CHAPTER III

KASHMIR GOES TO THE UNITED NATIONS

The Kashmir issue has been in the UN for the last over 30 years. So many resolutions have been tabled in the council and several mediators were appointed to resolve this deadlock; but none of these has been able to solve this problem.

After sending a note of protest to the premier of Pakistan, the Indian government referred the matter to the UN under article 35 of the UN charter. India complained that the invaders:

i. were allowed transit across the Pakistan territory;

ii. that they were allowed to use the Pakistan territory as a base of operation;

iii. that they included Pakistani nationals;

iv. that they drew much of their military equipment, transportation and supplies (including petrol) from Pakistan; and
v. Pakistan officers were training, guiding and otherwise actively helping the invaders.

So the government of India requested the council to ask the government of Pakistan: (i) to prevent Pakistan government personnel, military and civil, from participating in or assisting the invasion of Kashmir state; (ii) to call upon Pakistani nationals to desist from taking any part in the fighting in the Kashmir state; (iii) to deny to the invaders access to and use of its territory for operations against Kashmir, military and other supplies, and any other kind of aid that might tend to prolong the struggle.

Further India made it clear that if the situation called for military action it could take military action. India never tried to brand Pakistan as aggressor but approached the UN for Pakistan's complicity.

Pakistan took 15 days to reply to the charges. Pakistan answered in three documents. The first document dealt with Pakistan's denial of aggression and that it had done everything short of war to discourage the tribals' incursion. Further Pakistan maintained that she had not helped the tribals either militarily by
way of transportation or petrol supply. Her officials had not trained or guided or led the tribals. In the second document, Pakistan countercharged India. Zafrullah Khan made statements about the genocide of Muslims in India and how India had always tried to undo the partition plan. Further the Pakistani representative blamed India for not giving cash balances and military stores. He questioned the legality of Kashmir's accession to India and stated that the accession of Kashmir to India was based on fraud and violence. So Pakistan demanded that:

1. India should be called upon to refrain from acts of aggression on Pakistan;

2. India should cease putting pressures on the Reserve Bank; and

3. A commission should be appointed to investigate the charges of genocide and annexation of Junagadh and Manavadar. Further the commission could arrange for cessation of hostilities and for holding a fair plebiscite to ascertain the wishes of the Kashmiris.

The third document dealt with the history of Pakistan's creation and how India opposed the creation of Pakistan.
As Pakistan had no evidence to prove and defend her presence in Kashmir, she tried to sidetrack the main issue.

B.Gopalswami Ayyangar headed the Indian delegation. In his speech Ayyangar cited many examples to prove that Pakistan had a hand in the incursion over Kashmir territory. Ayyangar dealt with the administrative setup, socio-political and economic structure. He referred to the negotiations between India and Pakistan and told the council why they failed. He said India could have dealt with the raiders, but that would have involved armed conflict and the life of thousands. He quoted extensively from the statements of responsible leaders. He referred to the supply of arms, military camps and bases. He said since India had recognised the right of the Kashmiris to decide the future of their state outsiders had no business to fight against the Kashmiris.

The reference to the promise of plebiscite weakened India's strong case, making it appear that accession was conditional. The Indian delegate's speech was rather tactless and instead of emphasising Pakistan's role in the aggression he spoke about the complicity of Pakistan and put forward a lot of legal sophistry.
differentiating between Pakistan and the invaders. So he could not mobilise as much sympathy and support of the council members as he should have.

Zafrullah Khan handled the case cautiously and presented it very skilfully. His attacks were not dignified but his careful handling of the dispute put the Indians on the defensive. He traced the origin of the Kashmir dispute not only to the tribal invasion but also to the developments before it, before the partition of India. Further he emphasised the genocide of Muslims in 12 states including Bharatpur, Jind, Kapurthala, Delhi, the Punjab etc.

As regards Pakistani personnel "on leave" in action Zafrullah Khan maintained that when they found that their brethrens were being persecuted the Pakistani personnel could not refrain from entering the fray.

About arms, ammunitions, vehicles, petrol and uniforms etc. Zafrullah Khan said the tribals manufactured the arms and there was the illicit arms traffic going on in the different parts of the world. But his argument about the sophisticated weapons like anti-tank weapons and wireless sets was not convincing. As to the vehicles
captured by India bearing Pakistani number plates, they were already in Kashmir on legitimate business. As to petrol he said it was a scarce commodity subject to government control. The petrol companies were responsible for the supply. As regards the uniforms he said they had been procured from the Disposal Department.

Zafarullah Khan, in the concluding speech, demanded the replacement of Abdullah's government by a popular government and suggested that those who had gone into Kashmir like the RSS members, Sikh bands, the raiders who had entered Kashmir from the Pakistani side and the Indian troops should vacate the region. He suggested four alternatives:

First: joint administration under the governors general of India and Pakistan and joint occupation i.e., Kashmir and Muslim populated areas were to be under Pakistan and the Hindu populated areas were to be with India.

Second: joint occupation in each place.

Third: occupation by the commonwealth forces.

Fourth: administration through the UN.
The next move of Zafrullah Khan was to sidetrack the main issue and attempt to prove that the origin of the Kashmir dispute went back to the pre-partition days. He sought to show that the dispute was a byproduct of the partition of the subcontinent. This was a kind of setback to the Indian position.

After hearing both the parties the Belgian delegate moved a resolution, asking the parties to take all possible steps to improve the situation and refrain from any act which might aggravate the situation. The resolution was passed by a vote of 9 to 0, Russia and Ukraine abstaining. India welcomed this resolution. So the President of the council entered into negotiations with India and Pakistan in pursuance of this resolution. On the basis of these negotiations a resolution was passed on 20 January 1948 which envisaged the sending of a commission of 3 UN members, one to be nominated by India, another by Pakistan and a third one to be chosen by the mutual agreement of India and Pakistan, to investigate the facts in accordance with article 34 of the UN charter.5

As regards the activities of the commission India wanted the commission to confine its activities to
cessation of hostilities and the conduct of plebiscite by the Abdullah government of Jammu and Kashmir. Pakistan was in favour of giving the widest powers to the commission which would include power to order cease-fire and ensure that that was being observed on both the sides. The commission was to have freedom to consult with all the parties concerned on equal terms including the representatives of Azad Kashmir government. Although the resolution empowered the proposed commission to investigate the issues raised in the Pakistani letter of 15 January Zafrullah Khan was not satisfied. In another letter of 20 January Zafrullah Khan wrote to the President of the council threatening the use of force against India on the Junagadh issue. In this connection he requested the President to hold an early meeting of the council.

The President of the council changed the agenda items without consulting India from "Jammu Kashmir Question" to "India Pakistan Question." Initially the Indian delegate opposed this move but later he agreed to it. Thus India lost a winning case. Michael Brecher writes: "India conceded not only one of the cardinal theses of Pakistan's case but also provided the Pakistan Foreign Minister with an opening wedge for the further exploitation of his approach to the dispute."
On the 27 January at the suggestion of the President of the council India and Pakistan submitted their draft proposals and discussed the question the next day. India stressed two objectives: (i) the cessation of hostilities and the restoration of normal conditions; (ii) calling back those who had left Kashmir and the permitting of all legitimate political activity. The emergency government had to be converted into a council of ministers.

Six members, the UK, the US, China, France, Canada and Syria, supported the Belgian resolutions. The members interpreted the resolutions differently. The Canadian member, McNaughton opined that the draft resolutions if implemented would establish a basis to end the fighting. India was shocked at the proceedings and interpretations of the Belgian resolutions by the council members. Ayyangar pointed out that the second of the two resolutions had at best vague references to the real problem, namely, the cessation of hostilities. He said: "We put the issue of cessation of hostilities in the forefront of our proposals for a settlement. What we tried to do has apparently been brushed aside."
The members indirectly favoured Pakistan and failed to take note of India's case. The hostilities were increased when the Indian representative asked the President to adjourn the session for a few days so that he could contact New Delhi for further consultations. Britain, Colombia, Syria and Argentina criticised India's stand. The British delegate said: "I find it difficult to believe that in the early days of the League of Nations while the Covenant was still being taken seriously, the Council of the League would ever have agreed to such a course."8

Later the council increased the membership of the UNCIP from 3 to 5. These two members had to be selected by the council.

On 21 April 1948 another resolution was tabled. It was passed by a vote of 9 to 0, Russia and Ukraine abstaining. This resolution was the first attempt to provide an overall solution to the Kashmir problem.9 The sponsors focused their attention on three practical problems which arose from the earlier analysis of the case. Further the 21 April resolution requested the UNCIP to proceed to the subcontinent forthwith and place
its mediation at the disposal of governments of India and Pakistan in order to facilitate the restoration of peace and holding of a plebiscite in Kashmir by the two governments and to inform the council about the impartiality of the plebiscite. The 3 June resolution of the council asked the commission to proceed to the subcontinent without any delay.

Here in the subcontinent things were different. When Jinnah failed in his attempt to grab Kashmir, he sent a message to Lord Mountbatten, governor general of India, through General Auchinleck, then the Commander-in-Chief of Pakistan army. By doing so Jinnah politicalised the legal accession of Kashmir to India. Balraj Madhok says, "It was a clever and astute move to make the issue political while the invasion was on and the possible military decision (was) in his favour."10

Lord Mountbatten and Nehru accepted the offer of meeting Jinnah at Lahore. At the last moment Nehru cancelled his trip. Lord Mountbatten alone went to Lahore and held discussions with Jinnah. During the talks Lord Mountbatten proposed a plebiscite to decide the issue; but it was turned down by Jinnah because he knew that if a plebiscite were held amidst the Indian
army and when Sheikh Abdullah was in power it would go against him.

In this talk with Lord Mountbatten Jinnah tried to convince him of his viewpoint. Lord Mountbatten depicted a gloomy picture of Kashmir. He told Jinnah to call back those who were fighting in Kashmir. But Jinnah insisted on the withdrawal of all those who were fighting in Kashmir. He was not prepared to agree to Mountbatten's suggestion of withdrawing only the tribal invaders. He told Mountbatten, "I will call this whole thing off."

Later the prime ministers of India and Pakistan tried to settle the problem of Kashmir through their talks but they failed because of the Pakistani insistence on the withdrawal of the Indian troops from Kashmir.

**The UNCIP in Action**

The UN commission, as noted earlier, consisted of five members: one from Czechoslovakia (India's choice), another one from Argentina (Pakistan's choice), the third one from Belgium nominated by the council, the fourth one from Colombia nominated by the council and the fifth one from the USA nominated by the President of the council.
The work of the commission started with the very first interview given by Zafrullah Khan. Zafrullah Khan tried to establish the innocence of Pakistan and actually surprised the members of the commission when he disclosed that three Pakistani brigades were fighting in the Poonch area. He gave the following justifications for the presence of the brigades:

1. Protection of the Pakistani frontiers against a possible attack by India.

2. Apprehension of a *fait accompli* of the situation in Kashmir.

3. Prevention of an influx of the minorities into Pakistan.

4. Guarding against the possibility of India's establishing a link with the Pathanistan movement.

5. Guarding against a pincer movement against Pakistan by India and Afghanistan.

It was evident that by placing the three brigades in the Poonch area Pakistan had violated international law. But this factor was underplayed by Zafrullah Khan.
by emphasising the fact that Pakistan was taking precautions in her own interest against the possible dangers and threats.

After discussions, consultations, and the assessment of the situation the commission at its 40th meeting adopted a resolution on 13 August 1948. The resolution was divided into three parts. The first part dealt with the cease-fire; the second with the truce agreements and the third with plebiscite.¹²

a. Part I of the resolution of 13 August called on both the parties to issue separately but simultaneously a cease-fire order to all the forces under their control in the state of Jammu and Kashmir at the earliest possible date or at a mutually agreed date.

b. The parties were called upon to refrain from taking any measures that might augment the military potential of their forces under their control in the Kashmir state.

c. The Commanders-in-Chief of forces of India and Pakistan were to be allowed to confer regarding any
necessary local changes in the disposition of the forces which could facilitate the cease-fire.

d. The commission in its discretion could appoint military observers to supervise the observance of the cease-fire order.

e. The commission appealed to the peoples of India and Pakistan to assist in the creation and maintenance of an atmosphere favourable to the promotion of further negotiations on the subject.

Part I was significant from India's standpoint since it emphasised the cessation of hostilities as the primary condition of proceeding with the job of cease-fire. Part II indicated that Pakistan had violated international law and that the presence of the Pakistani troops in Kashmir had constituted a material change in the situation. This part called upon Pakistan to secure the withdrawal of the tribal invaders and the Pakistani nationals who were not residents of Kashmir. The resolution also laid down that pending the final solution the territory vacated by the Pakistani troops would be administered by the local authorities under the surveillance of the commission.
Section 3 of Part II was important from the Indian standpoint for it was a vindication of India's stand on the issue. According to clause 1 of this section the withdrawal of the Indian troops was conditional on two factors. One was the withdrawal of the tribal invaders and the Pakistani nationals not resident of Kashmir and the other was the withdrawal of the Pakistani troops. Clause 2 permitted India to maintain the minimum strength of troops in order to assist the local authorities in the maintenance of law and order.

Part III called upon India and Pakistan to reaffirm their intentions that the future of the Kashmir state should be determined in accordance with the wishes of the people of Kashmir.

Prime minister Nehru of India sought on 20 August some clarifications as follows: 13

1. Para A 3 of Part II of the resolution should not be interpreted or applied in practice so as to

   a. bring into question the sovereignty of Kashmir government over the portion of the territory evacuated by the Pakistani troops;
b. afford any recognition of the so called Azad Kashmir;

c. or to enable this territory to be consolidated in any way during the period of truce to the disadvantage of the state.

2. The strength of the Indian troops maintained in Kashmir should be sufficient to insure security against any form of external aggression or internal disorder.

3. Pakistan should have no part in the organisation and conduct of the plebiscite or in any other matter of internal administration of the state.

The commission gave assurances to India on these matters.

In another letter Nehru suggested that after the withdrawal of the Pakistani troops from the northern Kashmir the administration should revert to the Kashmir government and for defence purposes to the Indian government.

Pakistan raised a number of doubts and questions regarding this clarification. These were as follows: 

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1. The Azad Kashmir government could authorise the issue of cease-fire to its own troops.

2. The exact significance of the provisions relating to the appointment of the military officers should be explained.

3. Did the commission intend to secure for Pakistan's security the services of an international or a neutral force and, if yes, what would be the size of this force?

4. It sought some clarification with regard to the plebiscite.

5. It questioned the desirability of retaining the Indian troops in certain parts of Jammu and Kashmir.

6. It wanted to know the manner in which the commission proposed to secure the synchronised and simultaneous withdrawal of the Indian and Pakistan forces.

This memorandum of Zefrullah Khan sought to seek recognition for the Azad Kashmir government; the replacement of the government of Sheikh Abdullah by a
neutral government; and the withdrawal of the Indian
troops from Kashmir. The commission's reply to these
doubts, questions or suggestions did not satisfy
Pakistan. The commission refused to recognise the Azad
Kashmir government. Joseph Korbél, the President of
the commission, stated on 4 August 1948, that Pakistan
was only postponing the acceptance of the resolution by
involving the commission in endless discussions and
correspondence.

On 6 September Pakistan accepted the resolution
subject to the following: 15

1. India's acceptance of the commission's
clarifications to Pakistan and vice versa.

2. India's acceptance of the resolution of
21 April.

3. The commission's elucidations of the
resolution to Pakistan.

Having failed to secure any fruitful results the
commission left for Geneva to prepare its first interim
report. The commission's work laid the foundation for
the future misunderstanding which was to persist through
the years and decades. It told India that Azad Kashmir had no legal status but also told Pakistan that the status of the territory was one of a de facto character. It adopted an ambiguous attitude to the status of the northern part of the state. It did not define terms like the "bulk of the Indian troops," "local authorities," and "surveillance." The vagueness and conflicting interpretations resulted in delays and deadlock for quite some months. The first interim report of the commission was submitted to the President of the council on 9 November 1948.

After further consultations with India and Pakistan the commission made fresh proposals on 11 December 1948 reiterating the earlier resolutions and amplifying part 3 of the 13 August resolution by including in it "basic principles for a plebiscite." These principles, apart from reiterating the relevant provisions of 21 April resolution, rejected the idea of a coalition government and reduced the powers of the plebiscite administrator. He could no longer "direct and supervise" the Kashmir force and appoint special magistrates.
India accepted these proposals when she was given the following assurances:17

1. Pakistan must implement Parts I and II of the 13 August resolution.

2. The plebiscite administrator could deal only with the organisation of the plebiscite.

3. The term "freedom of speech" during the plebiscite did not imply the right to play upon religious fanaticism and any political activity which might disturb law and order could not be regarded as legitimate.

4. The large-scale disbandment and disarming of the Azad Kashmir forces.

Pakistan's acceptance was conditional on the following assurances which were given by the council:18

1. The final selection of the administrator would be made by the Secretary General.

2. That he would not be an employee under the control of the Kashmir government. He would be competent to exercise such powers as he considered necessary for the conduct of the plebiscite.
The 11 December proposals were less favourable to Pakistan than those of 13 August.

With the official acceptance of the 11 December proposals on 23 December by India and on 25 December by Pakistan a cease-fire agreement was signed by the two governments and the cease-fire was ordered one minute before the midnight of 31 December 1946. This is how Part I of the 13 August 1948 resolution was implemented.
FOOTNOTES


14. For further details see S/1100, paras 1, 3, 5, 9, 10, 9 November 1948.

15. S/1100, para 97, 9 November 1948.


17. For further details see S/1196, II Interim Report, Annexe 4, 10 January 1949.