CHAPTER-II
PAKISTAN’S FIRST INVASION OF KASHMIR
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Before India and Pakistan could settle down to their independence, they got entangled in a military and diplomatic confrontation over the Princely State of Jammu and Kashmir, which was in Dennis Kux’s words, “the unfinished business of partition.”¹ The conflict over Kashmir as it arose shortly after the independence of both India and Pakistan is in many ways a by-product of the political history of the Indian subcontinent.

Background

The Indian Independence Act,² passed on 18 July 1947, stated that on 15 August India and Pakistan were to become independent States. The British decided to leave the Indian subcontinent and declared to transfer power to the new Dominions of India and Pakistan. But they did not have any clear cut policy regarding the future status of more than five hundred and sixty five Princely States and preferred to avoid this tricky issue. The Act released all the States from all of their obligations to the British Crown. With reference to the constitutional consequences of partition for the Princely States, the Indian Independence Act stated:

As from the appointed day (August 15, 1947)... the suzerainty of His Majesty over the Indian States lapses. and with it, all treaties and agreements in force at the date of the passing of this Act... all obligations of His Majesty existing at that date towards Indian states or the Rulers thereof, and all powers, rights, authority or jurisdiction exercisable by his Majesty to Indian States....³

² The document which provided the legal basis for the transfer of power from the British government to the successor governments of India and Pakistan.
Thus it may be inferred that from a strictly legal point of view this provision granted full freedom of action to the Princely States — to accede to either India or Pakistan or to remain as independent entities. After 15 August 1947, they would have complete freedom — technically and legally they would become independent to decide their future course of action. The Act did not elaborate any detailed provision for the accession of the States to either India or Pakistan. Legal provision for the accession of the States to either of the new Dominions was made by adaptation of Section 6 of the Government of India Act 1935 by the Governor General in the two Dominions. Section 6 of the Act as adapted in India and Pakistan on more or less identical lines laid down that a State shall be deemed to have acceded to the new Dominion if the Governor General signifies acceptance of an Instrument of Accession executed by the Ruler of the State or any other person exercising for the time being the powers of the Ruler.\textsuperscript{4} Besides, Section 7 of the Indian Independence Act provided for the temporary continuation of existing arrangements between the States and the Dominions or Provinces thereof in respect of customs, transit, communications, posts and telegraphs and the like matters, till such arrangements were denounced by either party or substituted by fresh agreement.\textsuperscript{5} But the then Viceroy Louis Mountbatten urged the Princes to enter into Standstill Agreements with the future authorities of India and Pakistan to make arrangements about such matters.

However, the British Government was against the "balkanization" of the sub-continent and expected that all the Princely States would accede either to

\textsuperscript{4} P.L. Lakhanpal, \textit{Essential Documents and Notes on Kashmir Dispute} (New Delhi, 1958), P. 46.
\textsuperscript{5} ibid.
India and Pakistan. In his statement in the House of Commons on 10 July 1947, the then British Prime Minister Clement Attlee said:

> It is the hope of His Majesty's Government that all States will, in due course, find their appropriate place within one or the other of the new Dominions... If I were asked what would be the attitude of His Majesty's Government to any State which has decided to cut adrift from its neighbours and assert its independence, I would say to the ruler of that State: “Take your time and think again. I hope that no irrevocable decision will be taken prematurely.”

Similarly, Mountbatten urged the Princely States to make up their minds with regard to accession to either Dominion by 15 August 1947. In his important policy statement before the special session of the Chamber of Princes on 25 July 1947, Mountbatten said that the sub-continent of India was an economic entity and if all links between the States and the Government of India were to be broken, it could result in chaos, hitting the States first. The States were free to link themselves with either of the Dominions but there were certain geographical compulsions which could not be evaded. To the rulers of the Princely States he said, “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.”

By the time both India and Pakistan got independence and became sovereign nations, all of the Princely States but three acceded either to India or Pakistan by signing the Instrument of Accession. Only three States, Jammu and Kashmir in the north, Junagarh in the west coast and Hyderabad in central India ignored the writing in the wall and chose to join neither Dominion thus exposing themselves to a phase of uncertainty and instability. Junagarh was

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7 As cited in Gupta, n.6, pp. 77-78.
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one of the important Kathiawad States, bounded on three sides by States that had acceded to India and on the fourth by the Arabian Sea, which was the only possible opening to any other country. The State had a Muslim ruler but eighty percent of its population was Hindus. On 15 August 1947, the Nawab of Junagarh announced his decision to accede to Pakistan. However, India refused to accept the accession and protested the move pointing out that the accession violated three basic principles: Junagarh’s geographical contiguity, the composition of the population, and the wishes of her people. Finally the Indian Army intervened and the administration of the State was formally taken over by the Government of India on 1 November 1947. After normalcy was restored in the State, a referendum was held on 20 February 1948, in which overwhelming majority voted in favour of accession to India.

Similar situation prevailed in Hyderabad, where a Muslim Nizam ruled over a predominantly Hindu population, constituting eighty eight percent of the total population. Though the State was surrounded by the Indian territory, the Nizam did not accede to India and tried to form an independent State. However, the Government of Hyderabad signed a Standstill Agreement with the Indian government on 29 November 1947. As Hyderabad was undecided about its future, the militant Islamic group of the State – the Illehad-ul-Muslimeen – which was trying to set up a theocratic and totalitarian State, began to organize a “hate India” campaign. Gradually the Razakars – the armed brigade of Illehad-ul-Muslimeen – joined hands with the Communist bands and intensified their activities, and the Nizam did little to check them. Through inflammable speeches they roused communal passions and also terrorized Hindu population. The situation worsened when the Nizam issued
ordinances prohibiting the export of precious metals to India and declaring Indian currency illegal in the State. Further, Hyderabad advanced a loan of twenty crore rupees to Pakistan out of the Government of India securities and appointed a Public Relations Officer at Karachi. The Government of India sent a formal note to the Nizam on 23 March 1948 listing the items of violation of the Standstill Agreement. In its reply on 5 April, Hyderabad refuted all the charges and even made some counter-charges against India. As the law and order situation of the State completely broke down and its relations with India deteriorated rapidly, the Government of India sent its troops to the State on 13 September 1948, to bring the situation under control. Within a short period, all resistance had collapsed and a jubilant people welcomed Indian action. The Nizam's government resigned and on 23 September, Hyderabad's accession to India was complete. Thus it is clear that all the Princely States acceded either to India or to Pakistan according to their religious affinity and geographical contiguity. The only exception was the Princely State of Jammu and Kashmir.

Strategically located in the Himalayas in the north-west portion of the subcontinent, Jammu and Kashmir was the largest of the Indian Princely States. Since the accession of the States to India or Pakistan was guided by the principles of geographical contiguity and religious affinity of the local inhabitants, Kashmir presented an interesting dilemma because it was contiguous to both India and Pakistan. The strategic location of the State derived from the fact that its frontiers were adjacent to the frontiers of Russia, China, Afghanistan and Tibet. During 1947, it had a Hindu ruler, Maharaja

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8 ibid., pp. 86-87.
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Hari Singh, though about three-fourths of its approximately four million population were Muslims. Unlike most other princely rulers, Hari Singh chose to accede neither to India nor to Pakistan. Working on his own plans, Hari Singh wanted to establish an independent Kashmir, forgetting the hard reality that it would be impossible to remain independent unless the two Dominions agreed to respect this status. In view of the unique characteristics of Kashmir, Mountbatten made a special four-day visit to Srinagar in July 1947 in a futile effort to convince the Maharaja of the desirability of acceding to either India or Pakistan. During his visit, Mountbatten argued with the Maharaja that independence was “not a feasible proposition”. He also assured Hari Singh that in case he acceded to either of the Dominions before 15 August, there could be no trouble, as the Dominion to which he would accede would “take the State firmly under its protection as part of its territory”. Whatever might have been the Governor-General’s advice, the Maharaja evaded the issue by refusing to meet him on the last day of his visit on account of “illness”.

However, with the passage of time, Hari Singh realized the necessity of coming to some understanding with the successors to the British paramount authority. He apparently thought to temporize his position by offering a Standstill Agreement with both India and Pakistan. Thus on 12 August 1947, the Government of Jammu and Kashmir in a communique expressed its desire of concluding Standstill Agreements with India and Pakistan under section 7 of the Indian Independence Act and addressed identical telegrams to the two countries offering an agreement. Later in 1957, it was pointed out by the

10 Alan Campbell-Johnson, Mission with Mountbatten (New York, 1953), P.223.
11 Gupta, n.6, P.98.
Indian delegation in the United Nations (UN) that the offer to Pakistan was in regard to post-office, railways, communications, and supplies and "nothing else"; whereas, the offer to India included important subjects such as external affairs, control of State forces, defence etc.\(^{12}\) Pakistan accepted the offer, but India did not respond immediately. There are different explanations for India's non-acceptance. The Government of India insisted that it could not consider any agreement entered into by the Government of Kashmir valid, until it had the approval of the people's representatives.\(^{13}\) It was also argued that no agreement was concluded due to sheer lack of time. As V.P. Menon said, the Indian government wanted to study the situation further and personally he was too much busy with the problem of Hyderabad at the time to be overly concerned about the accession of Kashmir. To quote him, "we wanted time to examine its implications. We left the State alone... our hands were already full and, if truth be told, I for one had simply no time to think of Kashmir."\(^{14}\) According to V.K. Krishna Menon, the Government of India was not immediately interested so much in Kashmir. From these, it should not be inferred that India's interests were not involved in Kashmir. Rather, she was "vitally interested in the decision that the State might take in regard to accession."\(^{15}\) Whatever the reason, the absence of a formal agreement between India and the Maharaja was interpreted by the Pakistanis to mean that ultimately Kashmir would become a part of Pakistan.

\(^{13}\) Sheikh Abdullah stated this in the Kashmir Constituent Assembly on 5 November 1951. See *Jammu & Kashmir Constituent Assembly Debates, 5 November 1951*.
\(^{14}\) Menon, n. 9, pp. 8-9, 395.
\(^{15}\) Gupta, n. 6, p. 99.
After the acceptance offer by the Government of Pakistan, Kashmir signed a Standstill Agreement with Pakistan on 14 August 1947, whereby, pending a final settlement of Kashmir’s future, Pakistan would continue those services which had been carried out for Kashmir under the British by the Punjab Government. Under its terms, Pakistan would assume the responsibilities, which it held as part of British India and would continue to run communications, postal and telegraph services. From that day onwards, the history of Kashmir was a story of pressures exerted by Pakistan and its supporters inside Kashmir to accede to that Dominion, leading ultimately to open coercion in the form of armed invasion.

Meanwhile chaotic conditions and confusion was prevailing in Kashmir. There was general uncertainty about the State’s political future. The western and southern areas of the State were witnessing increasing disturbances due to peasants and ex-soldiers’ uprising. There was high communal hatred, following the communal massacres in Jammu and neighbouring Punjab. To deal with the prevailing unsettled conditions, the State Government adopted repressive methods and in this period of communal hatred it led to widespread resentment against the Maharaja’s rule. Against this background a number of developments occurred, which led to a rapid estrangement in the relations between the Governments of Kashmir and Pakistan. Charges and counter-charges were exchanged with ever-increasing frequency. Kashmir alleged armed infiltration from Pakistan into the State and economic blockade of the State by Pakistan in violation of the Standstill Agreement. Likewise, Pakistan accused the Kashmir government of ruthless repression of the Muslims and

also incursions into its territory by armed bands from Kashmir. In fact, early in September 1947, there were regular reports of border incidents and incursions by tribesmen and other Pakistanis into Kashmir. Such incidents continued throughout September and the first three weeks of October 1947, until the full-scale tribal invasion began.\(^{17}\)

On 4 September 1947, General Scott, the Commander of Jammu and Kashmir State Forces, in his report complained about armed incursions from Pakistan and advised the government to ask Pakistan to stop that. On the same day, the Kashmir Prime Minister officially complained to the Pakistani authorities about the covert armed incursions from the Pakistan side. He also requested to take prompt action to take these infiltrators back and to prevent further encroachments, for the maintenance of peaceful relations. In their reply, the Pakistani authorities denied any such infiltration. However, Pakistan assured that it would take prompt action, if anything specific could be pointed out.\(^{18}\)

Later on 12 October, Pakistan levelled similar charges against Kashmir. The Pakistani Foreign Secretary officially complained to the Prime Minister of Kashmir that: "...armed bands which include troops, are attacking Muslim villages in the State." It warned that the situation was fraught with danger.\(^{19}\)

The Pakistani Foreign Secretary sent another telegram to Kashmir alleging a number of raids from across Jammu border into Sialkot on the same day. The telegram said that the continuance of these raids would be regarded as "an unfriendly act" and urged "immediate and firm action to put a stop on

\(^{18}\) Gupta, n. 6, p. 100.
\(^{19}\) Telegram dated 12 October 1947, from the Foreign Secretary of Pakistan to the Prime Minister of Kashmir, as cited in Lakhanpal, n. 4, p. 50.
them."\textsuperscript{20} The Pakistani allegations were categorically denied by Kashmir. In his reply on 15 October 1947, the Prime Minister of Kashmir said that they had ample proof of infiltration from Pakistan into Kashmir. He also offered to make an impartial inquiry into the whole affair, which would help in removing the misunderstandings and restoring cordial relations with Pakistan.\textsuperscript{21}

More than raids and incitement of communal hatred, what undermined the position of Kashmir was Pakistan's economic blockade of the State, in violation of the Standstill Agreement.\textsuperscript{22} It was alleged that in an effort to coerce the State to accede to Pakistan, Pakistani authorities cut off supplies of food, petrol and other essential commodities to Kashmir and hindered the free transit of trade between Kashmir and Pakistan. These allegations were highlighted in the telegram of the Prime Minister of Kashmir to the British Prime Minister on 15 October 1947, which complained of an economic blockade and of a virulent press and radio campaign from Pakistan in order to coerce the State into accession.\textsuperscript{23} Subsequently, Kashmir accused the Government of Pakistan of conniving at the encroachment of armed intruders into Poonch, arming the border people and stopping the railway service. As there was a threat of invasion all along the border, Kashmir’s appeal to the British government was to advise Pakistan to observe restraint and to act in conformity with “the good name and prestige of the Commonwealth.” Finally in 18 October 1947, in a more detailed telegram to both the Prime Minister

\textsuperscript{20} Ibid., pp. 50-51.
\textsuperscript{21} Lakhanpal, n. 4, p.51.
\textsuperscript{22} Gupta, n. 6, p. 103.
\textsuperscript{23} ibid., p. 106.
and the Governor-General of Pakistan, the Government of Kashmir elaborated

the breaches of the Standstill Agreement and the border raids. It said:

Ever since August fifteenth in spite of agreement to observe Standstill Agreement on matters on which agreement existed on August 14 with British India, increasing difficulties have been felt not only with regard to supplies from West Punjab of petrol, oils, food, salts, sugar and cloth but also in the working of the postal system which has been most detrimental to the people as well as the administration...People armed with modern long-range fire arms have infiltrated in thousands in Poonch had committed horrors on non-Muslims, murdering, maiming and looting them and burning their houses as well as kidnapping women...Press and Radio of Pakistan appear actually to have been licensed to pour volumes of fallacious, libellous and false propaganda...To crown all, the state is being blamed for acts which actually are being committed by Pakistan people. Villages are being raided from Sialkot and in addition to actual infiltration in Poonch. The Government cannot but conclude that all is being done with the knowledge and connivance of local authorities. The Government also trusts that it would be admitted that these acts are extremely unfriendly if not actually bordering on inimical. Finally the Government wish to make it plain that it is not possible to tolerate this attitude longer without grave consequences to the life, property of people which it is sacredly bound to defend at costs. The Government even now hopes that you would personally look into the matter and put a stop to all the iniquities which are being perpetrated. If, unfortunately, this request is not heeded the Government fully hope that you would agree that it would be justified in asking for friendly assistance and oppose tresspass on its fundamental rights.24

On the same day, Pakistan rebutted the charges levelled against it by Kashmir.

In his reply Pakistani Foreign Minister emphatically and categorically denied the allegations and accusations. He said that there was mounting evidence of ruthless oppression of Muslims in Kashmir and of raids into Pakistan territory by armed Dogra gangs. He complained of the Muslims being driven out of Kashmir and taking the cue from the reference to an outside power, charged Kashmir of the attempt to join the Indian Dominion as a coup d'etat. While agreeing to have an impartial inquiry into the whole affair, the Pakistani Foreign Minister issued a threat to Kashmir in the following words: “We must

24 Text of telegram dated 18 October 1947, from the Prime Minister of Kashmir to the Governor-General of Pakistan, as cited in Lakhanpal, n. 4, pp.51-52.
earnestly draw your attention to the fact that if this policy is not changed and
the preparations and the measures that you are now taking in implementing
this policy not stopped, the gravest consequences will follow, for which you
alone will be held responsible." 25 In his reply on 20 October 1947, the
Pakistani Governor-General Mohammed Ali Jinnah "deplored" the tone and
language of the Kashmir Prime Minister and held widespread disturbances
and rioting in East Punjab responsible for the breakdown of supplies to
Kashmir. He said, "the threat to enlist outside assistance, shows clearly that
the real aim of your Government's policy is to seek an opportunity to join the
Indian Dominion through a coup d'etat by securing the intervention and
assistance of that Dominion. This policy is naturally creating deep resentment
and grave apprehension among your subjects 85 per cent of whom are
Muslims." 26 Jinnah suggested for a meeting between the two governments to
discuss the matter.

Operation Gulmarg: The Tribal Invasion

As allegations and counter-allegations through statements and exchanges of
telegrams were being made by Pakistan and Kashmir, thousands of heavily
armed Pathan tribesmen from the North West Frontier Province (NWFP)
suddenly invaded Kashmir on 22 October 1947. 27 As part of a grand design
code-named Operation Gulmarg, it was a clandestine operation of Islamabad
for annexing Kashmir to Pakistan through an ingenious plan of tribal invasion

26 Text of telegram dated 20 October 1947, from the Governor-General of Pakistan to the Maharaja of Jammu and Kashmir, ibid., pp. 53-54.
27 It is difficult to determine the exact number of invaders engaged in fighting. Official Indian sources claimed that 13,000 were actually fighting and about 73,000 were concentrated in the West Punjab. Government of India, White Paper on Jammu and Kashmir (New Delhi, 1948), pp. 22-23, as cited in Brecher, n. 3, p. 27.
actively organized and supported by Pakistani regular forces. Suspecting that Hari Singh was inclined to accede to India and knowing that the popular Kashmiri leader Sheikh Abdullah would oppose accession to Pakistan, Pakistan decided to seize Kashmir by force. Due to the geo-strategic location of the State, Pakistan feared that if Kashmir went to India, Pakistan would cease to be militarily and politically viable. Thus in the words of the then Pakistani Major-General Akbar Khan, *Kashmir's accession to Pakistan was not simply a matter of desirability but of absolute necessity for its separate existence.*

*Operation Gulmarg* consisted of two overlapping phases. The first phase starting as early as September 1947 involved numerous small-scale incursions and instigation to foment an uprising in Kashmir against the Maharaja's rule. But the second and more important major phase started on 22 October 1947, which involved a massive armed invasion of Kashmir. It was to be a full-scale invasion, different from the earlier small-scale infiltration that had been taking place from Pakistan into Kashmir from time to time. At 4.30 a.m., about two thousand tribesmen fully armed with modern weapons, under the command of trained generals, entered Muzaffarabad in motorbuses and on foot. In this invasion they enlisted the cooperation of some militants who championed the cause of Pakistan, particularly the ex-soldiers from Poonch. But by and large, the invasion was laid, conducted and planned from outside and the major bases of operation lay outside the State of Kashmir. Two features, which characterized the invasion were, the atrocities committed by the invading

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29 Gupta, n.6, p. 110.
forces against the people, and the methodical and modern nature of the operations. The atrocities and violence committed by the invaders were so gruesome and cruel that in the words of Sisir Gupta, it made the "living worse than the dead." The State forces were completely taken unaware by the sudden invasion. The ill-equipped, small and scattered forces of Kashmir were no match for the invaders who were professional soldiers and had the full complicity and active support of Pakistan. Faced with only token resistance, the invaders quickly captured Muzaffarabad and Uri. Five days later they sacked the town of Baramulla and seized Mahura where the power plant for Srinagar and its surrounding areas was located.

Both the Government of India and Kashmir viewed this development as a full-fledged invasion and pre-mediated aggression, aided and abetted by Pakistan. Though the Government of Pakistan openly showed their sympathy for the invaders, they denied their complicity and asserted that short of war, all steps were taken to prevent the infiltration. It argued that it was not physically possible to check infiltration through long borders. Pakistan tried to project the turmoil as an indigenous revolt against the atrocities committed by the Maharaja’s troops, and in which very few tribesmen and Pakistanis participated.

However, there were several pieces of evidence to support the Indian and Kashmiri accusation of Pakistan’s direct involvement in the invasion. In the first place, armed invasion of such large magnitude could not have taken place without the knowledge and assistance of Pakistani authorities. Secondly, the invading force was composed of Pathan tribesmen, ex-servicemen and

30 ibid., p. 112.
31 Brecher, n.3, p. 27.
soldiers ‘on leave’ from the Pakistani Army.\textsuperscript{32} Captured documents showed that the officer entrusted with organizing and implementing \textit{Operation Gulmarg} for capture of Kashmir was Major General Akbar Khan, a regular officer of the Pakistan Army.\textsuperscript{33} Major General Sher Khan succeeded him, who was also from the Pakistan Army. The supply of petrol and arms and ammunition to the invaders; the grant of leave to the Pakistani troops; the statements made by the prisoners of war; the discovery of Pakistani Army labels on ammunition cases captured; the pay books, uniforms and other Army insignia found in the person of captured raiders...— all proved Pakistan’s association with the invasion.\textsuperscript{34}

As the invaders went on capturing more and more territory with minimal resistance by the Kashmir forces, the fall of the State capital Srinagar, seemed imminent. In desperation on 24 October 1947, Maharaja Hari Singh appealed for India’s military assistance to stop the aggression. The request was considered at the meeting of India’s Defence Committee presided by the Governor-General Mountbatten on 25 October. The Committee concluded that “the most immediate necessity was to rush arms and ammunition already requested by the Kashmir Government, which would enable the local populace in Srinagar to put up some defence against the raiders.”\textsuperscript{35} The Committee recognized the urgency of timely help, but it was agreed that any kind of Indian military intervention could be made only after Kashmir

\begin{footnotesize}
34 For details, see \textit{Invasion of Kashmir} published by the Secretary for Information and Broadcasting, Government of Kashmir. The full extent to which Pakistan masterminded the entire operation to annex Kashmir by force, was revealed more than 20 years later by one of its main architects Major General Akbar Khan. In his book \textit{Raiders in Kashmir – Story of the Kashmir War: 1947 – 48} (Karachi, 1970), Khan described the origin of Pakistan’s clandestine operation at great length. The book provides details of the role played by senior military officers under the supervision of Pakistani political leaders.
35 Lakhanpal, n. 4, p. 47.
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acceded to India. Mountbatten warned, "It would be dangerous to send in any
troops unless Kashmir had first offered to accede."\(^{36}\) He argued that sending
military assistance to Kashmir without its accession to India would result in
war between India and Pakistan.\(^{37}\)

Moreover, Mountbatten suggested that the accession by the Maharaja should
be considered provisional and "when law and order had been re-established
in Kashmir a plebiscite should be held as regards Kashmir’s future."\(^{38}\)

V.P. Menon, the State Secretary of India, was sent to Srinagar to assess the
situation and to convey Hari Singh that India would provide military
assistance only after Kashmir’s accession to India. Still obsessed with an
independent Kashmir, but with no options left, a reluctant Hari Singh signed
the Instrument of Accession of Jammu and Kashmir to India on 26 October
1947. Governor-General Mountbatten accepted this accession on 27 October,
thus making the accession of Jammu and Kashmir to India both legally and
constitutionally complete.\(^{39}\) Mountbatten also convinced Prime Minister
Jawaharlal Nehru that Kashmir’s accession should be "conditional" until the
people of the State could vote on its final status.\(^{40}\)

...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

\(^{36}\) Campbell-Johnson, n. 10, p.469.
\(^{37}\) Gupta, n. 6, p.79.
\(^{39}\) The Instrument of Accession was the usual document signed by the States, as per the Government of
India Act 1935, as amended and as in force on 15 August 1947. Thus the accession of Kashmir to India
became legally and constitutionally complete when the Instrument of Accession was signed by
Maharaja Hari Singh on 26 October 1947, and accepted by the Governor-General of India,
Mountbatten on 27 October 1947.
\(^{40}\) Kux, n. 1, p. 59.
invader the question of the State’s accession should be settled by a reference to the people.\textsuperscript{41}

Few days later, in a radio broadcast on 2 November, Nehru similarly stated that the fate of Kashmir was ultimately to be decided by the people through a referendum held under international auspices like the United Nations.\textsuperscript{42} However, these statements in no way questioned the legality of the execution of Instrument of Accession between Kashmir and India, nor did it make the final integration of Kashmir into India legally a conditional one. Because the Instrument, unlike the Governor General’s letter, contained no mention of references to the public will; and it was the Instrument, not the exchange of private letters, which gave accession its legal form within the context of the Indian Independence Act.\textsuperscript{43} Nevertheless, Mountbatten’s letter and the reference to a future plebiscite exercised a profound effect on the subsequent shape of the Indo-Pak conflict over Kashmir, particularly since Pakistani leaders made use of it to put forth their anti-Indian arguments and views on the Kashmir issue.

**India’s Military Response**

After the formal accession of Jammu and Kashmir to India, the Government of India decided to send Indian troops to Kashmir to stop the advancing invaders, vacate the aggression and to recover the captured territory from them. To India, this invasion constituted an act of aggression against India since after its accession Kashmir had become a part of Indian territory. A

\textsuperscript{41} Text of Mountbatten’s reply dated 27 October 1947 to the Kashmir Ruler signifying his acceptance of the Instrument of Accession, as cited in Lakhanpal, n. 4, p.57.


\textsuperscript{43} Lamb, n. 42, p. 47.
dramatic and massive airlift of Indian troops to Kashmir began in the morning of 27 October 1947. The Indian troops were flown to Srinagar at a time when the invaders had reached a point about five miles from the city. The timing of the landing of Indian forces was crucial; otherwise “a few minutes later the airfield might well have been in enemy hands.”

In a swift and adventurous operation, the Indian troops stopped the tide of advancing invaders and gradually drove them back securing the safety of Srinagar. This event marked the beginning of the first Indo-Pak armed conflict over Kashmir. Infuriated by the Indian military intervention, Pakistani Governor-General Jinnah sanctioned immediate transfer of military supplies to the “invaders” and also sent some Pakistani troops to join their efforts as “volunteers”. Moreover, he ordered General Frank Messervey, the British Commander-in-Chief of the Pakistani Army, to move Pakistani troops into Kashmir to counter the Indian intervention. But Jinnah had to rescind his orders to Messervey, when the Supreme Commander of the Joint Command, Marshal Auchinleck flew from Delhi to Lahore on 28 October to convey the implausibility of such a move. Auchinleck informed Jinnah that since Kashmir had become a part of India, every British officer serving in the Pakistani Army would immediately be withdrawn, if Pakistani troops moved into Kashmir. Withdrawal of British officers could have a devastating impact on the Pakistani Army, which was then critically dependent on the services of British officers. Nevertheless, as mentioned earlier, Pakistan covertly supplied the military equipment to the “invaders” and many of the Pakistani Army regulars were fighting along with them against the Indian

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45 Sen, n. 33, p. 49.
Army as "volunteers". The Pakistani Army became officially involved in the conflict when the Government of Pakistan upon the advice of the new Commander-in-Chief, General Douglas Gracey, decided to send regular troops into Kashmir, as a matter of self-defence.46

Meanwhile on 28 October, India officially informed Pakistan of the accession of Kashmir, the terms under which it was accepted, and also the urgency and necessity of stopping the invaders from entering into Kashmir. New Delhi hoped that Pakistan would cooperate in vacating the aggression and creating a conducive atmosphere, under which the promised plebiscite could be carried out. However, in its reply on 30 October, Pakistan blamed India and held it responsible for the crisis in Kashmir. It charged that the Indian action of sending troops to Kashmir on pretext of accession has made things "infinitely worse". It alleged that there was a well-laid out plan to involve Indian troops which "could hardly have been unilateral", and this plan had nothing to do with the tribal invasion and was thus pre-mediated.47 On 4 November 1947, Pakistani Prime Minister Liaquat Ali Khan asserted that Pakistan did not recognize Kashmir's accession and that it was a fraud, perpetrated on the people of Kashmir by its "cowardly ruler" with the aggressive help of the Indian Government.48 In other words, Pakistan accused India of procuring the accession by fraud and violence and refused to recognize the accession of Kashmir to India.

The divergent views on the issue, continuing mutual suspicion and growing hostilities threatened to escalate the conflict into an all out Indo-Pak war. At

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46 Khan, n. 28, p.101.
48 Brecher, n.3, p. 33.
this juncture, an initiative was taken for reconciliation when the Indian Governor-General visited Lahore to discuss the Kashmir problem with his Pakistani counterpart Jinnah. However in the Mountbatten-Jinnah meeting of 1 October 1947 failed to resolve the issue. It became clear that there was an unbridgeable chasm between the Indian and Pakistani positions on the issue. Jinnah proposed to put an immediate stop to fighting and the simultaneous withdrawal of Indian forces and Pathan tribesmen from Kashmir. He suggested that the two Governor-Generals should be authorized to restore peace, undertake the administration of the State and arrange for plebiscite under their joint control and supervision. But Mountbatten did not entirely agree with Jinnah. Instead, he suggested that a plebiscite should be held under a neutral agency or the United Nations (UN) and only after Kashmir had been vacated by Pakistani forces and the law and order restored. He made it clear to Jinnah that the Indian troops would not leave the State till Pakistani troops were withdrawn from Kashmir. Thus, the first direct contact between India and Pakistan over the Kashmir issue ended without much headway. In the meantime, the war continued unabated.

As the conflict prolonged and the bilateral attempts failed to end the fighting, Nehru, following Mountabtten’s advice, decided to approach the United Nations Organization (UNO) for its mediation to end the conflict. Nehru believed that India had a strong legal and moral case on the issue and the UN verdict would go in India’s favour. On 1 January 1948, the Indian representative at the UN, Purushottama P. Pillai sent a letter to the President of the United Nations Security Council (UNSC) transmitting a telegraphic

49 Lakhanpal, n. 4, p. 62  
50 Gupta, n. 6, pp. 129-39.
communication from the Government of India dated 31 December 1947 and lodged a complaint with the Security Council under Article 35 of the UN Charter. This provision comes under Chapter VI of the Charter, which deals with "pacific settlement of disputes". It entitles any member of the UN, or even a non-member to bring any dispute or any situation of the nature referred to in Article 34, \(^{51}\) to the attention of the Security Council or of the General Assembly. India specifically requested the Security Council:

(i) to ask the Government of Pakistan to prevent their Government personnel, military and civil, from participating or assisting in the invasion of Jammu and Kashmir State;
(ii) to call upon their nationals to desist from taking part in the fighting in the State; and
(iii) to deny the invaders (a) access to and use of its territory for operations against Kashmir, (b) military and other supplies, and (c) all other kinds of aid that might tend to prolong the present struggle. \(^{52}\)

On 15 January 1948, Pakistan submitted three documents to the UNSC. The first dealt with Pakistan's reply to India's complaint; the second dealt with Pakistan's counter-complaint; and the third, with the Pakistani version of the crisis in Kashmir. From their representations to the UNSC, it appeared as if both India and Pakistan were aggrieved parties, as well as complainants. To India, Pakistan had committed aggression and violated her territory. Pakistan on the other hand, complained that India was "always hostile" and was intent on undoing the creation of Pakistan itself. \(^{53}\) India's complaint against Pakistan (S/628) was formally admitted to the agenda of the UNSC at its 226\(^{th}\) meeting

\(^{51}\) Under article 34 of the UN Charter, the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

\(^{52}\) Lakhanpal, n. 4, p. 97.

\(^{53}\) Gupta, n. 6, p. 148.
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held in New York on 6 January 1948. However, before the meeting of the Council, its President F. Van Langenhove had made an urgent appeal to both India and Pakistan to refrain from any step incompatible with the UN Charter and liable to aggravate the situation, thereby rendering more difficult any action by the UNSC. And the two Governments had in their replies, assured him that they would refrain from any action which might be contrary to the Charter.54

The US Policy

From the very beginning, the US was closely monitoring the fast unfolding events in the subcontinent, but initially it kept itself aloof from the affairs, as it did not perceive any major interests in the region. The Indian Secretary General in the Ministry of External Affairs and Commonwealth Relations, Girija Shankar Bajpai, however, remained in touch and discussed with the US Ambassador to India, Henry F. Grady, about the communal attacks and killings of the migrating non-Muslim refugees at the North West Frontier Province (NWFP) and the adjoining region. He formally requested that the US made available some army transport planes to fly above fifty thousand distressed refugees from Pakistan to India, to prevent atrocities and their killings.55 In its reply, the Truman Administration expressed sympathy, but opined that the US would act only if requested jointly by both India and Pakistan in that regard. In its view, the provision of American planes would not contribute to the improvement in Indo-Pak relations, as it had deteriorated so much that relatively small US gesture would not be effective. Moreover,

54 Lakhanpal, n. 4, p. 131.
Washington emphasized that the US could provide the planes only when there was Indo-Pak rapprochement and cooperation. When the war broke out between the Indian and Pakistani forces in Kashmir, the Truman Administration imposed arms embargo on both the parties. It resolutely resisted any direct involvement in the South Asian conflict and refused to lend its support to either party. Preoccupied with more pressing matters, especially US-Soviet relations, the incipient European economic recovery programme and the political problem in the Middle East, the Truman Administration devoted much less attention to what it initially perceived as a "mere legal controversy" in one of the world’s most remote areas. 56 Washington argued that the best solution of the Kashmir problem would be amicable agreement among the Kashmir authorities, the Government of India and the Government of Pakistan. Failing that, it was suggested that the parties to the dispute should follow the letter and spirit of Article 33 of the UN Charter, which enjoined recourse to peaceful means like negotiation, enquiry, mediation, conciliation, etc., to seek a solution to the conflict. 57 The US State Department’s position paper on the subject clearly reinforced such an approach. It noted that Washington would prefer that Kashmir question be settled by direct negotiation between India and Pakistan. However, if either India or Pakistan requested the intervention of the UN, particularly to supervise a referendum in Kashmir, the US delegation should support such a request. As it was apparent that this major difficulty between India and Pakistan could not be removed without external assistance, Washington strongly supported the role of the UN

in this regard.\textsuperscript{58} It believed that the UN involvement would certainly be a better substitute to direct American intervention. Washington clearly preferred to stay out of the Indo-Pak conflict and avoided making a choice between giving support to the interests of India or Pakistan. Further emphasizing the importance of Indo-Pak bilateral negotiation to solve the problem, Washington expressed its regret at the breakdown of Lahore talks between Mountbatten and Jinnah to settle the dispute and cease the hostilities.

In spite of such initial inhibition, when the Kashmir issue came before the United Nations Security Council on 1 January 1948, the US, though reluctantly, cooperated with the British for the attainment of an early and peaceful settlement of the dispute. As a friend of both, it also urged both the warring parties to refrain from taking any provocative actions, which could escalate the conflict and restraining "irresponsible" elements on both sides from fuelling hatred or mistrust. When the UNSC met on 6 January 1948 to consider the issue, the US outlined its broad policy framework:

\ldots the only solution acceptable to all parties concerned in the Kashmir problem will eventually in the Kashmir problem will eventually be a determination, probably by plebiscite, of the wishes of the inhabitants of Jammu and Kashmir with respect to their long-term affiliation with either India or Pakistan, taking into account the possibility that some form of partition may be proposed\ldots To this end any resolution adopted by the Security Council should recognize the existence of a dispute between India and Pakistan related to the ultimate affiliation of the state of Jammu and Kashmir, and the willingness expressed by both governments to have this problem resolved by a fair determination of the will of the people of the state when conditions in the area permit. The resolution should [also] recommend that the two Govts take all necessary action in cooperation to restore peace and order in the area, and to bring about a situation in which the will of the people of Jammu and Kashmir can be freely determined\ldots\textsuperscript{59}


The US representative to the UNSC was directed by the Secretary of State George C. Marshall, to follow such an approach and support any resolution adopted by the UNSC, which would lead to that general objective. Washington also recognized that the problem was so complex that any effective solution must result from the joint action and active cooperation of both the US and UK Governments. From the beginning, Britain urged the US to play an active role to resolve the Indo-Pak conflict over Kashmir, but without any success. On 10 January 1948, during a meeting at Washington, British Secretary of State for Commonwealth Relations, Philip John Noel-Baker, highlighted the danger of a probable holocaust on the Indian sub-continent arising from the Indo-Pak conflict. He urged that the US could play a decisive role in ending the conflict and effecting a peaceful settlement as it maintained very high prestige with both India and Pakistan. However, the Acting Secretary of State Robert Lovett, while expressing Washington's willingness to help, and not excluding the possibility of concrete American assistance at some later date, listed a series of factors that militated against direct US involvement:

...The United States is spread out very thinly in its present commitments and must of necessity bear down on the European Recovery Program now before Congress; [any] marked initiative by the United States in this dispute might attract undesirable Russian attention and make a solution more difficult...It [Russia] could adopt an obstructionist role merely in order to keep the pot boiling...previous experience with the Security Council made it doubtful that quick and effective action could be obtained there... India and Pakistan have in the past themselves taken an obstructionist role in the UN with respect to the United States objectives....

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60 Jain, n. 58, p. 8.
The US thus hesitated to play any leading role in diffusing the crisis in Kashmir. Instead, it opted to play an indirect role by exerting its influence with the two parties in a quiet, low-key fashion. Moreover, the American diplomats genuinely felt out of their depth in the intricacies of South Asia’s political and religious conflicts. Consequently, they welcomed British analyses and guidance. Thus in his telegram to the US representative to the UN, Warren Austin, Secretary of State George Marshall instructed him to cooperate to maximum extent with Britain but did not wish to take overt lead in Security Council. The US was also unwilling to be member of any commission selected by a party, but would agree if it were third member selected.62

Anxious to avoid any open differences with Britain which might be exploited by either India or Pakistan, and eager to defer to British expertise, Washington developed its policy position in close consultation with London. The two allies found themselves in essential agreement on the issue. Both feared that an independent Kashmir might set an unfortunate precedent. A balkanized subcontinent, they concurred, would create unstable political and economic conditions that could be exploited by the Soviet Union. They also agreed that there was but one realistic solution to the conflict: a cease-fire must be obtained and provisions made at the earliest possible date for a fair and free plebiscite, supervised impartially by the United Nations, to determine Kashmir’s ultimate accession.63

63 McMahon, n. 56, p. 24.
Keeping the above consideration in mind, in his telegram to Austin, Marshall formulated a settlement plan if any agreement between the conflicting parties could not be reached. The proposal contained three basic elements:

(i) calling on parties to desist from military action, to arrange truce and to consult with each other as to effective means of implementing truce;

(ii) establishment of a commission to assist parties in implementation of truce and in settlement of their dispute by peaceful means;

(iii) calling upon parties to carry out intention expressed by both that plebiscite be held at early date and expressing Security Council’s readiness through the commission to assist them to that end.\(^6^4\)

Meanwhile, after much deliberation, the Security Council passed an important resolution (S/654) on 20 January 1948. The resolution set up a three-member Commission of the Security Council to investigate the complaints of the two parties concerning Kashmir. It was to proceed to the spot as quickly as possible and act under the authority and directions of the UNSC. It would keep the Council informed about its activities and development of the situation and report to the Council regularly, submitting its conclusions and proposals.\(^6^5\) Out of the three members of the Commission, one was to be selected by India; one by Pakistan, and a third by the two members so designated. Accordingly, Czechoslovakia was selected by India and Argentina was chosen by Pakistan, while the US was designated as the third member.\(^6^6\)

It was a modest resolution. It made no mention of the withdrawal of either the tribesmen or the Indian army, or of the plebiscite, which supposedly had to be dealt with at a later stage. It is to be noted that though both parties agreed to


\(^6^6\) The US was chosen by the President of the UNSC on the failure of Argentina and Czechoslovakia to select a member of their common choice.
the resolution, such a Commission as envisaged in the resolution – which was to be dispatched to the subcontinent to resolve the crisis – was not constituted.

After a new round of negotiations, the UNSC met again on 28 January 1948. The divergent Indian and Pakistani approaches to the problem were put on record. Both the contending parties agreed to a plebiscite in Kashmir. Nevertheless, their views basically differed regarding the conflict. This is important to note here, because their views hardly changed later, during the many subsequent debates at the UN. India wanted the Security Council to recognize that Pakistan was the aggressor and India was the victim of Pakistani aggression. Therefore, first of all, Pakistan should withdraw its aggression and vacate the territory it had captured during the conflict. Only after these steps were taken, a plebiscite could be organized under international supervision and arranged by the local government under Sheikh Abdullah or one chosen from the whole of the State. On the contrary, Pakistan urged for the immediate establishment of a neutral government in Kashmir and agreed to withdraw the invaders only if there was a simultaneous withdrawal of Indian forces from the State. It thus put the Indian forces, on an equal footing with the Pakistan-backed invaders. In a essence, the Pakistani contention tried to obliterate the legal accession of Kashmir to India. The radically different approach of the two countries was mainly due to their opposite views regarding the legality of accession. India based her case on the conviction that she had all the legal rights, whereas, Pakistan declared that she should have equal status with India because in her view the accession was not legally valid.
However, the US refused to accept the Pakistani argument, even though it did not openly support the Indian standpoint in the Security Council. Throughout the Security Council debates, the US took the position that there must be early termination of fighting by pacific means. Moreover, the question of Kashmir’s accession would be determined at earliest possible date by free and fair plebiscite supervised by the UN under impartial administrative arrangements. Washington believed that such a stand would not discriminate in favour of or against any of the contending parties. It should be noted that, though the US agreed that Indo-Pak conflict had taken place due to their dispute over Kashmir and called for a plebiscite to end the deadlock, Washington found it difficult to deny the legal validity of Kashmir’s accession to India. It was evident from the meeting of the American officials with their British counterparts in New York on 27 February 1948, where the former prevailed over the latter to agree with the US point of view that “we had to proceed on the assumption for the time being at any rate India has legal jurisdiction over Kashmir.” Washington also perceived that the withdrawal of aggression by the invaders and withholding of material assistance to them by Pakistan would be a positive step for the early settlement of the conflict and holding of a plebiscite. Concurrently, India should arrange progressive withdrawal of its forces from combat zones. However, the US rejected the Pakistani demand of complete withdrawal of Indian troops from Kashmir. Such a perception is discerned from the telegram sent by Marshall to the Embassy of India. It stated that:

68 Emphasis added, Memorandum of conversation between the American and British officials in New York, 27 February 1948, ibid., p. 307.
GOP would be asked to give full cooperation in truce arrangements calling for withdrawal of tribesmen, withholding material assistance from tribesmen and insurgents, etc. despite obvious political embarrassments involved. GOP must also recognize that SC cannot impose settlement under Chapter VI of the UN Charter but can only make recommendations to parties. Such recommendations must necessarily be made in light of India's present legal jurisdiction over Kashmir which makes complete civil and military neutralization of kind envisaged by Jinnah impracticable unless with Indian consent. Even if latter [is] given, project for neutral army [is] unrealistic. Obvious conclusion is that only available facilities for civil administration and maintenance of law and order in interim period are those which can be found locally...Indian attitude toward plebiscite arrangements has apparently become more reasonable in that GOI [is] now willing to have plebiscite machinery in hands of neutral official who would, however, be constitutionally part of Kashmir coalition government. We believe that such a neutral official might serve very useful purpose inside Kashmir Government....

When no solution was in sight, the US took the initiative along with Britain to introduce a new draft resolution in the UNSC to end the deadlock over Kashmir. Consequently on 21 April 1948, the Security Council achieved its first breakthrough when it passed the resolution (S/726) that provided an overall framework for a settlement of the Kashmir dispute and cessation of the conflict. It is to be noted that neither India nor Pakistan was happy with the resolution. The resolution, however, was one of cardinal importance. It outlined the Security Council's stand on the Kashmir conflict, recommended the method of its solution, and became the principal term of reference for various UN efforts for the settlement of the Kashmir conflict since then.

The resolution established a five-member Commission, which was later named as United Nations Commission for India and Pakistan (UNCIP), to proceed to the subcontinent at once. It called upon Pakistan to secure the withdrawal of all tribesmen and Pakistani nationals from Kashmir. Once that process had begun and the fighting ceased, India was to withdraw its troops in

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69 Marshall's telegram to the Embassy in India, 4 March 1948 (extracts), ibid., p. 311
stages, in consultation with the Commission, leaving the minimum required forces for the time being for the maintenance of law and order. It also called for the constitution of a coalition government in Kashmir at the time of the plebiscite and the appointment of a Plebiscite Administrator, nominated by the Secretary General, to arrange for a free and impartial plebiscite. For the maintenance of law and order, personnel recruited locally were to be used and if the local forces were found to be inadequate, then the Commission, subject to the agreement of India and Pakistan, should arrange for use of such forces of either Dominion as it deemed effective for purpose of pacification.\(^7^0\)

The UNCIP, as finally constituted, consisted of Argentina (selected by Pakistan); Czechoslovakia (selected by India); the US (nominated by the President of UNSC); and Columbia and Belgium (selected by the UNSC). Despite its deliberate efforts to shun any overt role in resolving the Kashmir issue, Washington agreed to become a member of the UNCIP when the UNSC President nominated J.Klahr Huddle of the US as a member. It was a designation that the American representatives had hoped – and also tried – to avoid. Once tendered, however, it was not rejected. The American acceptance of the request made by the UNSC to become a member in UNCIP, was in line with the US foreign policy of giving prime importance to the active UN role in the peacekeeping, mediation and conflict resolution functions in different international conflicts. In the words of Robert J. McMahon, “Washington’s neutral stance in the divisive UNSC debates, coupled with its status as a major

\(^7^0\) UN resolution S/726, 21 April 1948 (extracts), as cited in Lakhanpal, n.4, pp. 137-41.
world power and its firm support for the UNSC resolution plainly made the US a logical choice.\textsuperscript{71}

More than two months after passage of the UNSC resolution, the UNCIP arrived at Karachi on 7 July 1948 to begin its work. By then, conditions in Kashmir had deteriorated dramatically as renewed fighting brought both India and Pakistan to a state of undeclared war. With the advent of spring and melting of snows, Indian Army had mounted a large-scale offensive in Kashmir in May. Pakistan, which was surreptitiously infiltrating "volunteers" into the region earlier, had sent three brigades of its regular troops into Kashmir in May 1948, to meet the Indian military challenge. That fact was disclosed by the Pakistani Foreign Minister, Mohammad Zafrullah Khan, during his meeting with the UNCIP on 8 July 1948. He explained the measure as an act of self-defence against the spring offensive of the Indian Army, which constituted a grave threat to the security and defence of Pakistan.\textsuperscript{72} The Pakistani authorities stressed the fact that it was not their intention to reconquer the areas captured by the Indian Army but to guard their defence line, and prevent an influx of refugees in the event India conquered whole of Kashmir and thus presented the world with a fait accompli. Later, the Pakistani government presented the UNCIP a detailed note prepared on 20 April 1948, by the Commander-in-Chief of the Pakistani Army, General Douglas Gracey, about the military aspects of the Kashmir situation recommending the deployment of Pakistani Army in Kashmir.\textsuperscript{73}

\textsuperscript{71} McMahon, n. 56, p. 25.
\textsuperscript{72} Korbel, n. 16, p.121.
\textsuperscript{73} Lakhanpal, n. 4, p. 146.
The disclosure, to quote Josef Korbel (the chairman of the UNCIP), came as a bombshell to the Commission. The UNCIP neither informed the Security Council nor India about the bombshell until much later. Nonetheless, the proof of Pakistan's direct involvement in the conflict led to the realization of the UNCIP that the situation was far more grave and disturbing than what it appeared to be. Thus the Commission agreed that this constituted a material change in the situation and emphasized the need to act urgently to bring about a cessation of the conflict. Then the UNCIP arrived in New Delhi on 9 July to begin discussion with the Government of India. The Indian side reacted angrily that the UN failed to condemn Pakistan as an aggressor and apparently treated the two countries as equal parties to the dispute. Nehru plainly told the UNCIP that Pakistan was an aggressor and its first task should be to bring about a withdrawal of Pakistani nationals and troops from the State. Nehru told Korbel, “Pakistan must be condemned. I do not require any solemn, formal verdict, but a clear declaration about the Pakistani army's presence in Kashmir and its withdrawal.”

From the discussions with the Indian and Pakistani officials, it appeared to the UNCIP that little common ground existed and the prospect for any immediate cease-fire was rather bleak. It found that the two sides would agree only on one point, that neither wished to stop fighting without certain conditions which were respectively unacceptable to the other. The UNCIP’s difficulty lay in the fact that Pakistan and India had deep mutual suspicion about each

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74 Emphasis in the original, Korbel, n. 16, p. 121.
76 Lakhnanpal, n. 4, p. 147.
77 Korbel, n. 16, p. 129.
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other.\textsuperscript{78} Even the US representative in the UNCIP, Klahr Huddle, found “little to choose” between the Indians and the Pakistanis. Nehru, in Huddle’s view, adopted a “self-righteous intransigent stand”, while Zafrullah Khan’s “attitude toward [the] Commission has been patronizing and approaching arrogance.”\textsuperscript{79}

Despite those major hurdles, the UNCIP tried its best to achieve some breakthrough, which would help at least the general framework for a future settlement of the conflict. Consequently, on 13 August 1948, the UNCIP adopted a resolution (S/995), which was designed to bring about the cessation of fighting in Kashmir. The resolution which was in three parts— (i) Cease-fire; (ii) the Truce Agreement; and (iii) Plebiscite. The first part called on the Governments of India and Pakistan to agree on a cease-fire within forty days of their joint acceptance of the terms of the resolution, after which the Commission would appoint military observers to supervise each side’s adherence to the cease-fire. Second, Pakistan was asked to withdraw its troops from Kashmir; the tribesmen and Pakistani nationals were also asked to leave the State. Local authorities under the tutelage of the UN Commission would administer the territory that was evacuated by the Pakistani troops. The resolution also enjoined India to withdraw its forces following the departure of the Pakistani troops, nationals, and tribesmen. Finally, the two sides were asked to reaffirm their commitment to a plebiscite to settle the dispute.\textsuperscript{80} India accepted the resolution on 20 August with minor modifications. After intensive discussions with UNCIP, Pakistan accepted the resolution on 6

\textsuperscript{78} ibid., p. 132.
September. But it attached so many reservations, qualifications and assumptions that the Commission had to consider its answer as “tantamount to rejection.” As the stalemate continued, the UNCIP was bitterly disappointed that it had been unable to stop the fighting. Ultimately, on 21 September 1948, it left Srinagar for Geneva to prepare its report to the Security Council, which was in session at that time in Paris. In Paris, the Commission held a number of meetings and re-entered formal and informal consultations with the Indian and Pakistani representatives.

During this phase, the US policy aimed at ending the threat that Kashmir dispute posed to international peace, not to take sides between India and Pakistan, or to pass judgement about who was to blame. In order to break the deadlock, the American diplomats personally urged Indian Prime Minister Nehru and the Pakistani Prime Minister Liaquat Ali Khan to resolve their mutual differences. During his private discussion with Nehru and Liaquat in Paris, the Secretary of State Marshall urged both the leaders to accept a cease-fire, emphasizing the grave dangers of continued regional instability. However, those efforts proved unavailing, as neither of the South Asian leaders saw much room for compromise. To quote Huddle, “it seems clear that a stalemate exists between the two Governments on the Kashmir question and that neither is willing to make concessions which are obviously necessary if a peaceful settlement is to be achieved.”

On 10 November 1948, London offered a new proposal for Washington’s consideration. To prevent any renewed fighting, the British Government

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81 Korbel, n. 16, p. 144.
82 Lovett to the Embassy in France, 25 October 1948, as cited in McMahon, n. 56, p. 29.
suggested two steps: First, the Security Council should issue an immediate and unconditional cease-fire order to India and Pakistan; Second, it should send a “high-powered and prominent mediator” to the subcontinent to help arrange a settlement and administer the much-discussed plebiscite. London was convinced that a well-known American citizen would be ideal for the task and inquired about the availability of General Dwight D. Eisenhower.\(^\text{84}\)

Washington accepted the underlying logic of British proposal, but questioned the need for greater American involvement. In his reaction to the British suggestion, Secretary of State Marshall noted that any American mediator would find himself in an extremely delicate position. His own recent experience as a negotiator in China demonstrated acutely the difficulties and hazards inherent in such a role. Moreover, Marshall pointed to the US position as “newcomers” to the sub-continent, drawing a sharp contrast with “the many generations of British experience in the area.”\(^\text{85}\)

Nonetheless, the Truman Administration kept the option open for the possible appointment of an American mediator. Although concerned about assuming any principal responsibility for peace in the subcontinent, it reasoned that a successful cease-fire resolution by the UNSC might ease the mediator’s task, thus lessening the prospects for failure. This viewpoint was influenced by Huddle’s argument that the availability of an “outstanding figure” would help facilitate an Indo-Pakistani agreement. Huddle and Philip C. Jessup, the US representative to the UN, warned that the preclusion of an American mediator might “seriously jeopardize current negotiations which are in [an] extremely

\(^{84}\) Memorandum of Conversation between Marshall and British delegate Alexander Cadogan, 10 November, 1948, as cited in McMahon, n. 56, pp. 29-30.

\(^{85}\) ibid., p. 30.
They indicated that in recent discussions, the Indian and Pakistani representatives evinced a strong preference for the appointment of an American as mediator and Plebiscite Administrator. Those arguments were reinforced by the British and American intelligence inputs that pointed to the likelihood of renewed fighting in the spring, if the Paris negotiations collapsed. Referring to those reports, Acting Secretary of State Lovett in a letter to Secretary of Defence, James V. Forrestal, emphasized that broader national interests would be served by an American commitment to help supervise a cease-fire and truce agreement. Peaceful disposition of the Kashmir dispute, he said, was “essential to the peace of the Indian subcontinent ... Particularly in view of recent events in China and Indonesia it is increasingly important to the United States to help preserve and assure the stability of the subcontinent.”

Meanwhile after much deliberations and hard work, the UNCIP submitted its first interim report (S/1100) to the Security Council on 22 November 1948, which still left many questions vague and unanswered. The UNSC resumed the debate on Kashmir on the basis of UNCIP’s first report and ended by appealing unanimously to India and Pakistan to stop the fighting in Kashmir and to do nothing to aggravate the situation or to endanger the negotiations. The Commission held further discussions with India and Pakistan to draft a supplementary resolution on the plebiscite. On 11 December, it circulated that draft resolution to India and Pakistan for their consideration. The resolution (S/1196) containing UNCIP’s proposals was later adopted by the UNSC on 5
January 1949. The resolution was an elaboration of the part III of the 13 August resolution of 1948, and spelled out in more detail the principles that would govern the proposed plebiscite. To meet the Pakistani objection to the 13 August resolution, the new resolution stated that a Plebiscite Administrator would be nominated by the UN Secretary General in agreement with the Commission to organize and conduct a free and impartial plebiscite, which would finally decide the accession of Jammu and Kashmir. The resolution ended with a request to the two governments to order a cease-fire as from 1 January 1949.90

Finally, success crowned the Commission’s endeavour. Despite some reservations and dissents, both India and Pakistan finally accepted the resolution. The two governments also agreed to a cease-fire that took effect from 1 January 1949. Thus the first ever Indo-Pak armed conflict came to an end.

Conclusion

The above analysis of the US response towards the first Indo-Pak armed conflict over Kashmir crisis reflects some degree of ambiguity and inconsistency in the American policy. Initially though the Truman Administration assiduously avoided any direct and active involvement in the affairs of the subcontinent, and refused to play an overt role in the settlement of the Kashmir conflict, it gradually found itself involved in the Kashmir issue and often took a leading role for its solution. Final resolution of the conflict continued to be elusive. Why was it so? To get an answer to this and also to correctly discern the underlying factors, which shaped the US policy during

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90 UNCIP Resolution S/1196, 5 January 1949 (extracts), as cited in Lakhanpal, n.4, pp. 158-60.
this period, one has to take into account then prevailing geo-political situation, the foreign policy priorities of the Truman Administration, and most importantly, the Cold War dynamics.

When India and Pakistan gained independence in August 1947, Washington paid only limited attention to the momentous events in the subcontinent. By the time India and Pakistan were emerging as independent nations, the Cold War had already set in and was spreading like wild fire, and the US was engrossed in 'Containment of Communism' by adopting Truman Doctrine, Marshall Plan, and coming to terms with the Chinese civil war. India and Pakistan appeared far removed from the major theatres of Cold War confrontation. Due to American pre-occupation with areas of greater strategic significance, the place of South Asia was almost negligible in the basic Cold War calculus of the United States. The Central Intelligence Agency (CIA) analysts placed India and Pakistan in the fourth – and last – place among areas important to the US security after Western Europe, the Near and Middle East and the Far East in that order as regions of greater importance. Given the greater intrinsic value attached to Western Europe, East Asia and the Middle East, and given the distressing level of disorder and instability prevailing in those key areas, it was not surprising that the Truman Administration paid scant attention to the Indian subcontinent in the years following partition. In relative terms, India and Pakistan were peripheral to core US national security interest at that time. Nevertheless, the US was equally aware of the alarming vacuum of power and the socio-political instability in the region generated by the abrupt termination of the British Raj. Washington was apprehensive of the

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fact that the power vacuum and prevailing unsettled condition had made the region vulnerable to Communist penetration. The US recognized that both India and Pakistan needed to quickly deal with their bitterness, hatred, and mutual suspicion and cooperate to resolve the grave political, economic and security problems to keep at bay Soviet influence from creeping in. Thus the stated goal of the US diplomacy was to facilitate the settlement of Indo-Pakistan bilateral disputes and to promote regional cooperation.

The ultimate US goal was to orient both the countries towards the Western-bloc headed by America and away from the Soviet-led Communist bloc. More specifically, Washington sought to promote stable, peaceful and economically productive states that would be oriented towards the West and capable of resisting Communist blandishments, both internal and external.  

The Truman Administration hoped to foster those general goals through a variety of diplomatic, economic and military means, all of which were to be developed in coordination with Britain. Initially, Washington supported the British initiative in the affairs of the region avoiding any direct involvement of the US. Besides, Truman Administration attempted to maintain a strict neutrality and evenhandedness between India and Pakistan, which in the words of H.W. Brands, “was sometimes carried to almost absurd lengths.”

Different considerations contributed to such a policy option. In the first place, the American and British interests in the region ran along parallel lines. Britain’s historic ties to South Asia and the continuing connection through the British Commonwealth, convinced Washington to follow Britain’s lead on all substantive matters relating to the Indian subcontinent. In the calculation of

92 McMahon, n. 56, p. 17.
the American officials, despite the end of the British rule, Britain still possessed considerable political, economic and cultural leverage in the region. Secondly, pursuing the policy of ‘Containment of Communism’, the US was already over-committed globally. It could ill afford to devote its energy and resources to a region, which lay on the periphery of American foreign policy priorities. Thirdly, the US viewed that open support to one nation would inevitably alienate the other and hopelessly complicate prospects for an amicable resolution of various intra-regional disputes. Lastly, any American initiative would attract undesirable Soviet attention and give the latter a pretext to interfere in the region. Thus towards South Asia, the Truman Administration adopted a policy of indirect influence, of working through the British and through Britain’s Commonwealth connection with India and Pakistan, to maintain a pro-Western balance of power in the region.

However, contrary to the US expectation, Britain was unacceptable to the two contending parties as a mediator, and failed to accomplish the task envisaged by Washington. As no early end to the fighting could be achieved and the prolonged conflict in Kashmir was increasingly heading towards a deadlock, the US gradually, though reluctantly, accepted increased responsibility for forging a settlement. The Truman Administration perceived that a Kashmir settlement was the sine qua non for regional stability in South Asia, an important American policy goal, which would contribute to the national security interests of the US in the region. Nevertheless, the Truman Administration clearly preferred a limited American role. Even after accepting the membership in the UNCIP, the American policy makers remained wary of
over-involvement. For example, Marshall was initially hesitant at the prospect of an American being designated as a Plebiscite Administrator.

Several developments during the first half of 1949 shook the American complacency and finally pushed the Truman Administration towards a deeper involvement. Even after putting so much effort to find a solution to the conflict, the UNCIP could not succeed to implement the UNSC resolution of 4 January 1949. Secondly, there were intelligence reports, which warned of renewed fighting in the absence of an early agreement, which could lead to an all-out Indo-Pak war. Lastly, there was gradual erosion of the West’s influence in Asia, indicated by continuing military triumphs of the Communists in the Chinese civil war and the colonial conflicts in Indochina and Indonesia. These were some of the important factors, which elevated the importance of an early settlement of the Indo-Pakistan conflict in the foreign policy priorities of the US.

Consequently, the US became directly engaged in the negotiation process and increasingly started to play a lead role to settle the conflict and end the fighting. It is evident from the naming of Admiral Chester W. Nimitz, Commander of the Pacific Fleet during the World War II, as the Plebiscite Administrator by the Truman Administration. In accordance with the provision with the UNCIP’s proposals of 11 December 1948, which were accepted by both India and Pakistan and later adopted by the UNSC on 5 January 1949, the UN Secretary General selected Admiral Nimitz as Plebiscite Administrator on 24 March 1949. This activism and commitment by the Truman Administration ultimately played a vital role in bringing to an end the first Indo-Pakistan armed conflict.