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Kashmir Dispute and the Role of UN (1948-53)

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Abstract

After seven decades of independence, the Kashmir disputes continue to deteriorate the already adversarial relations between India and Pakistan. There are many problems between the two countries, but the core problem is the Kashmir issue. The United Nations Organization (UNO) has played an important role in the Kashmir issue. The UNCIP and Mr. McNaughton, Mr. Owen Dixon, Mr. Frank P Graham had played important mediatory role in the Kashmir dispute. The present article briefly outlines the role of UN in Kashmir dispute from 1948 to 1953 and analyses the nature of the solution proposed by it.

Keywords: Kashmir dispute, UNCIP, Solution

Introduction

Kashmir dispute is a territorial conflict primarily between India and Pakistan. This dispute is not only territorial or strategic, but also has strong ideological component to the motives of the two nation states. From Pakistan's point of view, the possession of Kashmir is very crucial to her ideology, particularly religious ideology that could serve as the cornerstone of a state. On the other hand, from India's point of view, Kashmir has significant strategic importance. It is very difficult to pinpoint when the Kashmir dispute arised. It is commonly thought to had begun when some 2000 Pathan tribesmen crossed over the Kashmir- West Pakistan border on October 22, 1947 under the leadership of Akbar Khan (Gupta 1966, p.111)¹. On this day i.e. October 22, 1947 the commander in chief of Indian Army, received message in New Delhi that the riders had sieged the border town of Muzaffarbad; within the next three days the Maharaja (Hari Singh-Ruler of Kashmir) acceded to India. Both the countries' struggle over Kashmir and their right over Kashmir had started first Indo-Pakistan war over Kashmir in 1947-48. This war, however did lead to a substantial territorial lose for India, as much as 5000 square miles (Lamd 1996, p.67).² One of the leading experts of South Asia mentioned that "the origin of Kashmir war, then, can be traced to four major sources. They are: 1) the existence of two competing ideological forces on the sub-continent, 2) irredentism on the part of the Pakistani leadership, 3) the strategic location of Kashmir, and finally, 4) the lack of sufficient institutional arrangement by the British to ensure an orderly transfer of power" (Ganguly 1988, p.45).³ Kashmir is one of the world's frontier regions. This is not just in the geographical sense, although the territory is wedged between Pakistan, India, China (Xinjiang Province and Tibet), and, in one northwestern corner, Afghanistan. Since the emergence of India & Pakistan, as independent states in 1947, the Kashmir issue has dominated the adversarial relations between New Delhi and Islamabad. Kashmir problem is the root of all tensions between not only India & Pakistan as well as in the region. Although both countries started their independent journey at the same time and under similar historical and social conditions As a result, after 70 years of independence, India and Pakistan stand opposed to each other in different directions. There are many problems of two nation states but the core problem is Kashmir issue. The Kashmir conflict remains both a struggle for land as well as about the rights of people to determine their future. One leading expert of Kashmir rightly pointed out that 'you cannot talk about Kashmir as a dispute between two nations. It is a conflict because we-the Kashmiri-are in the middle'(Schofield 2004, p. xv).⁴ Terrorist network is expanding day by day and most beautiful valley of the world which is known as 'earthly paradise' has now become the 'valley of death'.

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After seven decades, it is true that the conflict between India and Pakistan centered on Kashmir. Kashmir crisis is not only a problem for India-Pakistan relations it is also a unique challenge to the international community. Actually, Kashmir is a twentieth century problem born out of the process of decolonization, bared by the dominant concept of the nation-state and sovereignty as well as the right to self-determinations (Sidhu et al 2007, p.3).⁵ It is true that the Kashmir problem is a consequence of the British failure to find a satisfactory method for the integration of the princely states in to the independent India and Pakistan which succeeded the British Raj (Lamd 1966, p.3).⁶

Kashmir: Three key players and their perspectives

The strongest hurdles in the process of establishing peace in Kashmir are the three key players in the Kashmir issue; two nation states like India and Pakistan and self-determinate Kashmir. India, Pakistan and Kashmiri look at Kashmir through different interpretative lenses (Dasgupta 2002; Lamd 2001).⁷ Both from India's and Pakistan's points of view there are board arguments, one legal and other political. On Indian side the legal one is that the state of Jammu and Kashmir, represented by the Maharaja, acceded to India legally and that the commitment that India had made to obtain the concurrence of the people to accession was met when the state constituent assembly, elected in 1951 based on full adult franchise, approved accession. Further, the 1957 Constitution of Jammu and Kashmir, enacted by the state's own constituent assembly, have made it an integral part of India. The political argument is that while Pakistan may have a different view, India has never considered that the people of undivided India were made up of two different nations, Hindu and Muslim, and therefore Pakistan has no claim to any part of the country on the basis of its being a Muslim majority area.

Pakistan's case is also predicted on two positions, one legal and the other political. The legal one is that the accession was valid for several reasons: that it was a violation of the 'Standstill Agreement' the state had signed with Pakistan, that an 'Azad Jammu & Kashmir' government had been declare before accession, that the instrument of accession was conditional, and that India's dealings with the state from the beginning of Mountbatten's viceroyalty had been characterized by fraud. The political argument is that the Hindu Maharaja of J&K state, which was 77 percent Muslim, with Muslim majorities in all areas-Jammu (61 percent), Kashmir (95 percent) and the rest of the state (88 percent) and also more contiguous to Pakistan, had no right to accede his state to India. There are the parallels of Hyderabad and Junagardh states. Moreover, the opinion of the people of the state has not been determined in an internationally acceptable manner. From the Kashmiri peoples (not all Kashmiri but maximum) point of view, they do not want to get acceded either to India or to Pakistan. Kashmir is their motherland, they are returning to their motherland from India and Pakistan and they are fighting for independent Kashmir. Actually, Kashmiri people want to protect their traditional culture and values from both the countries.

United Nations Role on Kashmir (1948-1953)

The United Nations has played an important role in Kashmir crisis between the years of 1948-1953. On January

1, 1948 Mr. P.P.Pillai, representative of India to the United Nations, filed an official complaint to the president of Security Council (S.C) against the Pakistan, invoking article 35 of the UN charter. The Indian argument was based on the validity of the Maha Raja Hari Singh accession to India. Nehru's initial diplomacy in the Pakistan and Kashmir was tied closely to British thinking. Particularly Lord Mount Batten shaped Nehru's policy and Kashmir dispute referred to UN Security Council (Hudson 1985).⁸ The UN mediation process finally brought the war to a close on January 1, 1949 (Kavic 1967, Pp.33-35).⁹ from Indian point of view, India requested to Security Council: I) To prevent Pakistan Government Personnel, military and civil from participating war assisting in there invention of the Jammu and Kashmir State. II) To call upon other Pakistani Nationals to desist from taking any part in the fighting in the Jammu and Kashmir state III) To deny to the invaders IV) access to and use of its territory for operation against Kashmir V) Military and others supplies VI) All other kinds of aid that my tend to prolong the present struggle (Dasgupta 1959, Pp.114-123).¹⁰ Pakistan replay to Security Council I) She (Pakistan) deny that Pakistan was assisting the riders, also deny that she had committed an act of aggression against India. II) Pakistan submitted her own complaint against India. In it she maintain that India was determined to wipe out the enter Muslim population of partitioned India and the process of wholesale massacre of Muslim had started in June 1947 in anticipation of the award of boundary commission. Pakistan mentions further that India would not rest content with the killing of Muslim (East Punjab, Delhi, Ajmer, Faridkot, Sind, Patialla, Allwar, Gwalior, Navha, etc.) in India only. India wanted to destroy Pakistan alsoto complete the process of elimination of Muslims. To that end India first of all attacked Junagadh state, lawfully acceded to Pakistan, and occupied by brute force. In the same way, it had illegally annexed Manavadar, Sardargar, Bantva, Sultanabad and Mangrol; Kashmir possession however the same line of the Indian plan. In this context Pakistan Government requested the security council 1) to call upon the Government of India a) to deficit from acts of aggression against Pakistan b) to implement without delay all agreement concluded between the two dominions 2) to appoint a commissions to investigate the charge of mass destruction of Muslims in the area of the Indian dominion 3) to arrange for the cessations of fighting in the state of Jammu and Kashmir, the withdrawal of all outsiders troupe and lastly Pakistan applied to the security council to consider her complaints in toto and not to take of the Kashmir issue alone. Pakistan also questions the validity of the Maha Raja Hari Singh's accession to the India. Pakistan's representative to UN, Sir Zafrullah Khan Mentions that Indian Army had illegally taken action on the tribesmen of Kashmir in 1947. As the tribesmen had reached Kashmir to revolt against the oppressive ruler Maha Raja Hari Singh

The key to the difference between the Indian and Pakistani argument on Kashmir before the Security Council is to be question of plebiscite. In the security council of the UN both the states produce a resolution (17 January, 1948) calling both sides to cease hostilities at once, followed (20 January, 1948) by formation of United Nations Commission for India and Pakistan (UNCIP). The UNCIP first steps to investigate the situation on the spot, to

endeavor to help India and Pakistan to bring about law and order in Kashmir, and then to try to arrange for a plebiscite to decide the future of the state. The UNCIP after lot of discussion on both sides' leaders, finalized the plan, and produced 13th august, 1948 but the plan not finally successful, both sides objected to the UNCIP plan. On Pakistani, side the object of role of Sk. Abdullah and Indian side objection to the total withdrawal of Pakistani force.

United Nations new approach for mediation--McNaughton, Dixon, Graham Plan

In December 1949, the Security Council made a new approach to the Kashmir problem under the mediation of General McNaughton of Canada. He was an informal 'mediator' and he submitted the following proposal to the India and Pakistan government on 22 December. These proposal mentions that 1) the withdrawal of regular forces of Pakistan and the regular forces of India not required for Security and for law and order. 2) the reduction of local forces by disbanding and disarming, including on the one side the arm forces and militia of the state of Kashmir and on the other, the Azad forces. 3) the northern areas to be included in such a scheme of de-militarization. Pakistan accepted the proposal only minor reservation (Ibid, Pp.135-138).¹¹ But India rejected the McNaughton proposal on the ground, in effect that it implied a legitimization of the concept of Azad Kashmir. Thus the McNaughton mediation can be describe as a failure and rise another option to appoint another mediators sir Owen Dixon, a distinguished Australian jurist, as United Nations represented to take over the function of the UNCIP. Sir Owen Dixon arrived in the sub-continent on May 27, 1950 and continued his mediatory activities up-to august 21st 1950. He submitted his report to the Security Council on 15 September 1950. The proposals of the report are summary below:

- A) Dixon suggested the withdrawal Pakistani forces first, to be followed by the withdrawal of the Indian forces (not only the Bulk). After complete demilitarization along these lines, the authorities on both sides of the cease-fire line would consult the UN military adviser as to the forces to be kept in their respective zones for the purpose of law and order prior to plebiscite.
- B) Dixon also proposed that after demilitarization, the areas held by the Pakistani and Azad forces were to be administrated by local district magistrates under the supervision of UN officers.
- C) Dixon finally attempts a solution, which could have partition the state between India and Pakistan apart from the vale of Kashmir. In the vale of UN, administration under the plebiscite administrator was to be organized and a plebiscite conducted after the exclusion of all troops from the area (Dasgupta 1968, Pp.167-178).¹²

India again rejected the proposal on the familiar ground of a. security of the state; b. in advisability of affording Pakistan any right or privilege in the conduct of a plebiscite in an area where its aggression stood unreplled. In this context, Dr. Frank P Graham, one time US senator for North Carolina was appointed UN representative in succession to Sir Owen Dixon. Between 1951 to 1953 submitted five report to the UN; but he could not provide any solution for the Kashmir dispute. Dr. Graham proposed (Seven Proposal) demilitarization of Kashmir. Similar to

the experience of previous UN mediation, demilitarization plan was accepted by Pakistan and rejected by India. There after Graham had an alternative proposal, where by both countries were to gradually reduce their forces to a minimum and in proportion to the forces of both countries that were in Kashmir on 1 January 1949. The proposal again was accepted by Pakistan and rejected by India. On 16 July 1952, Graham again offered both the countries withdrawal of forces from Kashmir, but again Pakistan accepted this and India rejected the proposal. Dr. Graham finally submitted a report on 27 March 1953. The two questions during this mediation, which India and Pakistan differ upon, were the number of forces to retain after demilitarization on each side and when the plebiscite administration could assure their duty.

Concluding Observation

It may fairly be said that in the span of some five years the United Nations made absolutely no progress at all in its quest for a final solution for the Kashmir dispute. It had played an important role in securing of a cease-fire and the democratization of cease-fire line. UN had made a number of recommendations to solve the Kashmir issue. But, the bitterness between the two countries impeded the process. Apart from this, the cold war between the Great Powers is also responsible for this situation. At present, the Kashmir issue has become a very complex and sensitive matter. This is no more a problem between two nations. This has become a dangerous problem for South Asia and probably for the world as well. Hence, UN alone cannot solve this problem. The positive attitude and initiative of the heads of the two countries, the role of the civil society of the countries, international pressure and most importantly positive intervention by the Great Powers can solve this problem. India is now a 'Rising' or 'Emerging Power'. This Kashmir issue has become a constraint in this process of India's transformation. Thus, in the 21st century India will have to adopt a positive attitude and a visionary foreign policy to solve this Kashmir issue.

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