International organisation is fundamentally a reaction to the problem of war. Until recently, war had remained the ultimate means of settling disputes among nations of the world. According to General Clausewitz, the famous war theoretician, "political units seek to impose their wills upon each other; and, war is an act of violence intended to compel our opponent to fulfill our will". Thus as long as war remains the ultimate instrument of political settlements, threat of war cannot be eliminated from international relations.

The champions of world peace wanted an organization which would not only be equipped itself to meet the challenges of war through collective security arrangements, but also could provide a permanent machinery for the peaceful settlement of disputes. Thus regarding the primary purpose of the United Nations, namely, the maintenance of international peace and security, the Charter prescribed two principal approaches: Collective measures for preventing or removing threats to the peace and suppressing acts of aggression or breaches of the peace; secondly, adjustment or settlement of international disputes.

2. Ibid., Raymond Aron, op. cit.; p.21.
or situations by peaceful means". An examination of the Charter provisions reveals the fact that the primary responsibility for performing these functions was placed squarely on the Security Council alone.

SECURITY COUNCIL IN A DIVIDED WORLD:

It has been the unfortunate fate of the United Nations to function in a divided world, even though unity of the big powers was the basis on which the international organization was founded. Most seriously affected organ of the United Nations was the Security Council; it was almost paralysed due to the political developments between the big powers immediately after the war. The Security Council which had the legal responsibility to preserve and maintain international peace was deprived the political power to take independent actions. In other words, as a reflection of the main trends in international politics, the Council became a house divided against itself.

The United Nations being an association of member-states could have only common ends for which the states should contribute their might. There can be no scope for the individual nations to work exclusively on the basis of their national interests. But in practice the United Nations, since its establishment, has


4. Although the General Assembly can consider any question which may have bearing on peace and security, the Security Council alone is responsible for enforcement actions. See Stephen S. Goodspeed, "The Nature And Function of INTERNATIONAL ORGANIZATION", Oxford (1959); p.167.

5. See Chapter 1 for main trends in international politics.
witnessed the spectacle of member-nations, especially the big powers using the UN forums to further their own sectional interests. To quote Sir Pierson Dixon: "the practice has fallen short of theory and it is in fact true to say that, at present, diplomacy in the classical sense is commonly practised at the United Nations". The reason for this sorry state of affairs is not difficult to discern; mainly, the UN as an international organization failed to reconcile national interests of the big powers within its framework of collective security. Furthermore, power-politics has been institutionalized in the UN organ, the Security Council.

POWER POLITICS WITHIN THE SECURITY COUNCIL:

The United Nations came into existence in 1945, as an association of 'peace loving' nations of the world. After protracted discussions at Moscow, London, Yalta and San Francisco both the United States and Soviet Union agreed to co-operate with the Charter without sacrificing their big-power status. The Charter envisaged the unity of the war-time alliance to continue in order to pursue the "fight for peace", and to maintain international security. But due to the struggle for power between the super-powers, even before the United Nations could start


7. See "UNITED NATIONS DOCUMENTS" 1941-45, Royal Institute of International Affairs, London, 1946.

8. Paul G. Hoffman used this phrase in his lecture; He said, "I have the greatest confidence that we can wage the peace, and wage it successfully, if the United States accepts the responsibilities of world leadership". Vide, "PEACE CAN BE WON", Doubleday & Co., New York, 1951, p.25.
operating, the Charter had been rendered obsolete.

The big-power dominance within the United Nations set-up has been made a permanent feature by making the Security Council to function as something like an "executive arm" of the world organization. The primary responsibility of maintaining international peace and security is with the Security Council, under the Charter. It can investigate any situation or dispute which is likely to endanger peace and can take necessary actions, including "enforcement measures" to maintain or restore peace. The assumption was that prompt and effective action is easier for a small and continuously functioning body like Security Council than for the General Assembly. But the most important criteria for giving predominant position to the Security Council is the nature and composition of the Council.

To quote a commentary on the Charter, "The 'ultima ratio' of any proceedings of the Council is the threat of force; and no effective economic or military sanctions are conceivable without the concurrence of the Great Powers". Their "big-powers" status and authority is ensured through the mechanism of "Veto" on vital issues in the Security Council. The structure of the United Nations displays a determined weighting of the position of the Great Powers in the security arrangement. Behind the facade of "equality" of all nations, and "universality" of membership, the world organization actually exhibits "a system"


of Big-Power dominance. Professor George Liska found the existence of three political organs in the United Nations, instead of the two according to the usual text-book interpretations. They are: the General Assembly, the Security Council with eleven members, and the nucleus of the Council's five permanent members. "The smaller organ was endowed with strong executive authority primary responsibility for peace and security, and powers to decide and act on behalf of other states". Within this nucleus, the members preserve their power positions through the "Veto" device.

The world-body, therefore, represents an "institutionalized hierarchy combining elements of state equality with the legal primary of the Great powers". This inevitably leads to conflict among the Great Powers, because the national interests of the Great powers could not be reconciled within the framework of the Charter. The fundamental truth of the situation is that there is contradiction between the co-operative premise in the hierarchy and the competitive nature of the balancing process.

The net result was that instead of being an effective collective

14. George Liska, Op.cit; p.188.
security system, "United Nations has become an instrument to protect and promote the national interests". It has become another dimension of foreign policy regulations for the Big-Powers.

CHARTER EMPHASIS ON PEACEFUL CHANGE:

"The task of the international organization", said Inis L. Claude, "is to make available a variety of peaceful substitutes for the techniques of violence, and to encourage their utilization by the parties to the dispute". The Charter had made a definite attempt to provide the nations of the world a permanent machinery for settling disputes. The "Peaceful Settlement of Disputes" is the central theme of the Charter and the Security Council is given considerable authority in this matter. The sole aim of the "Peaceful Settlement of Disputes and Situations" under Chapter VI of the Charter, is to prevent a dispute or situation from developing into a threat to, or actual breach of, international peace and security. The basic assumption in this regard is that war is due to passions raised by political disputes between states; the United Nations machinery would provide a forum for discussion and to the

subsequent "cooling off" effect on the disputants. Another assumption underlying pacific settlement doctrine is that "war is often caused by ignorance or misunderstanding of facts" involved in a dispute. The international organization can give an opportunity to dispel fears and clear misunderstandings through the instruments of inquiry, mediation, conciliation etc. and thus help prevent wars between nations as an instrument of political settlements.

Under the Charter, the peaceful settlement of disputes is the joint responsibility of the parties as well as the Security Council. Article 33 enjoins the parties "to seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice". The Charter has given a wide range of alternatives of peaceful settlements to the members. It is significant that not all disputes are to be referred to the international organization;

19. According to Dag Hammarskjold, "the United Nations is not intended to be a substitute for normal procedures of reconciliation and mediation but rather an added instrument providing, within the limits of its competence, a further or ultimate support for the maintenance of peace and security", "The United Nations: An Added Instrument To Diplomacy", Vide IVO-D. Duchacek, CONFLICT AND COOPERATION AMONG NATIONS, New York (1961); p.599.
on the other hand, only those disputes which could not be solved mutually by the parties, and those which are a threat to international peace and security should be referred to the Security Council or to the General Assembly. Under Article 34 the Security Council can investigate any dispute or situation which might endanger international peace and security, and recommend suitable methods of settlement under Articles 36 and 38.

In Chapter VI a distinction is made between two sources of danger to peace, namely, (1) disputes, and (2) situations, which might prove to be a danger to international peace and security. The term "dispute" refers to the existence of a definite form of conflict between the States and which is likely to erupt into violence. The Charter singles out only two types of situations wherein the Council is expected to take interest. The one class comprises situations which might lead to international conflict. The others are "situations" which might eventually give rise to a dispute in the technical sense of the term. It is the prerogative of the Council to decide on the nature of the dispute or situation, as to its potentiality to create international conflict. When the Iranian question was referred to the Security Council as a "situation", the Council actually treated it as a dispute; similarly, India also preferred to call the Kashmir question "as a situation".

21. Bentwich and Martin, op.cit; p.80. Professor Stephen Goodspeed argues that if the "situation" referred to the Council is not a danger to international peace, the Council can drop the item out of consideration, op.cit.,p.71.

22. United Nations Charter, Article 34. The Council's power to investigate a "dispute" is not conditional on any formal representations under Article 35 or Article 99.
Charter Emphasis On Justice:

To maintain international peace and to uphold the principles of justice are the twin responsibilities of the United Nations. The Preamble of the Charter states that the United Nations is determined to establish conditions under which justice and respect for international law can be maintained. Article 1 of the Charter also explains the purpose of the international organization as to maintain peace and security, and to that effect we take collective measures "in conformity with the principles of justice and international law". The Charter calls upon the Members "to settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered."  

The Charter's emphasis on law and justice may be due to the influence of the Aristotelian concept of the inter-relationship between law and politics. The United Nations as a living organisation wanted to preserve the moral principles and "common values" of human society. One of such universal principles is the settlement of political disputes on the basis of law and justice and not on "political expediency" alone.

Thus the Charter hoped to fulfill its primary purpose of "maintenance of international peace and security" in conformity with the principles of justice and international law. For that particular purpose the Charter has provided an elaborate machinery for utilization both by the Members as well as by the Principal organs of the United Nations.25

In practice it has been observed that in the working of the international organization, emphasis was placed upon security than on law26. The Charter provides that the Security Council should submit legal disputes to the International Court under Article 36(3). The Council under Article 96(1) may request the Court for advising opinions on any legal question. But the real situation is that throughout the history of the United Nations these procedures are very rarely followed: No advisory opinion of the Court has ever been sought.27

Legal Aspects of the Kashmir Issue:

The Kashmir dispute will go down in history as a test case for the Security Council. Even though the Charter requires the Council to find solutions to international disputes on the basis of law and justice, Kashmir case is an example in which the Security Council has failed to do so.28

25. Leland Goodrich, op. cit; see discussion on the sub-title "The United Nations as a commitment to common values", p. 65
27. The Jin Kang, "LAW, POLITICS AND THE SECURITY COUNCIL", The Hague (1964) p.6. Also Lincoln P. Bloomfield: "One of the most curious and depressing features of modern international society has been the steady decline in the role played by law and legal method in the settlement of the disputes among nations", vide, INTERNATIONAL CONCILIATION, No. 516; January, 1958.
Council completely ignored the legal aspects involved in the issue. India had maintained that Kashmir, having acceded to India, had become a part of the Indian territory and any aggression against Kashmir will tantamount to aggression on India. So the crux of the problem is the issue of accession, and the Council deliberately avoided checking the validity of the accession that took place in October, 1947.

Even if the fact of accession of the State of Jammu and Kashmir was not considered, Pakistan had no right to help the invaders or to give facilities to the tribal insurgents who crossed the Pakistani territory only to disturb the peace in the Princely State. If the validity of accession was not accepted, then Kashmir in 1947 would be entitled to be called a "State" and therefore, it comes within the fold of the phrase "any state" of the Articles 2, paragraph 4 of the Charter. According to this Article, threat or use of force against the territorial integrity and political independence of any State is forbidden. Pakistan cannot renounce its responsibilities on the ground that the tribals along the Kashmir border "went to help their Muslim brothers across the frontier", and that she

28. "The collective refusal of the S.Council to countenance the principle of international law raised by India......was based on a faulty understanding of the letter and spirit of the Charter. This gave rise to some important consequences in the way of effectiveness of the UN in the whole question," vide Mumtullah Khan, "KASHMIR AND THE UNITED NATIONS", Vikas, Bombay (1969); p. 52

29. See Josef Korbel's statement, cited earlier.

did not have effective control over them. This argument does not hold good because under international law, the principle of the "RESPONSIBILITY OF STATES" confers upon the States the duty to prevent its nationals or residents committing any crime or injury upon the neighbouring States or to its citizens.31

The principle of the responsibility of States is a "natural and necessary corollary" of the principles of territorial sovereignty and equality of States. Professor W.E. Hall, a British authority on International Law pointed out:... "A State must not only itself obey the law, but it must take reasonable care that illegal acts are not done within its dominions" 32. To aid and abet in the process of illegal acts against another sovereign State will itself constitute aggression 33. Under international Law, the foreign nations "have a right to take military actions against the insurgents by invading the neighbouring country and disarming the intending raisers" 34. Justification of such acts are advanced for the reason of "self-preservation" of the sovereign states in international relations. 35 In the Kashmir

31. See discussion on this topic: Charles C. Fenwick, INTERNATIONAL LAW, Chapter 15, "...A state is under a general obligation to prevent the use of its territory by persons organized to commit hostile acts against a foreign State". p. 301
32. W.E.Hall, " A TREATISE ON INTERNATIONAL LAW", p.64.
34. In her original complaint India contended that she reserves the right to taking recourse to such retaliation if Pakistan Government did not stop the tribal invaders, S.C.O.R. s/628 See Quincy Wright, " The Prevention of Aggression", in "AMERICAN JOURNAL OF INTERNATIONAL LAW", 1956
issue, even though there existed a prima facie cases for India to take defensive actions against the tribals and also against Pakistan, she instead preferred to make an appeal to the United Nations to help restore amity between the two states.

The Security Council, if it wanted, could have declared Pakistan guilty of violating Article 2(3), Article 33 and also Article 37. If Pakistan argued that she was seeking solution through negotiations as required under Article 33, then what was the propriety for Pakistan to use force without referring the matter to the Security Council. It should be understood that any failure to settle international issues by mutual methods do not automatically confer any right on the Members to use force. On the other hand, Article 37 reads: "should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in the Article, they shall refer it to the Security Council." It was what India had done in the case of the "situation" in Kashmir by referring the matter promptly to the Security Council under Article 35 of the Charter. The conclusion is that Pakistan had failed to prevent hostile or prejudicial acts being perpetrated against a friendly state from its own territory. Because of the shirking of her "vital responsibility" in relations between nations, "Pakistan is answerable for an 'international tort', because she failed to discharge the obligation imposed upon it by international law". 36 But was it only a case of transgression

35. In practice, the States in modern times has uniformly recognised the principle of "responsibility". Examples are disputes between U.S.A. and Mexico and between U.S.A. and Canada.
of law or something more serious than that? Legal experts have proved that there was a clear case of aggression committed by Pakistan in Kashmir and that the Security Council had left her unadmonished.37

"Aggression" in International Law:

Aggression is nowhere defined in the Charter, except in an implied reference in Article 51 as "an armed attack". But considerable research has been done on this problem since the International Law Commission made an attempt to define aggression. According to Professor Quincy Wright, "an act of aggression is the use or threat to use armed force, across an internationally recognized frontier, for which a government, de facto or de jure, is responsible because of act or negligence, unless justified by a necessity for individual or collective self-defence, by authority of the United Nations to restore international peace and security or by consent of the state within whose territory armed force is being used."38 The Soviet proposal to the Law Commission also included the point in its enumerative definition, "support of armed bands organized in its own territory which invade the territory of another state, or refusal, on being requested by the invaded state, to take in its own territory any action within its power to deny such

37. Submil K. Mukerjee, op. cit. Also see Rahmatullah Khan (op. cit.) for legal aspects involved in the Kashmir question.
biands any aid or protection."  

Aggression is an offence against peace and security of mankind. Mr. Scelle of France pointed out, "this offence consists in any resort to force contrary to the provisions of the Charter of the United Nations". Mr. Hsu of China also gave a descriptive definition of aggression. According to him, "aggression, which is a crime under international law, is the hostile act of a state against another state, committed by:
(a) the employment of armed force other than in self-defence or the implementation of the United Nations enforcement action;
(b) the arming of organised bands or of third states, hostile to the victim state, for offensive purposes; (c) the fomenting of civil strife in the victim state in the interest of some foreign state; (d) any other illegal resort to force, openly or otherwise". Under these definitions, Pakistan's action of helping the tribals and providing them with transit facilities and fuel amounted to aggression in international law.

Apart from these indirect encouragement for tribal invasion, what about the presence of the three brigades of regular Pakistani troops inside Kashmir territory? Pakistan first denied any hand whatsoever in the tribal invasion and maintained in the security Council that she had taken steps "short of war," to prevent the tribesmen entering into the Kashmir territory; but later disclosed to the Members of the United Nations Commission that Pakistan had sent three brigades and gave

39. Julius Stone, op. cit. p. 19
40. Ibid, 216
41. Ibid, p. 217
42. See Governor Dundae's disclosures to the UNJIP (Refer Chapter VII above)
three reasons for the same. She wanted to justify her actions on the principle of self-defence granted to sovereign states in international law. Professor Quincy Wright and Professor Kelson have both pointed out that this time-honoured principle of "self-defence" is not absolute in contemporary international law. According to modern theory, remedying the international wrongs and punishing of international crimes are not within the jurisdictions of nation-states. On the other hand, they are to be achieved by peaceful procedures and under the authority of the United Nations. When all these defences advanced by Pakistan for her illegal fall, her guilt of aggression was established beyond doubt. It was, therefore, not without reason that the United Nations Commission as well as Sir Owen Dixon expressed adverse opinions on the Pakistani's behaviour in international law.

NO Action Under Chapter VII:

The Charter under Chapter VII empowers the Council to adopt appropriate measures with respect to threats to peace, breaches of peace, and acts of aggression. Article 39 lays down that "the Security Council shall determine the existence of any threat to peace, breach of peace or acts of

44. Read Article 51 of the UN Charter.
46. Refer Chapters VI and VII above.
aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42 to maintain or restore international peace and security."
The purpose of this Article is to confer on the Security Council the authority: (1) to declare the existence of actual or imminent breaches of international peace or of serious violations of the charter; and (2) to decide upon and apply effective measures to prevent violence, restore order or vindicate the authority of the Charter.47

It is necessary that Articles 41 and 42 "must be read in conjunction with Article 39, which makes it clear that once the Council had determined the existence of a threat to the peace, a breach of peace or an act of aggression, and recommendations for the maintenance or restoration of peace have proved to be unavailing, enforcement measures must be taken." While Article 41 deals with non-military sanctions, such as economic and diplomatic sanctions against an aggressor, Article 42 empowers the Council to take military measures to contain the aggressor.

Though wide discretionary powers were given to the Security Council under the Charter on the question of determining the existence of a threat to the peace or act of aggression,

48. N. Bentwich and A. Martin, op. cit.; p. 94.
and to decide on the necessary action to be taken thereafter, the Council failed to exercise its powers in the Kashmir case. The Council was provided with enough facts to show that the relations between India and Pakistan were not at all peaceful and that an all-out war on the issue cannot be ruled out under such a situation. In fact the parties to the dispute have emphasised time and again the imminence of war between the two countries if no satisfactory solution was found by the Council. But in spite of such direct and indirect warnings, the Security Council sat tight without taking recourse to Chapter VII of the charter.

Explaining the reason for the lapse on the part of the Council for not taking recourse to chapter VII, Mr. Josef Korbel said that (a) the parties themselves invoked chapter VI in their formal requests to the Security Council; and (b) the Council had always been reluctant to apply the provisions of Chapter VII because it "wished to avoid an unnecessary sharpening of the issue". Both the reasons were unconvincing to students of international politics. Regarding the first point, one can only say that the parties to the dispute cannot decide beforehand as to what measures the Council should adopt to help resolve the dispute. Secondly, if the Council is reluctant to take necessary actions to preserve peace in order to avoid incurring the displeasure of the parties, the Council would only compromise its position as an effective organ for preserving international peace and security.

49. Josef Korbel, op. cit. p. 116
The Security Council, which is given the greatest power potentiality under the charter to maintain international peace, is expected to act without fear or favour. The concept of collective security depends upon the right to take concerted action against a declared or even a potential aggressor. When once the behaviour of a state becomes illegal under international law, it should be treated as a law-breaker and proper warning should be given immediately. Under the pretence of "negotiated settlement" if a law-breaker is treated on par with the complainant, not only the delinquent becomes brave to commit more wrongs, but the prestige of the United Nations will also suffer. That was what exactly happened in the Kashmir case also. From the position of a simple law breaker (by not effectively stopping the tribal invaders across her territory), Pakistan became an aggressor under international law, by the time the United Nations Commission visited Kashmir. The Security Council, by refusing to take actions under Chapter VII and making recommendations which would have been binding upon the parties, had greatly compromised its power and prestige.

50. See chapter VI above for the minority report of the UNCIP "The Azad forces meanwhile grew by the spring of 1949 into 32 disciplined and fully armed, which was a formidable force."
Pacific Settlement Approach in Kashmir Case:

Under the pacific settlement the international organisation can assume a third party role or can act through its agencies so as to negotiate and mediate between the parties to the dispute. The charter system of peaceful settlement and adjustment confers similar responsibilities on the Members of the United Nations as well as on the principal organs. Firstly, the "Members shall settle their international disputes by peaceful means and in such a manner that international peace and security and justice are not endangered". Secondly, if the members fail to settle their disputes by such peaceful means, "they shall refer them to the Security Council". Under Article 33, the Security Council can recommend appropriate procedures or methods of settlement or adjustment, or can, of its own, recommend the terms of settlement. Subject to the primary responsibility of the Security Council in matters affecting international peace and security, the General Assembly may also make recommendations in respect to any dispute or situation.

In the book "VOTING AND HANDLING IN THE SECURITY COUNCIL", Mr. Eduardo Jimenez de Arechega analyses the activities of the Security Council in three instances, namely Indonesia, Palestine and Kashmir. He says, "in all these instances...... the Security Council had developed a general pattern of action which consists of isolating the circumstances

51. Charter, Article 2, para 3.
52. Charter, Article 37, para 1.
53. According to Clark U. and Sohn, L.B., "the present Article 33 limits the obligation to settle any dispute by pacific means to a dispute 'the continuance of which is likely to endanger the maintenance of international peace and security: This is inconsistent with Article 2, para 3 which imposes on all nations the obligation to settle by peaceful means all international disputes"
which menace peace from the merits of the claims of the opposing parties. A critical study of the Council debates in the initial period and its resolution on Kashmir would reveal the fact the majority of the Members in the Council were least worried about an immediate peace in Kashmir.  

The Security Council in gave precedence for the measures of pacific settlement over the immediate question of stopping the actual fighting in Kashmir. Though pacific settlement proposals would ensure long-term solution of the outstanding disputes between the two countries, these proposals could be enforced only under conditions of peace. As regards the ultimate affiliation of the State of Jammu and Kashmir, the Government of India had voluntarily declared that the wishes of the "people of Kashmir would be ascertained as soon as normal conditions are established". India requested the Council to help restore normal conditions by asking Pakistan to stop giving any aid to the tribal invaders. Instead of taking step in that direction to stop fighting and to create normal conditions, the Council on the other hand allowed Pakistan to use its forum for propaganda purposes and to malaign India, who was the original complainant in the Kashmir case.
The failure of the Security Council to warn Pakistan of her unholy alliance with the tribal invaders emboldened her to send troops to that part of Kashmir territory where state administration had completely broken down. Her aim was to show to the world a "fait accompli" and to make things still worse for the Council to take action under chapter VI of the Charter.

In the Kashmir case, the issue of plebiscite which was a means of pacific settlement, could not be taken up because Pakistan failed to create normal conditions as required under the UNCIP resolutions. Throughout the history of the Kashmir dispute, India persistently maintained that Pakistan had initially aided tribal invasion and subsequently occupied a portion of the Kashmir territory and therefore she had no "locus standi" in conducting the plebiscite. Further more, plebiscite could be conducted only under conditions of peace, which again depended upon Pakistan's withdrawal of her troops and nationals from the territory of the State. The failure of the Security Council to come to grips with those basic issues led to a complete dead-lock of the pacific settlement procedures.
The endeavours of the several Council mediators failed to bring about the desired results because of their partisan approach to the problem. Such partisan approach stemmed from the ambiguous mandates given to them by the Security Council. The United Nations Commission for India and Pakistan, after serious research and investigation of the problem, tacitly accepted the Indian stand that Kashmir was in accession to India at that time and Pakistan should withdraw her troops and nationals. The Commission further stated that Part III of the August 13, 1948 resolution which deals with the question of plebiscite would be implemented only after Part I and II were implemented. After several meetings and difficult negotiations, the Commission made both India and Pakistan to agree to its two resolutions.

But due to unknown reasons, the Security Council did not care to take actions according to the UNEIP report. Thus agreements reached between the parties after hazardous negotiations were not implemented and thereby the Security Council lost the chance of bringing about any peaceful settlement to the dispute. On the other hand, General McNaughton who was the President of the Council at that time was asked to negotiate for a settlement of the dispute.

56. Reference is to the resolution of March 14, 1950 in particular.
57. This was the basic assumption for the adoption of August 13, 1948 Resolution by UNEIP.
58. See discussion Chapter VII above.
between India and Pakistan. General McNaughton, instead of continuing the thread of negotiations initiated by UNCIP, not only reversed the Commission's approach but also "introduced several new factors which made the problem complicated and confusing." In substance, his approach was to deny India's legal authority over the State of Jammu and Kashmir and to treat Pakistan an interested party to the settlement. To quote the Indian delegate to the Security Council "the net result of the proposals is to eliminate or neutralize everyone of the assurance relied upon by India." It was significant to note that whoever succeeded General McNaughton as mediators, ignored the basic approach adopted by the United Nations Commission and unsuccessfullly tried to work within the framework of the March 14, 1950 resolution of the Security Council, which India vehemently criticized.

However, Dixon's verdict on Pakistani aggression and his recommendation that the parties themselves should settle the Kashmir situation through mutual agreement gave India the sufficient strength to stand firm on her principles. It was during the same period that the Korean question arose and in case the Security Council acted promptly to declare

59. P.N. Kaul Banzai, op. cit; p. 176
60. Another feature was to treat Kashmir territory as "a no man's land", to which India took strong objections.
61. P.N. Kaul Banzai, o. cit; p 181
North Korea an aggressor and adopted measures to contain the aggressor. In contrast, the delaying tactics of the Western bloc "over the Kashmir issue appeared hypocritical."

The cause of the Security Council's failure to bring about a peaceful settlement in Kashmir is not difficult to understand. Firstly, the Security Council did not consider the basic issue of Pakistan's unlawful activities in Kashmir which formed the subject matter of India's complaint. Secondly, the Council failed to preserve even the minimum agreement reached between the contending parties by the United Nations Commission. On the contrary, majority opinion led by Anglo-American powers attempted to pressurise India to give up her basic stand.

Thirdly, the pressures brought against India was not only confined to the Security Council debates, but were amply demonstrated even outside, particularly through the Commonwealth intervention and military pacts with Pakistan.

**Politics in the Security Council:**

Handling of the Kashmir issue by the Security Council had brought to light the inefficiency of the U.N. machinery as an instrument for keeping international peace and security. The Security Council has been more often the "cock-pit of powers".

62. P.N. Kaul Bamzai, op. cit; p. 181
63. Sec. Chapter 63 for the development of the Anglo-American Policy over the years on the Kashmir issue. It could be argued that due to the cold-war situation, while the Anglo-American powers took the lead to support Pakistan, the Soviet Union took sides with India in the Security Council.
than an instrument of peaceful co-operation. The big powers who dominate the Council, by using it as a platform for propagandising their political ideas and values, convert it into "an instrument to implement their specific foreign policies."

The impact of the cold-war that existed between the two super-powers, the United States and the Soviet Union, could be felt in every major political issue handled by the Security Council. A particular example is the Korean problem which was essentially a cold-war issue in which the super-powers were directly involved. Whereas, Kashmir though not in any way connected with the cold-war between the major powers, gradually developed into an issue in which they took sides. Kashmir was thus brought into the vortex of the cold-war because international politics in the mid-twentieth century was such that stakes were total for the super-powers.

It was often a common feature that in the Security Council decisions were taken not on the basis of "international law and justice" as demanded by the Charter, but on the exigency of

64. George P. Taylor and Ben Cashman, "THE NEW UNITED NATIONS", (1965) p. 21
65. Raymond Dennett, "Politics in the Security Council", in "INTERNATIONAL ORGANIZATION", Vol. 3, August 1949. Professor Dennett's opinion, "the Security Council is a mechanism largely used by the States for the achievement of their own separate goals of foreign policy rather than being used primarily for the resolution of international problems."
66. Korea is an important landmark in the history of the cold-war and it has a particular significance to Asian politics, see "THE UN AND THE US SECURITY POLICY", Ruth B. Russel, Brookings (1968).
the Powers that dominate the Council. In the words of Paul Hasluck, "in every case up to date the Council discussion has eventually reached a point where there is little hope of composing the dispute or adjusting the situation without first composing the differences of the Council Members." Thus it was not surprising that the Security Council, which depended heavily upon the unity of the big-powers for its effective functioning, failed to make any headway in the pacific settlement of the dispute between India and Pakistan.

On the other hand, the United Nations intervened to stop the war between the neighbours and created a cease-fire line in Kashmir. As Professor Inis Claude Jr. has pointed out, the greatest triumph of the United Nations was that "it had persuaded the parties to settle down permanently with the dispute."

Concluding Remarks:

International politics of the post-war world was marked by the emergence of bi-polarity; only two powers, the United States and the Union possessed the traditional sovereign right to formulate their foreign policies independent of others. The dilemma of the United Nations is that it was launched in an already polarized world.

68. Paul Hasluck, WORKSHOP OF SECURITY, Melbourne (1948), p. 94.
70. Inis Claude, Jr. SWORDS INTO PLOWSHARES, pp. 216-217.
The world body is based on the principle of "sovereign equality". But in relations among nations, "equality" is a myth; and so also in the politics of the United Nations. Within the international organization, it is the Security Council which is endowed with primary responsibilities. Under the Charter, enforcement actions could be taken by the Council even without the formal consent of several members of the United Nations.

Due to the emergence of extreme bi-polarity, political manoeuvring within the Security Council had come to nought. The so called executive arm of the world body was thus soon paralysed. The super powers having made the United Nations ineffective, began to argue that "to bypass the world organization" was not necessarily a vice. Many important economic-political decisions of the post-war world were taken outside the United Nations.

Under the Charter, pacific settlement of international disputes and problems is given a primary position. It was assumed that the Nations of the world would utilize the UN machinery to settle their international disputes through peaceful methods prescribed in the Charter.

The Kashmir problem brought before the Security Council in 1948 was a bi-lateral issue between India
and Pakistan. The problem itself arose between the two new nations due to the "incompleteness of the scheme of partition." But Lord Mountbatten who was responsible for the execution of the partition urged India to take the Kashmir issue to the United Nations. The Security Council debated the issue not only for months together, but even for years together.

The substantial achievement of the Security Council was to stop fighting and establish a cease-fire line in Kashmir, to be guarded by the UN Observers Group for years to come. In effect, an uneasy peace descended on the sub-continent, but the possibility of peaceful settlement of the dispute receded; the Security Council simply persuaded the parties "to settle down permanently with the dispute."

Throughout the lengthy debates and discussions on the Kashmir situation, India relied entirely on the legal and constitutional points; she thought that she would win the case within the provisions of international law and the Charter; she thought that justice would prevail over politics. But within the Security Council, "the law hath not been dead, though it hath slept."
Throughout the lengthy debates, majority of members in the Security Council led by the West refused to countenance the principle of international law and equity raised by India. This led to the deadlock over dis-engagement. As a result, peaceful settlement procedures never materialized.

Pakistan, on the other hand, argued purely on the political plane. She earned the sympathy of the Western powers by showing to them that politics of the sub-continent throughout the previous decades was communal. Anglo-American powers saw only the communal nature of the Kashmir problem and urged a solution on the basis of religion.

Pakistan was too willing to associate herself with the Western defence system in the cold-war between the East and the West. She found a "Patron" in the United States who provided economic and military assistance in return to lands near the Soviet frontier. In spite of India's many protestations, Kashmir became an issue which got entangled in the Cold-war. While India with her idealism was taken for granted by the big-powers, Pakistan was realistic enough to change her policies to suit different situations in international politics. Like many other issues of international politics of the post-war world, the Kashmir question in the Security Council was also viewed through the coloured glass of the cold-war between the super-powers.