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by
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The undersigned, appointed by the Dean of the Graduate Faculty, have examined a thesis entitled


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[Signatures]

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PREFACE

The eleven-year old Kashmir dispute between India and Pakistan has still to be solved by the United Nations or the parties themselves. An uneasy and tense situation continues to smolder in the Indo-Pakistan sub-continent. The youthful United Nations has, however, been successful in effecting a cease-fire in Kashmir. It has prevented the outbreak of a full-scale war between the two parties and has maintained the status quo through stationing a Military Observers Team along the cease-fire line pending a final settlement.

The main purpose of this work is to present a complete and detailed account of the origins, evolution, nature, and consequences of this highly inflammable dispute, in the hope that it will contribute to a realistic appraisal of the problem. Special emphasis is given to the means used by the Security Council of the United Nations in its attempt to solve this international dispute within the framework of the United Nations Charter. The writer's primary reason for undertaking this research is that the Kashmir dispute makes an excellent case study in examining and appraising the machinery and efficiency of the United Nations with regard to the pacific settlement of international disputes. Another reason is that the
Kashmir conflict is highly significant in terms of comprehending over-all Indo-Pakistan relations; relations which directly affect the destiny and welfare of 460 million people in South Asia. The future of these relations will in large part be determined by the outcome of the Kashmir dispute.

Being aware of directly conflicting national interests and the diametrically-opposed views of India and Pakistan not only on the origins of the dispute but also with regard to the means of solving it, the writer intends to pursue the work strictly from an objective and impartial point of view. Since this work is primarily a case study of United Nations mediation efforts in international disputes, the issue is viewed mainly in its political aspect. Nevertheless, in the Kashmir affair there are certain basic questions, the legal aspects of which are so important that without probing them from the viewpoint of international law a comprehensive grasp of the whole issue is impossible.

For data on the background and origins of the dispute, the writer has had recourse to many books on India and Pakistan written by various authors of different nationalities. With regard to the Security Council proceedings on the Kashmir question, he has depended on the
Official Records of the Security Council. The writer is fortunate to have had access to authentic copies of all United Nations documents on the Kashmir question. The most important of these are resolutions passed in the Security Council, and by the United Nations Commission for India and Pakistan. Equally valuable are the reports of the Commission, and of the individual United Nations mediators. The writer has tried to be faithful to the original sources both in word and spirit. In order to avoid possible misunderstanding and controversy and to assure the authenticity of references, he has quoted directly from these original resolutions and reports with regard to many critical points of the problem.
ACKNOWLEDGEMENTS

The writer is indebted to Dr. Minoo Adenwella, under whose direction this work was conducted. Many constructive suggestions and scholarly criticisms were offered by the latter in the course of this study. The writer is also grateful to Dr. Louis G. Kahle for his kindness in devoting time to the reading of the manuscript and in giving invaluable advice. Acknowledgement should be also given to Mr. James W. Sire, M. A., for his co-operation in carefully examining the manuscript.

Mrs. Ann Todd Rubey, Head of Reference Department, the University of Missouri General Library, greatly facilitated the writer’s work by helping to search for and acquire valuable reference materials. The St. Louis Public Library kindly supplied him with the authentic (mimeographed) copies of all United Nations documents on the Kashmir question. The Embassy of India in Washington and the Pakistan Permanent Delegation to the United Nations in New York generously furnished him with collections of United Nations documents, government documents, and other various literature on Kashmir. For this the writer is very grateful.

The writer finally wishes to express his gratitude to Mrs. Joseph Wendling for undertaking the typing of this thesis.
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CHAPTER I

BACKGROUND OF THE KASHMIR DISPUTE

Geographical location of the State of Jammu and Kashmir. Jammu and Kashmir is the official name of the State, which is generally referred to as Kashmir. The State consists of the Valley of Kashmir in the center, Jammu in the south, Ladakh in the east, Baltistan, Hunza and Nagir in the north, the Gilgit Agency composed of several political districts in the west, and Muzaffarabad, Riasi, Poonch, and Mirpur to the west of the Valley.\(^1\)

Kashmir borders Pakistan, India, Tibet, Sinkiang, Afghanistan, and the Soviet Union. The northwestern boundaries of the State are still indefinite today. Its border with the Soviet Union is about 20 miles long on some maps, while on others (including some Russian maps)\(^2\) it ends at a common point with the borders of both Sinkiang and the Soviet Union.\(^3\) Because of the fact that the frontiers of Afghanistan, Pakistan, the Soviet Union


\(^2\)Bol'shoi Sovetskii Atlas Mira (Moskva: 1937), cited by *Ibid.*, p. 6. For a comprehensive sketch of the boundaries of the State, see the map on the following page.

\(^3\)Ibid.
--- Undefined Boundary.

--- Defined Boundary.

--- Provincial Boundary.
and China meet in the small area of the northernmost
tech of Kashmir, the State is of considerable geographic
importance to the principal powers of central Asia.

The total area of the State is about 84,471 square
miles,4 about the same size as the state of Minnesota.5

The total population of the State was, according
to the recent statement of the 1951 census, 4,382,680.6

The rate of increase in population since the 1941 census
has been estimated at one per cent per year.7 Seventy-
seven per cent of the total population was Muslim,
approximately 20 per cent Hindu, 1.5 per cent Sikh, and
1 per cent Buddhist.8

Brief history of Kashmir up to the Dogra dynasty.

Over the first two thousand years up to the rise of the
Dogra dynasty, the political history of Kashmir was
colored by the constant flow of invasions and dynastic
eruptions. Most authorities agree that the history of

4The Statesman's Year-Book (New York: The

5Korbel, loc. cit.

6Times of India [Bombay], July 29, 1952, cited by
Michael Brecher, The Struggle for Kashmir (New York:

7Pakistan Permanent Delegate to the United Nations,

Kashmir starts with the reign of Asoka, the great Buddhist monarch, who ruled the State from B.C. 269 to about 232. After the short period of Buddhist rule, the Hindu dynasty reigned in Kashmir until the later part of the twelfth century. Seizing power after a Tartar invasion, Rainchan Shah, a soldier of fortune, became the first Muslim king of Kashmir. The Muslim dynasty lasted for the next three centuries, and in 1586 was conquered by Akbar of Moghul. The Moghuls ruled Kashmir until the Afghans took it over in 1753. After sixty-three years of Afghan rule, the Sikhs, coming from the adjacent Punjab, ousted the Afghans and annexed Kashmir as a protectorate of the Sikh empire under Ranjit Singh. The Sikhs ruled Kashmir until 1845, when war broke out between the British and the Sikhs of Punjab.

The Kashmiris were ruled brutally and oppressed mercilessly by all of these monarchs. The resulting accumulated discontent on the part of the Kashmiris eventually erupted into a mass movement during the

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following Dogra dynasty to fulfill the aspiration of the people for popular rights and political emancipation.

The rise of the Dogra dynasty. In 1820 Raja Gulab Singh, a member of the Dogra family and a soldier of fortune, was rewarded by the Sikhs with control over the principality of Jammu in recognition of his assistance to the Sikhs' expedition against the Afghan ruler in Kashmir.\(^{12}\) In 1837 he extended his rule to Ladakh, which hitherto had belonged to Tibet. In 1839 he seized Baltistan from Tibet.\(^{13}\) It was at this time that Gulab Singh consolidated the land of Kashmir as it is constituted today. In this connection the *Imperial Gazetteer of India* notes that "the history of the State, as at present constituted, is practically the history of one man, Dogra Rajput, Gulab Singh of Jammu."\(^{14}\)

When war broke out between the British and the Sikhs in 1845, Gulab Singh at first remained neutral. It was during the decisive battle of Sobraon that he, who was still theoretically a vassal of the Sikh empire, suddenly appeared as a mediator for the British. Later


\(^{13}\) *Ibid.*; and *Imperial Gazetteer of India, op. cit.*., p. 95.

\(^{14}\) *Imperial Gazetteer of India, op. cit.*, p. 94.
he actively participated in the fighting for the British and contributed in no small measure to the military collapse of the Sikhs. 15

The British defeated the Sikhs, and by the Treaty of Amritsar in March, 1846, the British East India Company virtually sold for 7.5 million rupees (1.575 million dollars) the rich Valley of Kashmir to Gulab Singh in recognition of his service to the British victory. 16

While some writers such as Sardar Panikkar referred to it as an acquisition, 17 it was clearly a sale.

By this treaty, the process of consolidation of Dogra rule was virtually completed. It is important

15 Ibid., p. 95.

By the Treaty of Lahore, March 9, 1846, the British acquired the State of Lahore, the hill and mountainous countries between the rivers Beas and Indus (including Kashmir and Hazara) from the Sikhs for the indemnity of one crore (10 million) rupees which the Sikhs were to pay by the treaty but couldn't. (Imperial Gazetteer of India, op. cit., p. 95.)

By the Treaty of Amritsar, "the British Government transfers and makes over, forever, . . . to Maharaja Gulab Singh and the heirs male of his body, all the hilly or mountainous country with its dependencies situated to the eastward of the river Indus and westward of the river Ravi . . . Gulab Singh will pay (for the State) to the British Government the sum of 75 lakhs (seven and a half million) of rupees." (Mohammad Aslam Khan, The Dogra Occupation of Kashmir (Srinagar: Amar Singh College, 1946), pp. 23-30, cited by Brecher, op. cit., p. 7.)

16 Ibid.

17 Brecher, op. cit., p. 7.
to note the significance of this historical event, for it was to have tragic consequences on the internal politics of Kashmir immediately preceding and following the partition of the sub-continent.

**Political development under the Dogra dynasty.**

From the beginning, Dogra rule was despotic and autocratic. Administration of Kashmir until 1947 had been typically medieval in pattern. The living standard of Kashmiris went on at the lowest level through the merciless and discouraging collection of every kind of tax, including one on women.

Beside this absolute autocracy, the communal discrimination between Hindus and Muslims was also a characteristic of Kashmir politics. This was the element most responsible for the Kashmir dispute today. Muslims were almost entirely excluded from the civil service until the 1930's and non-Dogras were completely barred from the State Army. The consequence was a series of riots arising from demands for the termination of discrimination against Muslims. This movement was encouraged by

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the general political development of that time taking place outside Kashmir such as the upsurge of nationalism throughout Asia, the Indian struggle for independence, and the termination of British power in the sub-continent.

The early mass awakening was the aspiration for communal equality within the administration. The first significant movement for the termination for communal discrimination took place when Sheikh Abdullah (the lion of Kashmir) and other popular leaders succeeded in forming the "All Jammu and Kashmir Muslim Conference." It is an undeniable fact that the mass movement started as a communal one on a communal basis and for a communal purpose. However, the character and purpose of the movement was certainly changed in the later 1930's by allowing Hindus and Sikhs to participate in the Conference. The membership was henceforth open to all Kashmiris regardless of their creeds. The primary communal composition of the Conference now evolved into a movement for responsible government and political reform in a close collaboration between Hindus and Muslims. This intercommunication culminated in June, 1939, when

20 Ibid., p. 8.
21 Korbel, op. cit., p. 20.
22 Brecher, op. cit., p. 10.
the Conference adopted its new name, the "All Jammu and Kashmir National Conference."^{23}

The character of the Conference at the beginning and its change at a later period is very significant in terms of understanding the background of the Kashmir dispute because it provides an insight into the origin and evolution of the dispute. This change was chiefly advocated and directed by Sheikh Abdullah. Mr. Josef Korbel, a former member of the United Nations Commission for India and Pakistan, made an interesting comment: "... the origin of the present tragic struggle can, in a sense, be traced back to those months (of 1939)." He observed that the unity of the Muslim Conference was broken due to Sheikh Abdullah's dissatisfaction with the political program and practice of the Muslim Conference in Kashmir. He was, Mr. Korbel said, inspired by the secular concept of Indian society of the National Congress, especially that of Nehru, and was discontented with the Muslim Conference's preoccupation with the struggle between Muslims and Hindus.^{24}

However, Mr. Korbel did not see the real significance of this mass awakening and struggle for a common

^{23}Ibid., pp. 10-11.

^{24}Korbel, op. cit., p. 20.
purpose of all Kashmiris. Hindus and Muslims alike were being oppressed by the Maharaja for their movement and alike were aspiring for the establishment of responsible government beyond the scope of the realization of communal equality. To fight for popular rights and responsible government against despotic princely tyranny was no longer an exclusive affair of the Muslim Conference but the goal of every awakening Kashmiri. This intercommunication provides a strong evidence in support of the belief that Hindus and Muslims not only can live together peacefully but co-operate closely for a common purpose.

This mass awakening for political reform in Kashmir in the late 1930's was no isolated affair but was affected by the general freedom fighting taking place in British India and many other princely states during that period. In 1941, the National Conference became a member of the All-India States' Peoples Conference and in 1946 Sheikh Abdullah, who had for some years been an executive member of the Conference, was elected to the presidency of that organization. The All-India States' Peoples Conference was an affiliation of India's National

25Brecher, op. cit., p. 11.
Congress in the princely states, and Nehru was the president of the Congress.

The objective of the National Conference was well-expressed in the Resolution of October, 1939, which was called the National Demand. It was to call for responsible government subject to the general control of the Maharaja, and a legislature entirely elected by adult suffrage with reserved seats for minorities.26

After the Second World War, the Maharaja made some concessions in response to the popular demand. He offered to appoint two ministers from the elected members of the legislature. The National Conference reluctantly accepted this meager reform but it publicly reasserted the self-determination of people on all political, social and economic issues.27

On the other hand, by early 1940, the communal forces were reviving and rising again, and became a vital part of the all-Indian political scene. After the Lahore Resolution of the Muslim League in 1940, which for the first time proclaimed the goal of an independent Muslim state, the political cleavage between the communal Muslim League and the secular Congress of India became

26Ibid.
27Ibid., p. 13.
deepened and rigid. This political bipolarity affected Kashmir politics in a considerable degree.

Ghulum Abbas and his colleagues, who collaborated with Sheikh Abdullah in the early movement of the Muslim Conference and later opposed the transformation of the All Jammu and Kashmir Muslim Conference into the inter-communal National Conference, reorganized the old Muslim Conference on a strictly communal basis. It started with a pronounced Muslim communal orientation. Inevitably, strife was begun between the leaders of these two parties. The reorganized Muslim Conference became a follower of the Muslim League, and Kashmir's future alignment with an independent Muslim state, Pakistan, was the goal of the Muslim Conference. The link of the National Conference to the Congress, however, did not mean that the National Conference was inclining to the idea of Kashmir's ultimate accession to India. The two organizations were linked merely by the political ideology based on the secular concept of responsible government.

Now this third force joined the hitherto existing political duality of Kashmir, the Dogra dynasty and the National Conference. From 1944 to 1946, both the National Conference and the Muslim Conference actively

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28 Ibid. 29 Ibid.
participated in the Kashmir legislature, and the National Conference was represented in the cabinet. However, the party rivalry in and out of the assembly only gave the exclusive benefit to the Maharaja in pursuing his autocratic rule and reactionary policy against the mass movement. Their energies were constantly diverted from the mutually-agreed-upon objective of responsible government to an interparty ideological conflict.30

When Sheikh Abdullah began the "Quit Kashmir" campaign in early 1946, demanding the immediate termination of autocratic rule in Kashmir, the consequences of the interparty struggle were most acutely demonstrated. Primarily concerned with the objective of the partition of the sub-continent and Kashmir's accession to Pakistan,31 the Muslim Conference found itself in a position of actively supporting the Hindu dynasty in order to stop the National Conference's demand for full responsible government on the secular basis. The Muslim Conference aligned with the Maharaja because they saw Abdullah's demand as the orientation of an independent Kashmir.

In a cable to the arriving British Cabinet Mission, Abdullah denounced the "Sale Deed" of the Treaty of Amritsar and challenged its validity. He demanded the

immediate termination of the autocratic rule of the Hindu dynasty. The memorandum ran as follows:

Today the national demand of the people of Kashmir is not merely the establishment of responsible Government, but their right to absolute freedom from autocratic rule. The immensity of the wrong done to our people by the "Sale Deed" of 1846 can only be judged by looking into the actual living conditions of the people. It is the depth of our torment that has given strength to our protest.32

From this statement and his political activities since the declaration of the "National Demand" in October, 1939, it is hard to believe that Sheikh Abdullah was pursuing a pro-Indian policy and inclining to the idea of Kashmir accession to the Indian Union.

Following his fiery speeches, Abdullah was finally arrested by the Maharaja's government and put in jail. He was tried and sentenced to three-year imprisonment. Many other National Conference leaders were also arrested later.

As the issue over the future disposition of the State along with the partition of the sub-continent became more and more acute, both the National Conference and the Muslim Conference found it necessary to form a

32Opening Address by the Hon'ble Sheikh Mohammed Abdullah to the Jammu and Kashmir Constituent Assembly (Srinagar: November 5, 1951), p. 7, cited by Ibid.
united front against the Maharaja in order to obtain the support and popularity of the people. The two parties entered into negotiation in May, 1946. But the negotiations soon broke down completely due to the demand of the Muslim Conference on the complete disbandment of the National Conference as an organization, in favor of the Muslim Conference's goal of the partition and Kashmir's accession to Pakistan.

While the Muslim Conference was asserting itself as the chief organ of the Muslims in Kashmir, Abdullah and his followers claimed that the accession issue should be resolved only by the self-determination of Kashmiris—freedom and immediate full responsible government from the autocratic rule first, and then determination of accession to India or Pakistan, or to remain as an independent Kashmir solely through the freely-expressed will of the people. Religion should not take a part in shaping the nation's destiny.

After the arrest of Sheikh Abdullah and other leaders, the National Conference ceased to function in open opposition for the time being, but it continued to

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34 Ibid.
operate as a strong underground movement, particularly in Srinagar. The Muslim Conference was unaffected in its operation and continued to operate until September, 1946.

Now the full energy of the Muslim Conference was devoted to winning the secularists of the National Conference to their goal of the partition and Kashmir's accession to Pakistan. In order to make their two-nation theory appealing to the people, it pursued a strong communalist policy. It advocated that "all problems in Kashmir are essentially Hindu-Muslim problems."36

After consolidating the situation, the Maharaja now turned his attention to the Muslim Conference leaders. On October 25, 1946, Abbas and other Muslim Conference leaders were arrested by the Maharaja's government on the ground of their violation of a recently-enacted law against demonstration.37

Thus, the first stage of the popular movement for political reform and responsible government was smashed through suppression by the end of 1946. This was the

35Brecher, op. cit., p. 16.
36Dawn (New Delhi), September 25, 1946, cited by Brecher, op. cit., p. 16.
37Civil and Military Gazette (Lahore), October 29, 1946, cited by Brecher, op. cit., p. 17.
political situation in Kashmir awaiting the Mountbatten plan of June, 1947, which stated that India was to be independent from the British paramountcy on August 15, 1947,\(^\text{38}\) and the new nation of Pakistan created.

\(^{38}\)Crane, op. cit., p. 57.
CHAPTER II

THE PARTITION OF THE SUB-CONTINENT AND THE TRIBAL INVASION

Facing the outright suppression of the Maharaja's princely government, the two leading political parties in Kashmir, the National Conference and the Muslim Conference, disappeared from the front political scene. The Maharaja's power remained supreme. The two parties, however, continued to operate as underground organizations for their respective political goals. The parties were now more concerned with the future disposition of the State after the independence of the sub-continent than the movement for the realization of responsible government and political reform.

Independence and partition. While the leaders of both parties were in the Maharaja's jail, the day of India's independence was near. This involved the serious question of the partition of the sub-continent. The independence of India came about in a hurried and disorderly manner. After the Second World War, the British government was rather anxious to transfer power to India. However, India was not quite ready in terms of the internal and communal situation. The forthcoming partition involved many difficult problems—economic, geographic and
The question of the accession of Kashmir whether to the Dominion of India or the Dominion of Pakistan was one of the most troublesome problems. Only two months after India's independence, this problem caused the most serious friction between the two Dominions.

On February 20, 1947, the British government announced its definite intention to take the necessary steps to effect the transfer of power to responsible Indian hands by June, 1948.¹

The British government appointed Lord Louis Mountbatten as Viceroy and entrusted him with the tremendous task of transferring power to a unified India or to two separate governments: the Dominions of India and Pakistan. As soon as he arrived in the sub-continent on March 22, 1947, Mountbatten realized it was impossible to have a unified India. He, therefore, proceeded with the task on the basis of the creation of two nations.²

On June 3, 1947, the British government (Attlee's Labor government) declared its intention to partition the sub-continent. It published the so-called Mountbatten


²Korbel, op. cit., p. 44.
plan for the partition and independence of the subcontinent, which was later incorporated into the India Independence Act. The Act was passed by the Parliament and received the Royal Assent on July 18, 1947.  3

This Act not only provided the legal basis for the transfer of power to India and Pakistan but was legally interpreted as granting full freedom to India's 565 princely states in deciding their accessions either to the Dominion of India or the Dominion of Pakistan or for them to remain as independent entities. The document states as follows:

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 at that date in or in relation to Indian States . . . .  4

This interpretation was made clear by Mountbatten in his address to the Chamber of Princes on July 25, 1947.  5

This interpretation of the document of July 18 was also accepted by both the National Congress and the

3Ibid.


Muslim League although the former did so with much reluctance. The reason for India's reluctance to accept this course of free action on the part of the princes, was not one but many. It was not only because India had been long committed to the idea of a unified nation but that she well realized the grave economic repercussions arising from the partition and independent action of the princely states. This was also an outcome of the policy of the National Congress. They had long struggled for the establishment of responsible government both in British India and the princely states and had "called for the curtailment of princely privileges . . ."6

However, a more practical reason for India's reluctance was the geographical situation of these 565 states. Since the vast majority of them were irretrievably linked geographically with the Dominion of India, the princes'

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Ever since the British took over the complete administration of British India in 1858, she recognized some degree of autonomy in princely states and respected the rights, privileges and honors of the princes. The rights of foreign affairs and defense were surrendered to the Paramount Power but the right of internal affairs was retained by the hands of each respective prince.

"British India and the princely states were linked by a sort of personal union: the Viceroy . . . acted also as the British Crown's representative toward the princes." (Korbel, op. cit., p. 46,)
free action on their accession issues and its consequences were far graver to India than Pakistan. If some of these vitally important states strategic to the Dominion of India had become independent or acceded to Pakistan, they could have led India to virtual paralysis and chaos. This was one of Mountbatten's gravest concerns.

At his address to the Chamber of Princes, Mountbatten stressed the point that "there were certain geographical [and economic] compulsions which could not be evaded" on the question of accessions.

Realizing their inability to undertake the responsibility of national defense which had been hitherto exercised by the British, and largely influenced by the Viceroy's advice, all of the princely states except three, Junagadh, Hyderabad and Kashmir, acceded to either India or Pakistan by the appointed day of August 15, 1947. The states with a majority of Muslims generally joined Pakistan and the states mostly inhabited by Hindus acceded to India.

At this stage, Kashmir, unlike others which had either a predominantly Hindu population and a Hindu ruler or a predominantly Muslim population and a Muslim ruler,

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7 Royal Institute of International Affairs. loc. cit.
8 Ibid., pp. 433-34. 9 Ibid., p. 433.
faced serious difficulties. "Out of three states [which did not accede to either Dominion], only Kashmir was to become a serious threat to the peace and security of the sub-continent because the other two states had no frontier contiguous with the boundaries of Pakistan."\textsuperscript{10}

In order to understand the background of the Kashmir dispute and over-all Indo-Pakistan relationships, one ought to bear in mind one fact, that the partition was made in desperation. In Sir Percival Griffiths' term, neither party was ready to accept friendly relations after the division of the country. When the National Congress accepted partition, "the Hindu as a whole bitterly resented the partition . . . and many among them openly declared . . . that India would before long reunite the two parts of the sub-continent."\textsuperscript{11}

\textbf{Expectations of Pakistan on Kashmir’s accession.}

The hope of Pakistan in regard to Kashmir's ultimate accession to her was certainly high for many reasons. Seventy-seven per cent of the total population of the State was Muslim. For Pakistan, the broad principle of the partition was that Muslim majority areas would go to her.\textsuperscript{12}

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\textsuperscript{10}Brecher, \textit{op. cit.}, p. 22.
\textsuperscript{12}Callard, \textit{op. cit.}, p. 305.
culture, the Kashmiris were "homogeneous with the people of bordering West Punjab."\(^{13}\) The head waters of three major rivers, the Indus, the Jhelum, and the Chenab, flowed from or through the territory of Kashmir and reached the plains of West Punjab.\(^{14}\) In terms of these religious, communal, cultural, geographic, and economic affinities, Pakistan's expectation of Kashmir's accession to her is understandable.

However, the Maharaja's appraisal of the situation was very different. During his four-day visit to Srinagar in late June, 1947, Mountbatten strongly urged the Maharaja to ascertain the will of the people in regard to accession in one way or another, and announce the result of his findings by August 14th.\(^{15}\) The awaited answer which was supposed to be given to Mountbatten on the final day of their meeting, was shrewdly avoided through the excuse of the Maharaja's colic pain, which made him unable to attend.

The Maharaja was not in the least willing to ascertain the wishes of his people since he knew well that

\(^{13}\)Shikoh, \textit{op. cit.}, p. 17.

\(^{14}\)For the courses of the rivers, see the map of Kashmir on page 2.

\(^{15}\)Alan Campbell-Johnson, \textit{Mission with Mountbatten} (London: Robert Hale Ltd., 1952), p. 120.
accession to the Dominion of India would eventually bring up the substitution of responsible government for his autocratic rule. "The National Congress was democratic and socialistic and bitterly opposed to all forms of autocracy." In Kashmir, "nobody, except a handful of highest privileged Hindus, were in the least anxious for him to remain as Maharaja." Having been a Hindu, accession to Pakistan would eventually have resulted in the loss of his throne. He hesitated to decide on accession to either Dominion. He wished to wait and play for time. Of course, this chronic indecision must be counted a big factor in the present crisis. Mr. Korbel comments: "he was a worthy son of the Dogra."

Standstill agreement. With the passage of time, the Maharaja, however, realized the necessity of securing some kind of understanding with both India and Pakistan. On August 14, 1947, the Maharaja secured a standstill agreement with Pakistan, by which he authorized the latter to operate Kashmir's communications, state railroad, posts and telegraph, and obliged Pakistan to supply Kashmir

Callard, op. cit., p. 306.
Griffiths, op. cit., p. 148.
Campbell-Johnson, op. cit., p. 223.
Korbel, op. cit., p. 63.
gasoline, kerosene, wheat, sugar, salt, cloth and other necessities. A similar agreement was offered by the Maharaja to India but India neither accepted nor rejected it. There was no official explanation for this from the government of India. However, one thing is sure. India thought that such agreements would not help any to open the door to Kashmir's eventual accession to India.

The absence of this agreement between India and the Maharaja and the effectuation of it between Pakistan and Kashmir, as Mr. Shikoh cited, "gave the general impression [only to Pakistanis] that the agreement would eventually fructify into the accession of Kashmir to Pakistan."

"The Muslim Conference . . . had already unequivocally declared itself for such accession." 21

But this assertion disregarded one important fact, perhaps the most important factor for accession. The standstill agreement thus made was confined to Kashmir's communication, postal and telegraphic services only. It never dealt with the issues of foreign affairs and defense, which, together with communication, were the very basis for the accession of every princely state to either Dominion.

20 Srecher, op. cit., p. 23.

Furthermore, the agreement was a temporary measure to maintain friendly relationships with both until Kashmir could decide her accession.22

Pakistan's pressure on Kashmir. During the period between the conclusion of the standstill agreement and the tribal invasion of October 22, Pakistan, according to Indian sources, employed every kind of pressure including an economic blockade against Kashmir as a means to compel eventual accession. In violation of the agreement, Pakistan refused to supply foods and other necessities to her partner. In the middle of September, the railroad service was completely suspended between West Punjab in Pakistan and Kashmir.23

Kashmir charged Pakistan with failure to honor her obligations under the standstill agreement and with the infiltration of armed Muslim bands into Kashmir. Pakistan, on the other hand, countercharged that Muslims in

22Griffiths, op. cit., p. 148.

23S/P.V. 222, Jan. 17, 1948: All Verbatim Records of the United Nations Security Council meeting are, hereafter, to be referred to in an abbreviated form adopted by the United Nations Secretariat as S/P.V., with the appropriate number and date of the meeting. The records are all taken from The Official Records of the United Nations Security Council (Lake Success and New York).
western parts of Kashmir were being maltreated by the Maharaja’s troops.  

During the exchange of these charges and counter-charges between two parties, it was, however, made clear that Pakistan never unequivocally denied her failure to fulfill the treaty obligation for food supply.

Sir Zafrulla Khan, Pakistan’s delegate to the Security Council on the Kashmir problem, explained it before the Council as follows. The stoppage of the supply was due to the massacres of Muslims by Hindus in East and West Punjabs. There were terrible killings going on in those areas. Under circumstances like this, Muslim lorry-drivers of vehicles were afraid of driving supplies through these areas as the killings were taking place even inside Kashmir. Practically, no traffic was possible at that time between West Punjab and Kashmir, and Pakistan never intended to put any pressure on Kashmir to coerce her. The difficulty of railroad operations was caused by India’s failure to supply coal to Pakistan in default of her obligation under the agreement. As a consequence, West Punjab, which was part of Pakistan, suffered from

lack of supplies at that time as well.\textsuperscript{25}

India, however, termed this picture untrue. According to D. C. Setalvad, Indian delegate to the Security Council, it was true that Kashmir became crowded with a large number of refugees, both Sikhs and Muslims, and Muslim refugees were passing through parts of Kashmir from East Punjab to West Punjab. Kashmir, therefore, became a sort of channel through which they passed. When both East and West Punjabs were in the flame of these communal passion and disturbances raised by the Punjab Muslims, Kashmir, nevertheless, "remained quiet." There was no killing going on inside Kashmir by Hindus.\textsuperscript{26}

\textbf{Poonch revolt.} Amidst this confusion, in the second week of August, 1947, there occurred the Poonch revolt, the prelude to the tribal invasion of October 22. This revolt was, according to Pakistan, an example of the Hindu-Muslim conflict which was put down by the Maharaja's troops.

India charged that the revolt was prompted and promoted by the Muslim leaders in West Punjab. She again claimed that "excepting these killings of Hindus and Sikhs which were committed by the Muslims in the raid, there

\textsuperscript{25} \textit{F.V. 222, Jan. 17, 1948.}

\textsuperscript{26} \textit{Ibid.}
was no disturbance at all [in Kashmir].”

All of these contentions are, however, not wholly valid in the writer’s opinion, because both parties neglected the fundamental character of the revolt. The revolt was a peasant uprising against the brutally autocratic rule of the Raja of Poonch and the Dogras. It was not a communal strife nor a raid committed primarily by the Muslims from West Punjab, although a good many Muslims flew a banner of the revolt against the Hindu ruler.

There were particular regional elements involved in this revolt. Poonch was the area which had, for a long time, been most ruthlessly exploited by the Dogras. When proprietary rights were granted to the landholders of the State, Poonch alone was excluded from this fundamental reform. The result was the existence of widespread and deep-rooted grievances on the part of Poonchis during the succeeding years.28

Traditionally, Poonch was a recruiting ground for the British Indian Army. When sixty thousands soldiers returned home from the service after the Second World War, they found their fellow-Poonchis suffering even

27 Ibid.
more grievances from ever-intensifying taxation imposed
by the Raja. These ex-service men gradually organized
their guerrilla forces to fight the Dogra despot and
smuggled arms from the North-West Frontier Province of
Pakistan. Thus, they raised the banner of revolt for
their own political emancipation.

Once the revolt started, it spread from West Punjab
to the eastern part of the province and was joined by many
other Muslims. It came to a climax when the full-scale
tribal invasion occurred from the North-West Frontier
Province and West Punjab of Pakistan.

The tribal invasion. On the early morning of
October 21, 1947, well-equipped thousands of the Afridi
and Mahsud tribesmen of Tirah and Waziristan moved swiftly
down to the Jhelum Valley Roads. When the Maharaja saw
the tribesmen advancing rapidly and virtually unopposed
toward Srinagar, and capturing the city of Balamulla,
some thirty-five miles from Srinagar, the Maharaja
realized the results of his indecision. On that night
he requested India for urgent military aid while

33Frank Morse, Jawaharlal Nehru (New York: The
34Ibid.
threatening Karachi by telegraph that he would call upon outside help if Pakistan did not stop her unfriendly acts.35

At a meeting of India's Defense Committee, Mountbatten, now the Governor-General of the Union of India, strongly advised that it would be impolitic and improper to send troops unless Kashmir first accede to India constitutionally.36 The Prime Minister Jawaharlal Nehru and his most influential advisor and the greatest spiritual leader of India, Mahatma Gandhi, then agreed with this view. V. P. Menon, right-hand-man of Sardar Vallabhbhai Patel (the Deputy Prime Minister and Minister of States; Home Affairs; and Information and Broadcasting) in the Ministry of States, flew to Kashmir immediately to investigate the situation.

Advised by Menon and convinced of the urgency of the situation under which no other choice was possible, the Maharaja wrote a letter of request for military aid in exchange of his offer of accession to the Union of India.37 The Maharaja also appointed Sheikh Abdullah, who

35Korbel, op. cit., p. 79. 36Moraes, loc. cit.

37For the Maharaja's letter to Lord Mountbatten desperately asking for aid together with the offer of Kashmir's accession to India, see White Paper on Jammu and Kashmir, op. cit., pp. 46-48; and Korbel, op. cit., pp. 80-82.
had been released from prison early in September of that year, to head the interim government to carry out the responsibilities in the emergency with his Prime Minister. The accession was supported by Sheikh Abdullah and the National Conference.38

The Defense Committee accepted the accession and decided to send troops to Kashmir. Again, it was Mountbatten's initiative and insistence that India put a reservation in the instrument of accession. Mountbatten's reply clearly stipulated that, once law and order was restored in Kashmir, the issue of accession should be decided by a free plebiscite of Kashmiris.39 This stipulation made India's acceptance of accession conditional on the will of the people.

This reveals the legalistic character of Mountbatten's way of thinking. This is nothing but his philosophy that no state should constitutionally accede to either Dominion unless the will of people was freely and properly ascertained.

Although the Indian government referred to this action as high statesmanship40 and Nehru confirmed it as

38 Moreas, op. cit., p. 391. 39 Ibid.
40 S/P/V. 227, Jan. 15, 1948.
evidence of India's *bona fide* attitude toward the accession. Mountbatten's action is responsible for the character of the present dispute. If he had not included this reservation, the picture of the dispute might be different today. He should have known that "if the war over this issue were to develop between the two Dominions, it would not be on the basis of the legality of such method of accession, but rather over the fact itself."42

The question of Pakistan's complicity in the initial stage of the invasion. The question of Pakistan's role in the initial invasion remained unclear and formed a subject of constant controversy between India and Pakistan for the following years. This tribal invasion and subsequent accession of Kashmir to India compose the core of the present dispute.

Both India and Pakistan took diametrically opposed positions on the circumstances which gave rise to the invasion and accession offer.43 In order to grasp the fundamental character of the dispute, it is, therefore, essential to examine and analyze the contentions of both on these crucial issues.

41Moses, *loc. cit.*
42Korbel, *op. cit.*, p. 79.
43Brecher, *op. cit.*, p. 28.
The Indian government had no doubt at all about the fact that the invaders, among whom were a large number of Pakistani nationals, had been helped in every possible way by the Pakistan government. They were allowed transit through Pakistan territory by motor transport and railway trains, and supplied petrol, foods and accommodations; and the arms they possessed were manifestly those of the Pakistan Army. Pakistan Army personnel had also been captured by Indian troops in the operations in Kashmir.\footnote{\textit{Jawaharlal Nehru, Independence and After: Collection of Speeches 1946-49} (New York: John Day Co., 1950), p. 67. (Nehru's statement at a press conference, New Delhi, Jan. 2, 1948).}

However, Pakistan's view was that the invasion was a spontaneous and voluntary action of the tribesmen rushing to aid their relatives and co-religionists suffering from atrocities committed by the Dogra troops. The government, however, did everything it could to discourage the movement short of war. The invasion was started and carried out without the knowledge of the government officials and was beyond government restraint.

This explanation was well-expressed in a letter of Ali Khan, the Prime Minister of Pakistan, to the Prime Minister of India during their cable correspondences from October 1947 to December 1947:
The sole responsibility for the disturbances which occurred in the State must squarely lie on the Maha-
raja and his Government, who . . . persisted in their policy of repression of Muslims. Repression was
followed by resistance, particularly in the area of Poonch which is inhabited by a large number of ex-
soldiers. The resistance in its turn was met with more repression till the Dogra savagery supported by
the brutality of Sikh and Rashtriya Sewak Sangh [R.S.S.] bands created a reign of terror in the State.
This state of affairs naturally aroused strong feelings of sympathy throughout Pakistan, particularly
among the Muslims living in the contiguous areas who had numerous ties of relationship with the persecuted
people of the State. Some of these people went across to assist their kinsmen in their struggle for freedom
and indeed for existence itself.45

There are, however, many facts, which hardly confirm this contention.

First, the invaders were amazingly well-equipped with up-to-date weapons such as two and three inch mortars,
antilankan rifles, Mark-V mines and even light tanks and flamethrowers.47 These tribesmen, who had been living in
the area lying between the settled regions of the North-West Frontier Province and the border of Afghanistan,48
came to Kashmir by a long route, marching through the Frontier Province and then West Punjab. How could these
large numbers of organized armed forces possibly be

46 *Moraes*, op. cit., p. 388.
47 *Time* (magazine), Nov. 10, 1947.
transported to Kashmir without the knowledge and connivance of the provincial government of the North-West Frontier Province and of Pakistan? According to the statement by Pakistan's delegate before the Council, during this period traffic was completely suspended not only between West Punjab of Pakistan and Kashmir but even between West Punjab and its adjoining provinces of Pakistan, due to the shortage of coal and the difficulty of railroad operations.

Evidently the invaders not only had the connivance of the officials of the provincial government and of Pakistan but actually were helped to a certain extent in their transit through Pakistan territory by the Pakistan government in their use of motor transport and railways trains. They were also provided with petrol, foods and accommodation.

By the time of the Srinagar battle, the entire force was led by General Akbar Khan, widely known by Kashmiris as the Tiger of Kashmir. It is interesting to note that General Khan later became the Chief of Staff of the Pakistan Army and still later was imprisoned by the Pakistan government for organizing a plot against the government.

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49Korbel, op. cit., p. 75; and Moraes, op. cit., p. 393.
Second, Pakistan insisted that the invaders spontaneously and uncontrollably rushed to save their brothers and co-religionists from massacre by Dogra troops. But, once they were inside Kashmir, the invaders massacred indiscriminately Muslims, Hindus, Sikhs and even Christians, including many British residents in Srinagar. It was at this time that a British officer, Colonel Dyke, and his wife and several nuns of the Catholic Franciscan Convent were killed in Baramulla.50

In this respect, Pakistan cannot escape her state's responsibility for injuries and manslaughters of foreign nationals under international law.

The state's responsibility for injury to an alien incurred by acts of private individuals or mob violence arises in case of "the actual or implied complicity of the government in the act, before or after, either by directing or approving it, or by an implied, tacit, or constructive approval in the negligent failure to prevent the injury, or to investigate the case, or to punish the guilty individuals . . ."51 "The failure of a government

50Morese, op. cit., p. 390; Newsweek, Nov. 17, 1947; and Korbel, op. cit., p. 76.
to use due diligence to prevent a private injury is a well-recognized ground of international responsibility."^52

These records make observers question the character of the invaders and the motive of the invasion. According to many sources including a British official document, these tribesmen were a thorn during British rule of the sub-continent. The way the British pacified them and kept them from frequent violence was to post well-armed guards at all strategic locations and then pay subsidies to their chieftains in exchange of their promise of good behavior. After the British left there, newly-born Pakistan could not afford to consolidate these posts nor pay subsidies to their heads.^53 Pakistan was born in insecurity, without any national, economic, and cultural unity. The nation was instable from the beginning. Amidst internal insecurity and the many difficult problems arising from the partition, the government had to worry about the traditional raiding habits of these war-like tribesmen. It is understandable that, under those circumstances, the Pakistan government might see that the best way was to turn the direction of invasion somewhere outside the territory of Pakistan—specially to Kashmir, since it

52Ibid.
53Korbel, op. cit., p. 74.
would serve a national interest. It was a policy of killing two-birds-with-one-stone, for Pakistan.\textsuperscript{54}

It would not require much effort to incite the tribesmen. Naturally they did not hesitate to invade Kashmir when "they saw an opportunity of gaining both religious merit and rich booty in the civil war which was being waged between Muslim and Hindu in the southern part of the state."\textsuperscript{55}

Third, during the meeting of October 30 in Lahore discussing the situation of Kashmir between Mountbatten and him, Mohammed Ali Jinnah, the Governor-General of Pakistan, and the greatest leader of the Muslim League and the creator of the state of Pakistan, suggested that if the Indian forces withdrew from Kashmir, the raiders would withdraw simultaneously. When Mountbatten mischievously inquired about how the tribesmen could be induced to remove themselves, Jinnah replied sharply, "if you do this [withdraw your troops], I will call the whole thing off."\textsuperscript{56} This statement admits Pakistan's actual control

\textsuperscript{54}Moraes, \textit{op. cit.}, p. 389; Korbel, \textit{op. cit.}, pp. 74-75; and Salehhoij Abdul Kader, "Kashmir—Challenge to Indian Muslim," \textit{Indian Muslim on Kashmir} (New Delhi: The External Publicity Division Press), pp. 4-5.


\textsuperscript{56}Campbell-Johnson, \textit{op. cit.}, p. 229; and Moraes, \textit{op. cit.}, p. 393.
over the tribesmen and their operations.

The question of Pakistan's role in the initial stage of the invasion was, however, publicly clarified when the United Nation Commission for India and Pakistan made its First Interim Report on November 22, 1948. In its report the Commission states that:

at the informal meeting held on 1 August . . .
Sir A. Dundas, the Governor of the North West Frontier Province . . . added that the movement of tribesmen into Kashmir had in fact to be canalized through his Province in order to avoid the serious risk of outright war with the territory of Pakistan. Further, he said that the tribesmen obtained petrol from local sources in Pakistan and made use of railways and local motor transport. Mr. Mohammad Ali added that the denial of this petrol would have amounted to an economic blockade and might have implied grave consequences for the Government of Pakistan . . . Sir Zafrulla confirmed that petrol was obtained by the tribesmen from local sources.57

This was further proved by the budget speech of Abdul Quayum Khan, the premier of the North-West Frontier Province, advocating a special grant for the tribesmen who had joined the Kashmir campaign as follows:

The House will recall the fact that in our great danger the Muhsud [tribesmen] responded to our call by rushing to the rescue of the oppressed Muslims of Jammu and Kashmir State, without any remuneration.

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57S/1100, Nov. 22, 1948. All the United Nations Security Council's documents are, hereafter, to be referred to as S/... commonly used abbreviation at the United Nations Secretariat, with the appropriate number and date of the document. All contents of the documents are taken from authentic copies (mimeographed) obtained through the mid-western inter-library loan service.
and purely out of their sense of duty to protect the weak and oppressed. . . . The scheme of Mahsud colonization is but a humble token of appreciation of their wonderful service. 58

Abdul Khan, himself a Kashmiri, made no secret of his sympathy in the action. 59

Pakistan's non-recognition of Kashmir's accession to India. Once the news of Kashmir's accession offer to India and India's acceptance reached Karachi, Jinnah and Ali Khan raged at it. 60 Pakistan, since the day of the Lahore Resolution in 1940, always regarded Kashmir as an essential part of Pakistan because of many affinities between the Muslim-nation of Pakistan and the Muslim-dominated state of Kashmir. 61

That is understandable. But, what is not understandable is the basis of the contention on which Pakistan would not recognize the constitutional accession of Kashmir to India.

First, Pakistan argued that the timely and rapid military dispatch to Srinagar indicated that such aid had been already pre-planned for weeks. 62 Pakistan condemned

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59Ibid.
60Time, Nov. 10, 1947.
61Symond, op. cit., p. 159.
62Korbel, op. cit., p. 85.
the accession as illegal. Ali Khan expressed this view in the following terms in his address to the nation on November 4, 1947:

We do not recognize this accession. The accession of Kashmir to India is a fraud, perpetrated on the people of Kashmir by its cowardly Ruler with the aggressive help of the Indian Government. The release of Sheikh Abdullah who had been convicted of high treason and the continued imprisonment of Muslim leaders who had been convicted of mere technical offense is only a part of the conspiracy...63

Second, Jinnah and the Pakistan government claimed that the accession was invalid because it was based on violence and fraud.64

Because of the current nature of the dispute, it is impossible to evaluate conclusively the validity of these contentions. However, the following facts give little support to the conspiracy thesis—Pakistan's first contention.

As regards pre-planning. It is clear that the military dispatch by India was a last-minute intervention.65

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64Campbell-Johnson, op. cit., p. 241; and Korbel, op. cit., p. 38.
65According to the testimonies given by General Lockhard, the Commander-in-Chief of the Indian Army; General Lukhrist, the Air Marshal commanding the Royal Indian Air Forces; and Rear Admiral Hall of the Royal Indian Navy, all British officers, who furnished the time-table events for the plan of the military dispatch...
Because of the imminency of time and the extremely difficult and unfamiliar flight of a completely clouded five hundred miles air-route between New Delhi and Srinagar, India was not sure whether this dispatch would be successful or not. On the day Indian troops arrived in Srinagar, the tribesmen were only four and a half miles from the city of Srinagar, preparing to encircle the airport on which the airborne troops were to land. Thirty minutes before the invaders moved in, the troops were landed and Srinagar was saved. Shortly after the landing, the commander of this Sikh Regiment Battalion, Lieutenant-Colonel Rai was killed. The whole battalion was shaken and temporarily fell back to a point only three and a half miles from Srinagar.

As regards the release of Sheikh Abdullah. As soon as he was released from jail in early September of

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66 Moraes, op. cit., p. 392.
67 Moraes, loc. cit.; and Korbel, op. cit., p. 85.
68 taken from the writer’s personal conversation with a person from India. Permission to quote secured.
69 Korbel, loc. cit.
70 Moraes, loc. cit.
that year, he reiterated his demand for responsible government and issued the slogan "freedom before accession." In his speech to Kashmiris on October 5, he declared that:

If the four millions of people living in Jammu and Kashmir were bypassed and the State declares its accession to India or Pakistan, I shall raise the banner of revolt and we will launch a "do or die" struggle.71

He went to New Delhi to confer with Nehru and Gandhi and urged that "the State's destiny be decided by the people rather than individual ruler and that religion plays no part in shaping the State's destiny."72

As regards the illegality of accession, during the conference with Mountbatten discussing the situation of Kashmir, Jinnah asserted that the accession was made in a moment of crisis and violence. As Mountbatten replied,73 it is true that the accession was made in a moment of violence. The violence, however, did not come from India but Pakistan; it is not India but Pakistan who should be responsible for the violence.

71 E.P.V., 232, Jan. 23, 1948; and Sheikh Abdullah, To America (Bombay: 1948), pp. 4-5, cited by Brecher, op. cit., p. 35.


73 Campbell-Johnson, op. cit., p. 229.
International responsibility on the part of Pakistan. It is not the writer's purpose in this study to analyze the present dispute strictly from the legal point of view. Nevertheless, it is important to look at the issue from this point, while many observers rather ignore it because they are preoccupied with the factual events of the invasion.

There is no question at all that the invasion of Kashmir, still technically an independent nation, constitutes a violation of the well-established rules of international law on the part of Pakistan if the tribal invaders were actively helped and supported by the Pakistan government.

Even conceding the Pakistani government's non-complicity in the initial stage of the invasion, Pakistan still cannot escape a state's responsibility under international law—an obligation to prevent injurious use of her territory. Even in the absence of a treaty, the general principle of international law imposes an obligation upon each state "to prevent the organization within its territory of activities calculated to foment civil strife in the territory of any other State." Mr. Herbert Briggs, an eminent professor of international law, further said that:
The principle may be traced to action taken by States to restrain the commission within their territories of injurious or hostile acts, such as the organization of filibustering expeditions, against foreign States.\textsuperscript{74}

In this respect Pakistan must be charged with failure to prevent the organization of the tribal invaders within the territory of Pakistan calculated to bring an armed attack to Kashmir.

Judging the situation existing between Kashmir and West Punjab before the invasion, the Pakistan government was fully aware of the possibility of this kind of occurrence. In fact, the Kashmir government telegraphed "a stiff complaint to Pakistan of 'unfriendly act' of Pakistan against Kashmir by allowing the Muslim bands infiltrating into Kashmir," and Kashmir even threatened to "call on outside aid—presumably from India,\textsuperscript{75} if the Pakistan government would not stop the bands. Pakistan, however, did not give any evidence of appropriate measures taken to prevent the invading bands from attacking Kashmir from the territory of Pakistan.

Even after the invasion started, India, during the last two months of that year, repeatedly requested Pakistan to prevent the use of her territory by the tribesmen. The border areas of Pakistan were, neverthe-

\textsuperscript{74}Briggs, op. cit., p. 311.
\textsuperscript{75}New York Times, Oct. 21, 1947.
less, continuously used by the invaders for bases for their operations. 76

Jinnah's call for military intervention. Raging at India's acceptance of the Kashmir's accession offer, Jinnah, at midnight of October 27 (the Indian troops arrived in Srinagar that morning), ordered General Sir Douglas D. Gracey (a British officer) to dispatch Pakistani troops to Kashmir immediately. 77 The wise general, realizing the grave consequences of such indiscreet action, did not follow his instructions. At the urgent request of General Gracey, Sir Claude Auchinleck, who was then the supreme commander in charge of administering the partition of the British Indian Army, flew back to Lahore from "New Delhi" 78 and persuaded Jinnah to cancel his orders. 79 He threatened Jinnah that he would withdraw all British officers, including two commanders-in-chief, from the Indian and Pakistan armies if Jinnah still persisted. 80 Pakistan had proportionally more

76 Nehru, Independence and After, op. cit., p. 66.
77 Time, Nov. 10, 1947; Korbel, op. cit., p. 67; and Moraes, op. cit., p. 393.
78 Time, loc. cit.
79 Korbel, loc. cit.; and Moraes, loc. cit.
80 Ibid.; and Ibid.
British personnel in her armed forces than India did at that time.31

**Diplomatic negotiation.** After cancelling his orders, Jinnah invited both Mountbatten and Nehru to Lahore for a discussion of the situation. Nehru was not able to go to Lahore because of illness.82

At the meeting in Lahore, Jinnah criticized India for failing to inform Pakistan earlier of the accession and for moving Indian troops to Kashmir. He claimed the accession was invalid because it was based on violence. When Mountbatten proposed to have a plebiscite under the United Nations auspices, Jinnah replied to it by asserting that only two governor-generals could organize a plebiscite under their authorities. Mountbatten stressed that, whatever Jinnah's prerogatives as the governor-general might be in Pakistan, he (Mountbatten) did not have such a constitutional power but was allowed to act at his government's advice.83 They did not reach any agreement in the conference.

There was a series of cable correspondences between Nehru and Ali Khan charging and countercharging each

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31 Moraeas, loc. cit.
82 Campbell-Johnson, op. cit., p. 226.
83 Ibid., pp. 229-39.
other's position during November and early December of the year. In the first week of December, 1947, Nehru and Ali Khan finally met in New Delhi. The Conference did not break the impasse but succeeded in providing the broad outline of a possible solution, which was later incorporated into one of the Security Council resolutions on the Kashmir problem. They were that:

(1) Pakistan should use all her influence to persuade the rebel "Azad Kashmir forces" to cease fighting; and tribesmen and other invaders to withdraw from Kashmir as soon as possible; and to prevent further incursions;

(2) India should withdraw the bulk of her forces, leaving small detachments of minimum strength to deal with disturbances; and

(3) The United Nations Organization should be asked to send a commission or commissions to hold a plebiscite in Kashmir.

However, the Indian cabinet's position hardened against agreeing to an immediate plebiscite without specifying the nature and functions of a commission. A report prepared by Patel and Baldev Singh after their

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84 For the full contents of the correspondences, see White Paper on Jammu and Kashmir, op. cit., pp. 61-67; and Campbell-Johnson, op. cit., pp. 229-245 and 251.

inspection on Kashmir, stated: (1) that the large concentrations of invaders were being assembled in West Punjab; (2) that as soon as he left New Delhi, Ali Khan encouraged new raiders to invade Kashmir; and (3) that atrocities including the wholesale murder of non-Muslims and the sale of Kashmiri girls were taking place in Kashmir. As a consequence, the subsequent Lahore conference faced a complete deadlock.

It was at this time that Mountbatten suggested United Nations mediation as the third-party role to break the impasse between two parties. This proposal was favorably accepted by Ali Khan. Nehru wondered what section of the United Nations Charter should be referred to when they submitted the case to the United Nations. After he returned from Lahore, like Gandhi and Menon, Nehru was inclined to favor the idea of referring the dispute to the United Nations.

However, there soon occurred an important change in India's policy, particularly in Nehru's mind. On January 1, 1948, India formally raised the Kashmir dispute before the Security Council as the complainant against Pakistan for her aid to the tribal invaders. During the exchanges of telegraphic correspondences with Ali Kahn

86 Ibid., p. 251. 87 Ibid., pp. 251-52.
in November and early December of 1947, Nehru suggested to Ali Khan that the parties refer the dispute to the United Nations and invite a commission to advise them as to a proposed plebiscite. Now things were certainly changed. Obviously Nehru did not want to let the United Nations treat India and Pakistan on an equal basis and as equal parties to the dispute, by jointly submitting the dispute to the United Nations. In the writer's opinion, this was the reason why India took the issue to the Security Council as a complainant, not as one of the joint petitioners along with Pakistan. If so, why did India invoke Chapter VI of Pacific Settlement of Disputes clause in the Charter instead of Chapter VII on Acts of Aggression? The later treatment of India and Pakistan by the Security Council on an equal basis and as equal parties to the dispute was a natural consequence of the section of the Charter which India had invoked. This was the greatest technical mistake India made in the Kashmir dispute. Later, India complained of the Security Council's treatment of Pakistan as an equal party to the dispute vis-a-vis India. This reveals the inconsistency of India's policy in the Kashmir dispute and of her position in the Security Council. Nehru, in this respect, cannot escape the criticism of his inconsistent policy.

CHAPTER III

THE SUBMISSION OF THE DISPUTE TO THE SECURITY COUNCIL

Reference of the dispute to the Security Council of the United Nations was motivated by India's complaint against Pakistan as to her complicity in and aid to the tribal invasion. By the letter dated January 1, 1948, Dr. F. P. Pillai, the Indian permanent representative to the United Nations, called the attention of the Security Council,¹ under Article 35 of the United Nations Charter,² to the critical situation in the State of Jammu and Kashmir. India accused Pakistan of the following:

(1) giving the invaders transit across Pakistan;
(2) allowing the invaders to use Pakistani territory as a base of operations;
(3) permitting Pakistani nationals and officers in training, guiding and otherwise actively helping the invaders; and


²Article 35 of the Charter: Any member of the United Nations may bring any dispute, or any situation of the nature referred to Article 34 (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.), to the attention of the Security Council or of the General Assembly.
(4) providing military equipment, transportation and supplies including petrol for the invaders.\(^3\)

India requested the Security Council to call upon the Government of Pakistan:

(1) to prevent all Pakistani nationals from participating or assisting in the invasion;

(2) to desist from all such activities as alleged above; and

(3) to deny to the invaders access to and use of its territory for operations against Kashmir, and military and other supplies.\(^4\) India clearly indicated in her communication to the Security Council that "in order to remedy this situation, . . . Indian troops would have to enter Pakistani territory" in self-defense in order to have the invaders cut off from their bases and sources of supplies in Pakistan.\(^5\) However, India significantly neither tried to charge Pakistan with aggression nor requested unequivocally that the Council condemn Pakistan as an aggressor. India, instead, appealed to the Security Council for prompt action to preserve the peace in the sub-continent.\(^6\)

\(^3\) S/628, Jan. 2, 1948.  
\(^4\) Ibid.  
\(^6\) Ibid.
The Council, for the first time, took up the question on January 6, 1948, but adjourned until the week of January 11-17 session in order to allow the Government of Pakistan time to prepare its case and its Foreign Minister time to reach New York to present the case. This adjournment had been requested by the Prime Minister of Pakistan on that day. 7

The Council began its deliberation on January 15, 1948. Sir Mohammed Zafrulla Khan, Foreign Minister of Pakistan, replied with three communications from his government. He emphatically rejected India's charges point by point, seized the offensive and quickly moved to a series of sweeping countercharges against India. He successfully diverted the attention of the Council members from India's complaint of Pakistan's aid in the invasion to his own countercharges against India. His speech, which for length set a record in the annals of the United Nations, lasted almost five hours. Zafrulla charged India with:

(1) persistently attempting to undo the partition scheme;
(2) pursuing a pre-planned and extensive campaign of "genocide" against Muslims in the East Punjab and the other Punjab princely states, which acceded to India;

7Ibid.
(3) unlawfully occupying Junagadh, Manavadar and other neighboring states which had lawfully acceded to the Dominion of Pakistan;
(4) obtaining the accession of Kashmir by fraud and violence;
(5) attacking Pakistan territory;
(6) blocking the implementation of the agreement relating to or arising out of the partition including the withholding of Pakistan's share of cash balances and military stores; and
(7) performing all these acts of aggression against Pakistan with the object of the destruction of Pakistan.  

The Government of Pakistan requested the Security Council to call upon the Government of India:
(1) to desist from all acts of aggression against Pakistan; and
(2) to implement all agreements between India and Pakistan.  

It further requested the Council to appoint a commission or commissions to investigate all of Pakistan's charges against India to right all wrongs done her by India.  

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8 S/646, Jan. 15, 1948.
9 Ibid.
10 Ibid.
The positions of India and Pakistan before the Security Council.

The Indian case. The principal feature of India's position taken before the Council was its microscopic approach to the dispute. Throughout the deliberations of the Council, the Indian delegate concentrated almost exclusively on the tribal invasion, which had started in full-scale on October 22, 1947, and the subsequent accession of Kashmir to India. India's strategy seemed to narrow the scope of the issue under consideration by the Council. Also of interest is the fact that India, because of the section of the United Nations Charter she had invoked or perhaps because of a desire not to provoke Pakistan on the dispute, never made a direct accusation against Pakistan as the aggressor. Mr. Gopalaswami Ayyangar, former Prime Minister of Kashmir and the Indian chief delegate for the Kashmir problem at the Council, limited India's charge against Pakistan to a serious error committed by the government of Pakistan—aiding the invaders attacking the Indian territory. He never categorically stated that India considered Pakistan as an aggressor. Ayyangar distinguished between Pakistan and the tribal invaders as manifested in his statement of

11 Brecher, op. cit., p. 56.
January 15th:

While all this [the Prime Minister of North-West Frontier Province had already appealed to the all trained and demobilized soldiers to proceed to the Kashmir front] was happening, we still continued to hope that Pakistan would realize the utter fatality of this conflict and adopt a friendly and co-operative attitude and help us in ridding Kashmir of these pestilential invaders. 12

Consequently, India's ultimate demands were confined to the immediate stoppage of the fighting in Kashmir and the withdrawal and expulsion of the raiders from the soil of Kashmir. 13 India held to the position that if a plebiscite were necessary and feasible under certain circumstances, India would carry it out under her own authority, exclusive of Pakistan's participation. Because Kashmir was already part of India.

The Pakistani case. Contrary to India's approach to the dispute, the principal characteristic of the Pakistani approach to the case was its exhaustive effort to place the dispute over Kashmir in as broad a context as possible. 14 Zafrulla asserted that "hostilities in Kashmir were only a part of the whole picture of the


13 Ibid.

14 Brecher, op. cit., p. 66.
unhappy Indo-Pakistan relations," and her presentation of the issue was, therefore, an exhaustive account of all problems dividing the two countries immediately before and after the partition of the sub-continent.\(^{15}\) He attempted to convince the Council that the origins of the Kashmir dispute were to be traced not to the tribal invasion of October, 1947, but to the series of events between the two Dominions after the partition and its aftermath; particularly to the communal strife of 1946-1947. He expressed this view as follows:

The picture is by no means as clear as it appears to him [Ayyangar], and it will be necessary to set out before the Security Council the whole background of this Kashmir dispute.\(^{16}\)

In this approach, Kashmir was portrayed merely as one of the numerous points of friction resulting from the partition.\(^{17}\)

Zafrulla's initial diplomatic victory was not wholly due to his brilliant achievement in the debate but, in no small measure, to Ayyangar's failure to present effectively the issue to the Council. While India hesitated to condemn Pakistan as an aggressor, Pakistan openly

\(^{15}\)Korbel, op. cit., p. 102.
\(^{16}\)S/P.V. 227, Jan. 15, 1948.
\(^{17}\)Brecher, op. cit., p. 68.
claimed that India was attacking Pakistani territory. Starting a counteroffensive, the Pakistani delegate now charged India point by point with the occupation of Janagadh and Manavadar, genocide, and other offenses.

During the debate, Zafrulla did not fail to stress the "human element" involved in the communal upheaval. This allusion, hardly likely to incur the displeasure of the Council, found its most acute expression in the grave countercharge of genocide against the Muslims of East Punjab and other Punjab princely States. With this human element thesis he intended to obscure the legal question of aggression and the legal rights of India in Kashmir and further defend and rationalize the tribesmen and Pakistani nationals participating in the invasion.

Immediately after the Council took note of India's complaint at its meeting of January 6th, Mr. Van Langenhove (from Belgium), the President of the Security Council, sent an urgent appeal to both India and Pakistan to maintain the status quo in Kashmir. He received assurances from both parties. But the fighting in

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18 Ibid.
Kashmir still went on.

Resolution of January 17th. Following Zafrulla's opening statement appeal for the maintenance of the status quo was reiterated in a resolution, which was passed on January 17, 1948, by a vote of 9 to 0, with the Soviet Union and the Ukraine abstaining. The resolution called on India and Pakistan

... to refrain from making any statement and from doing ... or permitting any acts which might aggravate the situation; to inform the Security Council immediately of any material change in the situation.\(^2\)

In March, 1948, Pakistan sent her regular forces to Kashmir. Contrary to the terms of the January 17th resolution, Pakistan, however, did not notify the Security Council of this action which materially aggravated the situation in Kashmir. It was only when the United Nations Commission for India and Pakistan arrived in Karachi in July of that year that Zafrulla reported this "material change" to the Commission.

Article 33 of the United Nations Charter urges that the parties in a dispute, first of all, seek a solution by direct negotiation between themselves when the Council

calls upon the parties to do so. Under the spirit of this Article, the British delegate, Mr. Noel Baker, suggested that the President of the Council hold informal discussions with the Indian and Pakistani representatives to "find . . . some common ground on which the structure of a settlement may be built."21

Resolution of January 20th. As a result of these discussions it was agreed that the President was to present the Security Council a draft proposal on behalf of both parties to establish a three-member commission. Both parties agreed to this proposal in advance. This was adopted by the Council as the second resolution on January 20, 1948, by a vote of 9 to 0, with the Soviet Union and the Ukraine again abstaining.

The Commission was to be composed of three members; one selected by India, one by Pakistan, and the third to be designated by the two so selected.23 The Commission was instructed to proceed to the spot as soon as possible. The Commission was to have dual functions:

(1) to investigate the fact pursuant to Article 34 of
the Charter; and

(2) to exercise any mediatory influence likely to smooth away difficulties, and to carry out the direction given to it by the Council. 24

In addition to the Kashmir dispute, the Commission was instructed to exercise the above-mentioned functions with regard to "the situation in... Kashmir State set out in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General dated 15 January..." 25

The principal significance of this resolution was to widen the scope of the Commission's activities. This clearly indicated Zafrulla's diplomatic victory in his attempt to secure United Nations intervention over the entire field of Indo-Pakistan disputes. The proposal in regard to the scope of the Commission's activities was, however, agreed to by the Indian delegate in advance. 26

This action taken by Ayyangar was not, in the writer's opinion, a defined policy of the Government of India. It was Ayyangar's own diplomatic blunder. His error became evident when the Security Council, on

24 \( S/654 \), Jan. 20, 1948; \( S/P.V. 230 \), Jan. 20, 1948;

25 \( \textit{Ibid.} \)

January 22, 1948, finally decided to alter the item on its agenda from the "Jammu and Kashmir Question" to the "India-Pakistan Question". This change of title, among other things, implied that both states were now the equal parties to the dispute, which had been a proposition Zafrulla sought to make as an established fact from the very beginning of the Security Council debate. On the other hand, it was India's fundamental policy to appear before the Council as the complainant. In spite of Ayyangar's concession in the Council, the Government of India persistently insisted throughout the subsequent years that "Pakistan had no legal right and position vis-à-vis India in participation of a plebiscite." During the debate on the question of the change of title, the British and Soviet delegates supported India's view while Syria, Argentina and Columbia favored the proposal for the change.

However, the three-member Commission was never constituted and dispatched to the sub-continent. It was tragic. The United Nations document offered no official explanation at all for this important omission. The resolution of January 20th was a vaguely-defined and

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28 Brecher, op. cit., p. 78. 29 S/P.V. 231, op. cit.
highly modest one. It did not mention anything on such vital questions as the withdrawals of forces and the holding of a plebiscite. The resolution was buried under the exchange of mutually-bitter accusations of India and Pakistan.\textsuperscript{30}

**Draft proposals of India and Pakistan.** Both parties presented the case to the Security Council with sharply different views. These different views concerned not only the cause and nature of the dispute but also the methods of resolving the conflict. During their informal discussions on the dispute in the presence of the President of the Security Council, the representatives of India and Pakistan, on January 27, 1948, submitted their own draft proposals respectively to the President for the appropriate methods of solving the dispute.\textsuperscript{31}

India's first objective was stoppage of the fighting in Kashmir and the withdrawal and expulsion of the raiders.\textsuperscript{32} After the fighting had ceased and the invaders withdrawn, "the next objective should be the restoration of peace and normal conditions."\textsuperscript{33}

Pakistan's proposals were quite straightforward.

\textsuperscript{30}Korbel, op. cit., pp. 103-04.
\textsuperscript{31}S/P.V. 236, Jan. 28, 1948.
\textsuperscript{32}Ibid.
\textsuperscript{33}Ibid.
Pakistan first proposed to reach an agreement on a plebiscite instead of on the stoppage of fighting as was the case in India's proposals. She asserted that the "people would stop the fighting only if they had guarantees that a fair plebiscite was forthcoming". This demand for agreement-on-a-plebiscite-first seemed to come from Pakistan's fear that once the fighting was stopped and the military situation was stabilized, a de facto political stabilization would evolve a partition of the State, by which the more important part of the State, particularly the rich Vale of Kashmir, would come into possession of India.

Cleavages between India and Pakistan in their ways of the solution. In their draft proposals, there were three fundamental issues over which the cleavages between India and Pakistan in their approaches to the solution became most clear. These three issues were very closely interrelated. They were the withdrawal of forces, the Interim Government, and a plebiscite.

The withdrawal of forces. India maintained that as long as Kashmir remained acceded to the Dominion of India, it was part of India. Therefore, India was

34 Korbel, op. cit., p. 105.
35 Ibid.
responsible for the defense of Kashmir against outside attack. India clearly indicated that, although she would gradually reduce the strength of her troops in Kashmir after the cessation of hostilities, it would be, nevertheless, necessary to maintain an adequate number of Indian troops in the State to ensure not only the protection of the State from future attack from outside but also the preservation of law and order in the State. These troops would remain in the State not only during the period between the cessation of hostilities and the holding of a plebiscite but during the holding of a plebiscite itself. Since Pakistan aided the invasion of a foreign state, she, first of all, should use all her influences to secure the withdrawal of the tribesmen and Pakistani nationals who were participating in the fighting.\textsuperscript{36}

Pakistan, on the other hand, claimed that the accession was invalid because it had been achieved under conditions of fraud and violence. India, therefore, had no right to maintain nor even to dispatch her troops to Kashmir. The termination of hostilities, in Pakistan's view, could be achieved only by simultaneous withdrawals of all armed forces including Indian and Pakistan from

\textsuperscript{36}S/P.V. 236, Jan. 28, 1948.
The Interim Government and plebiscite. These two issues were delicately intertwined. As already noted, Pakistan considered a plebiscite the central issue. A plebiscite should be held and conducted under the complete authority, responsibility and control of a United Nations Commission,\(^38\) which was to be created by the Security Council resolution of January 20, 1948. This Commission was to have such vast powers as arranging the establishment of an Interim Government in Kashmir and the withdrawals of all armed forces, including Indian, from Kashmir.\(^39\)

But India had quite a different view on the functions of the Commission. The role of the Commission, according to India's view, was to be confined to advice and observation (as was the case in the Republic of Korea) on an eventual plebiscite.\(^40\) This difference had been already revealed during the telegraphic correspondence between Nehru and Ali Khan during the period of November and early December, 1947.\(^41\)

India's draft proposals

\(^37\)Ibid.  \(^38\)Ibid.  \(^39\)Ibid.  \(^40\)Ibid.  \(^41\)For the full text of the correspondence, see Campbell-Johnson, \textit{op. cit.}, pp. 229-51.
indicated that Sheikh Abdullah's Interim Government should convvoke a national assembly, upon which base a national government would be constituted. Only this national government would be legally qualified to conduct a plebiscite on the issue of accession. 42 India's view was that Sheikh Abdullah's Emergency Government was to continue to function because this regime had been legally appointed by the constitutional authority of the State. Only a national assembly should be elected and composed. This legal government could not be replaced by the United Nations Commission in the functions of conducting a plebiscite.

Pakistan was, however, primarily concerned with providing the "essential conditions" for the holding of a plebiscite. She was not willing to recognize Sheikh Abdullah's Interim Government, and urged that the United Nations Commission set up a new Interim Government: one which could be fair and impartial to the conduct of a plebiscite. However, Pakistan did not give any explanation about how the Commission was to set up an Interim Government or on what basis an Interim Government could be composed.

43 Ibid.
Belgian draft resolutions. As already discussed, India emphasized the cessation of hostilities while Pakistan stressed the agreement on a plebiscite first in their respective draft proposals of January 27th. In order to reconcile these two diametrically-opposed views on the ways of solution, the President of the Council, Mr. Van Langenhove of Belgium, simultaneously presented two separate resolutions of his own to the Council on January 29, 1948.\(^4\) The first Belgium resolution called for a plebiscite to be "organized, held and supervised under its [United Nations] authority,"\(^4\) and the second resolution stated that "the Commission ... should take into consideration that, among duties incumbent upon it, are included those which tend towards promoting the cessation of acts of hostility and violence ..."\(^4\) These resolutions, as clearly stipulated, gave priority to Pakistan's position. Naturally the resolutions, which supported the Pakistani insistence on a plebiscite to be conducted under the complete authority of the United Nations, did not encounter any objection from the members of the Council. During the deliberations

\(^{4}\)\textit{S/661 and S/662, Jan. 29, 1948.}

\(^{4\text{a}}\textit{S/661, op. cit.}

\(^{4\text{b}}\textit{S/662, op. cit. (Underlined emphasis is mine).}
of the resolutions from January 29 to February 11, the
delegates of the United States, the United Kingdom,
France, and other members eventually endorsed a plebiscite
under United Nations control. Moreover, Mr. Austin,
the delegate of the United States, and Mr. Baker openly
declared the views that the United Nations could stop the
fighting only by assuring the tribesmen and other invaders
that a fair plebiscite would be held. The British
delegate now acknowledged unequivocally Pakistan's
equality in the dispute **vis-à-vis** India. This attitude
of the West in favor of the Pakistani position should
also be considered from the fact that Pakistan was a
party of the Western military alliance. Nehru was
marked with his non-pro-Western policy in the eyes of the
West. With regard to this aspect the editorial of De
Standard (daily) of Brussels made an interesting comment:

> Here it should not be overlooked that the position
> of the West in connection with Kashmir has been
> influenced by the fact that Pakistan had joined
> the Western alliance and that Pakistan is considering
> this in the first place as a means to improve her
> military position in connection with Kashmir.**48**

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**47** For the speeches of Mr. Austin and Mr. Baker
supporting the Pakistani position, see **S/P.V. 240**,

**48** Editorial in **De Standard [Brussel]**, Oct. 12, 1957,
extracted by Information Service of India, **Kashmir: Foreign Press Comment**, Vol. III (New Delhi: The External
Publicity Division Press), p. 2.
During this period, the delegates of the Soviet Union (Mr. Gromyko) and the Ukraine (Mr. Tarasenko) entirely abstained from the debate and voting. The reason is quite simple. They did not want, in the light of their preoccupied anti-Western policy, to hurt either party in the hope that this case would be useful to them some day in attacking "Western imperialism." The first significant statement ever made by the Soviet delegate in regard to the Kashmir problem in the Council was, as a matter of fact, Mr. Malik's address to the Council on January 17, 1952. He launched a vitriolic attack on the United States and the United Kingdom for their persistent interference in Kashmir for their imperialistic motives and for their annexationist designs in Kashmir which were part of their global strategy for war against the Soviet.

The Chinese delegate, Dr. Tsang, however, supported the Indian position throughout the entire deliberation of the dispute. He pointed out the difficulty of changing Kashmir's administration and proposed a progressive withdrawal of the Indian forces from

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49Korbel, op. cit., p. 106.

50For Malik's address, see S/P.V. 570, Jan. 17, 1952.
Kashmir. 51

Pakistan was, not unexpectedly, in favor of the resolutions. Zafrulla accepted them. 52 India deeply resented the priority given to Pakistan in the resolutions, and felt that her fundamental request—the cessation of hostilities, had been completely "brushed aside". Ayyangar expressed his discontent with the resolutions in sharp terms: "Is this not an illustration of our trying to fiddle here while India is burning? Are we nearing the solution of the immediate problem [the cessation of hostilities]." 53

During the debate on the Belgium resolutions, the Council was shocked by the news of the tragic death of Mahatma Gandhi, the great apostle of Hindu-Muslim amity and unity. The President and all members of the Council, including Zafrulla Khan, paid an eloquent tribute to his greatness, and the Council was adjourned for that day. 54

When the Indian delegate requested an adjournment of the Council's debate on the Kashmir dispute until

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51 Korbel, op. cit., p. 108. 52 S/P.V. 240, op.cit.
he came back from New Delhi after he had had consultations with his government, the criticism of this Indian request was very severe. The request was not understandable to most members of the Council. The British, Colombian and Syrian delegates made bitter remarks on this request.\(^55\) The Chinese delegate again supported the Indian position and moved a "draft resolution" for adjournment.\(^56\) India was surprised at this treatment by the Council. Ayyangar protested with astonishment: "... why a great international body should view a simple question of that sort with so much suspicion!".\(^57\) India's absence in the Council for the next five weeks gave Pakistan the chance to raise the discussion on the "other situations," which had been promoted by Zafrulla. The Council discussed them without the participation of the Indian delegate. After all, this request for adjournment was another diplomatic mistake the Indian Government made during the first phase of the Security Council debate on the Kashmir problem. The Council's action on the "other situation" irritated Nehru as

\(^{55}\) For the British delegate's bitter remark on the Indian request for the adjournment, see \textit{S/P.V. 244}, February 11, 1948.

\(^{56}\) \textit{S/P.V. 244}, Feb. 11, 1948.

\(^{57}\) \textit{Ibid.}
revealed in his confession:

I shall not take up the time of the House [the Constituent Assembly of India] with a detailed account of the proceedings of the Security Council; ... I must confess that I have been surprised and distressed at the fact that a reference [the cessation of hostilities in Kashmir] we made are not even properly considered thus far and other matters [Pakistan's various countercharges against India] have been given precedence.58

Chinese draft resolution. After Ayyangar returned from New Delhi to Lake Success, the Council resumed the discussion on the Kashmir problem on March 18th. On that day the President of the Council, who was the Chinese delegate, Dr. T. F. Tsiang, submitted a draft resolution in an effort to reconcile the differences between India and Pakistan. The main features of the resolution were that: The Council was

(1) to call on Pakistan to desist from any further aid to the tribesmen and permit India to maintain part of her troops in Kashmir to ensure the preservation of law and order in the State;

(2) to call on Abdullah's Interim Government to add representatives of other major political parties, such as Azad Kashmir, to the administration in order to form a coalition government; and

(3) to hold a plebiscite to be directed by an appointee

58Nehru, Independence and After, op. cit., p. 81.
of the United Nations Secretary-General.\textsuperscript{59} The resolution was more favorable to India. As expected, Pakistan rejected the resolution. Zafrulla quoted the statement made by Sheikh Abdullah a few days before in Jammu. The statement: "we shall prefer death rather than join Pakistan"\textsuperscript{60} was not only undiplomatic at that important moment but greatly helped Pakistan in the attempt to justify her opposition to the resolution.

While India was not willing to accept the Belgian resolutions, Pakistan was equally critical of the Chinese resolution. Then, the President of the Council conducted further informal discussions with the parties. During a month of this deliberation, all of these resolutions including three additional ones were thoroughly investigated and further revised. The result of these most deliberate negotiations toward a compromise turned out in a form of another resolution on April 21, 1948.

Resolution of April 21st. It was not until April 21, 1948, that the first significant resolution on the Kashmir dispute was adopted by the Security Council. The resolution, sponsored by the delegates of Belgium, Canada, China, Colombia, the United Kingdom, and the

\textsuperscript{59} S/699, March 18, 1948.
\textsuperscript{60} S/P.V. 262, March 18, 1948.
United States, was carried by a vote of 9 to 0, with the Soviet Union and the Ukraine again abstaining. 61

The resolution first called upon the Council:

(1) to increase the membership of the Commission from three to five, the additional two members to be selected by the Council; and

(2) to direct the Commission to proceed to the subcontinent immediately to offer its good offices in regard to the restoration of peace and order, and the holding of a plebiscite. 62

The resolution obviously attempted an over-all solution of the Kashmir dispute. The attention of its sponsors was focussed on the three principal points of difference between the parties, which had already been made clear by the draft resolutions of India and Pakistan of January 17th—the withdrawal of troops, a plebiscite and the Interim Government. Therefore, it is necessary to examine and analyze critically the proposed solutions of these three fundamental issues.

The withdrawal of forces. On this issue the resolution gave prior consideration to India's claim. India was, according to the resolution, to begin the

61 Korbel, op. cit., p. 112.

62 GS/726, April 22, 1948.
withdrawal of her troops from Kashmir only after the Commission had satisfactorily observed that the tribesmen and other Pakistani nationals had withdrawn from Kashmir and the arrangement for the cessation of hostilities had become effective. Furthermore, India was permitted to maintain a minimum strength required not only for the defense of Kashmir from possible outside attack but for the maintainance of law and order in the State. The withdrawal of the Indian troops was to be accomplished in consultation with the Commission. The resolution definitely instructed Pakistan to prevent any intrusion into the State of hostile elements and any furnishing of material aid to those fighting in the State.

The Interim Government. On this point the resolution almost readopted the compromise plan of the Chinese resolution of March 18th. It called upon the Government of India to ensure that the Government of the State (but not Sheikh Abdullah's regime) invite the major political groups (parties) such as the National Conference and Azad Kashmir to share equitable representation at the ministerial level during the preparation and the holding of a plebiscite. The

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63 S/726, April 22, 1948, (Underlined emphasis is mine).
64 Ibid.
65 Ibid.
sponsors showed evidence of very careful consideration on this issue in providing the most-likely acceptable compromise to both parties.

**Plebiscite.** Undoubtedly, the resolution on this issue was markedly favorable to Pakistan. It acknowledged Pakistan's demand of a plebiscite to be held under the complete authority, responsibility and control of the United Nations. This approach is not very surprising since nearly all members of the Council except the Soviet Union and the Ukraine favored the plebiscite under the complete authority of the United Nations. The key feature of this section was the vast powers and authority given to the Plebiscite Administrator in the fulfillment of his functions. The Plebiscite Administrator was to have:

1. whatever powers he considered necessary for holding a fair and impartial plebiscite, including directing and supervising the State forces and police; and
2. the authority, through the request to the Indian Government, to use Indian forces to help the exercise of his functions as the Plebiscite Administrator.

Although it maintained Pakistan's claim for a plebiscite under the complete authority of the United Nations

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Commission, the resolution still showed some degree of concession to India by giving the Plebiscite Administrator the authority to use and direct Indian forces.

This compromised "package-deal", unfortunately, did not satisfy either party. India was discontented with its special emphasis on a plebiscite and the almost unlimited powers of the Plebiscite Administrator. The Indian delegate strongly objected to the resolution mainly because of the last two issues. Pakistan was also critical of the Council's efforts to reach a compromised agreement on the first two issues, specially one on the cessation of hostilities. Even the most-compromised proposal on the issue of the Interim Government did not secure satisfaction from either party, because Pakistan still maintained a "impartial Interim Government" while India never gave up her original demand on the retention of Sheikh Abdullah's Emergency Administration. India categorically rejected the resolution. One month later, India, however, showed a somewhat conciliatory attitude by announcing that ". . . if the Council should still decide to send out the Commission [to India]. . . . the Government of India

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68 Ibid.
would be glad to confer with it."69

Dissatisfied not only with the Council's concession made to India, which enabled India to retain a reduced number of her troops in Kashmir after the cessation of hostilities, but also the "lack of means to ensure an impartial plebiscite" and the failure of the establishment of an "impartial Interim Government," Pakistan refused to accept the resolution either.70 This unwillingness on the part of both India and Pakistan was criticized by many members of the Council including the United States and the United Kingdom.71

With this deadlock on the solution of the Kashmir dispute, the Council had really exhausted its efforts. However, some Council members inclined to favor the idea of sending the Commission to the sub-continent despite the rejection of the resolution by the parties. Specifically, the Chinese delegate advocated sending the Commission to India for the solution of the Kashmir dispute first. He insisted that: "We must agree that, once we make some headway with the question of Kashmir,

69 S/734, May 6, 1948.
70 S/735, May 6, 1948.
71 For the criticism of the United States delegate for India and Pakistan's nonconformity with the spirit of the United Nations Charter, see S/P.V. 304, May 26, 1948.
we shall find other questions much easier of solution."

Resolution of June 3rd. The move to send the Commission to the sub-continent was finally formulated in the resolution of June 3, 1948, sponsored by the Syrian delegate, Mr. El-Khoury. The resolution, which was the last one on the Kashmir dispute ever passed by the Council until the departure of the Commission to the sub-continent, was adopted by a vote of 9 to 0, with the Soviet Union and the Ukraine again abstaining. It directed the Commission:

... to proceed without delay to the area of the dispute with a view to accomplishing in priority the duties assigned to it by the resolution of 21st April 1948; ... [and] further to study and report to the Security Council when it considers appropriate on the matters raised in the letter of Foreign Minister of Pakistan, dated 15th January, 1948.

The letter of January 15, 1948, was Zafrulla's claim that the Council should consider the whole complex of Indo-Pakistan disputes. This resolution retained, at least some, the official sanction of the Council to consider the whole complex of Indo-Pakistan disputes including the Kashmir problem, which had been for the first time manifestly stipulated in the resolution of January 20th.

The significant difference of this resolution from the

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72 Ibid.

73 UN/ESCAP, June 3, 1948. (Underlined emphasis in mine.)
other was to give wide discretionary power to the Commission by authorizing it to investigate Pakistan's countercharges only when "the Commission considers it appropriate" rather than doing as the Council directed in the resolution of January 20th.

Again, the Government of India made its position clear in regard to the scope of the Commission's activities. Nehru strongly protested against the Council for enlarging the scope of the Commission's activities, and announced that India would not follow the Council's sanction in this effect. Under these complicated situations in and out of the Council, the Commission, which had been long withheld ever since the Security Council resolution of January 20th, was finally sent to the sub-continent to attempt to solve one of the United Nations' most difficult and important tasks.
CHAPTER IV

THE UNITED NATIONS COMMISSION: FOR INDIA AND PAKISTAN

As already discussed in the preceding chapter, the composition, functions and scope of the Commission were stipulated in the resolutions of January 20th, April 21st, and June 3rd.

The Commission was composed of the representatives of Czechoslovakia, nominated by India; Argentina, nominated by Pakistan; Colombia and Belgium, selected by the Security Council; and the United States, named by the President of the Council. The members of the Commission were Josef Korbel from Czechoslovakia; Richard J. Siri and his alternate, Carlos Leguizamon from Argentina; Egbert Graeffe and his alternate, Harry Graeffe from Belgium; Affredo Lonzano and his alternate, C. Hawley Oaks from the United States; and Erik Colban from Norway to serve as the personal representative of the United Nations Secretary-General.

The Commission in the sub-continent. The Commission held its first formal session in Geneva on June 16, 1948. During the three weeks in Geneva, one of the main tasks

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1Korbel, op. cit., p. 118.
2Ibid., p. 119.
of the Commission was to establish its rules of procedure. This was followed by "an exploratory correspondence" with the governments of India and Pakistan regarding the purposes and plans of the Commission. After this correspondence, the Commission, however, decided not to commit itself in advance on the scope of its investigations. It was a cautious action lest any hint or suggestion of the Commission might give unintentional offense to the sensitive parties. Under these circumstances, the Commission carefully adopted its official title as the United Nations Commission for India and Pakistan. This suggests that the Commission inclined to the view that it was qualified to investigate eventually the whole complex of Indo-Pakistan disputes. This decision was made within the frame of reference embodied in the Security Council resolutions, particularly the resolution of June 3rd, which had indicated Pakistan's diplomatic victory in this matter.

On July 5, 1948, the Commission left for Karachi on its difficult task. It was received by Jinnah and Pakistani government officials in an extremely cold manner. None of them even mentioned the word, "Kashmir."  

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Korbel, op. cit., pp. 120-21.
During the Commission's sojourn in Karachi, it was, for the first time, informed by Zafrulla Khan that Pakistan had sent three brigades of her regular troops to Kashmir since May of that year. Zafrulla explained that this action was a result of India's spring offensive.\(^5\) India's military advance in the spring of 1948 threatened the security of West Pakistan. Local Azad Kashmir forces and tribesmen had been pushed back close to the Pakistani border. He asserted that Pakistan could not sit back passively, unmindful of the danger that India might invade the territory of Pakistan.\(^6\)

This sudden announcement by the Pakistani spokesman is highly significant. First, Pakistan notified the Commission of this important change so late since she realized she could no longer conceal the action of dispatching her regular troops to Kashmir because of the Commission's arrival in the sub-continent. Moreover, the action taken by the Pakistani government was, as already noted in the preceding chapter, not in accordance with the Security Council resolution of January 17th, which both India and Pakistan promised to observe.\(^7\)

\(^5\)S/1100, op. cit.
\(^6\)Korbel, op. cit.
\(^7\)The resolution of January 17th called upon the
was seriously disturbed by this grave situation but
preferred not to express any opinion or judgement for
fear of impairing the beginning of its task.

Three days later, the Commission flew to New Delhi. It was received by Nehru and Indian government officials
in a much warmer manner than it had been by Pakistanis,
although the former did not refer particularly to Kashmir
either. The Indian newspapers received the Commission in
calmer tones than was the case in Karachi. Later, India
gave assurances at a meeting in New Delhi that the
Commission’s work would be facilitated if its formal pro-
ceedings were not public and were supplemented by individ-
ual conversations in private with representatives of the
parties concerned. It was July 13th when the Commis-
sion’s real work began. On that day, Sir Girija Shanker
Bajpai, Secretary-General of the Ministry of External
Affairs of India, was invited to present the Kashmir
case. He openly declared:

our troops [Indian] are fighting the regular armed
forces of Pakistan on all fronts in and around

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parties to inform the Security Council immediately of any
material change in the situation; and refrain from per-
mitting any acts which might aggravate the situation.

8Korbel, loc. cit. 9Ibid., pp. 122-23.
10S/1100, op. cit.
... Kashmir ... What is in progress today is an undeclared war between India and Pakistan.\(^{11}\)

The Commission found that India now insisted that it brand Pakistan an aggressor, since Pakistani armed forces were actually taking part in the fighting and the Pakistani government openly admitted it.\(^{12}\) Nehru, Ayyangar and Bajpai all insisted that Pakistan be condemned as the aggressor.\(^{13}\)

The Commission, however, refrained from making such condemnation because of these facts: (1) it would immediately close the door to any further negotiation with Pakistan, and (2) the Commission was bound to follow the Security Council resolution of April 21st, which deliberately evaded discussing the guilt of the invasion or the judicial validity of accession.\(^{14}\) After patient consultations and negotiations with the government officials in New Delhi and Karachi and an intensive investigation of the dispute, the Commission determined to draft a resolution. The Commission realized that no resolution of any type would be acceptable to India unless it expressed disapproval of the Pakistani dispatch of regular troops to Kashmir.

\(^{11}\) Ibid. Annex 21. \(^{12}\) Ibid. \(^{13}\) Korbel, op. cit., p. 102. \(^{14}\) Ibid., p. 125.
Before drawing up a resolution, the Commission started to investigate the grounds of the Pakistani contentions justifying the dispatch of her regular troops. The contentions were:

(1) that if India's general offensive in the spring were successful, India would have the possibility of an Indian fait accompli stemming from a complete military occupation of Kashmir;

(2) that it would create the danger of a mass influx of hundreds of thousands of Muslim refugees from Kashmir;

(3) that it would threaten the security of West Pakistan; and

(4) that the Indian occupation of the upper waters of three Kashmir rivers flowing to Pakistan would place India in a position to strangle Pakistan economically.\footnote{15} As a whole, the Pakistani government believed that the approach of the Indian Army to the Pakistani border would spell the end of her independence. The Commission patiently and sympathetically listened to all detailed explanations on the grounds of this action given by the Governor of the North-West Frontier Province, Sir Ambrose Dundas; the Commander-in-Chief of the Pakistani
Army, General Douglas Gracey (a Britisher); Pakistan military intelligence officers and other governmental authorities. 16

These justifications did not convince the Commission of the validity of Pakistan's unauthorized action. The Commission replied to the Pakistanis that the movement of these troops into a foreign territory without invitation of the government of that territory was undeniably a violation of international law. It reminded them that this movement had seriously aggravated the problem and had given India a certain right to complain. 17

The resolution of August 13th. The Commission finally proposed a resolution on August 13, 1948, calling upon both parties to issue cease-fire orders at the earliest possible date to apply to all forces under their control in Kashmir, and to accept certain principles as the basis for a truce agreement. 18 The resolution was divided into three parts—cease-fire order, truce agreement and plebiscite.

In part I, the resolution urged the parties to agree that their respective High Commands would issue a

16 Ibid.; and S/1100, op. cit. 17 Ibid.

cease-fire order separately within four days after these proposals had been accepted by both governments. 19

Part II of the resolution defined in broad outline the conditions for a truce. It specifically criticized Pakistan's action of dispatching her regular troops to Kashmir and used it as the point of departure for the resolution. In the provisions of the resolution, there was a noticeable shift in the Commission's attitude to the advantage of India. It admitted the illegal presence of Pakistani troops in Kashmir in the following terms:

As the presence of troops of Pakistan in the territory of the State . . . constitutes a material change in the situation since it was represented by Pakistan before the Security Council . . . Pakistan agrees to withdraw its troops from that State [Part II, A, 1]. 20

The resolution stated that Pakistan would use her best endeavor to secure the withdrawal from the State of tribesmen and Pakistani nationals not normally resident in the State, while India would withdraw the bulk of her forces agreed upon with the Commission, 21 but not agreed upon with Pakistan. This withdrawal of Indian troops was to begin only after "the Commission shall have notified [India] that the tribesmen and Pakistani nationals . . .

20 Ibid.
21 Ibid.
have withdrawn . . . and further, that the Pakistani forces are being withdrawn."\textsuperscript{22} It upheld the resolution of April 21st on this issue.

A significant factor to note is that, while most members of the Security Council except the Soviet Union and the Ukraine eventually endorsed Pakistan's position during the first phase of the Council's debate and all resolutions adopted by the Council were more favorable to Pakistan than to India, most reports and resolutions made by the Commission in the sub-continent showed a considerable shift to the advantage of India.

Part III of the resolution merely stated that the future status of Kashmir would be decided by a free plebiscite.\textsuperscript{23}

Not unexpectedly, India accepted the resolution on August 20th after she had clarified certain points of interpretation with the members of the Commission.\textsuperscript{24} Pakistan accepted the resolution with many reservations and qualifications, in particular regarding the organization of a plebiscite. The introduction of these reservations was beyond the jurisdiction of the Commission. The Commission, therefore, had to consider Pakistan's accept-

\textsuperscript{22} Ibid. \textsuperscript{23} Ibid. \textsuperscript{24} S/1100, op. cit., Annex 10.
ance of the resolution with such conditions tantamount to a \textit{de facto} rejection of the resolution.\footnote{Everyman's United Nations, loc. cit.}

Among the reservations, the following merit attention:

(1) Pakistan asserted that political control over the Azad Kashmir forces was to be vested in the Azad Kashmir government (recognition of the independent regime of Azad Kashmir by the Commission). Authority to issue cease-fire order to those forces, and to conclude terms and conditions of a truce, belonged only to this government, not to Pakistan. Therefore, this government was a necessary party to any settlement of the Kashmir question;

(2) Pakistan believed that the proposals contemplated the synchronization of the withdrawals of the armed forces of Pakistan and India, which would be arranged between the High Commands of the two governments, and the Commission. During the period of a truce, no civil or military officers of the Indian government should enter Azad Kashmir territory. Azad Kashmir forces should remain intact, i.e. should not be disarmed or disbanded. The surveillance of the Commission over the local authorities did not imply the exercise of control over or interference with the
administration of the State. This contention undoubtedly ignored the original intention of Part II of the resolution. It does not justify, in any way, her willingness to accept the resolution;

(3) In order to ensure an absolute equality of the parties in a plebiscite, Pakistan urged the complete withdrawal of Indian troops from Kashmir; and

(4) Before Pakistan accepted the resolution, the Indian government should accept Part B of the Security Council resolution of April 21st (paragraph 6 to 15, both inclusive) regarding necessary conditions for the holding of an impartial and free plebiscite. The Indian government should accept the clarifications and elucidations made by the Commission to the government of Pakistan, and vice-versa. Moreover, Pakistan was preoccupied with suspicion of India, who, she thought, might obstruct the holding of a free plebiscite after political stabilization had been achieved in Kashmir following the cessation of hostilities. Pakistan was discontented with the resolution for the absence of detailed procedures for a free and impartial plebiscite. The Commission designed the resolution first to stop hostilities and later to negotiate on

\[26\text{S/1100, op. cit.}\]
\[27\text{Ibid.}\]
\[28\text{Ibid.}\]
the detailed procedures of a plebiscite.

Weakness of the resolution. The main weakness of the resolution of August 13th was the ambiguity of terms such as "bulk of Indian troops," "local authorities," and "surveillance of the Commission." These terms served as the groundwork for many future misunderstandings between the parties. Those were never clarified to the satisfaction of both parties by the Commission. Based on this ambiguous character of the resolution, the Commission's position in interpretation and clarification of the resolution appeared inconsistent and equivocal to the parties.

On the question of a plebiscite, the Commission recognized Nehru's view that Pakistan had no right to participate in a plebiscite, but, at the same time, it acknowledged at least Pakistan's de facto claim to participate in a plebiscite as a party. The cases of Pakistan's status in Azad Kashmir and the Northern Area were identical.29 These contradictory assurances were unwise. This reveals a desperate, wishful desire on the part of the Commission to secure an acceptance of the resolution from the parties at any price. The resolution did not mention anything about specific procedures for holding a plebiscite. It was one of the main reasons why Pakistan did not accept

29 Ibid.; and Brecher, op. cit., p. 95.
the resolution.

The Commission's visit in Srinagar. Before it left for Paris to report its work to the Council, the Commission decided finally to visit Kashmir and see the area in dispute. In his personal conversation with Mr. Josef Korbel, Sheikh Abdullah admitted a division of Kashmir as the last solution for the dispute. He seemed quite discouraged and distressed about the prospect of a Kashmir settlement. He was not very confident about securing the people's unquestionable support for Kashmir's accession to India. The Indian government had previously indicated its willingness to divide Kashmir between India and Pakistan. The difference between India's view and Abdullah's was that, while India seemed ready to divide the State as a realistic solution, Abdullah saw it as an act of desperation and the last resort. Sheikh Abdullah and his colleagues resented the Commission's negotiation about the fate of Kashmir, which took place outside Kashmir and without their participation. They did not know that India had discouraged the Commission from visiting Kashmir earlier when the Commission had first expressed

30 The following stories are taken from the representative of Czechoslovakia in the Commission, Mr. Josef Korbel's personal experience and observation in Kashmir. Korbel, op. cit., pp. 145-51.
this idea to India.

The resolution of January 5th. The Commission drafted the second resolution in Paris. This time, the Commission hoped to satisfy Pakistan's request for more assurances of an eventual plebiscite, by stipulating detailed principles governing a plebiscite. On December 11, 1948, the Commission presented this resolution to the representatives of India and Pakistan who were then participating in a session of the Security Council in Paris. In essence, the proposals were only a supplement to Part III of the resolution of August 13th (plebiscite clause) because the Commission "reaffirmed its previous resolution" and merely added "basic principles for a plebiscite." 31

The new proposals still favored India. In general, they were made along the line of the Security Council resolution of April 21st on this issue. Conceding India's serious objection to the ideas of a coalition Interim Government and of enormous powers of the plebiscite administrator embodied in the resolution of April 21st, the resolution however recognized Sheikh Abdullah's regime as the Kashmir government, and dropped the provision of

the Plebiscite Administrator's authority to direct and supervise the Kashmir state forces and police (B, 8 of the April 21st resolution). The proposals stipulated that "... a plebiscite administrator shall be a personality of high international standing and commanding general confidence". He was to be recommended by the Secretary-General of the United Nations in agreement with the Commission and formally appointed to the office by the government of Kashmir (Abdullah's interim regime). The reason for employing this method of appointing the Plebiscite Administrator was merely a technical one. By this provision, India's prestige was maintained. The Plebiscite Administrator still possessed such powers as he considered necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite as ones stipulated in the resolution of April 21st. After implementing Part I and II of the Commission's resolution of August 13, 1948, and peaceful conditions having been restored in the State, the Commission and the Plebiscite Administrator were to determine, in consultation with the government of India and not with Pakistan, the final disposal of the Indian and State armed forces. Pakistan was completely excluded from participating in the
disposal of the Indian and State armed forces. Such disposal was to be carried out with due regard to the security of the State and the freedom of the plebiscite.\textsuperscript{33}

India accepted the proposals on December 23rd. Before accepting them, Nehru requested and received full assurances from the Commission on the following major points:

1. Until Pakistan accepted and implemented Part I and II of the resolution of August 13th, India's acceptance of the new resolution was not to be regarded as in any way binding upon them;

2. If the Plebiscite Administrator found a plebiscite impracticable under those circumstances, the way would be open to consider other methods than a plebiscite to ascertain the free will of Kashmiris in regard to the future status of the State;

3. The functions and powers of the Plebiscite Administrator would be limited to ensuring that the plebiscite was free and impartial and not involve in any way interference with the normal administration of the State government;

4. After Pakistani forces had withdrawn, Azad Kashmir forces would be disarmed in order to ensure a free atmosphere for

\textsuperscript{33}Ibid.
a plebiscite; and

(5) Pakistani religious fanaticism could not be regarded as a legitimate political activity if it tended to disturb law and order.\textsuperscript{34} The Commission, after the presentation of the proposals, sent its members to New Delhi and Karachi to be at the disposal of both governments for any explanation about the proposals.\textsuperscript{35}

Pakistan accepted the proposals after she received some measure of assurance from the Commission on the question of selecting the Plebiscite Administrator:

(1) The Plebiscite Administrator would be selected in consultation with the governments of India and Pakistan, but the final decision would rest with the Secretary-General of the United Nations in agreement with the Commission;

(2) The Plebiscite Administrator was to have powers as he considered necessary for organizing and conducting the plebiscite and ensuring its freedom and impartiality;

(3) The organizing and conducting of the plebiscite would be the responsibility exclusively of the plebiscite administrator; and

(4) The Plebiscite Administrator, though formally appointed

\textsuperscript{34}Korbel, \textit{op. cit.}, p. 158.

\textsuperscript{35}\textsuperscript{34}/1100, \textit{op. cit.}, Attachment 1, Aide Memoire No. 1.
by the government of Kashmir, would not be an employee of
the government of Kashmir or subject to its control.  

The resolution was finally accepted by India and Pakistan
after thorough explanations by the Commission to the
parties on the precise meaning and implied conditions of
almost every clause. As the first step, both governments
ordered the cease-fire in Kashmir effective one minute
before midnight, January 1, 1949.

For the first time in fourteen months, the Kash-
miris found relief from the nightmare of killing and
destruction. Hundreds of homes had been destroyed. The
number of people killed in the conflict was unknown. The
number of refugees had reached 375,000 in Pakistan, and
150,000 in Azad territory; and 45,000 in India, and
181,000 in Indian Kashmir. It is true that this cease-
fire stood to the credit of the United Nations as one of
its early and most important success in preserving inter-
national peace and security. On January 5th, the Commiss-
ion met at Lake Success to embody its proposals of
December 11th into a formal resolution, now generally
known as the resolution of January 5th.  

36S/1100, op. cit., Annex 5, Enclosure (Memorandum
embodying the clarification given by H. E. Lazano of


38S/1196, op. cit.
In accordance with the provisions of this resolution, the then Secretary-General of the United Nations, Mr. Trygve Lie, selected United States Fleet Admiral Chester W. Nimitz, as the Plebiscite Administrator on March 24, 1949. However, because of the deadlock over the negotiation on demilitarization, he never formally assumed his responsibility.

The Commission returned to the sub-continent on February 4, 1949, to implement the terms of the cease-fire, put into effect the truce agreement, and prepare a plebiscite.

**Implementation of Part I of the resolution of August 13th.** Upon its return to the sub-continent, the Commission had to deal first with the effective implementation of the cease-fire, Part I of the August 13th resolution. The Commission continued negotiations with the parties for seven long months to secure an agreement on the question of demarcating the cease-fire line, but without success. The Commission vainly strived to secure agreements on the military and political aspects of the truce simultaneously through various procedures. The delay was due to the Commission's futile attempt to

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implement the goals of Part I and II of the resolution at the same time. After realizing the difficulties of this means, the Commission started to treat the two problems separately and negotiated with the parties in joint meetings to achieve the agreement on the purely military problem—the demarcation of the cease-fire line on the ground which was the goal of Part I of the resolution. By this an agreement was finally secured in Karachi on the question of Part I on July 27, 1949, "without prejudice to political issues as to future negotiations concerning the implementation of Part II of the 13th August resolution." The agreement stated:

(1) that both parties were free to adjust their defensive positions behind the cease-fire line;

(2) that both parties, however, should not increase their forces in Kashmir; and

(3) that the Commission was allowed to station observers anywhere in the State (which was the origin of the United Nations Military Observers Group for Kashmir).

The observers teams were composed of officers of Belgium, Canada, Mexico, Norway and the United States, and

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41. Ibid.
headed by the Commission’s military advisor, in close co-operation with the military authorities on both sides. The teams contributed a great deal by the prevention of any incident which might have become a major breach of the cease-fire line. The Commission hoped that this would prove to be an important contribution to the peaceful settlement of the dispute.42

According to Mr. Korbel, the delay and difficulties the Commission had during its first seven months was mainly due to the lack of the Commission’s internal cohesion, specially due to the sabotage tactics of the Czechoslovak delegate, Mr. Oldrich Chyle.43

The implementation of Part II of the resolution of August 13th. The effectuation of the truce, which was the goal of Part II, was a very difficult task to accomplish. It was concerned with such fundamental political issues as already discussed in Chapter III.

On March 2, 1949, the Commission called upon the governments of India and Pakistan to send their respective civil and military representatives to meet with the

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42.Ibid.

43.Korbel, op. cit., p. 154. After Mr. Korbel had left the Commission for a political reason, the communist government of Czechoslovakia nominated Mr. Oldrich Chyle, who immediately employed the tactics of sabotaging the Commission’s work.
Commission's Truce Sub-committee. The joint meeting began in New Delhi on March 9, 1949. The two governments presented their own plans for the withdrawals of their forces, which sharply differed from each other. The government of India did not agree with the premises on which the plans of the Pakistani delegation were based. Several attempts were made by the Commission in its mediation on all points of difference, but without success. The Commission, then, drafted its own proposals and submitted them to India and Pakistan on April 15th. Both parties refused to accept them without making major reservations. The Commission finally drafted compromised "revised Truce Terms" and presented them to both parties on April 28th. The truce terms of April 28th were classified into the three parts of the August 13th resolution:

(1) Cease-fire line (Part I of the August 13th resolution)—Paragraph A through C of Part I relating to the cease-fire line had already been implemented as a result of the Karachi agreement. The only unsettled problem was one on the sparsely populated and mountainous region of the State—Northern area, which was referred to in Paragraph 1, D. It provided that, if the Commission and/or the Plebiscite Administrator concluded that it was

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48/1430, op. cit.
necessary for the defense of the area, the Commission and/or the Plebiscite Administrator might agree to have the government of India station garrisons north of the cease-fire line;

(2) Withdrawal of forces (Part II)—In conformity with the terms of Paragraph B, 1 of Part II, and following the principles embodied in Part II of the August 13th resolution, the Commission established the detailed schedules for the withdrawals of Pakistani troops and the bulk of the Indian troops from the State; and

(3) General provision (Part III)—This reaffirmed the clauses of the August 13th resolution regarding the release of political prisoners, the guarantee of civil rights, etc. It stated that the territory evacuated by the Pakistani troops would be administered by the local authorities under the surveillance of the Commission. The Commission would dispose of the Indian and State armed forces in consultation with the government of India, and disband the local armed forces in the territory to be evacuated by Pakistani troops in consultation with the local authorities.\(^{45}\) The ambiguous terms such as "local authorities," "bulk of the Indian troops," and "surveillance of the Commission" were never clarified by

\(^{45}\)Ibid. (Underlined emphasis is mine).
the Commission in these proposals either. The proposals of Part II were designed to please the Indian government.\textsuperscript{46}

Both governments sent the Commission letters of reply, which did not constitute an acceptance of the revised "Truce Terms". They clearly brought out that major points of difference still existed between them. The Commission found that both parties were still maintaining their old objections to Part II of the August 13th resolution, objections which they had previously raised when they first considered this resolution in August, 1948. The letters of May 8, June 17 and June 19 by the government of India to the Commission and that of May 30 by Pakistan revealed that "their previous attitudes toward the conditions, under which they would be able to carry out their obligations, were virtually unaltered" in spite of their acceptances of the August 13th resolution. They were India's usual claims on the complete disbanding and disarming of Azad Kashmir forces and on its relationship with the Indian troops. The other was Pakistan's reiterated claims on the synchronized withdrawals of both Indian and Pakistani troops. These were

\textsuperscript{46}\textit{Ibid.} \hspace{1cm} \textsuperscript{47}\textit{Ibid.}
all thoroughly analyzed and discussed in a previous section of this chapter.

**Arbitration proposal.** Having faced the impasse on the joint political meeting, the Commission felt that its mediation, under the limitation of the mandate, was exhausted. As a final effort to break the impasse, the Commission, on August 26th, requested the parties to submit to arbitration all points of difference regarding the implementation of Part II of the resolution of August 13th.\(^{48}\) This arbitration proposal was supported by President Truman and Prime Minister Attlee, who handed massages urging the acceptance of this proposal to the ambassadors of India and Pakistan both in Washington and London.\(^{49}\) Fleet Admiral Chester C. Nimitz was proposed as arbitrator. However, this move surprised and displeased Nehru. On September 4th, he openly declared this surprise at his press conference.\(^{50}\) He also reminded the world of Pakistan's "unwarranted aggression against international

\(^{48}\) *Ibid.*


\(^{50}\) *Times of India [Bombay], September 5, 1949, cited by Brecher, *op. cit.*, p. 101.*
In the letters of September 8th and 10th to the Commission, the government of India expressed its inability to accept this suggested course of action. In Pakistan, the reaction also took the form of criticism of the West, and it contended that Kashmir was enmeshed in power-politics. Pakistan, however, accepted the proposal on September 7th.

**Military situation in Kashmir in the interim.** At this stage of the dispute and during the following years, the principal problems in the implementation of the August 13th resolution were the disposal of Azad Kashmir forces, the withdrawals of armed forces from Kashmir, and the status of the Northern area. But there was another outstanding obstacle to the implementation of the resolution. It was the situation which occurred in Kashmir between August, 1948 and the summer of 1949. Azad Kashmir had grown from a small, poorly-equipped guerrilla force to an army of some 32 well-equipped fighting battalions.

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51 Nehru’s speech in Allahabad, Sept. 4, 1949, cited by Korbel, op. cit., p. 158.
52 S/1430, op. cit.
54 S/1430, op. cit.
55 Ibid.
The Commission observed that:

The Azad Kashmir forces who have been working in close co-operation with the Pakistani regular Army and been training and officered by that Army now have a strength which changes the situation and to that extent makes the withdrawal of forces, particularly those of India, a far more difficult matter to arrange within a structure which considers only the regular forces of two Armies.\(^5\)

This was one of the main reasons why the resolution had been unworkable. When the resolution had been drafted, the procedures laid down in it did not contemplate the creation and enlargement of Azad Kashmir forces. The Commission observed that the situation changed but the resolution remained unchanged, which did not provide an adequate way of solving the dispute.\(^5\) India had a valid reason to worry about this Azad Kashmir forces. India was never sure of the ability of Kashmiris living in the Indian part of the State to resist Azad people either politically or militarily. Moreover, once the Indian troops had withdrawn, it would be difficult for India to get back all strategic locations of the State over high mountains and long distances within a short period. On the other hand, if Azad Kashmir forces suddenly started war again, Pakistani supplies, weapons, and perhaps

\(^5\)Ibid. (Underlined emphasis is mine).

\(^5\)Ibid.
once again troops would be easily and immediately available.\footnote{58}

The Commission's recommendations. In its third interim report of December 9, 1949, the Commission made several recommendations to the Council on the future means of solution of the dispute by United Nations mediation: (1) The Security Council should designate a single individual as its representative for mediation with broad authority to negotiate on all unresolved issues; and (2) The Security Council should consult with representatives of both governments in order to arrive at terms of reference for its representative—including consultation regarding the scope of his authority to settle all points of difference eventually by arbitration.\footnote{59}

Minority report. A week later, the Czechoslovak delegate presented the minority report, which disagreed with the majority view on all issues. This report also recommended that the Commission be replaced by a new one composed of representatives of all members of the Security Council.\footnote{60} This report was never acted upon.

\footnote{58}{\textit{Korbel, op. cit.}, p. 159.}
\footnote{59}{\textit{S/1432, op. cit.} (Underlined emphasis is mine).}
\footnote{60}{\textit{Ibid.}, Add. 3 (Addendum to the third interim report of U.N.C.I.F.: Minority report of the Czechoslovak delegate,).}
Therefore, it is too insignificant to discuss.

The Commission found that in such circumstances it "could no longer hope to continue in effective mediation of difference, without a broad field of action". With the acknowledgement of its failure to secure an agreement on the conditions for holding a plebiscite, the Commission finally returned the entire question to the Security Council.

61 Ibid.
CHAPTER V

THE MCNAUGHTON PROPOSALS AND THE DIXON MISSION

The McNaughton proposals. On December 17, 1949, the Security Council appointed General A.G.L. McNaughton, the then President of the Council and the Canadian permanent delegate to the United Nations, as informal Mediator for the Kashmir dispute. The Council entrusted him with the task of negotiating with the representatives of India and Pakistan, and of finding a mutually satisfactory basis for dealing with the Kashmir problem.

Pursuant to the Security Council decision of December 17, 1949, General McNaughton presented the proposals for demilitarization to India and Pakistan on December 22, 1949. The program for progressive demilitarization included:

(1) the withdrawal from Kashmir of the regular forces of Pakistan; and the withdrawal of the regular forces of India not required for the purpose of security, or for the maintenance of local law and order on the Indian side of the cease-fire line;

(2) the reduction of local forces through disbanding and

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disarming the State armed forces and militia, and the 
Azad Kashmir forces; and
(3) the provision that the administration of Northern 
Areas, which was in the program of progressive demilitari-
zation, should be continued by the existing local authori-
ties, subject to United Nations supervision. As a "sug-
gested basis of agreement," he proposed:
(1) that Pakistan should give an unconditional assurance 
to India that she would not allow the tribal invaders to 
enter Kashmir from or through the territory of Pakistan; 
and
(2) that agreement should be reached on the minimum forces 
required for the maintenance of security and of local law 
and order. As recommended by the Commission in its third 
report to the Council, the Commission was to be replaced 
by a single United Nations Mediator with authority (1) to 
interpret the agreements reached between the parties; and 
(2) to determine, in consultation with the governments of 
India and Pakistan respectively, the implementation of the 
plans for the reduction and redistribution of armed forces.

Pakistan accepted the proposals with minor verbal 
modifications. India accepted them with such significant

2Ibid.
3For Pakistan's modifications, see Ibid.
substitutions that her acceptance was tantamount to a de facto rejection of the proposals. They were:
(1) that the State armed forces and militia should remain intact in Kashmir and not be disbanded nor disarmed; (2) that the responsibility for the defense of the Northern Areas should be vested in the government of India; and (3) that the responsibility for the administration of the Northern Areas should be vested in the government of the State (Sheikh Abdullah's regime) instead of the "existing local authorities." The fundamental objection of India to the proposals was her unchanged position that she would not recognize Azad Kashmir as a necessary party to the dispute. From December 29, 1949, to January 13, 1950, General McNaughton conducted a series of further negotiations with the parties regarding his proposals. But, the amendment reservations of India could not be reconciled. After accepting failure, General McNaughton reported the deadlock on the negotiations to the Council on February 3, 1950. Despite India's rejection, these proposals attracted favorable reaction from most members of the

Annexure 1 (Amendments proposed by Pakistan to General McNaughton's proposals of 22nd December 1949).

4Ibid.
5Ibid.
Council as evidenced in the subsequent resolution of March 14, 1950.

The resolution of March 14, 1950. Two months after the McNaughton proposals had been rejected, the Council came back again to a scene of mutual recrimination between Sir Benegal Rau (who had replaced Ayyangar) and Zafrulla Khan. The representatives' speeches were clouded with even more bitterness and hostility. Zafrulla Khan, speaking continuously through three meetings of the Council, reviewed the entire history of the dispute from a decidedly Pakistani point of view. Benegal Rau, on February 10, 1950, charged Pakistan with violating Article 51 of the United Nations Charter almost two years before:

Article 51 of the United Nations Charter imposes two limitations upon the right of self-defense: first, there must be an armed attack upon the Member that exercises the right; and, secondly, measures taken in the exercise of the right of self-defense must immediately be reported to the Security Council. However there was no armed attack upon Pakistan, and, admittedly, the sending of the army into Kashmir was not reported to the Security Council.

Finally, a new draft resolution was submitted to the Council by the delegates of Cuba, Norway, the United Kingdom, and the United States on February 24, 1950. It called upon India and Pakistan:

... to make immediate arrangements ..., to prepare and execute within a period of five months.

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from the date of this resolution a program of
demilitarisation on the basis of the principles
of paragraph 2 of General McNaughton's proposal
or of such modifications of those principles as
may be mutually agreed upon.7

Like the recommendation of the Commission to the Council
and the McNaughton proposals, it provided for the appoint-
ment of a single United Nations Mediator to implement
the program of demilitarization.8 During the debates on
this resolution, most members of the Council strongly
supported the McNaughton proposals. On March 14, 1950,
the resolution was adopted by a vote of 8 to 0, with
India and Yugoslavia abstaining. The Soviet Union was
absent. Since India was an elective member of the Secur-
ity Council at that time, India's abstention was by
virtue of paragraph 3, Article 27 of the United Nations
Charter.9 Yugoslavia was doubtful of the resolution.
She thought it did not give due consideration to the
rights and interests of the Kashmiris.10 During the
debate the Soviet delegate, Jakob Malik, abstained.

7S/1469, March 14, 1950.  
8Ibid.  
9Paragraph 3 of Article 27 of the Charter provides:
Decision of the Security Council on all other matters shall
be made by an affirmative vote of seven members including
the concurring votes of the permanent members; providing
that, in decision under the Charter VI, and under para-
graph 3 of Article 52, a party to a dispute shall abstain
from voting.  
When the Council met to vote on the resolution, Malik was absent. The Soviet delegate refused to attend any more Council meetings until the permanent seat occupied by Nationalist China was given up to the People's Republic of China (Peking regime). The elective members of the Security Council during the 28 months since 1947 were Argentina, Belgium, Canada, Colombia, Syria, Egypt, Cuba, Ecuador, Brazil, Holland, Turkey, and at a later period Lebanon, Greece, Chile, and Norway.¹¹

On March 14th, the Indian delegate, Bengal Rau, though accepting the replacement of the Commission by a single United Nations Mediator, rejected the McNaughton proposals and, consequently, the resolution itself which was based upon the McNaughton proposals.¹² The proposal of March 14th was not reasonable. When General McNaughton made his proposals, upon which the resolution was based, India did not accept them unconditionally and clearly indicated her unchanged position in her amendments. Nevertheless, the resolution did not contain any modification from the McNaughton proposals nor take into consideration at all India's view for objecting to the proposals.

On April 13th, the Security Council, by a vote of

8 to 0 with India and Yugoslavia again abstaining and with the Soviet Union absent, appointed a prominent Australian jurist and former Australian ambassador to the United States, Sir Owen Dixon, to be United Nations Mediator. Although there was no outright opposition to Sir Owen's appointment, the reactions to the McNaughton proposals in India and Kashmir (the Indian side of the cease-fire line) were not calculated to inspire him with confidence in his mission. Spokesmen in India and Kashmir declared "if Sir Owen tries to be his proposals on the McNaughton formula, failure is certain." 13

The Dixon Mission. On May 27, 1950, the newly-appointed Mediator arrived in the sub-continent to implement the resolution of March 14th. He visited the capitals of both countries and traveled extensively in Kashmir during the following eight weeks. On the return of the Prime Ministers of India and Pakistan from abroad, Sir Owen convened a four-day conference with Nehru and Ali Khan in New Delhi on July 20, 1950. 14

It is noteworthy that Sir Owen became the first


United Nations official to accept India’s claim that the early invasion of Kashmir by tribesmen and the later movement of regular forces of Pakistan into Kashmir had both been contrary to international law. On the first day of the New Delhi Conference, this legal-minded Mediator criticized Pakistan in the following terms:

I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed . . . by hostile elements, it was contrary to international law, and when, in May 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law.¹⁵

The statement made by Sir Owen was, however, not in accordance with the mandate given to him by the Council in carrying out his political mission. He was not given any authority to make such a judicial finding and judgement on the dispute. Neither was the Commission. Like the Commission that had preceded him to the sub-continent, Sir Owen Dixon found himself criticizing Pakistan for what he considered to be a violation of international law, and thus became more favorably inclined toward the Indian position.

Sir Owen’s program for demilitarization was divided into two parts—withdrawals of forces and separate administration of each territory.

¹⁵Ibid.
The withdrawals of forces. He proposed that as a first step in demilitarization, the withdrawal of the regular forces of the Pakistan Army begin on a specific day from the areas west or west and north of the cease-fire line. After a significant number of days, India was to start to withdraw her forces from the areas east and south of the cease-fire line. After the fixed day agreed upon by the parties, the withdrawal or disarming and disbanding of both Azad Kashmir and State forces would take place, and this would be followed by the disarming and disbanding of the State militia. Although given a preferred position in the proposals, India rejected the plan for the withdrawals of both forces on the grounds that, despite the withdrawals, Pakistan might still attack the State in view of its earlier actions, and that India needed some protection in the areas against marauders.16

The separate administration of territories. Sir Owen first proposed a plan for controversial Azad Kashmir, which he defined as the area west of the cease-fire line. The administration of the State government was to proceed according to the law and custom of the State as existing before the tribal invasion. To ensure impartiality, Sir Owen suggested that a United Nations officer be assigned

16 Ibid.
to each District Magistrate with the "power of supervision."
He assured India that this provision by no means intended
to recognize Azad Kashmir authority in that area or any
other authority except one derived from the State govern-
ment. Nehru, however, remained unconvinced and objected
to the plan on the grounds that (1) it would recognize
existing District Magistrates and subordinate officers; and
(2) the present Magistrates, who had been appointed by
Pakistan to replace the former officials since the tribal
invasion of 1947, might be repugnant to India.¹⁷

The Northern Areas. The Areas were made up of the
territory north of the cease-fire line and east of the
district of Muzaffarabad and of the Gilgit sub-division
and of the political districts of Gilgit Agency. Sir Owen
treated this area separately from Azad Kashmir territory
because of India's objection to the recognition of
Pakistan authority continuing in this area during the
interim period between demilitarization and a plebiscite.
He proposed that a Political Agent or Agents representing
the United Nations be appointed directly by the Security
Council, after consultation with India and Pakistan, and
be vested with authority for the administration of the
area. To this plan, the Prime Minister of India objected

¹⁷Ibid.
on the following grounds:

(1) Any consultation with Pakistan recognized her right to be in the Northern Areas;

(2) The Political Agents representing the Security Council would be necessarily guided by existing administrative officers, who were appointed by Pakistan, and would be unable effectively to ensure fairness; and

(3) In any event India should place garrisons or military posts in certain places in the area.\(^1\)

As to the Indian side of the cease-fire line, the Mediator was exceedingly cautious to ensure that "arbitrary powers which at present exist were not exercised so as to interfere with the freedom of the plebiscite. . ."\(^2\) For this he proposed that a United Nations officer be posted with each District Magistrate. This officer would be given vast powers to see the administrative records and proceedings of the District Magistrates and all officers subordinate to the Magistrate, while in Azad Kashmir the functions of the United Nations officer was confined to "supervision". Furthermore, without the prior written consent of the United Nations officer, no warrant or order for the arrest of any person was to be granted by the State government. To this plan the Prime Minister of

\(^1\)Ibid.

\(^2\)Ibid.
India objected on the grounds that (1) it would involve an interference with the integrity of the functions of the State; and that (2) it would help subversive elements to stir up communal strife and violence.

Upon the rejection of his plan for a split administration, Sir Owen suggested plans for joint administration of the State. It was to be the administration of unified government for the entire State during the plebiscite period. He offered three plans and urged the parties to accept one of these, viz.;

(1) to set up a coalition government through a meeting of Sheikh Abdullah of the Kashmir State government, and Ghulam Abbas of the Azad Kashmir movement;
(2) to form an administration for the entire State composed of trusted, non-political officers, half of them Hindus and the other half Muslims, under a chairman appointed by the United Nations; and
(3) to form a non-political administration constituted wholly of United Nations representatives. This scheme was, however, not accepted by India. In his report, Sir Owen did not explain why Prime Minister Nehru objected to it. 20

At this stage, Sir Owen submitted a proposal, as a

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20 Ibid.
final solution alternative to an over-all plebiscite in
the State—the partition of Kashmir between India and
Pakistan and a plebiscite in the Valley of Kashmir only.
At the Conference, Sir Owen concluded that some areas
were certain to vote for accession to India and some for
accession to Pakistan. People in those areas should
join respective Dominion accordingly without taking votes.
A plebiscite should be confined only to uncertain areas—
the Valley of Kashmir and perhaps some adjacent areas.
Nehru then pointed out that geographic contiguity should
be given due consideration in any such partition. India
reacted favorably to this proposal. Ali Khan objected
to the scheme on the ground that it would be a breach
of the August 13th resolution, which stipulated that the
destiny of the State should be determined as a whole.
However, he later reluctantly accepted Sir Owen's further
suggestion that the two Prime Ministers meet again with
Sir Owen to discuss the possibility of this scheme on
August 11, 1950. The Prime Ministers then agreed to the
adjournment of the Conference.

During Sir Owen's individual negotiations with the
heads of both governments in New Delhi and Karachi on
the possibility of the partition scheme, Ali Khan insisted
that he would not attend the next conference with Sir Owen
and Nehru unless Sir Owen inserted one provision into his
scheme, viz. a provision that would permit Pakistan to send her regular troops into the Valley of Kashmir during the plebiscite period in order to ensure fairness and impartiality of the plebiscite. Pakistan also insisted that India accept this condition in advance. Pakistan's claim on her participation in a plebiscite in the Valley of Kashmir, which was located on the Indian side of the cease-fire line, was apparently unacceptable to India. Pakistan undoubtedly knew that India would not accept this condition. Consequently, Nehru informed Sir Owen by telegram that the government of India would not allow this condition for holding a plebiscite in the Valley of Kashmir. When his final mediation effort for a solution alternative to an over-all plebiscite in the State proved hopeless, he acknowledged the failure of his mission and left the sub-continent on August 23, 1950.

**Dixon Recommendation.** Despite his failure to secure an acceptance from the parties on the proposal for a partition of the State and a plebiscite in the limited area, Sir Owen, in his report to the Security Council on September 15, 1950, nevertheless concluded that the only likely solution in Kashmir would now be a plebiscite only in the Valley of Kashmir and partition of the rest

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21 **Ibid.**
of the State by mutual agreement between the parties, rather than an over-all plebiscite in the State. An over-all plebiscite would prove not only difficult but would be likely to lead to refugee migration. As another possible solution, Sir Owen strongly recommended that the Council allow the parties themselves to negotiate bilaterally without participation by the Security Council. He pointed out that the continued threat to international peace and security was "another matter". For this, he recommended that the Council:

(1) press the parties to reduce their military strength along the cease-fire line as if it were a peacetime frontier; and

(2) retain, in the meantime, the party of United Nations Military Observers team along the cease-fire line.22

With the termination of the mediation mission by Sir Owen Dixon, another phase of the Kashmir dispute had ended. After the failure of the Dixon mission, both India and Pakistan charged each other with the responsibility for the failure. Both sides were equally dissatisfied with the Dixon report.

The United Nations action in the Korean War. The Dixon mission became increasingly difficult with the

22Ibid.
outbreak of the Korean conflict in June, 1950. Both parties were bitterly critical of the difference in the way the United Nations acted in the Kashmir conflict and the way it acted in the Korean conflict. They interpreted this contrast as evidence that the United Nations acted decisively only when the vital interests of one of the great powers were at stake.\(^2\) India's disappointment was far more profound than that of Pakistan. India argued that, "if the North Korean communists had invaded South Korea [the Republic of Korea], so had Pakistan invaded Kashmir."\(^2\)

In the writer's opinion, India herself was responsible for the United Nations' less decisive action in Kashmir. India, through her delegate, Ayyangar, did not intend to condemn Pakistan nor unequivocally request the Council to brand Pakistan as the aggressor or call for positive United Nations action against this aggressor. As fully explained in "India's approach to the case" in Chapter III,\(^2\) the Indian delegate rather abstained from formally calling Pakistan the aggressor, and differentiated between Pakistan and the tribal invaders.

\(^2\)Brecher, op. cit., p. 113.
\(^2\)Korbel, op. cit., p. 171.
CHAPTER VI

THE GRAHAM MISSION

The Dixon Report was not discussed in the Security Council for the following five months. One reason was that the Council was not prepared to follow Sir Owen's recommendation to allow the disputants themselves to negotiate bilaterally. In the writer's opinion the Council was right in not following this suggested course of action in view of the situation which subsequently occurred in the sub-continent.

After the Dixon Report was made public, both India and Pakistan criticized each other. In Pakistan the situation was dangerous. Nationalist elements in Pakistan and Azad Kashmir, being impatient with the United Nations mediation efforts, advocated a settlement of the dispute by means of force. Extremists in Pakistan called for the withdrawal of the Pakistan delegation from the United Nations if the Council would not reopen the discussion on Kashmir in the near future.¹

Pakistan's insistence on immediate United Nations

¹Korbel, op. cit., p. 175; and Brecher, op cit., p. 114.
action increased when, on October 27, 1950, the General Council of the Kashmir National Conference called for the convening of a Kashmir Constituent Assembly on the Indian side of the cease-fire line to "determine the future shape and affiliation of Kashmir". 2

If the Security Council, following Sir Owen's recommendation, had let the parties negotiate directly, these cries would never have ceased. The prolongation of this situation would have opened the door to a renewal of war in the sub-continent. This would have been a threat to the very authority of the Security Council.

The Commonwealth mediation. During this critical period, the Security Council was very cautious in taking the initiative in the resumption of discussion on the dispute. Another reason for the Council's delay in opening the discussion was the Conference of the British Commonwealth Prime Ministers held in London in January, 1951, and the Council's hope of mediation through the Commonwealth bloc. The British government was, however, equally cautious about taking any initiative in that direction.

In an effort to "regain confidence of the public at home and enlist the sympathy of the Commonwealth Prime

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Ministers abroad,^3 Prime Minister Ali Khan, on December 30, 1950, announced that he would not attend the Conference unless the Kashmir question was placed on the agenda.^4

After an exchange of cables between London and Karachi, Ali Khan finally agreed to attend the Conference. At the Conference, three proposals were made by the Australian Prime Minister, Robert Menzies, to solve the problem of demilitarization in Kashmir:

(1) to station Commonwealth troops in Kashmir during the plebiscite period;

(2) to authorize the Plebiscite Administrator to raise a local Kashmir force for the plebiscite period; and

(3) to have a combined force of Indian and Pakistan troops in Kashmir during the holding of a plebiscite.5

The meeting continued informally for seven hours but nothing was agreed upon. Nehru rejected all of these proposals while Ali Khan accepted all.

The United Kingdom-United States joint draft resolution of February 21, 1951. The following month, the lengthy silence of the Security Council on the dispute

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^3 Shikoh, op. cit., p. 110.


was finally broken by the British delegate, Sir Gladwyn Jebb, who called for urgent United Nations action to improve the situation in Kashmir. On February 21, 1951, the delegates of the United Kingdom and the United States (Mr. Ernest A. Gross) jointly introduced a draft resolution in the Council.

In its preamble, the resolution merely reaffirmed the Commission's resolutions of August 13, 1948, and January 5, 1949, and the Security Council resolution of March 14, 1950. It also criticized India for sanctioning the convening of the Kashmir Constituent Assembly. The resolution reminded India that the action taken by her in connection with the Constituent Assembly was not in accordance with the principles embodied in the Security Council resolutions (of April 21, 1948; of June 3, 1948; and of March 14, 1950) and the Commission's resolutions (of August 13, 1948, and of January 5, 1949), which stipulated that the destiny of the State was to be determined through the democratic method of a state-wide plebiscite.  

Flatly rejecting Sir Owen's recommendation for bilateral negotiation by the disputants themselves, the resolution provided for another single United Nations
Mediator to work on the demilitarization problem and to provide the necessary conditions for the holding of a plebiscite on the basis of the Commission's resolutions of August 13th and January 5th. 7

The resolution showed some flexibility in the Council's approach to a settlement of the dispute. This was demonstrated in the terms of reference given to the Mediator by the Security Council. The Council, until then, had repeatedly used the same terms of reference with regard to the Commission and Sir Owen in spite of the failure to break the impasse. Now, the new resolution directed the Mediator to take into consideration the recommendation of Sir Owen in regard to a partition of the State, or the combination of a partition of the State and a plebiscite in the valley of Kashmir. As proposed in the preceding Prime Minister's Conference in London, the resolution directed the Mediator to consider the idea of the stationing of a neutral force in Kashmir during the plebiscite period. This term of reference was not diplomatic at all since India had emphatically rejected this proposal in London. The Security Council should have known that it would not be wise to again urge India to accept the same proposal which she had rejected only

7Ibid.
a month ago. The resolution called upon the parties to accept arbitration upon all outstanding points of difference on demilitarization in the event the parties failed to reach an agreement.

In general, the resolution was, however, not very different from the earlier ones, which had not broken the impasse over the major points. The Council demonstrated a considerable degree of flexibility in its means of procedure for a settlement of the dispute employing the mediations by Council Presidents, the United Nations Commission and single United Nations Representative. But, by giving the same terms of reference to both the Commission and the Representatives— to seek for the solution of the dispute only through demilitarization and a State-wide plebiscite, the Council could not escape a rigidity of approach to the solution.

Although not rejecting the resolution, Zafrulla Khan suggested to the Council a further modification of the resolution. Pakistan strongly objected to the provision allowing the Mediator to consider Sir Owen's recommendation concerning a partition of the State and a plebiscite in the Valley of Kashmir.

As to the criticism of the Kashmir Constituent

\[8S/P.V. 574, \text{ March 6, 1951.}\]
Assembly, the Indian delegate explained that: "so far as the government of India is concerned, the Constituent Assembly is not intended to prejudice the issue before the Security Council, or to come in its way." The government of India made it clear that the Assembly did not intend to nullify the use of a plebiscite on the issue of Kashmir.

On March 21, 1951, the Indian delegate informed the Council that his government would not accept the resolution. Nehru favored the Dixon recommendation of bilateral negotiation. India objected to the resolution on the ground that she would not countenance the entry of any foreign troops in the State or in any part of India.

The Revised draft resolution of March 21, 1951. Both parties, in their statements before the Council, had asked for modifications of the draft resolution. After further debate in the Council, the delegates of the United Kingdom and the United States presented a revised draft resolution to the Council on March 21, 1951. The revised draft resolution removed certain significant provisions from the original draft. They were:

(1) the provision concerning the implied reference of the

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93/P.V. 523, March 1, 1951. 10Ibid.
possibility of a partition of the State and a plebiscite in the Valley of Kashmir, which Pakistan had strongly objected to and India had favored;

(2) the provision that the Mediator present detailed plebiscite plans to the two governments; instead it was now left to the Plebiscite Administrator; and

(3) the provision authorizing the stationing of a neutral force in the State during the plebiscite period, which India had objected to and Pakistan had favored.\textsuperscript{11}

The revised resolution did not consider India's fundamental objection in the original draft—reference to arbitration. All members of the Council, except the delegates of the Soviet Union and Yugoslavia supported this compulsory arbitration.\textsuperscript{12}

The revised resolution was adopted on March 30, 1951, by a vote of 8 to 0 with India, the Soviet Union, and Yugoslavia abstaining.\textsuperscript{13} India's abstention was by virtue of paragraph 3 of Article 27 of the Charter. Not unexpectedly, Pakistan welcomed and adopted the resolution "in all parts and aspects — and particularly paragraph 6

\textsuperscript{11}S/2017/Rev.1, March 21, 1951.

\textsuperscript{12}For speeches supporting the resolution by members of the Council, see S/P.V. 572, March 29, 1951; and S/P.V. March 30, 1951.

\textsuperscript{13}S/P.V. 540, April 2, 1951.
[compulsory arbitration]." The resolution satisfied Pakistan's two basic demands—reference to arbitration of not only differences in the implementation and execution of the resolutions of August 13th and January 5th but also of other Indo-Pakistan disputes; and the criticizing of India for sanctioning the convening of the Kashmir Constituent Assembly. India rejected the resolution principally because of the arbitration clause.15

Despite India's rejection of the resolution, the Council proceeded to implement it by appointing Dr. Frank F. Graham as another United Nations Representative for the Kashmir dispute on April 30, 1951. The appointment was approved by the Council by a vote of 7 to 0, with India, the Netherlands, the Soviet Union, and Yugoslavia abstaining. Dr. Graham had been President of the University of North Carolina and for a short period a United States senator from North Carolina. At the time of his appointment, he was Defense Manpower Administrator in the United States Department of Labor. He had recently gained considerable international renown for his achievement as a member of the United Nations Committee of Good Office

14 Ibid.
15 S/P.V. 538, March 29, 1951.
for Indonesia. 16 Evidently, the Council deliberately picked such a man of ability and accomplishment on mediation.

The arbitration proposal. Before discussing the Graham mission, the writer would like to examine and analyze the procedures and legal validity of the arbitration proposal made by the Council in connection with the demilitarization of the State. India was criticized for her objection to the arbitration proposal, and this was taken to be by some members of the Council as an unco-operative attitude toward the United Nations.

India, however, had her own basis for rejecting it. Kashmir had already been part of the Union of India, against which Pakistan was the aggressor. This important fact was, according to India, ignored by the Security Council. Moreover, India questioned the legal basis of the arbitration proposal to solve all points of difference between the disputants on demilitarization. Traditionally, arbitration was defined as "the application of law and of judicial methods to the determination of disputes between nations." 17 It is thus "not a diplomatic

16 Korbel, op. cit., p. 185; and Brecher, op. cit., p. 119.

procedure based on compromise or the fair composition of political differences, but is a species of judicial settlement or adjudication on the basis of international law."  

The legal definition of arbitration was expressed in the Hague Convention of 1907 on the Pacific Settlement of International Dispute. It states that "international arbitration has for its object the settlement of dispute between states by judges of their own choice and on the basis of respect for law [Article 37, Section 1]."  

These requirements for international arbitration have been historically used in the practice of states in dealing with legal disputes. In the case of the Kashmir dispute, however, none of these requirements was met. The Council attempted to revolutionize the basic concept of international arbitration.  

First, the Council did not let the parties choose their own judges (normally two or more) by their special agreement. Instead it proposed, without any consultation with the parties concerned, United States Admiral Nimitz as the arbitrator. Admiral Nimitz was a military leader,  

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not a legal expert. Second, there was no specific question submitted by the parties to arbitration in the Kashmir problem. The arbitrator was empowered to decide any question regarding the implementation of the resolutions of August 13th and January 5th for reference to arbitration, after the parties failed to reach an agreement on it. Third, the arbitrator was to settle all points of difference between the parties on the basis of equity, not of international law.

The Council's scheme of arbitration was based on the Commission's memorandum of August 26, 1946, which ran as follows:

The two Governments agree . . . (a) that they will submit to arbitration the difference existing between them concerning all questions raised by them regarding the implementation of Part II of the Resolution of 13 August 1948, the Arbitrator to decide these questions according to equity, and his decisions to be binding on both parties.\(^{20}\)

Rejecting the proposal, the government of India stated that "this procedure is novel and without precedent, and could hardly be justified."\(^{21}\)

If the Security Council sought to solve the dispute through reference to adjudication, why did it not refer

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to arbitration on the legal and basic questions of the dispute such as the validity of Kashmir's accession to India, and Pakistan's participation in the tribal invasion, or the entire question of the dispute as a whole? The questions which were to be submitted to the arbitrator were all minor, political ones. But, neither the Council nor Pakistan were ever willing to refer these other questions to arbitration. The Council attempted to solve the whole dispute through political means—mediation. Some questions of the dispute were legal ones and could be referred to arbitration, in which case law was very likely on India's side. But, the Council and Pakistan wanted to refer particular political questions exclusively to arbitration, only when political justice seemed to be favorable to Pakistan.

The situation between India and Pakistan before the arrival of Dr. Graham in the sub-continent. Dr. Graham arrived in the sub-continent on June 30, 1951. The situation of the sub-continent awaiting the new Mediator was extremely bad. In Pakistan, newspapers, responsible government authorities, and especially opposition parties leaders such as Manzour-ul-Haq vigorously advocated a so-called Jehad (holy war) campaign against India.  

Moreover, the Middle-East Muslims took part in aggravating the situation by urging all Muslim governments to support Pakistan at the United Nations. Some of them openly called for a Jehad against India, and gave their pledges to join Pakistan in event of war with India. They thus made the Kashmir dispute a struggle between the whole of Islam and the whole of Hinduism. Although both parties had withdrawn some of their regular forces from the cease-fire line, there had been an increasing number of alleged cease-fire violations. Each government accused the other of fanatical war-mongering propaganda. The over-all relationships between the two countries, including the disputes on minorities, evacuee’s property and waterways, had become worse. Thus, in the summer of 1951, the two nations once again reached the very brink of a full-scale war.

The first phase of the Graham mission. It was in this atmosphere of mutual suspicion that Dr. Graham

23 Korbel, op. cit., p. 183.

24 For India’s charge against Pakistan’s violation of the cease-fire agreement, and vice versa, see S/2225, June 30, 1951, and S/2245, July 15, 1951, respectively.

25 For the details of these charges, see Government of India, Pakistan’s War Propaganda Against India (New Delhi, 1951); and Government of Pakistan, India’s War Propaganda Against Pakistan (Karachi, 1951).
began his conversations with the leaders of the parties in Karachi and New Delhi, and then in Srinagar, to effect the demilitarization. Because of this atmosphere of outspoken hostilities, the Mediator avoided holding a joint meeting with the Prime Ministers of both parties, and proceeded with his negotiations on the basis of separate and informal meetings with the leaders of both governments respectively. As a result, the Mediator was able to frame a draft Indo-Pakistan Agreement for the demilitarization process and present it to the parties on September 7, 1951.²⁶

At first he secured an agreement from the parties, in broad principle, that they would co-operate to provide a suitable atmosphere for effecting the demilitarization of the State. He then proposed plans for demilitarization, which were to be effected in a single, continuous process within a period of ninety days. The detailed plans were to be implemented in the following stages:

1. the withdrawal of the Pakistani troops, nationals and tribesmen from the Pakistan side of the cease-fire line first; the large-scale disbandment and disarming of Azad Kashmir forces to follow; and

The withdrawal of the bulk of the Indian forces from the Indian side of the cease-fire line; and further withdrawal and reduction of the Indian and State armed forces. The Plebiscite Administrator was to be appointed to office at some stage during the period of demilitarization.27

Dr. Graham's plans for demilitarization were more favorable to India than to Pakistan. It urged the withdrawal of Pakistan forces from Kashmir first, instead of the synchronized withdrawals of both regular forces. The replies from both Prime Ministers to the draft proposals revealed the principal points of difference between them on the following major issues:

1. the period of demilitarization;
2. the withdrawal of troops;
3. the size of the remaining forces on each side of the cease-fire line after demilitarization; and
4. the day of the Plebiscite Administrator's induction into office.

As to the period of demilitarization, India doubted whether ninety days would be enough for completing demilitarization in the light of the prevailing war temper in Pakistan; Pakistan had no objection to a ninety-day period.

As regards the withdrawal of troops, India held that

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27 Ibid.
further withdrawals and reductions of the Indian and State armed forces remaining in the State after the withdrawal of the bulk of the Indian forces should not be included in the ninety-day limitation.

In regard to the forces to remain on each side of the cease-fire line, the government of India agreed that, on the Pakistan side of the cease-fire line, there should be a force of 4,000 men, consisting of Kashmir residents. This force would be commanded by United Nations officers and not by Pakistanis. Half of it would be followers of Azad Kashmir and the other half non-followers. On the Indian side of the cease-fire line, four brigades of four battalions each would remain. On the other hand, the government of Pakistan maintained that an equal number of forces should remain on each side of the cease-fire line. This should be no more than four infantry battalions.

For the day of the induction of the Plebiscite Administrator into office, India preferred that the formal appointment of the Plebiscite Administrator would be made as soon as conditions on both sides of the cease-fire line permitted, not necessarily by the final day of the demilitarization period. Pakistan preferred that the appointment be made as much in advance of the final day of the demilitarization period as possible.\footnote{Ibid.}
the Council on October 15, 1951, the Mediator concluded that "although he does not underestimate the difficulties, the possibility of arriving at a basis of agreement between the two governments is not excluded." He explained that the failure of his mission was largely due to conflicting interpretations of the obligations of the two governments regarding demilitarization under the resolutions of August 13th and January 5th. The first Graham recommendation. The Mediator recommended that the Council:

(1) call upon both governments to improve the situation between them by avoiding any increase of their military potential in the State, and by refraining from making any war-like statement and action;

(2) consider the possibility of a renewed effort being made to obtain an agreement of the parties to a plan for effecting the demilitarization of the State; and

(3) allow the United Nations Representative to continue negotiations with the parties for demilitarization at the seat of the Security Council. He should report back to the Council with six weeks. Coincidently, the day after the first Graham report

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29 Ibid. 30 Ibid. 31 Ibid.
was published, the Prime Minister of Pakistan, Liaquat Ali Khan, was assassinated by a Muslim fanatic. Perhaps because of this national loss, Pakistan's reaction to the Graham Report was very unfavorable.\textsuperscript{32} India was generally in favor of the report.\textsuperscript{33}

The United Kingdom–United States joint resolution of November 10, 1951. In order to embody Dr. Graham's recommendation for the extension of the term of the United Nations Representative into a formal resolution, the Council passed a joint resolution sponsored by the United Kingdom and the United States, on November 10, 1951. The resolution was carried by a vote of 9 to 0, with India and the Soviet Union abstaining.\textsuperscript{34} The Council also approved the four major points of difference observed by Dr. Graham as "the basis for a program of demilitarization."\textsuperscript{35}

The second phase of the Graham mission. Soon the Mediator entered a six-week negotiation period with the

\textsuperscript{32}For Pakistan's criticism, see Civil and Military Gazette [Lahore], October 21, 1951.

\textsuperscript{33}For Senegal Rau's statement favoring the report, see Hindustan Times [New Delhi], October 22, 1951.

\textsuperscript{34}S/2,425, November 19, 1951; and S/2392, November 10, 1951.

\textsuperscript{35}S/2392, op. cit.
representatives of both parties in Paris. He conducted these negotiations with special emphasis on two major points of difference, viz.: (1) the minimum forces to be left on each side of the cease-fire line at the end of the period of demilitarization; and (2) the day on which the government of India would ratify the appointment of the Plebiscite Administrator. The Mediator, however, could not obtain agreement from the parties on these two vital issues. The views of both sides were too irreconcilable. Beside these two, the Mediator was not able to secure agreement between the parties on the two other major points of difference either.\(^{36}\)

Acknowledging his failure to secure agreement on any of the four major points of difference between the parties, the Mediator, on December 19, 1951, submitted the second report of his mission to the Security Council. The report aroused bitter reaction on the part of Pakistan. Pakistani newspapers severely criticized the failure of the mission.\(^{37}\) Indian Kashmir was also critical of the


\(^{37}\) For the criticism, see *Dawn* [Karachi], December, 27, 1951.
report this time. 38

On January 17, 1952, Dr. Graham was invited to the Council to discuss his second report. After discussing it in great detail, he intimated his willingness to continue with mediation. 39 The discussion was followed by the Soviet delegate, Mr. Malik's vitriolic attack on the United States and the United Kingdom for their "imperialistic purpose in Kashmir." 40 This was the first significant statement ever made publicly by the Soviet delegate before the Council in regard to the Kashmir problem. He charged the United States with blunting the will of Kashmiris in the following terms:

The Kashmir question can be resolved successfully only by giving the people of Kashmir an opportunity to decide the question of Kashmir's constitutional status by themselves, without outside interference. This can be achieved if that status is determined by a Constituent Assembly democratically elected by the Kashmir people. 41

This statement seems to support India's position. However, the Soviet delegate did not give any explanation about whether this referred to the Constituent Assembly

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38 For Kashmir's criticism of the report, see Times of India [Bombay], Jan. 2, 1952.
40 Ibid.; and see Supra, Chapter III, Belgian draft resolutions.
41 S/E.V. 570, op. cit.
already established in Indian Kashmir or to another assembly to be composed of the representatives of the whole of Kashmir through a general election. This statement was sharply criticized by other members of the Council, including Pakistan.\(^4\)

Through the proposal of the British delegate, the Council, on January 31, 1952, approved the extension of the Graham mission. The proposal was adopted by the Council without passing a formal resolution or taking a vote. The decision was delivered by the President of the Council to the Mediator. The Council instructed the Mediator "to report back to the Council at the end of March, 1952, in any event."\(^5\) Why the Council avoided adopting a new resolution for the extension of the term of the Mediator is beyond the writer's knowledge. However, one could only guess that, in view of the recent Soviet delegate's attack on the United States and Dr. Graham, the Council might have been afraid of a Soviet veto with regard to that resolution.

The third phase of the Graham mission. Dr. Graham

\(^4\)For the criticism of the Soviet delegate's statement by the delegates of the United States, the United Kingdom, and Pakistan, see \textit{S/P.V.} 570, Jan. 17, 1952; \textit{S/P.V.} 571, Jan. 30, 1952; and \textit{S/P.V.} 572, Jan. 31, 1952, respectively.

\(^5\)\textit{S/P.V.} 572, op. cit.
left for the sub-continent on February 26, 1952, for the third phase of his mediation mission. In Kashmir, the Mediator found that the parties were making considerable progress on the question of the withdrawals of both forces from the cease-fire line. Pakistan informed the Mediator that the tribesmen and all of Pakistani nationals not normally resident in Kashmir had already left the State. In response to discussions about further withdrawals of military forces from the State, India was further withdrawing unconditionally one division of 18,000 men with supporting armour. The Government of India decided to withdraw to distances varying from 70 to 450 miles from the western Indo-Pakistan border, the Indian forces which had been moved up the preceding summer. Pakistan, too, indicated that most of her forces, which had been moved to the border during the same period, had withdrawn to their peacetime stations. The Mediator noted with satisfaction that the two governments were acting in keeping with the spirit of his proposals. In his fourth report to the Council, the Mediator stated that, by the end of March, 1952, the forces on both sides of the cease-fire line were less than half the size that they had been in 1949, when the cease-fire had been effected.\(^{44}\)

\(^{44}\)S/2611, April 22, 1952. Third Report of
Out of the twelve proposals, which the Mediator had submitted to the parties at the beginning of the first phase of the mission, four had been accepted during the first phase of the Graham mission. Another four had been accepted during the second phase. Furthermore, the government of India assured the Mediator that if agreement could be reached on the issue of the number and character of forces to be left, the two other remaining issues, viz., a definite period for demilitarization, and the date for the formal induction into office of the Plebiscite Administrator, could be solved without difficulty.\footnote{\textit{Ibid.}}

Now the major obstacle to the full implementation of the demilitarization was the difference between the parties over the number and character of forces to remain on the cease-fire line. Unfortunately, this man of ability and patience could not break the deadlock over this issue. India reiterated her original demands of 21,000 regular Indian forces, plus 6,000 State militia, to remain on the Indian side of the cease-fire line; and of a force of 4,000 men consisting of persons normally resident in Azad Kashmir on the Pakistan side of the

\textit{Dr. Frank P. Graham, United Nations Representative for India and Pakistan, to the Security Council.}
cease-fire line. Pakistan accepted the Mediator's suggestion that at the end of the demilitarization period, there should remain on each side "the lowest possible number of armed forces based in proportion to the number of armed forces existing on each side... on 1 January, 1949." The remaining two other issues, which were closely related to each other, were not solved nor much discussed because of the impasse over the issue of the number and character of forces to remain.

The second Graham recommendation. In his third report to the Council, the Mediator, on April 22, 1952, recommended that the governments of India and Pakistan:

(1) refrain from augmenting their forces in the State;
(2) continue their determination not to resort to force and to observe the cease-fire agreement; and
(3) further reduce the forces under their control in the State by July 15, 1952.

Finally he requested the Council to prolong the term of his mission in order to solve the remaining points of difference between the parties.

Pakistan was extremely dissatisfied with the third Graham report. She resented Dr. Graham's emphasis on the progress being made in the withdrawals of both forces, at

\[46\text{Ibid.}\]  \[47\text{Ibid.}\]
the expense of neglecting the importance of the two other questions.\textsuperscript{48}

The fourth phase of the Graham mission. The fourth phase of the mission started on May 26, 1952, when the Mediator held negotiations with the representatives of both governments in New York. It continued until July 16, 1952, without success. The same negotiations were carried on in Geneva from August 28 to September 10 of that year, but also without success.\textsuperscript{49}

During this phase of mediation, the main issue hampering the demilitarization problem was also the number and character of forces to remain on the cease-fire line. In New York, the Mediator made his revised proposals on this issue. On the final day of negotiations in New York, he suggested that:

(1) Pakistan retain her troops ranging from 3,000 to 6,000 on the Pakistan side of the cease-fire line; and
(2) India retain her troops ranging from 12,000 to 13,000 on her side of the cease-fire line.\textsuperscript{50} The parties agreed

\textsuperscript{48} \textit{Evening News} [Bombay], April 26, 1952, cited by Brecher, \textit{op. cit.}, p. 137.


\textsuperscript{50} \textit{Ibid.}, Annex III.
to meet again and to consider the proposals as a basis of discussion at a conference which was to be held at the ministerial level in Geneva later.

At the following Geneva Conference, however, these proposals were not accepted by the parties. India insisted on maintaining more forces than the Mediator had suggested. Pakistan wanted much smaller units of equal size on both sides of the cease-fire line.

The second stage of the Geneva Conference started on September 4, 1952. The Mediator, realizing the impossibility of securing agreement on the minimum forces to be left, suggested to the parties that they agree on some principles based on the requirements of each. The Mediator accordingly submitted new draft proposals. The proposals suggested that:

1) On the Pakistan side of the cease-fire line, there should remain the minimum number of forces that were required for the maintenance of law and order and of the cease-fire agreement, with due regard to the freedom of the plebiscite; and

2) On the Indian side of the cease-fire line, there should remain the minimum number of Indian forces and State armed forces that were required for the same purpose, with due regard to the security of the State and the freedom of
the plebiscite.\textsuperscript{51} With the unfavorable response of the parties to the proposals, the Conference ended in failure.

Because of the failure to secure agreement on this issue, the Mediator, in his fourth report to the Council on September 19, 1952, stated that the issue of the induction of the Plebiscite Administrator into office could not be solved.\textsuperscript{52} In concluding Dr. Graham’s fourth report, it can be said that the present unyielding positions of the two governments derived from their status in the State.\textsuperscript{53} They relate to:

(1) the status of Kashmir;
(2) the nature of responsibilities of the appropriate authorities on each side of the cease-fire line after demilitarization; and
(3) the obligations of the two governments under the resolutions of August 15, 1949, and January 5, 1949, which both parties had accepted. These differing conceptions had been repeatedly stated by both governments during discussions in the Council and during the negotiations with the Commission, with General McNaughton and with Sir Owen Dixon.\textsuperscript{54}

After Dr. Graham’s fourth report was made public, Pakistan criticized the Security Council and the United States for their concessions to India and for their insincerity in wanting a settlement of the dispute.

\textsuperscript{51}Ibid., Annex VIII. (Underlined emphasis is mine).
\textsuperscript{52}Ibid.
\textsuperscript{53}Ibid.
\textsuperscript{54}Ibid.
There had even been war-like talk in Pakistan. India expressed herself favorable toward the report. Benegal Rau stated that the proposals of September 4, 1952, were conceived in the right spirit.

The United Kingdom-United States resolution of December 23, 1952. Under this hostile atmosphere, the delegates of the United States and the United Kingdom jointly submitted a new draft resolution to the Council on November 5, 1952. The resolution urged the parties to enter immediate negotiations to reach agreement on demilitarization, by determining the specific number of forces to remain on each side of the cease-fire line. As previously suggested by Dr. Graham during the second stage of the Geneva Conference, the resolution called upon:

1. Pakistan to retain between 3,000 and 6,000 of her troops excluding the Gilgit Scouts of 3,500; and
2. India to retain between 12,000 and 18,000 of her troops excluding the Kashmir State militia of 6,000.

This resolution was nothing more than a reiteration of Dr. Graham's earlier revised proposals. The Council again

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55 For Pakistan's criticism, see Dawn [Karachi], September 14, 1952.
56 S/P.V. 605, October 10, 1952.
57 S/2832, November 5, 1952.
showed a lack of flexibility in its approach to the solution by giving the Mediator the same terms of reference which had been unsuccessfully employed by him just before. The Council's lack of flexibility was in the terms of settlement it provided in the resolution—the solution of the dispute only through demilitarization, not in its procedures of settlement.

The Indian delegate, Mrs. Vijaya Lakshmi Pandit, rejected the resolution on December 8, 1952, reiterating that 21,000 Indian troops should be the absolute minimum on the Indian side. The Pakistan delegate, on December 8, 1952, declared that, if India would not insist on the disarming of Azad Kashmir forces on the Pakistan side, his government was willing to allow India to retain her 28,000 troops (including the State militia) on the Indian side, "without armor and artillery". According to Nehru's statement in the New York Times of December 21, 1952, Pakistan had a force numbering from 25,000 to 35,000 under the name of Azad Troops at that time.

58 S/P.V. 608, December 8, 1952.
59 S/P.V. 609, December 16, 1952. (Underlined emphasis is mine).
Despite India's objection, the Security Council, on December 23, 1952, adopted the resolution by a vote of 9 to 0, with Pakistan and the Soviet Union abstaining. Pakistan's abstention was by virtue of paragraph 3 of Article 27 of the Charter. Dr. Graham was, thereby, given the same mandate to continue negotiating with the parties. India, however, indicated her willingness to continue negotiations regardless of her rejection of the resolution.

The final phase of the Graham mission. On January 23, 1953, the Mediator secured agreement from the parties to hold another Geneva Conference at the ministerial level. The second Geneva Conference was held from February 4 to February 9. As was the case in the previous Conference, the Mediator put his emphasis on breaking the deadlock over the issue of minimum forces to remain. He offered another exploratory suggestion to compromise the points of difference between the parties as follows:

(1) On the Pakistan side, there should remain an armed force of 6,000 separated from the administrative and operational command of the Pakistan High Command, and without armor and artillery;

(2) On the Indian side, there should remain an Indian

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armed force of 21,000 (including State armed forces), without armor and artillery. \(^{62}\)

While India accepted the suggested number of troops to remain on the Indian side, she still rejected the suggestion of 6,000 armed troops to remain in Azad Kashmir. She reiterated her original demand for the complete disbandment of Azad Kashmir military forces in Azad Kashmir, leaving a civil armed force of only 4,000 on the Pakistan side. Only half of them should be armed. Pakistan criticized this compromise proposal as another instance of continuously giving ground so as to appease India's intransigence. She termed it a contravention of the Security Council resolution of December 23, 1952. \(^{63}\)

However, India had not accepted that resolution as the basis for resumption of negotiations. India merely indicated her willingness to continue negotiations to break the impasse over the demilitarization regardless of the resolution. Therefore, it is fair to say that the Mediator had the discretion to propose such a suggestion, which was, in his opinion, likely to bring the parties close to an agreement.


\(^{63}\) Ibid.
With the unfavorable replies from the parties to this suggestion, the Conference ended without securing any agreement on the question of the minimum forces to remain on both sides of the cease-fire line after the demilitarization period.

Dr. Graham's last recommendation. In his fifth report to the Council on March 27, 1953, the exhausted Mediator recommended that the Council let the leaders of the disputants negotiate directly to break the impasse, as did his predecessor, Sir Owen. This time he did not request another extension of his term.

For over two years, Dr. Graham had secured agreements between the parties on most of his twelve basic proposals for the demilitarization of the State. Yet, the remaining major issue of the minimum forces to remain on the cease-fire line, had given rise to irreconcilable differences between the parties. This unsolved question had prevented the whole plan of demilitarization from being implemented. The points of difference between the parties on this issue, as already stated by Dr. Graham in his fourth report, derived from their fundamentally differing conceptions of the origin, evolution, and nature of the Kashmir dispute.
When Dr. Graham's recommendation for bilateral negotiations was made public, India welcomed this suggested course of action. But Pakistan still relied on the United Nations. On April 7, 1953, the Pakistani Minister of Foreign Affairs issued a statement that his government still wished the United Nations to make definite recommendations to the parties regarding demilitarization and the speedy implementation of a plebiscite. However, following a cabinet change in Pakistan on April 17, 1953, by which Mr. Mohammad Ali, former Pakistani ambassador to the United States, succeeded Mr. Khwaja Nazimuddin as the Prime Minister, the situation improved in favor of bilateral negotiations. The new Prime Minister sent a message of goodwill to the Indian Prime Minister and expressed his willingness to solve all outstanding problems between the two nations, including Kashmir. This statement was welcomed by Nehru and his government.¹

As Mr. Korbel said, "In any therapy, when the disease persists, there comes a time for a change of

treatment". Thus it was worthwhile to try direct negotiations between the leaders of both parties without outside influence or pressure, after the United Nations mediation efforts had been exhausted. This was another example of the flexibility which the Council demonstrated in its procedures for the settlement of the dispute. For many reasons, this type of negotiation was highly desirable at that time. First, contacts between the leaders of the parties might help to bring about a better understanding of each other's policies and points of view. Second, this method could favorably influence the general climate of public opinion in both countries and augment the sentiment of good neighborliness. Third, the negotiations would have the Kashmir problem discussed in the light of the large context of over-all politics of the sub-continent and of the general state of Indo-Pakistan relations as affected by canal waters, evacuee's property, minorities, etc. Joint discussion of all problems could bring about an entirely new and friendly approach to the problems that had divided the two countries.

In June, 1953, the Prime Ministers of India and Pakistan discussed the Kashmir problem informally in

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2 Korbel, op. cit., p. 196.
3 Gupta, op. cit., pp. 5-6.
London, where they met on the occasion of the coronation of Queen Elizabeth. The Prime Minister of Pakistan declared in London that the chances of settlement for Kashmir were bright.

The Karachi Conference. On July 25, 1953, Nehru paid a visit to Karachi and discussed in general terms the Kashmir question and other Indo-Pakistan disputes with Mohammad Ali. Agreements were reached between them on minor issues other than Kashmir. With regard to the Kashmir question, the parties at least secured a clear understanding of each other's points of view, and paved the way for further talks. After the meetings, Nehru stated at a press conference that he had been deeply moved by the friendliness of Karachi and that it was very gratifying that the previous vicious atmosphere surrounding Indo-Pakistan relations had almost disappeared. The press of both countries were more friendly than they had been before. The atmosphere of Indo-Pakistan relations had never been more promising and encouraging.

But this favorable atmosphere was soon interrupted

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4Ibid., p. 7; and Korbel, op. cit., p. 192.
5Gupta, loc. cit.
6Chronology of International Events, op. cit., IX:479.
7Korbel, loc. cit.
by the following incidents in Srinagar. They were the dismissal of Sheikh Abdullah from the Premiership by the Head of the State and the resulting mob violence in the Valley of Kashmir. Once the news reached Karachi, there was a violent outburst of indignation against India. The Pakistani press termed this internal affair "a challenge to Pakistan" and published exaggerated reports of the disturbances in Srinagar.

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8 On August 9, 1953, Sheikh Abdullah was dismissed by the Head of the State, Sadar-i-Riyasat Karan Singh, and later arrested. The dismissal and arrest was on the ground that Abdullah had promoted the intrigue to precipitate a split in the cabinet and thus hampered the efficiency of the government administration. Karan Singh appointed the former Vice-Premier and Abdullah's political opponent in the cabinet, Bakshi Ghulam Mohammed, to be Prime Minister of the State. The new Prime Minister claimed in a broadcast that Abdullah was endangering Kashmir's future by sinister intrigues with foreign imperialist powers which aimed at "carving out an independent State from the wreckage" of existing Kashmir. The speech contained thinly disguised references to the United States as the chief instigator of the political unrest and of Abdullah's increasingly independent attitude toward India. In Srinagar, security forces opened fire in self-defense on a mob demonstrating in protest against Abdullah's arrest. In this violence, three Muslims were killed and one injured. The Indian government issued a statement that it had nothing to do with this purely internal affair of Kashmir. Nehru told the House of People that recent events were an internal development with which India should interfere as little as possible. He denied that Indian Army personnel were involved in the incidents at Srinagar. (Chronology of International Events, op. cit., IX:498-501.)

9 Korbel, loc. cit.; and Gupta, op. cit., pp. 7-8.

10 Ibid., p. 8.
The New Delhi Agreement. Despite these disturbances, Mohammad Ali went to New Delhi to discuss the Kashmir problem with Nehru. The conference started on August 17, 1953. After four days of consultations, the two Prime Ministers issued a joint communiqué. It said inter alia:

(1) The Kashmir dispute should be settled by a free and impartial plebiscite by the people of the State;
(2) Certain preliminary issues, on which the parties had not agreed for effecting a plebiscite, should be considered by the Prime Ministers directly in order to arrive at agreement with regard to them;
(3) The agreements on the preliminary issues would be given full effect prior to the appointment of the Plebiscite Administrator by the end of April, 1954; and
(4) The committee of military and other experts would be set up to advise the two Prime Ministers on the preliminary issues for the plebiscite.

Finally the two Prime Ministers appealed to the press and responsible politicians of both countries to refrain from making any statement or taking any action that could promote discord between the two nations and worsen the situation.¹¹ The joint communiqué seemed not only to help

¹¹Chronology of International Events, op. cit., IX:528.
the restoration of normal relationships between the two
countries but also to arouse tremendous hopes in the sub-
continent. In Indian Kashmir, the new Prime Minister,
Bashar Mohammed, gave his unequivocal support to the
communique. The Prime Minister of Pakistan said that a
solution of the Kashmir problem was "in sight". 12

Soon after Mohammad Ali returned to Karachi, unfor-
tunately there started a vicious campaign against India
by the leading newspapers and political forces in Pakistan.
Right wing parties in India retaliated. Pakistan's cam-
paign was concerned with the retention of United States
Admiral Chester Nimitz as the Plebiscite Administrator.
Although India had nothing against Admiral Nimitz, Nehru
suggested to Mohammad Ali that India rather preferred that
the Plebiscite Administrator be chosen from a smaller
European or Asian country, in order to isolate the issue
from possible big power politics. 13 In fact, the Prime
Minister Mohammad Ali and his Foreign Minister, Zafarulla
Khan, agreed with this point of view in the New Delhi
Conference but objected to the insertion of this statement
in the joint communique. The Karachi daily, Dawn, took

12Gupta, op. cit., p. 9.

13Kashmir: A Factual Survey, op. cit., p. 54; and
Korbel, op. cit., p. 194.
Nehru's view on a new Plebiscite Administrator as an attempt:

(1) to drive a wedge between the United States and Pakistan; and

(2) to create a situation in which the Kashmir dispute could for all practical purposes cease to be a living issue before the United Nations. ¹⁴

Later, the Pakistan government insisted on Admiral Nimitz's retention as the Plebiscite Administrator. India did not understand Pakistan's sudden interest in Admiral Nimitz. It was true that the Pakistani Prime Minister was under extremists' pressure to take a strong stand against India on the Kashmir problem, while he was trying to negotiate with India in a friendly atmosphere. In a broadcast to the nations, Mohammad Ali assured his people that the Kashmir dispute would not be taken out of the jurisdiction of the Security Council permanently. He explained to his people that the previous government's decision to cut down the size of the Pakistani army was an economy measure. He announced his government's reversal of this decision. ¹⁵

During this period, Nehru and Mohammad Ali exchanged several letters in regard to the preliminary issues as

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¹⁴ *Dawn (Karachi)*, August 27, 1953.

envisioned in the New Delhi Agreement. They continued their efforts for negotiation.

The Military Experts' Conference. Four months later, on December 21, 1953, the representatives of India and Pakistan to the Committee of Military Experts met in New Delhi to discuss the preliminary issues. There was no tangible progress made in this Conference between the parties. The Conference ended on December 29, 1953, and was never held again. None of the preliminary issues were agreed upon or solved. The awaited month of April passed and no Plebiscite Administrator was appointed. The reason for the deadlock over the negotiations on the preliminary issues was a new development in the sub-continent. This was Pakistan's acceptance of military aid from the United States and India's unfavorable reaction to it.

Pakistan-United States military aid agreement. A month before the Conference started, India in November, 1953, received a definite report from Washington that negotiations for an United States-Pakistan military aid pact was in progress. This time Indian suspicions were aroused as to Pakistan's military position, and its effect on the security of India. The strong campaign against this

16Chronology of International Events, op. cit., IX:15.
17Ibid., IX:16.
move was led by Nehru and other governmental officials.
It was carried out most vigorously and boldly. India
employed every means of pressure to prevent Pakistan from
joining the Western military alliance.  

India believed that Pakistan's pronounced alignment
with the Western military alliance would bring very far-
reaching consequences on the whole structure of relations
in South Asia and especially between India and Pakistan.
It would change the entire context of the Indo-Pakistan
relations. It is significant to note that India's posi-
tion in the bilateral negotiation, contrary to her pre-
vious one in the Security Council, was that the parties
would discuss and solve over-all Indo-Pakistan disputes
such as waterways, evacuee property, and minorities, to-
gether with the Kashmir question. The parties would
consider the whole context of the Indo-Pakistan relations.
Pakistan's admission to the Western military alliance
would inevitably bring the region of "cold war" to India's
border. Pakistan's foreign and defense policies would
become diametrically opposed to the policies of India.
The area of disagreement between India and Pakistan would
now extend over a wider field. This bothered Nehru more
than the Kashmir dispute itself. An expansion of Paki-

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stan's war-resources with the help of the world's biggest power would affect every major question which was pending between them. In Kashmir, the whole issue would change face completely because the rapid and heavy militarization of Pakistan would have serious repercussions on the Kashmir conflict. Nehru in the House of the People declared that these negotiations for an United States-Pakistan military aid "might affect the solution of the Kashmir problem". 19

After the conclusion of the military pact between Pakistan and the United States, the former further entered into two Western military alliances in this region—SEATO (the South-East Asia Treaty Organization) and the Baghdad Pact. Pakistan asserted that neither the military aid agreement with the United States nor its membership in SEATO and the Baghdad Pact had any relevance to the conflict on Kashmir. However, India was still worried as to whether these arms and weapons received from the United States would be used for aggression against Kashmir. President Eisenhower assured India that in case arms given to Pakistan were used for aggression, he would immediately undertake appropriate action both within and without the United Nations to thwart such aggression. To India this

19Korbel, op. cit., p. 195.
assurance did not appear sufficient. These suspicions and tensions on the part of India almost exclusively hampered the whole course of the Experts' Conference. Nehru also demanded the withdrawal of American officers attached to the United Nations Military Observers Team from Kashmir because "the United States could no longer be considered neutral in the Kashmir dispute".  

Mohammad Ali, on several occasions, requested Nehru to resume negotiations on the Kashmir question based on the New Delhi Agreement of 1953. Nehru replied that the New Delhi Agreement had been reached in the context of a situation, which was now altered by Pakistan's acceptance of American military aid. The bilateral negotiations, which had been so hopeful at the beginning, had by now definitely broken down.

After the failure of the initial stage of bilateral negotiations, the Prime Minister of Pakistan stated that the case had to be referred back to the Security Council. India held to the position that only the parties could settle their dispute between themselves through negotiations without outside pressures.  

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21 Korbel, op. cit., p. 195.
22 Gupta, op. cit., p. 18.
conditions for the success of direct negotiations were for them to be free of the formal atmosphere of a debate in the United Nations and to be free of the political and military pressures of other powers. The most important pre-condition for the success of such negotiations—the absence of outside political and military pressures—had been removed now by the decision of the Pakistan government to secure military supplies from the United States. What, then, was an alternative solution? India was not willing to take the issue back to the Security Council. She was equally suspicious of big power politics in the Council. What would most satisfy India now seemed to be the status quo in Kashmir based on the cease-fire line, which at best meant a partition of the State.

On January 12, 1953, Mohammad Ali, in an attempt to remove India's suspicions concerning Pakistan's military alignment with the United States and to appease India's intransigence, conceded that a new Plebiscite Administrator should be appointed from a smaller Asian or European country. He expressed his willingness to meet with Nehru to discuss the problem.\(^23\) India still insisted that any new attempt at finding a solution of Indo-Pakistan

\(^{23}\) *Chronology of International Events, op. cit.*, p. 54.
problems must necessarily base itself on the recognition of the changed context which was created by Pakistan's acceptance of United States military aid.

The second New Delhi Conference. Once again, a hopeful atmosphere for resuming direct negotiations was revived by the visit of the Governor-General of Pakistan, Ghulam Mohammad, to New Delhi during the Republican Day celebration in January, 1955. Direct negotiation, again started on May 14, 1955, in New Delhi, between the Prime Ministers of India and Pakistan. After the meeting, both leaders issued a joint communiqué. It only stated that the talks would be continued at a later stage, after full consideration had been given to the various points that had been discussed in the course of these meetings. Before leaving for Karachi, Mohammad Ali said that his talk with Nehru on the Kashmir dispute had progressed satisfactorily and would be continued on Nehru's return from Moscow.24

Despite this vague communiqué, it was widely publicized by the foreign press during the Conference that the leaders of both parties were approaching a solution with new ideas, ideas which were radically different from solutions involving a plebiscite. They reported that

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Pakistan was now considering alternative plans that would not involve a plebiscite in the State. The Indian press also widely discussed solutions other than a plebiscite. These reports were partially confirmed by the statements of the two Prime Ministers after the Conference.25 Evidently, behind the closed door some progress had been made.

Political pressures in Pakistan. When the Prime Minister of Pakistan and his colleagues returned to Karachi, they were faced with a barrage of attacks both from the Pakistani press and politicians. The Prime Minister was accused of having betrayed the people of Kashmir and of having surrendered to India. The press was extremely suspicious of their Prime Minister for having secretly made any concession to India in New Delhi and for having given up the plebiscite principle. Mohammad Ali repeatedly explained to the public through the press that there could be other forms of ascertaining the will of the people of Kashmir than a plebiscite. In fact, after the New Delhi Conference of May 17, 1955, he made this statement: "The people of Kashmir must decide their own future whether it was by plebiscite, referendum, or anything

25 Ibid.
else." However, the press was not on his side. They increasingly aggravated public opinion by making vitriolic attacks on their leader for his weak stand on the Kashmir problem. The leading newspapers and influential politicians jointly claimed that Pakistan stop the bilateral negotiations immediately and return the entire question of Kashmir to the Security Council.27

From the beginning, Mohammad Ali sincerely sought to solve the dispute through direct negotiations with Nehru in a friendly atmosphere. Evidence of this was shown at the Karachi Conference of July, 1953, and the following New Delhi Agreement, and further at the second New Delhi Conference of 1955. However, the policy pursued by the Prime Minister of Pakistan was not wholeheartedly supported by all members of his cabinet and by influential, responsible politicians in Karachi. The press always suspected him of being too friendly to India. Due to these pressures, Mohammad Ali later had to change his previous position with regard to the possibility of settlement other than a plebiscite; these other means he had embraced at the second New Delhi Conference. Now he

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stated that there was no question of giving up Pakistan's stand for a plebiscite. *The Pakistan Times* quickly caught this shift:

Faced with criticism and asked to explain his utterances Mr. Mohammad Ali began gradually to resile from his new position until . . . he has returned to the Pakistani government's original stand that no impartial plebiscite offers the only just solution to the Kashmir problem.28

India took this advancing tide in the ruling circle of Pakistan as anti-Indian sentiment. For the following two years, it became clear that there were powerful forces in Pakistan which would under no circumstances accept any means of solution other than a plebiscite for the entire State. The Prime Ministers of India and Pakistan alike believed that the military situation for the subsequent six years after the effectuation of the cease-fire in January, 1949, had greatly changed. This changing situation was complicated far more by other significant developments such as Pakistan's acceptance of United States military aid. They recognized that a State-wide plebiscite on the basis of the agreement of January 1, 1949, had become impracticable, and could lead to grave difficulties. For these reasons, India was now more and more reluctant to hold a State-wide plebiscite in Kashmir. The political

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28 Editorial in the *Pakistan Times* [Lahore], June 3, 1955.
force in Pakistan, on the other hand, continued to insist on a plebiscite. Throughout 1956, this disagreement between India and Pakistan in approach to the solution was reiterated.

**India's claim for partition.** On April 2, 1956, Nehru at a press conference categorically stated that India no longer wanted to have a plebiscite in Kashmir because it seemed to lead into a blind alley. India now unequivocally insisted on what is called a practical approach to the solution.\(^{29}\) That was India's previous suggestion of partition of the State on the basis of the cease-fire line. In Indian Kashmir, the government of India had already established some link between the Union of India and Kashmir by convening the Kashmir Constituent Assembly. Nehru, in the Indian Parliament, upheld the right of the Kashmir Constituent Assembly to frame a constitution for Indian Kashmir.

Following the government reshuffle in the middle of September, 1956, which resulted in the replacement of moderate Prime Minister Mohammad Ali by Mr. H. S. Subrawady, anti-Indian sentiment became even more severe in Pakistan. Faced with India's unyielding position against a plebiscite, the campaign against India reached

\(^{29}\text{Gupta, op. cit., p. 24.}\)
unprecedented proportions. Finally, on October 6, 1956, the new Pakistani government announced that the Kashmir issue would be referred back to the Security Council in January, 1957.  

**Reasons for the failure of bilateral negotiations.**

It was against this background that Pakistan urged the Security Council on January 2, 1957, to take up again the Kashmir question. In a net assessment of the bilateral negotiations, one can say that the entire course of direct negotiations from 1953 to 1956 between the parties were filled with mutual suspicions and doubts which persistently obstructed any reasonable settlement. These suspicions and doubts were mainly created by some powerful interests and forces as well as the press in both countries. These forces were more influential against the government policymaking agencies in Pakistan than in India. Political instability in the Pakistan government and lack of strong leadership in Pakistan must also count as important factors for the failure of bilateral negotiations. Finally, Pakistan's acceptance of United States military aid and India's outright objection to it fatally affected the course of negotiations.

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30 Ibid., p. 25.
CHAPTER VIII

RENEWED MEDIATION BY THE SECURITY COUNCIL

After three years of fruitless search for a settlement of the dispute by the parties themselves, the issue returned to the Security Council. The outcome of the bilateral negotiations disappointed those who hoped for a solution to the problem.

The Security Council debates. On January 2, 1957, Pakistan appealed to the Council on the basis that the situation in Kashmir constituted a serious threat to the peace of the sub-continent, inter alia:

(1) India ignored her international commitment to hold a plebiscite; and

(2) India had taken steps to integrate Kashmir into the Union of India.¹

The debate opened on January 16th. The Pakistani delegate, Mr. Feroz Khan Noon, requested that the Council:

(1) call upon India to refrain from accepting the verdict of the Kashmir Constituent Assembly;

(2) spell out the obligations of the parties under the terms of international agreements; and

(3) send a United Nations force to Kashmir at once.

On January 24th, the Indian delegate, Mr. V. K. Krishna Menon, explained various changes that had taken place in the sub-continent during the seven year period following the effectuation of the cease-fire in Kashmir. He called upon the Council to view the question of the plebiscite in the context of peace and stability in the sub-continent. It is interesting to note that the position of India now wanted to consider the issue of a plebiscite in the context of over-all Indo-Pakistan relations. This position was quite contrary to her previous microscopic approach to the issue; the approach she took at the early stage of Council debate in 1948. The Indian delegate proceeded with his arguments with regard to both political and legal aspects. In essence:

(1) Pakistan had committed aggression against Kashmir, and this was admitted by the United Nations Representative, Sir Owen Dixon. It was about such aggression that India had complained to the Security Council.

(2) Kashmir's accession to India was legal and constitutionally complete. It was not a territorial dispute that the Security Council was called upon to settle;

(3) The promise to refer the accession issue to the will

\[2\text{Ibid., p. 10.}\]
of people was made only to the Kashmiris and not to any other party;

(4) The holding of a plebiscite was agreed upon on certain conditions. But, the conditions had changed in many ways in the sub-continent during the last eight years. The military situation had changed following Pakistan's acceptance of military supplies from the United States; and

(5) In Indian Kashmir, the Constituent Assembly framed a constitution; and a democratically elected legislature had brought about political and economic stability in the area. A plebiscite would not only reverse the process of normalization in Kashmir but retard the advancement of the entire sub-continent. An offer made eight years ago could not remain indefinitely valid when conditions had changed.³

³Ibid.; and Gupta, op. cit., p. 28.
the final destiny of the State would be settled by a plebiscite. It, furthermore, reaffirmed the Council resolution of March 30, 1951, which had criticized the convening of the Kashmir Constituent Assembly. The resolution was adopted by a vote of 10 to 0 with the Soviet Union abstaining. The Indian delegate declared that this resolution would not bind India. Moreover, he claimed that the resolution was contrary to one of the purposes of the United Nations Charter—to conciliate disputants.

However, discussions continued in the Council. The Pakistani delegate, Mr. Feroz Khan Noon, pressed the Council to send a United Nations force to the subcontinent and to take a concrete step toward the holding of a plebiscite.

The joint resolution of February 21, 1957. On February 14th, the delegates of Australia, Cuba, the United Kingdom, and the United States jointly introduced a draft resolution in the Security Council. The resolution called upon the then President of the Security Council, Mr. Gunnar Jarring of Sweden, to proceed to the

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5Gupta, loc. cit.
sub-continent to examine proposals for demilitarization or for the establishment of other conditions for progress toward a settlement of the dispute. The President was to take into consideration the previous resolutions of the Security Council and of the Commission, and to bear in mind the Pakistani proposal for the use of a temporary United Nations force in Kashmir. He was to report back to the Security Council not later than April 15, 1957.\(^7\) The Soviet delegate opposed the idea of stationing a United Nations force and proposed an amendment.\(^8\) The Soviet amendment was, however, rejected by a vote of 2 to 1 with 8 abstaining. When the resolution of February 14th came to a vote on February 20th, the Soviet delegate exercised his first veto in the Kashmir question.\(^9\) The Indian delegate stated that though the government of India would welcome a visit of the President in the sub-continent, it "will under no circumstances permit foreign troops on its soil."\(^10\) Reconciling itself to Soviet opposition, the

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\(^7\)Ibid., pp. 12-13; and S/3787, Feb. 14, 1957.


next day the Council adopted a modified resolution by a vote of 10 to 0 with one abstention. The compromised resolution still asked Mr. Jarring to proceed to the subcontinent to seek the solution, but removed from the February 14th resolution the provision in regard to the stationing of a United Nations force in Kashmir.  

The attitude of the Soviet delegate in favor of India's position during this period is understandable only in terms of the current climate of international politics. The atmosphere in the Council during the debates in January and February, 1957, was generally more favorable to Pakistan than to India. At that time, India played a distinguished role in the Council in opposing Anglo-Franco attempts to impose their solution of the Suez question on Egypt. In this connection, the editorial of the Pakistan Times made a significant comment: "The Suez dispute had turned the West against India to support us [Pakistan] in Kashmir." The Soviet delegate did not fail to make use of this opportunity to drive a wedge between India and the West.

The Jarring mission. Mr. Jarring arrived in Karachi


on March 14, 1957, and held discussions with the two
governments for almost a month. Both in Karachi and New
Delhi, the conversations took place in an atmosphere of
complete frankness and cordiality. Spokesmen for both
governments declared that the Commission's resolutions of
August 13th and January 5th were the only international
obligations which bound them in regard to the Kashmir
dispute. Therefore, the new Mediator proceeded to ex-
plore what was impeding the full implementation of the
resolutions. India emphasized that two factors stood in
the way of the implementation of the Commission's two
resolutions. The first of them was that Part I of the
August 13th resolution (cease-fire order) had not been
implemented by the government of Pakistan. India pointed
out that Pakistan had not refrained from taking measures
that might augment her military potential in Kashmir and
had not co-operated in "creating and maintaining an
atmosphere favorable to the promotion of further negotia-
tions." The second of these impediments was that India

13 S/3821, April 29, 1957. Report of Mr. Gunnar V.
Jarring, Representative of Sweden on the Security Council;
14 see Supra Chapter IV.
15 S/3821, loc. cit.; and United Nations Review,
loc. cit.
felt aggrieved that the Council "had so far not expressed itself on the question of ... aggression committed by Pakistan against India." For these reasons, India thought that it was premature to discuss the implementation of Parts II and III of that resolution or of the resolution of January 5th. Pakistan, on the other hand, insisted that Part I of the August 13th resolution had been implemented "in good faith and in full," and that the time had come for carrying out Parts II and III of the resolution. In an attempt to break the deadlock over the interpretation of Part I of the August 13th resolution, the Mediator suggested that the two governments submit to arbitration the question of whether or not Part I of the resolution had been implemented. Pakistan accepted this proposal while India rejected it. India thought that "such procedure would be inconsistent with the sovereignty of Kashmir and the rights and obligations of the Union of India in respect to this territory." India was, furthermore, apprehensive that arbitration even on an isolated part of the resolution might be interpreted as indicating that Pakistan had a locus standi (right to be heard) in the question.

16 Ibid. 17 Ibid. 18 Ibid. 19 Ibid. 20 Ibid.
As was the case with the Commission and the Dixon mission, the Jarring Report revealed a noticeable shift in India's favor. This was in contrast to the attitudes of most Council members toward India during the debates of January and February of that year. In his report to the Security Council on April 27, 1957, Mr. Jarring explicitly declared: "On exploring this question of a plebiscite, I was aware of the grave problems that might result in connection with, and as a result of, a plebiscite." This statement seemed to confirm Krishna Menon's previous contention before the Council. Mr. Jarring further went on to say:

I would not fail to take note of the concern expressed in connection with the changing political, economic and strategic factors surrounding the whole of the Kashmir question, together with the changing pattern of power relations in West and South Asia. He warned that the "implementation of international agreements of an ad hoc character" could become progressively difficult, if not achieved quickly, because the situation with which they were to cope tended to change. Despite the deadlock on the question of the implementation of Part I of the resolution, the Mediator noted that both parties were still desirous of finding a solution.
the same day the report was released, the Pakistani permanent representative to the United Nations delivered a communication from his government to the President of the Security Council, Sir Pearson Dixon of the United Kingdom. The communication complained of further Indian attempt incorporating Kashmir by affiliating it with membership in the Northern Zonal Council of India. The Prime Minister of Pakistan charged that the failure of the Jarring mission was due to India's intransigence. India's reaction to the report was generally favorable because of Jarring's recognition of changed conditions in the sub-continent and the difficulties of holding a plebiscite.

On September 24, 1957, at the request of Pakistan the Council discussed the Jarring Report. The Pakistani delegate again demanded speedy United Nations action for a plebiscite. He termed the reference to the "changed context" in the Jarring Report a reference to the changed attitude of India. Nothing had happened to render the holding of a plebiscite impracticable. Feroz Khan

26 S/P.V. 701, September 24, 1957.
28 Ibid.
Noon insisted that all troops, whether of India or Pakistan, be withdrawn from the cease-fire line and a United Nations force be stationed there to prevent any violation of the cease-fire agreement.\textsuperscript{30} Replying for India, Krishna Menon on October 9th reiterated the charge of Pakistani aggression.\textsuperscript{31} Beside this he made reference to sabotage activities in Kashmir and charged Pakistan with complicity in them.\textsuperscript{32} During the Security Council discussions on Kashmir in September, October, November and December of 1957, India's main contentions were:

(1) The basic question of the Kashmir dispute, about which India complained to the Council in 1948, was the aggression committed by Pakistan against Indian territory. Therefore, the United Nations should first arrange to rid Kashmir of it;

(2) The Kashmir question could not be subject to arbitration because Kashmir was already part of India;

(3) India would not countenance a United Nations force on Indian soil;

(4) Demilitarization should be applied only to the Pakistan side of the cease-fire line, since it was

\textsuperscript{30}Ibid.

\textsuperscript{31}S/P.V. 725 Rev. 1, Oct. 9, 1957.

\textsuperscript{32}Ibid.
Pakistan who had militarily consolidated her occupation of parts of Kashmir.  

The joint draft resolution of November 16, 1957. Finally, on November 16, 1957, the delegates of Australia, Colombia, the Philippines, the United Kingdom, and the United States jointly introduced a draft resolution in the Security Council. Completely overruling India's position, the resolution emphasized the need for demilitarization as a step toward a plebiscite. It urged that the former United Nations Representative to India and Pakistan, Dr. Frank F. Graham, proceed to the subcontinent again to devise a scheme for demilitarization. The resolution instructed the United Nations Representative to negotiate with the parties in order to implement Part II of the Commission's resolution of August 15th and in particular to reach agreement on a specific number of troops to remain along the cease-fire line. In this respect one does not find any new approach on the part of the Council in securing a solution of the dispute. This was nothing but mere reiteration of the Council's earlier resolutions, which had not broken the impasse.

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34 S/3911, November 16, 1957.
over this particular matter. The Council approached the same deadlock with the same methods it had previously employed unsuccessfully. The resolution did not take into consideration realities of the changed situation. Yet Pakistan welcomed the resolution, while on November 21, 1957, the Indian delegate expressed India's "total opposition to the resolution." It appeared to India to be a refutation of the Jarring Report. Taking India's side, the Soviet delegate, Mr. Arkady A. Sobolev, threatened that he would veto the resolution when it came to a vote. On November 21st, he declared that the measure served the interests of Pakistan only, and that it "merely repeats the proposals which experience had proved fruitless."36

The revised resolution of December 2, 1957. In this tense atmosphere, the Council adjourned without further discussion. The Swedish delegate, Gunnar Jarring, then proposed an amendment to the five-power resolution. The Council again met on November 28th to consider it. The amendment removed from the five-power draft resolution all references to the demilitarization of the States. It also removed the provisions concerning references to Dr. Graham's earlier reports, and the operative paragraph

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358/F.V. 805, Nov. 21, 1957.
36 Ibid.
requesting Dr. Graham to formulate an early agreement on demilitarization procedures, which was to be implemented within three months of such an agreement. The revised resolution still requested the United Nations Representative to make recommendations to the parties for further appropriate action with a view to making progress toward the implementation of the resolution of August 13th and January 5th.\textsuperscript{37} The resolution was finally adopted by a vote of 10 to 0, with the Soviet Union again abstaining.\textsuperscript{38} The Indian delegate expressed his inability to accept the revised resolution either.\textsuperscript{39} Though not rejecting the resolution, Pakistan also had objections to it. They concerned a reference to proposed recommendations by Dr. Graham on the implementation of Part I of the August 13th resolution. Pakistan held that she had fully complied with these provisions.\textsuperscript{40}

The second Graham mission. According to the resolution of December 2, 1957, Dr. Frank F. Graham was to make renewed efforts to achieve agreement between the

\textsuperscript{37} S/3922, December 2, 1957.
\textsuperscript{39} S/P. V. 308, December 2, 1957.
\textsuperscript{40} United Nations Review, loc. cit.
parties on demilitarization. The Mediator arrived in the sub-continent on January 12, 1958. He began a series of alternate meetings with the representatives of India and Pakistan. After five weeks of talks which focused on long-standing differences, the Mediator made a number of specific recommendations to the parties. He found that the main controversial issues, which had troubled the Commission at the early stage of its mission, still existed unchanged between the parties. Therefore, he concentrated on such obstacles as appeared to stand in the way of progress toward the implementation of the Commission's two resolutions. Foremost among them was the procedure for the withdrawals of Pakistani troops and of the bulk of Indian troops. He, therefore, made the following five recommendations:

(1) The two governments were to consider the possibility of making declarations in accordance with the Security Council resolution of January 17th and the Commission's resolution of August 13th, by which they would undertake to refrain from making statements or taking action which would aggravate the situation;

(2) The two governments were to reaffirm that they would respect the integrity of the cease-fire line and that they would not seek to cross the line on the ground or in the air;
(3) A study as to how the territory evacuated by Pakistan troops could be administered in accordance with the provisions of the August 13th resolution, was to be undertaken promptly under the auspices of the Mediator. With a view toward increasing the security of the area to be evacuated, consideration was to be given to the possibility of stationing a United Nations force on Pakistani territory bordering Kashmir;

(4) The two parties were to agree on the interpretation of Part III of the August 13th resolution and of those parts of the January 5th resolution, which provided for a plebiscite; and

(5) A Prime Ministers conference was to be held, under the auspices of the Mediator, in the early spring.41

The government of Pakistan agreed to all of these recommendations in principle. India, however, declared herself unable to accept any of these proposals on the following grounds:

(1) The recommendations were made without regard to Pakistan's failure to implement the Security Council resolution of January 17, 1948, and Part I of the August 13th resolution (The January 17th resolution called on

the parties to take all measures "calculated to improve
the situation" and refrain from making any statements
or actions which might aggravate the situation). "The
sole onus of performance," the government of India said,
was on Pakistan and the United Nations, both of which had
the responsibility of taking steps toward a peaceful
approach to the solution and of contributing to a resolu-
tion of the difficulties between India and Pakistan; and
(2) The Mediator's approach was not feasible because it
tended to by-pass the implementation of what India con-
sidered to be the preliminary question. Particularly,
India was unable to accept the recommendation for a study
regarding the local administration of the area evacuated
by Pakistani troops because such a study would tend to
by-pass and evade the main issue, viz., the illegal
occupation of Indian territory by Pakistan. In India's
view, Kashmir was an integral part of India. The recom-
mendation was, however, based on the misconception that
Kashmir was a no-man's land. The government of India was
unable to accept the proposal for the holding of a
Prime Ministers conference because it would place the

\[\text{\textsuperscript{42}}\text{Ibid.; and United Nations Review, May, 1958,}
Vol. 4, No. 11, p. 30.\]

\[\text{\textsuperscript{43}}\text{Ibid.}\]
aggressor and the aggressed on an equal footing.\textsuperscript{44}

Despite her rejection of the recommendations, India expressed her desire to promote and maintain peaceful relations with Pakistan. India would continue to seek a constructive approach to the solution. In closing his report the Mediator, just as he did in ending his first mission, strongly urged that the leaders of the two governments hold well-prepared talks, which would break the impasse.\textsuperscript{45}

\textsuperscript{44}Ibid.

\textsuperscript{45}Ibid.; and S/3984, \textit{op. cit.}
CHAPTER IX

CURRENT DEVELOPMENTS IN THE SUB-CONTINENT

During March, April and May of 1958, India and Pakistan both complained about developments in Kashmir in a series of notes to the Security Council. On March 28 and April 11, Pakistan complained that India was continuing with the integration of Kashmir into the Union of India. In reply India held that Kashmir was in fact an integral part of India, as it had been since its accession in October, 1947. Pakistan further charged India with the suppression of free speech and expression in Kashmir. India, however, denied these allegations, and replied that the charges were "part of a Pakistani campaign of hatred and calumny"¹ against India.

The re-arrest of Sheikh Abdullah. On May 6, 1958, in a letter to the President of the Security Council, the government of Pakistan protested the re-arrest of Sheikh Abdullah.² The former Prime Minister was accused of violating the security act of the State by planning

²Former Prime Minister Sheikh Abdullah was released from the custody in January, 1958, after spending more than four years in detention.
large-scale disorders and subversion in addition to making provocative speeches at public occasions. Pakistan charged that the arrest was an "act of repression by the present Prime Minister of Kashmir, Bakshi Ghulam Mohammed," and declared that "the inference was warranted that India's approval had been given." Pakistan further claimed that the arrest constituted a further breach of the Security Council resolution of January 17, 1948. It was revealed that there had been enmity between Abdullah and Bakshi Mohammed during that period. India, however, took the position that the incident was strictly an internal affair of the State which fell under the jurisdiction of the Kashmir government. She had nothing to do with it. In its communication to the President of the Security Council on June 11, 1958, India stated that the Kashmir government ordered the arrest of the former Prime Minister because "his remaining at large was hazardous to the security of the State." She held that the Pakistani letter of May 6th

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4 Ibid.
5 Ibid.
8 United Nations Review, July, 1958, Vol. 5, No. 1, p. 3; and Foreign Affairs Records (Shri Arthur S. Lalli's
was "a blatant attempt at interference with the internal affairs" of the State. India could not understand Pakistan's sudden interest in the security of Abdullah, whom Pakistan once regarded as an enemy.

Demonstrations for the march on Kashmir. During the following months, there occurred a series of demonstrations in Pakistan by those who advocated a "peaceful march on Kashmir." On June 30th, fifty persons were hurt when Pakistani police repelled demonstrators planning to march on Kashmir. Another ten were hurt as police halted another march on Kashmir on July 4th. The demonstrators urged the government to take positive action toward a settlement of the Kashmir question. The political situation in Pakistan was insecure and unstable during this period.

The change of regime in Pakistan and its effect on the Kashmir conflict. Following the political crisis, General Ayub Khan, the chief of staff of the Pakistani


9Ibid.


Army, launched a military coup in October and succeeded in overthrowing the government of Feroz Khan Noon (who had been the Pakistani delegate to the United Nations on the Kashmir dispute before becoming Prime Minister of Pakistan). After becoming the Premier, Ayub Khan took a much tougher stand against India on the Kashmir issue than previous governments had. Naturally, India was concerned with the effect of this change of regime on the situation. Nehru ruled that the risk of war between India and Pakistan had increased by the change of regime in Pakistan. On October 31, the new Prime Minister of Pakistan warned that extreme measures, even war, could not be overruled between India and Pakistan as long as the present deadlock over Kashmir continued. He was also "skeptical" about a personal meeting with Nehru over the Kashmir question. On November 29th, Abdullah and his followers went on trial for treason. They were charged with plotting to overthrow the Kashmir government with the help of Pakistan. The Court needed several more months to complete the hearing of testimonies from more than 200

witnesses. On December 30, 1958, Pakistan sent a letter to the President of the Security Council, protesting the alleged mistreatment of political prisoners by the Kashmir government. Fortunately, in India public sentiment with regard to the Kashmir question was generally calm. There was not much war-like talk, and the political situation was fairly stable under Nehru's leadership. At the closing session of the Congress Party's annual meeting in Nagpur, Nehru made a speech in which he flatly rejected demands by several delegates for a "tougher line toward Pakistan." Nehru's conciliatory statement gave the impression that while Indian leaders were not prepared to negotiate with Pakistan on Kashmir, they at least wanted a cooler and calmer atmosphere within the sub-continent.

The current climate in the sub-continent. The political climate in the sub-continent for the last few months, however, bore symptoms of more tension on the Kashmir question. On February 25, 1959, the President of Pakistan, Ayub Khan (who had replaced the former President,

Iskander Mirza) declared at a press conference that the Kashmir dispute was "a question of life and death"\(^\text{19}\) to Pakistan. Kashmir was vital, he said, to the integrity and defense of Pakistan. He stated that Pakistan would fight for the "self-determination"\(^\text{20}\) of this area. On February 4th, India charged Pakistan with violating the cease-fire line.\(^\text{21}\) On March 8, 1959, in a letter to the President of the Security Council, India charged that Pakistan was using the Security Council to make "baseless allegations against India in a long-standing dispute over Kashmir."\(^\text{22}\) In his second letter to the President of the Council the Indian delegate, Mr. Chandra Shekhar Jha, stated that Pakistan's communications to the Council regarding the arrest and trial of Sheikh Abdullah was only designed as propaganda.\(^\text{23}\) These two letters were the latest in a long series of charges and countercharges by the parties in the Security Council. Thus matters stand at the time of writing this chapter, April, 1959. Eleven years had passed since the Kashmir dispute had been


\(^{23}\) *Ibid.*
referred to the Security Council by India, and more than ten years after the United Nations achieved its initial success in effecting a cease-fire in Kashmir.
CHAPTER X

CONCLUSION

Significance of the dispute. Ever since the independence of the sub-continent, mutual relations between India and Pakistan have been strained primarily over Kashmir. The Kashmir dispute affects not only relations between the two nations and peace and stability in the sub-continent, but their external relations with other powers desirous of maintaining friendly and cordial relationships with both. Something has to be done to remedy this chronic tension between the two nations. Once the Kashmir dispute is solved peacefully in one way or another, all other Indo-Pakistan disputes might be settled without difficulty.

In solving the dispute, one ought to bear in mind the complexity of the problem as well as changing circumstances in the sub-continent. There are many reasons for the parties holding to unyielding positions. The Kashmir dispute is so important to the existence of both nations that under no circumstances can either afford to lose completely. To India, Kashmir is highly important because of its strategic location with regard to defense and security. It is true that Nehru, who is of Kashmir Brahmin
stock, has a profound affection for Kashmir. But what is more significant for Nehru and other Indian leaders is that Kashmir is a testing ground "to disprove the two-nation' theory"¹ of Pakistan's by incorporating a predominantly Muslim state into the secular Union of India. Nehru and his colleagues have not yet given up their dream of establishing a united India some day. According to Korbel, Kashmir is regarded as a bridge between India and Pakistan.² Equally important to Pakistan is not only Kashmir's geographic, religious, and communal affinities but psychological implications involved in the entire affair. If Kashmir is lost to India, the very basis of internal security in Pakistan would be threatened. For the loss of Kashmir might very well challenge the very existence of Pakistan as a nation state. The two-nation theory, which was the basis of the creation of Pakistan, would be at stake. The loss of Kashmir could create serious political chaos and internal disaster to the losing party.

The prospect for a settlement. Realizing the urgent need to solve the dispute, which threatened the

peace and security of not only the sub-continent but the whole world, the Security Council of the United Nations, for the last eleven years, has strived to reconcile the opposing points of view of the parties through mediation. It has exhausted almost every procedure available for the pacific settlement of international disputes. Yet, the solution is still remote largely because of the deadlock on the question of demilitarizing the State; as this is the preliminary condition to holding a plebiscite.

Under present circumstances, the writer can see two desirable means of settlement. One of them would be the reference of the entire Kashmir dispute, including the question of the legality of Kashmir's accession to India, to adjudication or arbitration. The other is a partition of the State. The tribunal would decide the status and destiny of the State or instruct the parties with regard to other means of solving the dispute. The decision of this tribunal would be based on international law and binding on the parties. This means of settlement is, however, very likely unacceptable to both India and Pakistan. As already discussed in the preceding section, the conflicting national interests of the parties are so great that neither one would be ready to take such a risk. Pakistan is aware that the law would very likely favor India on the point of Kashmir's accession to India.
Moreover, a judicial decision would not be in the field of political compromise. It would merely designate the winner and the loser. The resulting loss of prestige of the losing government would overshadow future relations between the two nations. The consequence of such verdict would be fraught with danger for the future.

For these reasons the writer reaches the conclusion that the most desirable solution to the dispute at present would be the partition of the State based on the present cease-fire line. Neither India nor Pakistan will win or lose all under this scheme. It is not realistic to believe that the disposition of the State through a plebiscite is the only way of solving the dispute. There are three reasons for overruling the plebiscite solution. First, during eleven years of negotiations, it was apparent that the parties became more adamant to the conditions for demilitarization. These unreconcilable views result from their "fundamentally differing conceptions" of the origin, evolution and nature of the dispute itself. Throughout eleven years of debates before the Council, the parties continuously focused their arguments on the very basic questions of the dispute, such as the legality of Kashmir's accession to India, the existence of aggression.

\[3\text{S/273},\text{ op. cit.}\]
in the sub-continent, the obligations of the two governments in Kashmir under the terms of the resolutions of August 13th and January 5th, and the nature of the responsibilities of the appropriate authorities on each side of the cease-fire line after demilitarization. Unless these fundamental questions are answered definitely and authoritatively by a judicial tribunal, the opposing positions of the parties over the issue of demilitarization can never be settled. It seems certain that both parties will not submit these fundamental, legal questions to adjudication or arbitration. Therefore, solution through a plebiscite is almost impossible now. Second, there are many difficulties involved in a plebiscite. The return of refugees who left the State during the fighting, the identification of the residents of Kashmir, and the providing of accommodations and facilities for those who return to the State, would be difficult to accomplish. It would also be difficult to provide an atmosphere completely free from religious fanaticism, under which the docile and illiterate Kashmiris could vote without feeling coerced or intimidated. As Sir Owen Dixon stated to the Council after his mission, a plebiscite would produce a large influx of refugee migration and the further dislocation of settled population. This view was
later confirmed by another United Nations Representative for India and Pakistan, Mr. Jarring. It is the Kashmiris who would suffer most in the wake of a plebiscite. Not to add further disturbance and disaster to these unfortunate people, a plebiscite should be avoided. Third, even if it were possible to hold a plebiscite, it would increase tension and communal consciousness, retarding the advancement and stability of the entire sub-continent. For the last ten years since the effectuation of the cease-fire, Kashmir had made great progress toward political and economic stability. In view of these changed circumstances, a plebiscite would reverse the tide of political and economic normalization in Kashmir, and would not promote better relations between the two countries. It would only help to create an atmosphere for the outbreak of a full-scale war between the two nations. In solving the dispute, one ought to take into consideration the realities of the present situation and the overall interests of both countries as well as of the Kashmiris. The dispute should be viewed in the larger context of a lasting peace for the sub-continent.

**Evaluation of the effectiveness of the United Nations in the pacific settlement of the Kashmir dispute.**

The United Nations was partially successful and partially
unsuccessful in solving the Kashmir dispute through pacific means. The biggest success of the United Nations in Kashmir, perhaps one of the most important success in the history of the United Nations, was the effectuation of the cease-fire in the sub-continent. It prevented the outbreak of a full-scale war between the disputants. After the effectuation of the cease-fire, the United Nations maintained the status quo in Kashmir and prevented major violations of the cease-fire agreement.

During eleven years of mediation, the Security Council demonstrated a great deal of flexibility in employing various procedures toward a settlement of the dispute. The Council recommended to the parties these means of settlement in its resolutions. When the use of mediation by a United Nations Commission failed because of internal dissension, the Council promptly replaced it by another means of procedure: mediation by a single United Nations Representative. Thus far the Council has recommended

(1) conciliation by the President of the Council,
(2) the offer by the Council of its good offices,
(3) bilateral negotiations between the parties themselves,
(4) mediation by the United Nations Commission,
(5) mediation by single United Nations Representative,
(6) direct mediation by the Council President in Kashmir.
All these procedures of settlement were employed by the Council regardless of the objections of one or both of the parties. The failure of Council mediation in the dispute was not because of the procedures of settlement employed. Nor was it due to what is called the inherent weakness of the United Nations. The impact of the cold war which has prevented the Security Council from working effectively in the peaceful settlement of international disputes in most other cases, did not affect the Kashmir issue. The Soviet Union has so far exercised only one veto with regard to the Kashmir question. This veto, however, could not block the Council's attempt to send the then Council President, Mr. Jarring, to the subcontinent as one more United Nations Mediator. The Council never considered enforcement action under the Charter to prevent aggression or rectify it in Kashmir. There was no ground for testing the efficiency of the Security Council enforcement action to preserve international peace and security under the terms of the Charter. The cease-fire order, which was recommended in the resolution of August 13th, was accepted by the parties through their negotiation with the Commission. The threat of United Nations force did not bring about the cease-fire.

One or both of the parties always rejected the
resolutions adopted by the Council except for two—those of August 13th and January 5th. Despite these rejections, the Council still sent its Commission and Representatives to the sub-continent to achieve a solution in keeping with the terms of reference in the resolutions. Both governments, nevertheless, tried to co-operate with these missions. The inherent weakness of the United Nations such as the abuse of veto by one of the big powers, the ineffectiveness of enforcement action to preserve world peace and security, and the lack of the Council's power to bind disputants to a resolution adopted by it, never became serious questions in the Kashmir dispute.

The major reason for the non-success of the United Nations to achieve a settlement of the dispute was its lack of flexibility with regard to its recommendations for the terms of settlement. From the beginning, the Council sought to solve the dispute through the holding of a plebiscite on the issue of Kashmir's accession. When the issue was referred to the Council by India, this approach seemed feasible and perhaps the best solution. But because of the failure of the Council and its Commission and Representatives to reconcile the major points of differences between the parties over the issue of demilitarization, and because of the changing political
and military situation in the sub-continent, a plebiscite proved impracticable or at the very least difficult to execute. Sir Owen Dixon was the first United Nations official to point out the difficulty and impracticability of a State-wide plebiscite. He recommended to the Council an alternative solution, the partition of the State and a plebiscite in the Valley of Kashmir only. But, the Council did not pay attention to his finding nor take into consideration the realities of the present situation within the sub-continent. It continued to recommend a State-wide plebiscite under the auspices of the United Nations. By the time of the Jarring Mission in March, 1957, a plebiscite had become practically impossible. His recommendations against the proposed plebiscite as a solution was again ignored by the Council. The Council repeatedly approached the same deadlock within the same terms of reference. In every resolution adopted by it, the Council used the same terms of reference to instruct its Commission and Representatives despite the fact that previous Mediators failed to achieve a solution under those very same terms. The Council could have suggested an alternative means of settlement. But it limited the scope of its Representatives and denied to them a free hand in exploring and recommending to the parties alternative means of solution.
Exceeding his mandate given him by the Council, Sir Owen nevertheless recommended to the parties the plan for a partition of the State and a plebiscite in the Valley of Kashmir only. The Council, however, overruled this recommendation.

There are several other alternative plans. They are (1) a partition of the State based on the present cease-fire line, (2) the combination of a partition of the State and a plebiscite in the Valley of Kashmir and other adjacent areas only, (3) an independent Kashmir, and (4) a wholly neutralized Kashmir guaranteed under the United Nations. Among them, the partition of the State along the cease-fire line merits most attention and is least open to criticism. Pakistan opposed partition when it was first raised by Sir Owen and later during the Second New Delhi Conference between Nehru and Mohammad Ali in May, 1955. But, if the Security Council fully endorses this scheme, and urges Pakistan to accept it, the situation might be different. The Council even could transfer the Kashmir issue to the General Assembly. With the prestige and weight of an 81-state Assembly which includes friends of Pakistan and of world peace, the United Nations could persuade her to accept this alternative means of settlement.
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