

## 8 RMLNLUJ (2016) 87

### Kashmir in the United Nations

by  
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#### I. INTRODUCING KASHMIR

The severely entrenched dispute of Kashmir, variously described as the 'Kashmir Imbroglia' and the 'Kashmir Conundrum', seen often as an intractable and stubborn problem that has defied resolution despite persistent and protracted efforts at it, has marked the international landscape for close to seven decades now. The strained situation in Kashmir has understandably caused apprehension and trepidation amongst the international community for it is seen, and legitimately so, as a potential flashpoint for the two nuclear-armed neighbors India and Pakistan contesting it. On January 1, 1948, India took the case to the United Nations where the case got embroiled in international power politics and Kashmir became a near permanent item on the agenda of the United Nations for a considerable length of time since that date.

The princely state of Jammu and Kashmir, with its diversity of ethnicity, language, culture and religion, can be seen as a miniature version of India. "Tucked away in the high western Himalayas situated along India's border with China, touching Afghanistan and close to the Central Asian regions of Czarist Russia and, later, the Soviet Union, the disparate regions of Kashmir were cobbled together by the dynastic ambitions of the state's rulers abetted by British imperial design. In the first half of the nineteenth century, these maharajas, Hindus of the Dogra ethnic group based in the Jammu area of the state, had with British backing created one of the largest states in Britain's Indian Empire"<sup>1</sup>.

The majority of the former state of Jammu and Kashmir's population now living within India is in the Kashmir Valley, with a population of over 5.4 million according to the 2001 census. The language spoken in the Valley of Kashmiri and in the areas immediately bordering it is Kashmiri,

a Dardic tongue. The religion is 98 per cent Muslim with distinct Sufi characteristics. The Jammu Division, the second major constituent has a population of over 4 million in a sixty to thirty Hindu-Muslim ratio, the Muslims being in a majority in three of the six districts of Jammu. The languages spoken are several variations of Punjabi. The third constituent of the state is Ladakh with a population of 2, 33,000. It is the largest of the three in area, with a slim Muslim majority, mostly Shia in contrast to the predominantly Sunni Kashmir. One of Ladakh's two districts is Kargil with 73 percent Shias and to its South is the district of Leh with a Buddhist majority<sup>2</sup>. The regions of Mirpur, Muzaffarabad popularly known as "Azad Kashmir" or Pakistan-controlled Kashmir (depending on who is doing the identifying-the former identification used in Pakistan while the latter by the Indians) enjoy limited autonomy. The regions of Gilgit, and Baltistan are referred as the Northern Areas and fall under the total control of Islamabad. Gilgit—Baltistan has *de facto* province-like status without constitutionally becoming part of Pakistan. Unlike the Valley and Pakistan-administered Kashmir, which are predominantly Sunni, the Northern Areas include sizeable groups of Shia as well as the Ismaili followers of the Aga Khan<sup>3, 4</sup>

India on the eve of its independence from the British rule consisted of two major components: the portion administered directly, which became the Dominion, and the other, what were called the Princely States, professedly independent but woven into the matrix of the British Empire under the Empire's policy of 'Paramountcy'. Paramountcy developed as a live, vigorous, forceful and dynamic concept *pari passu* with the ascendancy and preeminence of the British power on the Indian subcontinent. With the Indian States' acquiescence to British supremacy and the acknowledgement that the perpetuation of ruler ship was contingent upon their allegiance to the British Crown, the British were established as the sole independent sovereign power in India with no Indian State in a position to claim parity. In such an arrangement, the states were effectively turned effete in terms of exercise of external sovereignty, the same endeavor vis-à-vis their internal affairs being circumscribed by the entitlement of intervention exercisable by the British Crown, the only independent sovereign in India as per the various treaties outlining the contours of British paramountcy apropos Indian States big or small. The relationship between the Crown and the States was thus neither federal, nor Quasi-federal, nor was it a political confederacy as it under no circumstance would admit of secession on the part of the States. The Butler Committee in 1928 appointed to examine and spell out the relationship between the paramount power and the Princely States endorsed the

Native Princes' contention that their relations existed with the Crown, not with the government of India, and could not therefore be transferred without their consent, to a new government in British India. "Later, Section 7 of the Indian Independence Act, 1947, provided for the lapse of 'the suzerainty of His Majesty over the Indian States together with the lapse of all rights and obligations between His Majesty and the Rulers of Indian States'<sup>5</sup>, meaning thereby that the Indian States could reclaimed the status which they enjoyed before the British crown assumed sovereign powers, with a suggestion that they could well be arbiters of their destiny.

## **II. TRACING THE ROOTS OF THE 'IMBROGLIO'**

Now, with Independence came India's partition into two sovereign countries: India and Pakistan. The British Government delineated the division of the Dominion territories based on the Award of a Commission appointed for the purpose, in popular parlance known as the Radcliffe Award, so known after the name of the British official heading the Commission. Even though there have been arguments from various quarters that independence was theoretically an option, the Princely States were required to accede to one state or another, guided by the religious composition of their populations and the adjacency of their states to the soon to emerge dominions. The States Department, created in June 1947 to negotiate with the princes prepared the Instrument of Accession to secure the accession of the Indian states to the new Indian dominion on foreign affairs, defense, and communications while in other matters undertaking to "scrupulously respect their autonomous existence". Addressing the special meeting of the Chamber of Princes on 25 July 1947, Lord Mountbatten, the Viceroy of India, appealed to the Indian princes to join the dominion before 15 August 1947. He said, "If you are prepared to come, you must come before the 15th August. I have no doubt that this is in the best interests of the states, and every wise ruler and wise government would desire to link up with the great dominion of India on a basis which leaves you great internal autonomy and which at the same time gets rid of your worries and cares over external affairs, defense and communications"<sup>6</sup>.

"The Maharaja of Kashmir in the year 1947. Hari Singh. presided over a territory

where the "state subjects" were, according to the British census of 1941, 77 percent Muslims, 20 percent Hindu, 3 percent others (mostly Sikhs with a sprinkling of Buddhists)"<sup>7</sup>. The Maharaja's preference-on the advice of his Prime Minister during the critical years of 1945-47, Pandit

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 Page: 90


Ram Chandra Kak-was that the state take advantage of a grey area in the India Independence Act to opt for independence. It was only when Jammu and Kashmir forces faced an uprising by the British Indian Army's decommissioned Sixth Punjab Regiment in the border district of Poonch, and then a military rout by invading frontier tribesmen in the state's border town of Domel on 22 October 1947 that the Maharaja turned in desperation to India. Thus, a State which was predominantly Muslim in terms of its demographic composition, though headed by a Hindu Raja became a part of India once it signed the Instrument of Accession<sup>8</sup>. Kashmir joined the Indian Union after a minor 'surgical operation.' "In formally accepting it on behalf of the Government of India, Lord Mountbatten, the last Viceroy of the British India Empire and, since the transfer of power, the first governor general of independent India famously declared-'It is my Government's wish that as soon as law and order have been restored in Kashmir and the soil cleared of the invader the question of the State's accession should be settled by reference to the people.'"<sup>9</sup> A few days later, in a 2nd November (1947) radio broadcast, Indian Prime Minister Jawahar Lal Nehru similarly stated that a plebiscite would settle the state's fate<sup>10</sup>.

The State of Jammu and Kashmir signed the Instrument of Accession with India on the fateful day of 26th October, 1947. India's argument has been grounded in that accession. India's formal position is that "all of Kashmir is an integral part of the Indian Union by virtue of the Maharaja of Kashmir's accession to India in October 1947 and the confirmation, in 1954, of his act by the state's elected assembly. Similarly, Pakistan, in opposing India's claims, has been questioning the legality, even the authenticity of accession"<sup>11</sup>. These contending and conflicting claims made by India and Pakistan thrust the state into international focus soon after the birth of the two rival claimants and the world's attention has endured to to this day!

### **III. AND THEN CAME THE 'THIRD PARTY'!**

It was Lord Mountbatten's conviction and he apparently was sharing the faith of the British Government in the offices of the United Nations (though the organization was at that point in time in a fledgling state) to be able to assume a role that might assist in resolving the Kashmir dispute. This referral to the world body made Kashmir, one of the earliest major issues to

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 Page: 91

make it to the UN. "Mountbatten had first suggested the use of the UN during his 1 November 1947 meeting with Mohammed Ali Jinnah in Lahore. The talks between Nehru and Pakistani Prime Minister Liaquat Ali Khan in December 1947 reinforced his belief that an intermediary was necessary wherein he is quoted to have said 'I realized that the deadlock was complete and the only way out now was to bring in some third party in some capacity or other. For this purpose I suggested [not for the first time] that the United Nations Organization be called in.'"<sup>12</sup> Thus Mountbatten managed to persuade the Indian Prime Minister Nehru and Home Minister Patel and pursuant to

this acquiescence, the Indian Cabinet finally decided on 20 December 1947 to take its complaint against Pakistan's involvement in the tribal invasion to the UN, "under Article 35 of its Charter"<sup>13</sup>, an enablement entitling a UN member to bring before the Security Council of the UN, a "situation" which threatens international peace. Thus, instead of full war, the UN alternative was pursued<sup>14</sup>. The text of this complaint, comprising 16 parts, explained the circumstances leading to the accession of the state of Jammu and Kashmir to India, outlined the latter's military assistance to the state, and furnished proof of Pakistan's active complicity in assisting the tribal invaders still in occupation of a considerable chunk of the state's territory. "It requested the UN Security Council, 'to prevent Pakistan government personnel, military and civil, from participating and assisting in the invasion of Jammu and Kashmir state; to call upon other Pakistani nationals to desist from taking any part in the fighting in the Jammu and Kashmir state; to deny the invaders (i) access to any use of its territory for operations against Kashmir; (ii) military and other supplies, and (iii) all other kinds of aid that might tend to prolong the present struggle.'<sup>15</sup>

In the complaint, India also said: "since the aid which the invaders are receiving from Pakistan is an act of aggression against India, the Government of India are entitled, in International law, to send their armed forces across Pakistan territory for dealing effectively with the invaders". Pakistan refuted the Indian allegations<sup>16</sup>. But when the United Nations Commission on India and Pakistan (UNCIP) set up in pursuance of the United Nations Security Council Resolution of April 17 1948, arrived at Karachi, Pakistan admitted the presence of its troops 'since May' and in 'self-defense.'



Having heard out the Representatives of the two nations, "the U.N. Security Council passed its first resolution (Resolution 38) on Kashmir conflict on January 17, 1948, calling India and Pakistan to exercise restraint and ease tensions. Three days later, on January 20, the Security Council passed another resolution (Resolution 39), creating the United Nations Commission for India and Pakistan (UNCIP) composed of three UN representatives, one selected by India, one by Pakistan and third chosen with the support of both contentious parties to investigate the dispute and mediate between the two countries"<sup>17</sup>.

The United States and Britain exhibited great alacrity in taking the lead in the Security Council's efforts to resolve the issue. The Kashmir dispute seemed made-to-measure for the-then abecedarian UN's role as a crisis manager and trouble shooter. It was seen in many quarters as a critical and decisive trial of the use of international intercession to settle contentious issues and discord amongst nations. The United States showed an inclination to accept London's lead, reckoning that Great Britain was better conversant with the subcontinent and the nuances thereof, having been till the recent past, its imperial master and also augmenting its credentials further by virtue of being the leader of the Commonwealth Nations. Other nations played secondary and at times only peripheral roles. They generally backed the US-Britain's initiative and seasoned representatives for a string of special missions would be provided by various countries as a measure of their willingness to assist in sorting out the issue. Initially, the USSR was generally stand-offish in its posture, though it gradually warmed up and came to favor the Indian position<sup>18</sup>.

Shortly thereafter, "on 21 April 1948, led by Britain and the United States, the

Security Council passed another resolution (Resolution 47) which enlarged the membership of the United Nations Commission for India and Pakistan (UNCIP). Ultimately, the UNCIP was composed of Czechoslovakia, Argentina, Belgium, Colombia and the US. India clearly perceived the composition to guarantee greater US influence in the disposition of Kashmir<sup>19</sup> which India was getting gradually wary of. "Resolution 47 called on the Government of Pakistan 'to secure the withdrawal from the state of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purposes of fighting;' the Government of India was requested to reduce its forces to the minimum strength, after which the circumstances for holding a plebiscite should be put into effect 'on the question of the accession of the State

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Page: 93

to India or Pakistan.' The Resolution also laid down that the Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of the measures indicated in the Resolution. The first team of unarmed military observers, which eventually formed the nucleus of the United Nations Military Observer Group in India and Pakistan (UNMOGIP), arrived in the mission area in January 1949 to supervise the ceasefire between India and Pakistan<sup>20</sup>.

"The tasks of the observers were to accompany the local authorities in their investigations, gather as much information as possible, and report as completely, accurately and impartially as possible. Any direct intervention by the observers between the opposing parties or any interference in the armies' orders was to be avoided. These arrangements remained in effect until the conclusion of the Karachi Agreement on 27 July 1949 establishing a ceasefire line to be supervised by UN military observers. The Karachi Agreement specified that UNCIP would station observers where it deemed necessary, and that the ceasefire line would be verified mutually on the ground by local commanders on each side with the assistance of UN military observers<sup>21</sup>.

The United Nations Commission for India and Pakistan "was instructed to depart without delay for the subcontinent. On their return, a further resolution on 13 August 1948 adopted unanimously by UNCIP outlined arrangements for the cessation of hostilities and once more restated that a final decision on the status of Jammu and Kashmir 'shall be determined in accordance with the will of the people.'<sup>22</sup> Though the initial Indian complaint had been found to be a legitimate one by the UNCIP members who observed that aggression on the state of Jammu and Kashmir was actually aided and abetted by Pakistan, in an inexplicable turn of events, and what was to turn out to be a shock to the Indians, the August 13 resolution of a month later asked both India and Pakistan to withdraw troops, putting the aggressor and the aggrieved at par, in the process denying the legitimacy of the Accession treaty signed by the Maharaja of Kashmir with the Union of India, in the process also investing the State with a disputed status, pending the outcome of a free and impartial plebiscite. It is interesting to note that despite its initial reluctance to get involved, at the 15 January 1948 discussions in the Security Council, the British and the American delegates, Noel Baker and Warren Austin, persuaded the Council to extend the Indian complaint to include all matters covering 'the whole spectrum of Indo-Pakistani

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Page: 94

differences<sup>23</sup>, refusing to support India's position that tribal invasion constituted an act of aggression on the part of Pakistan<sup>24</sup>. These acts were not only to the chagrin of India but would also instill a mistrust in the minds of the Indian negotiators towards the key players in the UN which would not be assuaged any time soon and in the end contributed to an ambience not conducive to the resolution of the issue which was getting increasingly complex.

1st January 1949 saw an important step forward as both India and Pakistan accepted a cease-fire and allowed the UN to observe the cease-fire. "The cease-fire line went through the western part of Jammu and the eastern part of Poonch, leaving the capital city of Poonch on the Indian side of the line, then crossed the Jhelum river at a point west of Uri and made a large sweep following the valley of the Kishanganga river. From there it proceeded to Kargil, which also remained on the Indian side, and then north-west to the Chinese border. Hunza, Gilgit, Baltistan, Chilas, the great part of Poonch and the smaller part of Jammu remained in control of Pakistan and Azad Kashmir. Thus the ceasefire line left the Indians with the bulk of Jammu and Kashmir's territory (139,000 of 223,000 square kilometers, approximately 63 percent) and population"<sup>25</sup>.

"On 5 January 1949, UNCIP once more affirmed that, when the truce agreement had been signed, the question of the accession of the State of Jammu and Kashmir to India or Pakistan would be decided through the democratic method of a free and impartial plebiscite"<sup>26</sup>. The American administration of President Harry Truman believed that an early resolution of the Kashmir problem remained imperative if the uneasy and tenuous truce between the forces of the now nearly-belligerent states was to be preserved. "In collaboration with Great Britain, the United States recommended to the Security Council that a single negotiator be appointed, with broad authority to mediate between India and Pakistan. By the end of the year, on 17 December 1949, a Canadian diplomat, General A.G.L. Mc Naughton, was appointed mediator. McNaughton submitted a series of proposals, suggesting demilitarization of Kashmir to ensure an impartial plebiscite in Kashmir. These proposals were rejected by India. Nehru's main complaint related to the details of the troop withdrawal proposals and to the fuzziness of the provision for arbitration<sup>27</sup>. "In accordance with the Security



Council resolution of 14 March 1950, Fleet Admiral Chester Nimitz, commander of the US Navy in the Pacific Navy during World War II was appointed the plebiscite administrator. The plebiscite administrator was to enjoy quasi-sovereign powers over the state of Jammu and Kashmir"<sup>28</sup>. The proposal was however rejected by the Indian side, which maintained that the state had become a part of the Indian Union since 26<sup>th</sup> January 1950.

"Irresolvable difficulties over procedural matters led to the non-implementation of both the original UNCIP resolution of 13 August 1948, and the extended resolution of 5 January 1949 which sought demilitarization and the appointment of a plebiscite administrator"<sup>29</sup>.

After the failure of Mc Naughton's effort, the Security Council sent prominent Australian jurist Sir Owen Dixon to South Asia to try his hand. Arriving during the oven-like heat of May, Dixon toiled through the summer of 1950, working quietly with Nehru, Pakistan's Prime Minister Liaquat Ali Khan, and others. When he concluded that a statewide plebiscite was impractical, the Australian suggested "limiting the vote to the Valley while partitioning the rest of the state on religious lines. In the end, this

proposal failed after Nehru rejected the idea of UN control of the Valley during the plebiscite"<sup>30</sup>.

The Australian, who perhaps came closer to reaching a Kashmir settlement than anyone else, left disappointed at the end of the summer. In his report to the Security Council, Dixon wrote, 'I have formed the opinion that if there is any chance of settling the dispute over Kashmir by agreement between India and Pakistan it now lies in partition and in some means of allocating the Valley rather than an overall plebiscite.' "He recommended that the UN not pursue the mediation effort on Kashmir, letting the two countries seek a political settlement on their own"<sup>31</sup>.

#### **IV. THE ENDLESS IMPASSE AT THE UN**

As the mandate of UNCIP expired, the UNSC passed Resolution 91 on March 30, 1951 designating the UNMOGIP to continue its supervision of the ceasefire in Jammu and and report violations thereof to the UN Secretary General and also to both the parties.

1951 saw a renewed effort to tackle Kashmir with Dr. Frank Graham, US Senator with a reputation of having resolved the Dutch-Indonesian dispute,




appointed as UN mediator. His approach was to package ideas into a series of detailed points and then seek agreement on these by both the sides. By October, Graham was down to three outstanding questions: the number of Indian troops to remain in Kashmir after demilitarization, the length of the demilitarization period, and the date for the formal appointment of the plebiscite administrator<sup>32</sup>. At the United Nations, the Russians generally remained silent during Kashmir debates until 1952. By not openly taking sides, they presumably hoped to avoid damage in their relations with either India or Pakistan. Soviet delegate Jacob Malik thus caused surprise when in January 1952, he sharply criticized Dr. Frank Graham's report to the Security Council<sup>33</sup>. The same year, "the Soviet representative at the Security Council said that the purpose of the United States and Britain was to convert Kashmir into a protectorate under the pretext of rendering assistance through the United Nations"<sup>34</sup>. "At the end of 1955, Premier of the Soviet Union Nikolai Bulganin and Nikita Krushchev stopped at Srinagar, where their visit marked a new phase in Indo-Soviet relations. They stated that the people of Kashmir had clearly already decided to join India. 'We are so near that if ever you call us from your mountain tops we will appear at your side,' said Krushchev"<sup>35</sup>. This overt support from Russia of course would further strengthen Indian stance and in the bargain potentiated what increasingly looked to be a stalemated scenario.

Graham labored on until early 1953 before giving up. The final report, his fifth, reached the Security Council on 27 March 1953. Graham's report added to an impressive library of official documentation on unsuccessful efforts to resolve the Kashmir dispute. 'Nothing had been achieved, in fact, since India and Pakistan agreed upon the ceasefire in 1949. Although there was no progress toward a settlement, the guns at least had remained silent,'<sup>36</sup> he reported.

"By the late 1950s, the United Nations had ceased to be a viable forum for the resolution of the Kashmiri dispute. On 24 January 1957, the Security Council approved a five-power resolution, permitting Gunnar Jarring, the Swedish President of the Security Council to go to the subcontinent on a mandatory mission. Jarring visited India and Pakistan during March and April 1957. He stated that for the time being the present demarcation line must be respected and that the use of force to change the

status quo must be excluded. The UN Security Council subsequently passed a resolution expressing its concern over 'the lack of progress towards a settlement of

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 Page: 97

the dispute' shown by Jarring's report"<sup>37</sup>. Indian leaders were adamant in their negotiations with him and conveyed that there could be no solution to the Kashmir problem until parts 1 and 2 of the UNCIP Resolution were implemented (in other words, Pakistani forces were withdrawn from the Pakistani occupied Kashmir). "On 16 November 1957, the Security Council called on Dr. Graham to renew his efforts at the UN. On 18 March 1958, Dr Graham reported to the Security Council of the failure of his mission"<sup>38</sup>. The issue was gradually slipping in a state of stasis, the endeavors of the UN notwithstanding.

"In 1962 Dr Graham returned again to the sub-continent. But the draft resolution, reminding the parties of the principles contained in their earlier resolutions calling for a plebiscite, was not adopted. For the first time, instead of abstaining, the Soviet Union voted against the resolution"<sup>39</sup>.

"In October 1963 the Government of Pakistan once more referred the question of Kashmir to the Security Council and, in the Spring of 1964, the issue was debated for the 110<sup>th</sup> time in fifteen years. But, in view of the Soviet veto, there was little the United Nations could do. The President of the Security Council expressed the concern of all the members that 'two great countries which have everything to gain from reestablishing good relations with each other and whose present disputes, particularly that centering upon Jammu and Kashmir, should be settled amicably in the interest of world peace"<sup>40</sup>.

The multilateral involvement generally through the forum of the UN gradually went into abeyance, the last earnest foray made by an outside power being witnessed in the Tashkent conference (though an exercise in futility so far as the resolution of Kashmir's status which was an issue that triggered the war was concerned) convened to end the Indo-Pakistan hostilities of the year 1965, until the issue burst upon the international landscape towards the close of the 1980's marked by the outbreak of a secessionist movement in the Kashmir valley, (coinciding not accidentally with the Russian withdrawal from Afghanistan as the militants who had been fighting there became available to stir up trouble in Kashmir as Islamic zeal was systematically injected into the Valley) when again, the world would sit up and take notice of South Asia, a decade later to be branded by an American President as "the world's most dangerous place".

 Page: 98

## **V. 1971 AND SIMLA-THE WATERSHED**

Year 1971 was the last time that the Security Council of the UN passed a resolution that pertained to Jammu and Kashmir, occasioned by the Indo-Pakistan war of the year 1971 which did not figure Kashmir as the issue of contention, in fact the only Indo-Pak conflict not sparked by their competing claims on Kashmir. The UNSC demanded "that a durable cease-fire and cessation of all hostilities in all areas of conflict be strictly observed and remain in effect until withdrawals take place, as soon



as practicable, of all armed forces to their respective territories and to positions which fully respect the cease-fire line in Jammu and Kashmir supervised by the United Nations Military Observer Group in India and Pakistan"<sup>41</sup>. UNMOGIP has since remained in the area to strictly observe the ceasefire of 1971 and report of its breaches, if any, to the UN Secretary General.

Post the Indo-Pak war of 1971 which saw the signing of the Simla Agreement in the subsequent year (which envisions a bilateral resolution of the Kashmir issue), the UN involvement in Kashmir has been for all practical purposes non-existent. The Agreement did not mention a plebiscite or refer to the UN resolutions calling for one, the important reason being Indian desire to remove the UN as an actor in the Kashmir dispute. The old 1949 ceasefire line was devised with UN help; the new 1972 Line of Control was not, once more reflecting India's resolve to flout the multilateral organization. "India and Pakistan disagree on UNMOGIP's mandate in Kashmir as India argues that the mandate of UNMOGIP has lapsed after Simla agreement because it was specifically established to observe ceasefire according to Karachi Agreement"<sup>42</sup> of 1949 and this line no longer existed as the agreement converted the cease-fire line of 17 December 1971 into the Line of Control (LOC) between India and Pakistan. The Secretary General of the United Nations has however consistently maintained that the UNMOGIP should continue to function arguing that no resolution has been passed to terminate it<sup>43</sup>. India has been arguing that UNMOGIP's role has been overtaken by the Simla Agreement of 1972 which envisions a bilateral resolution and does not admit of a third party role. The UN official, UN's chief military observer in India and Pakistan mission - UNMOGIP - Major General Young Bum-Choi has recently asserted that the UN mandate 307, which was issued in 1971, directs the UNMOGIP to supervise along the LOC and report back to the UN headquarters and made it clear that the UNMOGIP will not be wound up. He further added that "UN's position is that UNMOGIP could be terminated only by a decision of the Security

Council. The Simla agreement does not supersede the UNMOGIP mission here until another UN resolution for terminating it is issued"<sup>44</sup>.

In the eighteen years following the 1971 UNSC Resolution and the outbreak of insurgency in the Valley, the United States has exhibited prompt leadership in the international efforts to address the dispute, especially in scenarios when it spawned an India-Pakistan crisis or threatened to spiral into situations with potential dire implications. But in all such situations, neither the US, nor any other country exhibited ambiguity in emphasizing on the merits of a bilateral approach towards resolution of contentious issues. The US administration reiterated its stand to not act as a mediator in the dialogue between India and Pakistan on the Kashmir issue on the eve of US Secretary of state John Kerry's visit to Pakistan in August 2013. "There's no change in policy in terms of where we are on that, which is that we do not see ourselves or seek to be in the middle of any conversation between India and Pakistan on Kashmir. But certainly we are supportive of the moves that both India and Pakistan have made to normalize relations", said a senior official, travelling with Kerry to Pakistan<sup>45</sup>. In fact US has been maintaining for a long time now that Kashmir is an issue to be decided upon by India and Pakistan and has pursued a "hands off" and "cheering from the sidelines" approach vis-à-vis Kashmir though when the Kashmir issue was first referred to the UNSC, the United States was in the forefront seeking to settle the contentious matter through the multilateral forum of the UN.

The last time the UN Security Council passed a resolution calling for plebiscite in

Kashmir was in 1957, when the total UN membership was eighty-two. The reason for this and for Kashmir to remain a problem that is neither resolved nor set aside is Pakistan's tendency to trump its strategic thinking by sentimentality. This unstrategic thinking has led to a loss of sympathy on the issue for Pakistan among the international community and a hardening of India's position, making negotiations nearly impossible.

The present United Nations Secretary General Ban Ki-moon has repeatedly maintained "that as far as the role of the good offices is concerned, the United Nations would normally take that initiative when requested by both the parties concerned"<sup>46</sup>, ruling out the possibility of interjecting itself into the dispute unless both parties were willing. After India conducted surgical strikes across the LOC to destroy Pakistan assisted terror launch pads, the UN secretary-general Ban Ki-moon made an offer to intercede between



Page: 100


India and Pakistan to reduce mounting tensions over POK. The offer came in the wake of Pakistan's ambassador's personal request to him for a personal intervention while India has consistently reiterated that it did not want to aggravate the situation. Ban called on both sides to take prompt steps to de-escalate the situation and to address differences while urgently requesting for utmost restraint.

## **VI. CONCLUSION**

Since the de facto border clearly favors India in territorial terms, India is the stronger and the status quo power in this conflict. India's very dogged resolve to preserve the status quo has been countered by the reinforcement of a matching obstinate revisionism and irredentist tendencies in Pakistan as exhibited in its audacious adventures of the military variety in 1948, 1965 and later 1999 leading to a stalemated conflict, static and frozen over the near seventy years since its genesis, the efforts of international organizations being rendered futile, they themselves being turned into mere mute and effete spectators in the task of resolution that appears to be Herculean in proportions. The success of the United Nations, despite Kashmir being one of oldest on the list of issues in dispute on the UN agenda, has clearly been mixed. It played a critical role in mediating the ceasefire between India and Pakistan in 1948 and again in 1965 which had Kashmir at its core, as also in bringing about the Karachi Agreement that drew the ceasefire line between the two warring nations. The UN also established the UNMOGIP to supervise the ceasefire line. However, with signing of the Simla Agreement in December 1972, India sees no merit in the continuation of the UNMOGIP arguing that as the agreed establishment of the LOC superseded the UN mandated ceasefire line, the UNMOGIP had no role of supervision and its mandate has lapsed. Despite being the subject of exhaustive deliberation, investigation and mediation, neither the UN mandated phased withdrawal of troops from both the sides of the ceasefire line in the princely state of Jammu and Kashmir has been affected nor the Resolution of plebiscite been implemented. Though the UN involvement in Kashmir has been reduced to a naught, the various resolutions on Kashmir have fashioned a very definite Kashmiri political identity apropos of the conflict therein. Indian plaint to the UNSC back in January of 1948 was categorically confined to Pakistan's aggression in the state of Jammu and Kashmir and not a plea to the world body to adjudicate on the question of accession per se. However in the long course of the UN involvement, not only has India's specific complaint remained without redress, imbuing international diplomatic parlance with the term 'disputed' to describe the status of Kashmir has triggered political mobilization, especially in the Kashmir Valley, around a

separate national identity for the Kashmiris. In fact it can be argued that the UN aegis by restraining a full-fledged armed

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 Page: 101

confrontation as a means of dispute resolution between the contending parties has encouraged an inertia that seems to have deadlocked the conflict.

India with a non-aligned orientation of foreign and security policy is skeptical of any multilateral institution for maintaining its territorial integrity. In fact it places greater faith on a bilateral approach in dealing with its neighbors rather than intervention from a third party which is reflected in its wariness *vis-a-vis* the United Nations. India with its aspirations for a seat in the Security Council should however show greater confidence in dealing with the UN at the same time seeking its reform and a seat in the expanded Council.

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<sup>1</sup> HOWARD B. SCHAFFER, *THE LIMITS OF INFLUENCE. AMERICA'S ROLE IN KASHMIR* 9 (Penguin, 2009).

<sup>2</sup> WAJAHAT HABIBULLAH, *MY KASHMIR, THE DYING OF THE LIGHT*, 6-7 (Penguin, 1st ed. 2011).

<sup>3</sup> HOWARD B. SCHAFFER, *THE LIMITS OF INFLUENCE. AMERICA'S ROLE IN KASHMIR*, op.cit. 2-3.

<sup>4</sup> HOWARD B. SCHAFFER, *THE LIMITS OF INFLUENCE. AMERICA'S ROLE IN KASHMIR*, op.cit. 2-3.

<sup>5</sup> LEE WARNER: 'THE PROTECTED PRINCES OF INDIA', 105 (Macmillan, 1894).

<sup>6</sup> MAURICE GWYER AND A. APPADORAI, *SPEECHES AND DOCUMENTS ON INDIAN CONSTITUTION 1921-1947*, Vol. II, 775 (Oxford University Press, 1957).

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