sadiq dated September 26, 1956 published in *Sheikh-Sadiq Correspondence* (Aug. to Oct. 1956), p. 18. The pamphlet is published by Miss Mridula Sarabhai, New Delhi.

### 3. EFFORTS AT NEGOTIATED SOLUTION

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ONE OF the charges against Sheikh Abdullah was that he had conspired with the United States representative, Mr. Adlai Stevenson, who had just visited the State. In a statement issued on August 15, 1953, by the U.S. Ambassador, Mr. G. V. Allen, the allegations were denied and it was said that "The Government of India has been informed that if there is any evidence whatsoever seeming to point to interference by Americans in the internal affairs of Kashmir, the United States would be happy that such evidence would be fully brought to light." No such evidence was forthcoming. Indeed, in the trial that was launched five years later, it was alleged that Sheikh Abdullah had conspired, not with the United States but with Pakistan. Mr. Nehru in his statement in the Lok Sabha on August 10, 1953, said: "I should like to repeat that we have considered the recent development as an internal affair with which we should interfere as little as possible. On the larger issues, our policy remains what it was and we shall stand by the assurance we have given." Mr. Nehru and Mr. Mohammedali Bogra met in New Delhi from August 17 to 20. A communique issued on August 21, 1953, said: "Kashmir dispute was especially discussed at some length. It was their firm opinion that this should be settled in accordance with the wishes of the people of the State,

with a view to promoting their well-being and causing the least disturbance to the life of the people of the State. The most feasible method of ascertaining the wishes of the people was by fair and impartial plebiscite. Such a plebiscite had been proposed and agreed to some years ago. Progress, however, could not be made because of the lack of agreement in regard to certain preliminary issues." In fact, it was even decided that "the plebiscite administrator should be appointed by the end of April 1954." In a statement issued in Srinagar on August 21, 1953, the Kashmir Premier, Bakshi Ghulam Mohammed, said that the joint communique had the "unqualified support" of his Government. The following passage in his statement is very significant: "Now that we have succeeded in securing the right of self-determination, we can hopefully look forward to more peaceful times. . . . The Joint Communique promises to open a bright chapter of Indo-Pakistan amity and goodwill." For the first time in six years there seemed to be an overwhelming desire in both the countries to resolve the outstanding points of dispute by direct and peaceful negotiations. Thereafter, further correspondence ensued between the Prime Ministers of India and Pakistan. They were nearing agreement, both with regard to a regional plebiscite and the choice of the plebiscite administration to be selected from an Asian State, when signs of discord made their appearance.

The first sign of basic discord was revealed in Mr. Nehru's letter of November 10, 1953, in which he referred to the news of negotiations for a military pact between Pakistan and the United States. As he wrote in his letter of December 9, 1953, "in view of the developments that appear to be taking place, Pakistan's



Foreign and Defence policies will be diametrically opposed to the policy we have so consistently and earnestly pursued." Mr. Nehru nominated Mr. M. J. Desai, Shri Vishnu Sahai, Shri V. Shanker and Brigadier Maneckshaw for preliminary talks on the Kashmir question with their counterparts in Pakistan at New Delhi on December 21, 1953, as contemplated by the joint communique. He added, "Inevitably it will affect the major question we are considering, and more especially, the Kashmir issue." Mr. Mohammedali Bogra on his part said that the two questions were separate. But Mr. Nehru was not convinced. In his letter of March 5, 1954, he wrote: "The decision to give this aid has changed the whole context of the Kashmir issue, and the long talks we have had about this matter have little relation to the new facts which flow from this aid." Interestingly enough, he added: "the Constituent Assembly was properly free to decide, as it liked, in regard to the State's accession or other matter, but, so far as we were concerned, we would abide by our international commitments. There has at no time been any question of our repudiating the decisions of the Constituent Assembly and indeed we have no right to do so. That elected Assembly has every right to express its wishes in any way it chooses. So far as we are concerned the accession of Jammu and Kashmir was legally and constitutionally complete in October 1947 and no question of confirming or ratifying it arises. Nevertheless, we had said that the people of Kashmir should be given an opportunity to express their wishes about their future, and we had agreed to a plebiscite under proper conditions. We have adhered to that position throughout, subject always to those conditions, which would ensure a fair and peace-

ful plebiscite. It is because those conditions have not been agreed to that delay has occurred.”<sup>1</sup>

However, Pakistan went ahead with the Pact for Military Aid and the two countries drifted further apart. The Officials' Committees were deadlocked and no progress was possible. On February 6, 1954, however, the Constituent Assembly of Kashmir declared the State's accession to India as “irrevocable.” Despite the strong stand which Mr. Nehru took in his correspondence, he declared at Ernakulam on February 10, 1954, that the issues of U.S.-Pak Pact and the Kashmir problem stood apart.<sup>2</sup> On the decision of the Kashmir Constituent Assembly too, as late as February 25, 1955, Mr. Nehru was asked by Mr. Lakshmi Charan in the Lok Sabha, “In view of the fact that the Kashmir Constituent Assembly has ratified the accession of the State to India, what will be the terms of discussion on Kashmir with the Pakistani Prime Minister?” Mr. Nehru replied: “A question like this cannot be solved unilaterally.” On May 15, 1954, even after the U.S.-Pak Pact was signed, Mr. Nehru still said: “India still stands by her international commitments on the Kashmir issue and will implement them at the appropriate time.”

Meanwhile, in Kashmir itself the situation had been deteriorating. The President's Order under Article 370, passed on February 19, 1954, extended fundamental rights to Kashmir in a highly attenuated form. For five years the State Legislature was given power to impose such restrictions as it thought necessary on the fundamental rights relating to freedoms of speech, movement

<sup>1</sup> The correspondence was published as White Paper “Kashmir Meetings and Correspondence between the Prime Ministers of India and Pakistan,” July 1953-October 1954.

<sup>2</sup> *The Times of India*, February 11, 1954.

and association. Mr. Asoka Mehta was assaulted in broad daylight in the streets of Srinagar. At a public meeting in New Delhi on November 14, 1954, Mr. Mehta narrated this incident. Acharya Kripalani warned the Government of India that a one-man rule had been established in the State.

Soon after the Bandung Conference, the Prime Minister of Pakistan, Mr. Mohammedali Bogra, had talks with Mr. Nehru and other Ministers in New Delhi from May 14 to 18, 1955. The communique said: "In the course of the joint talk the Kashmir problem was discussed in all its aspects. It was decided to continue these talks at a later stage after full consideration had been given to the various points that had been discussed in the course of their meetings." The Government of India's stand had changed as a result of the U.S.-Pak Military Aid Pact. This shift became more pronounced and the first indication of second thoughts was given by the Union Home Minister, Pandit Govind Ballabh Pant, in a speech at Srinagar on July 7, 1955. He said: "Kashmir's accession was a reality which could not be changed because the people, *through their representatives in the Constituent Assembly*, had decided to remain with India." *The Times of India's* correspondent, reporting his speech two days later, commented: "The Union Home Minister, Pandit Govind Ballabh Pant, today virtually ruled out the possibility of a plebiscite in Kashmir because he did not see any prospect of Pakistan agreeing to honourable conditions on the issue." Mr. Pant told a press conference that all that was now left was for the people in Azad Kashmir to express their opinion. Asked how he reconciled his remarks with Mr. Nehru's declaration, Pandit Pant said that the circumstances had changed and the time factor was the most important.

“While I am not oblivious of the initial declaration of India, I cannot ignore the important series of facts [to] which I have referred.”

This press conference aroused great resentment in Pakistan. Addressing a press conference in New Delhi on July 16, 1955, after his triumphant tour of Russia and other European countries, Mr. Nehru referred to Pakistani criticism and mentioned that the Prime Minister of Pakistan had written to him protesting against these remarks of Mr. Pant. “My reply to Mr. Ali is that we stand and shall continue to stand by our commitments. We are prepared to explore all possible avenues for a possible settlement of this and other issues with Pakistan.” Again, while replying to Mr. M. L. Agarwal in the Lok Sabha on August 5, 1955, he stated that the Home Minister had never said that India wanted “to by-pass or end old commitments. . . . We cannot ignore the changing world. We stand by our commitments and we must also take into considerations all that happens.” Thus, he reconciled Pandit Pant’s statement with his own stand. Replying to Mr. H. M. Mathur in the Rajya Sabha on August 22, 1955, Mr. Nehru mentioned that he had been in correspondence with the Pakistan Government, and added, “Broadly speaking the Prime Minister of Pakistan objected to an inference that could be drawn from the Home Minister’s speech that a plebiscite was no longer feasible or necessary. That inference was not, according to us, wholly justified.” Meanwhile, Bakshi Ghulam Mohammed, who had a year ago advocated the adoption of the Dixon Plan, declared in Srinagar on August 24, 1955, that no plebiscite would be held in the State “till eternity.”

Later in the year, Mr. Khrushchev and Mr. Bulganin visited India. In a speech delivered at a reception given

in Srinagar by the State Prime Minister, Bakshi Ghulam Mohammed, on December 10, Mr. Khrushchev said: "The question of Kashmir as one of the States of the Republic of India has already been decided by the people of Kashmir." He further remarked that he had found the State very similar to his Central Asian Republics. This speech elated Indian public opinion. Mr. Nehru publicly expressed his pleasure over it. However, in the following year Mr. A. I. Mikoyan, First Deputy Premier of Russia, said at Karachi on March 25 that the future of Kashmir in the ultimate analysis would be determined by the people of Kashmir, a statement which gives a clear opening for a *volte-face*, should it become necessary in the Soviet interests.

In his speech in the Lok Sabha on March 29, 1956, Mr. Nehru dwelt at length on the history of the Kashmir dispute and, referring to the Constituent Assembly, said, "The Assembly was free to decide any constitution it liked but we made it clear that we continued to be bound by our international commitments." He proceeded to refer to the events which had occurred since then—the U.S. military aid, Pakistan's membership of SEATO and the Baghdad Pact. He also referred to the creation of one unit of Western Pakistan in that context, and said: "I have made it clear to the Pakistan Representatives that while I am prepared to discuss any aspect of the question if they want to be realistic, they must accept and take into consideration all that has happened in the last seven or eight years and not talk in terms of eight or nine years ago. The only alternative is a continuing deadlock in our talks."

Addressing a press conference in New Delhi a few days later, on April 2, 1956, Mr. Nehru made certain pronouncements which, according to a correspondent of *The*

*Times of India*, "virtually ruled out a plebiscite in Kashmir under the existing conditions." <sup>3</sup> The Prime Minister seemed to have confused the legality of accession which was contested by Pakistan, with its provisional character, which was stipulated by India in 1947. He welcomed Mr. Bulganin and Mr. Khrushchev's support on Kashmir, and referred to the changes which had taken place in the last nine years, particularly, the American Military aid to Pakistan. "The whole context of the question changes," he remarked. A question was put to him: "An inference has been drawn that you do not want now any plebiscite to be held in Kashmir. Is it correct?" Mr. Nehru replied: "Largely so; I shall explain myself. What I have said was that we have tried and discussed the question of plebiscite for six or seven years, but the preconditions have not been fulfilled. Meanwhile, other things have taken place, like the Military aid, etc., which have increased tremendously the difficulties of this problem. It is not that I am not willing to discuss this problem still further. But as a practical person I say this leads to a blind alley. We have, therefore, to discuss it from another point of view in regard to conditions that have arisen now and try to come to an agreement." The offer of a settlement on a basis of the present cease-fire line, was the logical corollary. Mr. Nehru made this offer while addressing a public meeting in New Delhi on April 13, 1956. "I am willing to accept that the question of the part of Kashmir which is under you should be settled by demarcating the border on the basis of the present cease-fire line. We have no desire to take it by fighting."

Mr. Nehru revealed that he had made his offer to Mr.

<sup>3</sup> *The Times of India*, April 3, 1956.

Mohammedali Bogra in their talk the previous year, and mentioned that the Pakistani Prime Minister had rejected the offer. This stand, naturally, could not find full favour abroad. At a press conference on June 22, 1956, a correspondent drew the attention of Mr. Dag Hammarskjöld, the U.N. Secretary-General, to Mr. Nehru's remark and asked: "Has the U.N. received any official notification from the Indian Government that it no longer considers itself bound by the plebiscite proposal? And, secondly, would it require concurrent action by some body of the U.N. in order to set the plebiscite proposal aside?" Mr. Hammarskjöld replied: "As to the first question, the answer is 'No'; as to the second question, the U.N. decision is valid until it has been invalidated by the organ which took it."<sup>4</sup>

The Kashmir Constituent Assembly adopted a Constitution on November 17, 1956, to come into force on January 26, 1957. The people of Azad Kashmir had not voted for the Constituent Assembly. The Constitution contained the following provisions:

- (a) "The State of Jammu and Kashmir is and shall be an integral part of the Union of India." (Article 3.)
- (b) "The territory of the State shall comprise of the territories which on the 15th of August 1947 were under the sovereignty or suzerainty of the Ruler of State." (Article 4.)
- (c) By Article 47 the Legislative Assembly was to consist of 100 members.
- (d) By Article 48, 25 seats were to be left vacant "until the area of the State under the occupation

<sup>4</sup> *The Times of India*, June 23, 1956.

of Pakistan ceases to be so occupied and the people residing in that area elect their representatives."

Pakistan now raised the matter before the Security Council. Answering Pakistani charges of bad faith Mr. Nehru declared at a public rally at Madras on January 31, 1957, that if he was convinced that he had not honoured any international commitment about Kashmir, "I shall honour it or resign from office." He added, "I do not want any final decision which is against the interest of the Kashmir people. I do not want to ask for a decision on the legal issue." Meanwhile the Security Council met at Pakistan's request to consider the Kashmir question. Mr. Krishna Menon represented India in the debate. He stood by the previous resolutions of the Security Council, but contended that Pakistan had not carried them out. The Security Council passed a new resolution on January 24, 1957, whereby it reminded the two governments of its previous resolutions and the resolution of the U.N. Commission for India and Pakistan "That the final disposition of the State of Jammu & 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; reaffirms the affirmation in its resolution of 30th March 1951 and declares that the convening of a Constituent Assembly and any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the State or any part thereof or action by the parties concerned in support of any action by the Assembly, would not constitute a disposition of the State in accordance with the above principle." Despite Mr.



Khrushchev's declaration the Soviet delegate did not veto this resolution.

The Security Council decided to continue its consideration of the dispute. On February 21, 1957, the Council passed a resolution requesting Mr. Gunnar Jarring, its President, "to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards a settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan; to visit the sub-continent for this purpose."

Addressing a meeting at Allahabad on February 6, 1957, Mr. Nehru denied that India had attempted to back out of any commitments about Kashmir. He referred to a slogan raised from a corner of the audience and said: "I want to tell those who raise the slogan that Kashmir is not ours but it is of the Kashmiris. We cannot stay in Kashmir for a moment without the consent of the Kashmiris. It is not our property."

At a public meeting at Jullundur on February 10, 1957, Mr. Nehru said: "I am willing to talk with Pakistan or any country or U.N. provided two basic facts are accepted. One basic fact is that Kashmir became part of India in October 1947. The other basic fact is that of Pakistan's unprovoked and improper invasion of Kashmir. If these two basic facts are accepted then talks can be held on this Kashmir issue." Mr. Nehru omitted to make any reference to the U.N. Commission's resolutions accepted by India and Pakistan. He paid a tribute to the "able and brilliant" handling of the Kashmir case by Mr. Menon in the Security Council. But needless to say, as a result of the public stand that he took, Mr. Jarring's mediatory efforts were doomed to failure.

In a report submitted on April 29, 1957, Mr. Jarring recalled the acceptance by the two Governments of the U.N. Commission's resolutions of August 13, 1948, and January 5, 1949, "to which they admitted themselves bound very recently in the Security Council debate. In view of these declarations, I felt it appropriate to explore what was impeding the full implementation of these resolutions." Mr. Jarring referred in para 13 of the report to discussions with the Government of India and their emphasis on the fact that two factors prevented the implementation of the two resolutions. One was that Part 1 of the resolutions regarding the cease-fire had not been implemented by Pakistan, and therefore the implementation of Part 2 and Part 3 thereof did not arise. The second impediment was that the Government of India "felt aggrieved that the Council had so far not expressed itself on the question of what in their view was aggression committed by Pakistan on India. In their view it was incumbent on the Security Council to express itself on this question and equally incumbent on Pakistan to evacuate the aggression." Mr. Jarring's reply was, "I pointed out that regardless of merits of the present position taken by their Government it could not be overlooked that they had accepted the two UNCIP Resolutions." Mr. Jarring suggested arbitration on the question whether Part I of the resolution of August 13, 1948, dealing with the cease-fire had been implemented or not. Pakistan accepted this suggestion in principle; the Government of India rejected it.

Elections were now held in Kashmir. Mr. Om Prakash Saraf, Chairman of the State P.S.P., mentioned in a statement issued on March 4, 1957, that nomination papers of eight of the eleven candidates belonging to his party were rejected by the returning officers.

Similar charges of irregularities were made by the Praja Parishad of Jammu. The brochure *Elections in Kashmir*, published by the Publications Division of the Government of India, mentions "23 candidates, however, were returned without contest, because no other candidate had filed nomination papers for these constituencies. Opposing candidates to the nominees of the National Conference for ten more seats took back their nomination papers and withdrew from the contest. Nomination papers of opposing candidates in the ten constituencies were rejected for technical defects by the returning officers. This left only 32 constituencies in which the contest was to be fought." Thus 43 out of 75 seats went to the National Conference without a contest. The final results were: National Conference 68, Praja Parishad 5, Harijan Mandal 1, and Independent 1.

Later, in the same year, the Security Council met once again to consider the Jarring Report. It passed a resolution on December 2, 1957, which read in part as follows:

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

This is the last resolution the Council has been able to pass on Kashmir.

The Council then proceeded to request the U.N. representative in India and Pakistan, Dr. Frank Graham, "to make any recommendations to the parties for further appropriate action with a view to making progress towards the implementation of the resolution of the United Nations Commission for India and Pakistan of 13th August 1948 and 5th January 1949 and towards a peaceful settlement."

Dr. Frank Graham arrived in the sub-continent in the following year and held discussions with the Governments of Pakistan and India. It may be mentioned that the Government of India did not accept the resolution of the Security Council in pursuance of which Dr. Frank Graham had come, but they conferred with him all the same. Dr. Graham made five recommendations: (1) Renewed declaration by both the Governments, in accordance with the United Nations resolutions for a favourable atmosphere; (2) a declaration that they will respect the integrity of the cease-fire line; (3) withdrawal by Pakistan troops from Azad Kashmir, the vacated territory to be administered by a local authority in accordance with the U.N. resolution (Dr. Graham also mooted in this context the possibility of stationing a U.N. force in Azad Kashmir following the withdrawal of Pakistani Army); (4) renewal of negotiations with regard to regional plebiscite that were going on between Mr. Nehru and Mr. Mohammedali Bogra in 1953; and (5) a Prime Ministers conference under his auspices.

The Government of Pakistan accepted all these recommendations in principle. "The Government of India declared themselves unable to agree to my recommendations," said Dr. Graham. What aroused much surprise was the rejection of the last of his recommendations, namely, a Prime Ministers conference under his auspices,

on the ground that "it would in their view place the aggressor and the aggressed on the same footing. They, therefore, considered it contrary to the charter and all considerations of international ethics and equity." Thus, Dr. Graham reported failure in his report to the Security Council dated March 28, 1958, which remains the last of the reports.

Meanwhile, on January 6, 1958, Sheikh Abdullah was released from jail. Immediately after his release he reiterated his stand that Kashmir should be granted the right of self-determination. On April 11, 1958, he wrote a letter to Mr. Nehru drawing his attention to the repression let loose in the Kashmir Valley by the Government of Bakshi Ghulam Mohammed. "I am not interested in creating trouble within the State to overthrow any Government whatever its character. Of course, I do want to create an organized opinion among all sections of the people of Kashmir as well as of India to have this dispute over Kashmir between the two great neighbours India and Pakistan settled as early as possible in accordance with the wishes of the people of the State expressed freely and without any fear, internal or external.

"In spite of all that has happened since August 1953, I still believe that the key of the solution lies in your hands and I appeal to you not to be deceived by Bakshi Ghulam Mohammed and his other supporters in pursuing a policy which, in the end, is bound to prove disastrous for all." However, while efforts to bring about a meeting between Sheikh Abdullah and Mr. Nehru were already under way, Sheikh Abdullah was re-arrested on the night of April 29, 1958, even before Mr. Nehru could reply to his letter.

Mr. G. M. Sadiq, Chairman of the Democratic National Conference, issued a statement on May 1, 1958, in which

he said: "Sheikh Abdullah has been re-arrested. We consider this action of the State Government uncalled for and devoid of any justification."

On May 17, the Kashmir Government ordered the prosecution of 25 persons for the offence of conspiracy to overthrow the State by use of force. Sheikh Abdullah was not cited as one of the accused. On October 23, 1958, however, a complaint was filed by the Inspector-General of Police in pursuance of these orders and this time Sheikh Abdullah was also included among the persons accused of conspiracy. The specific charge against Sheikh Abdullah and his colleagues was that they, from August 9, 1953, to April 29, 1958, "conspired to overawe by means of criminal force and show of criminal force the legally and constitutionally established Government of Jammu and Kashmir and facilitating the wrongful annexation of the Jammu and Kashmir State by Pakistan. . . ." Later, in the Sessions Court, the charge of waging war was also added. In January 1962, the accused were committed to stand trial in the Sessions Court. The proceedings in the Sessions Court began on September 9, 1962.

Meanwhile opinion had been changing in Pakistan. After October 1958, President Ayub, who had come to power, made many conciliatory gestures to India and proposed among other things joint defence of the sub-continent. A most significant departure in Pakistan's Kashmir Policy was expressed by Mr. Manzoor Qadir, the Foreign Minister of Pakistan, in a major pronouncement. In an address to the Pakistan Institute of International Affairs on March 12, 1960, he said, "if somebody has a solution other than ours, let him suggest it. We can at least start thinking about it." This line was maintained consistently. The Pakistani pronouncements have been

tabulated in an article in *Opinion*.<sup>5</sup> Mr. Nehru went to Rawalpindi to sign the Indus Water Treaty and conferred with President Ayub in September 1960. By now the Indian stand had moved far from the previous one. Thus, Mr. Nehru had now completely ruled out any mediation. He characterized Dr. Graham's suggestion for Prime Ministers Conference under his auspices as "totally and absolutely unacceptable." India, he said, would directly deal with Pakistan. He overlooked however that he had met Mr. Liaquat Ali Khan at a Conference under the auspices of Sir Owen Dixon, as mentioned earlier. Indeed, Mr. Nehru had himself said, on November 12, 1949, at a Press Conference in London, "India continues to suggest that there should be mediation and that this mediation should be under the auspices of the United Nations partly because we want to increase the prestige of the United Nations."

On his return to India, Mr. Nehru declared at a Press Conference in New Delhi on November 16, 1949, "If you rule out mediation, then the only two things that remain are either continuation of the deadlock or war. So far as we are concerned, and I have said this repeatedly, we want to rule out war. . . . A deadlock, of course, will continue until there is a settlement. Therefore, mediation is the only way out. When I say mediation, it does not mean necessarily the type or kind or extent of mediation that we have had. That is a matter for consideration. But I do say that it should be under the auspices of the United Nations. What form it should take can be considered later." This proved logical enough from Mr. Nehru's stand which he had expressed at Srinagar on July 8, 1949, "that Kashmir is a world question."

<sup>5</sup> A. G. Noorani, "India, Pakistan & Kashmir," in *Opinion*, May 12, 1964.

Over the years, however, the stand was abandoned and by 1960 Mr. Nehru had come to the opinion that Kashmir was a domestic matter, in which mediation was not acceptable. Subsequently, when in a speech at Bombay on April 9, 1960, President Nasser of the U.A.R. said that he was willing to use his good offices in solving the Kashmir dispute, the offer was politely ignored. President Ayub and Mr. Nehru had talks over Kashmir from September 19, 1960, onwards, during the latter's five-day tour of Pakistan, but no headway was made.

Soon after this began the Sino-Pak flirtation. President Kennedy who was greatly disturbed over this development offered his good offices in January. He revealed at a Press Conference on January 24, 1962, that he had asked Mr. Eugene Black, President of the World Bank, if he would undertake "to see if a solution was possible in this most difficult and delicate problem. It creates international tensions, of course. We are assisting both the countries. We would like our assistance to be used in a way which is most effective to the people." Mr. Black consented. This also was turned down by India. In a speech at Lucknow on February 2, 1962, Mr. Nehru made it clear that India had always been opposed as a matter of principle to mediation on any issue involving the country's sovereignty. "These things must be discussed only by the two parties concerned." About this time, while Pakistan was also trying to raise the question in the Security Council, India was pressing its invitation to President Ayub to come to New Delhi for discussions. President Ayub suggested preparatory talks before going to Delhi. Unless there was some prospect of progress, he said, there was little point in going to New Delhi. In a speech at Lahore on March 23, 1962, he said that if the plebiscite was "not the best solution" for Kashmir,



“then let us have another solution satisfactory to all.” Nothing, however, came of these talks and the Security Council debate was eventually held.

Meanwhile, elections were held in the State of Jammu and Kashmir along with the rest of the country. For 32 seats out of the 43 in the Kashmir Valley the National Conference nominees were returned unopposed. In all, 70 seats went to the National Conference, three to the Praja Parishad and two Independents, who later joined the ruling party.

*The Hindustan Times* in its editorial of February 12, 1962, referred to “ugly rumours about the use of force” and said “public confidence in the free and fair elections will remain badly shaken unless there is a thorough-going investigation into the charges of malpractices which have been levelled by the opposition against Bakshi Saheb’s Government.”

Similarly, Mr. Balraj Puri, the P.S.P. leader, in articles published in issues of *Janata* dated March 11 and May 20, 1962, detailed the charges of malpractices in the elections. Representatives of opposition parties met the Chief Election Commissioner and pointed out the various irregularities.<sup>6</sup> The significant point is that the present Kashmir Assembly owes its existence to these “free and fair elections.”

In April-May 1962, the Security Council once again debated the Kashmir question at Pakistan’s request. On June 22, Ireland submitted a resolution which reminded both the parties of previous resolutions of the UNCIP and requested the acting Secretary-General, U. Thant, “to provide the governments with such services as they may require for carrying out the terms of this resolution.” “The resolution asked the two countries to solve the

<sup>6</sup> *Janata*, December 31, 1961.

Kashmir problem by using the provisions of the U.N. Charter by negotiations, mediation, arbitration or any other mode of choice." This very innocuous resolution was vetoed by the Soviet Union. On June 22, 1962, the Council voted on the resolution. The vote was 7 to 4 in favour, two abstentions (Ghana and U.A.R.) while Rumania and the Soviet Union voted against it. Thanks to the Soviet veto, the resolution could not be adopted.

On October 20, 1962, there began a massive Chinese invasion. Due to the efforts of the Commonwealth Relations Secretary, Mr. Duncan Sandys, and Mr. Averell Harriman, the U.S. Assistant Secretary of State, Mr. Nehru and President Ayub issued a joint statement on November 29, 1962, in which they announced that they had "agreed that a renewed effort should be made to resolve the outstanding differences between their two countries on Kashmir and other matters so as to enable India and Pakistan to live side by side in peace and friendship. In consequence they have decided to start discussions at an early date with the object of reaching an honourable and equitable settlement. These will be conducted initially at the ministerial level. At the appropriate stage, direct talks will be held between Mr. Nehru and President Ayub." Thus, the object of the talks was a Nehru-Ayub summit. The very day after this communique, however, Mr. Nehru told Parliament, "anything that involved the upsetting of the present arrangements would be very harmful to the people of Kashmir as well as to the future relationship between India and Pakistan. . . . I explained to them again and again our basic principles and how it was not possible for us to by-pass or ignore them." This statement naturally caused disquiet and Mr. Nehru clarified the very next day, December 1, 1962: "There had been never any

question of precondition or any restriction on the scope of the talks which the two governments are initiating." Eventually, the representatives of the two Governments met in Rawalpindi on December 26, 1962. India was represented by Sardar Swaran Singh; Pakistan was represented by its Foreign Minister, Mr. Z. A. Bhutto. Sardar Swaran Singh communicated to President Ayub, President Radhakrishnan's invitation to visit India. After the Rawalpindi discussions, these ministerial talks were continued in New Delhi from January 16, 1963, to January 19, 1963; in Karachi from February 8 to 10; in Calcutta from March 12 to 14; and again in Karachi from April 22 to 25. Finally, the talks ended in a deadlock after resumption in New Delhi from May 6 to 16. A Joint Communique announced that no agreement could be reached on the settlement of the Kashmir dispute. At a Press Conference at New Delhi, Sardar Swaran Singh disclosed that the Ministers had decided to explore the possibilities of delimiting the international boundary in Kashmir. It may be mentioned here that towards the end of the talks the ideal of third-party mediation to get negotiations going at the diplomatic level as an alternative to the fruitless series of ministerial discussions was mooted by the United States and United Kingdom and India had now begun favourably to consider the mediation. *The Times of India* in a despatch from its New Delhi correspondent published in the issue of May 10, 1963, stated that "India sees no harm in having the good offices of a mutually acceptable mediator to facilitate these [Indo-Pak] negotiations." In the meantime, India wanted a settlement along the cease-fire line, while Pakistan wanted neutralization of the Valley for five years followed by a plebiscite. There the talks ended.

Mr. Nehru declared in the Lok Sabha on August 13,

1963: "the concessions which we offered to Pakistan are no longer open and they must be treated as withdrawn." He revealed that he was agreeable "to have the good offices of a mutually accepted personality, even though previously we had declined similar proposal." But Pakistan's demands were impossible. In a Press Conference on September 9, 1963, President Kennedy once again reiterated his interest in a settlement over Kashmir, but wryly remarked that "struggle between India and Pakistan is more important to a good many people in that area than the struggle against the communists." He said, "In the case of India and Pakistan we would like to have them settle Kashmir. That is our view of the best way to defend the sub-continent against the communists."

On April 8, 1964, Sheikh Abdullah was released from jail. Immediately after his release he reiterated his demand that the people of Kashmir should be granted the right of self-determination by fulfilment of the pledges given to them repeatedly, and pleaded that an earnest attempt be made to arrive at a settlement with Pakistan on the State's future. He emphasized that the settlement must be such as would not endanger the future of the minorities in India and Pakistan or leave either State with a sense of defeat. "Kashmir should not leave its individuality. It will live if India lives and Pakistan lives: the State is an integral part of the sub-continent". Thus Kashmir having been a source of discord, he said, could be a source of reconciliation.

In India there has been much re-thinking about the official stand that the State's future has already been decided by an irrevocable accession to India. Shri Jayaprakash Narayan<sup>7</sup> and Rajaji have lent their powerful

<sup>7</sup> Appendixes IV and V.

voices in the advocacy of this re-thinking, because the alternative is to perpetuate the *status quo*, a policy which has dismally failed. Pakistan has also moved away from its demand for a plebiscite.<sup>8</sup> As early as March 22, 1961, President Ayub had said, "If there is any other reasonable solution as would satisfy the people of Kashmir we should be prepared to listen."

This re-thinking on both sides should facilitate compromise. A Unionist leader said on the eve of the Irish settlement, "Now and again there comes a moment in the affairs of men when courage is greater than prudence and a great act of faith uplifting the minds and moving the hearts of men achieves miracles that no act of statesmanship can encompass." Such a moment has arrived in the relations between India and Pakistan and a great act of faith is required of both.

<sup>8</sup> A. G. Noorani, "India, Pakistan & Kashmir," in *Opinion*, May 12, 1964.



## APPENDIX I

### INSTRUMENT OF ACCESSION OF .....

WHEREAS, the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an Independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify be applicable to the Dominion of India.

And WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

Now therefore I .....  
Ruler of ..... in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and:

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of ..... (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947 (which Act as so in force in hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act, or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default, of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to ..... commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.



GIVEN UNDER MY HAND THIS ..... day of August, Nineteen hundred and forty seven.

.....  
.....  
I do hereby accept this Instrument of Accession. Dated this ..... day of August, Nineteen hundred and forty seven.

.....  
GOVERNOR-GENERAL OF  
INDIA.

## APPENDIX II

*[Text of the letter addressed to Lord Mountbatten, the Governor-General of India by the Maharaja of Jammu and Kashmir State.]* •

26th Oct. 1947.

MY DEAR LORD MOUNTBATTEN,

I have to inform Your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As Your Excellency is aware the State of Jammu and Kashmir has not acceded to either the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundary with the Soviet Republics and China. In their external relations the Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, whether it is not in the best interest of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into a standstill agreement with my State. The Pakistan Government accepted this arrangement. The Dominion of India desired further discussion with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government under the standstill agreement are operating Post and Telegraph system inside the State.

Though we have got a standstill agreement with the Pakistan Government, that Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes, with modern weapons, have been allowed to infiltrate into the State

at first in Poonch area, then in Sialkot and finally in mass in the area adjoining Hazara district on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at several points simultaneously that it has become difficult to stop the wanton destruction of life and property and looting. The Mahoorah Power House which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my Government, as a first step to overrunning the whole State.

The mass infiltration of tribesmen drawn from the distant areas of the N.-W.F. Province coming regularly in motor trucks using Mansehr-Muzaffarabad road and fully armed with up-to-date weapons cannot possibly be done without the knowledge of the Provincial Government of the N.-W.F. Province and the Government of Pakistan. In spite of repeated appeals made by my Government no attempt has been made to check these raiders or stop them from coming to my State. In fact both the Pakistan Radio and press have reported these occurrences. The Pakistan Radio even put out a story that a provisional Government has been set up in Kashmir. The people of my State both the Muslims and non-Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to free-booters. On this basis no civilized Government can exist or be maintained. This alternative I will never allow to happen so long as I am the Ruler of the State and I have life to defend my country.

I may also inform Your Excellency's Government that it is my intention at once to set up an Interim Government and ask

Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you if further explanation is needed.

In haste and with kindest regards.

*Sd.* HARI SINGH.

### APPENDIX III

*[The text of the Kashmir Premier's statement  
on the Delhi Agreement in the State Constituent  
Assembly on August 11, 1952.]*

SIR,

I crave permission to make a statement before the House in regard to the constitutional relationship between the Jammu and Kāshmir State and the Indian Union. As the Hon'ble Members are aware, during the last session of the Constituent Assembly, the Basic Principles Committee had submitted a report making certain specific recommendations about the Future Head of the State. The House, while accepting these recommendations, had charged the Drafting Committee to present for the consideration of the Assembly, a draft resolution incorporating the proposed principles for the election of the Head of the State. The Drafting Committee will, no doubt, submit its report to the House during this session.

Since the changes proposed by this Assembly involved corresponding adjustments in the Indian Constitution, the Government of India desired that it should have time to discuss with our representatives the proposals pending in the Assembly. Accordingly, a delegation headed by Hon'ble M. A. Beg was sent by us to Delhi. The Government of India also availed of this opportunity to discuss with our representatives other matters pertaining to the constitutional relationship of our State with the Union. During the last stage of these discussions, it became necessary for me and some of my other colleagues in the Government to participate in the talks. I am now in a position to inform the House that certain broad principles have been laid down and certain decisions have been tentatively arrived at between the two Governments.

Before I apprise this House of the details of these tentative decisions, I wish to review briefly the background of our rela-

tionship with India. For some time past, there has been a good deal of discussion on this important question both here as well as outside. In the heat of public controversy, which this question aroused, the points at issue were sometimes obscured.

May I mention here the developments which led to the establishment of our relationship with India in October 1947? After the Independence Act of 1947 was passed by the British Parliament, the Dominion Status was conferred on India and Pakistan; and the British Paramountcy having lapsed, the Indian States became independent. They were, however, advised to join either of these two Dominions. It is a tragic commentary on these arrangements proposed by the British Government that the position of these Indian States, comprising one-fourth of the total population of the entire Indian sub-continent, was left absolutely vague and nebulous with the result that the future of the States' people came to be subjected to the vagaries of their respective rulers. Many of them acceded to either of the two Dominions after a good deal of procrastination while others hesitated and delayed the final decision to the detriment of the interests of the people living in those States.

The Jammu and Kashmir State was one of the States whose ruler had not taken a decision in regard to accession. While the State was in the condition of uncertainty and indecision and while the national movement was seeking transfer of complete power to the representatives of the people and the then State Government was indulging in repression in certain areas of the State particularly in Poonch, the State was suddenly invaded. Thousands of tribesmen from Pakistan, as well as Pakistan nationals, launched a savage attack against the people of this State. The administration then in charge of its affairs proved singularly ineffective to cope with the grave emergency and consequently it collapsed all of a sudden. At that critical moment in the history of the State, the National Conference stepped in to avert what looked like total annihilation at the hands of raiders from Pakistan who were later proved to have been abetted by the Pakistan Government. The National Conference mobilised all sections of the population in an effort to prevent conditions of chaos and dislocation from spreading to the entire State. This factor was mainly responsible for the

splendid morale displayed by the people of Kashmir who were inspired to heroic deeds in their resistance against the invaders.

It was, however, obvious that in face of the overwhelming number of the well-armed raiders, the unarmed people of Kashmir could not hold out for long. Consequently, it became urgently necessary for us to seek the assistance of a friendly neighbour which alone would enable us to throw back the invaders. In that critical moment, we could turn only to India where the Government and the people had demonstrated their sympathies for the ideals for which we were fighting the raiders.

But legal complications came in the way of India rendering the State any immediate help for its defence against aggression. The Government of India could send their army only if the State would accede to that Dominion. In accordance with the Indian Independence Act of 1947, the Instrument of Accession had to be executed by the Ruler of the State in order to make it legally valid. Consequently, with the backing of the most popular organization in the country, the Maharaja signed the Deed of Accession on the 26th of October, 1947, and the State of Jammu and Kashmir became part of the Indian Dominion.

The basis of our relationship with India is the Instrument of Accession which enabled our State to enter into a union with India. In accordance with the terms of the Instrument, certain powers were transferred to the Centre. The principal matters specified for this purpose in respect to which the Dominion Legislature could make laws for this State were:

- (a) Defence,
- (b) External Affairs, and
- (c) Communications.

This arrangement involved a division of sovereignty which is the normal feature of a Federation. Beyond the powers transferred by it to the Dominion, the State enjoyed complete residuary sovereignty.

These terms of the association of our State with the Dominion of India were maintained; and, subsequently, when the Constituent Assembly of India was charged with the task of framing a Constitution, this overriding consideration was kept in view

in determining the position of this State in the proposed Constitution. Earlier to this, it had been agreed between the two Governments that "in view of the special problems arising in respect of this State and the fact that the Government of India have assured its people that they would themselves finally determine their political future," a special position should be accorded to Jammu and Kashmir in the future Constitution so that a limited field of the Union Powers over the State is ensured. Four representatives were nominated from the Jammu and Kashmir State to the Constituent Assembly of India. These representatives participated in the deliberations of the Constituent Assembly of India at a time when the bulk of the Indian Constitution had already been adopted. It was at this stage that the constitutional position of this State was determined in the Constitution of India. The representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was also made clear that while the accession of the Jammu and Kashmir State with India was complete in fact and law to the extent of the subjects enumerated in this Instrument, the autonomy of the State with regard to all other subjects outside the ambit of the Instrument of Accession should be preserved.

Taking into account the special circumstances in which this State was placed, a special constitutional arrangement was evolved and provided in Article 370 of the Constitution which defines the position of Jammu and Kashmir as follows:

"(1) Notwithstanding anything in the Constitution,

- (a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;
- (b) the power of Parliament to make laws for the said State shall be limited to
  - (i) those matters in the Union list and the Concurrent list which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the



Dominion Legislature may make laws for that State; and

- (ii) such other matters in the said lists as, with the concurrence of the Government of the State, the President may by order specify.

*Explanation:* For the purposes of this Article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

- (c) the provisions of Article 1 and of this Article shall apply in relation to that State;
- (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.
- (2) If the concurrence of the Government of the State referred to in paragraph (ii) of the sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such assembly for such decision as it may take thereon.
- (3) Notwithstanding anything in the foregoing provisions of this Article, the President may, by Public Notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendations of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues a Notification."

While the State of Jammu and Kashmir is included in the list of States in Part B of Schedule 1 of the Constitution, it is apparent from a perusal of this Article that the provisions of Article 238 relating to the constitution of the States in Part B shall not apply to the State of Jammu and Kashmir. In view of the special position and character of the State and with a view to regulate the relationship of the State with the Union of India, Article 370 was devised.

The other important feature of this constitutional set-up is that the matters specified in the Instrument of Accession shall apply in relation to the Jammu and Kashmir State in consultation with the Government of the Jammu and Kashmir State and all other matters which do not fall within the terms of the Instrument of Accession shall not apply in relation to our State except with the final concurrence of the Jammu and Kashmir Constituent Assembly.

Here I would like to point out that the fact that Article 370 has been mentioned as a temporary provision in the Constitution does not mean that it is capable of being abrogated, modified or replaced unilaterally. In actual effect, the temporary nature of this Article arises merely from the fact that the power to finalise the constitutional relationship between the State and the Union of India has been specifically vested in the Jammu and Kashmir Constituent Assembly. It follows that whatever modifications, amendments or exceptions that may become necessary either to Article 370 or any other Article in the Constitution of India in their application to the Jammu and Kashmir State are subject to the decisions of this sovereign body.

Since a good deal of confused thinking and uninformed criticism is indulged in by some interested people, I would like to point out here that the Constitution has confined the scope and jurisdiction of the Union Powers to the terms of the Instrument of Accession with the proviso that they may be extended to such other matters also as the President may by order specify with the concurrence of the Jammu and Kashmir Constituent

Assembly. The special problems facing the State were thus taken into account and under the Constitution the relationship approximated to that subsisting under the Instrument of Accession.

The Constitution of the Indian Union, therefore, clearly envisaged the convening of a Constituent Assembly for the Jammu and Kashmir State which would be finally competent to determine the ultimate position of the State in respect of the sphere of its accession which would be incorporated as in the shape of permanent provisions of the Constitution.

This, briefly, is the position which the Constitution of India has accorded to our State. I would like to make it clear that any suggestions of altering arbitrarily this basis of our relationship with India would not only constitute a breach of the spirit and letter of the Constitution, but it may invite serious consequences for a harmonious association of our State with India. The formula evolved with the agreement of the two Governments remains as valid today as it was when the Constitution was framed and reasons advanced to have this basis changed seem completely devoid of substance.

In arriving at this arrangement, the main consideration before our Government was to secure a position for the State which would be consistent with the requirements of maximum autonomy for the local organs of State Power which are the ultimate source of authority in the State while discharging obligations as a unit of the Federation.

I would, therefore, plead that the validity of such constitutional arrangement should not be appraised academically but in the proper context of the extraordinary circumstances through which the State has been passing for the last five years or so. Since the State was invaded in 1947, the situation here has been bristling with such compelling urgencies as needed drastic administrative and economic changes. The revolutionary conditions prevailing in our State could be coped with only through extraordinary measures. The Government of the State was, therefore, called upon to take vital decisions which could not wait. Accordingly, it enacted laws which were calculated to transform the social and economic fabric of the common people. With the improvement in the internal situation of the country,

the necessity for a legislature became obvious. Consequently, it was decided to convene a Constituent Assembly for the State elected on the basis of adult franchise. This Assembly accordingly came into being in October, 1951.

The Hon'ble Members are aware that as the leader of the National Conference party, I indicated in my inaugural address the scope of the decisions which I felt the Constituent Assembly would have to take. I listed the four main issues as pertaining to the main functions of the Assembly, viz., the future of the Ruling Dynasty, payment of compensation for the land transferred to cultivators under the Big Landed Estates Act, Ratification of the State's accession to India as well as the framing of a Constitution for the State. While discussing these issues in my address to this House, I had given clear indications of my party's views in regard to them. I had also an occasion to place my point of view on these issues before the representatives of the Government of India and I had the satisfaction that they approved of it.

When the Constituent Assembly commenced its labours, it had to tackle these issues in course of time. It took decisions in regard to payment of compensation to landlords and it came to the conclusion that no compensation was justified.

The Constituent Assembly has, at present, under its consideration the future of the Ruling Dynasty. In this connection the Basic Principles Committee recommended that the institution of hereditary rulership in the State should be abolished and in future the office of the Head of State should be elective. While accepting the recommendations of the Basic Principles Committee, this Assembly charged the Drafting Committee to place before this House appropriate proposals for the implementation of these recommendations.

As I said in the beginning of my statement, such a fundamental decision involved corresponding adjustments in the Indian Constitution and in order to finalise the position in respect of this issue and other matters pertinent to it, I and my colleagues had discussions with the representatives of the Government of India as a result of which we arrived at some tentative agreement, the details of which I wish to place before the House.

The Government of India held the view that the fact that the Jammu and Kashmir State was a constituent unit of the Union of India led inevitably to certain consequences in regard to some important matters, namely:

- (a) Residuary Powers,
- (b) Citizenship,
- (c) Fundamental Rights,
- (d) Supreme Court of India,
- (e) National Flag,
- (f) The President of India,
- (g) The Headship of the State,
- (h) Financial Integration,
- (i) Emergency Provisions, and
- (j) Conduct of elections to Houses of Parliament.

Permit me, Mr. President, now to deal with each one of these items and also the agreements arrived at between the Jammu and Kashmir Government and the Government of India in relation to them.

#### *Residuary Powers*

It was agreed that while under the present Indian Constitution, the Residuary Powers vested in the Centre in respect of all the States other than Jammu and Kashmir, in the case of our State, they rested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the Instrument of Accession on which this Article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow. Under these circumstances, it is up to the people of Kashmir through this Assembly to transfer more powers for mutual advantage to the custody of the Union Centre.

#### *Citizenship*

It was agreed that in accordance with Article 5 of the Indian Constitution persons who have their domicile in the Jammu and

Kashmir State shall be the citizens of India. It was further agreed that the State legislature shall have power to define and regulate the rights and privileges of the permanent residents of the State, more especially in regard to acquisition of immovable property, appointments to services and like matters. Till then the existing State law would apply. It was also agreed that special provision should be made in the laws governing citizenship to provide for the return of those permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with the disturbances of 1947 or in fear of them as well as of those who had left for Pakistan earlier but could not return. If they returned, they should be entitled to the rights, and privileges and obligations of citizenship.

There are historic reasons which necessitate such constitutional safeguards as for centuries past, the people of the State have been victims of exploitation at the hands of their well-to-do neighbours. The Hon'ble Members are perhaps aware that in the late twenties, the people of Jammu and Kashmir agitated for the protection of their *bona fide* rights against the superior competing interests of the non-residents of the State. It was in response to this popular demand that the Government of the day promulgated a Notification in 1927 by which a strict definition of the term "State Subject" was provided. I am glad to say that the Government of India appreciated the need for such a safeguard. No definition of the special rights and privileges of the residents of the State can afford to remain static. The need may arise at one stage or the other to liberalize such a definition. The importance of the fact that State Legislature shall retain powers to be able to effect such modifications becomes obvious in this context.

There is yet another class of State Subjects whose interests had to be safeguarded. The Hon'ble Members of this House are aware that on account of the disturbances of 1947 and also as a consequence of the invasion of this country by Pakistan, large numbers of the residents of this State suffered dislocation. We have, therefore, to visualize the possibility of their return to their homes and hearths as soon as normal conditions are restored. It has been suggested in certain quarters that this protection has been provided only for those residents of the State

who are at present stranded in Pakistan. I would like to make it clear, as I have stated earlier, that this protection will operate only when the conditions are normal and such conditions naturally presume that the resettlement of the dislocated population, whether Muslim or non-Muslim, cannot be one-sided or unilateral.

### *Fundamental Rights*

It is obvious that while our constitution is being framed, the fundamental rights and duties of a citizen have necessarily got to be defined. It was agreed, however, that the Fundamental Rights, which are contained in the Constitution of India, could not be conferred on the residents of the Jammu and Kashmir State in their entirety taking into account the economic, social and political character of our movement as enunciated in the New Kashmir Plan. The need for providing suitable modifications, amendments and exceptions as the case may be in the Fundamental Rights Chapter of the Indian Constitution in order to harmonize those provisions with the pattern of our principles was admitted. Particular care would have to be taken to preserve the basic character of the decisions taken by this House on the question of land compensation as well as the laws relating to the transfer of land to the tiller and other matters. The main point to be determined is whether the Chapter of our Fundamental Rights should form a part of the Kashmir Constitution or that of the Union Constitution.

### *Supreme Court*

It was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in Article 131 of the Constitution of India. It was further agreed that the Supreme Court should have jurisdiction in regard to Fundamental Rights which are agreed to by the State.

On behalf of the Government of India, it was recommended that the Advisory Board in the State, designated "His Highness's Board of Judicial Advisors" should be abolished and the jurisdiction exercised by it should be vested in the Supreme

Court of India. That is to say that the Supreme Court should be the final Court of appeal in all civil and criminal matters as laid down in the Constitution of India.

We, however, felt that this would need a detailed examination and consequently it was agreed that we should have time to consider it further.

### *National Flag*

We agreed that in view of the clarifications issued by me in my public statements while interpreting the resolution of this House according to which the old State flag was substituted by a new one, it was obvious that the new State flag was in no sense a rival of the National flag. But for historical and other reasons connected with the freedom struggle in the State, the need for the continuance of this flag was recognized. The Union flag to which we continue our allegiance as a part of the Union will occupy the supremely distinctive place in the State.

### *President of India*

It was agreed that the powers to grant reprieve and commute death sentences, etc. should also belong to the President of the Union.

### *Headship of the State*

I am glad to inform this House that the Government of India have appreciated the principle proposed by the Basic Principle Committee as adopted by this Assembly in regard to the abolition of the hereditary rulership of the State. In order to accommodate this principle, the following arrangement was mutually agreed upon:

- (i) The Head of the State shall be the person recognized by the President of the Union on the recommendation of the Legislature of the State.
- (ii) He shall hold office during the pleasure of the President.
- (iii) He may, by writing under his hand addressed to the President, resign his office.



- (iv) Subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.
- (v) Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

### *Financial Integration*

In regard to this subject, we agreed that it would be necessary to evolve some sort of financial arrangement between the State and the Indian Union. But as this involved far-reaching consequences, it was felt that a detailed and objective examination of this subject would be necessary.

### *Emergency Powers*

On behalf of the Government of India, it was stated that the application of Article 352 of the Constitution was necessary as it related to vital matters affecting the security of the State. They did not press for the application of Article 356 or 360.

On behalf of the Kashmir Delegation, it was stated that the application of Article 352 to the State was not necessary. In the event of war or external aggression, item I in the Seventh Schedule relating to the defence of India applied and the Government of India would have full authority to take any steps in connection with defence, etc. In particular, we were adverse to internal disturbances being referred to in this connection, as even some petty internal disorder might be considered sufficient for the application of Article 352.

In reply it was pointed out that Article 352 could only be applied in a state of grave emergency and not because of some small disorder or disturbance.

In order to meet our viewpoint, it was suggested on behalf of the Government of India that Article 352 might be accepted as it is with the addition at the end of the first paragraph (1) of the following words: "but in regard to internal disturbance at the request or with the concurrence of the Government of the State."

We generally accepted this position, but wanted some time to consider the implications and consequences as laid down in Articles 353, 358 and 359 which on the whole we accepted. In regard to Article 354, we wanted to examine it further before expressing our opinion.

*Conduct of Elections to Houses of Parliament*

Article 324 of the Indian Constitution already applies to the State in so far as it relates to elections to Parliament and to the offices of the President and the Vice-President of India.

I have put before this House the broad indications of the agreements arrived at between us and the Government of India. As the Hon'ble Members will, no doubt, observe, the attitude of the Government of India has been most helpful. A satisfactory position has emerged and we are now able to assess the basic issues of our constitutional relationship with India in clearer terms. There has been a good deal of accommodation of our respective points of view. Both the representatives of the Government of India and the Kashmir Delegation, have been impelled by the desire to strengthen further the existing relationship to remove all obscurity and vagueness. We are convinced, as ever before, that we have the full support both of the Government and the people of India in the fulfilment of our democratic ideals and the realization of our objectives.

This goodwill and amity, I am sure, will result in the consolidation of freedom and democracy in our country. I may, however, emphasize that the supreme guarantee of our relationship with India is the identity of the democratic and secular aspirations, which have guided the people of India as well as those of Jammu and Kashmir in their struggle for emancipation and before which all constitutional safeguards will take a secondary position.

It is, of course, for the Constituent Assembly, which is seized of these matters, to determine the extent and scope of the State's accession to India. The Assembly may agree to continue this relationship on the present basis or extend its scope as it might like and consider feasible and proper. In the course of framing

the constitution for the State, the Hon'ble Members of this Assembly will have an opportunity of discussing these agreements and expressing their views thereon.

I thank you, Sir, for affording me this opportunity to place before the Hon'ble Members of this House the result of our recent talks with the representatives of the Government of India.

## APPENDIX IV

### OUR GREAT OPPORTUNITY IN KASHMIR \*

JAYAPRAKASH NARAYAN

THE STORY of Kashmir is an account of confused aims, unsure methods, insincere ideals. From the beginning, Kashmir has been the Prime Minister's concern. Yet when Sheikh Abdullah was dismissed from the Prime Ministership and detained, Mr. Nehru happened to know of the event just as any other Indian citizen did. That is only one example of the incredible manner in which the Kashmir question has been handled. The present ballyhoo over Sheikh Abdullah's statements raises the doubt if the old story was not going to be repeated again.

After 11 years of dilly-dallying the Sheikh was at last released. But again there seems to be no well-thought-out policy behind that belated decision. Surprise and pain have been expressed at Sheikh Saheb's statements. Unless the gentlemen concerned had deliberately hidden their heads in the sand, they could have saved themselves these emotional upsets. Sheikh Abdullah has said nothing that was not expected from him. Happily, the one sane voice in the ruling party is that of the Prime Minister himself.

What, after all, is the substance of Sheikh Abdullah's statements? This, that the future of Kashmir has to be decided by the people of Kashmir, and that it has to be done in a manner that the dispute about it between India and Pakistan is amicably ended. With a little imagination it was possible to see that this clear and principled stand of the Kashmir leader opened for India a wonderful opportunity that could be exploited to the advantage of all concerned. What actually is happening, however, is parrot-like reiteration of slogans that carry no conviction in any dispassionate quarters.

\* Published in *The Hindustan Times*, April 20, 1964.

One of these slogans is that the accession of Kashmir to India is final and irrevocable. The Sheikh has questioned that, and it is for impartial lawyers to decide the issue. But the vital point to keep in mind is that it is not by legal advocacy that a human problem like that of Kashmir can ever be settled. Indeed, it was such realization that had prompted the original promise of the Prime Minister to ascertain the wishes of the people.

At this point two further slogans are raised: (a) the people of Kashmir have already expressed their will at three general elections; (b) if the people of Kashmir are allowed to express their will, it will be the beginning of the end of the Indian nation.

Both, to my mind, are baseless slogans. The elections in Kashmir after Sheikh Abdullah's arrest were neither fair nor free. If that has to be disproved, it can be done by an impartial inquiry and not just by official assertions. Delhi seems to believe that by auto-suggestion it can establish any fact it pleases.

I may be lacking in patriotism or other virtues, but it has always seemed to me to be a lie to say that the people of Kashmir had already decided to integrate themselves with India. They might do so, but have not done so yet. Apart from the quality of the elections, the future of the State of Jammu and Kashmir was never made an electoral issue at any of them. If further proof was needed, it has come in the form of Sheikh Abdullah's emphatic views who, to put it at the least, is as representative of the people as any other Kashmiri leader.

Lastly, if we are so sure of the verdict of the people, why are we so opposed to giving them another opportunity to reiterate it? The answer given is that this would start the process of disintegration of the country. Few things have been said in the course of this controversy more silly than this one. The assumption behind the argument is that the States of India are held together by force and not by the sentiment of a common nationality. It is an assumption that makes a mockery of the Indian Nation and a tyrant of the Indian State.

Threats have been held out that should Sheikh Abdullah misbehave, the law would take its course. The law had taken its course. The law had taken its course for eleven years and the issue remained unsettled. It is not likely to achieve more in

the future. It is remarkable how the freedom-fighters of yesterday begin so easily to imitate the language of the imperialists.

The last and final slogan raised in the ballyhoo is that there is no Kashmir question at all, and that if there was one at any time, it has now been settled once for all. Kashmir is a part of India and that is a fact of history, they say. That, I think, is the worst form of auto-suggestion.

The slogan-raisers forget that less than half of the State of Jammu and Kashmir is under the occupation of Pakistan. Has that been accepted as settled fact? If so, when and where? If not, how is the issue of Kashmir settled, except in the private thoughts of those who believe that "we shall keep what we have" and "they shall keep what they have."

Secondly, the issue is still pending before the Security Council and U.N. observers are still posted in Kashmir. Thirdly, here is a leader of the stature of Sheikh Abdullah who clearly states that the issue has yet to be settled.

Therefore, as a humble servant of this country, I plead earnestly that instead of trying to take shelter in a fool's paradise of our own making, let us have the courage to face facts and deal with them on the basis of the ideals and fundamental principles that guided our freedom movement. After all, Sheikh Abdullah has not said anything that shuts the door to a reasoned and amicable settlement. All he has done is to envisage the unity and integrity of the original State of Jammu and Kashmir and the ascertainment of the wishes of the people of the reunited State in a manner to be agreed upon. He has indicated that a plebiscite need not be the only way of ascertaining the people's wishes and has mentioned free and fair election as one method. That is not a stand that does not provide a meeting ground for India, Pakistan and the people of Kashmir.

It was encouraging to find that the Prime Minister in his reply to the foreign affairs debate boldly affirmed his faith in Indo-Pakistan friendship, envisaging even some kind of a constitutional tie, and was generous enough to concede that mistakes had been made by both sides. Recent events have proved that the partition of India was a grave mistake and it has failed to solve any problem. However, there is now the incontestable fact of two sovereign nations.

But at the same time the history of the post-independence years has proved another incontestable fact, namely, that neither India nor Pakistan can live and grow unless there is friendship and co-operation between them. The lack of such relationship between them has, among other things, upset the power-balance in South and South-East Asia, depriving the sub-continent of the role that history and geography had destined it to play. The result was the tilting of the balance in favour of China—a most unhealthy state of affairs.

The Kashmir question has to be viewed in this broad perspective.

The question whether settlement of the Kashmir problem would establish friendship between India and Pakistan may be debated, but it cannot be denied that it will go a long way towards that goal, as also create international conditions that will necessarily promote that friendship. I do fervently hope that our leaders would have the vision and statesmanship that this historic moment demands.

## APPENDIX V

### THE NEED TO RE-THINK \*

JAYAPRAKASH NARAYAN

MY RECENT article on Kashmir has provoked a rather fierce controversy. That is good, because after the emotional catharsis, tempers should cool down, allowing for a more reasoned approach to a question that has plagued the sub-continent for the past 17 years. There is urgent need for re-thinking on this question, and all I had done in my article was to plead for this. It is to be regretted, therefore, that most of those who thought it necessary to preach angry sermons to me on patriotism refused to look squarely at the truths I had drawn attention to.

Yet, I have no desire to prolong this controversy, because I believe it would help if everyone concerned kept his counsel for a while. But in recent days there have been some amazing statements, and a dangerous state of mind has been revealed. Therefore, it seems necessary to deal briefly with some of these anxious matters, and point if possible a constructive way out.

When I wrote of the ballyhoo in my article, I had little imagined that there had been such a vast, organized attempt to work up a state of mind that was hysterical and closed to reason and intolerant to a violent degree of all dissent. The public temper in Delhi at the time of Sheikh Abdullah's arrival reminded one of the days when the Father of the Nation was sacrificed at the altar of a similar synthetic hysteria. Regrettably, Parliament itself helped to create that spirit of violent intolerance; recall—to give only one example—the shouting down of Mr. Frank Anthony.

A rather mortifying example of the mental state of some Members of Parliament was provided by Mr. A. P. Jain, President of the U.P. Congress and one-time Union Minister. He is

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reported to have said at New Delhi that there were men who held a different opinion from mine on Kashmir who had voluntarily imposed upon themselves "extreme restraint"; but that "if provocations of the type that Mr. Narayan is making continue, their patience might be exhausted."

I have no idea what Mr. Jain means by that threat; perhaps he and his friends would have me put away in prison. Personally, I would welcome that as an opportunity to snatch some rest and do some reading. But the crucial point to ponder is, if a person of Mr. Jain's position throws about threats in this manner, can it be surprising that irate young men should go about muttering assassination?

The pity is that when I made a reference to this mass hysteria at a public meeting in New Delhi, some friends in the Rajya Sabha turned it into an issue of personal security (I am in no need of protection), rather than giving serious thought to the dangers of the situation that had developed. May I say with due respect that in order to remedy the situation Members of Parliament might well begin with themselves by practising a little more patience and tolerance?

Of all the amazing statements made in the course of this controversy the one by the 27 Congress MPs (including the Secretary of the Congress Party and other important members) would easily take the prize. First, there was the astounding assertion of the primacy of law over moral and human values. As legislators the MPs should know the nature and limitations of law, as they are making and unmaking laws, even amending the Constitution, all the time. In human affairs law no doubt has an important role to play, but it has its limits. Morality and human values transcend the limits of law and take precedence over it.

Nor is it a question of any "one's personal views of what is moral." It is not at all difficult to identify what civilization in this age considers moral and human. It was Mahatma Gandhi who devoted his whole life to spiritualize politics. It is sad to find that in a decade and a half leaders (one hopes their number is limited) of the organization which he built up have come to sneer openly at morality and humanism.

Coming to Kashmir, this is how they authoritatively summed

up the position: "You can no more talk of self-determination in the case of Kashmir than in the case of, say, Bombay or Bihar." Further on they said, "After the Americans attained independence was any State allowed to exercise the so-called right of self-determination?" Surely, Congress MPs know better. Then why this deliberate obfuscation? Is the answer far to find?

Lest the public, who have proverbial short memories, should be led into believing that the idea of self-determination for Kashmir was a creation of Jayaprakash Narayan and his ilk, let me try to put the record straight. When partition was agreed upon, it was decided that what was known as British India would be divided according to Muslim and Hindu majority areas (without any referendum); and that in Princely India the Princes would have the option to accede to either India or Pakistan. Thus there was no question of any referendum in Bihar or Bombay.

As to the Princely States, the accession of the Prince was to be final. So, when Maharajah Hari Singh of Kashmir acceded to India, that should have set the matter beyond doubt for all times, as indeed in strict law it actually did. But there was a snag: the accession had to be accepted. And it was precisely at that point that the idea of referendum or self-determination in regard to Kashmir was injected into the course of events. After accepting the Instrument of Accession on October 27, 1947, Lord Louis Mountbatten, in a separate letter of the same date, wrote to the Maharajah as follows: "In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that, in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people."

A few days later (November 2, 1947) Mr. Nehru, in a broadcast, underlined the assurance given by the Governor-General in these clear words: "We decided to accept this accession and to send troops by air, but we made a condition that the accession

would have to be considered by the people of Kashmir later when peace and order were established. We were anxious not to finalize anything in a moment of crisis, and without the fullest opportunity to the people of Kashmir to have their say. It was for them ultimately to decide.

“And here let me make clear that it has been our policy all along that where there is a dispute about the accession of a State to either Dominion, the decision must be made by the people of that State. It was in accordance with this policy that *we added a proviso* to the Instrument of Accession of Kashmir.”

Later in the same broadcast the Prime Minister went on to declare to all the world: “We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given, and the Maharajah has supported it, not only to the people of Kashmir but to the world. We will not, and cannot, back out of it. We are prepared when peace and law and order have been established to have a referendum held under international auspices like the United Nations. We want it to be a fair and just reference to the people and we shall accept their verdict. I can imagine no fairer and juster offer.”

In view of this crystal-clear position it is amazing that such frantic efforts should be made to cloud the issue.

At this point it might help to clarify matters to consider another variation of the theme—though it was not the theme of the 27 MPs. Briefly, it is this; true, there was a proviso added to the Instrument of Accession, but that has already been given effect to and there is nothing further to be done about it. The proviso was carried out, it is said, when the Kashmir Constituent Assembly adopted in 1956 a Constitution which declared that “the State of Jammu and Kashmir is and shall be an integral part of India.” That was three years after Sheikh Abdullah’s arrest, but that may not be considered so important. The really important point is that a decision of the Constituent Assembly cannot be equated with a referendum, which the Prime Minister had solemnly pledged.

Statements of Sheikh Abdullah are bandied about to prove that he himself had accepted the accession. But there never was any question about it. Following the Maharajah’s legal act of accession, the Sheikh and the National Conference had endorsed

and explicitly accepted the accession; and on many subsequent occasions their acceptance was reiterated. All that is incontestable. Yet the proviso remained and had to take effect. Neither the National Conference nor Sheikh Abdullah could take the place of the people of Kashmir, whose will had to be ascertained and not the Sheikh's or that of the National Conference.

Still another argument is that since Pakistan joined SEATO and CENTO and the U.S.A. supplied it arms, and other things happened, the situation became so transformed that the offer of referendum stood no longer. But it is forgotten that it was not to Pakistan that the offer or pledge had been given but to the people of Kashmir. There could be no justification for punishing the latter for the actions of the former.

In view of all this it appears to me that the right and constructive approach is not to deny to Kashmir the *right* to self-determination, or to assert that the right has already been exercised, but to show rationally how impractical and imprudent it would be to exercise that right *now*.

The following considerations might be put forward; first, there is the hard fact of aggression by Pakistan, which they show no intention to vacate; second, a referendum might have serious consequences for the minorities both in India and Pakistan; third, a referendum might lead to further disintegration of the State of Jammu and Kashmir; fourth, the effect of the foregoing would have serious consequences for India's defence. There may be other factors; but these four are weighty and reasonable and neither Sheikh Abdullah nor any other Kashmir leader, because they are as much concerned with India's good as with that of Kashmir, would brush them aside.

Therefore, my humble plea is that we put aside all this heated controversy about the accession having been final and irrevocable and sit down with the Sheikh and discuss practical ways of settlement. If according to us the only way of settlement is for Sheikh Abdullah to accept the finality and irrevocability of the accession, we might as well send him back to prison: he will never agree to that position. But in order to find a mutually acceptable solution, it is not necessary for either side to give up its position. The important thing is for each to understand that merely by asserting one's own position and sticking to it,

the problem is not solved. No matter how aggressively we affirm that Kashmir's accession to India is final and irrevocable, the world does not accept it, the "Azad Kashmir" area remains under Pakistan, the cease-fire line remains, the two armies remain facing each other, the minorities in both India and Pakistan continue to live in fear, discontent in Kashmir simmers and might have to be put down by force. So, what have we gained, or hope to gain in the future, by our insistent unilateral assertion? On the other hand, if Sheikh Abdullah continues to press for the right of self-determination, and the circumstances do not permit it to be exercised, what good does it do to him or anyone else?

So, let each hold on to his position, but put it aside, and get down to brass tacks to find a practical solution. Let it be recalled that there were three referendums in Alsace Lorraine, and now who cares where it belongs!

I do not think anyone knows what the solution can be. Yet a few positive things might be stated about it. One, that there must be an honest desire on all sides to find a solution. Two, it should be remembered, as an English statesman said, that nothing is settled unless it is settled right. Of course, it is not easy to know what is right in a complicated situation, but one test may be that it gives satisfaction to all concerned. Therefore, the third point about the solution is that it must be such as to satisfy India, the people of Kashmir and Pakistan.

Sheikh Abdullah's insistent stress on Indo-Pak understanding as a part of any solution of the Kashmir's question has irked Indian public opinion and many have read into it his predilection for Pakistan. This, however, is a complete misreading. Sheikh Abdullah sees, as everyone else should, that if Pakistan were not a party to it, there could be no settlement. The very Kashmir question came into being on account of Pakistan, and it was India that made her a party to the dispute at the U.N. Apart from Kashmir, Sheikh Abdullah also sees that the future of both India and Pakistan depends upon whether they are friends or enemies.

This is a view that will not be seriously contested in this country, and it has the support of no less a person than the Prime Minister. In a courageous and statesmanlike speech in

the Lok Sabha, in reply to the foreign affairs debate, Mr. Nehru was reported to have said that "he would have hoped that India and Pakistan would come together closer, even constitutionally, but that would annoy the Pakistan authorities." So he would content himself to declare: "There is no other way for us except to live in peace." When it is recalled that the speech was made at a time of intense communal feeling, its courage and wisdom become still the more impressive.

I might remark here parenthetically—though this is not the place for it—that the Prime Minister's speech was equally remarkable for its responsive approach to the inquiry made by the Prime Minister of Ceylon. I should add, however, that it is not for China to make a "proper approach" to us as the Prime Minister said. Now that both sides have been sounded, it is for the mediators, the six Colombo Conference Powers, to make the proposal in a formal manner to both Governments. That would amount to a mutually agreed amendment of the original Colombo proposals, and enable India and China to meet at the conference table.

However, to return to Indo-Pakistan relations and Kashmir. The reference by the Prime Minister to some kind of constitutional link between the two countries is particularly interesting in the present context. And it need not be assumed that Pakistan would always be opposed to such an idea. After all, every country is concerned above all with its security and economic development. Can there be any doubt that a constitutional link between India and Pakistan would go a long way to guarantee their security as well as economic progress? Moreover, the fact that Sheikh Abdullah is also thinking on similar lines introduces a fresh element of hope into the situation. So, if the rigid positions are kept out of the way, there is every hope that a constructive line of approach will be agreed upon that might lead ultimately to a solution at once satisfying to India, Kashmir and Pakistan. Here is a task of statesmanship of the highest order.

Before concluding I wish to take a look at our secularism in relation to Kashmir. Apart from other considerations, Kashmir is deemed to be of great value to us because we wish to hold it up as an example of our secularism. I wonder if the

spokesmen of secularism are aware of the irony of the present situation. The same Kashmir that is supposed to be an example of Indian secularism has occasioned a nasty upsurge of Hindu communalism. It is not easy to discern this process, because it is happening under the cover of nationalism. India being a Hindu-majority country, it is not difficult, as has been remarked by many observers, for Hindu communalism to trot out in the garb of Indian nationalism. Therefore, it is the more urgent that those who believe in a truly secular and composite nationalism should be on their guard.

What is meant by Kashmir being an example of Indian secularism? It means, I believe, that the people of India have given such proof of their non-communal outlook that the Muslims of Kashmir, even though they are in a majority there, have freely decided to live with India which is a Hindu-majority but a secular country, rather than with Pakistan which is a Muslim-majority but an Islamic State. But suppose we had to keep the Muslims of Kashmir within India by force; would that also be an example of our secularism? The very question exposes its absurdity. And yet, how widespread is the mentality today that in order to defend the secular basis of our nation, we must keep Kashmir, if necessary by force, within the Indian Union!

Therefore, I do wish most seriously to plead with the Prime Minister, the Congress President and other Congress leaders to look carefully at the cancerous process that is taking place within their party. As things are moving there would soon be little to choose at least in this matter between the Congress and the Jan Sangh. Shallow and timid Congressmen are feeling that the latter is stealing the thunder. But by and large the people's mind is sound, and they would rally round Pandit Jawaharlal Nehru (as they have always known him) if he were to give a clear and bold lead. And so would all the faint-hearted Congressmen who are eager to ride to victory on the communal wave. If some such event does not happen, I am afraid there would be vital damage done to the secular base of our Nation.





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