

“Kashmir and the United Nations”

By

Dr. Ghulam Nabi Fai

Executive Director, Kashmiri American Council

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Background

The Kashmir dispute primarily involves the life and future of the people of the land. Because of its impact on relations between India and Pakistan, however, it directly affects the peace and stability of the South-Asian subcontinent. This is a region which contains a large segment of the human race.

Two wars have been the harvest reaped from the dispute. The possibility of a third, bloodier, probably nuclear and more extensive one has by no means been eliminated.

The dispute is not insoluble through peaceful procedures. I believe that the United States can, and should, lead the effort to achieve a fair and peaceful settlement of the dispute - fair to the people most immediately involved and fair to its own commitments to democracy and human rights. By doing so, our country can strengthen the principles of a just world order. It will also earn the gratitude of generations in Kashmir, in Pakistan and even in India itself.

Location and Size

Kashmir is situated in the extreme north of the India-Pakistan subcontinent and at the southern point of Central Asia. With an area of 86,000 square miles and a population currently estimated at around 13 million, (Census of 1990) it is surrounded by four countries: China, Afghanistan, Pakistan and India, with the narrow Wakhan strip (in Afghanistan) separating it from the Tajikistan and Krygstan. Its rivers flow into Pakistan: its traditional highways led there: It is also with Pakistan that it shares the larger part of its border. In its middle is the Vale of Kashmir, famed for its scenic beauty. Compared to the existing 191 sovereign states in the world taken individually, Kashmir is larger than 93 and more populous than 121.

Present Status

The cease-fire line between the forces of India and Pakistan has currently divided Kashmir into two parts. One is under Indian occupation: this comprises 63% of the whole territory and includes the Vale; it has a population of around 7.5 million. The other with around 3 million people, includes Azad (free) Kashmir, which is under indirect Pakistani

control, and the northern region of Gilgit and Baltistan, which is directly administered by Pakistan. About 1.5 million Kashmiris are refugees in Pakistan: some 400,000 live in Britain and about 250,000 are scattered around the world. The present arbitrary bifurcation of Kashmir has divided thousands of Kashmir families.

Modern History

At that time, Britain was liquidating its empire in the subcontinent. The tripartite agreement of Britain, the National Congress (representing Hindus) and the Muslim League (representing Muslims) partitioned British India into two independent countries: one comprising Hindu-majority areas which retained the name 'India' and the other including Muslim-majority areas which named itself Pakistan. As this settlement also meant the end of British paramountcy over the autonomous principalities called States, these were supposed either to merge with one of the two countries in accordance with the wishes of the people and the principle of partition (Hindu-majority States with India and Muslim-majority States with Pakistan). Kashmir was a predominantly Muslim-majority State; besides, it was far more contiguous with Pakistan than with India. It was therefore, expected to accede to Pakistan. But the Maharajah was Hindu and he rejected the first option and could not manage the second.

Faced with the insurgency of his people, which had been joined by a few hundred civilian volunteers from Pakistan, he fled the capital Srinagar, on 25 October 1947 and arranged that India send its army to help him crush the rebellion. India, coveting the territory, set one condition on its armed intervention. The condition was that the Maharajah must sign an Instrument of Accession to India. He agreed but India did not wait for his signature to fly its troops into the State.

Though long planned and swiftly executed, the annexation of Kashmir could not be a simple affair for India. First, there was the incongruity of the act which clearly violated the principle of partition. Secondly, while accepting the instrument of accession from the Maharajah, India did not wish to jeopardize its chances of annexing two other principalities or States (Hyderabad and Junagadh) which, in contrast with Kashmir, had Hindu majorities but Muslim rulers. It had a stake, therefore, in ostensibly preserving the principle that in case of conflict between the ruler's and the people's wishes, the latter must prevail. Under these compulsions, India had to attach a condition to the transaction with the Maharajah: the accession was made subject to "reference to the people." On India's own showing, therefore, the accession had a provisional character; one official representative of India at the United Nations termed it "tentative."

Kashmir Question at the United Nations

Between October and December of 1947, the Azad Kashmir forces successfully resisted India's armed intervention and liberated one-third of the State. Realizing it could not quell the resistance, India brought the issue to the United Nations in January 1948. As the rebel forces had been undoubtedly joined by volunteers from Pakistan, India charged Pakistan with having sent "armed raiders" into the State and urged that the

United Nations call upon Pakistan to withdraw them. This was coupled with the assurance that, once the "raiders" were withdrawn, India would enable a plebiscite being held under impartial auspices to decide Kashmir's future status. In reply, Pakistan charged India with having maneuvered the Maharajah's accession through "fraud and violence" and with collusion with a "discredited" ruler in the repression of his people. Pakistan's counter complaint was also coupled with the proposal of a plebiscite under the supervision and control of the United Nations to settle the dispute.

Security Council Decisions

There was much in these submissions that was controversial between India and Pakistan, but the proposal of a plebiscite was not. This is clear from the statement made on 28 January 1948 by the President of the Council. He said:

" ... the documents at our disposal show agreement between the parties on the three following points:

- (1) The question as to whether the State of Jammu and Kashmir will accede to India or to Pakistan shall be decided by plebiscite;
- (2) This plebiscite must be conducted under conditions which will ensure complete impartiality;
- (3) The plebiscite will therefore be held under the auspices of the United Nations."

Led by the United States and Britain, the Council adopted a resolution on 21 April 1948 which noted "with satisfaction that both India and Pakistan desire that the question of accession ... should be decided through appointed a Commission of the United Nations, of which the United States became a member, to work out a plan for the demilitarization of Kashmir prior to the plebiscite.

The United Nations Commission for India and Pakistan (UNCIP) submitted proposals to the two governments. Formulated as resolutions, they constituted an international agreement upon being accepted in writing by both governments. Part III of the Commission's resolution of 13 August 1948, agreed to by both India and Pakistan, states:

"The governments of India and Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and, to that end, upon acceptance of their 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."

Position of Democratic Powers

The United States, Britain and France have traditionally been committed supporters of the plebiscite agreement as the only way to resolve this issue. They

sponsored all of the Security Council resolutions which called for a plebiscite. Their commitment was indicated by a personal appeal made by America's President Truman and Britain's Prime Minister Clement Atlee that differences over demilitarization be submitted to arbitration by the Plebiscite Administrator, a distinguished American war hero: Admiral Chester Nimitz. India rejected this appeal and, later on, objected to an American acting as the Plebiscite Administrator. As mentioned earlier, American Senator Frank Graham visited the Subcontinent as the United Nations Representative to negotiate the demilitarization of Kashmir prior to the plebiscite. India rejected his proposals as well.

The American position was bipartisan and maintained equally by Republicans and Democrats. Secretary of State John Foster Dulles stated on 5 February 1957 that:

"We continue to believe that unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail, which is that there should be a plebiscite."

On 15 June 1962, the American representative to the United Nations, Adlai Stevenson, stated that:

" ... The best approach is to take for a point of departure the area of common ground which exists between the parties. I refer of course to the resolutions which were accepted by both parties and which in essence provide for demilitarization of the territory and a plebiscite whereby the population may freely decide the future status of Jammu and Kashmir. This is in full conformity with the principle of the self-determination of people which is enshrined in Article I of the Charter as one of the key purpose for which the United Nations exists."

Similarly in Britain, both Labor and Conservative governments consistently upheld the position that a plebiscite was the only way the dispute over Kashmir could be democratically and peacefully settled. When the dispute first arose, Clement Atlee launched a conciliatory effort and conveyed to the Pakistani Prime Minister the assurance of the Indian Prime Minister that India would allow Kashmir's status to be determined by the people's vote. Two years later, the Prime Ministers of the Commonwealth informally proposed alternative arrangements for the demilitarization of Kashmir prior to the plebiscite. They suggested that a neutral peacekeeping force consisting either of contingents from the Commonwealth countries or composed of local troops from both sides under the control of the Plebiscite Administrator could be stationed to safeguard the state's security. India rejected all of these suggestions.

Plebiscite Absolutely Feasible

The idea of a referendum or plebiscite can be translated, without derogation, into the idea of elections to one or more constituent assemblies which will determine the future status of the state or of its different zones. The sole condition is that the election

should be completely free from undue pressure, rigging or intimidation: it must be conducted under the control and supervision of the United Nations.

India's position, though plainly untenable and unjust, appeared to gain some plausibility during the cold war. To demilitarize Kashmir under those circumstances was to expose it (and India as well) to unpredictable dangers-this was the undertone of India's pleas. Since India was supported by the Soviet Union and Pakistan had allied itself with the United States the insinuation was that Kashmir would somehow become an American base and thus a detriment to India's professed non-alignment.

Arrangements for Plebiscite

It is clear from this historical narrative that there is nothing fuzzy about the modalities of holding the plebiscite. These were exhaustively worked out during the negotiations concluded by the United Nations about the implementation of its peace plan for Kashmir. The phased withdrawal of forces on both sides, the appointment of the Plebiscite Administrator by the United Nations Secretary General, his induction into office, the institution of the electoral process under his authority, the exercise of powers deemed necessary by him-all these are fully known to the parties. If a credible peace process is instituted, some t's will need to be crossed and some i's dotted, but given the political will of India and Pakistan to implement their international agreement, and the will of the Security Council to secure that implementation, these can present no obstacles. It is not the inherent difficulties of a solution, but the lack of the will to implement a solution, that has caused the prolonged deadlock over the Kashmir dispute. The deadlock has meant indescribable agony for the people of Kashmir and incalculable loss for both India and Pakistan. If the new world order is not to be an order of unreason, injustice and terror and thus a permitted anarchy, that agony should be brought to an end and that loss repaired. The peace that has eluded the South Asian subcontinent, home to one-fifth of humanity, should be made secure.

Finally, the United States should make Kashmir the centerpiece of its peace and non-proliferation strategy in South Asia.

- (a) She should make it clear to the world community that it is implausible to believe that India and Pakistan will either cap or renounce their respective nuclear genies after they have escaped the South Asian bottle unless the chief source of antagonism between the two -- Kashmir -- is resolved. It is obvious that no settlement can last if it is not based on justice for the people of Kashmir and recognition of their inherent rights.
- (b) It should facilitate Kashmir negotiations, not crown India with veto power over the gambit, which the United States do at present. Bilateral Pakistan-Indian talks have proven barren for more than 56 years, and nothing suggests any non-hallucinogenic possibility of breaking that bilateral stalemate.

- (c) It should appoint a special envoy on Kashmir, and urge the Secretary General of the United Nations, Kofi Annan, to do the same. The mediation should be undertaken by a person of international stature, such as Nelson Mandela, Jimmy Carter, or Baroness Thatcher.
- (d) It should insist on the inclusion of genuine representatives of the Kashmiri people at the negotiating table. It is their political destiny and human rights which are at stake, and no solution that fails to command their consent will endure.
- (e) It should understand that moral suasion and diplomatic gambits by individual nations and international organizations should be the chief instrument for achieving a peaceful settlement in Kashmir, just as they were employed to accelerate the end of apartheid in South Africa.
- (f) It should realize that the self-determination for Kashmir would strengthen respect for justice, international law and legality.

In sum, Kashmir is too important to world peace and security and human rights to be left to either the apathy or the passivity of the international community.

Correspondence:

Kashmiri American Council
733-15th Street, N.W. Suite 1100, Washington, DC 20005, USA
Tel: 202-628-6789 / Fax: 703-295-8683
E-mail: kac@kashmiri.com / gnfai2003@yahoo.com
Website: www.kashmiri.com