

## **Background To The Kashmir Issue**

### **Facts of the case**

*(A note prepared by the Ministry of External Affairs  
in the early 1950s, probably 1951)*

- 1) Invasion of the State by tribesmen and Pakistan nationals through or from Pakistan territory on October 20, 1947.
- 2) Ruler's offer of accession of the State to India supported by the National Conference, a predominantly Muslim though non-communal political organization, on October 26, 1947.
- 3) Acceptance of accession by the British Governor-General of India on October 27, 1947. Under this accession, the State became an integral part of India.
- 4) Expression of a wish by Lord Mountbatten in a separate letter to the Ruler the fulfillment of which was to take place at a future date when law and order had been restored and the soil of the State cleared of the invader. According to this wish, voluntarily expressed by India, the people of the State were given the right to decide whether they should remain in India or not.
- 5) Complaint by India to the Security Council against Pakistan's assistance to the invader on January 1, 1948, and Pakistan's emphatic denial of the allegation.
- 6) Invasion of the State by Pakistan Regular forces on May 8, 1948, in contravention of international law. One of the grounds for this military operation, as disclosed by Pakistan's Foreign Minister himself, was a recommendation of the Commander-in-Chief of Pakistan that an easy victory for the Indian Army was almost certain to arouse the anger of

the invading tribesmen against Pakistan "for its failure to render them more direct assistance."

Thus Pakistan tried to force the issue first by actively assisting the tribesmen and Pakistan nationals in the invasion of the State, and when the tribal invasion failed, by herself becoming an invader. When even direct aggression failed, she began to clamour for a plebiscite, thereby hoping to achieve by other means what she had failed to obtain by force.

The Security Council sent out a U.N. Commission to the Indian sub-continent. This Commission discovered, according to its own Report, that the tribesmen and Pakistan nationals had invaded the State from Pakistan territory, that the Azad Movement, which constituted an organised political and military body, was assisted by the Pakistan High Command, and that this Movement had co-operated since October 1947 with invading tribesmen and individual Pakistan nationals. Thus, India's complaint which had been emphatically denied by Pakistan was proved to be true. The Commission learnt from the Foreign Minister of Pakistan that Pakistan troops had entered the territory of the state! The Commission also learnt that contrary to the Security Council Resolution of January 17, 1948, which the Government of Pakistan had accepted, the fact that Pakistan troops had entered the State unlawfully had been withheld from the Security Council. The Commission was informed "that it was for the defence of Western area that the Pakistan Regular forces entered the State of Jammu and Kashmir." Only a few months later Pakistan marched her troops into the Northern areas, again without informing the Commission or the Security Council.

Having entered the State unlawfully and contrary to the Resolution which she herself had accepted, the Pakistan Government began to consolidate its position in the areas it had invaded. The extent to which this was done is described by the Commission in its Third Interim Report:

"The Resolution of 13th August 1948 recorded one major change in the

situation as contemplated by the Security Council during its deliberations in the early part of that year, namely, the presence of Pakistan troops in the State of Jammu and Kashmir. It did not, however, record a second element which has developed subsequently into a serious problem in the implementation of that Resolution: the "Azad (free) Kashmir Movement" the fighting forces of which today number more than 32 well-equipped battalions... The Government of India, of course, grants no recognition to the Azad organization and holds officially, at any rate, its existence to be a problem of internal public order. On the other hand, the Government of Pakistan has rendered important assistance to the Azad Movement; it has officered the Azad Forces with officers of the Pakistan Army. Units of the Pakistan Army itself are present in 'Azad Kashmir' and have operated in the closest co-operation with the local forces. However, Pakistan has not given formal recognition to the "Azad Kashmir Government". In a letter dated 6<sup>th</sup> September, 1948, Pakistan informed the Commission that it could not make commitments on behalf of the Azad organization. The Commission has never negotiated with its representatives; having no international standing, the organization can have no international responsibilities."

It is noteworthy that Pakistan should render important assistance to the "Azad Kashmir Government" which she has not recognised and which, in fact, has not been recognised either by India or by the Security Council. On the one hand Pakistan refuses to make commitments on behalf of the Azad organization; on the other, she offers surreptitious aid to the same organization contrary to her obligations under international law. The Commission went on to remark –

"There is indeed no doubt that the Azad Forces now have a strength which changes the military situation and to that extent makes the withdrawal of forces, particularly these of India, a far more difficult matter to arrange. Although it might be a matter for discussion whether the material strength

of the Azad Kashmir Forces has actually increased since August 1948, there is no question that these forces, who have since been working in close co-operation with the Pakistan Regular Army and who have been trained and officered by that Army, have increased their fighting strength. It is reasonable to suppose that, if the Commission had been able to foresee that the cease-fire period would be prolonged throughout the greater part of 1949 and that Pakistan would use that period to consolidate its position in the Azad territory, the Commission would have dealt with this question in Part II of the Resolution of 13th August."

What the Commission discovered was reinforced by the U.N. Representative - Sir Owen Dixon. "Without going into the causes or the reasons why it happened, which presumably formed part of the history of the sub-continent," remarked Sir Owen Dixon in his Report to the Security Council in 1950, "I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed on; I believe, 20th October 1947, by hostile elements, it was contrary to international law, and that when in May 1948, I believe, units of the Pakistan Regular forces moved into the territory of the State, that too was inconsistent with international law." In brief, Pakistan, not content with assisting the invader, has itself become an invader and its army is still occupying a large part of the soil of Kashmir, thus committing a continuing breach of international law. The Kashmir case has been before the Security Council for over three years. No solution has yet been found, because the root cause of the trouble, namely, the unlawful occupation of nearly half the State and the creation of subversive forces and authorities therein by Pakistan, has been allowed to continue. So long as the root cause of the trouble continues, there can be no solution to the problem.

### The Solution

- 1) The U.N. Commission produced two Resolutions- the Resolution of

August 13, 1948, and the January Resolution of 1949 - which aimed at bringing about a cease-fire, the drawing of a cease-fire line, and effecting a truce followed by a plebiscite under U.N. supervision. Despite the unlawful activities of Pakistan described in the previous chapter, and out of her desire for peace India accepted both the Resolutions. Pakistan at first rejected the August Resolution and then accepted it a little over four months after its acceptance by India. At the same time she accepted the January Resolution of 1949. Thanks to the initiative which India took in the matter, a cease-fire was brought about in January 1949 and a few months later the cease-fire line, supervised by U.N. observers, was drawn by the U.N. Commission.

2) In view of the series of acts of aggression committed by Pakistan, the August Resolution is based on the simple principle that while Pakistan forces, regular and irregular, and Pakistan tribesmen and nationals who have entered the State for the purpose of fighting, must be completely withdrawn from the State, India, by virtue of its responsibility for the defence of the State resulting from the accession has the right and the duty to retain some troops in the state to ensure its security. Another important principle underlying this Resolution is that since no invader can be given any voice in the disposal or disposition of the protecting forces, the stages in which the bulk of the Indian forces are to be withdrawn from the State and the strength of the Indian forces to be retained in the State are matters for agreement solely between the U.N. Commission and the Government of India. Thus the Resolution, already accepted by Pakistan and India, does not suggest the complete withdrawal of Indian forces from the State. Another principle, equally important; which underlies the two Resolutions is the recognition of the sovereignty of the Jammu & Kashmir Government. In other words, neither Resolution suggests that for purposes

of a plebiscite the lawful Government of the State should be replaced by some other authority. Lest there should be any shadow of doubt on these points, the Prime Minister of India obtained explicit confirmation of them from the Commission before accepting the Resolutions, as is clear from the following extracts from his letter to the Commission and the Commission's reply and from the aide memoire on a meeting between the Prime Minister and certain Members of the Commission.

Following are some of the points which the Prime Minister of India raised in his letter to the Chairman of the Commission dated August 20, 1948: -  
"3. Since our meeting of 18th August, we have given the Commission's resolution our most earnest thought. There are many parts of it which we should have preferred to be otherwise and more in keeping with the fundamental facts of the situation, especially the flagrant aggression of the Pakistan Government of Indian Union territory. We recognise, however, that if a successful effort is to be made to create satisfactory conditions for a solution of the Kashmir problem without further bloodshed, we should concentrate on certain essentials only at present and seek safeguards in regard to them. It was in this spirit that I placed the following considerations before Your Excellency:" ..... that is, the Chairman of the United Nations Commission-

"(1) That paragraph A.3 of Part II of the resolution should not be interpreted or applied in practice, so as

(a) to bring into question the sovereignty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops,

(b) to afford any recognition of the so-called 'Azad Kashmir Government', or

(c) to enable this territory to be consolidated in any way during the

period of truce to the disadvantage of the State.

(2) That from our point of view the effective insurance of the security of the State against external aggression, from which Kashmir has suffered so much during the last ten months, was of the most vital significance and no less important than the observance of internal law and order, and that, therefore, the withdrawal, of Indian troops and the strength of Indian forces maintained in Kashmir should be conditioned by this overriding factor. Thus, at any time, the strength of the Indian forces maintained in Kashmir should be sufficient to ensure security against any form of external aggression as well as internal disorder.

(3) That as regards Part III, should it be decided to seek a solution of the future of the State by means of a plebiscite, Pakistan should have no part in the organisation and conduct of the plebiscite or in any other matter of internal administration in the State.

"4. If I understood you correctly, A. 3 of Part II of the resolution does not envisage the creation of any of the conditions to which we have objected in paragraph 3(1) of this letter. In fact, you made it clear that the Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government.

"As regards paragraph 3(2), the paramount need for security is recognised by the Commission, and the time when the withdrawal of Indian forces from the State is to begin, the stages in which it is to be carried out and the strength of Indian forces to be retained in the State are matters for settlement between the Commission and the Government of India.

"Finally, you agreed that Part III, as formulated, does not in any way recognise the right of Pakistan to have any part in a plebiscite.

"5. In view of this clarification, my Government, animated by a sincere desire to promote the cause of peace and thus to uphold the principles and prestige of the United Nations, have decided to accept the resolution."

In reply to this letter, the Chairman of the Commission wrote as follows:

"I have the honour to acknowledge the receipt of your communication dated 20th August 1948, regarding the terms of the resolution of the United Nations Commission for India and Pakistan which the Commission presented to you on 14<sup>th</sup> August 1948.

"The Commission requests me to convey to Your Excellency" - that is, to the Prime Minister - "its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point 1(c) the local, people of the evacuated territory will have freedom of legitimate political activity. In this connection, the term 'evacuated territory' refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.

"The Commission wishes me to express to Your Excellency its sincere satisfaction that the Government of India has accepted the resolution and appreciated the spirit in which this decision has been taken."

That it was not the intention of the U.N. Commission to interfere with the administration of the Jammu and Kashmir Government or to replace the lawful Government by some other authority, including a U.N. authority, for purposes of a fair and impartial plebiscite is clear from the following extract from an aide memoire on discussions which took place between the U.N. Commissioner Dr. Lozano, and the Prime Minister of India between December 20 and 22, 1948:

"B. 3( b)- The question was raised whether the form of words employed was intended to give to the Plebiscite Administrator powers of interference in the



administration of the State, e.g., by "direction and supervision of the State Forces and Police", mentioned in paragraph B.8 of the Security Council's Resolution of the 21st April 1948. Dr. Lozano said that this was not the intention of the Commission and that the words quoted above had been deliberately omitted. The Prime Minister pointed out that all that the Plebiscite Administrator could in reason expect was that, for the purpose of organising and conducting the plebiscite and ensuring its freedom and impartiality, the Government of Jammu and Kashmir should give him such assistance as he might require. Dr. Lozano said that a Plebiscite Administrator of international standing and commanding general confidence who would be appointed after consultation with the Government of India could be expected to act reasonably and that the Commission did not intend that he should usurp the functions of the State Government in the field of normal administration and law and order. His functions and powers would be limited to ensuring that the plebiscite was free and impartial."

The Commission itself attached so much importance to the security of the State that its Chairman in a letter to the Foreign Minister of Pakistan dated September 3, 1948, stated: "As regards paragraphs B1 and 2 of Part II, the Commission, while recognising the paramount need for security of the State of Jammu and Kashmir, confirms that the minimum strength required for the purpose of assisting the local authorities in the observance of law and order, would be determined by the Commission and the Government of India."

It is worth remembering that the U.N. Commission agreed with India's Prime Minister that if and when a plebiscite was held, "Pakistan should have no part in the organisation and conduct of the plebiscite or in any other matter of internal administration in the State."

3) The January 1949 resolution made detailed provisions for the holding of a fair and impartial plebiscite --- provisions which were considered not only

adequate and satisfactory, but agreed to by Pakistan, India and the Commission. Some of these provisions are: -

1. "The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organising and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.
2. "... The Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite.
3. "All civil and military authorities within the State and the principal political elements of the State will be required to co-operate with the Plebiscite Administrator in the preparation for the holding of the plebiscite.
4. "All authorities within the State of Jammu and Kashmir will undertake to ensure, in collaboration with the Plebiscite Administrator, that:
  - (a) there is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite;
  - (b) no restrictions are placed on legitimate political activity throughout the State. All Subjects of the State, regardless of creed, caste and party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;
  - (c) all political prisoners are released;
  - (d) minorities in all parts of the State are accorded adequate protection;
  - (e) there is no victimization."

As has already been shown, it has been clearly stated on behalf of the U.N. Commission that the Plebiscite Administrator could be expected

to act reasonably and that the Commission did not intend that he should usurp the functions of the State in the field of normal, administration and of law and order. The sovereignty of the entire State must necessarily vest in the lawful Government of the State and because of this, it was stipulated that the Plebiscite Administrator should be formally appointed by the State Government. All this was recognised by the United Nations Commission.

4) While India still stands by all her commitments, she insists that all the commitments made to her contained in the two agreed resolutions of the U.N. Commission and the connected assurances must also be honoured. She was and is prepared to take, in consultation with the Plebiscite Administrator, all measures that may be necessary to prevent the presence of Indian forces from interfering with the freedom of the plebiscite. This could be done in a number of ways – e.g., stationing the forces in localities outside centres of civilian population and confining them to barracks during the plebiscite. She has also suggested that the Security Council could send several thousand observers to report on the fairness and impartiality of the plebiscite if and when it is held. Thus, the two agreed resolutions made provision not merely for the withdrawal or reduction of armed forces but also for the freedom of the plebiscite consistent with the requirements of security.

5) To sum up, a fairly detailed plan for bringing about a truce and the holding of a fair and impartial plebiscite under U.N. auspices is contained in the resolutions of August 13, 1948 and January 5, 1949, agreed to by India, Pakistan and the U.N. Commission. According to these resolutions, Pakistan is given no right to retain her troops, regular or irregular, or tribesmen or her nationals in the State; nor is she given a right to have any say in the matters on which the U.N. Commission, according to the resolutions, requires the agreement of the Government of India. Being an aggressor, she

was denied any voice in questions relating to the holding of a plebiscite which was a matter between the Government of India and the Jammu and Kashmir Government on the one hand and the U.N. Commission and the Plebiscite Administrator on the other. On the other hand, the resolutions recognised the responsibility of the Government of India for the defence of the State -- a responsibility which results from the State's accession to India -- and the lawful character of the Jammu and Kashmir Government and its sovereignty over the State. In other words, the two resolutions have already laid down the fundamental principles for the settlement of the dispute, principles which were considered fair and just by all the parties which accepted them.

#### Who Blocks Settlement?

- 1) Despite the existence of the two resolutions, accepted by all parties, the settlement of the Kashmir dispute is as far as ever. Why? Who blocks settlement? What stands in the way of implementing the resolutions? Why does not Pakistan withdraw her troops from the State, or at least make the beginning of a withdrawal?
- 2) According to the two agreed resolutions Pakistan has no locus standi in the State; nevertheless, she continues to be in unlawful possession of nearly half of its territory which she has shown no desire to give up. To cover up her continuing breach of international law and to escape the charge that she is holding up the plebiscite, Pakistan, supported by well-meaning but misguided Powers, has taken resort to a number of devices to reopen the issue already settled in the agreed resolutions.
  - (a) It is said: "India is a Hindu State; Pakistan is a Muslim State; Kashmir is predominantly Muslim and therefore belongs to Pakistan; India is trying to retain it by force." This is how the argument is presented to all those who are not fully acquainted with facts and the

background of the situation. Even after the separation of Pakistan, India still has a Muslim population of some 40 millions -- the third largest of any State in the world. Apart from mere numbers, it is important to remember that India is a secular State, with a "Bill of Rights" providing for equality before the law, freedom from discrimination, freedom of religion and various other rights enforceable by direct recourse to the Supreme Court. Every reasonable safeguard which could be devised for the protection of racial or religious minorities has been embodied in the Indian Constitution now in force.

The present Governmental structure in India is significant. The Prime Minister of India is a Hindu; the Deputy Leader, who is also Education Minister, is a Muslim; so too is the Minister of Communications; the Defence Minister is a Sikh; the Health Minister is a Christian; the Law Minister and the Minister of Labour are members of the Scheduled Castes. The nine Governors of the States in India include a Muslim, a Christian and a Parsi; the elected Speaker of the largest State Legislature in India is a Muslim; Indian Ambassadors include two Muslims; the Supreme Court of India includes a Muslim Judge and a Christian Judge; the Chief Justice of the Bombay High Court is a Muslim. India's fighting forces include Muslims - one of them a General. Similarly, in the Cabinet of seven of the lawful Government of Kashmir, the Prime Minister, Sheikh Abdullah, is a Muslim and four of his colleagues are Muslims. It represents an organisation, namely, the Jammu and Kashmir National Conference, also predominantly Muslim, which has been fighting for democracy and freedom for decades, and this organisation desires that Kashmir should remain in India. For this desire, it has given cogent and impressive reasons. A convention of the Jammu and Kashmir National Conference stated in a declaration in October 1948.

“During the long and glorious struggle for our freedom our people have gained the experience that the real problem facing them is the plight of the people, irrespective of caste, creed and colour and that the solution to this problem does not lie in dividing the people on a religious basis but by equitable distribution of national wealth. Pakistan, with its basis on the two-nation theory and its insistence on the perpetuation of religious distinctions, does not and cannot accommodate a programme and an outlook which is the very negation of its basis and conception of social justice. The Convention strongly hopes that the Indian Government and the people of India will lend the people of Kashmir all material, moral and political support in completing this task and in achieving the goal of economic and political freedom.”

(b) Again, it is said that the State's accession to India is not legal, and that the question of accession is still to be decided by a plebiscite. Now under the Constitution which was in force in India between 15th August 1947 and 26th January 1950, which is the material period for this purpose, India was a Dominion under the British Crown. This Constitution was an enactment of the British Parliament. Under that Constitution, often referred to as the Government of India Act, 1935 - as amended by the Indian Independence Act, 1946 - an Indian State must be deemed to have acceded to the Dominion if the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler. That is all that is required for the accession; an instrument executed by the Ruler and accepted by the Governor-General. On 26th October 1947, in order to get India's help to repel an invasion of the State in which Pakistan was aiding, the Ruler of Kashmir actually executed such an instrument of accession in favour of India and on 27th October 1947, Lord Mountbatten, then Governor-General of India, signified his acceptance of the instrument in the usual formula, "I

do hereby accept this Instrument of Accession". The document itself contains no conditions or reservations of any kind; it is in the same form as any other Instrument of Accession accepted by the Governor-General of India and it took effect from the moment of acceptance. Only in the case of Kashmir, Lord Mountbatten, after accepting the Instrument, wrote a separate letter to the Maharaja in which he expressed the Government of India's wish that "as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people" In other words, the acceptance of accession was followed by the expression of a wish to be fulfilled at a future date when certain conditions had been satisfied. Unfortunately, the soil of Kashmir has not yet been cleared of the invader - the Pakistan army which joined the invader is still there - and so the fulfilment of the Government of India's wish has been delayed by Pakistan's own act. Meanwhile, the accession to India continues to be effective, and it will inevitably so continue, unless and until the people of Kashmir settle the question otherwise. Having delayed the plebiscite by an act of invasion, Pakistan cannot take advantage of its own wrong to hold up or suspend the legal consequences of the accession.

(c) Pakistan has often asserted that the Pakistan Army went into Kashmir on 8th May 1948 to defend vital interests of Pakistan, that is to say, in self-defence, and, incidentally, to turn away the wrath of invading tribesmen in case Pakistan did not give them assistance in a more direct form against the Indian Army. Under Article 51 of the U.N. Charter, the right of self-defence begins only when there is an armed attack against a Member. In the present case there was never an armed attack against Pakistan by the Indian Army. Secondly, under the Article, measures taken by the Members in the exercise of self-defence must be

immediately reported to the Security Council. Pakistan did not inform the Security Council; indeed, it was only after the U.N. Commission for India and Pakistan arrived on the sub-continent, nearly two months later, and the facts could no longer be concealed, that the Commission was informed of the presence in the State of Regular Pakistan troops. Thirdly, and this is very important, under the Charter the right of self-defence continues only until the Security Council has taken measures necessary to maintain international peace and security; in the present case the Security Council, through the United Nations Commission for India and Pakistan, took the necessary measures, and, in fact, the Commission succeeded in getting the parties agree to the two resolutions already mentioned. Under these resolutions a cease-fire has been achieved, a cease-fire line has been demarcated and there are military observers to supervise the observance of the cease-fire order. None of the alleged grounds on which the Pakistan Army marched into Kashmir on May 8, 1948, have any longer any validity. The line which that Army was meant to hold, and more than that line, is now secured under the cease-fire arrangements already in force.

(d) Pakistan argues that the occupation of Kashmir by India is a threat to the existence of Pakistan since India thereby aims not only to encircle Pakistan strategically but also to have its economy at its mercy by control over the rivers which are the life-blood of Pakistan. It is also stated that Kashmir is vital to Pakistan for geographic, economic, strategic and other reasons. If as the result of a plebiscite, Kashmir goes to Pakistan, the question does not arise; the question can arise only if Kashmir decided to remain in India. Here is a suggestion thrown out by Pakistan that even if the plebiscite should result in favour of India, Kashmir should be allocated to Pakistan because Kashmir is essential to her security and economy. Should Pakistan have any



apprehensions regarding the supply of water from the rivers of the State, India will have no difficulty in giving suitable assurances. After all, there are rivers in other parts of the world flowing through more than one State and there are well-established ways of regulating the use of those waters.

(e) Another line which has been taken is that a fair and impartial plebiscite is impossible without a complete demilitarization of the State, and that to achieve this object the armed forces of India and Pakistan must be completely withdrawn from the State and those of the lawful Government of the State and that of the so-called 'Azad Kashmir Government' disbanded and disarmed, their places to be taken by a neutral force. In other words, the agreement contained in the two resolutions accepted by all parties must be completely undone. Even an authority like Sir Owen Dixon fell into the trap when contrary to the two agreed resolutions he suggested at one stage a complete withdrawal of Indian, forces from the State, and at another, the retention of some forces of Pakistan for certain purposes! The McNaughton proposals, made earlier, suffered from similar defects. In view of the provisions contained in the agreed resolutions of August 1948 and January 1949, there is no occasion for the use of foreign troops or of special local levies recruited by any outside agency.

(f) No less vigorously has been advanced the suggestion, again contrary to the agreed resolutions and the assurances given to India, that the lawful Government of the State should be replaced by a neutral authority, preferably a U.N. authority, to ensure that the plebiscite is held fairly and impartially. The effect of this proposal and of complete demilitarization would be not to ensure a fair plebiscite but the reverse. While striving to eliminate undue influence, the supporters of Pakistan forget to take into account the subtle but psychological effect which is

bound to result from the removal of the lawful forces and authorities in the State, guaranteed by previous agreements and assurances and from the recognition, direct or indirect, of the unlawful forces and the unlawful local authorities in various parts of the State. Such a solution would be a victory for aggression and a defeat for the democratic forces which tried to repel aggression and which still resist the unlawful occupation of the State by Pakistan.

(g) Finally, it is suggested that all differences between India and Pakistan should be submitted to arbitration. In fact, Pakistan has recently urged that a super-arbitrator should be sent to the sub-continent to settle all differences on the spot, and a provision for arbitration has been made in the latest resolution of the Security Council which India has not accepted. As has already been explained in Chapter II, there is no room for differences of opinion between India and Pakistan Under the two agreed resolutions according to which Pakistan is required to withdraw all her forces, tribesmen and nationals completely from the State, and she has been given no voice whatsoever either in the disposition or disposal of Indian troops or in matters relating to plebiscite. On the other hand, on matters concerning India and the Commission, the resolutions required that nothing should be done without the agreement of the Government of India. The motive behind the arbitration proposals seems to be that even in the vital matters affecting the security of the state Pakistan should have a right to be consulted. Such proposals thus seek to reopen in favour of Pakistan issues which have already been settled by the resolution of August 1948. First they seek to give Pakistan a voice in matters which Pakistan, as invader of the State, has been rightly denied any voice under that resolution, and secondly, they seek to transfer to the arbitrators the, right, to make vital decisions which, under the old

resolutions, require India's agreement. No country would agree to a proposal that matters of sovereignty and vital military security should be decided, not by its own, Government, nor even with its consent, but by arbitrators chosen by somebody else after consultation with the country that has invaded its territory. The question is not one of acceptance of arbitration as a general principle; what is proposed is to disturb, under the guise of arbitration, agreements previously accepted by the parties. To this India cannot but object. The latest resolution of the Security Council is a violation of the agreed resolution of August 1948 in which there is no room for arbitration. Recent developments in Pakistan and what is called the 'Azad Kashmir' area indicate forcibly the dangers of any failure to ensure the security of the state. According to the U.N. Commission's own report the so-called 'Azad Kashmir' forces were built up to the formidable strength of 32 battalions during the cease-fire period in violation of the resolution of 13th August. The Commission itself remarked that this made the withdrawal of the Indian forces a far more difficult matter than was contemplated in that resolution. The recent army plot in Pakistan has added greatly to that difficulty. Moreover, the talk of jihad or holy war has become more pervasive and insistent than ever before in Pakistan. In such circumstances, India cannot be expected to leave to a third party, however chosen, the decision as to how the State should be protected against a recurrence of the horrors of October 1947.

3) For reasons never explained either by Pakistan or by her supporters, Pakistan forces continue to be in unlawful occupation of nearly half the territory of the State contrary to the resolution which she herself has accepted. This continued unlawful occupation holds up the plebiscite for which, strangely enough, India is blamed. Let alone insisting on Pakistan completely withdrawing her forces from the State, thereby

facilitating the holding of an early plebiscite her supporters have been putting forward, contrary to the agreed resolutions; various suggestions, already mentioned above, presumably with the object of reopening closed issues, of whitewashing Pakistan's aggression, and reinstating her unlawfully in the state. India has had to reject all such proposals, not only because they are irrelevant, not only because they are wholly opposed to the spirit of the provisions of the two resolutions accepted by all parties, but also because, if accepted, they would disturb the peace in the State and perhaps on the whole sub-continent. But it is not for India to answer the question why an early plebiscite cannot be held. It is for Pakistan and her supporters to explain why Pakistan forces are allowed to be in unlawful occupation of part of the State when according to the August 1948 resolution which Pakistan herself accepted, they are required to be withdrawn completely from the State as a first step towards the holding of a plebiscite. Sir Owen Dixon, the U.N. Mediator, recommended to the Security Council that since the whole question had been thoroughly discussed with the parties by the Security Council, the Commission and himself and the possible methods of settlement had been exhaustively investigated; the initiative should be allowed to pass back to the parties. He also recommended that the Security Council should press the parties to reduce the military strength holding the cease-fire line to the normal protection of a peace-time frontier. The Security Council completely ignored the first recommendation, although India supported it. India accepted the second recommendation and reduced her forces by 20-25 per cent without waiting for any corresponding reduction by Pakistan. Up to date Pakistan has not reported any reduction of her forces to the Security Council. Thus, India took the third step under the August 1948 resolution, when Pakistan has still to take the first. Curiously, the latest

resolution of the Security Council does not call upon Pakistan to reduce her forces by a corresponding percentage. Here again the Security Council has ignored Sir Owen Dixon's recommendation.

RESOLUTION ADOPTED BY THE UNITED NATIONS COMMISSION FOR INDIA  
AND PAKISTAN AT ITS FORTIETH MEETING ON FRIDAY, 13 AUGUST 1948,  
IN KARACHI

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN

Having GIVEN CAREFUL CONSIDERATION TO THE POINTS OF VIEW  
EXPRESSED BY THE Representatives of India and Pakistan regarding the  
situation in the State of Jammu and Kashmir, and being of the opinion that  
the prompt cessation of hostilities and the correction of conditions the  
continuance of which is likely to endanger international peace and security  
are essential to implementation of its endeavours to assist the Governments  
of India and Pakistan in effecting a final settlement of the situation,  
Resolves to submit simultaneously to the Governments of India and Pakistan  
the following proposals:

PART I

Cease-fire order

- A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.
- B. The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.  
(For the purpose of these proposals "forces under their control" shall be considered to include all forces, organized and unorganized,

- fighting or participating in hostilities on their respective sides).
- C. The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.
  - D. In its discretion and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order.
  - E. The Government of India and the Government of Pakistan agree to appeal to their respective people to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

## PART II

### Truce Agreement

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

#### A.

1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.
2. The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the state for the purpose of fighting.

3. Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

B.

1. When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from that state in stages to be agreed upon with the Commission.

2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire those forces of its Army which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

C.

1. Upon signature, the full text of the Truce Agreement or a communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

The Government of India and the Government of Pakistan reaffirm their



wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

RESOLUTION ADOPTED BY THE UNITED NATIONS COMMISSION FOR  
INDIA AND PAKISTAN AT ITS MEETING ON JANUARY 5, 1949 AT LAKE  
SUCCESS

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN

Having received from the Government of India and Pakistan in communications dated December 23 and December 25, 1948, respectively their acceptance of the following principles which are supplementary to the Commission's Resolution of August 13, 1948:

- (1) The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.
- (2) A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Part I and II of the Commission's Resolution of August 13, 1948, have been carried out and arrangements for the plebiscite have been completed.
- (3) (a) The Secretary-General of the United Nations will in agreement with the Commission nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir.  
(b) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organising and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.  
(c) The Plebiscite Administrator shall have authority to appoint such staff or assistants and observers as he may require.
- (4)(a) After implementation of Parts I and II of the Commission's Resolution of August 13, 1948, and when the Commission is satisfied that peaceful

conditions have been restored in the state, the Commission and the Plebiscite Administrator will determine in consultation with the Government of India the final disposal of Indian and State Armed Forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite.

(b) As regards the territory referred to in A(2) of Part II of the Resolution of August 13, 1948, final disposal of the Armed Forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

(5) All civil and military authorities within the State and the principal political elements of the state will be required to co-operate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

(6) (a) All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan. The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision into effect.

(b) All persons (other than citizens of the State) who on or since August 15, 1947, have entered it for other than lawful purpose shall be required to leave the State.

(7) All authorities within the State of Jammu and Kashmir will undertake to ensure in collaboration with the Plebiscite Administrator that

(a) there is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite;

(b) no restrictions are placed on legitimate political activity throughout

the State. All subjects of the State regardless of creed, caste or party shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(c) all political prisoners are released;

(d) minorities in all parts of the State are accorded adequate protection;

(e) there is no victimization."

(8) The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problem on which he may require assistance and the Commission may in its discretion call upon the Plebiscite Administrator to carry out on its behalf any of the responsibilities with which it has been entrusted.

(9) At the conclusion of the plebiscite the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the plebiscite has or has not been free and impartial.

(10) Upon the signature of the truce agreement the details of the foregoing proposals will be elaborated in the consultation envisaged in part III of the Commission's Resolution of August 13, 1948. The Plebiscite Administrator will be fully associated in these consultations.

Commends the Government of India and Pakistan for their prompt action in ordering a cease-fire to take effect from one minute before midnight of January 1, 1949 pursuant to the agreement arrived at as provided for by the Commission's Resolution of August 13, 1948 and

Resolves to return in the immediate future to the sub-continent to discharge the responsibilities imposed upon it by the Resolution of August 13, 1948 and by the foregoing principles.

RESOLUTION ADOPTED BY THE UNITED NATIONS COMMISSION FOR INDIA  
AND PAKISTAN AT ITS MEETING ON MARCH 30, 1951, AT LAKE SUCCESS  
THE UNITED NATIONS COMMISSION FOR INDIA & PAKISTAN

Having received and noted the report of Sir Owen Dixon, the U.N. Representative for India and Pakistan, on his mission initiated by the Security Council resolution of March 14, 1950, observing that the Governments of India and Pakistan have accepted the provisions of the U.N. Commission for India and Pakistan resolutions of August 13, 1948, and January 5, 1949, and have reaffirmed their desire that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of U.N,

Observing that on October 27, 1950 the General Council of the "All Jammu and Kashmir National Conference" adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the "future shape and affiliations of the State of Jammu and Kashmir,"

Observing further from statements of responsible authorities that action is proposed to convene such a Constituent Assembly would be elected is only a part of the whole territory of Jammu and Kashmir, reminding the Governments and authorities concerned of the principle embodied in the Security Council resolutions of April 21, 1948, June 3, 1948 and March 14, 1950 and the U.N. Commission for India and Pakistan resolution of August 13, 1948, and January 5, 1949 that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed in the democratic method of a free and impartial plebiscite conducted under the auspices of U.N.;

Affirming that the convening of a Constituent Assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference"

and any action that Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle; Declaring its belief that it is the duty of the Security Council in carrying out its primary responsibility for the maintenance of international peace and security to aid the parties to reach an amicable solution of the Kashmir dispute and that a prompt settlement of this dispute is of vital importance to the maintenance of international peace and security;

Observing from Sir Owen Dixon's report that the main points of difference preventing agreement between parties were:

- (a) The procedure for and the extension of demilitarization of the State preparatory to the holding of a plebiscite,
- (b) The degree of control over the exercise of the functions of Government in the State necessary to ensure a free and fair plebiscite,

The Security Council:

- (1) Accepts, in compliance with this request, Sir Owen Dixon's resignation and expresses its gratitude to Sir Owen for the great ability and devotion with which he carried out his mission;
- (2) Decides to appoint a U.N. Representative for India and Pakistan in succession to Sir Owen Dixon;
- (3) Instructs the U.N. Representative to proceed to the sub-continent and after consultation with the Governments of India and Pakistan, to effect the demilitarization of State of Jammu and Kashmir on the basis of the U.N. Commission for India and Pakistan resolution of August 13, 1948, and January 5, 1949;
- (4) Calls upon the parties to co-operate with the U.N. Representative to the fullest degree in effecting the demilitarization of the State of Jammu and Kashmir;
- (5) Instructs the U.N. Representative to report to the Security Council

within three months from the date of his arrival on the sub-continent.

If, at the time of this report, he has not effected demilitarization in accordance with paragraph (3) above, or obtained the agreement of the parties to a plan for effecting such demilitarization, the U.N. Representative shall report to the Security Council those points of difference between the parties in regard to the interpretation and execution of the agreed resolutions of August 13, 1948, and January 5, 1949, which he considers must be resolved to enable demilitarization to be carried out.

- (6) Calls upon the parties, in the event of their discussions with the U.N. Representative failing, in his opinion to result in full agreement, to accept arbitration upon all outstanding points of difference reported by the U.N. Representative in accordance with paragraph (5) above: such arbitration to be carried out by an arbitrator, or a panel of arbitrators, to be appointed by the President of the International Court of Justice after consultation with the parties;
- (7) Decides that the military observer group shall continue to supervise the cease-fire in the State;
- (8) Requests the Governments of India and Pakistan to ensure that their agreement regarding the cease-fire shall continue to be faithfully observed and calls upon them to take all possible measure the maintenance of an atmosphere favourable to the promotion of further negotiations and to refrain from any action likely to prejudice a just and peaceful settlement;
- (9) Requests the Secretary-General to provide the U.N. Representative for India and Pakistan with such services and facilities as may be necessary in carrying out the terms of this resolution.