

Report – Round Table

“Commemorating Kashmiris’ Right to Self-Determination Day”

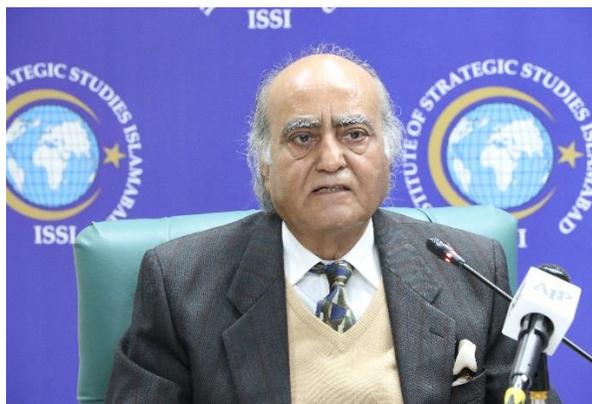
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PICTURES OF THE EVENT





To remind the world of the promise made to the Kashmiri people 73 years ago on January 5, 1949, the India Study Centre (ISC) at the Institute of Strategic Studies Islamabad (ISSI) organized a Round Table titled “**Commemorating Kashmiris’ Right to Self-Determination Day**” on January 05, 2022. The speaker’s panel included Ambassador Aizaz Ahmad Chaudhry, Director General ISSI; Ambassador Khalid Mahmood Chairman Board of Governors ISSI; Dr. Saif Malik, Director ISC; Dr. Waleed Rasool Sheikh, Director General at Institute of Multi-Track Dialogue, Development and Diplomatic Studies; Advocate Nasir Qadri, a Human Rights Lawyer from HIOJK and also the head of the Legal Forum for Kashmir (LFK); Ambassador (R) Riffat Masood; Barrister Needa Salam, a practicing lawyer in the Islamabad High Court; Dr Sameera Imran, Assistant Professor (IR) Department at National Defence University, Islamabad; Mrs. Midhat Shahzad, Secretary Tourism, Information and Information technology at Govt of Azad Jammu and Kashmir; Syed Faiz Naqshbandi, Convener of All-Parties Hurriyat Conference (APHC); and Professor Dr. Muhammad Khan from the Department of International Relations at International Islamic University, Islamabad.

In his introductory remarks, **Dr. Saif ur Rehman Malik, Director ISC**, said that ISC focuses on all events pertaining to Kashmir. On January 05, 1949, a promise of right to self-determination through a free and fair plebiscite was made to the Kashmiri people. That promise so far remains unfulfilled. Nations with conscience recognise the fact that any dispute pending since long has its own repercussions. ISC has organised this event to remind the world that the pledge made to the Kashmiri people needs to be implemented for the peace in the region and in the world.

In his welcome remarks, **Ambassador Aizaz Ahmad Chaudhary, Director General ISSI** said that there are number of dimensions of the Kashmir dispute. On legal dimension, 73 years ago the international community granted this right for self-determination to the Kashmiris to decide their destiny and this promise remains unfulfilled. Second is the humanitarian dimension where Kashmiris have been made to realise by India that they are under an occupation and a kind of colonial rule. Third is the political dimension where despite the resistance shown by the Kashmiris for over seventy years, the Indian leadership is unable to hear the clear voice that Kashmiris do not wish to live with India. January 5th is the reminder that Kashmiris must be granted their right to self-determination.

Dr. Waleed Rasool Sheikh, Director General at Institute of Multi-Track Dialogue, Development and Diplomatic Studies, said that there is no difference between western or eastern scholars while dealing with international laws for their own interest. On August 5, 2019, India re-annexed Kashmir which is one step further than occupation and has changed the basic narrative on Kashmir. He lamented the fact that international law is being used by the great powers for their own interest and India is no exception. He referred to the periods of unrest which led to mass movements in Kashmir and wondered what groundwork Pakistan has done to highlight the Kashmir issue internationally if such a situation arises again. He said that Pakistan needs to work with other nations to increase its support in international foras like the UN and United Nations Human Rights Commission.

Mr. Advocate Nasir Qadri, a Human Rights Lawyer from IIOJK and also the head of the Legal Forum for Kashmir (LFK) made a strong case that issue of Kashmir should be seen from the prism of an armed conflict. Both India and Pakistan are signatory to Geneva conventions and its additional protocols. He said that Pakistan as a party to the conflict has to legitimise the ongoing war in Kashmir. He warned that Pakistan is losing the ground and losing the case. Pakistan also has to recognize the Kashmir liberation movement, he added.

Ambassador (R) Riffat Masood, a seasoned former diplomat, stated that India likes to portray Kashmir issue as a bilateral issue between India and Pakistan which in reality is only one dimension of the conflict. More importantly, Kashmir is a global issue which has unfortunately melted down with time. It is actually time for retrospection for Pakistan and Kashmiris to identify what exactly is lacking. Kashmir is referred to as nuclear flash point and most militarized region of the world. But despite Pakistan raising all red flags, everything seems to be falling on deaf ears. She insisted that Pakistan need to focus more on the humanitarian dimension of the conflict. She also highlighted the fact that Pakistan needs to be economically strong to be taken seriously by the world community. She recommended that Pakistan should mobilize its very active diaspora as well as the youth to convey its concerns to the international community.

Barrister Needa Salam, a practicing lawyer in the Islamabad High Court in her speech condemned the grave human rights violations carried out by Indian Armed Forces in Kashmir calling them the worst crimes against humanity in modern time. The right to self-determination

is the basic norm of the democratic society and is the fundamental principle of international law. She pointed to the violation of Article 1 of the United Nations Charter which provides every individual with the right to self-determination. But unfortunately, this right is completely ignored and denied by the so-called largest democracy of the world. Ironically, despite the mentioning of the right to self-determination in the United Nations Security Council Resolutions, the people of Kashmir so far are not granted the right to self-determination.

She further reiterated that how India was responsible for breaching both the United Nations Resolutions on Kashmir as well as the sanctity of the bilateral agreements with Pakistan. India is exposed to the world by her nasty campaign against Pakistan for instance the EU DisinfoLab. Pakistan is a nuclear power that can tackle any misadventure. The only solution is dialogue; the world has experienced the solution of dialogue. Afghanistan is the biggest example after almost 19 years of war the Doha negotiation emerged.

Needa Salam warned that India is giving more births to Wanis in Kashmir. She said that her considered opinion is that the Movement of the People of Jammu Kashmir will lead to the disintegration of India because India has much internal turmoil in various parts of the country. Paying tribute to the sacrifices of the Kashmiris, she called for the world to take immediate action against the fascist policies of the Modi government with regards to Kashmir and the treatment of minorities.

Dr. Sameera Imran, Assistant Professor (IR) Department at National Defence University, Islamabad, in her talk analysed the Kashmir issue in the philosophical context by saying that the idea of self-determination is an integral component of the idea of freedom. The idea of freedom is only based on consent. Born free and equality are two fundamental notions of freedom. Self-determination is linked with the idea of freedom. The Indian occupation of Kashmir is violating human rights. She further added that Pakistan has historical, philosophical as well as contextual reasons for supporting the Kashmir cause. Pakistan support of Kashmir is based on historical reasons and the continuation of resistance shows the resilience of Kashmiris, rejecting the Indian occupation. Resistance is very important, and it gives us a ray of hope for the future, she added.

Modi's government has threatened the Indian democracy. It needs to be seen that how India is playing a double game with the world by showing the Daesh presence in India and connecting its

presence with anti-Muslim sentiments in Kashmir. The Universal Declaration of Human Rights declaration provides the idea of self-determination. There are philosophical, universal ethical standards that bind us together, providing us with the commonality of interest as well as raising the consciousness of the West, she concluded.

Mrs. Midhat Shahzad, Secretary Tourism, Information and Information technology at Govt of Azad Jammu and Kashmir in her talk focused on the plebiscite issue in the context of the Self -Determination Day. She discussed that India took the case of Kashmir to the UN on 1st July 1948 under article 35 of Chapter 6 of the UN charter which deals with the pacific settlements of disputes giving the fact that the Kashmir issue is very much alive in the cards of the United Nations which is also evident from more than 23 exclusive resolutions adopted in the UN over time. She stated that the strong acknowledgement of the Kashmir dispute by the UN is a legal strength for Pakistan which it must utilize to raise the issue on the international level.

She further turned down the Indian claims of bilateralism under Shimla Agreement by maintaining that the very first article of the Shimla Agreement in itself states that it is under the auspices of the United Nations Charter. The importance of mobilizing the Kashmiri/Pakistani diaspora for a better representation of the Kashmir issue and pressed on the need that the diaspora must be educated on legal grounds which is the true strength of Pakistan on the Kashmir cause, she added.

She further stated that under the umbrella of the UN charter, there are other ways available for settling a dispute if peaceful means do not produce conclusive results. Kashmir issue must always remain alive as an inseparable part of Pakistan's foreign policy and Pakistan must continue the advocacy of the rights of the Kashmiris as long as they are not given their basic right to self-determination, she concluded.

Syed Faiz Naqshbandi, Convener of All-Parties Hurriyat Conference (APHC) appreciated Dr. Saif Malik Director ISC, and Ambassador Khalid Mahmood Chairman Board of Governors ISSI for hosting the event. Mr. Naqshbandi argued that across the globe Kashmiris are observing this day as a day of right of self-determination and this day reminds the international community of their responsibilities towards the UN Resolutions and the implementation of UN Resolutions. He did put some light on the legal aspects of the UN resolutions on Jammu and Kashmir and

their continued validity. India has been misleading the world by saying that the UN resolutions are old, more than 72 years, therefore, infructuous, invalid, and not enforceable – this is not the situation. The UN Resolutions on Jammu and Kashmir are valid and enforceable. The beauty of our resolutions, the resolutions of August 13, 1948, and of January 5, 1949, were agreed upon by India and Pakistan making these resolutions as international agreements of binding force. Also, the United Nations Military Observer Group is based in Indian occupied Kashmir as well as in Azad Kashmir. Kashmiris are struggling for the implementation of the UN resolutions and the Indian argument that these are old resolutions cannot stop its continued validity.

Mr. Naqshbandi said that in only three situations the UN Resolutions can become invalid. The number one situation when United Nations pass a resolution cancelling the old one, this has not happened in our case. The second situation, if the parties to the dispute say that we have resolved the issue and we don't need now the resolution, and this too has not happened in our case. The third situation is when there is mention of time for implementation; fortunately, time has not mentioned in our resolutions. Therefore, our resolutions are valid and enforceable. If I will refer to the Article 6 of the UN Charter if a member state persistently violates the UN resolutions her membership in the United nation can be cancelled by the General Assembly on the recommendation of Security Council.

The UN Resolutions on Jammu and Kashmir has been passed in the light of UN Charter under Article 34 of the United Nations. Therefore, now the matter is who will do it? The law is in our favour. Membership can be cancelled for non-implementation of the UN Resolutions in light of the Article 6. Despite of all these things, Kashmir issue has two important dimensions. One is human rights violations, and another is this the right of self-determination, the political aspect of this dispute. The human rights violations, as Barrister Needa said “India is involved in war crimes, crimes against humanity which attracts the Rome Statute of criminal justice as well as United Nations Security council can take cognizance of this situation.” Laws have been framed by the Indian Government that facilitates human rights violations. Even shoot to kill has been granted to the Indian Armed Forces, they can shoot to kill anyone had discretion, which is a complete violation of the Article 6 of the ICC the International Covenant on Civil and Political Rights that gives that everyone has a right to life no one can be deprived of this right even if there is an emergency or war. Let me conclude, despite of Indian repression the people of the

Indian Illegally Occupied Jammu and Kashmir will continue their struggle for implementation of the UN Resolutions.

Professor Dr Muhammad Khan from the Department of International Relations at International Islamic University, Islamabad, argued that Kashmir is very dear and near to every Pakistani and every Kashmiri. The spirit behind this entire process is that the Kashmiris are the Pakistanis, and the Pakistanis are the Kashmiris. Dr. Khan quoted former President of Pakistan General Pervez Musharraf that Kashmiris blood runs in the veins of Pakistanis, and the Pakistanis blood runs into the veins of Pakistanis. He said that Pakistan and Kashmir share the same blood and the basis of this common blood, Pakistan continues to make all efforts that Kashmiris get their right to self-determination. Dr. Khan covered the issue of self-determination from academic perspective and raised the very important question that why nations go to war? Dr. Khan argued that there are two aspects for any nation going to war. The first aspect is realism and its associated concepts of power politics and the struggle for power. The second aspect is to expand the power. But in the case of Kashmir, there is something else which was formally agreed in October 1945 in the form of United Nation Charter. The UN Charter was different from the League of Nations and the Congress of Vienna in 1815. It was completely different as the right of self-determination made all the difference. The reason for self-determination was the aftermath of the Second World War where the war-torn nations of Africa and Asia aspired for self-determination to prevent the Third World War.

Dr. Khan said that unlike the people of Africa and Asia, the people of Jammu and Kashmir waited and waited for the implementation of UN Resolutions and their right of self-determination. Earlier, the UN Resolution of August 13, 1948, had a few bugs and it was unanimously adopted resolution by the UNCIP. Later, this resolution was reiterated by two United Nations Security Council Resolutions; one was Resolution No. 91 which was passed in 1951. And the other Resolution No. 122 which was passed in 1952. Dr. Khan stressed that UNCIP Resolutions may not be forceful, but the two UNSC Resolutions are supportive and have more enforcing value. The Indian Prime Minister Nehru first agreed with, but unfortunately later, his main objective was to linger on this issue so that with the passage of time it should die down and whatever today or at that time it was a ceasefire line, that should continue to get into the line of control or what is international border. But I would like to salute to the Kashmiris today who

continued to sacrifice their lives and they did not let that happen. The Kashmiris have revived this entire process with their second generation in 1990s and now the Kashmiri youth are looking forward with the clear aim of continuing their struggle with or without the support of any foreign actor. However, the Kashmiri blood is still being shed by the occupying Indian Forces in all parts of IIOJK.

Dr. Khan argued three main concerns regarding Kashmir. First, the UNCIP and UNSC Resolutions are still valid, and he mentioned the UN Resolution passed in 1952 which said that India could deploy 24,000 and Pakistan could deploy 9,000 to 12,000 troops in their respective Kashmir. This particular resolution was enough for the self-determination of Kashmiri people, but India decided to linger on the issue till this day. Second, the world is witnessing a genocide in Kashmir, a strategy formulated by Indian General Bipin Rawat. The strategy called for killing every Kashmiri that wanted the right of self-determination and destroy or burn any house which has a Pakistani flag. Also, using fake encounters to eliminate the youth and using rape as an instrument of suppression. Almost 13,000 Kashmiri women are reportedly gang-raped by the occupying Indian Forces. Third, there exists almost no house or family in IIOJK that hasn't lost a single or multiple members to the Indian oppression. These brutal actions have been accelerated after the illegal annexation of Jammu and Kashmir on August 5, 2019.

Dr. Khan said that today, Pakistan stands at a very high pedestal and India is at a very low position regarding the Kashmir dispute. Pakistan must go back to the United Nations Security Council, Human Rights Council, ICC, ICJ, and take up the case of Kashmir. No power on earth could separate Pakistan from Kashmir and Kashmir from Pakistan, Dr. Khan concluded.

Ambassador Khalid Mahmood Chairman Board of Governors, Institute of Strategic Studies Islamabad, said that today we are commemorating Kashmiris Right to Self-Determination Day. Naturally, we have to think of the origin of this issue, and how over the last more than 73 years the people of Kashmir are still struggling to realise their right to self-determination which was given according to them by the UN Resolutions and UN Security Council Resolutions. Factually, these resolutions which were accepted by India, Pakistan, and the rest of the international community. We are all aware of the background of the case at the time of the partition of India more than 565 princely states and the basis for partition was that

areas which are mostly Muslim majority should become Pakistan and the rest remain India. However, in a duplicitous way applied this principle in the case of all the states were given this right to opt for accede to Pakistan or India except three states; i) Hyderabad, ii) Junagadh, and iii) Jammu and Kashmir. Subsequently, India occupied Hyderabad and Junagadh on the basis that the majority of the population comprised of non-Muslims and absorbed both. However, contrary to the same logic, Indian tried to absorb Jammu and Kashmir where majority of the population comprised of Muslims. Indian leadership falsely argued that the rule of Jammu and Kashmir wanted to accede to India. So, in hindsight, it was a classic case of “running with the hare and hunting with the hound.”

Amb. Mahmood appreciated the learned speakers and said that many points have been covered about the political, humanitarian, legal, and philosophical aspects of this issue. But, at the cost of repetition I will just highlight a few of them. India maintains that it is an internal issue, but it is repudiated by facts. Kashmir dispute still remains on the agenda of the UN Security Council. There have been more than 28 UN Security Council resolutions on this subject and as late as 2021, three times Security Council has taken notice of this dispute. Off course, it did not take any action, but very fact that they are considering, it means not an internal issue of India. Then UNMOGIP is telling example of the fact that this is a place which is still disputed and then India sometimes maintains it is a bilateral issue between Pakistan and India, in the context of Shimla Agreement. The latter said that the relations between India and Pakistan will be governed by the purposes and principles of the UN Charter. And secondly, even the same agreement itself says that durable peace in the sub-continent cannot be achieved without settlement of Kashmir dispute and it also says that this agreement is without prejudice to the recognised position of both India and Pakistan. And in any case, the Article 103 of the UN Charter says that if there is a bilateral agreement and the UN charter, it is the UN Charter which will prevail.

Amb. Mahmood said that so, these are just lame arguments and excuses which India raises. But, I think more important for today's meeting is this right to self-determination. I think all the speakers have dilated upon this very important subject from various angles, yes, it is recognised in the UN Charter Article 1, it is recognised in the Universal Declaration of Human Rights, it is recognised in the International Covenant on Civil and Political Rights, it is recognised in the Declaration on Decolonization and so on.

Amb. Mahmood emphasised that even if there were no resolutions specific to Kashmir, even if there were no such resolutions, even then the people of Kashmir under this general body of International Law they will have the right to self-determination. Now, this right has been recognised and given to Southern Sudan, East-Timor, Kosovo, Montenegro, and Eritrea, but why not the people of Kashmir? Amb. Mahmood said that another issue which India raises that this is an act of terrorism – this is quite frustrating. It is to be remembered here that the UN recognises that the right to self-determination is an inherent right and it cannot be equated to terrorism. Unfortunately, since 9/11 India has abused the international atmosphere to duck the Kashmiri struggle as sometimes terrorism, while the fact is that the UN has never equated the struggle of Kashmiri people with terrorism. Amb. Mahmood said that I think more pressing issue at this moment is the human rights situation in Kashmir because the overall issue of course remains important, and we should work for it and the people of Kashmir are struggling for to realise their right to self-determination. But now the pressing issue is the massive violations of human rights taking place day and night in Indian occupied Kashmir. So much so that UN High Commissioner for Human Rights has given two successive reports depicting what is the state of affairs there and rightly it is said this the most militarised region, it is an open prison, there is as if pandemic of blind eyes has spread in Kashmir because of the indiscriminate use of pellet guns. So, human rights situation is really frightening, and this is the night case I think to be taken cognizance of International Criminal Court because this genocide alert, the organisation already has sounded alarm that the situation is approaching proportion of a genocide.

Amb. Mahmood said that so many important recommendations have been made by the distinguished speakers. I think rightly said that this is a situation which now qualifies to be called an armed conflict and the relevant international laws which are applicable to situations of armed conflict are or should be applicable to the situation in Kashmir. And we should build on the momentum which has been created by these two reports by the UN High Commission for Human Rights and we should examine of taking this issue to the International Criminal Court and also maybe to seek advisory opinion of the international Court of Justice. I think we should focus also on trying to persuade the UN Secretary General to be more active, of course the present one has said that the UN Resolutions are still valid and applicable. So, he should appoint some special representative to follow this situation in Indian occupied Kashmir. The Secretary General appoints for Rohingyas, for Palestine and why not for the situation in Kashmir, he

added. Amb. Mahmood also stressed to keep the international community informed of this very dire situation in occupied Kashmir to keep on sensitising them because it is only through this accumulative pressure that you can ensure that the countries/international community particularly the big powers will act as is expected of them.

Amb. Mahmood said that I would like to conclude my remarks by just recalling what Dr. Martin Luther King said that “the ultimate tragedy is not the repression and cruelty by the bad people, but the silence over that by the good people.” So, I think the international community has to wake up and address this situation in Indian occupied Kashmir with all the seriousness which it demands, he concluded.