

JAMMU AND KASHMIR DISPUTE: EXAMINING VARIOUS PROPOSALS FOR ITS RESOLUTION

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Introduction

The Jammu and Kashmir Dispute (referred to as the Kashmir Dispute) is the core issue between Pakistan and India that has bedevilled relations between the two countries since August 1947. It is also a known fact that the perceptions of India and Pakistan about *what constitutes the dispute* are totally different. Pakistan regards it as an unfinished agenda of the Partition of the sub-continent in 1947 and as an issue of granting the right of self-determination to the Kashmiris, a principle also upheld by the UN Security Council resolutions. India, on the other hand, regards it as its territorial issue. It asserts that Jammu and Kashmir is an integral part of India and that Pakistan is occupying Indian territory. The impasse has resulted with India occupying two thirds of the territory of Jammu and Kashmir, and Pakistan administering one-third, with an UN-recognised ceasefire line separating them.

In this connection it may be noted that the Indian government adopted a dual policy on the Kashmir dispute. For example, following the landing of Indian troops in Jammu and Kashmir on August 26, 1947, at the *declaratory level*, the Indian government expressed its commitment to resolve the dispute according to the wishes of the Kashmiris through a plebiscite, but in practice the Indian leaders, particularly, Prime Minister Nehru, were interested in incorporating the State of Jammu and Kashmir into the Indian Union. In the words of Pandit Nehru, 'Kashmir, because of her geographical position, with her frontiers marching with three countries, namely, the Soviet Union, China and Afghanistan, is intimately connected with the security and international contacts of India.'¹ Gandhi is reported to have said that Kashmir 'had the greatest strategic value, perhaps, in all India.' Sheikh Abdullah, while talking to reporters in New Delhi on October 21, 1947, said: 'Due to the strategic position that the State (Kashmir) holds, if this State joins the Indian Dominion, Pakistan would be completely encircled.'² Also, when the partition of the sub-continent was accepted by the then Indian leaders, it was done with mental reservations, and the hope that Pakistan would not survive for long. The All-India Congress Committee (AICC), in its resolution of June 1947, said: 'the picture of India we have learned to cherish will remain in our minds and our hearts. The AICC earnestly trusts that when the present passions have subsided, India's problems will be reviewed in their proper perspective and the false doctrine of two-nations will be discredited and discarded by all.'³

Through Kashmir, India hoped to be in a better position to strangle Pakistan by securing a strategic edge and by having control over the rivers flowing into Pakistan. India managed to obtain a land-link with Kashmir through the manipulated Radcliffe Award. While partitioning the Punjab, the Award divided the Muslim majority district of Gurdaspur in such a way that, besides Pathankot tehsil, even the Muslim majority tehsils of Gurdaspur and Batala to the south were awarded to India. India thus got access to Kashmir. There are strong indications that Mountbatten had earlier reached an understanding with the Congress in respect of Gurdaspur district. As mentioned by V. P. Menon, Mountbatten, during his visit to Kashmir in June 1947, well before the Radcliffe Award, 'assured the Maharaja that so long as he made up his mind to accede to one Dominion or the other before August 15 no trouble will ensue, for which ever Dominion he acceded to would take the State firmly under its protection as part of its territory.'⁴ Also, during his press conference on June 4, 1947, Mountbatten did mention that the Boundary Commission 'would be unlikely to *throw* the whole of the Gurdaspur district into the Muslim majority areas.'⁵ As observed by Lord Birdwood, in his book *Two Nations and Kashmir*, (1956), 'It was Radcliffe's Award to India of the Gurdaspur and Batala tehsils, with Muslim majorities, which rendered possible the maintenance of an Indian force at Jammu, based on Pathankot as railhead, and which enabled India to

consolidate her defences southwards all the way from Uri to Pakistan border.¹⁶ This collusion came to light after the British Empire rolled back, leaving behind a festering dispute.

The Kashmir dispute dominates Indo-Pakistan relations, and has also become central for peace and stability in the South Asian region. Since 1998 it has been described as a nuclear flashpoint. It is unfortunate that while in the beginning the international community supported the Security Council Resolutions, over the decades there has been a lessening of governmental interests in that commitment, of those very countries such as Australia, UK and US, which had earlier played an active leading role in the Security Council debates and resolutions with a view to solving the dispute. However, the nuclear tests by India and Pakistan in May 1998 renewed the interest of the world community in the unresolved Kashmir dispute in South Asia. Though the international concern is palpable over Kashmir becoming a potential nuclear flashpoint, the world community at the present juncture has yet to give more teeth to the Security Council resolutions that it has neglected for so many years. It also necessitates that the international community comes to grips with all the inter-related aspects and the dimensions of the dispute.

The dire need for an urgent solution to the Kashmir dispute came to the fore recently, as India and Pakistan faced each other with their armies deployed at their borders, since December 19, 2001, when India announced its decision to deploy its troops to forward positions along the India-Pakistan international border. This Indian position in itself follows recent precedents.

A dangerous trend that has surfaced in the post-September 11, 2001, international scenario is the unspecified nature of America's 'anti-terrorism' campaign, in which there is a blurring of distinctions between terrorist activities and genuine struggles by oppressed people for self-determination. Taking advantage of the unspecified nature of the 'anti-terrorism' campaign, the BJP government in India has seized the opportunity to attempt to clinch the Kashmir dispute according to its own thinking, by recasting the indigenous Kashmir struggle as a terrorist one. It is imperative for the international community to act with responsibility and commitment, if it has to ensure that such vested interests do not confuse issues for their own motivated ends, and lead to further conflagrations.

Self-determination vis-à-vis Terrorism

The concept of self-determination is an internationally recognised norm. According to Dr. Ijaz Hussain, an expert on international law, the concept 'started as a political (or moral) right' and later during the decolonisation period 'evolved into a legal right.'¹⁷ For example, in 1917, Lenin conceived it as 'political self-determination that is the right to secede and form an independent state.'¹⁸ In 1918, the American President, Woodrow Wilson, included it in the famous fourteen points and described it as 'an imperative principle of action.'¹⁹ A development in this connection was the UN General Assembly Resolution 1514, adopted in 1960. Paragraphs 2 and 3 of the resolution proclaimed that 'all peoples have the right to self-determination and lack of political, economic, social or educational preparedness could not be a ground for delaying independence.'¹⁰ Also, Article 1(2) of the UN Charter, (Chapter I 'Purposes and Principles'), states: 'To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people, and to take other appropriate measures to strengthen universal peace.'¹¹ Other related important documents are the two International Human Rights Covenants, adopted in 1966. The two Covenants - 'International Covenant on Civil and Political Rights' and 'International Covenant on Economic, Social and Cultural Rights' - came into force in 1976. The common article 1 (1), incorporated in both the Covenants, states: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'¹² Another important document is the UN General Assembly Resolution 2625, adopted in 1970, entitled: 'Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among

States.' The resolution 'recognises the right of self-determination in favour of an oppressed people within an independent state.'¹³

An important point to note is that various international conventions on terrorism have also pointed out the difference between struggles for self-determination and acts of terrorism. For example, the UN General Assembly Resolution 3314 (XXIX) on the 'Definition of Aggression', adopted in December 1974, in Article 7 states: '*Nothing in this definition, and in particular Article 3 could in any way prejudice the right of self-determination, freedom, and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; or the right of these peoples to struggle to that end and seek and receive support...*' The United Nations, in December 1979, adopted an International Convention Against the Taking of Hostages (came into force June 1983). It declares that it: '*shall not apply to an act of hostage-taking committed in the course of armed conflicts ... in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on principles of International Law...*' (Article 12). Similarly, the 'Convention on Combating International Terrorism' adopted by the OIC in 1999, states in its preamble '*the legitimacy of the rights of peoples to struggle against foreign occupation and colonialist and racist regimes by all means, including armed struggle to liberate their territories in compliance with the purposes and principles of the Charter and resolutions of the United Nations*'. Recently, 'The Almaty Declaration' signed at the end of the 'Conference on Interaction and Confidence Building Measures in Asia' (CICA), held in Kazakhstan in June 2002, while condemning terrorism in all forms states in para 18, '*We reaffirm the right of people living under foreign occupation for self-determination in accordance with the UN Charter and International law.*'

As emphasised by Dr. Shireen M. Mazari, 'at present, there is also the imperative to understand the centrality of the principle of self-determination to international law because given the present anti-terrorist coalition that is building up, the moves for an international convention on terrorism are going to reach a conclusion much sooner than would otherwise have been possible. The UN is presently studying a number of drafts on terrorism, including the one adopted by the OIC, which has been presented on behalf of the OIC. There is also an Indian draft, which in its present form would be invalid in terms of the Vienna Convention on the Law of Treaties since it does not distinguish the principle of self-determination. Unless the norm of self-determination is preserved, the fight against terrorism will become devoid of international legality.'¹⁴

Taking advantage of the international campaign against terrorism, the Indian BJP government has stepped up its two-pronged efforts to have Pakistan declared a terrorism-sponsoring state, and project the Kashmiri struggle for self-determination in the Indian-held Kashmir as 'terrorist' activity. Under the circumstances, it is important to understand the real genesis of any struggle, even military struggles, before labelling them or the organisations involved, as terrorists. The indigenous struggle for self-determination in the Indian-held Kashmir, recognised also by the UN, is a prime example, where the oppressed people have been forced to take up arms for their right of self-determination, and as a measure of resistance against the excesses being committed by more than 700,000 Indian armed forces personnel, deployed all over the Indian-occupied areas, to eliminate the resistance.

Over the years, various solutions for resolving the Kashmir dispute have been suggested, in the United Nations, and by international observers and specialists on South Asia. However, because of the intransigence of the successive Indian governments, none of the proposed solutions could ever be discussed or implemented. This paper aims at analysing the various proposed options and address the

important question: What could be a viable solution of the Kashmir dispute? However, before examining these proposals, it is necessary to be clear about the nature of the dispute itself.

PART I

KASHMIR DISPUTE: KEY ASPECTS

Before we discuss the various proposed options, it is important to first understand the nature of the dispute between India and Pakistan, which provides the backdrop to the official statements and positions taken by both governments in the post-1947-48 period, when India first took the Kashmir case to the United Nations. The following are the key aspects of this long-standing dispute.

- 1. Legacy of the Partition of the Sub-continent in 1947:** The sub-continent was partitioned on the agreed principle that contiguous Muslim majority areas were to be separated from the contiguous non-Muslim majority areas, to form the two independent states of Pakistan and India.¹⁵ There were about 562 Princely States, which existed under the overall paramountcy of the British Crown. The Cabinet Mission, in its statement of May 16, 1946, clarified that 'Paramountcy could neither be retained by the British Crown nor transferred to the new Government'.¹⁶ Also, in Section 7 of the Indian Independence Act, 1947, it was stated that 'the suzerainty of His Majesty over the Indian States lapses.' Thus, legally the Princely States became independent.¹⁷ However, the last British Viceroy Lord Mountbatten, during his address to the Chamber of Princes on July 25, 1947, asserted that 'the rulers were technically at liberty to link with either of the dominion (India or Pakistan)'.¹⁸ As regards the criteria to be followed, he held that 'normally geographical situation and communal interests and so forth will be the factors to be considered.'¹⁹ On various occasions between June and July 1947, Quaid-e-Azam, the Governor General-designate of the new State of Pakistan, stated, 'The legal position is that with the lapse of Paramountcy on the transfer of power by the British all Indian States would automatically regain their full sovereign and independent status. They are, therefore, free to join either of the two Dominions or to remain independent. The Muslim League recognises the right of each State to choose its destiny. It has no intention of coercing any State into adopting any particular course of action.'²⁰ By August 15, 1947, the majority of the Princely States, owing to their geographical contiguity and Hindu population, joined India while only ten joined Pakistan. However, disputes over independence arose with India in the case of three Princely States, namely Junagadh, Hyderabad and Jammu and Kashmir.²¹

Junagadh, a maritime state in Kathiawar, with a Muslim ruler and a Hindu majority population, decided to accede to Pakistan on August 15, 1947. By middle of September 1947 Pakistan accepted the accession. India reacted by criticising Pakistan's acceptance as 'in utter violation of the principles on which Pakistan was agreed upon and effected.'²² On September 17, India deployed troops around Junagadh and by November 1947 India had militarily annexed the State, as its first expansionist act after the partition of 1947. It is to be noted that this happened when Pakistan had no defence structure of any sort. Pakistan's complaint, claiming Junagadh as its territory, is still pending before the Security Council. Similarly, Hyderabad, also with a Muslim ruler and a majority Hindu population, despite Indian pressures, decided to remain independent and in fact executed a Standstill Agreement with India in November 1947, which India duly signed. However, India continued to increase pressure on Hyderabad and by the middle of 1948 had imposed an economic blockade as well as carried out border raids. During a parliamentary debate, on July 30, 1948, the then British Prime Minister, Winston Churchill referred to a speech by Pandit Nehru made in the last week of July, 1947, in which he had declared, 'If and when we consider it necessary we will start military operations against Hyderabad.'²³ Commenting on this remark, Winston Churchill said 'It seems to me that this is the sort of thing which might have been

said by Hitler before the devouring of Austria.²⁴ On August 24, 1948, Hyderabad filed a complaint before the Security Council, but before the case was heard before the Council, Hyderabad was militarily annexed by India on September 13, 1948.

While India laid claim on the other two Princely States on the basis of them being Hindu majority areas, as well as geographically contiguous to India, and that the partition of the sub-continent was agreed to on these principles, it did not apply the same principle to the Jammu and Kashmir State, which had a Muslim majority population, under a Hindu ruler who was in favour of remaining independent. During the previous hundred years, the subjects of the Jammu and Kashmir State had been in a state of ongoing series of revolts against the Dogra rulers. When Partition took place, the Muslim majority population of Jammu and Kashmir was in favour of joining Pakistan, whereas the Hindu Maharaja was reluctant, hoping that he would retain his independence. Internally, there were already tensions due to repressive measures of the Maharaja against the Muslims.²⁵ The situation further deteriorated when, towards the end of July 1947, the Maharaja ordered the Muslims to surrender their arms to the police, and communal violence erupted. In the Jammu province, hundreds of Muslims were massacred by the Hindus and Sikhs, who attacked Muslim villages. The massacre was one of the first attempts of ethnic cleansing, which, in fact, had begun even before independence, with the connivance of the local administration comprising units of the Maharaja's Army and Police. In August 1947, on the eve of Partition, Poonch revolted against the Maharaja's rule and in September 1947, the Muslim population liberated the area from the State Police.²⁶ According to some estimates, between August-October 1947, in the State of Jammu and Kashmir out of the Muslim population of 500,000 about 200,000 just disappeared, presumably were killed, and many Muslims from among the rest fled to the neighbouring West Pakistan (now Pakistan).²⁷

Another significant development of the time was that on August 12, 1947, the then Prime Minister of Jammu and Kashmir, Janak Singh, proposed a 'Standstill Agreement' to both India and Pakistan. This was agreed to and signed by Pakistan on August 15, but India was reluctant and suggested further discussions, keeping matters pending. Eventually no discussion took place and, thus, the 'Standstill Agreement' was never signed by the Indian government with the Maharaja of Kashmir even though it had signed a Standstill Agreement on November 29, 1947, with Hyderabad, since Prime Minister Nehru had other plans to annex the State of Jammu and Kashmir.

In October 1947, there was a revolt by the Muslim population against the Maharaja. He fled from the capital Srinagar to Jammu on October 26, 1947, and appealed to India for help. India claims that the Maharaja signed the 'Instrument of Accession' on October 26, following which the Indian forces landed in the State supposedly on October 27, 1947. Regarding the signing of the Instrument of Accession, its timing, terms and conditions, and the timing of the landing of Indian troops, are all controversial. The study of historical events shows that initially the Maharaja sent the Deputy Prime Minister, R. L. Batra, to New Delhi, on October 24, with a 'letter of accession to India' which could not be signed. Mr. Batra, in New Delhi, held discussions with 'who would listen to him; but his mission was fruitless.'²⁸ According to British historian, Alastair Lamb, this was 'certainly no blanket unconditional Instrument of Accession but rather a statement of the terms upon which an association between the State of Jammu and Kashmir and the Indian Dominion might be negotiated in return for military assistance. The Indian side have been careful to avoid specific reference to this particular document in their descriptions of the State of Jammu and Kashmir's plea for assistance. It is probable that it involved no more than a token diminution of the State's sovereignty. It certainly did not provide for an administration in the State of Jammu and Kashmir presided over by Sheikh Abdullah.'²⁹

Moreover, research also shows that Indian leaders were not in favour of signing the Instrument of Accession before any military help was provided to the Maharaja. As has been mentioned above the Maharaja was not in favour of unconditional surrender of sovereignty. Pandit Nehru, however, was of the view that what was required was *'not so much the formalities of accession as some pragmatic arrangement whereby the Maharaja's government might be obliged to collaborate politically with Sheikh Abdullah and his National Conference, bolstered in power by Indian arms.'*³⁰ Also, during the Indian Defence Committee meeting on October 25, 1947, which discussed the situation in Jammu and Kashmir, V. P. Menon stressed, *'it would technically be quite proper for India to send its forces to the State of Jammu and Kashmir without its prior accession to India, be it definitive or provisional.'*³¹

Subsequent research has also thrown doubts on the official Indian version, which claims that its intervention was legal, basing it on the signing of the so-called 'Instrument of Accession' signed by Maharaja Hari Singh. According to the British historian Alastair Lamb, the Maharaja was forced to sign a conditional Instrument of Accession *after* the Indian troops had landed at Srinagar.³² As the International Law expert Dr. Ijaz Hussain points out, article 49 of the Vienna Convention on the Law of Treaties states, 'A treaty is invalid if its conclusion is procured by the threat or use of force in violation of the principles of the Charter of the United Nations.' Therefore, the fact that the Instrument of Accession was signed under duress in the presence of Indian troops 'points to the use of force in obtaining consent of the Maharaja to the said Instrument. This makes it patently defective.'³³

The next significant element in that drama was the connivance of Lord Mountbatten, both as out-going Viceroy and later as the first Governor General of India. While receiving the Instrument of Accession regarding the State of Jammu and Kashmir, Lord Mountbatten, explicitly stated in his acceptance letter of October 27, 1947, addressed to the Maharaja, that *'...it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of State's accession should be settled by the reference to the people.'*³⁴

India's military intervention in Jammu and Kashmir in October 1947 was also accompanied by the solemn assurances of the Indian Government to the Government of Pakistan that the final decision would be in accordance with the wishes of the people of the State. The Indian Prime Minister in a telegram, dated October 27, 1947, to the Prime Minister of Pakistan stated: *'I should like to make it clear that the question of aiding Kashmir in the emergency is not designed in any way to influence the State to accede to India. Our view which we have repeatedly made public is that the question of accession in any disputed territory or State must be decided in accordance with the wishes of the people and we adhere to this view.'* In another telegram dated October 31, 1947, Prime Minister Nehru again pledged: *'Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of this State to the people of the state is not merely a promise to your Government but also to the people of Kashmir and to the world.'* Again, on November 2, 1947, in a broadcast on All-India Radio, Prime Minister Nehru declared that the Government of India *'was prepared when peace and order have been established in Kashmir to have a referendum held under international auspices like the United Nations.'*³⁵ These statements reflect the 'conditional and provisional' nature of the so-called accession. As has been pointed out by Dr. Ijaz Hussain it establishes that *'the accession of Kashmir to India was not complete, final and irrevocable as contended by India. It was no more than an ad hoc and temporary arrangement and was subject to reference to the people for its final disposal.'*³⁶

India repeated the same commitment of deciding the question of the accession of Jammu and Kashmir in accordance with the wishes of the people of the State, when it took the issue to

the United Nations in January 1948. The Indian representative made this commitment in the UN (discussed in section on Right of Self-determination). Although India took the issue under Chapter VI, titled "Pacific Settlement of Disputes" of the UN Charter, and not under Chapter VII, titled "Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression", the Indian efforts were to get Pakistan declared as an 'aggressor'. The Indian Representative to the UN in para 6 of the letter, dated January 1, 1948, stated: 'The grave threat to the life and property of innocent people in the Kashmir Valley and the security of the State of Jammu and Kashmir that had developed as a result of the invasion of the Valley demanded immediate decisions by the Government of India.'³⁷ As Lord Birdwood, British historian, observed, 'Illegal act of aggression by Pakistan and a legal accession of Kashmir to India is, therefore, the basis of the Indian case.'³⁸ Also, important to note are the arguments of the Indian spokesman, during the discussions in the Security Council in January 1948, where he stressed, 'We have referred to the Security Council a simple and straightforward issue...The withdrawal and expulsion of the raiders and the invaders from the soil of Kashmir...'³⁹ Moreover, A. S. Annand, a Judge of High Court of Jammu and Kashmir, in his book writes: 'The government of India appealed to the Security Council, to ask the Government of Pakistan: (1) to prevent government personnel, military and civil, participating in or assisting the invasion of Jammu and Kashmir State; (2) to call upon other Pakistani nationals to desist from taking any part in the fighting in Jammu and Kashmir State...'⁴⁰

As regards the controversy of 'invaders' or 'raiders' from Pakistan, as alleged by India, according to research by Alastair Lamb, the Pathan tribesmen from the Pakistani side, crossed over on the night of 21/22 October 1947 'at the invitation of internal elements in the political struggle then going on in the State of Jammu and Kashmir. The clearing of the way into the State at Domel was not that of forced entry by the tribesmen but of a gate being opened, as it were, by rebels within the State of Jammu and Kashmir.'⁴¹ Therefore, the entry of tribesmen cannot be regarded as 'aggression' as termed by India.

However, when India realised that its initial attempts had failed and the United Nations, which in clear-cut terms, also supported the right of the self-determination of the people of Jammu and Kashmir, India started to wriggle out of its original commitments. For example, on January 20, 1948, the Security Council through Resolution 39 established a mediatory commission - the United Nations Commission on India and Pakistan (UNCIP) - to 'investigate the facts pursuant to Article 34 of the Charter of the United Nations,'⁴² When India saw that its effort to get Pakistan declared as an 'aggressor' was not endorsed by the UN, in the Security Council discussions, it then adopted differing attitudes on various occasions. As observed by the British scholar, Rosalyn Higgins, 'Pakistan clearly felt that no impartial plebiscite could take place under Sheikh Abdullah's government; whereas, India, while conceding the possibility of a National Assembly being elected, clearly thought it should be done while Abdullah was still leader. This in turn led to disagreement on the UN's role, Pakistan wishing it to have temporary administrative authority, and India believing it should have an advising and observing capacity. Above all India regarded accession as complete, and resented the view of many Security Council members that Lord Mountbatten's letter regarding accession was an integral part of the terms of accession.'⁴³ It may be recalled that Lord Mountbatten in his letter to the Maharaja, dated October 27, 1947, explicitly stated that finally 'the question of the State's accession should be settled by the reference to the People.'⁴⁴

Simultaneously, India also started taking steps to gradually change the status of Jammu and Kashmir, by tightening its illegal, unconstitutional control over the State with the ultimate aim of unilaterally absorbing it within the Indian Union. In January 1950, India accorded a 'special status' to the State through Article 370 of the Indian Constitution. Under the said Article three subjects, namely defence, external affairs and communications only were to be dealt by the Indian

Parliament. Article 370 also limited the powers of the Indian Parliament to make laws regarding subjects mentioned in the Union List and the Concurrent List of the Constitution. According to the Kashmiri scholar, Prem Nath Bazaz, 'while remaining within the framework of the Indian Constitution, the Kashmir State virtually attained an autonomous status not enjoyed by any other state of the Republic of India.'⁴⁵ As commented by Prem Nath Bazaz, Article 370 of the Constitution was 'specifically meant to be a temporary provision as the Constitution-makers were fully confident that the close association of the people of Kashmir with free democratic India would convince them of their bright future by becoming an integral part of the Republic.'⁴⁶

While this status accorded to Jammu and Kashmir went so far as to allow the Jammu and Kashmir State, unlike any other Indian State, to have its own flag, constitutional structure and government as well as judiciary, in June 1949, India exiled the Maharaja, and installed his son, Karan Singh, temporarily as his Regent. The Indian government also put the National Conference, under Sheikh Abdullah, in charge of running the administration of the State, with the hope of using the National Conference as the rubber stamp for its other designs to absorb the State.

In October 1950, the National Conference, with the Indian Government's backing, tried to convene its own Constituent Assembly to determine the future of the State. At Pakistan's request, the UN Security Council discussed the efforts to convene the Constituent Assembly and in its Resolution 91 of March 30, 1951, stated: 'the final disposition of the State of Jammu and Kashmir will 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 United Nations'.⁴⁷ Sir B. N. Rau, the Indian representative, assured the Security Council that the Constituent Assembly of Kashmir was not intended 'to prejudice the issues before the Security Council.'⁴⁸ The Kashmir Constituent Assembly met on November 5, 1951. The Indian government's interest in the Constituent Assembly of Kashmir was to obtain a ratification of the accession to the Indian Union, whereas Sheikh Abdullah intended to retain the special autonomous status of Jammu and Kashmir State within the Indian Union.⁴⁹ In July 1952, Abdullah and Nehru reached an agreement, the 'Delhi Agreement', whereby the special status of Kashmir under Article 370 could not be changed without the approval of the Kashmir Constituent Assembly. The Hindus in Indian-held Kashmir and India agitated for a complete integration of Kashmir in India. In August 1952, anti-Abdullah demonstrations were held in the State. Sheikh Abdullah adopted a tough policy against these demonstrations and ordered arrests of the Hindu protestors. The Indian government, showing its displeasure, dismissed Abdullah as Prime Minister on August 9, 1953, and imprisoned him, replacing him by Bakshi Ghulam Mohammad. British historian Alastair Lamb notes, 'With Bakshi Ghulam Mohammed in power, the state of Jammu and Kashmir drifted steadily into the Indian orbit. ...In February 1954 the Kashmir Constituent Assembly, while adhering in principle to the special position of the State, confirmed (in language that would surely never have been used if Sheikh Abdullah had still been presiding) the legality of its accession to India.'⁵⁰

In 1954, the president of India promulgated a Constitutional Order, with reference to Indian-held Kashmir, empowering the Indian government 'to legislate on all matters on the Union List, not just defence, foreign affairs and communications.'⁵¹ Finally, in November 1956, the Constituent Assembly of Indian-held Kashmir finalised the Constitution of the State. The UN Security Council in its Resolution 122 of January 24, 1957, reaffirmed that the 'final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic means under the auspices of the United Nations' and declared 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 may have taken or

might attempt to take to determine the future shape and affiliating of entire state or any part thereof, or action by the parties concerned in support of any such action by the Assembly, would not constitute a disposition of the State in accordance with the above principle.¹⁵² Thus, India was not able to get UN approval for its constitutional dabbling to incorporate the State in the Indian Union. However, the Constitution came into operation on January 26, 1957. It provided that the 'State is and shall be an integral part of the Union of India.'¹⁵³

Moreover, Sheikh Abdullah, then in prison, protested against the decision of the Constituent Assembly. There was a split in the National Conference and the breakaway faction, which was pro-Abdullah, known as the Plebiscite Front, was founded by Mirza Afzal Beg. The Front advocated plebiscite under the UN supervision. When Sheikh Abdullah was released in January 1958, he supported the Plebiscite Front and vehemently criticised the decision of the Constituent Assembly. As a result Abdullah was again imprisoned in April 1958. Meanwhile, in 1958 the Indian government, as part of its designs to integrate the State, through another constitutional amendment brought the Indian-Occupied Kashmir under the purview of the central administrative services. According to an Indian scholar, Sumantra Bose, 'any trace of substantive autonomy had been systematically eradicated from Kashmir by the mid-1960s, and without even the pretence of a reference to the wishes of its people.'¹⁵⁴

As a third step to illegally incorporate the State into the Indian Union, and also to undermine the special status of the State accorded under Article 370, after the Constituent Assembly started its meetings, the Indian central government managed to hold elections for a State Assembly and the Lok Sabha in Indian Occupied Kashmir in 1951. After the 1967 elections, the central government invited Karan Singh, then *Sadar-i-Riyasat*, to join the cabinet as Minister for Tourism. He immediately resigned as *Sadar-i-Riyasat* and the central government appointed an acting Governor to the State. Thus, the central government was able to abolish the office of *Sadar-i-Riyasat* and in its place establish the office of Governor, which appeared, at least on the surface, to bring it into line with the structure of the rest of the Indian States. Later, frequent impositions of Governor and President's Rule (1990-96) have practically eroded the principle of full autonomy supposedly accorded through Article 370, by allowing greater central interventions.

- 2. Right of Self-determination:** The Kashmir Dispute, as recorded in the UN documents, involves the principle of the right of self-determination, which was basic both to the principle of Partition and the Charter of the United Nations. According to the 1970 Declaration of the UN General Assembly, the term 'self-determination' means 'the right of all peoples to freely determine their political status.'¹⁵⁵ The Kashmir dispute basically involves three parties. Pakistan and India, as the two main parties according to the UN resolutions. The third are the Kashmiris, whose right of self-determination has been recognised in UN resolutions. Pakistan and India, on their own cannot decide the future of the Kashmiris. The commitment to enable the Kashmiris to decide about their future was not only made by India when it accepted the conditional so-called 'Instrument of Accession', but was also explicitly admitted in India's complaint before the UN Security Council in January 1948. The Indian Representative, in his letter to the President of the Security Council, regarding the status of the State clarified that finally 'its people would be free to decide their future by the recognised democratic method of a *plebiscite* or *referendum* which, in order to ensure complete impartiality, might be held under international auspices.'¹⁵⁶ Furthermore, the UN Security Council discussions led to the resolutions of August 13, 1948, and January 5, 1949, which clearly laid down that '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.'

These UN resolutions are still valid, even though India has made many efforts to declare them 'dead', particularly after the signing of the Simla Agreement on July 3, 1972. The Indian argument is based on Article (ii) of the agreement, which states: 'that the two countries are resolved to settle differences by peaceful means mutually agreed upon between them.' However, it may be noted that the said Article in no way implies that either party has agreed to give up the UN option. In fact it follows Article (i) of the Simla agreement, which asserts the relevance of the UN principles when it states: 'that the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries.' Moreover, this Indian claim has been refuted by various UN representatives who, on several occasions, have clarified that, only a bilateral agreement, which solves the problem, would legally supersede the numerous existing UN resolutions on that dispute. Also, in the absence of any fundamental change in the circumstances, the UN resolutions can become invalid only when the UN Security Council declares them null and void.⁵⁷ For example in 1956, the then UN Secretary General, Dag Hammarskjold, had clearly stated that 'the UN decision is valid until it has been invalidated by the organ which took it.'⁵⁸ In April 1990, the UN Representative, Francis Guiliani, clarified: '*a bilateral agreement, which solved the problem, would supersede the resolution aimed at solving the issue. However, as long as the problem remained, the resolutions would remain in effect regardless of when they were adopted.*'⁵⁹ Thus, the manipulated elections to the Jammu and Kashmir State Assembly, often cited by India as the expression of the will of the people of Kashmir, cannot replace the international consensus which endorses impartial plebiscite under the UN auspices, as the means for ascertaining the wishes of the Kashmiris regarding the future status of the State.

The Indian government again tried to use the election card to establish its legitimacy in Occupied Kashmir by holding farcical elections in September/ October 2002. Commenting on the Indian government's move to hold elections, the Chairman of All Parties Hurriyat Conference (APHC), Abdul Ghani Bhat said, 'Elections provide no answers to the question of the people, which is that the future of Kashmir is yet to be determined. Elections did not provide anything in the past and cannot in the future either.' Ruling out participation in the scheduled elections Mr. Bhat had said that elections should be held not for forming government but 'to determine the future of Kashmir in keeping with the wishes of the people.'⁶⁰ APHC has been stressing on holding trilateral talks, involving India, Pakistan and the Kashmiris, for resolving the Kashmir dispute.

When in August 2002, India announced a four-phase schedule for the elections to the Occupied Jammu and Kashmir Assembly, as part of its efforts to convince the APHC and other Kashmiri parties to participate in the elections, the BJP government nominated the Kashmir Committee, headed by the former Law Minister, Ram Jethmalani to hold talks. The Indian Kashmir Committee held two rounds of talks with Mr. Shabir Shah, leader of the Jammu and Kashmir Democratic Freedom Party and the APHC delegation. APHC and Mr. Shah, however, rejected participation in the Scheduled Assembly polls. Here, it may be noted that the Indian Kashmir Committee on September 8, in a joint statement at the end of the second round of talks, supported the Hurriyat Conference's demand to visit Pakistan for holding talks with Kashmiri leaders and the Pakistan government for finding a solution to the Kashmir imbroglio. However, on September 9, the Indian Prime Minister, Atal Behari Vajpayee, denied that there was any proposal to allow the Ram Jethmalani-led Kashmir Committee to visit Pakistan to hold talks with the Hurriyat leaders there. This shows that the BJP government started the internal dialogue process as a face-saving measure, to project to the international community that a dialogue process has begun and thus to avoid the international pressure for resumption of a dialogue with Pakistan. Now, after elections a coalition government, by Congress, People's Democratic Party and

Panthers Party, has been formed. It is obvious that this cannot be regarded as a true representative government of the Kashmiris, as none of the major Kashmiri political parties participated in the elections.

More currently, implementation of UN resolutions in the case of East Timor is an important precedent. In the case of East Timor, the UNSC resolutions, No. 384 and 389, passed in 1975 and in 1976 respectively, recognised the 'inalienable right of the people of East Timor to self-determination and independence in accordance with the principle of the charter of the UN', and called upon Indonesia to withdraw its forces from the territory and the government of Portugal to cooperate fully with the UN in implementing the resolutions. Indonesia and Portugal, finally, agreed on May 5, 1999 to allow the UN to conduct a referendum for greater autonomy within Indonesia or independence. If the UN was able to finally fulfil its commitment in case of East Timor, after twenty-three years, then why not in the case of Kashmir?

- 3. *An Internationally Recognised Dispute:*** The Kashmir dispute, though it appears to be predominantly a bilateral one between India and Pakistan, as is stressed by India, directly involves the international community. India itself took the dispute to the UN Security Council in 1948, where it is still registered as such and thus remains a pending agenda till it is resolved. India presently takes the line that the signing of the Simla Agreement in 1972, between India and Pakistan, has made the earlier UN Resolutions redundant and that the issue has to be dealt with bilaterally. The Indian argument that the Simla Agreement supports bilateralism is its interpretation of Article (ii) of the agreement, which states: 'That the two countries are resolved to settle differences by peaceful means mutually agreed upon between them.'⁶¹ The factual position is that Pakistan has repeatedly stressed the need to begin the process of talks under the UN resolutions. The said Article in no way implies that either party has agreed to give up the UN option, in fact it follows Article (i) of the same agreement which asserts the relevance of the UN principles when it states: 'That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries.'⁶²

As far as the legal position of the UN resolutions is concerned regarding unresolved conflicts, Article 103 of the UN Charter explicitly states: 'In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.' Thus, under its own provisions, the UN itself has a legal obligation to play the role of a 'moderator' or 'facilitator' in efforts for the resolution of outstanding disputes on its agenda.

- 4. *An Indigenous Freedom Struggle:*** The Indian Government's attempts to describe the mass Kashmiri resistance movement in areas under its control, as terrorist activity being waged by 'infiltrators', is an attempt to nullify the indigenous nature of the freedom struggle in Jammu and Kashmir. India blames Pakistan for fanning the movement. The fact of the matter is that the struggle for the right of self-determination in the Indian-held Kashmir has been going on since 1947. Despite India's harsh and repressive measures, the movement could not be suppressed. It began as a political struggle, but faced with continuous setbacks and the Indian policy of backtracking on promises made, transformed the movement into an armed struggle. An Indian scholar, Sumit Ganguly, wrote, 'after years of frustrated attempts at meaningful political participation, and in the absence of institutional means of expressing dissent, the resort to more violent means become all but inevitable.'⁶³ Lt. Gen. V.K. Nayar, a former Indian Army commander, stated that the root cause of the Kashmir situation was 'political ineptness, due to which Kashmiris felt isolated both from the national mainstream and within the state itself.'⁶⁴ According to Sumantra Bose, an Indian scholar, 'Kashmiris rose in rebellion not because Muslims are constitutionally incapable of loyalty to a "secular" state, but because they saw no hope of redressal within the Indian state's institutional framework to the gross, consistent and systematic

pattern of abuse of their rights as citizens and as human beings. The brutal and disproportionately violent response to which their (initially largely non-violent) protests were sought to be suppressed, especially in early 1990, steeled their resolve to seek “self-determination”, through force if necessary, and it was thus that the gun became a legitimate political weapon in a society where the “sight of blood” (as Walter Lawrence observed at the turn of the century) was once anathema.¹⁶⁵

Pakistan being a legitimate party to the dispute, by virtue of the Partition Plan and the UN resolutions, has the right to support the cause of the right of self-determination of the Kashmiris. As argued by Dr. Ijaz Hussain, an expert on international law, ‘Pakistan’s *locus standi* in the Kashmir dispute is also established by the fact that on 22 January 1948 the Security Council decided to change the item on its agenda from the “Jammu and Kashmir Question” to the “India-Pakistan Question.”¹⁶⁶ The very fact that the freedom movement in Kashmir has been going on since 1947, and gained momentum since 1989, itself establishes the undying indigenous nature of the movement. No outside influence can sustain a movement for such a long period in this manner, in which in the last decade alone, (since 1989), the Kashmiris have sacrificed more than 80,000 lives. To divert world attention from the real situation, India has, since long time, been trying to portray the indigenous struggle as being waged by ‘religious fanatics’ or ‘Muslim terrorists.’ The Kashmiri leaders themselves have belied the Indian propaganda. While attending the 53rd Session of the UN Commission on Human Rights in Geneva, the then Secretary General of All Parties Hurriyat Conference, Ghulam Mohammad Safi said: ‘first and foremost, it is a movement for a realisation of the right to self-determination of the people of Jammu and Kashmir in accordance with international law.’¹⁶⁷

PART II PROPOSED OPTIONS FOR RESOLUTION OF THE DISPUTE

Over the past fifty years, besides the UN resolutions, observers and intellectuals have proposed various other options for resolving the Kashmir dispute time and again at the UN fora and at the bilateral India-Pakistan levels. These proposals are examined below.

I. UN Resolutions: The Plebiscite Option

The UN Security Council resolutions of August 13, 1948 and January 5, 1949, proposed the plebiscite option for resolving the Kashmir dispute. However, it is important to note that the Government of India itself accepted *plebiscite* or *referendum* as a right of the Kashmiri people, when it filed the initial complaint against Pakistan before the United Nations on January 1, 1948, as pointed out in Part I of this paper. Beginning with Governor General Mountbatten, Indian leaders like Prime Minister Nehru also repeatedly made the commitment to ‘the will of the Kashmiri people’ as has been discussed in detail earlier in Part I.

After India filed its initial complaint, the UN Security Council passed the two important resolutions of August 13, 1948 and January 5, 1949. (See Appendix I and II) These resolutions laid down the principles and procedures for a free and impartial plebiscite under UN auspices. Broadly, the resolution of January 5, 1949, stated: ‘(a) the question of the accession of the State of Jammu and Kashmir to India and Pakistan, would be decided through the democratic method of a free and impartial plebiscite after the cease-fire and truce agreement provided for in the Resolution of August 13 had been carried out; (b) the Secretary General of the UN would nominate a Plebiscite Administrator, who would be appointed by the government of Jammu and Kashmir and given powers which he considers necessary for holding a free and impartial plebiscite; (c) on implementation of the ceasefire and the truce agreement, the Commission and the Plebiscite Administrator would determine, in consultation with the Government of India, the final disposal of Indian and State Armed Forces, as well as the Forces in Azad Kashmir (in consultation with the local authorities); (d) persons who had entered the State since August 15, 1947 would be required to

leave the State, and citizens of the State who had left the State on account of disturbances would be allowed to return.¹⁶⁸

Both India and Pakistan accepted the above UN Resolutions. However, later, differences arose over the interpretation of various clauses of the resolutions, especially on the issues of demilitarisation and disbandment/disarming of the 'Azad Kashmir' forces. India gave its own interpretation to the agreement and suggested that the Azad Kashmir forces be disbanded and the defence and administrative responsibility of the region be given to India and Indian Kashmiri authorities.⁶⁹ Pakistan, on the other hand, was in favour of a complete and simultaneous withdrawal of armed forces personnel by both the countries.⁷⁰ On this issue, the President of the Security Council, General McNaughton, in his proposal of December 22, 1949, in para 2, clarified that the Resolutions of 1948 and 1949 called for demilitarisation of the whole State of Jammu and Kashmir and not merely Azad Kashmir: that 'demilitarisation should include the withdrawal from the State of Jammu and Kashmir 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.'⁷¹ The UN Security Council passed Resolution 80 on March 14, 1950, which called upon the Governments of India and Pakistan 'to prepare and execute within a period of five months from the date of this resolution a programme of demilitarisation on the basis of the principles of paragraph 2 of General McNaughton's proposal, or of such modifications of those principles as may be mutually agreed.' Pakistan accepted that Resolution as well, but India maintained its position as regards the demilitarisation issue. Later, the UN Representatives continued discussions with the Governments of India and Pakistan over various proposals.

Based on these discussions, the UN Security Council passed Resolution 98, in December 1952. (See Appendix III) The UNSC Resolution, regarding demilitarisation issue clarified that: (Article 4) 'the Governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations representative for India and Pakistan in order to reach agreement on the specific number of forces to remain on each side of the cease-fire line at the end of the period of demilitarisation, this number to be between 3,000 and 6,000 armed forces remaining on the Pakistan side of the cease-fire line and between 12,000 and 18,000 armed forces remaining on the India side of the cease-fire line.' Though during the discussions Pakistan's representative to the UN, Mr. Zafrulla Khan, pointed out that the number of forces proposed was not fair, yet he said that Pakistan 'is prepared to go forward on the basis of this resolution.'⁷² The Indian representative, Mrs. Pandit, in her speech, however, categorically said, 'I should like to repeat that we reject the proposal in it and we are not prepared to enter into any talks on the basis suggested.'⁷³

Regarding the question of plebiscite, Pakistan was in favour of giving complete authority to the UN for holding, organising and supervising the plebiscite. India, on the other hand, only wanted the non-binding advice of the UN. Various UN mediators were appointed to resolve this issue, but no one was successful in convincing India on a compromise. Sir Owen Dixon, the UN mediator, in his report submitted in 1950, wrote: 'In the end I became convinced that India's agreement would never be obtained to demilitarisation in any such form, or to provisions governing the period of plebiscite of any such character, as would in my opinion, permit of the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled.'⁷⁴ Dr. Frank P. Graham, appointed UN representative for India and Pakistan in 1951, submitted five reports, up to March 1953, but his efforts at mediation also proved to be unsuccessful as India would not agree on the size of the forces to be left on either side of the cease-fire line after demilitarisation. India, therefore, consistently refused to take recourse to all proposals of various statesmen and UN representatives for the holding of a plebiscite in Jammu and Kashmir. On the other hand, it is on record that Pakistan supported all such international mediation and UN efforts.⁷⁵

Defending the Indian position on plebiscite, Sisir Gupta, an Indian scholar, wrote: 'it became obvious even at the early stages of the Kashmir dispute that a plebiscite - an "ideal" solution according to some - because of the complexities in Kashmir was difficult to accomplish. Even as a democratic solution, it had loopholes. Kashmir, clearly, is not composed of one people: in religion, it has three major groups; in language, four. If there is a section which wants to secede from India, there are others who do not.'⁷⁶ However, the fact of the matter is that, right from the beginning, India feared that if a plebiscite was held it would lose what it had already occupied. According to a Kashmiri activist, Prof. Mrs. Shamim Shawl, 'plebiscite is the most plausible solution of the problem. This has been accepted in the Resolutions of August 48 and January 1949. It is these resolutions, which confirm the disputed character of the problem and negate the Indian position that says Kashmir is an irrevocable part of India. India is in fact challenging the rightful and legal authenticity of the United Nations by delaying the implementation of UN resolutions.'⁷⁷

Keeping in view the basic genesis and nature of the dispute, the option incorporated in the then UN resolutions is still valid. The UN resolutions are not time-barred, as observed in 1956, by the UN Secretary General, Dag Hammarskjöld, who clarified the important principle that 'the UN decision is valid until it has been invalidated by the organ which took it.'⁷⁸

II. The UN Trusteeship Option

Generally, this option proposes that Kashmir should be placed under UN Trusteeship and then plebiscite may be held for the final resolution of the dispute. It is argued that this will provide a face-saving for India, and will also give Kashmiris, on both sides of the Line of Control, enough time to come up with a joint option. The JKLF Chairman, Ammanullah Khan in December 1993, proposed: (1) complete, simultaneous withdrawal of Indian and Pakistani troops and civil administration, non-Kashmiri personnel from Jammu and Kashmir; (2) the reunification of Indian and Pakistani-controlled parts of Kashmir; (3) placement of the State under UN control for five to ten years; and (4) holding of a plebiscite.⁷⁹ Well-known Pakistani economist, the late Dr. Mahbubul Haq, in an interview he gave to an Urdu Weekly *Hurmat*, in 1994, proposed that only the Kashmir Valley be placed under UN Trusteeship for ten years and then plebiscite be held in the Kashmir Valley.⁸⁰

As India regards Occupied Kashmir as its integral part, it is obvious that it will never voluntarily agree to the placing of the State, or the Kashmir Valley under UN trusteeship. *Secondly*, both the above trusteeship options support the plebiscite option under the UN auspices, an option that has been rejected by India even though in the early years of the dispute India committed itself to holding of the plebiscite.

As regards Pakistan and the Kashmiris, since the above proposals support a UN role and the option of plebiscite, in view of the already existing UN resolutions which provide the plebiscite option under UN auspices, the above proposal would mean unnecessarily prolonging the solution beyond five or ten years. Moreover, according to Article 76 of Chapter XII of the UN Charter one of the basic objectives of the trusteeship system is 'to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence, as may be appropriate to the particular circumstances of each territory and its peoples...' The case of Jammu and Kashmir does not require placement under UN trusteeship as the Kashmiris have, over the years, demonstrated their political will by waging an indigenous movement in Occupied Kashmir for their right of self-determination, underscoring the fact that their preferred option is self-determination.

III. The Partition Option

Regarding the option of the partition of Jammu and Kashmir, this has largely been an academic debate and various scholars have suggested different proposals. The *first* is a division-related option for Jammu and Kashmir, based on the holding of regional plebiscites. This proposal was first given by UN Representative, Sir Owen Dixon, in his report of 1950-51. Called the 'Dixon Report', it proposed the idea

of holding regional plebiscites, instead of a general plebiscite as proposed in the UN resolutions.⁸¹ The Owen Dixon Plan proposed the division of the State of Jammu and Kashmir into four main regions: Jammu, Ladakh, the Vale of Kashmir including Muzaffarabad, and Gilgit-Baltistan. According to his plan the district of Poonch was to remain with Pakistan. He proposed that of the four regions, Jammu and Ladakh should go uncontested to India and the Northern Areas to Pakistan. He concluded that in the Valley a plebiscite might be held to decide about its future. Pakistan, did not outrightly reject the proposal, but was in favour of a general plebiscite in the whole of Jammu and Kashmir. India on the other hand regarded Jammu and Kashmir as a unit of the Indian Federation and thus was not in favour of any regional plebiscite.⁸²

The second partition proposal is an option based on a 'Trieste-type' solution. The Trieste issue, between Italy and Yugoslavia, arose as a result of the two World Wars. After World War I, Trieste and the adjoining areas, including the whole valley of the Adige river and Istria, went to Italy, but in 1945 it was claimed by Yugoslavia on the grounds that Italy was guilty of aggression against Yugoslavia. However, Trieste and its environs and the Gorizia region to the northwest (Zone A) remained under Anglo-American control and the southern portion (Zone B) was under the control of the Yugoslav troops. Finally, in 1954, Italy and Yugoslavia agreed to a partition and Zone A (including Trieste) was given to Italy and Zone B to Yugoslavia. Italy agreed to maintain a free port at Trieste. Later, the agreement was given a *de jure* status by the 1975 Treaty of Osimo between Italy and Yugoslavia.

The 'Trieste'-type option for Jammu and Kashmir proposes that the Valley along with some adjoining parts of Jammu and the Pakistani side of Kashmir (Azad Kashmir), be made an autonomous units, under India and Pakistan, respectively. The LoC would be a soft border between the two autonomous units. The remaining areas on both sides of the LoC may be merged with India and Pakistan, respectively. India and Pakistan would be required to withdraw their forces under UN supervision.⁸³ Again, this proposal lacks viability, as it does not address either the genesis of the dispute, nor the complexities that have accumulated since then to date. The struggle in Jammu and Kashmir is not for autonomy of any one region but for the right of self-determination to be expressed by the Kashmiris, as granted to them under UN resolutions. Also, India and Pakistan being parties to the dispute will continue to have a clash of interests in the proposed autonomous regions; therefore, this would certainly not result in any stability in the region. Moreover, the option implies that the existing Line of Control (LoC) may serve as the line of division. The LoC remains the UN-recognised ceasefire line (CFL) and was not drawn with any basis for serving as a permanent border, but with the intention of bringing about cessation of military hostilities.

The third partition proposal considers the conversion of the Line of Control (LoC) into an international border. This means maintenance of the prevailing *status quo*. This option is in principle supported by India. If it were accepted, India would take additional advantage by then propagating that it had conceded Indian territory to Pakistan and would try to emerge as a peacemaker in the region. As assessed by Robert Wirsing, 'by asserting the primacy of actual military *control* over punitive legal *entitlement*, it tacitly acknowledges India's dominant political standing in the region. By requiring Pakistan to relinquish its claim of the coveted Valley of Kashmir and the Kashmiri separatists their claim of independence, while at the same time entailing little or no detachment from India of territories now in its possession, it leaves existing political and economic arrangements essentially undisturbed. Thus, of the several conceivable forms of partition, it is clearly among the most generous to India.'⁸⁴

However, the 'the LoC as a border' option has to take into account the fact that the LoC is merely a ceasefire line, as well as take stock of the struggle for the right of self-determination that is going on in the Indian-held Kashmir. Moreover, Kashmiris do not recognise the LoC. Prof. Mrs. Shamim Shawl, a Kashmiri scholar from Srinagar, has argued that 'the proposal of division is in contravention of the basic principle that Jammu and Kashmir is an indivisible entity. It also violates the fundamental fact that the Kashmir problem is basically the problem of the people of Jammu and Kashmir. It is not a bilateral

problem between India and Pakistan. Nor is it a territorial dispute.¹⁸⁵ Secondly, the present LoC is an altered ceasefire line, whereby India acquired territory through military aggression in 1971. Therefore, accepting LoC would mean legitimising Indian military aggression. Thirdly, the LoC as accepted by both Pakistan and India at Simla in 1972 does not exist anymore. Indian incursion into Siachen in 1984 has destroyed the sanctity of the ceasefire line.

Fourthly, some Western scholars have proposed the partition of Kashmir along ethnic/cultural, religious, and linguistic lines. For example the *Kashmir Study Group*, a US-based group comprising academics and diplomats from various countries as members,⁸⁶ has made various proposals along these lines in its report entitled, *Kashmir: A Way Forward* (September 1999). The proposals suggested are as follows:

- (a) *Two hypothetical sovereign entities, self-governing in all aspects, established on both sides of the Line of Control on cultural and linguistic grounds.* According to the study, 'On the Indian side of the LOC every tahsil in Kashmir proper and in Doda district in Jammu, and Gool Gulab Ghar tahsil in Udhampur district in Jammu would seek incorporation in the proposed state. All these areas are imbued with "Kashmiriyat" or interact with Kashmiri speaking people. On the Pakistani side it is conceivable that the whole of Azad Kashmir would opt to have a sovereign status. This is predominantly Punjabi-speaking, wholly Muslim area';
- (b) *A new sovereign state on the Indian side of LoC with no territorial exchange between India and Pakistan.* The state would include 'within its maximum potential area the whole of Kashmir proper as well as adjoining areas in which Kashmiri is either the majority language or that of a plurality of the population';
- (c) *Desirable territorial changes along and beyond the Line of Control in Jammu and Kashmir.* Viewing that 'LoC is dysfunctional and has been violated innumerable times', it proposes that a new state be created with territorial exchanges between India and Pakistan. However, it proposes that Pakistan gives almost twice as much area (7,366 sq. km) to India, than India ceding territory (4,501 sq. km) to Pakistan. The rationale given for such an exchange is 'overall, the territorial adjustments should not be excessively disruptive of the established order and yet should appear significant and be of such a nature as to allow all parties to claim a victory.'¹⁸⁷

The above proposals are again not viable solutions, as they tend to complicate the situation in Jammu and Kashmir and result in a further division of the region, rather than leading to a stable solution. Moreover, the 'Kashmir Study Group's' proposals make no provision for the right of self-determination of the people of Kashmir to which presently a military struggle is underway by the Kashmiris in Indian-occupied Kashmir.

IV. The Independence Option

An option gradually evolved as a result of the impasse on the Kashmir issue is that of independence, generally known as the 'Third Option'. Under this option, the pre-Partition status of the Jammu and Kashmir State is to be restored and an independent state established. The proposal is mainly advocated by the JKLF. Its Chairman, Amanullah Khan, in one of his articles says, 'the future independent Kashmir is to be neutral, like Switzerland, with friendly and trade relations with all its neighbours.' According to Amanullah Khan's proposal, 'Independent Kashmir is to consist of five federating units: Kashmir Valley, Jammu province, Ladakh, Azad Kashmir and Gilgit-Baltistan, each enjoying considerable internal autonomy, having its own elected provincial government. At the centre there will be a bicameral parliament.' He further says, 'the re-unification and independence of the state can be brought about

without making any drastic changes in the existing socio-economic, political and administrative structures of any of the present three units i.e. Indian occupied areas, Azad Kashmir and Gilgit-Baltistan.⁸⁸

According to Indian scholars 'independence, either for part or all of J&K, is equally unrealistic. They maintain that although an artificial product of war, the Line of Control does follow a rough and ready ethno-cultural divide in some measure. Further, "self-determination" within the two parts of J&K could result in the Balkanisation of a mosaic put together by history, with every new 'self-determined' minority being assailed for a newly-created majoritarianism, which lesser minorities refuse to accept. Such an unravelling would be a recipe for strife, insecurity, and destabilisation of the region.'⁸⁹

The option for an independent Jammu and Kashmir state does not seem to be a viable solution, as the State would be land-locked and, therefore, permanently dependent on its neighbours. For India the proposition would be unacceptable because it could lead to a similar unravelling in other areas where separatist movements are going on in India.

As regards Pakistan, the 'third option' can be advantageous. An independent Jammu and Kashmir state would have a preference for good relations with a neighbour that has consistently extended its support to the principles of self-determination. Pakistan's position on the 'third option' has been that it should not confound the existent problems further, and, therefore, it stresses the need to address the issue in the light of the Security Council Resolutions, as a first step in the resolution of the dispute.

V. The Irish Model

Recently, various scholars have suggested the Irish model, based on the 'Good Friday Agreement' signed in April 1998 between the Governments of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, as a possible option for resolving the Kashmir dispute between India and Pakistan.

The main features of the 'Good Friday Agreement'⁹⁰ are: (a) it recognises the consent principle: that change in the status of Northern Ireland can only come about with the consent of the majority of its people. It acknowledges that while a substantial minority in the North and a majority on the island want a united Ireland, the majority in the North currently wishes to maintain the Union. However, it says that if that situation changes, there is a binding obligation on both governments to give effect to whatever wish the people of the North express; (b) it recognises 'the birthright of all the people of Northern Ireland' to identify themselves and be accepted as Irish, British or both; (c) it proposes concrete legislative and constitutional changes; such as, the Government of Ireland Act, claiming British jurisdiction over all of Ireland is to be replaced, future polls in the North on its status are to be held on the order of the Secretary of State for Northern Ireland. Such polls must be at least seven years apart; (d) it proposes a 108-member Assembly elected by proportional representation; (e) it establishes a North-South Ministerial Council under legislation at Westminster and the Oireachtas, to bring together ministers from the North and the Republic; (f) it establishes a British-Irish Council consisting of representatives of the British and Irish Governments, devolved in situations in Northern Ireland, Scotland and Wales, the Isle of Man and the Channel Islands; (g) it establishes a new British-Irish Conference; (h) reaffirms commitment to the total disarmament of all paramilitary organisations, and confirms intention to work constructively with the Independent Commission on Decommissioning; and, (i) establishes an independent commission to make recommendations for future policing arrangements in the North.⁹¹

Based on the Irish model, some Indian scholars have made suggestions supporting autonomy for various regions of Jammu and Kashmir. For example, Amit A. Pandya, an Indian scholar, has proposed the following steps: (1) An India-Pakistan commission to discuss boundary issues in Jammu and Kashmir, and to engage in joint monitoring of the LOC; (2) Phased demilitarisation at the LOC, contingent first on substantial cessation of 'cross-border' terrorism; (3) Three-way (Indian, Pakistani, Kashmiri) commission on internal law and order. Kashmiris to be chosen from Pakistan-occupied Azad Kashmir and all Indian-

occupied segments—Valley, Jammu and Ladakh. (4) Indian and Pakistani commitments to proceed with a scheme of local government reform and strengthening of local institutions and local autonomy in respective areas of Kashmir. (5) Issue-specific consultative bodies (water, power, tourism, finance) comprising such local units, and Indian Jammu & Kashmir State and Azad Kashmir governments. (6) Regularly scheduled and publicity-free consultative mechanism for Indian government's talks with all parties, and with non-party civil society institutions, within Indian Kashmir on political issues. (7) Corresponding mechanism for Azad Kashmir. (8) Consultative mechanism for talks among all parties on ethnic and religious minority protections. (9) Consultative mechanism for dialogue between these processes on the Indian and Pakistani side of the LOC. (10) Indian commitment to allow free access, consistent with security requirements, to independent and credible Indian human rights monitoring organizations, and to Indian, and Pakistani press. Corresponding commitment by Pakistan for Azad Kashmir.⁹²

Another Indian scholar, Professor Sumantra Bose, basing his suggestions on the Irish model proposes three dimensions. *Dimension one: the New Delhi-Islamabad axis*, involving the 'establishment of a permanent India-Pakistan Intergovernmental Conference to promote the harmonious and mutually beneficial development of the totality of relationships between the two countries.' As suggested by Professor Bose, this body is to be chaired by the respective prime ministers, and its twice-yearly meetings to be rotated between Indian and Pakistani cities. *Dimension two: the New Delhi-Srinagar and Islamabad-Muzaffarabad axis*, here the 'objective in Kashmir would be the gradual, incremental normalisation of politics within Kashmir in both Indian-and Pakistani-controlled zones, and the devising and implementation of political frameworks which can foster a working degree of internal accommodation and cooperation between the representatives of communities holding radically different basic political allegiances.' *Dimension three: the Srinagar-Muzaffarabad axis*, proposes 'along with the progressive normalisation of the overall framework of India-Pakistan relations and the gradual normalisation of life and politics in both sides of the Kashmir border', that there is greater need to make the border porous. He further suggests 'the establishment of a cross-border Jammu and Kashmir Council for Cooperation, with representatives from inclusive, elected and autonomous governments from both sides of the line of control.'⁹³

These Indian proposals, selectively use the Irish model, but basically support autonomy for the regions of Jammu and Kashmir under the supervision of India and Pakistan. The central aspects focusing on self-determination and total disarmament after implementation of the agreement are ignored. The Indian proposals are similar to the idea of a condominium with dominant Indian influence. Also, the LoC has been proposed as the dividing line and a soft border. This is against the genesis of the Kashmir dispute, which is not for greater autonomy or 'self-government', as proposed, but for the right of self-determination to be expressed by the Kashmiris. However, as Dr. Mazari has suggested,⁹⁴ it is the central aspects of the Irish model, which are relevant in case of the Kashmir dispute and could be used as guiding principles for a resolution of the conflict. For instance the underlying principle is *recognition of the right of the people as of Northern Ireland* to choose their political future through a referendum. Also, the principle of denuclearisation is linked to it, as following the implementation of the Agreement.

CONCLUSION

The Kashmir dispute basically involves three parties, namely, India, Pakistan and the Kashmiris. Pakistan and India are the two main parties according to the UN resolutions. The third party is the Kashmiris whose right of self-determination has been recognised in UN resolutions. Therefore, Pakistan and India, on their own, cannot decide the future of the Kashmiris, by excluding them from any such process.

It is now evident that for solving the Kashmir dispute in any durable manner, a viable solution would have to include as a *sine qua non* the full support of the Kashmiri people. The Indian policy of imposing a solution, based on autonomy, within the Indian Union will not be successful. This became clearly evident

from the outcome of the two rounds of talks, in August/September 2002, held by the Indian Kashmir Committee headed by Mr. Jethmalani, with the APHC delegation and Mr. Shabir Shah, leader of the Jammu and Kashmir Democratic Freedom Party. The Committee conducted consultations to persuade APHC and Mr. Shah to participate in the September 2002 elections in the Occupied State. APHC and Mr. Shah, however, rejected participation in the Assembly polls in Occupied Kashmir being held in September-October 2002.

Now the elections have been held in the Occupied State. While the Indian Election Commission claimed the process was fair and had a voter turnout of 44 per cent during the four phases of the elections, independent estimates put the voter turnout at 10-12 per cent. Also according to reports in the Indian media, a strong anti-incumbency wave against the National Conference was visible in the centres where voting took place. People at various places protested and resisted the attempts of the enforced franchise. According to reports in *Greater Kashmir*, slogans heard during these protests were, 'no election, no selection, we want freedom.'⁹⁵ Reports by various Indian organisations also confirm the coercive role played by the security forces. For example, on October 4, the Jammu and Kashmir Coalition of Civil Society reported "violent coercion" by security forces in most of the 16 constituencies, which went to polls during the third phase.⁹⁶ Keeping in view the past role of security forces in the elections in Occupied Kashmir, it is difficult to believe that under such a heavy deployment of 700,000 armed forces personnel the elections can be termed as being 'free' and 'fair'.

The BJP government projected these elections in Occupied Kashmir as an expression of the will of the people of Kashmir. For example, in a statement in Denmark, the Indian Prime Minister Vajpayee said that the vote in Occupied Kashmir was for 'India's unity, Kashmiriyat and against Pakistan-sponsored terrorism and Islamabad's anti-India propaganda.'⁹⁷ However, rejecting the Indian Prime Minister's statement, the APHC chairman, Abdul Ghani Bhat, had said that 'the people voted in anger against the incumbent government and India.' He stressed that the elections should not be construed as an alternative to plebiscite. He, however, added 'if a plebiscite is not workable for some reason, then let there be a dialogue involving India, Pakistan and the Hurriyat Conference.'⁹⁸

Interestingly, according to the official results none of the parties, participating in elections, have won enough seats to form the government by itself. The National Conference won 28 seats, Congress 20 seats, People's Democratic Party 16 and the BJP in alliance with RSS could win only a single seat. For forming a government in an 87-member assembly the party needs 44 seats. As this study goes to print, negotiations were underway for a coalition to be set up. Both the Congress and PDP are contenders for the Chief Ministership. Moreover, though the National Conference emerged as the single largest party, its leader, Omar Abdullah was defeated and no member of Abdullah family could win a seat in the elections. Omar Abdullah, also the Minister of state for External Affairs in NDA government, and Farooq Abdullah, the caretaker Chief Minister, resigned from their posts and the Vajpayee government imposed Governor's Rule in Occupied Kashmir on October 17, 2002. Commenting on the situation, the Governor, Girish Chandra Saxena, said on October 19, that the complex political situation necessitated the imposition of Governor's rule.⁹⁹ Whatever the end result of the political scene in Occupied Kashmir, it has become obvious that the new government will not be the true representative voice of the people of Kashmir, as the major representative voice, the APHC, did not participate in the elections.

Pakistan has been stressing the need for a negotiated settlement of the Kashmir dispute. In this context Pakistan supports the resumption of the dialogue process¹⁰⁰ between India and Pakistan. In this connection, President Pervez Musharraf, during his address to the nation on January 12, 2002, called

upon the Indian Prime Minister, Mr. Vajpayee, to 'come forward and help create peace and harmony with a view to resolving all disputes through peaceful means and through dialogue.'¹⁰¹ President Musharraf, while talking to the Aspen Strategy Group during his visit to US in January 2002, suggested a four-part process to defuse the crisis in Kashmir. According to the four-part process, (a) India and Pakistan must resume an official dialogue; (b) both must accept the premise that Kashmir is central to the dispute; (c) eliminate from discussions what each side finds unacceptable; and (d) construct an agreement on the basis of alternatives to their known positions.¹⁰² Later, President Pervez Musharraf, while addressing the 57th session of the UN General Assembly on September 13, 2002, has suggested a three-point proposal for reducing tensions in the region: (a) mutual withdrawal of forward deployed forces by both states, (b) observation of a ceasefire along the Line of Control in Kashmir, and (c) cessation of India's state terrorism against the Kashmiri people.¹⁰³

The decision by the Indian Cabinet Committee on Security, on October 16, 2002, to pull back troops deployed along the international border with Pakistan is the first step for de-escalation of tension between India and Pakistan.¹⁰⁴ In response Pakistan also announced withdrawal of forces to peace time locations.¹⁰⁵ These developments, if followed by the resumption of dialogue between India and Pakistan for discussing all outstanding issues, particularly the Kashmir dispute, will not only result in normalisation of relations between India and Pakistan but will also promote peace and stability in the South Asian region. To begin with, it requires normalisation of diplomatic relations, and for that restoration of all communications links (air, rail and road) has to take place.

Keeping in view the ground realities, the Indian rejection of a general plebiscite under UN auspices and the continuing struggle by the Kashmiris for their right of self-determination, what are the options for Pakistan for finding a solution within the parameters of self-determination? If the bilateral talks are resumed for resolving the dispute, then Kashmiris will have to be included, at some stage, for discussing various options. In principle, India has also recognised third party mediation on Kashmir by allowing the US to play an indirect role. For example, on August 27, 2002, a high-level American delegation, led by Lisa Curtis, Senior Adviser to the US Assistant Secretary of State, Christina Rocca, paid a two-day visit to Occupied Kashmir it may be noted, via New Delhi. The delegation consisted of Sheetal Patel and Kailash Jha of the Political Department of the US Embassy in Delhi as members. It held meetings with APHC and other Kashmiri leaders. Such third party meetings provide an opportunity to the APHC and other Kashmiri leaders engaged in the freedom movement to express their views directly to foreign dignitaries. Along with a growing recognition of the representative nature of the APHC, this development does show that India is gradually moving towards accepting some of the ground realities of the Kashmir dispute. However, it still needs to overtly recognise that without Pakistan, which is an integral party to the dispute, there cannot be a durable solution of the Kashmir dispute.

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Appendix-I

Resolution adopted by the United Nations Commission for India and Pakistan on 13 August, 1948. (Document No.S/1100, Para. 75, dated the 9th November, 1948).

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 proposal:

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 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, organised and unorganised, 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 peoples 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 A2 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 the 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 cease-fire the minimum strength of its forces 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 communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

PART III

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.

The UNCIP unanimously adopted this Resolution on 13-8-1948.

Members of the Commission: Argentina, Belgium, Colombia, Czechoslovakia and U.S.A.

Appendix-II

Resolution adopted at the meeting of the United Nations Commission for India and Pakistan on 05 January, 1949 (Document No. S/1196, dated the 10th January, 1949)

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN

Having received from the Governments 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 Parts I and II of the Commission's resolution of 13 August 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.

(3-b) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.

(3-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 13 August 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.

(4-b) As regards the territory referred to in A 2 of the Part II of the resolution of 13 August, 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 to effect.

(6-b) All persons (other than citizens of the State) who on or since 15 August 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:

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

(7-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 ;

(7-c) All political prisoners are released;

(7-d) Minorities in all parts of the State are accorded adequate protection ; and

(7-e) There is no victimization.

(8) The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems 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 13 August 1948. The Plebiscite Administrator will be fully associated in these consultations;

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

and

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

* UNCIP unanimously adopted this Resolution on 05-Jan-1949.

Members of the Commission:

- Argentina
- Belgium
- Columbia
- Czechoslovakia and
- U.S.A.

Appendix- III

Resolution 98, adopted by the Security Council at its 611th Meeting on 23 December, 1952. (Document No. 5/2883, dated the 24th December, 1952).

THE SECURITY COUNCIL,

Recalling its resolutions, 91(1951) of 30 March 1951, its decision of 30 April 1951 and its resolutions 96 (1951) of 10 November 1951,

Further Recalling the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August 1948, and 5 January 1949, which were accepted by the Governments of India and Pakistan and which provided that the question of the accession of the State of Jammu and Kashmir to India or

Pakistan would be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

Having received the third report, dated 22 April 1952, and the fourth report, dated 16 September 1952, of the United Nations Representative for India and Pakistan;

1. Endorses the general principles on which the United Nations Representative has sought to bring about agreement between the Governments of India and Pakistan;
2. Notes with gratification that the United Nations Representative has reported that the Governments of India and Pakistan have accepted all but two of the paragraphs of his twelve-point proposals;
3. Notes that agreement on a plan of demilitarisation of the State of Jammu and Kashmir has not been reached because the Governments of India and Pakistan have not agreed on the whole of paragraph 7 of the twelve-point proposals;
4. Urges the Governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations Representative for India and Pakistan in order to reach agreement on the specific number of forces to remain on each side of the cease-fire line at the end of the period of demilitarisation, this number to be between 3,000 and 6,000 armed forces remaining on the Pakistan side of the cease-fire line and between 12,000 and 18,000 armed forces remaining on the India side of the cease-line, as suggested by the United Nations Representative in his proposals of 16 July 1952, such specific numbers to be arrived at bearing in mind the principles or criteria contained in paragraph 7 of the United Nations Representative's proposal of 4 September 1952;
5. Records its gratitude to the United Nations Representative for India and Pakistan for the great efforts which he has made to achieve a settlement and requests him to continue to make his services available to the Governments of India and Pakistan to this end;
6. Requests the Governments of India and Pakistan to report to the Security Council not later than thirty days from the date of the adoption of this resolution;
7. Requests the United Nations Representative for India and Pakistan to keep the Security Council informed of any progress.

The Security Council voted on this Resolution on 23-12-52 with the following result:

In favour: Brazil, China, France, Greece, Netherlands, Turkey, U.K. and U.S.A.

Against: None

Abstaining: U.S.S.R.

One Member (Pakistan) did not participate in the voting



