

Peacekeeping without Conflict Resolution: The Kashmir Dispute

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Although in the aftermath of World War II the peacekeeping function of the United Nations was viewed as likely to promote the pacific development of disputes, three decades later it is clear that merely separating the combat forces of contending states does not bring the political resolution of conflict any closer. The United Nations has maintained a peacekeeping force in the troubled Kashmir region between Pakistan and India for more than thirty years. In this article, Shahidul Alam uses this long-standing dispute to illustrate the problems encountered by United Nations in promoting the resolution of international disputes. He concludes that the United Nations' use of peacekeeping forces to police cease-fires may actually prolong, rather than speed, the ultimate resolution of conflict.

The UN was created in the aftermath of the Second World War primarily for the purpose of maintaining international peace and security. It was entrusted with the responsibility of effectively controlling or even preventing international conflicts. However, it became evident that the UN is finding it increasingly difficult to carry out its primary function, particularly where major international disputes are involved. One of these conflicts — indeed one of the first after the UN was created — was the Kashmir dispute between India and Pakistan. This dispute remains unresolved to the present day.

As the UN finds itself unable to prevent major international conflicts, it is instead being used increasingly to police cease-fire lines. It also finds itself frustrated in its efforts to bring about a permanent solution to those conflicts. The Kashmir case is a classic illustration of these observations about the UN's role in the present-day world.

THE KASHMIR DISPUTE

The Kashmir dispute between India and Pakistan involves a struggle between two powers for the possession of a tract of territory which each

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wants on valid grounds. The stakes are of major economic, political, and strategic significance to Pakistan, while to India Kashmir has become a symbol of national prestige and international justice.

Kashmir, one of several princely states of British India, had an overwhelming majority of Muslims (77 percent in 1941) in its population, but had a Hindu ruler from the dynasty known as the Dogra Rajputs. One of the conditions set by the British before their paramountcy ended in India was that the Indian states could accede either to India or to Pakistan or seek some other form of relationship. When the dominions of India and Pakistan came into being in August 1947, the government of Kashmir, headed by the Hindu Maharajah, was undecided which way to turn. On behalf of the State of Kashmir, he sent telegrams to India and Pakistan, asking them to enter into a Standstill Agreement. One of the provisions of the Standstill Agreement transferred responsibility for administering certain services in Jammu and Kashmir such as the post, telegraph and railways from India to Pakistan.

On 22 October 1947, the peace in Jammu and Kashmir was shattered by an invasion from Pakistani territory. The Government of India took up the matter with the Pakistan Government. The sequence of events in Kashmir was: (1) religious disturbances, violence, and mass movements of population occurred directly after the partition; (2) Muslim tribesmen, inflamed by reports of violence and "bent on avenging their co-religionists, swarmed from the mountains," and penetrated as far as the southern borders on the east and outskirts of Srinagar; (3) nationals of Pakistan entered Kashmir to fight; (4) after acceding of the state to India, the Indian forces advanced into Kashmir; (5) the tribesmen were pushed back, but were not expelled from the border area.¹

Following the failure of the two Governments to settle the Kashmir conflict by direct negotiations, the Indian government, through its representative to the UN Mr. P.P. Pillai, brought to the attention of the Security Council on 1 January 1948 the situation in the State of Jammu and Kashmir.

In its letter addressed to the Council president, the government of India recalled Articles 34 and 35 of the Charter of the UN, according to which, it stated, "any Member may bring any situation, whose continuance is likely to endanger the maintenance of international peace and security to the attention of the Security Council." The letter continued: "Such a situation now exists between India and Pakistan . . ." In addition, the complaint gave specific details regarding alleged Pakistani assistance to

1. David W. Wainhouse, et al., *International Peace Observation: A History and Forecast* (Baltimore: Johns Hopkins, 1966), p. 360.

the invading forces, including, but not limited to, the supply of arms and ammunition.²

The Pakistan government, instead of answering the specific charges of aggression, filed countercharges against the government of India on 15 January 1948. Pakistan also invoked Article 35 of the Charter, and charged India with breach of international agreements, incitement of revolution, "numerous attacks on Pakistani territory," and an "extensive campaign of genocide." "The object of the various acts of aggression by India against Pakistan is the destruction of the State of Pakistan."³

On 15 January 1948, the Security Council began the consideration of the Kashmir dispute. The Indian chief delegate, Gopal Swami Ayyangar, stated that the continued refusal of Pakistan to stop its raiders and residents might result in an "unholy passion for a holy war."⁴ Pakistan's representative, Sir Mohammad Zafrullah Khan, asked the Security Council to appoint a commission or commissions to investigate India's charges. He suggested that the commission be vested with the responsibility to settle outstanding differences between the two countries and to return peace and order to the State of Kashmir. He also asked the Security Council to establish an impartial and independent administration in the State, and thereafter to hold a plebiscite to decide whether the State should accede to India or to Pakistan, based on the will of the Kashmir people.⁵

The Indians perceived that the discussion in the Security Council showed that most members were not prepared to accept their view that the primary task of the Council was to secure the withdrawal and expulsion of the raiders from Kashmir and the immediate cessation of hostilities. The members were inclined to emphasize the importance of holding a plebiscite to decide the question of the accession of Jammu and Kashmir and they were particularly concerned with its organization and supervision by an international commission.⁶ In fact, at Lake Success Pakistan obtained the first advantage since the Council debate came to concern not so much India's complaint against Pakistan as Pakistan's demand that the future of the Jammu and Kashmir State be considered.⁷ Pakistan attempted to raise questions regarding India's motives, because the Indians tried to

2. Josef Korbel, *Danger in Kashmir* (New Jersey: Princeton University Press, 1954), p. 97.

3. Das Taraknath, "The Kashmir Dispute and the United Nations," *Political Science Quarterly*, Vol. LXV, no. 2 (June 1950), p. 269.

4. M. M. R. Khan, *The United Nations and Kashmir* (Djakarta: J. B. Wollers, 1955), p. 87.

5. Khan, *ibid.*, p. 90.

6. *India and the United Nations*, Report of a Study Group set up by The Indian Council of World Affairs; Prepared for the Carnegie Endowment for International Peace (New York: Manhattan Publishing Company, 1957), p. 123.

7. Norman Brown, *The United States and India and Pakistan* (Massachusetts: Harvard University Press, 1963), p. 188.

make it appear that their case was based on solid legal grounds and not supported by national ambitions.⁸

After much intense and often acrimonious debate, the Security Council decided to act. By resolution 39 of 20 January 1948, it established a UN Commission and gave it a dual function: to investigate the facts pursuant to Article 34 of the Charter, and to exercise any mediatory influence likely to smooth away difficulties and carry out the directions of the Council. The Commission was also required to report to the Security Council on the implementation of those directions.⁹ According to Leland Goodrich, the establishment of the United Nations Commission on India and Pakistan (UNCIP) was premised on the belief that active hostilities had to be broken off before a peaceful settlement could be achieved.¹⁰

The UN resolution made no impact on the fighting in Kashmir and failed to improve Indo-Pakistani relations. Hope for effective action began to fade as Council members appeared unable to decide how best to satisfy the invading tribesmen.

The Indian representative maintained that the primary question was the cessation of hostilities and the withdrawal of the tribesmen. He further maintained that the holding of a plebiscite was a matter entirely for the Kashmir Government. He said the Maharajah would be prepared to agree that the plebiscite be held under the advice and subject to the observation of persons appointed by the UN. The Pakistan delegate demanded that the actual holding of the plebiscite be undertaken by an outside agency to ensure its impartiality, which he doubted could be assured by UN observers.¹¹

After three months' further consideration, the Security Council adopted on 21 April 1948 a second resolution advising that both Indian troops and the tribesmen should be withdrawn; that an interim government should be established representing "the major political groups" (meaning both the National Conference and the Azad Kashmir elements); and, that a five-man UNCIP should go to Kashmir to exercise its good offices in helping the two nations restore peace and arrange a fair plebiscite.¹²

This resolution pleased neither India nor Pakistan. With regard to troop withdrawal and the conduct of the plebiscite, it agreed essentially with

8. Alice Thorner, "The Kashmir Conflict: At the United Nations," *The Middle East Journal*, Vol. 3, No. 2 (April 1949), p. 1964.

9. Sisir Gupta, *Kashmir: A Study in India-Pakistan Relations*, (Bombay: Asia Publishing House, 1966), p. 174.

10. Leland M. Goodrich, *The United Nations* (New York: Thomas Y. Crowell Company), 1959, p. 208.

11. Khan, pp. 94-95.

12. Brown, p. 189. The resolution was sponsored by Belgium, Canada, China, Colombia, the United Kingdom and the United States.

Pakistan's terms of November 1947, which India had already rejected. Pakistan did not like the resolution, for though it provided for widening the Kashmir government by adding to it representatives of the Azad Kashmir government, it still left Sheikh Abdullah at the head. In such circumstances, Pakistan contended, an impartial plebiscite would be impossible. This outright rejection of the resolution by both India and Pakistan represented a rebuff to the Council. Josef Korbel maintains that the resolution of 21 April was of cardinal importance because it outlined the Security Council's stand on the Kashmir conflict, recommended the method of its solution, and became the principal term of reference for various UN representatives who have since been trying to bring about a peaceful and final settlement of the problem.¹³

The main purpose of the resolution was to stop the fighting and to establish conditions in the state which would allow the population to express freely, without threat of physical or psychological coercion, its desire to accede to either India or Pakistan. Acting under Chapter VI of the UN Charter, the Security Council could merely recommend a possible course of action. The Commission's role, therefore, was one of mediation without any right to impose its will. The final issue remained with the governments of India and Pakistan and depended on their good will. Meanwhile, the Security Council avoided taking sides in the dispute. It did not, as requested, condemn Pakistan as the aggressor, nor on the other hand did it touch upon the legal aspect of Kashmir's accession to India.

A conflicting interpretation of the resolution is put forward by Bowett, who believes that by 21 April 1948 the Council appeared to have switched from Chapter VI to Chapter VII, and that the resolution of that date, which instructed the Commission to establish in Jammu and Kashmir such observers as it may require, was based on Article 40.¹⁴ This argument appears to be based on the fact that "in an emergency situation falling under Chapter VII of the Charter, the Council has a choice of three types of action: It may call upon the parties concerned to comply with 'such provisional measures as it deems necessary or desirable;' it may decide 'what measures not involving the use of armed forces are to be employed; or it may take 'such action by air, sea or land forces as may be necessary.' "¹⁵

The 21 April resolution also provided for the appointment in due course of a Plebiscite Administrator, to be nominated by the UN Secretary-General and confirmed in office by the Indian government on behalf of

13. Korbel, p. 113.

14. D.W. Bowett, *United Nations Forces: A Legal Study* (New York: Praeger, 1964), pp. 63-64.

15. Louis Sohn, "The Authority of the United Nations to Establish and Maintain a Permanent United Nations Force", Leo Gross, ed., *International Law in the Twentieth Century* (New York: Appleton-Century-Crofts, 1969), pp. 685-686.

the government of Kashmir. He was to direct and supervise the holding of a free and impartial plebiscite to decide whether the state should accede permanently to India or to Pakistan.

The composition of UNCIP was completed by 7 May 1948. When it arrived in Pakistan on 7 July 1948, it at once got a frank acknowledgement from Zafrullah Khan (the Pakistan Foreign Minister) that Pakistani troops had been fighting in Kashmir since 8 May. Although this fact was widely known, it had not previously been admitted by the Pakistan government. In the eyes of the commission it constituted "a material change in the situation," and it stated so in correspondence with the Pakistan government. Pakistan also admitted in August 1948 that the Azad Kashmir forces were under the operational control of the Pakistan army. Pakistan defended sending troops into Kashmir in 1948 on the grounds of anticipatory self-defense, based on a broad interpretation of article 51 of the UN charter.¹⁶

When the UNCIP discovered that in fact a war was raging between the two young nations, it shifted the emphasis of its mediatory influence to efforts to effect a cease-fire to be followed by a truce agreement providing for demilitarization, which would permit the holding of a free and impartial plebiscite throughout Jammu and Kashmir. The results of the Commission's efforts were agreements embodied in the Commission's resolutions of 13 August 1948 and 5 January 1949. These were implemented by the parties by "the cessation of hostilities effected 1 January 1949" and "the establishment of a cease-fire line on 22 July 1949."¹⁷

Regarding the 13 August 1948 resolution, the Commission submitted to the governments of India and Pakistan a three-part proposal containing recommendations for a cease-fire, a truce agreement, and a plebiscite to determine the future status of Kashmir. The following principles were suggested as a basis for the truce agreement: (1) The government of Pakistan was to "withdraw its troops" and "use its best endeavor" to secure the withdrawal of tribesmen and Pakistani nationals not normally resident in the area. (2) "Pending a final solution," the territory evacuated by Pakistani troops was to be "administered by the local authorities under the surveillance of the Commission." (3) After the Commission notified the government of India that tribesmen and Pakistani nationals had withdrawn, the government of India would agree to withdraw the bulk of its forces from the state "in stages to be agreed upon with the Commission." (4) The government of India would maintain, "within lines existing at the moment of the cease-fire the minimum strength of its forces which

16. Jeffrey Golden, "Force and International Law," F.S. Northedge, ed., *The Use of Force in International Relations* (New York: The Free Press, 1974), p. 201.

17. Leo Gross, *The UN Charter and Peacekeeping*, manuscript, pp. 99-100.

in agreement with the Commission, were considered necessary to assist the local authorities in the observance of law and order.”¹⁸

India found the Commission’s proposals acceptable and assented to them on 20 August with certain “clarifications.” Pakistan, on 6 September also agreed to accept the proposal, but only on condition that India would also accept the Security Council’s proposals of 21 April, which at the time had not been acceptable to either nation. Since those earlier proposals of the Security Council partly contradicted the Commission’s own later proposals, the Commission in a reply (6 September 1948) released to the public observed that representatives of Pakistan’s “government have found themselves unable to accept without reservation the proposals of the Commission,” and treated Pakistan’s reply as a refusal. A truce did not seem possible at that time, and the blame was placed at Pakistan’s door.¹⁹

The first phase of UNCIP’s efforts ended in September when the Commission left for Geneva to prepare its first interim report. Apart from its apparent failure to secure an agreement, the Commission can be faulted for the inadequacy of what little it did accomplish. It was stated to Pakistan, for example, that Azad forces would remain intact; no provision, however, was made that they would not be increased sufficiently to counter the Pakistani army. “Surveillance,” “bulk of the forces,” “local authorities,” and other such terms were not defined. The status of Azad Kashmir was explained differently; India’s point regarding “Northern Areas” was to be taken up later, but there was no guarantee that these areas would not be taken over by Pakistan and claimed as Azad territory. Finally, on the issue of Pakistan’s status in the plebiscite, the Commission’s clarifications to India and Pakistan might not mean the same thing. From the Pakistan angle, Khan believes that the Commission sowed the seeds for future misunderstanding by ambiguous clarifications of the disputed points between the two Governments. The consequences of these ambiguous clarifications and contradictory assurances to the two Governments were reflected in the negotiations for a truce agreement.²⁰

The parties, as has already been mentioned, acceded to the proposal that a cease-fire be concluded under a system of international observation established with the consent of the parties. On 15 January the two military commanders agreed upon a cease-fire line, but it was not until July of the same year that the Karachi Agreement was signed. By this device, a formal cease-fire came into effect along the agreed cease-fire line, which was to be supervised by UN observers stationed on both sides. The day after the cease-fire was ordered in January, Lt. Gen. Maurice Delvoie

18. *India and the United Nations*, pp. 124-125.

19. Brown, pp. 189-190.

20. Khan, p. 105.

(Belgium) arrived on the subcontinent as the military adviser of the UNCIP. After his appointment in December, the military adviser had suggested to the UN Secretary-General, through the Commission's Principal Secretary, that forty military observers (MOs) be sent to the state of Jammu and Kashmir. The Secretary-General, impressed by the urgency and importance of this request, forwarded it to all member states. Within a few weeks, favorable replies were received from the United States, Canada, Belgium, Norway and Mexico.

On 24 January 1949, the first of the MOs arrived on the subcontinent and, by the beginning of the following April, thirty-five MOs had already taken up their stations along the cease-fire line.²¹

THE PLEBISCITE ISSUE

The plebiscite has been the thorniest issue in the Kashmir.

The UNCIP's plebiscite proposals were embodied in a formal resolution on 5 January 1949. This program departed from the Security Council's plebiscite proposals of 21 April by making concessions on some of the points to which India had objected. The government of the state, headed by Abdullah as Prime Minister, was to be left unaltered. The plebiscite administrator, who was to be named by the UN Secretary-General in agreement with the commission, was to be appointed to office by the government of the State of Jammu and Kashmir, and was to derive from the state the powers he should consider necessary for organizing and conducting the plebiscite and ensuring its freedom and impartiality. Final disposal of Indian and state armed forces was to be determined by the commission and plebiscite administrator in consultation with the government of India, after the cease-fire and truce proposals of the 13 August resolution were implemented. In the part of the state held by Pakistan, Azad Kashmir, and other pro-Pakistan forces, it said, "Final disposition of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities." India agreed to the proposals on 23 December and Pakistan on 25 December 1948, and the resolution was then formally adopted on 5 January 1949.²² However, the plebiscite has not taken place so far and the Kashmir problem remains unsolved.

Innumerable words have been written and spoken on the plebiscite issue. "In its essence," declares Sarwar Hasa, "the problem today is that India refuses to permit the holding of a plebiscite in Kashmir to enable

21. Sylvain Lourie, the United Nations Military Observer Group in India and Pakistan, *International Organization*, Vol. IX, no. 1 (February 1955) pp. 21-22).

22. Brown, pp. 190-191.

its people to decide whether their state should accede to Pakistan or India. To the holding of such a plebiscite, India is committed by its own declarations and by its acceptance of the resolutions of the United Nations Commission for India and Pakistan.”²³ J.S. Bains, arguing from the Indian side, believes that the demand for plebiscite is based on the political claim to self-determination which has not yet, at the present stage of world politics, attained the position of a legally sanctioned demand nor do the provisions of the UN Charter referring to this concept do more than emphasize the desirability *de lege ferenda* of incorporating such a rule in the jurisprudence of the UN. “Although Grotius favored the acceptance of such a rule,” Bains continued, “Oppenheim correctly observed that it is doubtful if the law of nations will ever make it a condition of every cession that it must be ratified by a plebiscite.”²⁴

The verbal battle over the plebiscite had started as early as 1947. Initially it appeared that India was sincerely interested in letting the people of Kashmir decide their own fate. In a broadcast from New Delhi on 2 November 1947, Pandit Nehru, the Indian Prime Minister, said:

We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given, and the Maharaja has supported it, not only to the people of Kashmir but to the world. We will not, and cannot back out of it. We are prepared when peace and law and order have been established to have a referendum held under international auspices like the United Nations. We want it to be a fair and just preference to the people, and we shall accept their verdict.²⁵

Pakistan, however, was not impressed by such pledges and its Prime Minister, Liaquat Ali Khan, in a telegram dated 24 November 1947 to the Prime Minister of the United Kingdom, stated: “The oft-repeated promise of the India Government and Pandit Nehru that they are willing to have a plebiscite in Kashmir is intended to mislead the world.”²⁶

Pakistan’s suspicions about the genuineness of the Indian promise of a plebiscite gained credence when the Indian representative to the UN, Gopal Swami Ayyangar, said on 10 February, 1948:

We agree to a plebiscite; we agree to its being under international auspices, but the international auspices we are willing

23. K. Sañwar Hasan, *Pakistan and the United Nations* (New York: Manhattan Publishing Company, 1960), p. 79.

24. J.S. Bains, *India's International Disputes: A Legal Study* (London: Asia Publishing House, 1962), p. 78.

25. Hasan, p. 115.

26. Ibid., p. 116.

to agree to are only to the extent of having the Security Council give advice and guidance to the Kashmir Government in the organization and holding of that plebiscite and to having the Security Council send observers to see how that plebiscite is conducted.²⁷

Zafrullah Khan retorted that the government of India took up the position that "a free and fair plebiscite we concede, but conditions under which alone a fair and impartial plebiscite can be held, we do not concede."²⁸

Krishna Menon, then the Indian Defense Minister, declared that no real elections had ever been held in Pakistan, yet her leaders had dared call for a plebiscite in Kashmir.²⁹

Pakistan was particularly irritated because she believed that India was following a purely legalistic stand with regard to Kashmir, while acting quite differently in Junagadh and Hyderabad. The government of India insisted that the question of the accession of Junagadh to either of the two dominions should be decided by a plebiscite to be held under the joint supervision of India and Junagadh. Pakistan, to whom Junagadh had acceded, was not to participate in the organization and holding of the plebiscite. If this principle were to be accepted, India would have nothing to do with the plebiscite in Kashmir, leaving that matter to joint supervision of the governments of Pakistan and Kashmir.

India argued that as the sovereign power it should conduct any referendum. Pakistan, on the other hand, demanded strict international precautions to insure an "honest" vote.³⁰ India's refusal to agree to demilitarization in any such form and sequence as to permit a free and impartial plebiscite appeared at first to be a matter of interpretation of the UNCIP resolutions of 13 August 1948 and 5 January 1949. It is this original refusal which has persisted to this day, albeit in changing forms and for varying reasons.

On 4 February 1949, the UNCIP returned to the subcontinent "to discharge the responsibilities imposed upon it" by the resolutions of 13 August 1948 and 5 January 1949. It was at this stage that the Commission was up against the most formidable problems — some created by its own clarifications of the resolutions and the interpretations the two governments chose to put on them. The problems were of two kinds: military and

27. Ibid., p. 128.

28. Ibid., p. 127.

29. Michael Brecher, *India and World Politics: Krishna Menon's View of the World* (New York: Praeger, 1968), p. 318.

30. Phillips Talbot, "Kashmir and Hyderabad", *World Politics*, Vol. 1 (October 1948-July 1949), p. 331.

political. India understood that the "local authorities" who were to administer the territory in Azad Kashmir had meant that the state government headed by Sheikh Abdullah, and hence that the Azad Kashmir government was finished. Pakistan, on the contrary, held that in that area "local authorities" meant only the Azad Kashmir government, which was therefore not eliminated. Disagreement also arose about the method by which the withdrawal of the Pakistani and Indian troops would be synchronized. At this point the situation became deadlocked.

The Commission had now decided that all possibilities for mediation had been explored. The only possible escape was arbitration regarding the issues raised relating to Part II of the resolution (of 13 August 1948) — the arbitrator to decide the questions according to equity and his decision to be binding on the parties. The Commission proposed this in a letter to the two governments on 26 August 1949 when it also named Admiral Nimitz (who, on 22 March 1949, was named the Plebiscite Administrator by the UN Secretary-General) as the Arbitrator. Pakistan accepted this proposal on 7 September 1949. India rejected the suggestion for arbitration.³¹ And when India also rejected the proposal of President Truman and Prime Minister Attlee on 31 August that both sides should agree to accept arbitration on the many differences of interpretation of the UNCIP plans, the first phase of the UN involvement in Kashmir came to an end.

The response to the first phase was mixed. To some, the handling of the Kashmir question by the Security Council in the 1947-49 period, although it was not a judicial proceeding, was not such as to attract India even to politico-legal methods of settling disputes. From its point of view, the experience was largely that of becoming enmeshed in immense irrelevancies and legalistic traps. The disillusionment was all the greater because India itself had initiated the move to bring the issue to the Security Council in the first place. Others hold that the important provision of

31. Sisir Gupta, p. 194.

The terms of the proposed arbitration were the following:

The two Governments agree that

- a) they will submit to arbitration the differences 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 for both parties;
- b) that arbitration will terminate once the truce terms are decided upon;
- c) that Fleet Admiral Chester W. Nimitz be arbitrator;
- d) that the procedure for arbitration will be worked out subsequently;
- e) that since the procedure for arbitration will be limited to the conclusion of the truce, the Commission will continue in the exercise of its functions.

Upon the arbitral decision the Commission will undertake tasks assigned to it under the truce and under the Resolution of 5 January 1949. (Das, pp. 275-276.)

Part I of the resolution (of 13 August 1948) was implemented and a significant success recorded by the UNCIP in its efforts. This was far short of terminating the situation India had reported to the UN; still, it was a considerable advance from the viewpoint of maintenance of peace in this part of the world.

The UNCIP made its final report on 9 December 1949 in which it suggested three principal recommendations, all of which were to be incorporated in future mediation efforts:

(a) The five-member Commission should be replaced by a single representative with broad powers to settle the problem. (This found practical expression in the appointment of Sir Owen Dixon in April 1950.)

(b) "The problem of demilitarization must be treated as a whole," i.e., it was necessary to bring about a synchronized withdrawal of all forces. (This recommendation was to become the guiding principle of the McNaughton proposals of December 1949 and the four-power resolution of March 1950.)

(c) With regard to a plebiscite, all points of difference concerning prior demilitarization might appropriately be submitted to arbitration. (Such a suggestion was embodied in the resolution sponsored jointly by the US and the U.K. and adopted by the Security Council in March 1959.)³²

On 17 December 1949, the Security Council met and again took up the Kashmir issue and considered the report of the UNCIP. The UNCIP reported through its chairman, Bernardo Samper of Colombia, that three outstanding issues remained unsettled, namely: The withdrawal of troops from Kashmir as the condition for a free and impartial plebiscite; disposal of Azad Kashmir forces in the western part of the State; and the administration and defense of the northern areas. On the same day (17 December 1949) the Security Council asked its President, Gen. A.G.L. McNaughton of Canada, to meet informally with the parties and examine the possibilities of finding a mutually satisfactory basis for dealing with the questions at issue. His proposals were:

(a) "the withdrawal . . . of the regular forces of Pakistan; and the withdrawal of the regular forces of India not required for purposes of security or for the maintenance of local law and order on the Indian side of the cease-fire line;"

32. *India and the United Nations*, p. 127.

(b) "the reduction, by disbanding and disarming of local forces, including on the one side the armed forces and militia of the State of Kashmir and on the other, the Azad forces;"

(c) the inclusion of the northern area in this program of demilitarization and its continued administration by the existing local authorities, "subject to United Nations supervision."³³

He also suggested the appointment of a single UN representative to supervise the demilitarization and to interpret agreements between the two parties concerning the reduction and disposition of forces.

In general, Pakistan accepted these proposals but India did not. In rejecting the McNaughton proposal, India reiterated its original contentions that, since the accession of Kashmir to India, Kashmir had become a part of Indian territory, for the defense of which Indian forces were responsible. Accordingly, Pakistan's invading forces must leave Kashmir unconditionally and the Azad forces be disarmed and disbanded before any steps for conducting a plebiscite be taken. Thus, Gen. McNaughton's mediation failed, and the issue again came before the Security Council.

A resolution based on McNaughton's proposals was adopted by the Security Council on 14 March 1950. India rejected it; Pakistan accepted it. The resolution, in contrast with the earlier suggestion of the Commission, proposed simultaneous withdrawal of the opposing armies and the disbandment of the state militia of the Kashmir government, as well as the Azad Kashmir forces. This meant that Pakistan's claim to equality with India as a party to the Kashmir dispute was accepted by the Council. Also, by terms of this resolution, the UNCIP, but not its observers, ceased its functions when on 14 March 1950 the Security Council appointed a single UN representative. This was evidently done on the grounds that the appropriate UN action was political mediation by a single person, but that the cease-fire must be maintained as a necessary condition for any political mediation.

In accordance with this resolution Sir Owen Dixon, an Australian jurist, was appointed as UN Representative for India and Pakistan. He reached Delhi on 27 May 1950, and worked in India, Pakistan and Kashmir until 22 August, when he issued a public statement of failure. After coming to India, Dixon was prepared to accept the view that the crossing of the frontiers of the state by hostile elements and regular Pakistani forces had been contrary to international law. He also suggested that Pakistan should withdraw its forces first, then Indian troops should be withdrawn and both the Kashmir state forces and Azad Kashmir forces should be disarmed and disbanded.

33. *India and the United Nations*, pp. 128-129.

For the northern areas, Dixon proposed the appointment of political agents representing the UN. In the territory west of the cease-fire line, he proposed attaching to each district magistrate a UN officer who would have supervisory powers and would report to the UN Representative. On the Indian side of the cease-fire line, UN officers would also be posted with each district magistrate. Their duties would include observation, inspection, remonstrance, and report.

As an alternative to these proposals, Sir Owen Dixon suggested the establishment of a unified government for the entire state during the period of the plebiscite. This could be a coalition government, an administration of "trusted persons" outside politics with a UN chairman or an administration composed entirely of UN representatives. These suggestions were rejected by India.

Sir Owen brought before the two governments the question of a limited or partial plebiscite. But Pakistan would agree to nothing less than one that was overall and would settle the fate of the entire state, while India would not accept partial plebiscite in the Vale of Kashmir. Dixon then stated that the only chance for a settlement lay in partition with a plebiscite in a limited area.

Dixon's report was rejected by both parties but was more vigorously opposed in India than in Pakistan. He presented his report to the UN in September 1950. It is a fascinating document, one of the very few pieces of literary elegance and wit to emerge from the sorry Kashmir story. It did not, however, indicate any easy solution to the problem.

Despite Sir Owen Dixon's gloom, the UN did not give up its struggle to bring about a mediated settlement in Kashmir. The Security Council, after all, had resolved that there should be a plebiscite; and it did not as yet seem disposed to permit its resolutions to moulder in a limbo of fruitless good intentions. Meanwhile, on 27 October 1950, the General Council of the Jammu and Kashmir National Conference adopted a resolution recommending that the state government convene a constituent assembly, under the provisions of the constitution of India, to determine the "future share and affiliations of the state of Jammu and Kashmir."³⁴

In the Security Council, on 21 February 1951, the UK and the US introduced a joint resolution, which disapproved the plan for convening a constituent assembly as contrary to the Council's resolutions previously accepted by both India and Pakistan and endorsed Sir Owen Dixon's proposals for demilitarization.

The resolution contained various other provisions which the two nations had previously found offensive and both promptly objected. Thereupon

34. Brown, p. 193.

the UK and the US lowered their aim and submitted a new resolution, still condemning the constituent assembly and providing for a new mediator but assigning him no duty except that of expediting demilitarization. The Security Council adopted the revised resolution on 30 March; Pakistan accepted it; India rejected it. The Security Council appointed Dr. Frank P. Graham as the new mediator. He went out in early June. India refused to help him implement the resolution. Under those inauspicious circumstances it was not surprising that his preliminary report in October was inconclusive.

Dr. Graham's first report was concerned with demilitarization and suggested a "single, continuous process" to be completed within a period of ninety days. On the Pakistan side of the cease-fire line, there was to be a withdrawal of Pakistani nationals, tribesman and troops and the large-scale disbandment and disarmament of the Azad Kashmir forces. On the Indian side, the bulk of the Indian troops were to be withdrawn and later (i.e., after the ninety day period) there were to be further reductions of Indian and state armed forces. Dr. Graham also suggested that the formal appointment of the Plebiscite Administrator should be ensured by India "not later than the final day of the demilitarization period."³⁵

The principal points of difference between the parties were: the timing of the demilitarization, the process for withdrawal of troops, the size of forces to be left on each side after the demilitarization process was completed, and the question of appointing a Plebiscite Administrator. Graham's first report disappointed Pakistan, but seems to have satisfied India.

In his second report, Graham suggested that the demilitarization process should be completed by 15 July 1952 and that the forces remaining on each side of the cease-fire line after that date should be the lowest possible number leased in proportion to the number existing on each side on 1 January 1949. This was not accepted by the two parties. Again the two governments were in disagreement over the same issues.

By the time Graham submitted his third report on 22 April 1952, some progress had been made toward agreement on the withdrawal of Pakistani and Indian forces from the territories of the state, on the withdrawal of troops from the frontiers, and in regard to the Plebiscite Administrator. As Graham stated: "The chief remaining obstacle is the difference over the number and character of forces to be left on each side of the cease-fire line at the end of the period of demilitarization." India was willing to negotiate on the "chief remaining obstacle" but rejected Graham's proposal that the Plebiscite Administrator-designate be asso-

35. *India and the United Nations*, p. 131

ciated with the UN Representative in further talks with the parties. Pakistan was disappointed.³⁶

Dr. Graham made two other reports (19 September 1952 and 27 March 1953) without achieving agreement between the two nations. Their principal point of difference concerned the quantity of forces each should maintain after demilitarization and the time when the plebiscite administrator should assume his duties. In the circumstances Dr. Graham left the problem to direct negotiation between the two disputants.

UNMOGIP

It may be recalled that the UNCIP had established a military observer group. The Security Council in resolution 91 of 30 March 1951 decided that this group should continue to supervise the cease-fire in the state of Jammu and Kashmir. This group came to be called the United Nations Military Observer Group in India and Pakistan (UNMOGIP). It operates under the terms of the Karachi Agreement of 1948. This provides that it operates in India, as well as in Pakistan, through the Army Chiefs of Staff.

Rosalyn Higgins points out that the nature of the observer missions such as UNMOGIP gives them no responsibility for actually preventing the escalation of incidents and violations. In their task of preventing the escalation of incidents, these missions have largely relied on observation, reporting and a procedure of joint investigation and the awarding of violations which is agreed on and accepted by both sides.³⁷ the former UN Secretary-General, U Thant, has pointed out that the mission of the UN forces has always been to stop the fighting and establish a cease-fire.³⁸

It may be noticed that the UNMOGIP was operating while intense efforts were going on inside and outside the UN to settle the Kashmir dispute. One very cogent reason advanced for the separate operation of these two bodies was that the problems of peace observation in the dispute, while difficult, were far simpler than those of solving the political questions. The political problem could be solved only in the capitals, which

36. *Ibid.*, p. 132. On 6 November 1952 a draft resolution, sponsored by the US and the UK, was discussed in the Council. In his speech the British delegate also raised the question of the possible use of a "neutral force" in Kashmir during the plebiscite. The Indian delegate rejected the proposal as well as the provision in the draft resolution. The Council adopted the resolution on 23 December 1952. India rejected it; Pakistan accepted it. Graham again informed the Security Council on 23 January 1953 that the two parties had agreed to make another effort to resolve the impasse but his further efforts were also fruitless. (p. 133.)

37. Rosalyn Higgins, *United Nations Peacekeeping 1946-1967: Documents and Commentary: Volume I: The Middle East* (London: Oxford University, 1969), p. 319.

38. Richard A. Falk and Saul H. Mendlovitz, eds. *The Strategy of World Order*, Vol. III, *The United Nations* (New York: World Law Fund, 1966), p. 525.

were miles from the front. Thus, early in the UN consideration of the problem, the issues and machinery of peace observation were separated from the function of mediation and good offices.³⁹

Unlike other UN missions and peacekeeping forces, UNMOGIP does not submit regular reports on the Kashmir situation, so there is no periodic reminder of its existence. For diplomatic and political reasons it was agreed at the start that reporting to the Security Council should be confined to confidential rather than public channels. This was considered desirable because in Kashmir the military observers were constantly being required in the course of their duties to switch from one side of the cease-fire line to the other and back again; any allegation of partiality and bias by either side could have greatly hindered their work. The success with which secrecy has been maintained has generated a confidence in UNMOGIP which carries with it respect for its conclusions and recommendations to maintain the cease-fire. Later, when Dr. Frank Graham was appointed as mediator, the practice was continued so as not to jeopardize or embarrass his peace efforts. The Secretary-General himself made repeated visits to Jammu and Kashmir, and so the UN was kept informed through his reports as to the continuing situation.

UNMOGIP was responsible for supervising the cease-fire and for adjudicating in cases of alleged violations of the Karachi Agreement. Until the India-Pakistan war of 1965, the number of military observers did not exceed fifty at any one time. An additional fifty-nine were provided during the 1965 crisis, but, the 1965 war apart, this relatively small band of observers from eleven countries has deterred a major breach of the armistice during the time it has been in effect. The fact that few people outside of Asia and the contributing countries know of its existence is a measure of its success. Numerous allegations and incidents were investigated in the period between 1949 and 1965. Each one was meticulously examined and in the majority of cases an adjudication was made against one side or the other. Each has been recorded and reported, not only to the governments of both sides, but also to the Secretary-General. UNMOGIP can claim to have been effective as a brake on escalation.

Perhaps the most remarkable feature of the moderately successful peace-observation mission of UNMOGIP is that tension has been less along the cease-fire line than in the capitals. In 1954 the conditions along the border were relatively tranquil, with not more than some twenty incidents. By 1961, the number had grown from two dozen to two thousand. The increase in incidents between 1954 and 1961 stemmed from the policy

39. Major General I.J. Rikhye, *United Nations Peace-Keeping Operations — Higher Conduct* (Paris: IPKO, Monograph No. 1, May 1967), p. 13.

of Krishna Menon, then the Indian Defense Minister, that the cease-fire line should become a fixed international boundary. Apparently, he had concluded that neither a plebiscite, nor any other alternative would assure Indian control of the Vale.⁴⁰

KASHMIR AND THE SECURITY COUNCIL

The years 1952 to 1955 had witnessed changes of political scenery in the Indo-Pakistani relationship and in Kashmiri politics startling enough to suggest new ways of solving the Kashmir problem. There were many opportunities to settle the dispute without either side losing international prestige, and, domestically, quid pro quos and rationales might have convinced public opinion that compromises on Kashmir were desirable. At the end of that period of flux, however, as the great powers began to align themselves to different states in the subcontinent, the position of the two principals hardened along much the same lines as in 1949, reinforced by then with new factors born of expediency and frustration.

Dr. Graham's lack of progress, combined with various attempts to solve the problem by direct negotiation, served to keep Kashmir off the Security Council agenda until January 1957 when Pakistan raised the matter. The occasion was once more the Kashmir Constituent Assembly which had recently met to declare, in November 1956, that "the State of Jammu and Kashmir is and shall be an integral part of the Union of India."⁴¹

On 24 January 1957 the Council adopted a draft resolution submitted by Australia, Colombia, Cuba, the UK and the US with ten votes in favor and one abstention (USSR). This resolution, after referring to the principle embodied in the earlier resolutions of the Council and to the resolutions of the UN Commission of 13 August 1948 and 5 January 1949 that the final disposition of the state of Jammu and Kashmir would be made in accordance with the will of the people, expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the UN, reaffirmed its resolution of 15 March 1951, and declared that any action taken by the Constituent Assembly of Jammu and Kashmir or by the parties concerned in support of such action, would not constitute a disposition of the State in accordance with that principle.

On 14 February a draft resolution was proposed by Australia, Cuba, the UK and the US which noted Pakistan's proposal for a temporary UN force for affecting demilitarization in Kashmir and expressed the belief that the use of such a force deserved consideration. The resolution requested

40. Wainhouse, p. 368. Menon ordered evacuation of civilians from the 500-yard demilitarized zone on the Indian side of the ceasefire line and encouraged the Kashmir police to use force to prevent the Pakistanis from crossing the border. The Pakistanis did not follow a similar policy.

41. Alastair Lamb, *The Kashmir Problem* (New York: Praeger, 1966), p. 57.

the President of the Security Council, the representative of Sweden, Gunnar Jarring, to proceed to the subcontinent to examine proposals for demilitarization or otherwise achieving progress towards the settlement of the dispute.

The Soviet Union proposed amendments to this resolution which sought to omit references to demilitarization and to a UN temporary force. The Soviet amendments were rejected by the Council. When it came to voting on the Four-Power resolution, it was defeated when the USSR exercised its seventy-ninth veto in the Security Council. Thereupon a new resolution was submitted by Australia, the UK and the US, under which the Council, recalling its earlier resolutions and the resolutions of the UN Commission, requested Jarring to consider any proposal likely to lead to a settlement of the dispute and, for that purpose, to visit the subcontinent. This resolution was adopted by ten votes in favour and one abstention (USSR).

Jarring, in his report, noted that both governments adhered to the resolution of the UN Commission of 13 August 1948 and 5 January 1949. The government of India, however, confronted the UN Representative with the arguments that Krishna Menon had put forward in the Security Council. That government contended that Part I of the resolution of 13 August 1948, sections B and E in particular, had not been implemented by the government of Pakistan. For that reason, it argued, there was no question of implementing Parts II and III of that resolution or of the resolution of 5 January 1949, which dealt with the plebiscite. The government of Pakistan, on the other hand, maintained that Part I of the first resolution had been implemented in full and that the time had come to proceed to the implementation of its Part II (preparatory to the implementation of the second resolution).

Jarring submitted his report to the Security Council in April 1957, but it was not considered by that body until the following September. On 2 December 1957 the Council adopted a resolution requesting that the UN Representative for India and Pakistan, Dr. Graham, make recommendations for further appropriate action with a view to making progress towards the implementation of the resolutions of 13 August 1948 and 5 January 1949 and towards a peaceful settlement.

After spending a little over a month in the subcontinent, Dr. Graham submitted his report on 31 March 1958. He recorded that Pakistan accepted all the proposals made by him, namely, that it should: (a) make a renewed declaration undertaking to refrain from statements and actions that would aggravate the situation; (b) reaffirm respect for the cease-fire line; (c) withdraw Pakistani troops from the State simultaneously with the bulk of the Indian forces; (d) agree to the administration of the territory evacuated by Pakistani troops by local authorities in accordance with the

provisions of the UN Commission's resolutions, pending a final solution; (e) consider the possibility of stationing in that area a UN force on the Pakistan side of the border with the state; (f) abide by the terms of the Prime Minister's communiqué of August 1953, in the matter of the interpretation of the 13 August 1948 resolution and those parts of the 5 January 1949 resolution which provide for a plebiscite; and (g) attend a conference at the Prime Ministers' level, under the auspices of Dr. Graham.

Corresponding proposals made by Dr. Graham to the government of India were rejected by it, for in its view ". . . the sole onus of performance was on Pakistan and the UN, which had both the responsibility and the capacity for taking steps towards a peaceful approach to the situation and for making a contribution to resolving the difficulties between India and Pakistan."⁴²

In February 1962, the Pakistan delegate, Zafrullah Khan, again brought the Kashmir issue to the Security Council's attention in a protest against certain bellicose speeches by Indian statesmen calling for the "liberation" of Azad Kashmir. Khan described the failure of direct Indo-Pakistan negotiations since Dr. Graham's last report; and he once more sought the mediation of the UN. On this occasion, however, the Russian veto, the 100th in the history of the UN, prevented the Security Council from making any resolution, even one so mild as merely to urge India and Pakistan to continue negotiating with each other.

A fresh round of ministerial talks on Kashmir began between India and Pakistan in December 1962 as a result of persuasion by Duncan Sandys and Averell Harriman on behalf of the British and American Governments, but by the middle of May 1963 it became clear that the discussions would produce no result. The New Delhi discussions on Kashmir in January and the Karachi discussions in February 1963 brought parties no closer to agreement. The only positive achievement of the meeting was the forum they provided for exposing a variety of ways by which the Kashmir dispute might some day be settled. When U Thant took office as UN Secretary-General in November 1961, a nagging, smoldering conflict over Kashmir still dragged on between India and Pakistan. This conflict was soon to erupt when serious fighting began between the two countries on 5 August 1965.

On 3 September 1965, the UN Secretary-General submitted a report to the Security Council based on the evidence of Nimmo, head of the UNMOGIP, that infiltrators had crossed into Kashmir from the Pakistan side, violating the cease-fire line. The Security Council, then, the next

42. Hasan, p. 164.

day adopted resolution 209 in which it called first, for India and Pakistan "to take forthwith all steps for an immediate cease-fire;" second, "to respect the cease-fire line and have all armed personnel of each party withdrawn to its own side of the line," and third, "to cooperate fully with UNMOGIP . . ." This being of no avail, the Council, on 6 September 1965, adopted resolution 210 of substantially the same tenor; but it added in paragraph 3 the decision "to keep the issue under urgent and continuous review so that the Council may determine what further steps may be necessary to secure peace and security in the area." The Secretary General was also requested "to exert every possible effort to give effect to the present resolution and to resolution 209 (1965) . . ."⁴³

The Secretary-General visited India and Pakistan from 7 to 16 September 1965 and held talks with the President, Prime Minister and External Affairs Minister of India and the President and Foreign Minister of Pakistan. India placed two points before him: (a) the cease-fire would apply to the troops but India's demand for action against the armed infiltrators would remain; and (b) India would not agree to any disposition which would leave the door open for further infiltration. Pakistan said that a cease-fire was desirable but if it was to be followed by a withdrawal of Pakistan's forces behind the cease-fire line, the root cause of the conflict, Kashmir, would remain.

Reporting on his mission to India and Pakistan on 17 September, U Thant said that pursuant to the mandate given him in Resolution 210 (1965) he had made formal approaches to the two governments. It appeared that in this destructive struggle each side felt that it had been abused by the other and each was convinced that the other had committed aggression. As a result, Mr. Thant stated, he had not succeeded in securing an effective practical measure of compliance by the two sides with the Council's resolutions. He then offered "his 'own views' about the role of the Security Council in the crisis under consideration." He suggested that the Council "might now do what it has done once before and successfully, in another dangerous conflict situation; it could order the two governments concerned, pursuant to Article 40 of the Charter of the UN, to desist from further military action and to this end, to issue cease-fire orders to their forces. The Council might also declare that failure by the governments concerned to comply with this order would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter.

In the opinion of Leo Gross, the Secretary-General had in mind the Palestine precedent of 1948 and felt the time had come to move from Chapter VI to Chapter VII. There was little support for such a move, and

43. Gross, *The UN Charter*, p. 100.

it was opposed by Pakistan. Its representative recalled "that all previous actions had been taken under Chapter VI" and he observed: "It would be the first time in the history of the Kashmir dispute that the Security Council could be contemplating action under Chapter VII of the Charter. . . . Departure from past practice would be a momentous decision, and its implications would have to be carefully weighed before the Security Council proceeds further in this matter."⁴⁴

The Council was apparently not persuaded that the time had come to take "a momentous decision" but it did, in resolution 211 of 20 September 1965, change the word "call" to "demand." Consequently it demanded "that a cease-fire should take effect" at a specified date and called upon both Governments to issue orders for a cease-fire at that moment and a subsequent withdrawal of all armed personnel back to the positions held by them before 5 August 1965. The subtlety of the language may be noted: the Council did not "order," as it did in 1948, the parties to do certain things; it "called" upon them to issue the "order."⁴⁵ For the first time, notes Sharma, in regard to Kashmir, the permanent members of the Council had acted with remarkable unanimity. The Council resolutions of 4 and 6 September were adopted unanimously; that of 20 September by all members with the exception of Jordan which abstained.

The parties accepted Resolution 211 (1965) and the Secretary-General decided to organize a separate group of observers to be known as UN India-Pakistan Observation Mission (UNIPOM) to function in addition to UNMOGIP, but the cease-fire failed to materialize. The Council adopted Resolution 214 on 27 September 1965, in which it demanded the parties "honor their commitments to the Council to observe the cease-fire." In Resolution 215 of 5 November 1965, the Council regretted delays in the full implementation of its resolutions, reaffirmed particularly resolution 211 (1965) "in all its parts," and formulated related requests and demands to the parties.⁴⁶

The Council had to wait for the Tashkent Declaration to end the stalemate and restore some little normalcy.⁴⁷ Meanwhile, the UNIPOM was established and remained in existence until March 1966, its purpose by then having been served. It had the role of supervising the cease-fire along the frontier between the two countries and observing the military withdrawals by both sides to within their own boundaries. UNIPOM was eighty-two strong and was deployed almost equally on either side of the border.

44. *Ibid.*, *The UN Charter*, p. 101.

45. *Ibid.*, pp. 101-102.

46. *Ibid.*, *The UN Charter*, supra, p. 102.

47. B.L. Sharpa, *The Kashmir Story* (New York: Asia Publishing House, 1967), p. 186.

THE TASHKENT DECLARATION

Even several months after the Security Council's last resolution, withdrawal of troops could not be secured by the Council and the cease-fire brought about by it remained unstable. The Soviet offer of good offices to resolve the differences between India and Pakistan was communicated on 14 September 1965 to Prime Minister Lal Bahadur Shastri and President Ayub Khan by Alexei Kosygin, Chairman of the Council of Ministers of the USSR. Both India and Pakistan accepted the Soviet offer of good offices, and the Soviet Government arranged a meeting at Tashkent on 4 January 1966 between the Prime Minister of India and the President of Pakistan. Elaborate discussions lasting over a week or so between the Prime Minister of India and the President of Pakistan received an authoritative expression in the form of a declaration. Kosygin tried, on the one hand, to persuade the Pakistani delegation to agree to a no-war declaration and, on the other, suggested to India that it should accept Pakistan's assurances regarding non-interference in India's internal affairs and observance of cease-fire terms as adequate basis for the withdrawal of Indian troops to pre-5 August 1965 positions.

The Tashkent Declaration, which came out largely owing to the initiative of Kosygin, was signed on 10 January 1966, and is now binding upon both India and Pakistan. It is composed of a preamble, nine paragraphs and a concluding paragraph. According to the terms of the treaty, both India and Pakistan have renounced recourse to force for the purpose of settling all their disputes. The declaration binds them not to seek a solution of their disputes by other than peaceful means. It contains a specific obligation to resolve controversies by arranging meetings both at the highest and other levels.

The Tashkent Declaration oddly enough had little to say directly about the Kashmir dispute other than to note its existence. In effect, it suggested that Kashmir should be put into cold storage while other more urgent problems were being solved. Most attention was devoted to promises by both sides to attempt permanent resolution of their mutual difficulties. The most urgent item in the declaration, the withdrawal of the armies behind the established international borders and the 1949 Kashmir cease-fire line, was implemented in late February.

Although discussions between the two countries did occur in the months to follow, they produced little of any consequence. As a matter of interest, at the first ministerial meeting held in pursuance of the declaration early in March 1966, no progress whatsoever was made toward the settlement of any of the important issues between India and Pakistan. So far as the Kashmir dispute was concerned, there was a complete deadlock. The Indian Foreign Minister, Sardar Swaran Singh, said soon after the meeting:

"We reiterated our well known position on Jammu and Kashmir." Two days later, Swaran Singh said that the sovereignty of Jammu and Kashmir was not negotiable.⁴⁸ Soon each side accused the other of violating the principle and spirit of the Declaration of Tashkent, and the situation by late 1966 had returned virtually to the status quo ante.

For India, the most significant part of the Tashkent Declaration was not that it resolved outstanding problems with Pakistan but that despite differences, Pakistan had reaffirmed its obligations under the UN Charter to settle dispute through peaceful means. For Pakistan, the biggest gain was that it had secured the return of all the territory it had lost in Azad Kashmir without entering into a formal no-war pact.

Various weaknesses in the UN were revealed in the Kashmir war of 1965. As a matter of international law for a hypothetical court, the hostilities that erupted in September 1965 "did not perhaps represent a clear violation by one party or the other." Politically, too, Kashmir was a unique situation: a territory long in dispute and in joint occupation without political solution in sight; military forces in close confrontation; political maneuvers that became a military skirmish and, both sides probably unwitting, exploded into war. Still, the fact that war occurred seemed to bode ill for the UN. The influence of the UN was at its weakest.⁴⁹

Similar sentiments about the UN role in Kashmir, particularly after the 1965 war, have been echoed by others. It is true, they say, that the UN twice brought about a cessation of fighting in Kashmir. Both times it established a cease-fire, for the maintenance of which it provided machinery at a considerable cost. But experience has shown that a cease-fire is not a substitute for a settlement. Inherent in it is a provocation for a renewal of hostilities. By its very nature, a cease-fire not followed by a settlement indicates that there has been an inconclusive war and emphasizes the fact that there is a dispute to be settled. For that reason complacent satisfaction over the achievement of a cease-fire is unwarranted. To assure peace in the area what is needed is a settlement of the dispute.

Expectations that a Kashmir settlement might not be far off have not so far been realized. The war of 1971 over Bangladesh further delayed any settlement of the Jammu and Kashmir dispute, and although a peace settlement has been agreed upon for this latest conflict in the subcontinent, no provision seems to have been made for settling the long-standing issue. And, in spite of later failures to observe the cease-fire, the Security Council has not changed its basic stand. Thus, in connection with major hostilities

48. Latif Ahmed Sherwani, *India, China and Pakistan* (Karachi: Council for Pakistan Studies, 1967), p. 128.

49. Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University), 1979, p. 170.

which broke out in consequence of the situation in Bangladesh in 1971, the Council, "having discussed the grave situation in the sub-continent, which remains a threat to international peace and security", issued its usual "demand" for a durable cease-fire and cessation of all hostilities in all areas of conflict, and calls and requests. Unquestionably, this long-lasting peace-keeping operation has remained within the framework of Chapter VI, and in spite of repeated outbreaks of serious hostilities has been kept within the tenor of that Chapter. Of course, nothing which the Security Council can do under Chapter VI is binding in nature.

The essence of the Kashmir problem is not to be found, except by inference, in the debates of the Security Council: it lies in the internal politics of India and Pakistan. This view tends to put the blame for the continuance of the problem on the statesmen and politicians of the countries concerned. It also lends support to Roger Fisher's contention that "one reason why the international system is so deficient in process is that few statesmen understand the kind of machinery that would best serve their interests — the kind that can cope with differences and handle them at a non-crisis level."⁵⁰ This does not, however, put the UN in the background, for, after all, it has played, and continues to play, a crucial role in handling the dispute.

A Pakistani commentator, Aziz Beg, is of the opinion that the history of UN intervention in the Kashmir dispute is a story of concessions to Indian intransigence.⁵¹ The Security Council and the four mediators always realized that plebiscite was the ultimate objective but perhaps they did appreciate that Nehru's diplomacy was directed to ensure that a plebiscite should never be held. According to one Indian commentator, Girilal Jain, the plebiscite was in fact prevented by Pakistani intransigence. He says that in the early 1950s Pakistan could have embarrassed India, if during the discussions, both directly and under UN auspices, it had agreed to stop its aggression, or if it had not insisted on Admiral Nimitz as the plebiscite administrator. But apparently Pakistan did not feel secure enough to withdraw its troops, or to accept a leading figure from a neutral country as the plebiscite administrator. The Pakistani positions on these issues made it easy for India to postpone fulfilling its commitment to hold a plebiscite.⁵²

In Lamb's opinion, the UN lost all initiative on the question in 1949. Once this occurred, the UN could do little beyond achieving cease-fire. "It could not force India and Pakistan to come to terms with each other;

50. Roger Fisher, *Points of Choice*, (London: Oxford, 1978), p. 23.

51. Aziz Beg, *Captive Kashmir*, (Lahore: Allied, not dated), p. 47.

52. Girilal Jain, "India, Pakistan and Kashmir," in B.R. Nanda, ed., *Indian Foreign Policy: The Nehru Years*, (Honolulu: The University of Hawaii Press, 1976), p. 52.

and without Indo-Pakistani collaboration it had really no prospect of bringing about a plebiscite."⁵³

Thus we are back to the highly complex political problems which have made the Kashmir dispute so difficult to solve: Deep-seated Hindu-Muslim antagonisms; varied problems of economic competition and cooperation between India and Pakistan; and the problem of security and mutual suspicion by both countries.

In addition, the Indians have always resented the fact that Pakistan came eventually to enjoy a position of equality with India over Kashmir. This point of view has been hotly contested by Pakistan, that India's claim that Pakistan has no *locus standi* in Kashmir and cannot claim equality with India to participate in the plebiscite, has caused much hindrance to the just solution of this problem.

While the UN has so far failed to bring about a settlement of the Kashmir dispute, it has succeeded in a quite effective, though unobtrusive way, in its peace-keeping operations. Peace-keeping, as it has in fact evolved within the UN's experience, has resulted from the ability to reach agreement on ad hoc arrangements — arrangements peculiarly suited to the circumstances at hand. This is because

it is impossible to predict what particular method, or combination of methods, will be most suitable for dealing in a peaceful manner with some particular controversy between nations. In one case the dispute may primarily involve questions which are susceptible of decision on legal principles and by strictly judicial proceedings. In other instances, however, the dispute might primarily involve various political questions . . . so that a peaceful solution would require the decision of various 'nonlegal' questions as much or more than the adjudication of any 'legal' issue.⁵⁴

The basic problem of Kashmir is that the dispute has become embroiled in so many political questions as the years have gone by that a peaceful solution would require the consideration of more "nonlegal" than "legal" issues. The UN might conceivably have forced a solution when the dispute was first brought to its notice, by going through with its plans for a plebiscite, but its subsequent vacillations and timid approach to the

53. Lamb, p. 65.

54. G. Clark and Louis B. Sohn, *World Peace Through World Law* (Cambridge: Harvard, 1958), pp. 321-322.

problem made its job more and more difficult and, correspondingly, the "legal" questions have given way to "nonlegal" questions.

On the other hand, as has already been indicated, the UNMOGIP has performed creditably in its peace-keeping operations. "There has been a widespread and well-documented belief," remarks Boyd, "that by their mere presence the United Nations' blue-helmeted military observers inhibit further violence."⁵⁵ Others have been more cautious about the observer group's achievements: "It is difficult to assess the extent of UNMOGIP's achievement and whether its presence has presented the complete destruction of a state — or has preserved a status quo that has been harmful rather than beneficial."⁵⁶ In fact, the UNMOGIP had apprised the Security Council of the deterioration in the interstate relations that prefaced the India-Pakistan war of 1965. It seems that the Council disregarded the warning signals and thus let pass by a chance to cool down the situation. Wainhouse has been so impressed with UNMOGIP's activities that he proposes that General Nimmo, because of the respect of both states for his work, might have mediated the political issues more effectively than the UN representative. He even goes to the extent of saying that the Kashmir experience may indicate that one of the easiest forums for obtaining international agreements may be negotiations of military leaders.⁵⁷ This point, however, is debated by Major General Rikhye who believes that it is not possible for the Military Adviser to have any but minor executive functions.⁵⁸

Although peace-keeping operations like UNMOGIP's are designed to pave the way for pacific settlement of dispute, peace may not be so easily achieved. The military observer group has been in operation since 1948, but the Kashmir problem has not been resolved.

But when a settlement is reached and UNMOGIP leaves, it is likely to be remembered for its longevity of stay rather than for its positive accomplishments. UNMOGIP cannot be said to have failed in its duty, since it has been the lack of any firm will on the part of the two contesting states to settle their dispute that has led to the prolonged but necessary presence of UN observers.⁵⁹

55. Boyd, James M., *United Nations Peacekeeping Operations: A Military and Political Appraisal* (New York: Praeger, 1971), p. 87.

56. Indar Jit Rikhye, Michael Harbottle, Bjorn Egge, *The Thin Blue Line: International Peacekeeping and Its Future* (New Haven: Yale University, 1974), p. 133.

57. Wainhouse, p. 372.

58. Rikhye, p. 5.

59. Rikhye, Harbottle, Egge, p. 133.

CONCLUSION

The Kashmir issue was one of the earliest disputes brought to the notice of the UN. Since then over thirty years have passed, but the problem remains to be solved. If there ultimately is a solution to this controversy, it does not appear that the UN will be the forum to produce that solution. The UN lost its initiative once it failed to implement the resolution of 5 January 1949 which, significantly, was initially accepted by both India and Pakistan. The UN, instead of acting authoritatively, became entangled in prolonged debates and senseless wranglings of the parties until it became incapable of carrying out the plebiscite which could finally determine the fate of Kashmir.

There can be little doubt that the UN's task was not made easier by the differing stands of India and Pakistan over the modalities of the plebiscite. While India increasingly hedged and finally withdrew its consent to a plebiscite because it probably realized that an overwhelmingly Muslim population would be extremely unlikely to vote for a union with predominantly Hindu India, the position of Pakistan over the issue is baffling. It insisted on a plebiscite almost certainly on the assumption that there would be a favorable outcome from the choice of the Muslim Kashmiris. That makes it all the more puzzling as to why it showed such great intransigence over India's preconditions for holding the plebiscite: withdrawal of its troops and accepting someone other than Admiral Nimitz as the plebiscite administrator. National prestige and an innate distrust of India could have been the reasons, but they have not helped Pakistan gain the plebiscite it has always so desperately wanted. However, all this does not exonerate the UN. The hardened stands of India and Pakistan developed over the years as the world body dealt with the issue timidly. The UN could have firmly carried out its plans for a plebiscite in 1949 when the contending parties were still uncertain about their actions.

Once the UN lost its initiative, it resigned itself to the role of achieving cease-fires when war flares up in the subcontinent and to a perpetual military observer presence in between hostilities. And therein lies the weakness of a peacekeeping force: It can observe and report, but it is not of much use when the contending parties decide to go to war. Its presence is useful as a deterrence to hostilities only when tensions are low, but it is a very poor substitute for a permanent and pacific settlement of the dispute itself. But that has not been achieved, and with the now hardened and incompatible positions of India and Pakistan over Kashmir, it does not seem that a lasting peace will come about in the near future. One can only hope that rational and accomodating diplomatic negotiations between the contending parties will take place so that the Kashmir problem can

be successfully solved. It is all the more imperative because if no progress is made toward settling the dispute, peacekeeping, as exemplified by UNMOGIP, may actually generate further unmanageable conflict. After all, peacekeeping is essentially keeping a lid on simmering tensions. But these accumulate over time until the lid no longer suffices and they finally explode. For the time being India, Pakistan and Kashmir are stuck with that unpleasant choice.

