



THE UNITED NATIONS' ROLE IN RESOLVING THE KASHMIR ISSUE

Adarsh Kumar Singh

Research Scholar, Faculty of Law, Lucknow University

ABSTRACT :

The World War II killed, wounded and displaced millions of people from their home all over the world. The bloody catastrophe of this magnitude forced leaders of the world to establish United Nations in New York on 24th October 1945 to resolve disputes between two or more countries and maintain peace and security all over the world. This organization was almost two year old when Kashmir dispute arose i October 1947 between India and Pakistan after latter's Army regulars in the garb of tribesmen, attacked Jammu and Kashmir. As India's first Prime Minister Pt. Jawaharlal Nehru was staunch supporter of United Nation, New Delhi did not doubt the intentions of this newly born organization and hence raised this issue to UN Security Council so it could be resolved peacefully. This paper deals UN attempts to resolve this dispute from the beginning till date in detail. Before discussing the main theme, this paper also tends to discuss in brief the main causes of the origin of the Kashmir problem.



KEY WORDS: *problem of Kashmir, Indian subcontinent, Security Council.*

INTRODUCTION:

The problem of Kashmir as it arose immediately after independence of India was in many ways a byproduct of the political history of the Indian subcontinent. The conflict was symbolic of a clash of the two newly independent sovereign states which were born after partition of British India. It was largely a result of the fears, jealousies, and rivalries that marked the political processes at work in India during freedom struggle.¹ Communalism, British policy of divine and rule, and finally King of Kashmir Hari Singh's decision not to accede to India or Pakistan by 15th August 1947 were the main causes of the origin of the Kashmir problem.

On 1st January 1948, India wrote letter to the UN Security Council referring Article 34 and 35 of the United Nations Charter which says "any member may bring any situation, whose continuation is likely to danger the maintenance of international peace and security, to the attention of the Security Council."² In this letter, New Delhi complained about Pakistani invasion on Indian state of Jammu and Kashmir and requested the Security Council to call upon Pakistan to stop using force against India. The Security Council first time met on 15 January, 1948. During this meeting Pakistan not only replied in writing to the Indian complaint but made counter complaints against New Delhi too. The Security Council passed its first resolution on the Kashmir dispute on 17 January 1948 calling both governments to immediately take all steps to improve situation and to refrain from doing or permitting any acts which might aggravate the situation. The Security Council passed the second resolution on 20 January

1948 which established the United Nations Commission for India and Pakistan (UNCIP) to resolve the Kashmir dispute. According to the resolution, this three member commission (one selected by India, other by Pakistan and the third by the two members so designated) would reach to spot under the authority of the Security Council and act according to its directions. The very title "India-Pakistan question" implied that both countries were equal parties to the dispute.³ As Pakistan demanded plebiscite in Jammu and Kashmir, in its next resolution the Security Council agreed to hold plebiscite under United Nations supervision and authority. It also specified the duties of the UNCIP to stop hostilities. Though UNCIP failed to achieve demilitarization, this commission succeeded in persuading both India and Pakistan to enforce ceasefire in Kashmir on 1 January 1949.⁴

After all mediation efforts were exhausted, the Security Council met in December and finally decided to entrust the task of negotiation to Canadian General A.G.L. McNaughton. After discussing the problem with representatives of both India and Pakistan, presented a plan of progressive demilitarization. Pakistan was ready to accept General McNaughton's plan but India rejected this and insisted upon complete demilitarization of forces from occupied area.

In March 1950, the UNSC passed another resolution to appoint Sir Owen Dixon (Australian Ambassador to US during World War II) as mediator. His mandate was to execute demilitarization on the basis of principles of General McNaughton or of such modifications of these principles as agreed by both India and Pakistan.⁵ After having talks with all parties, he told UNSC about the failure of his mission. He also told that only possibility of resolution of the dispute lied in partition of Jammu and Kashmir and not in holding plebiscite.⁶

Almost a year later in April 1951, UNSC appointed its representative Frank D. Graham to mediate between India and Pakistan so implement demilitarization in Kashmir. Talks began in Geneva but nothing was achieved. It is important to note that agreement had been achievement on most of the controversial issues. But India and Pakistan did not agree on the meaning of the final disposition of the forces. Hence in the end Graham's mission failed like Dixon. After failure of this mission UN effort to resolve the Kashmir dispute came to a temporary close and issue was not raised in UNSC until 1955.

In December 1956, Kashmir issue was again raised in UNSC by Pakistan. This time Islamabad demanded that the Indian and Pakistani army should be replaced by the UN force. However, India fiercely opposed it. Pakistani demand to deploy UN force was supported by the US in Security Council. In mid February 1957, a draft resolution (Known as Five Power Resolution) was introduced by US, Britain, Australia, Columbia and Cuba. It expressed concern at the lack of progress in resolving the dispute. However, this resolution supported deployment of UN force in Kashmir. Though western powers favoured this resolution to deploy UN force, Soviet Union supported Indian view point and vetoed this resolution.

Finally, the UNSC decided to send its President Gunnar Jarring, a Swedish citizen, to Indian subcontinent to resolve the Kashmir dispute. He travelled both India and Pakistan and reported that there was almost no possibility of its resolution in near future. Again in 1957, the UNSC sent Frank Graham. This was his second attempt to find solution of the Kashmir problem. But his efforts failed like previous one.

The UNSC again discussed the Kashmir issue in June 1962. When the UNSC supported the call for implement its earlier resolutions by holding plebiscite, the Soviet Union vetoed the resolutions. As US and her western allies were the driving force behind this resolution, India became angry with US, and Indian Prime Minister Nehru severely criticized the American stance in Indian Parliament.⁷ No doubt during this early phase of UN involvement in Kashmir was more due to the Cold War. As India and Non aligned Countries were seen as friends of Soviet Block, the Western block led by the US was suspicious of India. Hence it supported Pakistan's stand in the Security Council which was its military ally.

Subsequently the UNSC gave up its efforts to implement Kashmir's right to self determination. In fact the UNSC made no mention of Kashmiris or their right to self determination in its resolutions when it appealed for a truce during India-Pakistan Wars of 1965 and 1971.⁸ After 1971, the UN role was

largely confined only to UN Military Observer Group's monitoring of Line of Control on both sides of border in Kashmir.

During the Kargil War of 1999, Pakistan again tried to get United Nations involved in the resolution of the Kashmir dispute. Islamabad wrote letter to UN Secretary General for the sake of internationalizing the Kashmir issue. However, the US believed that India was a victim of aggression and was well within its rights to use military to push them out. Hence it blocked a Canadian attempt to bring Kargil to the attention of the UN Security Council.

When the Modi government came to power in India in 2014, it introduced multi pronged strategy to end terrorism in Kashmir. Indian security forces and intelligence agencies launched coordinated operations to flush out terrorism and their backers. As this was going on, the the Sri Nagar-based Jammu and Kashmir Coalition reported that conflict related casualties were highest in 2018 since 2008. Indian government reported that 238 militants, 86 security personnel, and 37 civilians were killed.⁹ Given violent year, the Office of the UN High Commissioner for Human Rights (OHCHR) in its report released on July 8, 2019, raised serious concerns about abuses by state security forces and armed groups in both Kashmir and Pakistan Occupied Kashmir (PoK).¹⁰ It further said that both India and Pakistan failed to take steps to address and implement the recommendations made in June 2018 report, the first such report on human rights in Kashmir. The OHCHR stated that India's Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) remained a key obstacle to accountability because it provided effective immunity for serious human rights violations.¹¹

In first week of August 2019, when Jammu and Kashmir State was under lockdown, the Modi government abrogated Article 370 and reorganized the Jammu and Kashmir state by bifurcating it into two Union Territories, Jammu and Kashmir and Ladakh. Islamabad issued "strong demarche" in response to New Delhi's moves, calling it illegal actions which were in breach of international law and several UN Security Council resolutions. Moreover Pakistan also downgraded diplomatic ties, suspended both trade as well as cross border transport services with India.¹² Beijing also expressed serious concern about New Delhi's actions in Kashmir. As India Pakistan relations reached at lowest due to abrogation of Article 370, the UN Secretary General Antonio Guterres called for maximum restraints and expressed concern that restrictions in place on the Indian side of Kashmir could deteriorate human rights situation in the region.¹³ He also stated that the position of United Nations on this region is governed by the Charter and applicable Security Council resolutions. Beijing's support of Pakistan's request for UN involvement led to informal and closed door consultations among UNSC members on 16th August, a session that included the Russian government. However, no statement was issued regarding this closed door discussion. No UNSC member other than China spoke publicly about the August meeting. This was the UNSC's first closed door consultations on Kashmir since 1971. In mid December, Beijing again supported Islamabad's demand that UNSC hold another closed door meeting on Kashmir, but no such meeting took place.¹⁴

A month later the UN High Commissioner for Human Rights Michelle Bachelet while speaking in the UN Human Rights Council meeting expressed being deeply concerned about human rights situation in Kashmir. In October, spokesman for the Council stated that it was extremely concerned that the people of Indian-administered Kashmir continued to be deprived of wide ranging human rights and hence it urged New Delhi to unlock the situation and fully restore the rights that they were being denied.¹⁵

In March 2023, UN Special Rapporteur Mary Lawlor stated that India must immediately end its crackdown against Kashmiri human rights activists. His statement came after Khurram Pervez, a Kashmiri was arrested in a second case of terrorism charges. Mr. Parvez was arrested by India's National Investigation Agency, top counter terrorism agency, after two days of interrogation. UN experts repeatedly criticized the Unlawful Activities (Prevention) Act, which allowed the designation of any individual as terrorist bypassing the requirement to establish membership of association with banned groups.¹⁶

To summarize, it can be said that in the beginning United Nations made extensive efforts to resolve the Kashmir issue. However no solution could be found simply because it supported Pakistan

view point in its resolutions. It passed resolutions regarding self determination and plebiscite under the supervision of the UN force. The Soviet Union generally supported India's stand on Kashmir and whenever needed vetoed resolutions inimical to Indian interests. The Cold War dynamics played its role during early phase. The end of Cold War and growing Indian economic might finally made UNSC understand India's Kashmir policy and hence it withdrew itself from Kashmir. After New Delhi's move to repeal the Article 370 of the Indian Constitution and stripping Kashmir of its special status and statehood, the UNSC held closed door meeting but no official statement was released. In recent times, the UN expressed concern on human rights violations in Kashmir as well as PoK.

END NOTES

¹ Gupta, Sisir (1966), *Kashmir: A Study of India Pakistan Relations* (New Delhi), p.1.

² Ibid, p.100.

³ Brecher, Michael (1953), *The Struggle for Kashmir* (New York), p.110.

⁴ Ibid, p.113.

⁵ Mudumbai, Srinivas C.(1980), *United States Foreign Policy Towards India, 1947-1954*, (New Delhi), 82.

⁶ Ibid, p.96.

⁷ Kux, Dennis (1993), *India and United States: Estranged Democracies 1941-1991* (New Delhi), p.201.

⁸ Hingorani, Aman M. (2016), *Unravelling the Kashmir Knot*, (New Delhi: Sage)

⁹ *Human Rights Watch (2019)*, Kashmir: UN Reports Serious Abuses, July 10, 2019 (available at [hrw.org/news/2019/07/10/kashmir-un-reports-serious-abuses](https://www.hrw.org/news/2019/07/10/kashmir-un-reports-serious-abuses) (Accessed on 20.04.2023))

¹⁰ Ibid.

¹¹ Ibid.

¹² *CRS Report (2020)*, "Kashmir: Background, Recent Developments, and U.S. Policy", 13 January 2020 (R45877) (available at <https://crsreports.congress.gov>), p. 17.

¹³ Ibid, p. 19.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ *UN Human Rights, office of the High Commissioner (2023)*, "India: UN Expert demands immediate end to Crackdown on Kashmiri Human Rights Defenders", 24 March 2023. (Accessed on 27.10.2023)