

PART III: VACATE THE AGGRESSION

3 May 1962¹

Yesterday afternoon, when Sir Muhammad Zafrulla Khan opened his observations, he referred to the time-table of these meetings. We have nothing in the way of complaint to make, but it is my duty – and a compelling one – to make the position of myself and of the Government of India clear in this matter.

We are met here at the request of the Government of Pakistan. We have taken no initiative in calling this meeting. The request was made some time ago and a considerable amount of negotiation or exchange of opinions with various people took place, and ultimately this date was decided upon. I regret I was not here at the opening of the session when Sir Muhammad was speaking, and I convey to him that it was not by way of discourtesy, but because my commitments in my own country do not permit me to leave there for more than a few days. Therefore I am in the position that I have to return tomorrow evening. But so far as we are concerned, we shall try to finish our observations this afternoon in reply to Sir Muhammad's statement and in regard to the newer facts which have not been adduced in his speech but which are taking place in India currently in connection with this problem. We are prepared to sit all hours of the day and night, if necessary, but so far as my delegation is concerned it will be impossible for us to participate in this after tomorrow. This is in no way a discourtesy to the Council, because the meeting was fixed for a particular day, and it is assumed that when Governments are represented from such long distances, those proceedings will be continuous, for none of us can forsake his duties at home in order to participate in proceedings over here. My Government is anxious to assist the Council, to assist itself and indeed the Government of Pakistan, to have a view of this problem as it is.

Now, having said this, I proceed to the subject-matter.

Nothing New Communicated by Pakistan

We are met here as a result of a letter dated 11 January 1962, sent by the Permanent Representative of Pakistan to the President of the Security Council in which it is pointed out that the way to a "just and amicable settlement of the dispute, have failed to open a way towards such settlement." I suppose this means that the Pakistan Government has come to the conclusion that there was nothing to be gained by what they called "direct negotiations." If by negotiations you mean exchange of views, the Government of India is always open to this. But we

¹ Reply to the speech by the Foreign Minister of Pakistan, following the request by Pakistan (S/5058) for consideration of the situation in Kashmir by the Security Council. *Official Records of the United Nations Security Council*, Seventeenth Year, 1009th meeting, pages 2-70.

have from 1949 onwards said that there cannot be negotiations on the substance of sovereignty.

But their letter would indicate that the Pakistan Government had come to the conclusion that there was no use then taking any other step except coming to the Security Council once again, and this is reinforced by the fact that my Government, my Prime Minister, invited the President of Pakistan to come to Delhi. While these exchanges were going on, the Security Council meeting was asked for and precipitated. Naturally my Prime Minister replied to say that we cannot have this argued in two places: either you talk to us or you talk to the Security Council.

These passages here indicate to those people of goodwill who are constantly talking to us outside about bilateral and trilateral negotiations and so on, that the Pakistan Government has in the initial stage ruled that out. Then comes the second part of the letter, which states:

“Recent pronouncements by responsible personalities in India have emphasised that the situation is charged with the utmost gravity.” (S/5058)

If there is gravity in the situation the charging has been done by the Government of Pakistan, not by us. The very fact that the Council was called and is still going on in this lackadaisical manner and that there has been no great urgency is an indication that there is no grave urgency or crisis in relation to this. We repeatedly informed this Council – and you, Mr President, are familiar with this problem intimately – that we will take no initiative in the way of the use of force or of altering the situation in such a way as to disturb the peace of our continent or of the world. There has always been the commitment made by the Government of India that however correct their position may be legally, morally, politically and Charter-wise, we were not prepared to alter that, even in the interest of justice, by the use of force. That is still our position.

Then the letter goes on to say that the Defence Minister of India said, “ we have not abjured violence in regard to any country who violates our interests.” This is not a very correct quotation, but I do not want to quarrel with words. This statement was made to the Fourth Committee of the General Assembly in regard to our position on colonialism, that is to say, if any part of our country was aggressed upon, then there was a general feeling here that – the American newspapers call it the “image of India” but we did not create that – we would in no circumstances use force. This is not a sensible view to take because India has an army, an air force and a navy, maintained at considerable cost to the taxpayer and perhaps to a certain extent through the retardation of our economic development - but only to a limited extent. Therefore, as a State we are not a pacifist State. And if we spoke truthfully, that is not a crime. When we said that we have not abjured the use of violence, that means that we have troubles on our frontiers of India. Pakistan itself knows that when it has probed our frontiers more

than our patience would bear, we have tried to teach them salutary lessons now and then. But that is what it means.

The letter goes on to say that the statements made by us constitute “a grave threat to the maintenance of peace in that region.” No country, either in the world or in our region, has contributed more to the lowering of tensions and the maintenance of peace in Southeast Asia, and even those who are not politically in full agreement with us would be willing to admit it at least in private. The letter continues and states that the Pakistan Government “feels that the Security Council should be made cognisant of the situation at the earliest opportunity.”

I have been at great pains, although I was not here on the first day, to read every line of what Sir Muhammad Zafrulla said, and also to listen to the speech he made as far as it could be heard yesterday and read it over overnight. I have not seen in these statements that anything new has been communicated to the Council or that any proposals for a speedy settlement of the dispute on the principles of the Charter or in regard to the history of this matter have been put forward. It would be easy for me simply to have an index of the previous statement made before the Council in 1957 and circulate it, which I have done informally, in the way of placing before the Council members the key to the text of the Security Council proceedings on the statements submitted by the Government of India because, having gone through several pages, it would not be fair to expect that those who are not intimately connected with the problem will be very familiar with every aspect of it. While we have no desire to introduce this as a Security Council document, we should like it to be made available for the information of the Council so that it will enable me to abbreviate the statements I am making. It is not necessary to read all the quotations, all the statements, and one could skip over a certain number of things.

Threat by Pakistan

What has happened? One further fact. We meet, and I hope no one will discount this, and proposals are being made; we meet in the shadow of a threat made by the representative of Pakistan in this Council. Here is what he said:

“If the Security Council does not want the elements in the State who started the liberation battle to start it again, if the Security Council does not desire that the tribesmen should get out of hand and pour into Kashmir again, if the Security Council does not desire that the people of Pakistan should get out of hand and – if I may mix the metaphor – take the bit between their teeth and run away with the whole system of ordered Government, and if the Security Council does not desire that powerful neighbouring States should plunge into the vortex” – the vortex of war, I suppose he means – “when it starts again, the Security Council had better take note of the realities of the situation.” (S/PV.1007, page 53)

It is not for me to comment on it in so far as it is addressed to us. My Prime Minister has replied yesterday by saying that this argument by threats is not going to have the slightest effect on any decisions we are going to take, and no one knows it better than the Government of Pakistan.

Then it has been said that we have made certain offers in regard to this. At various times we have suggested ways and means by which tensions could be lowered. We have at various times made suggestions on this problem as it is called - although Kashmir is not a problem but an integral part of India, and you do not call your country a problem - and the other day the Prime Minister had said that we could negotiate even without any previous changes being made before hand, and that has been taken as though it were an offer of some kind.

The Prime Minister said the other day that various suggestions had been made in the course of the previous few years about the solution of the problem, and among them was one that the basis of talks should be the existing position so as to have some reality about the talks. What Pakistan had been doing was something unrelated to the present position. He said: "Since the President of Pakistan has rejected that basis the question does not arise of raising it again."

Therefore, just because someone makes sometimes a reasonable proposition or suggests a way of meeting somewhere, which is rejected so that nothing happens, you do not start from there again. Otherwise it would not be possible to think aloud, so to say.

This really means that when we left the Security Council in 1957 we left it in the position that what was to happen was that Pakistan must vacate its aggression. We have two aggressors in Jammu and Kashmir - Pakistan and China. Some of you may have different feelings about the two countries, but as far as their position in Jammu and Kashmir is concerned they are identical. And, as I shall show later on, they are not only identical but they seem sometimes to play with each other in order to embarrass us.

Therefore, what we said in 1957 was that the aggression must be vacated. Aggression has been established by the United Nations Commission on India and Pakistan; aggression is a fact which can be noticed any day; aggression is proved by the fact, again, that Pakistan has illegally annexed this territory under the terms of its Constitution; aggression is also established by the fact that there has been considerable augmentation of troops - without the knowledge of the Security Council in the first instance and afterwards, not with its connivance, but within the purview of its knowledge of what has been taking place in Pakistan. That is by way of introduction. Now I proceed to deal with this matter.

As I said a while ago, there is nothing new in these statements. They are reiterations of what we would call misstatements, or statements with paragraphs taken out of their contexts, and so on. Thus I think you, Mr President, as an old

member of the Council, will perhaps turn round and say, "Then why waste time? Cannot we go on?" Unfortunately, it so happens that the Security Council has new members, and, what is more, you have permitted these statements to be made – or, rather, these statements have been made – and they have to be met in part. As I said just now we shall try as far as possible to avoid repetition, especially because, in the course of Sir Muhammad's six hours of speaking, there has been no proof of any threats. There has been no proof of anything whatsoever except the threat made by the representative of Pakistan himself, and if there are any changes in the conditions that exist they will be the changes to which I shall draw attention in the latter part of my observations – changes which will be substantiated by the facts as they exist today.

In the course of the statement made by the representative of Pakistan very little, if any, reference has been made to the proceedings before the Security Council since 1953 or thereabouts. That is to say, the more recent proceedings have been totally ignored. The Government of India has no right to expect that another country will either ignore or take cognisance of this, that or the other, but the fact does remain that in 1957, in the two long sittings which we had, the Government of India had put forward its position, correcting large numbers of misstatements that had cropped up, and that when Mr Jarring came back from India and Pakistan the main part of his report was concerned with drawing the attention of the Security Council to the fact that conditions had changed not only in relation to India and Pakistan but in relation to the political and power relations in Southeast Asia itself. Therefore, whatever UNCIP might have said with regard to the implementation of the first part in the early half of 1949, those conditions had long ceased to exist because that was written when the Security Council was not being taken into confidence by the Government of Pakistan in relation to aggression or in relation to the participation of Pakistan armed forces or other matters which the Commission discovered afterwards.

So we regret that no notice had been taken of those matters because perhaps, if it had been taken, Sir Muhammad – with his very considerable experience of the judiciary in India and afterwards of political affairs, and more recently of the highest judicial tribunal in the world, the International Court of justice – would have been more objectively minded. As I have said, no threats of this kind have been proved.

Pakistan Opposed National Movement in Kashmir

In this statement there is a reference to a liberation movement which will start all over again, and that liberation movement comes into play in the remainder of this speech also. The plane on which I propose to submit my observations is largely to deal with any new points – if I can find any – in this statement, to give the Council such brief answers as are possible to the repetition of the allegations and arguments of previous times, to give the cross references in the more elaborate statement made in 1957, which is part of the proceedings of the Council, and to

refer to what we call the changed conditions and the concepts that obtain in the continent, the new perspective that exists today on the roof of India in the Himalayan region with the intrusion of China into our territory, and also deal with the findings on behalf of the Security Council itself in the Jarring report.

Coming to the text of this statement, if one may so call it, the thesis seems to be that there was a liberation movement in Kashmir. That liberation movement was sought to be suppressed by the Maharaja, and those who went in afterwards in the form of raiders, and ultimately the Pakistan Army, were those who were supporting that liberation movement. Particularly with the large number of States here who have either achieved their liberty through liberation processes or who are interested, as we are all interested in our capacity of members of the United Nations, in national freedom, this is a word with which much play can be made. It is quite true that there was a liberation movement in Kashmir. Neither Pakistan nor its predecessor, the Muslim League in India, had anything to do with it. What is more, they were opposed to it. And I shall quote from Mr Jinnah to show that he was opposed to it at that time. This liberation movement, this nationalist movement, really started as a Muslim movement and afterwards became a nationalist movement. That nationalist movement tried to bring an end to the feudal regime inside Kashmir before Indian independence. It sought no assistance from the tribesmen or Pakistan, or even from the rest of India, except in the way of general political affiliations.

Therefore, when we speak about the liberation movement in Kashmir, to us it means one thing. I do not know what it means to Sir Muhammad, but from the way it is presented it apparently must mean something else. The liberation movement in Kashmir was the “Quit Kashmir” movement and was parallel to the “Quit India movement” in the rest of India itself. When Gandhi started the “Quit India movement” on 8 August 1942 that was notice to the Empire to go – that is to say, direct action against all the works of the Empire, as such, and large-scale resistance.

A parallel movement grew up in Kashmir called the “Quit Kashmir” movement, meaning thereby the removal of the empire from Kashmir. It was not particularly aimed at the institutional monarch or principedom but was part of a national liberation in India. This was opposed by the Muslim League, which was the precursor of Pakistan.

It is difficult for some of you gentlemen, without a background and knowledge of Indian development, to understand this.

Then, the next argument is that this liberation movement was sought to be suppressed by the Maharaja under whom, according to the London *Times*, which is always very accurate in counting people, 237,000 people – not 236,000 but 237,000 people – were killed in Kashmir. That is neither historical nor factual. In the Second World War only 400,000 were killed. But this fantastic report was put

out. There was no such mass killing or anything of that character. It is quite true that the Maharaja was not in favour of the national movement; which Maharaja is? The British Maharaja was not in favour of the national movement. So the British Maharaja put all our people in prison.

But the British have a habit – my friend, Mr Boland, who is opposite here, can tell you – that the prisoners of today are the friends of tomorrow. They negotiate with them and what is more, even when they are in prison, it is conveniently arranged for them to get together for consultations and things of that kind. All Maharajas put people in prison in that way. And this “Quit Kashmir” movement which was a real nationalist movement and had nothing to do with Pakistan or tribal holdings in the country, was put down.

Kashmir Was Always Part of India

Having said that, I would like to draw the attention of the Council to a very small account of the history of Kashmir. When I say history, nobody need be alarmed. I am not going to bring out books. But all these things are part of the background. This is not a case of a no-man’s-land somewhere, some country which one of these great Powers have found somewhere and put up a flag or something of that kind and this no-man’s-land is being snatched at by two people. That is not the position. Kashmir had always been part of India, whether under what in Europe would be called prehistoric days or later on. Kashmir has a long history since the foundation of its capital, Srinagar. Srinagar was founded by Emperor Asoka in the third century BC, that is to say, it was part of the Buddhist hegemony at that time. There were many kings, Hindus, Buddhists, Muslims, Sikhs and Afghans but always it was a part of the mainland of India. After Asoka’s empire dwindled away, in the valley of Kashmir, which was part of the Kushan Empire of the first century BC, a Buddhist council was held in Srinagar. King Harsha, in the years 1089 to 1101, had a lord of the gate appointed to look after Kashmir. That was a sort of Viceroy. Kashmir was one of the provinces of the empire of the great Moguls afterwards.

During the decline of the Mogul Empire, Kashmir and Gilgit, which was part of the Maharaja’s suzerainty and which has now been absorbed by Pakistan illegally, came under the rule of the Sikh ruler Ranjit Singh, who was then fighting the Muslims, while Jammu and Ladakh and Baltistan were ruled by Gulab Singh whose name you have heard and whom Sir Muhammad conveniently interchanged with Sir Hari Singh on many occasions.

In 1846, as a result of the Anglo-Sikh War, Kashmir and Gilgit were ceded to the British who, in turn, granted it to Gulab Singh for a consideration. That is where modern Kashmir begins. By the Treaty of Lahore these places went to the British, the British transferred them to Gulab Singh and the hegemony of Kashmir and all those territories under the suzerainty of the Maharaja begin from that time. Gulab Singh entered into a treaty with the British, acknowledging the supremacy of the

British Government and thus subjecting this sovereignty to the suzerainty or paramountcy of the Crown.

The authority of the paramount power of the States extended *inter alia* to a field of defence, in external affairs and, in certain aspects, in internal affairs. That is to say, none of these princely States was independent in the international sense. There were a few territories under the British Crown which exercised this authority, not by the power of the United Kingdom or by the power of Britain, but by the fact that Britain was the ruling authority in what was then called British India.

However, the rights and obligations of the paramount power were not created or sustained by treaties alone. They existed independently of such treaties, overriding them to great extent. I want to make this point because the matter has been raised time and again that when the British went away, they said, "Our obligations to the Prince are over." They could not do anything else because they could not carry out these obligations. This was so because while those obligations rested in the British Crown, the strength for carrying out those obligations came by the fact of the Government of India.

In other words, paramountcy has two aspects. Paramountcy has a kind of national aspect in the same way as the leadership of a State rests in the Crown. I do not know whether Sir Patrick Dean will agree with this or not, but the British Crown today is a many-headed one. The Crown of South Africa is not the same as the Crown of Australia; we have no Crown at the moment so we will not go into that. But the British Crown is not a monolithic Crown. In the Kingdom of Canada or the Queenland of Canada, they are all different heads of independent States. The British Crown, it is quite true, in the person of the monarch, entered into friendly treaties with the princes of the time. That is what they were called. But actually they were either conquered or whatever it may have been – I will not analyse it. But the British Crown could not function in relation to a prince in India except by means of the revenues or the armies or the administration of India, functioning through the Political Department.

And so, what happened? When the British left, the Crown remained for one more year. India being a dominion, its King was the King of India but the Crown decided, under advice into the history of which we will not go, to tell the princes, "We cannot protect you anymore. You cannot exercise any rights." This is very important, because the reference is only to rights. What the Crown said at that time was that the State cannot exercise any more rights against the British Crown. Nothing was said about the obligations of the States. They could not exercise any rights against the British Crown because the British Crown was in a difficult position because if, after the British left, one of these States had gotten into a conflict either in Pakistan or India, they would have been involved. For that reason, they kept out.

Under the orders of the Government of India Act, to which India and Pakistan are equal partners, being part of the British Parliament, the India of today is a succession State to Britain. Pakistan is not. It is a State carved out of parts of India that did not want to remain with the rest by agreement. It is a new State, admitted to the United Nations as a new State. We were not admitted as a new State; we were here. We have taken on all the obligations, the assets and the liabilities of the British Government. We have a succession State, whether it be as a result of the Japanese Treaty or anything else. We were a succession State and as such, inherited the functions of paramountcy. That is to say, irrespective of the absence of the Crown, those things that were done by British India at that time had to be done by others as well. But the Treaty certainly was between the Prince and the Crown.

The British Government succeeded to the paramount power over India, which was possessed *de jure* and *de facto* by the Mogul Emperor and acquired *de facto* by the East India Company and finally assumed by the East India Company *de jure* by the disappearance of the Emperor. The Crown was now in India what the Emperor had been, a completely sovereign power, predominant over all others and claiming allegiance.

The tone adopted by Canning is explicable only by the realisation that the Crown had succeeded to the whole authority of the Empire in so far as it chose to exert it, and the Crown unlike the Emperor, had means fully adequate to make active use of its powers. The Crown at that time had means fully adequate, but once they lost British India, that is once they ceased to be a Government in India – the same person was Governor-General and Viceroy, once he was merely the Governor-General, not the Viceroy – the Viceroy had no implementary powers in the matter.

It is thus an established fact that the British Crown itself did not acquire paramountcy rights – this is the point I want to make – by an express grant, cession or transfer. In this context a declaration issued by the Crown terminating its relationship with the States could determine only the Crown's own future relationship with the States. It could not have the effect of divesting the successor Government of its status *vis-à-vis* the States and its rights and obligations in relation to them inhering in the supreme power in India.

I say all this not in order to raise a legal problem. But, the way things are spoken about, as I said, it would look as though this is some island in some unknown sea and that we are both quarrelling about it. We are dealing with an integral part of India, historically – not in ancient times but in the continuance of the transfer of power – one of those things, which it is very difficult for those who have not been acquainted with the British system of government to appreciate and understand.

With the coming into force of the Indian Independence Act on 15 August 1947, the suzerainty of His Majesty over the Indian States lapsed. We admit that. But

the fundamentals on which it rested – the suzerainty is nothing unless exercised – but the fundamentals on which it rested remained. The essential difference in the security requirements of the country and the compulsions of geography did not cease to be operative with the end of British rule in India. If anything, in the context of world events, they become more imperative. The Central Government of India, which succeeded the British, was unquestionably the paramount power in India. And here if I may interpolate, if we abdicated or resigned from this position, both we and Britain would be in a difficult way, because we took over a considerable amount of liabilities in the same way as we took over the assets. Unquestionably the paramount power in India, both *de facto* and *de jure* – the Government alone was the only competent independent sovereign in India, that is, the *de facto* sovereign Government of British India.

There was a special responsibility of this Government to protect all the territories in India from external aggression. The withdrawal of the Crown makes no difference. That is why the Maharaja of Kashmir appealed to the Viceroy, to the Governor-General, because it is the duty of the British Government to go to their protection from external aggression. It was not the Viceroy's business to go there to protect his subjects against a feudal ruler. And that was why there was no interference in British India in regard to the Quit Kashmir movement. But when foreign invaders came in, and when information was received by the Maharaja in that way, on the one hand he protested to Pakistan, and on the other hand he appealed to the Prime Minister of Britain, and it was the duty of the Government of India therefore to protect all territories in India from external aggression and to preserve peace and good order throughout the country. I will not elaborate this matter. There it is.

That is the background of this question. I think it was the representative of Pakistan himself who referred yesterday to the fact that India is always insisting that the position of Pakistan and India are not the same in relation to Kashmir. That is true in more than one respect. It is true in the respect that Pakistan has no *locus standi* there. And it is true in another respect: the armies of the Union of India are in Kashmir because Kashmir is part of the Union. The armies of Pakistan are in India because they are a conquering, an aggressor, army. And therefore our position is that we will not be treated like two peas in a pod in this matter. And there can be no question of any intervention, any good offices or anything. And I say this with all the responsibility that rests on me as a member of the Government of India. We will never consider this question on the basis of equality of Pakistan and India – a fact which has been recognised by the United Nations Commission for India and Pakistan times without number. Even with regard to the stillborn plebiscite administratorship, there was no question of Pakistan having anything to do with this matter.

Accession of Kashmir Was Full and Final

Then, the next lot of things that have been dealt with is the question of accession. The President is aware – he was at that meeting – that I dealt with this matter at great length on the last occasion, and in the proceedings of the Security Council there are references to the law and the facts in relation to it.

Accession of Indian States to India is not anything that even started with independence. It was provided for by the British Parliament as early as 1935, when the dawn of independence became known to the practical British people and they did not want to leave India with congeries of States warring one against another, whatever their differences with us might have been. The wiser among the statesmen in England, and Parliament as a whole, recognised that the unity of India was necessary both for the Indian people and for the world. And therefore, as early as 1935, twelve years before our independence, the British Parliament provided in the 1935 Act for these States to come into some sort of Union. And so the idea of accession and the whole machinery, the whole mechanism, the architecture of accession, was provided in the 1935 Act. And that remained unchanged. It is not as though for the purpose of Kashmir, or because the British were going away, or because paramountcy lapsed, a new machinery was provided. The accession machinery is provided for in the Act of Parliament.

Afterward, when the British left India, the position in regard to what were then called the Indian States – all 561 of them, not one or two but 561, all “sovereign and independent” but none with either an international status or a capacity to defend themselves or a capacity to maintain their communications, or anything of that kind – no sovereignty in function or in practice, but sovereignty in the sense that there was a prince, there were guns fired when he went out – all that sort of things, yes.

So the accession question, on the one hand, is an old question. It assumed a new complexion when the British withdrew from India, from undivided India – and, in the course of 1946, 1947 and 1948, many changes took place. Before independence was actually established, for some time our Constituent Assembly, our constitutional discussions, were on the basis of a confederation in which the present territory known as Pakistan would also have been part of India. I refer to this because there are moving and dynamic factors in the matter.

Accession is provided for by law. What is required is that the acceding State has a particular form in which to make an application for accession, and when that application is made, that application is accepted, on behalf of the Government of India in the beginning, but later on behalf of the Dominion to which accession is asked for by the Head of that State. That is to say, if you take an analogy in municipal law, there must be an offer and an acceptance, which makes a contract. The acceding State makes an application, and it is also laid down – and particularly for those who have a republican tradition it is necessary to say this – under the law that application has to be made by the Head of the State. Whether the Head of the State is the Maharaja, whether he is the feudatory, or whatever,

makes no difference. He was the Head of the State, and no other accession would be legal. That is provided for in the Act itself: that the application for accession has to be made by the Head of the State. Therefore, in the case of these 561 States, not only Kashmir, the applications for accession were made by the princes, chieftains, feudatories – whatever they were – and they were accepted, so far as concerned the States that acceded to us – and the vast majority of them did – by the Government of India in the person of the Governor-General, who was the Head of the State on this side.

That takes us to the question of this particular accession. I will not at this moment go into the background of the few days prior to the accession. I will not escape it; I will come back to it. But let us get rid of this particular factor.

The Maharaja sent a letter to the Governor-General that his State desired to accede to India – he made this choice, for whatever reasons – and Lord Mountbatten, the Governor-General, wrote at the bottom, “We accept the accession,” or whatever the words were. I forget just what they were, but they were the prescribed words. Therefore, taking the analogy of municipal law, the offer by the State and the acceptance by the other side made a completed contract, and it is not possible, any more than with a civil contract, to alter it by any other instrument. There is no provision whatsoever – and the representative of the United Kingdom and his advisers will be familiar with this – in the enactments of Parliament for deaccession or conditional accessions or provisional accessions. An accession, once made, is complete.

Therefore, the accession of the State of Jammu and Kashmir, on 27 October, was a full and final accession. The only way that any change could take place in this is by consent. It is laid down in the Act of Parliament – and in order to save the Council’s time I will not read it out – that any changes, any modifications, in the terms of accession must be asked for by the acceding party and agreed to by the Dominion concerned. In other words, they could not change it by themselves. Once in, you cannot get out.

Now while the Soviet spokesman may not agree with us – he may even feel that we are rather backward, or we are rather forward, or whatever it is – all the others around here, and more particularly the United States and the United Kingdom, would have to agree, with all the emphasis possible, that there cannot be any question of any part of a federal State breaking away at will. The United States waged the most sanguinary of wars in human history where more people died than in the First World War, in order to maintain the right of the Union.

In the case of the United Kingdom the question has not arisen in that way. But I believe there was an attempt made by one of the States of Australia, Western Australia – Australia is a federation; it is called a Commonwealth – to secede. They have in their Constitution a system of referendum – they do not call it a plebiscite – on certain parts of legislation. They took a referendum. In that

referendum, Western Australia, speaking in rough figures, by some 136,000 to 76,000 voted in favour of withdrawing Western Australia from the Commonwealth. And immediately this matter was referred by the dissenting party to the supreme tribunal in the British Commonwealth. It was before the Statute of Westminster and therefore it was not possible for any Dominion to have any legislation of this kind introduced, except in the British Parliament.

It went to the House of Lords and the House of Lords held that it was not possible, that it was not permissible, that it was *ultra vires* for anyone to secede. There is no way in our system of Governments for people to get out like that. What is more, if there is to be a reference to the people, it cannot be a reference to a particular part. It must be a reference to all of the Union. It is conceivable that if the whole of Australia had said – not Western Australia alone, but the whole Australia – by majority vote, “Let Western Australia go out,” even though the legal position might be the same, the moral and political position might have been different.

So when people speak about plebiscite, about reference to opinion, it is not as though you take any particular area and say, what about it? In this case no State would be able to remain entire. I had not intended to develop this argument at this stage, but since it has begun I had better finish it so that I do not take any more time than necessary. I want the Council to understand that India is a federation today of about fourteen States and various units made up of a large number of elements, former provinces of British India and 561 States. India lives in the conditions of a troubled world. It lives in conditions of its own diversity; it is an old country but a new nation. If it were to be established – and I would like the major Powers here to realise it – that any part of a country can secede, by either external intervention or propaganda or by some other means, or for some temporary disaffection of some kind, then we would put the whole of the Union in the melting pot and India would become not a congeries of States, but a warring group of stateless entities, and this is not a situation we are prepared to face. It was never contemplated by the Act. It is not common sense and it will never be tolerated by our people, and let there be no mistake about it.

Therefore, when people speak about conditional accession, they may be speaking loose language, but there is no such thing as conditional accession. Once an accession is accepted, it is complete. Now the argument in favour of this has been that Lord Mountbatten – and it must be presumed that as a constitutional Governor-General he was acting with the consent of his advisers, his ministers or members of his council at that time; I do not know who they were, but let us assume that – wrote a letter in which it was said that there would be consultation as regards the wishes of the people, or whatever it was.

I do not want to labour the point about “simple futurity” or make determination about “shall” and “will,” “wish” or “desire” or anything of that kind. I maintain, as I maintained in 1957, that the act of accession is complete. And this letter

stands separately and its only meaning at that time was that India, having evolved out of a strong nationalist revolution, peaceful as it was, and what is more, unlike its neighbour, having adopted democratic traditions and democratic institutions, it was anxious that this accession should not be merely rubber-stamped by the Maharaja who was not popular, but should also have the moral consent of the people. That is all it meant. It required a further moral reinforcement of the people; and a moral reinforcement was sought not only in regard to Kashmir but in regard to a number of other States. There were States in the then undivided India, the then free independent India, which were perhaps – we cannot compare evils – but which were perhaps far more autocratically governed than, shall we say, Kashmir itself, small or large. In each case we made every attempt we could to obtain assessment of opinion, and the only way to do it – and here we have good precedent – was to do it the way the British did it. The British did not convene a Constituent Assembly. They did not ask for a plebiscite. They did not ask for circulation of the Independence Act for eliciting opinion. They negotiated with the main political party, as a great national movement, and the entire settlement of India was not on the basis of what we are accustomed to hear in these halls, of self-determination, in the abstract. But by an assessment of the people's will, the British abdicated in terms of friendship and transferred power by negotiation to the national movement. We have followed the same example.

As a national movement we were parallel to the National Conference in Kashmir although it began as a communal movement – in fact indeed in India it must have happened that the earlier national movement was not necessarily as broad as it was later on. We consulted them; we consulted not just one individual, for it is always wrong to put up individuals and say that opinions have changed. The whole of the nationalist movement was consulted, so we did not find ourselves in the position where we became the allies to the Maharaja against the popular movement. And that was the purpose of this phrase.

Then large numbers of statements have been made about what Mr Gopalaswami Ayyangar stated, about what the Prime Minister said, about what Sir B.N. Rau said, and I hope Sir Muhammad will do us the honour, if I may say so, to accept the fact that not one statement is as good as another. Mr Gopalaswami Ayyangar can be quoted in support of provisional accession, as it was called, or conditional accession. Let me quote what Mr Ayyangar said in some other statement. Mr Gopalaswami Ayyangar, who preceded me here, and who was the Minister of State at that time, has been quoted times without number, and it is possible to do that because no member of the Security Council, with all the troubles they have of their own countries and of other countries, can be expected to read all this. He was quoted yesterday as having said that the accession was provisional. But at the 242nd meeting of the Security Council - not on Kashmir; on Kashmir we are not on 200 yet, we are past the hundredth meeting – Mr Gopalaswami Ayyangar said the following:

“The instrument of accession is a document complete in itself. To the best of my memory, the instrument, in the case of Kashmir, does not contain any condition” –

and you can examine the instrument; it is one application and then at the bottom of it there is written the acceptance by Mountbatten –

“It does not state that the accession is provisional. The commitment which the Government of India made for themselves on the question of ascertaining the wishes of the people was contained in a letter accompanying the accepted instrument of accession. The Government of India is certainly bound by its commitment, but it would be wrong to call the accession itself a provisional accession.” (*Security Council Official Records*, Third Year, 242nd Meeting, pages 31)

I shall deal later with the question of what is binding and what is a commitment, but I want to establish here and now that the one person from one side who has been quoted against us, Mr Ayyangar, has made it very clear at various times what took place. At the 285th meeting of the Security Council, Mr Ayyangar stated:

“The accession which took place on 26 October 1947 was both legal and lawful.”

In fact, it could have been made in no other way. The Act of Parliament by which we were governed at that time as a British Dominion made no provision for any provisional or conditional instrument of accession. It made no such provision at all.

Mr Ayyangar continued:

“It has been followed up by India in the discharge of all the obligations that her acceptance of the accession has imposed upon her. She has saved the Jammu and Kashmir State from disintegration.” (S/PV.285, page 13)

That is another point altogether. That is to say, it is not as if there was a contract written on paper, signed, sealed and delivered; by performance we have acted as a party to the accession. From the date of receipt of accession, we have been responsible and we have spent a lot of treasure in doing this for protecting Kashmir from external aggression and have discharged the obligation of a sovereign Power. It is not as if there was merely an offer of acceptance to no purpose; this contract has been performed to the full although it is wrong to speak about contracts both in regard to marriages and in regard to these relations, because status has been acquired, the status of Jammu and Kashmir in the Union of India in that she is one of the many States in India, as integral a part of India as any of the other States or any part of India, it is as integral a part of the Union as

anything else and the Union will resist any attempt at disintegration. It will do this for its own sake and also in the interest of all the States of Asia and the world; we will not countenance the disintegration of our country.

India, therefore, defends Jammu and Kashmir's status of integration. Who went there when she was attacked by the tribesmen, when in the name of religion, those of the same religion were attacked and killed as we shall show later, when the territory was being made the victim of rape, arson, loot and murder? It was the Indian Army, the Indian people and the Kashmir people who joined in repelling the attack. India is now resisting those who are attacking her integrity today:

“She is protecting the State's population from the unfriendly attention of raiders from outside. The accession therefore subsists today and will subsist even after the fighting ceases and peace and order have been restored.” (Ibid.)

It has been said that once the raiders go then we will do something. It did not mean once the raiders go; in fact the raiders have not gone, they are still there. The fact that they are called the army of a country which ought to be our friend does not stop them being raiders; they are raiders into our country and they still remain there. It could not be said of them, as was said of the British Empire, that they came in a fit of absent-mindedness and stayed; they came there deliberately and that is that.

On the question of accession, therefore, the accession is full, it is complete, and it is final. There is no law in our system, and there is no power except the power of force, that can dismember India. In fact, for the information of the Council the Indian Parliament is not competent to divest itself of territory nor to meet our neighbours in some way. Without looking into the logic of it, we tried to transfer certain territories in the east of India to them but the Parliament of India has no right to divest itself of territory. It would need an amendment of the Constitution and it would require a two-thirds majority of the two Houses, which you would never obtain because we do not have a ruling party with a two-third majority. If we had, it might be all right, but we have not. So much for accession.

Question of Sovereignty

Then we come to what is called the question of sovereignty. I myself would not like this word sovereignty to be bandied about very much because it is undefinable. It varies within the context of things, but broadly speaking in the context of the United Nations I will give some idea of what it is. So far as the sovereignty of Jammu and Kashmir is concerned, it has become the sovereignty of the Indian Union by the act of accession, by the treaty of the Maharaja with the British Crown. Both by the functional aspects of paramountcy and by the fact of accession, sovereignty resided in the Union of India, and so when we speak of sovereignty of the State of Jammu and Kashmir and sovereignty of the Union,

they are interchangeable terms. The exercise of sovereignty in certain spheres would be within the State according to our Constitution and this sovereignty has never been questioned by the United Nations. On the contrary, it has been admitted in many places, as I shall point out. It has been admitted in the assurances given by the Commission to the Prime Minister and the Government of India and two things at least make it more clear. One is the responsibility for the security of the State. Responsibility for the security of the State rests with India, and I would like to ask the Council how under international law or in the practice of civilised nations a country can take upon itself the responsibility for security and defence unless she is sovereign over the territory or, in the case of a Trust Territory or something like that, the responsibility has been placed upon it by international authority.

Responsibility for the security of the State vests with India, the Commission told us, according to the resolution of 13 August 1948. The Commission stated that the sovereignty of the Jammu and Kashmir Government over the entire territory of the State shall not be brought into question. This was when the question of the evacuation of Pakistan troops and local authorities and so on was being discussed. Assurances were given on behalf of the Commission that the sovereignty would not be brought into question. It was also stated that there should be no recognition of the so-called *Azad* Government, which is spoken of here as if it were another government. It is part of the decision of the Security Council that there shall be no recognition of the so-called *Azad* Government. In fact at that time the *Azad* Government was merely the local authorities and in the course of the squabble it acquired some kind of a status. In the arrangements made by the Commission it was for the Government of India – not for the Government of Pakistan – to give assistance if assistance was required for the maintenance of law and order that was in the exercise of our sovereignty. It has been definitely said that under the existing cease-fire lines – at the time of the cease-fire mention was made of various places where there were all these pockets – it was for the paramount authority, the Government of India, to give them assistance. There was no other sovereign in the entire territory.

The *de facto* authority may in varying degrees be said to be exercised by the Government of Pakistan on the one hand and the Government of China on the other.

Thus the Government of India maintained garrisons to prevent the incursion of the tribesmen and to guard the main trade routes. This relates to the territory which is now in the occupation of Pakistan, which the Commission said Pakistan had no authority over at numerous times and in which the Government of India was to maintain garrisons to prevent the incursions of tribesmen – because Pakistan is not the only country with which we have a frontier; we have other international frontiers and therefore it was our responsibility to maintain the outer perimeter of India. The outer perimeter of India is our responsibility and all that lies behind that perimeter becomes our territory.

The last of these items and assurances for the exclusion of Pakistan from all the affairs of Jammu and Kashmir is that in fact if a plebiscite at that time had been possible, if the thing had not been prevaricated in that way, things would have changed. If a plebiscite had been taken, the plebiscite administrator would have had to function through the State of Jammu and Kashmir and not through Pakistan. Pakistan might go there as *amicus curiae* or to offer good offices, but had no position in the matter at all. The Government of India was responsible to the United Nations and you can read the whole of these documents and see that in each case when the Prime Minister asked the Commission “Is this the case?” the Commission said, “This is the case, your interpretation is correct.” These therefore are the assurances; they have been distributed as United Nations documents and are available to you. I shall not quote the numbers, but they are the published annexes to the proceedings of the Security Council. They are here for you to look at. Therefore, sovereignty has not been questioned by the United Nations. It flows from function, it also flows from the fact that the Union of India is one and entire, and its sovereignty springs from the act of the Constituent Assembly as implemented over all India.

Continuing Aggression by Pakistan

Sir Muhammad goes on to deal with aggression, and much to my surprise he says it is an academic question. I do not know whether he had in mind the debate that goes on year after year in the Sixth Committee trying to define aggression.

That may be, that some people may regard that as academic. But so far as we are concerned, the aggression in Kashmir, either by Pakistan or by China, is not academic, it is something that eats into our vitals, it is something that affects our national integrity, to put it mildly; it is something that sits on our economic development; it is something that contributes to the unsettlement of our continent. Therefore, the aggression is not academic to us. This is what Sir Muhammad said:

“My second line of argument will be that, whatever may be the merit of that part of the controversy – on one side, the claim; on the other side, the denial of it – it was after the so-called aggression...” (S/PV.1008, page 16)

But with thousands of miles of territory occupied with, according to some people forty battalions, according to others, twenty-two battalions – they need thousands and thousands of Pakistan troops; they are part of the regular army of Pakistan, today modernised, thanks to their military allies – with all this, you cannot call it academic. It is almost like saying, when two people are having a fight and one man has his hand gripping the other man’s throat, “Why are you worried about this? We are together.”

I continue to quote:

“... it was after the so-called aggression, whether it be the situation created by the incursion of the tribesmen in October 1947, whether it be the entry of the regular forces of Pakistan... into *Azad* Kashmir, whatever may be the situation with regard to that it was long after these two dates that the two resolutions of the Commission of 13 August 1948 and 5 January 1949 were accepted by the two Governments.” (Ibid.)

I am prepared to agree with this. But if that were so, then why does Sir Muhammad raise the question of accession? – because accession is admitted in the resolutions, sovereignty is admitted in the resolutions; he cannot have it both ways.

Let us take it from the resolution of 13 August 1948. Whether the provisions of this resolution are capable of implementation we shall examine later. But if the resolution of 13 August is the beginning, then we are to examine what is the position in relation to that. On 13 August the Pakistan Government did not inform the Security Council – and I do not want to use strong language – but withheld from them the information in regard to their own military position in the area Pakistan is now occupying. At the time of the 13 August resolution the Commission told us that the Pakistan Government had no authority, that their troops were not functioning, that they were not in functional *de facto* possession of the Northern Areas. On 13 August Pakistan had not illegally annexed, under the terms of its own Constitution, any part of the Union of India, and therefore, since 13 August and 5 January – the two resolutions must be taken together – if that is the position, certain other things have taken place. Therefore, if – for a moment they dismiss the idea – let us not quarrel about the tribesmen and this, that, and the other – what had happened? After all, there are only three resolutions that the Government of India has accepted – those of 17 January 1948, 13 August 1948 and 5 January 1949. The Security Council has since passed many resolutions; we have not accepted any one of them. But out of the traditional hospitality exercised in our country, when people have come there we have received them, talked to them. So the issue is that these resolutions created no situation.

I would submit that since the resolution of 13 August also, aggression has taken place and aggression is continuing today – which I shall deal with in a later part of my observations. That is my main purpose in participating. There has been the occupation of the Northern Areas; there has been the receiving of the so-called accession from the rulers of Hunza and Nagar; there has been the occupation of Gilgit; there has been annexation of Baltistan; there has been the taking-in of various territories even apart from the continual infringement, or attempt at infringement, of our borders, to which I shall refer in a moment. Therefore the aggression is a continuing aggression.

So Pakistan, in this case, begins to look almost like a colonial Power of the nineteenth century when it seeks an expanding frontier and, in order to protect one

frontier, it seeks a frontier beyond that, and then to protect that frontier, it seeks a frontier further on. We had a Viceroy in India called Lord Curzon, who enunciated this policy of the expanding frontier until he found himself in Afghanistan, much to the discomfiture of our friends of the present time. Therefore aggression to us is not academic.

I shall have to deal with this question of aggression again, because when I come to make our submission to the Security Council we shall not merely turn to Pakistan, because we do not regard ourselves as on the same plane, or the same level, with them in this matter. We shall have to ask the Security Council where it stands in this matter. The Security Council has not repudiated the Commission. It is no concern of ours whether the Commission sent a copy of the letter to the other side or not, to Pakistan or not; that is a matter between them and the Security Council. When that Commission – a Commission appointed by the Security Council so composed that there was one nominee of the Pakistan Government, the former Government of Argentina with which at that time they had intimate connections, and two others not nominated by either of us – when that Commission gives us an assurance, that assurance is given on behalf of the Security Council, otherwise these men have no position, no *locus standi*, and there is no need for them to come to India or to do anything of that character.

Communal Composition not Relevant

Now therefore, the question of aggression as it exists today is not academic. It is real. But perhaps this may be an occasion to dismiss the whole question of aggression at this time. The Council will remember what I said a while ago about the question of the liberation movement in North Burma. What actually happened in Kashmir was that as soon as the British withdrew from India and the Maharaja in his wisdom, or lack of it, was probably trying to play both sides against the middle or not make up his mind – you know, Maharajas' minds are often made up by other people for them – but whatever that may be, then the accession had not taken place. And I speak to you with all seriousness on behalf of the Government of India; until that accession took place the Government of India made no attempt by political persuasion, by pressure of any kind or by the sending of armies or anything of that character, to get any State, let alone Kashmir, into India. But what does Pakistan do? I would like to refrain from this, because too many extraneous issues have been brought in already; Sir Muhammad referred to them. But in the case of various other territories which were contiguous to Pakistan, approaches were made to us. But we did not encourage them. The ruler of a certain part of Baluchistan wanted to seek accession to India. We did not encourage him. But on the other hand, Mr Jinnah tried to play with the Maharaja of Jodhpur on the territorial frontier or the Nawab of somewhere else, far away from Pakistan. We did not put any pressure on the Ruler of Bahawalpur, whose State was contiguous to India.

There again, let me dispose of this issue. It has been said here that there is some theory somewhere that because the population of Kashmir is, in the majority, Muslim in its religion, therefore they should accede, by some written or unwritten right, to Pakistan. We do not accept this. We are not a theocratic State; we are a secular State. In our country, in our Union and under the law of civilised nations it is not religion that qualifies people for citizenship. Now, it may be said that that is what we agreed to. We never agreed to anything of this kind, and if anyone quotes British statesmen or parliament enactments, I would like the Council to look at the entire text of what is being quoted. The parliamentary enactment in relation to the transfer of power in India, as the representative of the United Kingdom will, if necessary, inform you later, did not concern itself with the Indian States at all. In fact, it definitely stated that the Act had no relation whatsoever to Indian States; it concerned only British India. Lord Mountbatten has been quoted as having told the Princes somewhere that, "Although you may accede to anybody, you must take into account geographical considerations and communal representations."

I want to say to you with the fact of authority behind me that he made no such statement. What has been quoted is what somebody said Mountbatten had said. The text of his speech is in the archives of India. What he said was that while it is true that each of you is entitled to accede to one or the other Dominion the question of your sovereign independence, that is impractical, or your acceding to anybody you like does not arise, because you have to take into account geographical contiguity. Not a word has been said about communal composition in the address to the Chamber of Princes or to anyone else; not a word has been said that the Ruler is a Muslim who will accede this way, or that the subjects are Hindus who should accede in that way.

We are a secular State. Religion is not a qualification or disqualification in our country, and we stand by this as fast as we can. In fact, Kashmir is one of the acid tests of this. Therefore, the introduction of this argument is so facile and people who do not know the ins and outs of this thing are at least delighted to accept it. Therefore, there has been no statement on behalf of the Government of India, either by my Prime Minister or any member of the Government or by the Governor-General who was then the Head of the State, to any authority saying that communal composition was one – that is the religious composition – of the factors in accession. What was said was "geographical compulsions."

So far as Kashmir is concerned, the State of Jammu and Kashmir – we must not forget that it is not Kashmir but Jammu and Kashmir, it is one – is contiguous to the Union of India, it has a frontier with Pakistan, it has a frontier with Afghanistan and a frontier with China. I have not heard any arguments in this Council – there may be elsewhere – that parts of Kashmir should accede either to Afghanistan or to China. But as far as Pakistan and we are concerned, they are nearer to us than to them. It is the factor of geographical contiguity that is really relevant because the accession has taken place. Jammu is practically part of the extension of the mainland of India, and all the communications are taken from

India, and things of that character. So even in regard to geographical contiguity, if you want to be very liberal on the other side, you might at least say that they are equal. But they are not.

In fact, it is not merely mileage that covers it, it is the whole set-up of things. So that the argument that three-fourths of the population of Kashmir are Muslims and that therefore they should accede to Pakistan – then what would happen to the sixty million Muslims living in our country who are content with a secular State, who are accustomed to the habits of democracy, who are as loyally affiliated and patriotic as a Christian or Jew or Buddhist or Hindu or Animist or anyone else in our country? How can we betray the faith that is vested in the country by our compatriots who are of another religion than the Mohammedan religion? Religion plays no part in the adherence of our people to our State. Therefore, I speak with some feeling on this because this is one of those things that has been put over, surprisingly enough, among Western communities which should be turning their faces against them. This seems to make some appeal of some kind because there has been, in international connections, talk of the Islamic belt and the Islamic brotherhood and this and that and the other. This sort of thing has happened in the world so many times. Today nationalism and membership of the Union is what characterises the citizens of our country.

So there is no special claim in regard to Kashmir except that there could be only geographical contiguity or accession. If the Maharaja had acceded to Pakistan we would have accepted it because we have a large enough country and we have large enough troubles of our own. That was why we said from the housetops in regard to another matter: whatever our troubles are with Pakistan, whatever some foolish people may say, we have no desire, in spite of our past connections for any part of Pakistan to come into our country because we have troubles enough of our own - and therefore we leave it at that. So then we come to this question of accession and I dispose of it in this way.

Pakistan's Violation of Standstill Agreement

So what happened? Soon after the British left, the leaders of the real liberation movement were imprisoned. I believe that at that time some of them were released. I do not quite know. One of the people whom the State authorities were seeking to arrest at that time was the present Prime Minister of Kashmir. He certainly was not a liberationist sent by Pakistan. One of the people imprisoned by the Maharaja for association with the liberation movement just before independence was Pandit Nehru, who is now the Prime Minister of India. So all these people are interested. At that time there came into Jammu and Kashmir, fishing in troubled waters, numbers of people who have been spoken of as raiders, whatever that means. We have no evidence to think that they came to steal a couple of cattle and go away, or something of that kind. They were people who, we were told, were tribesmen. I have not been able to find what that means. If it is meant that they came from trans-Pakistan, from the territory beyond the Durand

Line, there is no evidence of it. But let us assume there is. If they came from beyond the Durand Line, what right has a civilised State, which was in existence either as a result of an agreement between its neighbour, the British Parliament and itself, to permit its territory, its fuel, its food, its communications to be used in order to commit aggression on a neighbouring State? That is not a practice of civilised nations. They have the right to give them sanctuary, if they want to, but they have no right to allow them to pass over their territory. At that time the then Prime Minister, who a few days before was still a citizen of India, said, "What can we do, they are our co-religionists," and this idea of religion was raised again. And so people came day after day.

I have no desire to repeat what I said before. If you refer to the proceedings, to the key which I have circulated, you will find entries in his diary of a Major General Scott. He was and is, I believe, now a British national. He was a General seconded by the British Government to command the army of the Maharaja. He was the Commander-in-Chief of the Kashmir forces. Major General Scott reported at various times to the Maharaja. He was the Chief of Staff of Jammu and Kashmir. He submitted his first report of border raids from Pakistan on 31 August 1947, long before our accession. Protests were made to Pakistan by the Maharaja, and it was submitted by the Chief of Staff, Major General Scott.

The Kashmir Government protested by telegram to the West Punjab Government against armed Muslims from the Rawalpindi District infiltrating into the State. Protests were also made to the Deputy Commissioner. You know the conditions that existed. You have got to think back fifteen years. We were the same country and it is quite likely that a few people might come over this way by mistake or for the purpose of stealing cattle or for some other reason. This sort of thing happens. Anyway, protests were made in that way.

Then on 6 September there was a marked increase in the activities of the Pakistan troops on the main road. A patrol visited Alibeg, twelve miles south of Bhimbar. Major General O.D.T. Lovett, commanding the 7th Infantry Division, was informed. On 13 September 1947 a Pakistan Army patrol visited Alibeg and Jatlai, fourteen miles south of Bhimbar, both in the State territory.

I could read from Major General Scott's diaries further things, the way the rate of strength increased and by about 18 September, the railway service between Sialkot and Jammu – Sialkot is in Pakistan, Jammu is with us – was suspended by the Pakistan authorities. I will come to that in a moment, why they should not have done it. It was suspended by the Pakistan authorities without any reason and in contravention of the standstill agreement. Armed gangs entered these places, including Poonch on the State border. On 28 September hundreds of armed men with service rifles, automatics and spears, attacked a State patrol near Chak Harka. Hundreds of armed Pathans entered State territory on 30 September. The Jammu and Kashmir Government protested on 3 October telegraphically to the Pakistan Government that hundreds of armed people from Murree Hill in Pakistan

were operating in Poonch; they were also protesting the lack of essential supplies, including petrol, rice, salt and cloth being withheld.

“The fighting broke out with renewed activity by armed men in the Chirala area, near the Jhelum river. There was fighting between raiders and State forces.”

State forces went into operation. Whatever may be the opinion of the Maharaja and his Government, he had the responsibility of protecting his State against raids from outside.

“By 10 October sections of the Pakistan Army, followed by an armed gang, attacked Pansar village in Jammu.”

And this is the first time that we have evidence – although it may have happened before – where elements of the Pakistan Army actually entered Jammu and Kashmir while Sir Muhammad and others were telling this Council that no Pakistan troops were in Kashmir, until afterwards they were found out.

“Pakistan has cut off from Kashmir her supplies of petrol, etc.”

The economic boycott, again, is a violation of an agreement. The Maharaja, in his wisdom or lack of it, instead of acceding to one Dominion or the other – which would have been better for him, for better or worse – asked for what is called a standstill agreement. That is to say, until he could make up his mind to accede to anybody, he wanted both India and Pakistan to maintain the normal amenities of life – that is to say, post office communications, and so on. Kashmir regards salt as a very essential requirement – salt, petrol and things of that kind; trade relations, post office communications, and all those things.

I notice that it is implied in Sir Muhammad’s observations that this standstill agreement is some recognition of Pakistan’s sovereignty or paramountcy, or something of that kind. The fact that the Jammu and Kashmir Government asked for a standstill agreement with regard to posts and telegraphs simply means that there was one postal and telegraph system for the whole Union before partition – for the whole of what is called the sub-continent. Some letters go this way, some go that way. They had the same arrangement with us. They asked India for a standstill agreement. We said, “We are prepared to discuss any agreement with you. Come over and talk about it.” But by the time they could come over and talk about it the standstill agreement had been made with Pakistan, it was violated, and an economic boycott was imposed by Pakistan. And an economic boycott in these essential commodities of life is very hard on a population such as that of Jammu and Kashmir.

So it was violated, and these raids had come through over hundreds of miles of Pakistan territory. They were well organised and well disciplined, and no one in

the world who knows anything about these things could say that these were all raiders coming to lift cattle. They were led by Pakistan officers. It is quite true that there were some guerrillas among them, as Pakistan is discovering now, but they were properly led. They were officered by the Pakistan Army. There appeared on the scene a General called General Tariq. It sounds like a Philips Oppenheimer story, or something like that. General Tariq was none other than a commissioned General of the Pakistan Army who afterwards was dismissed – probably because he was too enthusiastic – but is coming back through the rear door. Anyway, there was a General Akbar Khan who also was operating in the area. By that time these raiders had reached a very large number and had taken on the aspect of a large army.

Undeclared War against India

We at that time appealed to Pakistan to deny its territory to these raiders and not to give them assistance, and the Prime Minister wrote to Mr Liaquat Ali Khan who was the Prime Minister. The Governor-General of Pakistan, Mr Jinnah, the founder of the State, who is highly revered in Pakistan and treated with a degree of affection in India, explained to the Governor-General of India on 1 November 1947 – and this is on record – that he had no control over the forces of the *Azad* Kashmir Government or the independent tribesmen engaged in the fighting. We shall show the Council pictorial records taken at that time of Mr Jinnah, the Governor-General of Pakistan, holding court with these very tribal chieftains in the territory of Kashmir – the people over whom he had no influence.

Then later, Lord Mountbatten advised Mr Jinnah of the strength of the Indian forces at Srinagar and of their likely build-up in the next few days. That is to say, the Indian Army, having pushed back the tide of invasion almost within a few hours of its approach to and possible sacking of Srinagar – they were turned back at the airfield – Lord Mountbatten advised them of the large build-up. He told him that he considered the prospect of the tribesmen entering Srinagar in any force was now remote. This led Mr Jinnah to make his first general proposal, which was that both sides – he had placed himself on a plane of equality by then – meaning Pakistan and ourselves should withdraw at once and simultaneously. Then Lord Mountbatten asked him to explain how the tribesmen could be induced to remove themselves, he having told us before that he had no influence. His reply was, “If you do this I will call the whole thing off.” They were the people over whom he had no influence. We at least suggest that the public propaganda line that the invasion was wholly beyond Pakistan’s control was not true.

On 22 December, protests having failed to bear fruit, the Government of India formally asked the Government of Pakistan to deny the raiders all access to the use of Pakistan territory in operations against Kashmir – “all military and other supplies, all other kinds of aid that might tend to prolong the present struggle.” It was a normal request for a Government to make to anybody else. Even today, if a United States airplane – or a United Kingdom airplane, for that matter – wants to

fly over our territory they ask our permission and we give it. They do not just walk through anywhere, so to speak. That is a normal custom. And if the airplane is loaded with any goods of a military character and it touches down, if we so wish, we go and inspect it, the same applies to us. That is normal international practice.

So we asked them to deny aid, and as the Prime Minister has said in one of the letters that was read the other day, it was easy for Pakistan to stop these troops because they had to come by bridges which could either have been very easily defended or obstructed, or could have been blown up. Therefore, there was no excuse whatsoever. This was an undeclared war against our country, in regard to the facts of which this Council was deceived by the Pakistan Government and its representatives.

On 30 December 1947 the Prime Minister of Pakistan said:

“As regards the charges of aid and assistance to the invaders by the Pakistan Government, we emphatically repudiate them. On the contrary... the Pakistan Government have continued to do all in their power to discourage the tribal movements by all means short of war.”

If that is the position how does Pakistan claim a position in Kashmir, in this territory it has occupied, and then talk about the tribesmen and things of that character?

False Denials by Pakistan

On 1 January India came here. The Government of India requested the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance – that is to the raiders – “which is an act of aggression against India.” There has been some doubt expressed – unfortunately by the people who ought to know better – whether we ever complained about aggression. It is quite true that we came here under Chapter VI, and not under Chapter VII, largely because, as I have said, before the complaint, we were members of the same nation and the same country. Conditions were different. But we said that this was aggression even then. It was an act of aggression against India. I am sorry to say that the gentleman who sits opposite me, on 15 January told this Council solemnly:

“The Pakistan Government emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act of aggression against India. On the contrary, and solely with the object of maintaining friendly relations between the two countries, the Pakistan Government have continued to do all in their power to discourage the tribal movements by all means short of war. The allegations made by the Indian Government that the Pakistan Government is affording aid and assistance to *Azad* Kashmir forces, or that these forces have bases in

Pakistan territory, or that these forces are being trained by Pakistan officers or are being supplied with arms and material by the Pakistan Government are utterly unfounded.”

I submit that this is contrary to the fact. What is more, it was either at that time or a little before or after that the Governor-General of Pakistan gave orders to the Commander-in-Chief of the Pakistan Army, General Gracey, an Englishman who was acting for the permanent General, to wage war against India. Happily for the good of the world, General Gracey disobeyed. That is to say, he consulted General Auchinleck – who in fact had no authority in this matter – and they decided not to wage war. But the permanent Commander-in-Chief – we have evidence of this and we will show it to you if you want - inspected the troops, and egged them on to fight, but in any case here was the Governor-General giving orders to his Chief of Staff to wage war against India.

At the 229th meeting held on 17 January 1948 – which is an important date because at that time the Security Council passed a resolution which was one of the few resolutions they accepted – Sir Zafrulla Khan, then Pakistan’s Foreign Minister who, I therefore assume, spoke with authority and knowledge, solemnly stated in the Security Council:

“One matter to which attention is drawn in the Indian statement is that the tribesmen, when they captured Baramula, committed certain atrocities, including atrocities against the inmates of the local convent there. I have no knowledge and my Government has no knowledge with regard to what has actually been happening inside the Kashmir State, except so far as reports have appeared or communications have been directly addressed to my Government.” (*Security Council, Official Records, Third Year, page 115*)

And these are the raiders against whom armoured cars and all the panoply of force of the Indian Army – within the short time available to us after receiving all the applications for accession – had to be used and it took us four months before the Indian Army rolled back the tide of invasion.

It was no joke.

Sir Zafrulla knew all about this because, according to Father Shanks, the Roman Catholic Father of St. Joseph’s Convent, General Cunningham, who was the Governor of North-West Frontier Province of Pakistan – unhappily no longer in existence and not by a plebiscite – sent troops to Baramula to rescue Father Shanks.

Father Shanks in a statement made as late as June 1958 said:

“At the end of Mass, there was a thunderous knock at the door of the ward, and we thought that the end had come. It happened to be our rescue convoy, sent by Sir George Cunningham, Governor of the North-West Frontier Province of West Pakistan. And the rest of that day was spent in getting our belongings together in preparation for the trek out of Kashmir under the protection of a Mahsud officer and some non-commissioned men belonging to the regular army.”

I shall have something to say about these individuals later. Mr Gopalaswami Ayyangar, who represented India at that time, also informed this Council on 15 April 1948, before Sir Muhammad made his admission in confidence to the United Nations Commission for India and Pakistan at Karachi on 8 May, that:

“A mountain battery of the Pakistan Government, in civilian dress, has been sent to the front. It consists of some 1,300 personnel, out of which about 600 have been sent to Naoshera front via Bhimbar and 700 to Poonch front via Palandhri.” (*Security Council Official Records*, S/PV.285, page 10)

We had been observing the action at one of these fronts. At a subsequent meeting of the Security Council, ending in the adoption of its resolution of 21 April 1948, Sir Zafrulla Khan did not deny this.

There is other evidence. A gentleman called Lord Birdwood, who is very well known to the United Kingdom delegation, though he is no friend of ours, as he does not approve of us very much, has written a book on Kashmir. He says:

“One again I draw attention to the obscurity surrounding the first use of Pakistan regulars in the war.”

General Headquarters in Rawalpindi, in so far as they are prepared to discuss the matter, assured us that no regular unit was moved before May. That is the date when Sir Zafrulla admitted that armies had gone. A battery of mountain guns with infantry escort were in action in an unsuccessful attack on Poonch on 17 March. Again on 21 March, General Kalwant Singh of the Indian Army had to abandon an attempt to land on the Poonch airstrip, since it was under artillery fire. The tribesmen had no artillery. He was, however, able to arrange for the landing of twenty-five pounder guns of the Indian Army, which were effective in saving Poonch for the Indians. On the Indian side, General Russell believed that regular troops were involved. He accordingly asked to be relieved of his command. That is to say, it was one of the unwritten laws of the Government of India that they would not ask British personnel to engage in any combat where Pakistanis were involved. We did not want British officers to be involved in this trouble.

General Russell had opted to serve India. He was in command and, under these conditions, he withdrew.

Material Change in the Situation

The Foreign Minister, Sir Zafrulla Khan, informed the members of the Commission – in confidence – that the Pakistan armies had at that time, on 8 May, three brigades of regular troops in Kashmir, that troops had been sent into the State during the first half of May.

Sir Zafrulla stated that these measures had been taken as a result of the spring offensive of the Indian Army.

The Indian Army had a right to be in Kashmir. It was sent there to protect that territory against invaders. And if any other army came to push them back, then from that point of time they became allies of the raiders. Sir Muhammad went on to say that the three main reasons – as is stated in the United Nations Commission report, S/1100, paragraph 51 – which had motivated the entry of Pakistan troops into Kashmir were the protection of the territory of Kashmir from possible aggression by Indian forces – Indian forces had at no time gone anywhere near Pakistan; prevention of a *fait accompli* in Kashmir by the Government of India; and the prevention of the influx of refugees into Pakistan. None of these arguments are tenable. They cannot be advanced by a civilised country.

The United Nations Commission in its first report, S/1100, paragraph 127 says:

“The statement of the Foreign Minister of Pakistan to the effect that Pakistan troops had entered the territory of the State of Jammu and Kashmir, and later his reply to the Commission’s questionnaire that all forces fighting on the *Azad* side were ‘under the over-all command and tactical direction of the Pakistan Army,’ confronted the Commission with an unforeseen and entirely new situation.”

According to the Security Council resolution of 17 January 1948, in para 128:

“... The Government of Pakistan was requested to inform immediately the Security Council of any material change in the situation. In a letter addressed to the Security Council the Pakistan Government agreed to comply with this request. The Government of Pakistan had, however, not informed the Security Council about the presence of Pakistan troops in the State of Jammu and Kashmir. Sir Zafrulla explained that, since the Commission had been charged to deal with the problems related to the India-Pakistan question, his Government thought that the information should instead be given to it” – it was so confidential – “but he had been unable to do this previously because of the delay in the Commission’s arrival on the Sub-continent.”

But he had not had any difficulty in communicating other matters to the Security Council and, although on the one hand they denied it, on the other hand they were bound by the Security Council resolution of 17 April 1948, and subsequently the then Foreign Minister of Pakistan himself admitted that the *Azad* force was under the over-all command of the Pakistan Army. They glibly told UNCIP that they were there since 8 May because if they had not gone there, India would have gone there.

The view of the Commission on this matter is important. In Appendix I to the Annex of UNCIP report S/1100, para 4, they stated:

“The Security Council resolution of 21 April 1948, which sets forth the terms of reference of the Commission, was adopted with cognisance of the presence of Indian troops in the State of Jammu and Kashmir.”

In other words, the Security Council could not be expected to abet a crime. They passed this resolution and asked that nobody else come in, knowing that the Indian Army was there. There was no secret about it; it was exercising its rights to paramountcy, the protection of the State – and so the Commission said that that was done with the cognisance of the presence of Indian troops in the State of Jammu and Kashmir.

“The presence of Pakistan troops in Jammu and Kashmir, however, constitutes a material change in the situation, inasmuch as the Security Council did not contemplate the presence of such troops in that State nor was it apprised thereof by the Government of Pakistan.”

A member of the Commission, writing later, on 7 July – Mr Korbelt, who, I must say in fairness, was our nominee on the Commission, but still he was a member of the Commission and did not always take the view that we did – wrote as follows:

“Sir Zafrulla gave the Commission a three-hour discourse on his concept of the background of the Kashmir conflict.”

Rather a short one.

“His tone was clam, his language precise, and following the best traditions of his English schooling, his narration was broken by good stories. Then came the first bombshell. Sir Zafrulla Khan informed the Commission that three Pakistan brigades had been in Kashmir territory since May. He explained the measure as an act of self-defence...

“The Commission explained to the Pakistanis that the movement of these troops into foreign territory without the invitation of that territory’s Government was a violation of international law.”

I want you to ponder this. It is one of several statements that I am going to cite in which representatives of the Security Council have said, as they have done on repeated occasions, that international law has been violated by acts of aggression. That is the first one. The later, in May of 1949, Sir Owen Dixon, a member of the Australian judiciary, who can by no means be regarded as a partisan of India – his country is a military ally of Pakistan – said:

“I was prepared to adopt the view that, when the frontier of the State of Jammu and Kashmir was crossed on, I believe, 20 October 1947” – that is before the accession – “by hostile elements, it was contrary to international law; and when, in May of 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law.”

I was dealing with the facts of aggression against the territory of the Union by a Power that should be friends of ours and a neighbour. Until just a few days before the aggression, we were parts of one nation. On either side were people who are of the same family, inheriting the same traditions and it was our hope that, while the amputation of India was a painful business, that surgical operation would bring relief and harmony. But that is another matter.

There are large numbers of other factors in this connection, a great many of which are in the proceedings of the Security Council. In accordance with what I said at the beginning, I do not propose to go into them in great detail, but again I draw the attention of the Council to the key of those proceedings that I have circulated, where the subject headings are given.

Atrocities against Muslims and Christians

Now we come to this other matter. As I said, much has been made of the kinship in religion which is the alleged basis of the “claims” that Kashmir should be part of Pakistan – right or wrong. First of all, it was said that this is a liberation movement of the Kashmir people, mainly Muslims suppressed by a Hindu Maharaja. I have all the facts in connection with it, and our views and sentiments on the matter are well known.

But now let it also be stated here that a great deal of atrocities were committed, atrocities of which Sir Muhammad had no knowledge, and it is a great pity that the Foreign Minister of a neighbouring country had no knowledge of the atrocities that went on, while fanciful atrocities are known. Therefore, I want to deal with the first phase of this invasion, not in order to survey the atrocities, so-called, being accustomed to much cruelty in the world, but in order to refute this argument that this was Muslim rescue operation or Muslim or Hindu domination.

The people who died in Kashmir were, by a large majority, people of the Islamic faith – men, women and children. The people against whom the worst atrocities

were practised were not Hindus merely, but Christian missionaries. And the evidence on this does not come from the Government of India but from others, such as United States journalists, who by no means have been friendly to India in the discussion of this problem, and certainly not to me. Therefore, we can take that as more or less impartial evidence. There is photographic evidence taken by an Associated Press photographer at that time, presumably an American, who flew over a section of Kashmir and saw villages in flames. The villages, in an area of ten miles long by ten miles wide, had apparently been set on fire by the invaders who were scoring the valley and moving in the direction of Srinagar.

So there was no question of a frontier loot. It was a well-planned attack on the capital of the city, in the valley of Kashmir and Srinagar – because he who dominates Srinagar dominates Kashmir. Therefore, it was a well-conceived military operation which was stopped in time by the Indian Army which flew in small units, in transport Dakotas and put men in the line of battle straightaway in the airplanes. That is the evidence of the Associated Press photographer, copies of which we have.

Then, on 10 November, a few days after the entry of the Indian Army, there was a report by Robert Trumbull, the *New York Times* correspondent. And here I want to say that while I am obliged to quote a newspaper report, I will not quote their opinions. I am quoting only a description of facts. Now Trumbull has written a great deal against the Government of India, about our shortcomings and that sort of idea. He lived in India for five or six or seven years... He said the following, under dateline of Baramula. Baramula is a town some thirty miles from Srinagar, where most of the atrocities took place. Now he said:

“The city had been stripped of its wealth and young women before the tribesmen fled in terror at midnight, Friday, before the advancing Indian Army. Surviving residents estimate that 3,000 of their fellow townsmen, including four Europeans and their retired British army officer, known only as Colonel Dykes, and his pregnant wife, were slain. When the raiders rushed into town on 26 October, witnesses said: ‘One party of Masud tribesmen immediately scaled the walls of Saint Joseph’s Franciscan Convent compound, and stormed the Convent Hospital and the little Church. Four nuns and Colonel Dykes and his wife were shot. Immediately, the raiders’ greed triumphed over their blood lust.’ A former town official said: ‘The raiders forced 350 local Hindus into a house, with the intention of burning it down.’ The group of 100 raiders is said to be holding another five as hostages on a high mountain, barely visible from the town. Today, twenty-four hours after the Indian Army entered Baramula, only 1,000 were left out of a normal population of about 14,000.”

I hope you will forgive me if I say that at Baramula lies buried the flower of the Indian Army. Not one of the personnel who went out to combat these people

returned alive to his home. Commanding them was a Muslim officer. All lie dead, buried in that soil and our country, if nothing else, owes a debt of gratitude to these people who defended our territory at that time.

Here is another account from Father Shanks, one of the Christian missionaries working in the area – not in the pay of the Government. It is a story that Father Shanks would never tell in the beginning. He describes the attack on the Convent, without giving his own name, as follows:

“The tribesmen, great wild, black beasts they were, came shooting their way down from the hills on both sides of the town. They climbed over the hospital walls from all sides. The first group burst into a ward, firing at the patients. A twenty-year-old Indian nurse, Philomena, tried to protect a Muslim patient whose baby had just born.” No co-religion here. “She was shot dead first. The patient was next. Mother Superior Aldetrude rushed into the ward, knelt over Philomena, and was at once attacked and robbed.” Robbed is a euphemism. “The assistant Mother Teresalina saw a tribesman point a rifle at Mother Aldetrude and jumped in front of her. A bullet went through Teresalina’s heart. At that moment Colonel Dykes, who had assured us we would not be attacked, raced from his room a few yards along the terrace to get the Mother Superior out of danger, shouting at the tribesmen as he ran, but the Mother Superior fell, shot, and Colonel Dykes collapsed beside her with a bullet in his stomach. Mrs Dykes ran from her husband’s room to help him. She, too was shot dead. While this went on Mr G. Boretto, an Anglo-Indian, was killed in the garden before a firing squad.”

Here comes a story wherein, irrespective of other considerations, one likes to pay tribute to the young man:

“As the tribesmen raised their rifles, a young Afridi officer, who once studied in a convent school at Peshawar, rushed in and stopped them.”

At least there are living characters with human qualities in these incidents.

“He had been told his men were raiding a convent and had run all the way from town. That saved all our lives for a few seconds.”

I should be wanting in decency if I did not express the appreciation of our people for the courageous conduct of this young man who, although he was on the other side – he was a Pakistan officer – did not fear the Afridi tribesmen.

“We did not find Mrs Dykes until the following day. She had been thrown down a well.”

Another report:

“A Pakistan Army convoy was sent rescue us. On the way from Baramula we stopped at the village of Boniyar to seek the staff of the World Wide Evangelistic Crusade Mission. At Baramula the townspeople told me of a young Muslim shopkeeper who had sacrificed his life rather than recant his creed of religious tolerance. His martyrdom had taken place almost under the shadow of the convent walls, and in the memory of the devoted Kashmiris he was fast assuming the stature of a saint.”

Here we have a report, again from a distinguished American photographic journalist, Margaret Bourke-White, and I will quote a little from her book *Half Way to Freedom*:

“He, Mir Maqbool Sherwani, must have been a sort of Robin Hood character from the stories the townspeople told me, championing peasants who could not pay their exorbitant taxes, pitching into the police when he found them beating up some luckless victim, bolstering the resistance of the people against their many oppressions. When the tribesmen invaded Kashmir and terrorised the countryside, Sherwani, who knew every footpath in the valley, began working behind the lines, keeping up the morale of the besieged villagers, urging them to resist and to stick together regardless of whether they were Hindus, Sikhs, or Muslims, assuring them that help from the Indian Army and People’s Militia was on the way. Three times by skilfully planted rumours he decoyed bands of tribesmen and got them surrounded and captured by the Indian infantry. But the fourth time he was captured himself.”

This is perhaps the occasion here to say, in reference to the Indian Army and to the pushing back at Baramula and so on that, as a matter of historical fact the first resistance to the tribesmen, to the raiders, the Pakistanis who came in, did not come from the Indian Army. They were a long time in coming because the accession had not taken place and when it did they had to be shipped over. But the unclad, half starved men, women and children of Kashmir, with nothing to help them but bare arms and bamboo sticks - they were the people who felt the call of their soil and rallied to the defence of their country and their fellow beings. They were the people who offered the first resistance, so that when people speak of liberation or co-religionism, or whatever it is, they were the people who offered the first resistance to the ferocious invasion that came along. Soon afterwards came the army of India, at a time when partition had divided practically every unit. There was not a single unbroken unit in the army of India at that time, because the soldiers had been allowed to opt for one State or the other. Gandhi was alive at that time. I say this because it is now fashionable to speak about the image of India, that even if you beat us black and blue we shall take it. Gandhi was alive at that time, and the Prime Minister records that in the anguish of his heart at the fact that so soon after independence his country should be involved in war, he went to him for counsel. Gandhi, than whom no greater man of peace ever

lived, said: “Your duty is to repel the invasion” and the army went in. we are not relying on the authority of a great man who is no longer with us, but this should be known to the world.

I have no desire to recount atrocities in this way, but in the whole tale of the invasion of Kashmir, until it became more or less a regular war, it was the forces of India – not by superiority of numbers or even by superiority of equipment, because we had the same that the British left us – which rolled back the invasion and after coming to the Security Council here, not under compulsion as some people think, but because of the desire of the Government and the people of India, which stopped the bloodshed.

What about the cease-fire? It was not an army in retreat, but an army which belonged to a country and a Government which placed its reliance on the United Nations and continues to do so, which regarded the sanctity of life even of opponents who had invaded its territory, which repelled the invading army and brought about a cessation of fighting.

Resolutions of 13 August 1948 and 5 January 1949

That brings me to the next stage of the observations of Sir Muhammad. As we were told, the resolutions of 13 August 1948 and 5 January 1949 form a landmark to use as a starting point of the argument that under those resolutions we had made certain promises and given certain undertakings, and things of the character. Then, it was once said that Pakistan was not bound by international obligations. I was told at that time that Krishna Menon is like the young man who said to his priest, “the Koran says do not go to prayer.” I was told that I had quoted only half, and then the representative of Pakistan said that what the Koran really said was “Do not go to prayer when you are in a state of drunkenness.” I am not a student of the Koran, but I happen to have some familiarity with it and so I looked up the passage. What it said was, “Do not go to prayer when you are in a state of drunkenness, wait until you have sobered down and have humility in your heart.”

So we come to these resolutions, and even at the risk of trying your patience, the resolution of 13 August 1948 was accepted by India long before it was accepted by Pakistan. It was discussed with us; obviously it was a compromise in the sense, what resolution need we accept except a resolution calling upon Pakistan to vacate its aggression. In spite of that, we agreed to certain things. First of all I want to put to you the format of the resolution. It is in three parts, and of those three parts each follows from the other. Part I deals with the cease-fire and certain things that follow from it, then comes part II with two sections, (a) and (b), then comes part III.

Part I of the resolution, it is our submission, has not been implemented. Sir Muhammad said yesterday that the Commission had said part I had been

implemented but I think it is necessary to look at the date when the Commission said this and at what happened afterwards. Part I of the resolution is this:

“Cease-fire order

“A. The Government 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.” (*Security Council Official Records*, Fourth Year, Special Supplement No. 7, Document S/1430, page 22)

Now there is a cease-fire. We will not go into the question of who it was that fired first or last; that does not matter. There is a cease-fire.

Afterwards our officers went to Karachi and made certain demarcations, and so forth, and the cease-fire had been established. Now we come to section B of part I:

“B. The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that augment the military potential of the forces under their control...” (Ibid.)

That is to say, that is an elaboration of the other resolution of 24 April. When the Commission said that the first part had been implemented, they were thinking in terms of the cease-fire being implemented and at that time they were not aware that the augmentation of these forces was taking place. It is known on the evidence of Pakistan authorities themselves that there was a considerable increase in the military potential, and not only in Jammu and Kashmir. There is evidence both from their own sources and from elsewhere of the construction of additional military bases along the western border of Jammu and Kashmir, one at Kharian, built with United States military aid where the Pakistan Armoured Division is stationed and another, the cantonment at Domel which was opened in September 1961; further construction and extension of airfields and airfield controls at Skardu, Gilgit and Askardas; southwest of Hunza and near Mangla; the construction of strategic roads and bridges to ensure safe lines of communications; the construction of an all-weather road from Swat to Gilgit, along the Indus, of which several sections have already been completed. Important weapons have been procured by Pakistan, but I will not go into details concerning them for other reasons. I am, in a certain sense, to a degree restrained; I do not want to spread this out further than need be.

In spite of the fact that India's total area is nearly four times that of Pakistan, its population about five times that of Pakistan, with a land frontier of 8,500 miles and a coastline of 3,500 miles, the proportion of defence expenditures to both the

total revenues and the national income is much less than that of Pakistan. India's total defence expenditure, on both revenue and capital accounts – I am not talking about this year's budget – during the last six years – the budget is on now, so I cannot include this year – has been on an average of 32 per cent of its total Central revenues and about 18.6 per cent of the total Central and States' revenues. On the other hand, Pakistan's defence expenditure, including the cost of military equipment received through foreign military aid, during the same period, has been on the average 55.7 per cent of its total revenues and 35 per cent of Central and States' revenues. On the basis of the national income of the two countries also, it can be seen that Pakistan has been spending, in comparison to India, much more on defence. In 1960-61 the national income of Pakistan was estimated at \$4,520 million. The defence expenditure was \$240 million, forming 4.6 per cent of the national income. In the same year the national income of India was estimated at \$24,400 million and the defence expenditure at \$560 million, making about 2.2 per cent of its national income.

So this is the position as to the military balance between the two countries. But we are not dealing with that only. Soon after the cease-fire Pakistan occupied this area. As I said a while ago, its armies were reorganised. We hear about the "Azad Forces," the "Azad Battalions," the Over-all Command" – in other words, a general military occupation where the United Nations Commission had talked only about local authorities maintaining law and order and, where their forces were not sufficient, of calling upon the Indian Government to provide them. The United Nations resolution – I read it to you – and the assurances given said that the Government of India was to garrison and guard the routes in Gilgit and the Northern Areas. We were told by the Commission that there was no evidence of the Pakistan Army or of anybody else having any command over these Northern Areas, so-called, but now they are part of the territories of Pakistan by forcible occupation.

"E. The Government of India and the Government of Pakistan agree to appeal to their respective people to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations."

I am free to confess that there are newspapers in India – if you call them newspapers – that sometimes are not as restrained as are some others. They are usually quoted by Pakistan and by certain others, but we do not read them very much in India. I get a free copy; a paper usually attacks me and therefore they send me a free copy. But during the whole of this period it was an article of faith in Pakistan to indulge in what is called a *Jehad*, that is a holy war, against India, and the holy war campaign went on over the radio, in the press and everywhere else. Therefore, psychological warfare was going on at that time. But even aside from that factor, the fact was that the position as to the cease-fire on the basis of which the Council said that part I was implemented, did not obtain. We should remember when we are seriously discussing this that all of these armaments were thought of in this connection: a cease-fire today; in a few week's time, in a few

days' time, may be, a demarcation; a few days afterwards, negotiations, a truce, and then the whole thing will be over in a year's time.

It is now twelve years after that. Our contention, which we put forward in 1957, is that part I of this agreement has not been implemented. Until part I is implemented, and while Pakistan does not withdraw those forces which it has augmented – that is, the entire forces – from that area, part II does not come into operation. Sir Muhammad claimed yesterday that there could be no question of going any further because part II refers to a truce agreement, and that truce agreement has not been brought about. When I heard that I was really taken back. I did not know what it was all about. It is some time, you know. Part II does refer to a truce agreement but it does not say that Part II should be put into operation after truce. Part I is the cease-fire; part II is the truce agreement. Now, that puts a different complexion on it. If part I said there must be a truce and then part II will operate, then what the representative of Pakistan said might be true. But part I prescribes the cease-fire, with the adjuration not to augment forces, and part II reflects the truce agreement, the plans of the truce agreement. And what are they? Section A, paragraph I, states:

“1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir” - these are not my words; they are the words of the resolution – “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 the State.” (Ibid.)

Is there anyone in Pakistan or anywhere else who would say that today the same troops are not there, after twelve years, and that they have not been augmented – not only that they have not been augmented, but that the quality of their equipment has not been improved? And there are other circumstances which will be dealt with later.

Paragraph 2 reads:

“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.” (Ibid.)

This also has not been implemented.

Paragraph 3 reads:

“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.” (Ibid.)

First of all, the evacuation has not taken place; it is an occupied area. The local authorities no longer administer in this area. There is the so-called *Azad* Government, which is under the Ministry of Kashmir Affairs in the Pakistan Government. The Secretary-General, or somebody, gives orders. This is a kind of colony of the Pakistan Government. Therefore no local authorities entered into the concept at the time when these resolutions were drafted. The sovereignty was that of the Union, and we simply agreed to the local authority as a *de facto* matter; they were there, and when you want order maintained you give them assistance.

So we submit that none of section A of parts I, II and III have been implemented, and it is only when part I has been implemented that the whole question of part II arises. But even assuming for the moment that part I for argument's sake – I say for argument's sake and I hope you will notice it because afterwards it should not be said that the Indian representative has said that it has been implemented – has been implemented, even then until part II A is implemented, part II B does not come into operation. That is how it is constructed and part II B does not come into operation. That is how it is constructed and part II B states:

“1. When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in part II, A, 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council... 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 its forces from that State in stages to be agreed upon with the Commission.”

The next paragraph, paragraph 2, states that “the Indian Government will maintain within the lines” – and I will ask you to note the plural – “existing at the moment of the cease-fire those forces of its Army” – there were lines of resistance and lines of action and so on – “which in agreement with the Commission are considered necessary to assist the local authorities in the observance of law and order.”

Where in this is the sovereignty of Pakistan or any title of Pakistan to be in the territory of Kashmir? Then we are told that we have not implemented, that we have not withdrawn this, that or the other. Our submission, first of all, is that all of part I has not been implemented. On the other hand, it has been unimplemented by the introduction of more forces, more air fields, by occupation, by keeping the illegal accession of Hunza and Nagar and all these places: what is more, by the generalisation of the position of *Azad* Kashmir as a kind of State which, under the assurance that was given to us, ought never to be done.

If part I had been implemented and section A had been implemented, then the obligation comes on to the Government after the Commission has notified us; and no Commission has notified us so far – how could it? – that this has been done.

Then it is up to us to withdraw the bulk of our troops. It states in part II B, paragraph 1, that:

“the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission.”

Here I want to say, and I tell you with some knowledge of this matter for I have some responsibility for it – perhaps I should not say it for security reasons – that there are not in the territory of Kashmir the components of the Indian Army that are permitted under the cease-fire agreement. We are still under strength because we are not a country that wants to build up a large army. There are other reasons why there should be more people in Kashmir than forces. For those reasons we take the steps that are required.

Then comes the third part of this resolution upon which a great deal of play has been made about a thing called the plebiscite. Part III states:

“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...”

There is no question of our entering into consultations with them. If these two are implemented, then we will go to the Commission and say, “what should be done about it?” It is from this part III that the resolution of 5 January arises.

I want to submit to you that the 5 January resolution is more a plan, that is to say, that if all this has been implemented and if after all consultations of the Commission something has to be done about it, then it was suggested that this should have been tried. There has been no commitment at any time by the Government of India that they would take a plebiscite in Kashmir. A plebiscite has been discussed, it is part of the plan. In any case, it would become operable after parts I, II and III of the Agreement had been implemented; but they have not been implemented.

The Question of a Plebiscite

Now we come to this question of the plebiscite. First of all, I say that whatever Mountbatten might have written about the wishes of the people, what the Prime Minister has said, what other people have been quoted to say, in part or in whole of the text, they do not necessarily mean a plebiscite. Yet the plebiscite idea came into the forefront with the principle of self-determination during the First World War. At the Peace Conference of 1919 the American technical experts were:

“almost without exception, opposed to the use of plebiscites, recognising the weakness of any definite solution which they might recommend but believing that it was better that the decision taken should be definite and immediate rather than involve the delay that would follow on a plebiscite.”

The Italian delegation was very concerned about this and they were anxious to avoid general acceptance of the principle and this came out plainly in the peace negotiations.

In the British Foreign Office, the great expert on these matters, whom we follow with great respect, said in a pamphlet in 1920:

“The Italians themselves deride the plebiscite as the clumsiest of devices for ascertaining the will of the people. A plebiscite, if it does not yield an overwhelming majority one way or the other, is worse than useless; for it serves only to emphasise the division of opinion among the people, and to open the way for intrigue, perhaps for civil war.

“But it is seldom that an annexation plebiscite can be taken on so simple an issue. When the question is one of uniting several fragments of a nation in a single State there must always arise a further question of the constitution to be adopted; and this can never be simple.”

This is from the official British Foreign Office Handbook.

Then we come to France. In regard to the annexation of Avignon to France, Mattern states that Pope Pius VI sent a protest to the Catholic powers of Europe, opposing the incorporation “as a manifest violation of the law of nations,” condemning the revolutionary character of the theories involved in such plebiscites and expressing criticism of the result of the votes.

The United States of America, with all of its constitutional history, has been one of the opponents of the plebiscite. In the United States the consent of the inhabitants of the territories annexed need not and has not been asked. The act of annexation derives its legal force “from the body which enacts it, and it would be an error to hold its legal force necessarily dependent upon a consent from some other source...” There, is according to the same authority, no reason why Congress could not make an annexation dependent upon the consent of the population of the territory to be annexed – that is what may be stretched out in our case – “but this is not a matter of legal necessity.”

“Nor is there any principle of public law, or general precedent from our own practice” – that is, of American practice – “that requires the consent of the population of an annexed territory to be obtained. In none of the

instances, except that of Texas, has the United States deemed this consent necessary.”

The British Government’s attitude in this question of popular consent is found in the statement made in the House of Lords by the Prime Minister and Secretary of State for Foreign Affairs, the Marquis of Salisbury, who made a statement on 19 June 1890. The Marquis of Salisbury said:

“While the plebiscite has been considered in its international aspects by a long list of commentators, of advocates and opponents, the institution has, nevertheless, found little space in our standard textbooks on international law. The prevailing opinion expressed before the World War was to the effect that the rules governing the intercourse of States do neither demand nor recognise the universal application of plebiscite in the determination of sovereignty. W. E. Hall, for instance, speaks of the idea that the exercise of the right of alienation is ‘subject to the tacit or express consent of the population inhabiting the territory intended to be alienated,’ as a misapprehension.”

I could read a great deal about this. On the present position under constitutional law, Professor Mattern said:

“No State can, at the present time, from the point of view of constitutional law recognise the right of secession founded upon the principle of self-determination.”

This is not in opposition to the general principle of self-determination, that is, of unity inside a State. Professor Mattern continued:

“By doing so it would invite its own destruction. For in every modern State there may be found, at one time or other, groups sufficiently dissatisfied with the conduct of the majority or of a ruling minority to demand a release from their allegiance.”

If the argument is that the Government of Pakistan does not think that the people of Kashmir want to be in the Union of India and therefore cannot be, I would cite the instance of the United States as regards the annexation of Hawaii. The Japanese said that they should not go there. That did not prevent Hawaii from becoming part of the United States. These instances can be multiplied in this way.

Then we come to the whole question of the plebiscite idea. I hope Sir Muhammad will bear with me, I do not think that there is anything national or personal in this matter. The whole idea of plebiscite – I do not mean in that form – or consultation or whatever it was, arose from our own background of parliamentary institutions with all its limitations, and our entering a new form of democratic government.

Here we are told by a country that has not known an election for twenty-five years that we should take a plebiscite. I will come to that in a minute.

But, over and above that, if it had been taken then and there, if conditions could have been restored – that is, if there could have been not only the withdrawal of all these people but also the restoration of the position of the population – and if various economic and similar circumstances had entered into it, then there would have been something to be said for it. However, with the change of circumstances – and I shall quote the authority for this afterwards – a situation has arisen where this just is known. That is to say, apart from all commitments which we deny, there is no question. Then you may well ask, “What consent have you got?” Our answer is that the only party that is preventing the assessment of the opinion of the Kashmiri people is the Pakistan Government.

Free Elections Held in Kashmir

There have been free elections in Kashmir since the passing of that resolution. Sir Muhammad derided elections in Kashmir, and I noticed a degree of approving titter going round the Council. We were told that in Kashmir people did not know whether the ballot boxes were right side up or upside down. I wonder whether anybody in Pakistan has seen a ballot box. How could they know which side up it was? But I am not going to let this occasion pass with its misrepresentation not only of the Union of India but also of its fundamental institutions. I would say to Governor Stevenson¹ that not even in this country is there electoral machinery where the law and the Constitution provide the safeguards against it. Our Electoral Commission is entirely outside the competence of government, and Kashmir is under the Electoral Commission. We have no more authority over the Electoral Commission than over a High Court judge, and step by step Kashmir is now under the Electoral Commission.

A great deal of play was made – because it was thought other people would not have the facts probably – about people being returned unopposed. If people were opposed then we would be told, “Oh, they got in on a split vote.” If they are not opposed, then they say it is submission. As Gladstone said, if the people protest that is bad, if the people do not protest then they are silent, and in either case the people are wrong.

So, what is the position? In 1934, long before all this came about, elections to the Assembly were held community-wise – that is to say, by communal representation. We call it in India Muslim seats and Muslim voters, and so on and so on. And then there is the Maharaja’s Government. It reminds me of the kind of Parliament we had in India also – not completely responsible, but some sort of representative assembly. As I say, elections to the Assembly were held community-wise in 1934. The Muslim Conference – that was the ancestor to the National Conference, which was based in the beginning on a kind of Muslim

¹ Adlai Stevenson, representative of the United States of America

nationalism – won nine seats without contest. Is it to be supposed that they were not representative? And, mind you, this was the time when the Maharaja's Government was in existence – the Government about which we hear a great deal the other way.

In 1938 the same Muslim Conference won nineteen seats out of twenty-one Muslim seats and lost the other two only on technical grounds.

Then we come to the time nearer independence – 1946. By that time the original kind of religious nationalism had converted into national nationalism. The Conference had become the National Conference. It had become the parallel to the Congress in India. The Muslim Conference, as I say, was converted into a National Conference representing all communities. The ruler – that is the Maharaja – swooped down on this new party, suppressed civil liberties and staged farcical elections. The National Conference boycotted them and appealed to the electorate not to cast its votes. Only 8 per cent of the electorate voted. Are we to say that that also was a kind of unconstitutional action where everybody was just being obedient because the national movement was able to get a boycott established?

Then came 1951 – that is, after accession. In 1951, for forty-three seats out of forty-five in the Valley of Kashmir the election was unopposed, the two opposition candidates refusing to face the electoral contest. Undeniably this result was due to the Pakistan invasion and the atrocities committed by Pakistan regulars and irregulars, and the widespread popularity of the National Conference. When you have an armed opponent on your frontier it does create unity of the parties within. In many countries, including the United Kingdom, there may be even prolongation of Parliament and suspension of elections. All kinds of things can take place. But to say that in 1951 forty-three seats out of forty-five were unopposed in the Valley does not imply that the National Conference observed some kind of farcical election.

In 1957 – and this was referred - twenty-three candidates were returned unopposed, ten candidates withdrew and the nomination papers of ten were rejected on technical grounds. That happens in India all the time because there so many formalities to be complied with. The Election Tribunal is very strict on the law, and if you do not sign in the proper place the paper goes out. Thirty-two seats, on the other hand, were contested with ninety candidates in the field. We did not hear about that – thirty-two seats contested with ninety candidates in the field. Four political parties participated, and in addition there were twenty-four independent candidates. That does not look like a Hitlerian election, does it?

What is more, there are fifty-four newspapers in the Indian administered part of Kashmir, apart from all the other methods of propaganda. Some opposition candidates won against the ruling party's nominees. That also was not mentioned.

Here is a comment from the *Manchester Guardian* – not a paper which is very friendly to India. The *Manchester Guardian* published on 20 April 1957 said:

“The Jammu elections are a great and quite a genuine victory for the National Conference.

“Elections in Kashmir are over. In Jammu the National Conference was given a tough fight by the Hindu Praja Parishad, and all but five of the seats were contested. After strenuous canvassing and election fever, equalled only in India’s most advanced parts, the National Conference won two-thirds of the seats...

“... over 70 per cent of the electorate turned out, women, men and elders, in spite of battering rains.”

There is no law for compulsory elections in Kashmir, as in Australia. Seventy per cent turned out, and this is not peculiar to Kashmir. There are constituencies in India where every vote is polled. The newspaper continued:

“In the Kashmir Valley elections are over too – except for two seats, one in the Buddhist Ladakh and the other in Doda. Of the eight seats that were contested the National Conference won seven and the turnout was as high as 50 per cent in spite of the icy rains and slushy mud...

“The National Conference would have probably won most of the seats in the Valley had there been a contest...

“What has surprised everyone in India is the large number of people who have taken part in the elections both in Jammu and in Kashmir.”

Now we come to 1961. Thirty-four candidates were returned unopposed. That was referred to by Sir Muhammad yesterday. But thirty-nine seats were contested. The total votes polled were 683,929. That is a very large proportion of the electorate in Kashmir, which has a population of 3.5 million and a voting population somewhere about 1.25 million, speaking from memory. Seven political parties participated. There were thirty-five independent candidates. The National Conference won thirty-four seats.

Now no ruling party can have, as it were, a command opposition. Is it part of their obligation to see that an opponent wins? That would be funny kind of election, would it not?

The opposition parties first demanded that the elections should be conducted simultaneously with those in the rest of India. The Election Commission agreed. There you are. The Kashmir Government ruling party tells the Election Commission, “Have the election some other time,” but the Election Commission

decides otherwise and that is the law. Subsequently the opposition parties changed their mind and asked for a postponement. The Election Commissioner turned that down also. That is to say, he does not care about one party or the other.

On the eve of the polling in Jammu the opposition party asked for postponement on the plea of discovery of defects in the ballot boxes. The ballot boxes had been supplied by the Election Commissioner of India. Now these boxes that are put upside down, according to Sir Muhammad, did not come from Jammu. They had been supplied by the Election Commissioner himself – he has his own administration – and the State Government had nothing to do with this. The Election Commissioner laid down procedures for triple safeguard of the ballot boxes and instructions were issued accordingly to all returning and presiding officers. No complaints of non-compliance with those instructions or tampering with ballot boxes were received by the Election Commissioner. In spite of an appeal issued by the Plebiscite Front – that is the Pakistan-sponsored party – for the boycott of the elections, there was heavy polling. As for unopposed returns, the National Conference has not so far found any serious rival to its position and prestige. Since the introduction of popular government this party has been engaged in raising living standards by planned development, and so on.

So when we speak about farcical elections in Kashmir we have to bear in mind, first of all, that these elections are conducted in the same way as in the rest of India – which, even our opponents say, is the largest democracy in the world conducting elections peacefully. There, under the Election Commissioner, anyone has the right to contest a result. There will be applications of all kinds. All of us are open, even after majority victories, to the fear of there being a contest. Anyone can contest an election in India. They can go to the Supreme Court – they can go anywhere.

It would not in any way be an argument to say that things are worse in Pakistan or somewhere else, because two wrongs would never make a right. But on the basis of the thing itself, and I have pointed out how the elections are conducted, I would not have gone into so much detail except that statements have been made in the Security Council which I cannot allow to pass uncontested.

Pakistan Does Not Believe in Democratic Elections

On the other hand, all this argument regarding the ascertainment of opinion and elections would have substance only if the party demanding it believed in elections. A claimant must come to a tribunal with clean hands. In the entire State of Pakistan, with a population of nearly 90 million, there are only 80,000 electors under the electoral law just promulgated by its President. There are only 80,000 electors who get their posts as a result of five years of indirect election. They have there what is called a basic democracy; we have in India a system of democracy that is basic – some slight difference. The basic democracy system, according to the *Baltimore Sun*:

“... is a five-tiered structure of councils from the local level up to the provincial development advisory councils, one for West Pakistan and one for East Pakistan.

“The idea is based on the theory that the Pakistanis are not ready for fully representative democracy and need a system suited to their genius.”

May I say something here about the reference to West Pakistan, East Pakistan and all that. We hear a great deal about the right of a population to choose the form and structure of their government. One might well ask how the North-West Frontier Province of Pakistan disappeared; what problems the tribesmen have, who are supposed to be patriots? Were they absorbed into the rest of Pakistan with their consent?

Reference was made to the people in gaol. There are today 20,000 Pakistanis in Pakistan gaols. There is no civil liberty in Pakistan. The people live under martial law. And who are they to tell us about liberty?

Pakistan expects unequivocal support from the United States Government and its people on the vital question of Kashmir. There is no objection to expecting. “Our country consists of soldiers,” says the President of *Azad* Kashmir. “All we need is money and weapons to turn Kashmir into a new Algeria.” What a hope! I am not looking at Mr Stevenson when I say “money,” but that is the usual thing to do. He says, “Our country consists of soldiers; all we need is money and weapons to turn Kashmir into a new Algeria.” In other words, it is an invitation to other people to come and make civil war in the area.

The Foreign Minister says, “Even patience has its limits.”

The representative of Pakistan says that, “So far, India has been our menace.” And this is the country with whom we are negotiating.

Said the President of Pakistan, according to the *Chicago Daily News* on 16 April of this year: “My hope and prayer is that we can run without political parties.” And the President of Pakistan is of course a fervent believer in prayer. That is the very same country whose representative tells us that only one party won in the election.

The *Manchester Guardian* on 17 April of this year said:

“The more prudent among the ‘opposition’ candidates in West Pakistan do not think it wise to challenge the Government too fiercely during the first Parliament. They know that the President has them covered – not only by the arms he has provided himself within the Constitution but by the power

of the Army itself. It can abolish the new Constitution as it abolished the last, and the President himself has mentioned this possibility.”

When Baluchistan, which is part of Pakistan wanted to become a part of India, we did not encourage it. The *Manchester Guardian* on 24 April 1962 said:

“Baluchistan, this sometimes austere beautiful country which politically is part of Pakistan, seems to have been destined throughout the five thousand years or so of its history and prehistory to be a limbo.

“This is one facet of the problem of Baluchistan and an important one. There is not just one minority, but there are many. Until recently there were still petty States. There was no democracy, as we know it, but a certain devolution of authority to tribal *sardars* and from them to village headmen and the fact that these latter were fairly close to their people gave the Khan of Kalat some reason to feel that he could speak with authority for that part... now all that is gone and something closely akin to British colonial rule has taken its place. However dedicated these commissioners, deputy commissioners, and the rest of the imposed hierarchy may be, they cannot, with only short periods of duty in Baluchistan, be expected to identify themselves with the people. The administration is typical of good colonial rule and there is a wide gulf between it and the people.”

Of course, one cannot expect the *Manchester Guardian* to say that colonial rule is not good.

“These freedoms, however, are becoming things of the past” – that is, in relation to other parts of Pakistan – “and the law of Pakistan... is replacing their tribal laws. Tribal law was formerly administered by the *sardars* whose powers were seldom questioned. Now these powers have been taken away from them.”

In other words, in place of a tribal democracy it has become a bureaucracy and that is the kind of quarter from which the demand for a plebiscite is made.

I shall quote from the *Globe and Mail* of Toronto, Canada:

“It must be said in fairness that Pakistan’s own record is a dubious one. The tribal attack on Kashmir in 1947 was well organised and prepared beforehand by the arousal of tribal feeling by northwest frontier political leaders. If the Pakistan Government did not prompt the invasion, which is open to question, it did nothing to prevent it. Today the Pakistan area known as *Azad* (free) Kashmir” – names do not mean anything; you can call a man with a weak arm ‘Armstrong’ – “is closed to visitors” – while there are 70,000 visitors a year in Srinagar, including large number of

nationals of countries ideologically opposed to each other, and perhaps to us.

“President Khurshid is the former secretary of late Mohammed Ali Jinnah. He said recently that his forces would succeed in ‘liberating every inch of Kashmir,’ a threat that India could hardly ignore.”

This talk of war came from everywhere, from small people and big people alike. The *Civil and Military Gazette* in Lahore stated:

“The Minister for External Affairs, Mr Manzoor Qadir, expressed the view in Lahore yesterday, that a referendum on the new Constitution would have served no useful purpose because the masses, having an overwhelming percentage of illiteracy, were not in a position to give a correct verdict on an intricate problem like the Constitution.”

If it would serve no useful purpose, I should like to know how a plebiscite in *Azad* Kashmir can serve a useful purpose.

Then there was a statement in the *Morning News* of Dacca on 6 April 1962, as follows:

“... We feel that if universal franchise is given, the Communists, or any other group hostile to Pakistan, would find it much easier to exploit the ignorance of the masses to our disadvantage...”

In other words, if you have a head, you are likely to have a headache; therefore, cut it off.

From the publication *Dawn* of 8 April 1962:

“President Muhammad Ayub Khan warned Pakistan here today that a bloody revolution would overtake the country within six months if parliamentary type of government was to be revived.

“... the President said this revolution... would not be like ‘my revolution,’ which he pointed out, had been ‘noble,’ benign and bloodless.”

When did a revolutionary ever say that he is not benign? The argument is, “I don’t mind autocracy, as long as I am the autocrat.”

“... the President said he did not think Pakistan had reached a stage of development and maturity where it could fruitfully run a parliamentary system based on political parties.” I am quoting this; I will not say it.

“The President said he thought the country should do without the luxury of political parties if it could.”

In the elections in Pakistan on 28 April – just now – only 80,000 people out of a population of 90 million, were eligible to vote. The political parties were not allowed to contest elections, as they have been banned. Latest reports state that no member of any of the minority communities has been able to win a seat. A Christian leader who contested in a constituency in Lahore was hopelessly defeated. He secured less than half a dozen votes in a constituency of 609.

No woman has been elected to the National Assembly from the general seat, though six seats are reserved for women. No seats are reserved for minorities.

I read all this out not because I have any business to comment on the system of government that they should have. That is their business. We do not criticise that. But when it is said that this medicine is good for other people, when somebody prescribes it, then we want to know what they think of it themselves.

What I am trying to submit is this: that this argument about plebiscites, about consultation of peoples, about freedom, about this, that and the other, is spurious; it has no reality; it is not substantiated by facts. And add to this the question that, every time a President of so-called *Azad Kashmir* shows some independence, out he goes. There is no civil liberty of any kind in *Azad Kashmir*. There are no meetings, no newspapers, and no expression of opinion of any kind.

Enslavement of People in Pakistan-occupied area

The Pakistan Government’s systematic enslavement of the people in the Indian Union territory of Jammu and Kashmir, which is occupied by force, is described in authentic terms by *Azad Kashmir* leaders in a memorandum which was submitted to the Pakistan Constituent Assembly and which now forms part of the Security Council records. I submitted it in 1957. According to this document, there is no legislature, no independent judiciary in this territory, and there are no civil liberties.

May I say in this connection that some reference was made to the judiciary in Kashmir. I shall have to talk about it later. But the judiciary in Kashmir is part of the judiciary of the Union, in the sense that it is, by and large, under the original jurisdiction of the Supreme Court of India. The rule of law applies and whatever changes there were in the transition period, they have been gradually eliminated. The judiciary in Kashmir – the high judiciary, the high court – is independent of the executive.

Newspapers in Pakistan testify to the degradation to which the unfortunate people are being subjected by the puppet regime foisted upon them by Pakistan. The administration in *Azad Kashmir* is run by the Minister for Kashmir Affairs in

Karachi – now in Rawalpindi, I suppose... All appointments, all questions of general policy, budget, internal security, all matters involving financial commitments, alienation of State property, public debts, loans, forest schemes, all important matters relating to civil supplies and rehabilitation - all have to have the consent of the official in Karachi. I will not read the rest.

Form time to time, the disaffection of the people against the local administration of government has found violent expression. In the summer of 1954, when the Pakistan Minister for Kashmir Affairs was addressing a gathering serious disturbances broke out. That is old history; I won't go into that.

The following views expressed by independent observers throw a significant light on the wretched conditions in which the people live under the Pakistan bayonets:

“It is a slur on the forehead of Pakistan that, even after nine years we have not been able to set up a model administration in *Azad* Kashmir. It might have saved us from hearing taunts across the border that ‘You have chained the Kashmiris in poverty, slavery and ignorance.’ Moreover, we are witnesses to the efforts the Government of India have made to uplift the people of Kashmir. The situation availing generally in Pakistan, and particularly in *Azad* Kashmir, would naturally raise doubts in the minds of a Kashmiri Muslim that, when Pakistan has failed in *Azad* Kashmir, how can she function better if the whole of Kashmir rejoins her?”

That is very normal question. It appears in a Pakistani paper in Lahore. It speaks well for the liberty that exists in Pakistan that this can be published. I do not know what happened to the editor afterwards.

“Pakistan leaders have been using this issue as a means to prolong their stay in power,” said a leader in Pakistan-occupied Kashmir in the inaugural address at the Muslim Conference Convention.

“*Azad* Kashmir,” says another paper in Lahore, “is on the cross-roads to dictatorship and democracy, intrigue and fair play. Not that there have been no changes in *Azad* Kashmir in these years. In fact, the changes have been more than necessary, but they have unfortunately been changes for the worse.

“The *Azad* Kashmir, officially stated to have a population of 1 million and a territory of 5,000 square miles, functions on the surface as a separate State. The area has its own provisional President and its own flag. But Pakistan whose military authorities command the *Azad* Kashmir army, is the real force here.

“The decisions for the formation of all governments installed in *Azad* Kashmir during the last ten years were taken in Karachi. They were all

undemocratic and were forced upon the masses from Karachi. These governments were against the claims of Pakistan that she wanted to achieve the right of self-determination for the Kashmiris.”

For “Karachi,” we must now substitute “Rawalpindi.”

“The way democracy has been trampled underfoot for ten years in the area called *Azad* Kashmir has tarnished Pakistan’s reputation, and *Azad* Kashmir is an area over which India has no control. India has never placed hurdles in democratising the administration in this region, in forming a popular government, and in enabling the people to exercise their right of self-determination. All this could be done by Pakistan.”

This, again, is one of their papers. I don’t know - do you want me to read any more? There are many more expressions of opinion of this kind, mostly from their own people, on conditions that obtain. I will not tire the Council with reading any more of this.

Progress in Indian-administered Area

Then we come to the question: It has been said that the Indian-administered area of Kashmir is exploited for the purposes of the Union, is governed by an army – and I tell you, with a personal responsibility for this, that the Indian Army does not interfere in the civil life of Kashmir. They are liked in the area. They have their own arrangements about residence. They do not interfere with the civil life. Our army does not interfere in our civil life. Civil government controls the military side in our Constitution. Soldiers do not govern our country.

As against this, I want to give the position on the other side. It is a natural question to ask: How are things on the other side? It may be, as has been said in this statement by Ayub Khan, that these people are so underdeveloped that they cannot be developed, they cannot develop themselves.

I will not read the whole of this table. I beg your permission to introduce this document on the conditions in Indian-administered Kashmir as a Security Council document, and I will read part of it.

The figures given below indicate the progress made by Jammu and Kashmir in the two five-years plans. Here are the comparative figures for 1951 and 1961:

Investment: 25 million and 57 million. That is an advance of 32 million in ten years;

Revenue: 5.5 million and, today, 23.5 million.

Taxation is high in India. Next to the United Kingdom, I suppose, we are the highest-taxed people in the world. We pass on the benefits to Kashmir also.

State income, in 1955-56 prices: in 1951, 100 million, today, 160 million.

Food production: 3 million tons, increased to 5 million tons.

Power potential: 4,360 kilowatts, increased to 16,000 kilowatts in ten years.

Roads per 100 square miles: 2.5 miles in 1951, and 40 miles today, in every 100-square-mile area.

Number of pupils in primary schools: in 1951, 65,000; today, 197,000.

Number of higher secondary schools: 52 in 1951, and 262 today.

Literacy was 6.6 per cent, and is 12 per cent today.

In 1951, there were no students sent out of Kashmir for education, and today there are 3,179 students sent abroad – in the United Kingdom and all sorts of places.

The per capita expenditure on public health was, in 1951, 13 cents; and today, 76 cents.

The number of hospitals and dispensaries was 89; today, 349.

The average life expectancy at birth was 32 years in 1951, and 47 years today.

In other words, the Indian-administered area of Jammu and Kashmir is not a colony, like *Azad* Kashmir. It keeps pace with development.

Conditions Have Changed

Although I have made more notes about other things, I propose to try to wind up this matter as quickly as possible.

First of all, I submitted in 1957 that irrespective of what interpretation may be put on certain resolutions, certain phraseology, with the exception of trying to inform the Council of what my Prime Minister has actually said, because my Prime Minister said that the Pakistan case here was based on falsehood – which practically meant something.

This is an international forum. While you are not a judicial tribunal and have no right to pronounce on the legality of one thing or another we are governed by conditions of international law in the world, and these conditions are governed by the well-known doctrine of *rebus sic stantibus* – that is to say, conditions having changed, you have to take another view of these things.

Now what those changed conditions are I will enumerate at the end, but I have already put forward certain changed conditions in relation to these resolutions, namely the military strength being changed, the conditions of suppression on the *Azad* side; and more than all that – I would like to submit to the Council – the only party that is preventing the free expression of opinion in *Azad* Kashmir is Pakistan because under the Constitution of Kashmir those territories have constituencies. They are free to elect them and if they have other decisions why do they not elect them and send them to the Kashmir Assembly? They are entitled to elect them; they have not been put out; those seats are kept vacant. But if they do not express an opinion it is because there are no elections. There is no expression of an opinion there, and if anybody says anything, out he goes. After all if the parent country is like that, how could anything be different.

Therefore, conditions have changed in the sense of economic advance, industrial advance, and the country being opened up in the way it is, with the spread of democracy in the institutions, the independence of our judiciary, the rule of law, financial control, and all these things happening in the Union territory and our sovereignty still subsisting. On this question of sovereignty there has been no challenge from the United Nations, and I think it will be useful to quote the opinion expressed at that time, as submitted to the Security Council by the representative of the United States.

India's Sovereignty in Kashmir Unchallenged

But over and above that there never has been a challenge from the United Nations on the question of sovereignty. The whole of this resolution is based on the sovereignty of independence because they make us responsible for security. You cannot make a country responsible for security when it has no authority.

Mr Warren Austin, the representative of the United States, said:

“... we must face the legal situation. The external sovereignty of Jammu and Kashmir is no longer under the control of the Maharaja. The external sovereignty of Jammu and Kashmir is the sovereignty that is involved here... with the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India and that is how India happens to be here as a petitioner.” (*Security Council Official Records*, Third Year, 240th meeting, page 371)

This is not a statement of my delegation. Then, at a meeting of UNCIP on 17 August 1948 with the Prime Minister of India, the Prime Minister enquired whether the 13 August 1948 resolution, the one to which I have been referring:

“... envisaged any change in the status of the territory, or whether it recognised the jurisdiction of the Government of Jammu and Kashmir over the territory. Mr Korbel remarked that that point incorporated the suggestion which the Prime Minister himself had advanced and that the phrase ‘pending final solution’ was intended to recognise the temporary nature of the administration by local authorities” –

Not the position of India, but the temporary nature of the administration by local authorities; it was intended at that time that these people should maintain local peace –

“Sovereignty over the territory was not to be changed.” (S/1100, annex 12, page 105)

In a letter dated 20 August 1948 from the Prime Minister of India to the Chairman of the Commission, the Prime Minister maintained:

“That, paragraph A. 3 of part II of the resolution” – which I read out a while ago – “should not be interpreted, or applied in practice, so as (a) to bring into question the sovereignty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops; (b) to afford any recognition of the so-called *Azad* Kashmir Government or (c) to enable this territory to be consolidated in any way during the period of truce to the disadvantage of the State.”

That is what I said, that it was impossible to perform part II even if part I had been performed, because the Pakistan Government had consolidated this area bringing it under the particular section of their Constitution, and they have annexed it, received accession, stationed armies, built airfields, and placed them under the Pakistan territory altogether. The Prime Minister again enquired:

“If I understood you correctly, A.3 of part II of the resolution does not envisage the creation of any of the conditions to which we have objected in part 3(1) of this letter. In fact, you made it clear that the Commission was not competent to recognise the sovereignty of any authority over the evacuated areas other than that of Jammu and Kashmir Government.” (S/1100, para 78, sub-para 3(1) and (4))

And as Mr Warren Austin pointed out, when the Maharaja disappears, that sovereignty goes to the Government of India.

In reply the Chairman said:

“The Commission requests me to convey to your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards points (1) (c) the local people of the evacuated territory will have freedom of legitimate political activity. In this connection the term evacuated territory refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.” (S/1100, para 79)

Doctrine of Rebus Sic Stantibus

Then reference was made by Sir Muhammad Zafrulla Khan – I think it was yesterday or some time before that – to the fact that if any authority of the United Nations found anything which the Pakistan Government had not honoured, which was presumably against international law, they would honour it. Now I would like to make him a present of this: When the frontier of the State of Jammu and Kashmir was crossed by hostile elements, it was contrary to international law, and when in 1948 units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law. That is fixed by Sir Owen Dixon. And then we have the following in the UNCIP Chairman’s letter:

“Surveillance of territories of the State of Jammu and Kashmir other than those now kept by the Pakistan Army and the forces under their control is not provided for in the resolution” – then what right have they to go into the Northern Areas? – “The administration of such areas remains under the jurisdiction of the Government of the State.”

Now I come to this doctrine of *rebus sic stantibus*: “It is a well established principle of international law that a treaty ceases to be binding when the basic conditions upon which it is founded have essentially changed.” This is the opinion given by the Attorney General of the United States on 28 July 1941. No international tribunal has so far rejected the validity of this doctrine. Otherwise we would not have a dynamic international society.

The essence of this doctrine is that all treaties are concluded – and I am not for a moment saying it is a treaty; I am quite prepared to call it even an international agreement, commitment, resolution, or whatever you would like to call it, all those that would be binding on a much more rigid form of agreement – on the basis of a clause concerning vital change of circumstances. It is inherent in the nature of circumstances. It is inherent in the nature of law that performance is conditional, that no vital change of circumstance occurs; if they do, the State is not in a position to perform them physically. This applies even to municipal law. For example, there is a rule about specific performance and if it becomes incapable of performance you cannot improve it any more.

This fact can be justified according to some writers only when the change of circumstances is so essential that to adhere to it would threaten the very existence of the State. The fundamental right of the existence of a State – which is so vital and to which I will refer later – is stronger than any of its obligations. As Hegel said:

“The relation of States is one of independent units which make stipulations, but at the same time stand above their stipulations.”

No State can be limited by its stipulation. If a stipulation limits a State, how will it become a stipulation? It is almost like saying that God cannot be Almighty because then he can create something that he cannot destroy, and if he creates something he cannot destroy, he cannot be Almighty.

What puts an end to the treaty is the disappearance of the foundation on which it rests or the treaty is ended, because we can infer from its terms that the parties, though they have not said expressly what was to happen in the event that has occurred, would, if they had foreseen it, have said that the treaty ought to lapse. This doctrine finds its place in the municipal law doctrine of many civilised nations, and most international law is interpreted or rather explained, or justified, in terms of municipal law.

In French law there is the doctrine of *force majeure*, where it is not possible to perform a contract by conditions which are beyond control by the parties to the contract.

In Germanic law, articles 323, 542, 605, 723, 775 of the German Civil Code also make the same provisions.

In the law of the United States, articles 454-496 of the American Law Institute's "Restatement of the Law of Contracts," deal with the same matter. The Restatement does not mean strict impossibility, but impracticability due to extreme and unreasonable difficulty. In that case the agreement cannot stand.

In Austrian law, Article 936 of the Austrian Civil Code makes the same provision.

In English law there is a large number of cases in connection with it. There is a case called *Taylor v. Caldwell*, one called *Krell v. Henry* and one called *Jackson v. Union Marine Insurance Company* (1974), the last, according to my memory, being the most telling although unfortunately I have not been able to obtain the text of the judgement. In the first case Mr Justice Blackburn held:

“In contracts in which performance depends on the continued existence of a given person or thing a condition is implied that the impossibility of performance arising from the perishing of the person or thing shall excuse performance. Though there is no express provision or stipulation that the

destruction of the person or thing shall excuse the performance, that excuse is apparent that the parties contracted on the basis of the continued existence of the particular person or chattel.

“The rule in this case has been extended to contracts the performance of which was held to have become impossible by the non-existence or non-occurrence of a particular state of things forming the basis on which the contract has been made.”

What is happening in this case? The local authorities are no longer there. There are places where there is no Pakistan Army, and what is more there are other circumstances in regard to which the conditions have changed.

Statements by the Prime Minister of India

Now we come to what Sir Muhammad has placed before this Council regarding the Prime Minister's statement. I am quite certain that the Prime Minister's reputation or his own sense of integrity would not be challenged by any misquotation anybody might make, but I have the duty, as a member of the Government of India, to correct this matter. Sir Muhammad yesterday quoted from the telegram of 27 October 1947. The Prime Minister of India has already conveyed the assurance to the Prime Minister of Pakistan to the following effect:

“I would like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence this 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 peoples, and we adhere to this rule.”

This is what Mr Muhammad quoted yesterday. What was not quoted was what followed in the same telegram:

“It is quite clear, however, that no free expression of the will of the people of Kashmir is possible if external aggression succeeds in imperilling the integrity of its territory.”

Now, what sense can the first paragraph of the telegram have without the second? I am not for a moment suggesting that the distinguished representative opposite has been guilty of wilful suppression, but it may be that like me he feels tried.

In his broadcast over All-India Radio on 2 November 1947 the Prime Minister said:

“We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given not only to the people of Kashmir but to the world.”

Then follow a number of lines which we do not see in our copy of the text of the telegram as it was quoted yesterday.

“We are anxious not to finalise anything in a moment of crisis and without fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide. And let me make it clear that it has been our policy all along that where there is a dispute about the accession of a State to either Dominion, the accession must be made by the people of that State. It is in accordance with this policy that we have added a proviso to the Instrument of Accession of Kashmir.”

There is another passage which we do not see quoted:

“We talk about the invaders and raiders in Kashmir, and yet these men are fully armed and well trained and have competent leadership. All of these have come across and from Pakistan territory. We have a right to ask the Pakistan Government how and why these people could come across the Frontier Province or West Punjab, and how they have been armed so effectively. Is this not a violation of international law and an unfriendly act towards a neighbour country? Is the Pakistan Government too weak to prevent armies marching across its territory to invade another country, or is it willing that this should happen? There is no third alternative.”

There is more, but I do not want to read it. In the same way there have been references to what has been said by Sir Benegal Rau and Mr Ayyangar. I read about the Prime Minister just now, and today, the Prime Minister, speaking in Parliament in India, said – this is a press report:

“Mr Nehru referred to the President of *Azad* Kashmir, Mr Khurshid’s recent statement that they would resort to war to ‘liberate’ the Indian part of Kashmir and also to Mr Zafrulla Khan’s remarks in the Security Council that a second tribal invasion would take place if the Council failed to find a suitable solution. ‘Now we have got definite information that for months past Pakistan authorities have been registering names of tribesmen on a monthly salary of Rs. 54.’ They were being invited first to function as some kind of levies. Nearly 5,000 men have offered their services in one area but actual recruitment has not taken place. Probably this was taking place elsewhere too. But when these persons were told that they had to go to Kashmir and they were not at all anxious to go there and perhaps realised they were likely to meet the Indian Army, many of them had withdrawn their names.

“Mr Nehru said that Pakistan well knew that any such thing as tribal invasion happening would mean ‘all out war.’ Still they indulged in threats

and all their strength lay in military aid they had got from the United States.”

This was said today.

Pakistan's Negotiations with China Concerning Indian Territory

Now, I want to deal with another matter. It is one which does not really concern the Security Council except in so far as Pakistan becomes involved. There have been certain changes in the relations between China, across our border, and ourselves. China claims certain territory as being part of Sinkiang Province at a certain border. Historically, there is another side; I suppose China would say this territory is in dispute, but the Indian Government knows its territory and would not permit this annexation. That matter is not before the Security Council, but the fact is this, this territory is part of Jammu and Kashmir, certain parts are along the border between China and Pakistan and I think Pakistan's allies and the world should know.

Although Pakistan has been in unlawful occupation of a part of the Indian Union territory of Jammu and Kashmir and, as admitted by Sir Muhammad Zafrulla in his statement on 1 February 1962, Pakistan is committed to the withdrawal of its forces from the State of Jammu and Kashmir, Pakistan has nevertheless sought to negotiate Kashmir's border with Sinkiang with the Government of China. We say categorically that Pakistan has no authority to barter away or negotiate any part of Indian territory and any agreements Pakistan may reach, or anybody else, would have no value in our eyes.

President Ayub and other official spokesmen of the Government of Pakistan quote the Government of Pakistan as saying that this part of the territory of Jammu and Kashmir is Pakistan territory. Then there is a lot more; some people have been taken in by this; there was a lot of talk about joint defence by India and Pakistan. Should we ask Pakistan to join our own defence against Pakistan? Impossible. “Only if India comes to an understanding with Pakistan which will end the aggression in Kashmir can it earn the moral right to demand that China vacate its aggression against Indian territory.” That is to say, unless we permitted Pakistan's invaders we must admit them elsewhere. This was in one of the newspapers, but I do not attach any importance to what appears in newspapers in serious matters of this kind.

However, at a news conference on 24 May 1960,

“Asked whether negotiations were still going on between China and Pakistan on demarcation of border between the two countries, [Foreign Minister] Mr Manzur Qadir said Pakistan had made a suggestion to this effect but had not heard anything further on the subject.”

China is not here to answer and we have not brought this question before the Security Council. Mr Qadir said that Pakistan had made a suggestion, but had heard nothing further on the subject. Everything Pakistan can do to exploit this it has done.

In an interview, Lt. Gen. K.M. Shaikh, Food and Agriculture Minister, has said he knew of no Chinese infiltration along the small segment of Pakistan-held territory that adjoins Sinkiang.

“About Pakistan’s relations with China, the President said they were normal. Pakistan had no problems with China and had diplomatic relations with her. However, the border between Pakistan and China in certain areas was undefined and they had asked the Chinese Government to define it. The President said indications were that the Chinese Government was willing to do so.”

That is to say, in a territory where they had no sovereignty, which they illegally occupied, in regard to which they have a dispute with another country – to put it mildly – they are willing to barter away our freedom in order to create embarrassment for us, irrespective of their professions in other directions. May I say that in either case the common ideology is expansionism.

“... The ruling elements in New Delhi are evidently even more disturbed by the fact that, of all the nations who are close neighbours of China in this area, India remains the only one with whom the Chinese find it hard to co-exist...”

“No wonder that the Indian Government should find all this most irksome, because they have been depicting the Chinese as utter aggressors and the image projected by their propaganda begins to grow less convincing.”

We are not aware we are making propaganda by this. This is an editorial in a Pakistan paper founded by Mr Jinnah. I continue:

“The fact of the matter is that the Indian allegations against the Chinese regarding border aggression seem now to have been more propagandist than truthful. But the campaign was so successful that even some Pakistanis were influenced by it and fell for the bogey of a ‘common danger’ from that quarter. What most of us failed to see at the time was the clever exploitation of the situation – deliberately exaggerated for the purpose – by India to stampede Americans and others into massive ‘help India’ campaigns. This is precisely what Mr Chou En-lai himself has just pointed out. In an interview published in *Look* magazine the Chinese Premier has said: ‘The Indian Government does not want a settlement because they are using it as card... for obtaining foreign aid.’ We have also reasons to believe that certain impartial experts on the Sino-Indian

disputes have studied the question and come to the conclusion that the boot was, in fact, on the other leg, and India's own forward policy created misgivings in Peking and forced the latter to attend more diligently to the guarding of China's frontiers with her ambitious rival for Asia's leadership."

This is all from an editorial in *Dawn*, dated 20 January 1961. We are not dealing with China's opinion but with Pakistan's opinion on this question and the use Pakistan is making of it in order to embarrass us.

I now quote from *Dawn*, 21 January 1961:

"When asked if his Government would accept Chinese or Eastern Bloc aid and arms, Mr Khurshid said there was no reason not to accept it in case it was given without political strings and helped in the cause of Kashmir's liberation. He added: 'In fact we have always appreciated the correctness of the Chinese stand in regard to accession.' Mr K.H. Khurshid welcomed reports that China had agreed to a proper demarcation of the Chinese border with Northern Areas of Pakistan through negotiations. India, he pointed out, had failed to maintain international borders with China..."

Here I want to say that we have no information that China has given any agreement of this kind referred to by Mr Khurshid, the President of the so-called *Azad* Kashmir. It was published in the paper, and Mr Khurshid is not supposed to speak without the consent of the Pakistan Government.

Now, from the *Pakistan Times* of 17 February 1961, I quote the following concerning President Ayub:

"Asked about Indian Premier Nehru's reported contention in Parliament yesterday that Pakistan had no such right, as she did not legally occupy the territory in question, the President told newsmen at the Dacca Airport that Pakistan was in legal occupation of the territory."

I suppose the law, for dictators, means what they think. Now, continuing:

"'Mr Nehru has the right to have his own opinion,' he commented."

Now, from the *Times of India*, dated 23 February 1961:

"In view of the international importance of the area and the danger of foreign intervention in disturbed conditions, the Pakistan Government sent a Political Agent in the middle of November, 1947, to provisionally take over the administration, in order to restore law and order and stabilise conditions..."

This action was not permitted by the United Nations resolution. In fact, as I have said so many times this afternoon, this was a function, which was placed squarely upon the shoulders of the Indian Government, to garrison them, protect them, and stabilise conditions. I read now from an interview of the Pakistan Foreign Minister, Qadir, in the *Hindustan Times* dated 16 March 1961:

“Mr Qadir said Pakistan had taken the initiative to negotiate the boundary with China in the middle of last year because of two reasons: first, the constitutional position of the Northern Areas in this boundary was different from that of the other parts of Kashmir” – Now, how does that square with the previous statement? I do not know – “and, secondly, Pakistan wanted to be certain of the line beyond which Pakistanis should not go and fix the line beyond which Chinese would not come.

“China, Mr Qadir said, had not responded immediately but had requested for time to consider the matter.”

So I am not placing any commitment on the border of China because we have not heard from the Chinese in Peking; nothing has been written to us, there has been no exchange of notes. We have not heard, so far as my papers say, that there has been any communication. But the fact remains that Pakistan has been negotiating and fishing in these troubled waters.

“Pakistan,” says the *Washington Post* of 9 July 1961 – no friends of India – “by considering India her number one enemy is embarking on a flirtation match with Communist China, India’s number one enemy.”

Well, we did not say either one is our enemy. Pakistan is a friend of ours.

President Ayub, in an address to the National Press Club in Washington on 14 July 1961, said:

“Pakistan will go ahead in negotiations with Communist China to define the common border between China’s Sinkiang province and Pakistan, which is now undefined. He said it is in the interest of both China and Pakistan to do this.

“Asked whether Pakistan wanted to sign a treaty with Communist China about their common border, President Ayub replied: ‘There is no need for a treaty. There is a common border between Pakistan and China on the Sinkiang border. It is ill defined. All that we want is that it should be defined. It is in the Chinese interest and our own interest.’”

President Ayub was further quoted, at his monthly press conference, as having spoken as follows:

“He said Pakistan had conveyed to Peking her willingness to demarcate her border with the latter. China had replied that she was examining the proposal and when they were ready they would let Pakistan know about it.”

“An Indian correspondent asked whether it would not create difficulties if Pakistan at this stage negotiates border demarcation with China and whether that would not weaken the cause of ‘democratic forces in Asia.’ President Ayub replied it would be very good for democracy if the causes of friction between neighbouring countries were removed.”

This is from the *Pakistan Times* of 4 October 1961:

“Mr Khurshid also announced that the Chinese Government representative was visiting South Kashmir. He said: ‘In fact, my Government would welcome such a visit.’ There has been no announcement on the Chinese side on this question, however.”

There are many more of these extracts, but I do not propose to read them. Now Mr President, if I may, I will finish in about fifteen minutes.

Summing Up

First of all, we want to say that these meetings have begun in the context of the threat of armed invasion being repeated all over the place. There have been these things going on, but on account of the shortness of time I am not able to recite before this Council the incursions, the violations of our territory that have taken place in recent times. In the last five years there have been an average of ninety incidents every year inside Indian-administered Kashmir where bombs and other things have been exploded – intricate equipment that could come only from the Pakistan Army. Saboteurs have broken up bridges and terrorised the population; in village clubs and schools and places of worship, in several cases mines and anti-personnel mines were used which were sent to our colleges of research and were revealed to be of Pakistan origin. There have been 400 cases of bomb explosions in Jammu and Kashmir and the usual story is that the people of Jammu and Kashmir are discontented – all of which you must know about from your own inferences, both from the election results and from the conditions of prosperity which I read out to you. Inside Kashmir there is taking place this degree of sabotage and subversion. We charged the Pakistan Government also, both publicly and in our communications with them, that their agents have been committing espionage in our territory. A Pakistani national, arrested in November 1959, disclosed how saboteurs were trained in Rawalpindi, in Pakistan. They were given practice in the use of various weapons including sten-guns and hand-grenades, TNT slabs – which we have had analysed in our laboratories – plastic explosives, detonators and time-pencils. All these things have been given in large

quantities to people who come to commit sabotage. He also brought sums of money.

The arrest of another Pakistan agent, Abdul Rashid, in September 1957, brought out the fact during his interrogation, that Pakistan intelligence was preparing to organise subversion and sabotage in other parts of India. I will not read the whole of that story, but I want to tell the Council something that concerns us deeply. Plans were hatched in Pakistan for the purpose of assassinating the Indian Prime Minister and our important Indian leaders. The part played by Pakistan intelligence in such plans was revealed during the case of a man arrested in 1958. Pakistan intelligence officers had provided him with arms and ammunition and money and had given him intensive training with a view to assassinating the Prime Minister during his journey to Kulu in 1958. The Prime Minister had gone on a holiday. This man, however, was arrested before he could carry out his plans. He was prosecuted for conspiracy to commit murder and was sentenced to seven years of rigorous imprisonment in 1961, along with three accomplices. Pakistan had placed ample funds at his disposal to aid in carrying out his nefarious mission: ten hand-grenades, twenty detonators, one revolver, one pistol and two sten-guns were found on him.

My distinguished colleague from Pakistan has referred to some other matters in a conspiracy trial that is now going on in Kashmir. I have not got the same liberty as he has. I am quite prepared to overlook the fact and think that the acquaintance of Sir Muhammad with the Indian judiciary is somewhat remote – it is now about twenty years.

But it is not our practice to be in contempt of our judiciary and we would be if we were to refer to matters that are *sub-judice*. These men have been committed to sessions; they were tried, the trial lasted for years, not because anyone in the judiciary was preventing it, but because the accused with the assistance of Pakistan, used obstructive tactics. The process of law had to go through, and it took time. They have been committed to trial. I believe that their defence counsel is coming from England. The trials are open, the proceedings are open, for anybody to read. I cannot comment on them because, both as a member of the Indian bar and as a citizen of India, it would be regarded as extremely improper for me to deal with matters that are before the judiciary.

In conclusion, our position is that, first the accession to India, which has been challenged, is full and complete. There is no such thing in our Constitution as provisional accession; secondly, if that accession has to be altered, it has not only to be the acceding side, but the receiving side also has to agree.

Then there is the question of plebiscite which has been raised. The only basis for plebiscite is this resolution of 5 January which provides a plan and, as I have said, first of all, the conditions are not there. What is more, twelve years have elapsed and we categorically say that we are not prepared to do anything in any part of

India that will shake the stability of our country, undermine our country or create conditions of trouble in Southeast Asia. There is no provision in our Constitution for the secession of any state. I want to say here again that the statement attributed to Lord Mountbatten on the one hand and to my Prime Minister on the other are quotations in part and not in full; secondly, that what it really means is that while the legal accession has taken place to the Head of the State, and that is good enough for the purpose of law, we, with our hostility to feudal and arbitrary rule on the one hand, our sympathies and our affiliations with the national movement in Kashmir on the other, are not prepared to regard that as sufficient. We want some moral support of it and that moral support we gained immediately as best we could, in the same way as the British did in India, by consultations with the national movement. Thereafter, as soon as it was possible, not even waiting for the raiders of the Pakistan Army to go, we established elections and the first elections were almost simultaneous with the elections in India. Three general elections have taken place with a free press, with anything from 50,000 to 70,000 visitors going to Kashmir without any obstruction from anyone except for the normal procedure with regard to visas and so on. Therefore, we are not prepared to change any of these questions, whatever might have been said at that time and on one single word or on a discussion of anything. Reference was made by Sir Muhammad about the discussion that went on between Mr Bajpai, I think it was, and the United Nations people with regard to what he called "the quantum of troops to be withdrawn" and so on. I want to say here and now that they were not negotiations, that they were discussions, saying that if the truce came and if this was preparatory in that way then such might be the case.

Therefore, our submission on the one hand is that the challenge to the accession of Kashmir to India just gets nowhere. Secondly, the sovereignty of the Union over this territory has been admitted by the United Nations, by leading members of this Council who have not sided with us in condemning or taking action against Pakistan with regard to aggression.

I say this, and I hope Governor Stevenson will excuse me, that we fully and completely accept the statements made by successive Presidents and statesmen in the United States that the military aid given to Pakistan is not intended by the United States to be used against us. But equally they cannot escape the fact that the guns that fire only in one direction have not been made. What is more, we cannot escape from the fact that Ayub Khan, before he became President, talked about these weapons in relation to the enemy on the riverine side. Only a few months ago the President again said that "in our hostilities, whatever it may be, with India" they would use everything they had in their possession. I think that the accession to strength, the position taken by the Baghdad Pact, when the Turkish Government and the Iraq Government which at that time held a different position, was, that they felt concern about the position of their ally Pakistan, their military ally, whatever were the other implications.

So far as our frontiers are concerned, dangerous conditions exist, and we cannot ignore these conditions. We cannot also ignore the fact of our troubles with China – like all other things, we hope they will be settled in due course and that wisdom will dawn and that there will be no attempt to force issues. We cannot also ignore the fact that our neighbour, whose citizens were our nationals only a few years ago, should try to fish in these troubled waters. All these things are not facts which we can tolerate, which we can acquiesce in. Our submission, therefore, is that this matter has come before the United Nations and we have done everything we have to do. We have honoured the cease-fire line although it runs through the middle of our country. I have not had the time to tell you about these violations of the cease-fire lines, and I am sorry to say that the balance has been very heavily tilted against us because under the rules 500 yards of this territory is not to be occupied or entered into by armed personnel. When Pakistan personnel in uniform who are armed come through there, the Commission tells us, “These are civilians, we cannot do anything about it.” When the Kashmir police, not the Indian Army, take protective measures, they turn around and tell us that it is against the cease-fire line.

I also wish to say that there are certain things that I will not go into at the present time as regards the defence of our frontiers and our integrity. If we are to accentuate the strength in the territory of the Union and in Jammu and Kashmir, not necessarily in relation to these resolutions, our hands cannot be tied behind our backs. I am quite sure that a majority of you understand our position in this matter. We are not going to allow the cease-fire agreement or anything else which is as of now dead as a dodo, to be pleaded in bar of the security of our land. If our border roads are to be built, their base is in Kashmir. These territories are to be opened up. That is our only position. Therefore, the circumstances having changed, there is only one submission we make, the one that we made in 1957. Then, one of my countrymen asked me why Sir Muhammad Zafrulla Khan was coming here. I told him not in jest, in ridicule, “After he has been Foreign Minister of Pakistan, after he has been a judge on the World Court, he has matured in years and, even more, he has come to understand all these matters. It may well be that the Pakistan Government is going to tell the Security Council that it proposes to vacate the aggression.” We did not hear anything of the kind. Since Sir Muhammad always likes to quote the Koran, and I do not know any Arabic, I can only tell him:

“Fight in the way of Allah against those who fight against you, but begin not hostilities. Lo! Allah loveth not aggressors.”

Another saying:

“And whoso committeth a delinquency or crime, then throweth [the blame] thereof upon the innocent, hath burdened himself with falsehood and a flagrant crime.”

Another saying:

“Whoso doeth that through aggression and injustice, we shall cast him into fire, and that is ever easy for Allah.”

We have gone through very difficult times – and as the Minister of Defence I ought to know – in the last twelve or eighteen months where not only probing but action of a character is being taken, where it is only with a very great deal of restraint that we refrained from using force. Parts of the territory which are even on this side of the cease-fire line have been sought to be occupied. On the international frontier where there is no cease-fire line – I am not now referring to other parts but to Jammu and Kashmir – there have been violations of this kind. Would it be wrong thinking to say that the limit of patience of any country in the interest of peace can be reached? I say before this Council, in spite of all that has happened, that the Government of India and the Union will not take the initiative in war action. That is the only pledge we make here. That does not mean that we shall not defend our sovereignty, our integrity, the honour and lives of our people with everything we have got, military allies or no military allies, arms or no arms. This is no threat, but it is a defensive statement.

I am asked by my Government to say that, irrespective of our moral, our political and our legal rights, irrespective of all deception that has taken place with regard to the Security Council, irrespective of these great nations which sit around us all these years not having raised a finger to assist us in this matter, not having addressed themselves to the question of aggression –irrespective of all this the people, the Union, the Government of the Union and the Prime Minister will never, any of them, take any initiative in war action. That is to say there have been during the last two or three years – and not fancifully – repeated attempts by the Pakistan Government to collect large numbers of the people under the guise of civilians, but unarmed, and to release them in our territory. If they come without uniform they will go into concentration camps. They will be fed because in India we do not starve people. We do not have the necessity to do so now. But if it means the violation of our territory in comparatively small ways – these people come and cut telegraph wires – under our law we can shoot them. However, we do not. We can do a lot of things, but we do not do them because they are citizens of our land. Most of them come from *Azad* Kashmir. Others may be Pakistanis who have relations on the other side.

So, while the Government of India will exercise its patience and its liberal outlook in this matter, we rely very largely on international public opinion. We are depressed, but we have not become cynical. We have not lost hope that this Council, after the passage of years, will realise what the basic question is. Even if it were argued for a moment that we have no right to be in Kashmir, except what has come about at the invitation of a people that was invaded, what right had the Pakistan Army to go there at all? Can there be any semblance of any right of any

kind? Did anybody ask them to go there? No. They have said that it is a liberation movement, but I have dealt with that.

Therefore, I repeat this pledge that, in spite of our moral, our political and our legal rights, in spite of the serious difficulties we have in that part of India, we shall not try to force a solution by force of arms. We, as a country, are in friendly relations with the so-called East and the so-called West. Our relations with China were happy, and we hope they will continue to be happy in the time to come. But, as I say, in spite of all our difficulties we shall not try to force a solution by force of arms. But again I say that the patience and restraint of a country, and its conformity with law, should not be interpreted as subservience. That is a mistake. Then, afterwards, they turn round and tell us that the image of India has been distorted. The distortion does not come from our side, and therefore, I will plead with this Council not to be stampeded into any action that will only make things worse.

This is the 104th meeting on this subject, I believe. You can hold 200 meetings. We will come here every time you ask us, but in no condition shall we trade our sovereignty. On no condition shall we sell our heritage. On no condition shall we open the door for the disruption and the disintegration of India, which would be a calamity not only for the Indian people but also for the whole of that part of the world. On no condition shall we be forced by provocation of the kind that I have read out to the Council – provocation coming from the head of a State – into a position of taking the short cut of a military feat for forcing the abdication of Pakistan. But we have faith in the growth of democracy in that country, which must come even after twenty-five years, in the growth of the people, who are friendly to us, and in the growth of public opinion, as well as in the conviction that will grow in this Council itself. What is more – and this is our main faith – we have confidence with regard to the conditions of the people in the area that is part of the Union. Today there is prosperity in Kashmir. There is no unemployment there. Today the people there are literate, and there is freedom of expression. There are, of course frailties of administration, as in any other part of India; we do not claim perfection. But the equilibrium will shift, and the people of Kashmir on both sides who are pledged to the unity of their State and the unity of the motherland – they will accomplish it by themselves.

4 May 1962²

I have no desire to prolong this debate unduly. My colleague from Pakistan said this morning that I had covered a wide field. I think the Council well knows the

² Reply to the statement of Pakistan Foreign Minister, Sir Muhammad Zafrulla Khan. *Official Records of the United Nations Security Council*, Seventeenth Year, 1011th meeting, pages 22-50.

limits of this field were not set by me; we were not asked to come here on this occasion. What is more, I introduced my observations, since the representative from Pakistan has covered large areas of what he alleges to be a fact. I believe I tried to finish in as short a time as possible; but anyway, he had covered a wide field; the initiative did not come from me.

Secondly, I want to say at the beginning: it is not my intention, nor part of my Government's policy, to go into large numbers of matters which Sir Zafrulla Khan has memories about. This is not a place to write his memoirs or what V. P. Menon, an ex-Government official, after a time in the Government, had written, without authority of Government. I know the name of Menon carries some weight, but not every Menon's. Therefore, we start from the beginning.

Threats by Pakistan

The first thing is that Sir Muhammad tries to repudiate that there had been any threat before the Security Council. That all depends on what you mean by "threat." A threat may be in words; it may be by display of force; it may be by other action. But we have no doubt in our minds; and in the view of the Government of India, as expressed by the Prime Minister in Parliament two days ago, we will not negotiate, we will not carry out conversations under threats of any kind. On the other hand, our policy is not likely to be changed because someone, unwisely, I think, tries to introduce the element of threat.

Be that as it may, what was said here I am not going to repeat. Sir Muhammad said that once; it was raised again yesterday; and, therefore, I will not read the whole of this. But he did say this much even later:

"I intend – and I trust I will be able to do it when I come towards the close of my submission to the Security Council – to stress one aspect which was stressed here by the late Senator Warren Austin: that nobody should deceive himself that, merely by covering over the question, it will be settled. If the Security Council does not want the elements in the State who started the liberation battle to start it again, if the Security Council does not desire that the tribesmen should get out of hand and pour into Kashmir again, if the Security Council does not desire that the people of Pakistan should get out of hand – I may mix the metaphor – take the bit between their teeth and run away with the whole system of ordered government, and if the Security Council does not desire that powerful neighbouring States should plunge into the vortex when it starts again, the Security Council had better take note of the realities of the situation."
(S/PV. 1007, page 53)

I submit, both in substance and language, it is nothing short of a threat; but even that is not the main thing, because I think we can afford to live with them. We have lived with these threats, and what is more, with the violations of

international law and neighbourly behaviour from this country for the past fourteen years. We will still exercise restraint in regard to these matters.

There are two other things to be considered: one, the responsibility of the State in regard to the use of its territory by what are called “tribesmen,” in the same pattern as in 1947. “We know nothing about them; we cannot stop them; they are co-religionists, and this, that and the other.” This is exactly the same pattern being followed, and it is not to be wondered at that we begin to think about what is happening. But over and above that, I believe there are some international obligations on States, which are members of the United Nations, and therefore, have full statehood.

It is an extraordinary statement that the people of *Azad Kashmir* and the people of Pakistan who are citizens of Pakistan may get out of control and Government becomes powerless. This is a statement we cannot accept. That is to say, on the one hand, if a citizen of a State is badly treated by another, then the State rightfully comes to his rescue. On the other hand, if a citizen runs amok then he has no responsibility. This cannot be coming from Sir Muhammad, an ex-judge of the World Court. This is a very strange interpretation of the behaviour of nations. He is probably proceeding on the mistaken theory that a State that is sovereign can have no responsibility, no legal responsibility, in regard to what its citizens do. But the external responsibility of a State – the external responsibility in these matters – must attach to every State. Even when volunteers go out of a country to participate in internal war, States are supposed to bear the responsibility.

In this connection, Oppenheim says about this that a State’s responsibility concerning international duties is a legal responsibility; a State must, according to international law bear vicarious responsibility for the injuries and acts of private individuals. My colleague must have been familiar with this in the famous decision handed down by the World Court to the effect that it is the obligation of every State not to allow, knowingly, its territory to be used for acts contrary to the rights of other States. If Pakistan, again, either connives at or even permits this, if Pakistan cannot control its citizens, it has little right to be a State and Government under laws of civilised nations.

But what worries us is the same pattern as before. You heard the statement by my colleague that I was not Foreign Minister at that time. With this there is no argument: the Foreign Minister of the country is expected to accept the responsibility of his Government to continue its institutions. But I will leave all that alone. I am glad to think that this gloss denotes a reconsideration of the wisdom or lack of wisdom of making a statement of this kind in this Council. Let us hope that this process will continue.

But when you look at what has been said by responsible people of Pakistan in the last two years – I do not go very far back because there was a change of regime - but according to what has been said, he was not the Foreign Minister and

therefore not responsible. It was said by the present President of Pakistan on 29 December 1958: “Amid resounding cheers-”

Mr Muhammad Zafrulla Khan (Pakistan): On a point of order, Mr President.

Mr Krishna Menon: I did not interrupt the honourable gentleman, Sir.

The President: The representative of Pakistan has the floor on a point of order.

Mr Muhammad Zafrulla Khan: My point of order is this. I have not said – and I challenge the Defence Minister of India to say that I have – that I am not responsible. I merely said that I have no personal knowledge of certain incidents, and the Defence Minister of India said “Foreign Minister, and not knowing what was happening?” I then said I was not Foreign Minister at that time; I was abroad.

I have not said that I am not responsible. I am responsible for everything that happened. I represent the Government even whether I was Foreign Minister or not.

Mr Krishna Menon: I have said what I have said.

The President: The representative of India now has the floor. I know that in the course of his statement there will be points to which others may wish to object. I request all members here to refrain from interruption. If they should take exception, I will be glad to give them the floor after the representative of India has finished.

Please continue.

Mr Krishna Menon: This is not a question to be disposed of by simply arguing about whether one person was Prime Minister or not. What was said was that these atrocious things that were recited that day would shock the Council or anybody else. They were done, in our opinion, as a matter of fact, by those who had been promoted by Pakistan, by forces officered by Pakistan officials, and things of that character, and therefore the Pakistan Government had knowledge of them. I gave in 1957 – and do not propose to repeat it now – and I gave yesterday evidence from responsible people who had suffered in those circumstances, statements which said that the Pakistan Government had knowledge of this matter. And if they had knowledge of it – then if the Foreign Minister says he was not the Foreign Minister, that does not hold much water. That is all I have to say. Anyway that does not come into this.

Now I continue General Ayub Khan's statement of 29 December 1958 at the Chittagong public meeting:

“Amid resounding cheers the President declared that Pakistan will consider no sacrifice too great to ensure the liberation of the people of Kashmir. The question of Kashmir is a question of life and death for us and we are prepared to stake everything for freeing Kashmir.”

Previously, in an interview given to foreign correspondents, he had said:

“We must have a satisfactory solution. It affects our security and our whole existence.” – That is a point I will come to later on when we speak about the rights of the people of Kashmir. “Should we be forced to adopt extreme measures the responsibility will be that of Bharat” – that is, of India. “Asked if he meant war, General Ayub said: ‘Yes, certainly.’”

The President of *Azad* Kashmir, speaking at Muzaffarabad, also said:

“The liberation of Kashmir was the question of life and death both for Pakistan and the people of Kashmir and they were determined to achieve their objective at all costs.”

Lieutenant-General K. M. Sheikh, who is now the Minister of the Interior, speaking on 19 January 1959, declared: “We will jointly work for the liberation of Kashmir. That is why I still wear my uniform.” He was talking to the so-called *Azad* Kashmiris.

The paper also said that:

“... the tribesmen had offered all help to the Government in settling the dispute and they were even ready to start a *jehad* against India on this question.”

A *Jehad* is a holy war, and here we have listened to the representative of Pakistan telling us that religious questions do not come into this.

Said the President of Pakistan again that “... Kashmir was as much a question of life and death for Pakistan as for the people of Kashmir. Kashmir was vital for Pakistan not only politically but militarily as well.” Therefore the issue of Pakistan is not the right of the people freely to express themselves, but their argument that Kashmir is necessary for their security.

Mr Akhtar Hussain, the Governor of West Pakistan, was quoted as follows:

“The Government was fully alive to the growing concern of the tribesmen over Kashmir and the Canal Water deadlock and would spare no possible

means to get these life-and-death problems resolved. If need be, he added, offers of sacrifices extended time and again by the brave tribesmen in this behalf would be fully utilised.”

That was at the time when they were obsessed by the idea of mediation, under a mediator who was a United States citizen, the chairman of a bank. A great deal of effort was made to resolve this Canal Water question, which at great sacrifice to ourselves has now reached the state – whether it is settled or not I do not know – where it is no longer a live controversy, at least at the moment. But in defence of such statements made by responsible Ministers of the Government – I do not mean responsible in a parliamentary sense, but Ministers of the Government – how can we say that these people are not egging the tribesmen on?

Major Mohammad Yusuf, the Resident and Commissioner of the Frontier Regions, replying to an address of welcome at a huge representative *Jirga* of Mohmand tribes at Shabquadar – and he is the main man responsible – said he was confident that when and if an emergency arose, they would come to the help of their Kashmir brethren. A *Jirga* is a collection of people, of tribes. If it is said that tribesmen are excitable and that their feelings are not necessarily conditioned by the resolutions of the Security Council, how can a responsible official say things like this?

“The Kashmir dispute was a powder-keg, and unless it was peacefully resolved it could lead to a conflagration,” declared the President of Pakistan on 8 June 1959 at Muzaffarabad.

Mr Khurshid, the present President of the *Azad* Government, so-called, said in the course of his speech that:

“... it was the good fortune of the Kashmiris that a *mard-e-Mujahid* like General Mohammad Ayub Khan was at the helm of affairs in Pakistan, and that he had promised that he would not rest until the entire State of Jammu and Kashmir was liberated.” Mr Khurshid added that he had full faith in that promise, as he knew that “a *mard-e-Mujahid* means what he says.”

“The bearded Ahmadzai Chief called upon the big powers not to tax ‘our patience but to press for an early solution of the problem instead.’ Otherwise we will have to resort to a *Jehad* to free the Kashmiris from the tyrannical yoke” – that is of the Government of India. This refers to Malik Jalat Khan, Chief of Ahmadzai tribe.

President Ayub Khan, speaking in October 1960 – not so long ago – said that the Pakistan Army, the defender of the motherland, “could never afford to leave the Kashmir issue unsolved for an indefinite time.” And it is said that we are seeking military solutions. The President also said around that time:

“I assure you that the feelings of the people of Pakistan on Kashmir are no less agitated than yours are” – he was speaking to the people in *Azad* Kashmir. “The people as well as the Government of Pakistan, and particularly the Army of Pakistan, have all along remained perturbed and restive at your worries and the miseries of these who live on the other side of the cease-fire line.”

The Council will remember, I set out the circumstances of those “miseries” yesterday, when I spoke about the progress made in Kashmir.

Again, the President of Pakistan, on 27 October 1960 said that the Kashmir problem was a “time-bomb never very far removed from the flash-point.” He said that “Unless the intention is to make it explode through lack of foresight and statesmanship, the answer is to defuse it as quickly as possible, and that cannot be done without touching it.” In other words, it is a threat of war.

President Ayub Khan, on 25 May 1961 was quoted as having declared that

“... Pakistan would have to pursue every means available for the solution of the Kashmir problem. The President told a questioner that it was wrong to think that Pakistan was depending on the United Nations alone for the solution of the Kashmir problem.”

Then I do not know why they came here.

“He emphasised that the people of Pakistan could not forget Kashmir, because the present cease-fire line was a constant source of danger to Pakistan’s rail, river and road system, and provided innumerable defence problems.”

If the President of the State says this and challenges the very kind of uneasy truce on which we rest – the cease-fire line was the result of the exertions of the Commission at that time and was agreed to by military representatives on both sides who met in Karachi afterwards. Now they say that the cease-fire line is a constant source of danger to Pakistan’s rail, river and road system. I do not know how it is, but I would not like to go into the question of how many rails there are.

“He [President Mohammad Ayub Khan] said that the people of Pakistan would not hesitate to sacrifice even their lives for the cause of Kashmir as the safety and territorial integrity of Pakistan, especially the West wing, would be always in danger unless the problem of Kashmir was solved...”

The President of *Azad* Kashmir said:

“... that the *Azad* Kashmir regular forces were not a purely defensive force” – and these are the descendants of the local authorities that the Commission set up and that we were supposed to assist – “but they had been created with a specific objective and therefore,” – by whom were they created, by Pakistan – “had a mission to fulfil... He said: ‘Let it be borne in the minds of all Kashmiris that there is no peaceful solution to the Kashmir issue and that they should from now on concentrate their potentials on finding a solution by other means.’”

Mr Khurshid again said:

“Thirteen long years had been lost in debates and now only military action remained for the solution of the problem.”

That was on 4 February 1961. Lt. General Azam Khan said in Dacca – he is the Governor of East Pakistan:

“... that the people of Pakistan would sacrifice their life, if need be, for getting their right of self-determination for their Kashmiri brethren.”

At least in this case there is some talk about the Kashmiri brethren. Mr Khurshid again declared on 4 April 1962 – that is, after the Security Council had first met:

“that the armed forces of the *Azad* Government will be equipped with modern arms to liberate the occupied territory at any time when they are forced by circumstances to do so.

“Addressing a public meeting of Kashmiris in the Town Hall, he also said the people of *Azad* Kashmir and the Kashmiris living in Pakistan would be given military training and arms and ammunition.”

Here is a news dispatch from *Dawn*, Karachi. It says:

“President Mohammad Ayub Khan said there today that in an emergency Pakistan would use all the weapons in her armoury” – and this is where her military allies come in – “to safeguard her independence. In such a situation, he said, there would be very little time to consult anybody,” – meaning his allies – and ‘we would not care if anybody is annoyed by our action.’” I make a present of this to the United States. “The President was asked by a questioner at a question-answer meeting of Mardan Basic Democrats whether, in view of the Indian troops concentration on the Pakistan border and the possible threat of aggression, Pakistan would be able to use the weapons received under the United States military aid... The President said he did not think Pakistan’s SEATO and CENTO allies would not come to her aid if she became a victim of aggression, but, even if they did not, Pakistan would fight the enemy with all its strength and

with every weapon in its armoury. He was confident Pakistan was strong enough to deal with any aggressor firmly.”

On various occasions Sir Muhammad here and elsewhere, and other Pakistan representatives, have spoken about the concentration of the Indian Army on the Pakistan border. In our system of government, Ministers do not command armies nor do they engage in their deployment. But they have certain responsibilities in regard to it. At least they know where they are and how they are deployed. I want to tell this Council, with all such responsibility as I hold, that even in the recent action of the Indian Army against Goa, troops had to be withdrawn from the area near Pakistan. There was not any armour, no additional troops nor anybody within forty miles of the Pakistan border because we knew that it would be cited as an act of provocation. We have every reason to be suspicious, having had experience two years before in the Assam frontier about all these things. But, in spite of that, no concentration of any kind was made. Still, we are perfectly entitled to do so because that is our sovereign territory. It is quite true that on the border between India and Pakistan there are troops, but the entire concentration of the Pakistan Army is within ten to thirty to forty miles of our frontier. Where is Abbotabad? How long does it take for troops to go from Abbotabad to Kashmir? But the concentration of the Pakistan Army is in Western Pakistan, within a stone's throw from our frontiers, whether it be in Kashmir or anywhere else. So this is a purely irrelevant argument. What is more, now that this has been said, I do not want to throw all our domestic internal matters into the Security Council, but I am left with no other choice.

Recently, there was a general election in India. There was internal tension in the state of Punjab on account of the difference between the different political parties. One of them was probably prone to violence and things of that character. It would be the duty of the Government to be on guard against internal difficulties, and some police forces which were normally on the border were withdrawn for election purposes. We took the risk because it is far more important that there should be no more difficulties inside the country. The police forces that were normally on the border – and there are relatively small army personnel on the frontiers of India, mainly guarded by the police – were withdrawn.

The Pakistan Government took this opportunity of establishing what is called a boar hunt, that is to say, a hunt presumably, ostensibly for wild animals except that on the particular occasion the Pakistan Army and police were asked to take part in it. These are all methods of countries that adopt the practice of undeclared war. We communicated to the Pakistan Government that it was creating difficulties for us because we had withdrawn the police in that area and that it was not right that they should concentrate policemen and soldiers in that area and create difficulties. They did not listen to us. So if there is any question of concentration from the other side – there have been skirmishes between the Pakistan armed elements and ourselves in the last ten years and on various occasions when there was a great deal of provocation and when attempts to probe

the Indian frontier were made, it sometimes was necessary to take action and we had to take action.

I want to tell you here that we will continue to do so. We have no intention of allowing you to put your foot on our soil.

I therefore wish to reiterate the conviction of my Government that the Pakistan representative has come here holding a threat both against the Security Council and the Government of India. I want to assure you, Mr President, on behalf of my Government that our action is not likely to be dictated by this kind of provocation because provocation is one of the means whereby we may be put in the wrong, where we may take an unwise action. Therefore, we have no intention of paying greater attention to it than it deserves. Then we come to the newer facts that have to be dealt with. You will find that soon after this had been disposed of, both the speaker from the Soviet Union who can take care of himself, and my humble self, have been taken to task merely for repeating what the representative of Pakistan said, and he said something that is entirely not factual.

Pakistan has no Locus Standi

The representative of Pakistan said:

“In the context of their first urgent concern” – that is, the Security Council’s – “that is to say, to bring about the cessation of hostilities” – they took up the position: “Why is the fighting going on?” and they came to the conclusion – and it was perfectly obvious – that the fighting was going on as the people of Kashmir desired to come to a decision with regard to the accession, through the exercise of their own choice – and not because the Maharaja had chosen to offer accession. “Therefore, once they are assured that their desire, their wish, their objective would be fulfilled through peaceful means completely they would realise that it was not necessary to go fighting for it. Consequently, that was affirmed and reaffirmed, not only by the members of the Security Council, but also by the representatives of India and the representatives of Pakistan.”

(S/PV.1010, page 22)

I submit that this is totally unrelated to fact. There have been questions of consulting the wishes of the people, if you like. There have been references to a plebiscite, to withdrawals, to demilitarisation and to all kinds of things, but there has never been any question of the cease-fire having to be established in relation to this particular factor. The whole idea of the cease-fire at that time was that unnecessary bloodshed was going on. And, as has been rightly pointed out by Sir Muhammad, the cease-fire was not agreed to by us at a time when our armies were in retreat. In the winter of that year the armies of India were fighting at Zoji La, where Indian tanks were in action at a height of 12,000 feet and the Pakistan Army was in flight. We could have pressed those advantages home. It was at that

time that Pakistan rushed to Paris to the session of the United Nations General Assembly and it was not a defeated army that was trying to sue for peace or to save its skin by a cease-fire. And, whatever the representative of Pakistan may think or whatever may be thought by responsible members of the Council, as all of you are, that shows that our intention was not to seek a military solution but to obtain a vacation of aggression through the good offices of the Security Council, on the one hand, and, on the other, through the realisation by the Pakistan Government that this was an unneighbourly relationship. That was our position from the very beginning.

I may say here and now that it has always been the position of the Government of India that Pakistan has committed aggression against us, and all these arguments about plebiscite and about determination of the people's will – what that has to do with Pakistan we cannot understand. Time after time the United Nations Commission has repeatedly said that Pakistan has nothing to do with this matter at all. Pakistan was not to take part in the plebiscite. Pakistan comes here as an aggressor. Pakistan comes here because we brought a complaint of aggression. Otherwise Pakistan would not be here at all. We made a complaint with regard to aggression in Kashmir, and the President, who is an old hand at this, will remember that the answer of Pakistan contained a number of points – so far as my memory serves me. Out of these points only one referred to Kashmir. All the others referred to various other matters.

That reminds me of the tale in Aesop's fables about the tailor who lost a needle in his dark house and, because he could not find it there, went out into the lighted street to look for it.

There was no answer to the question of aggression, and there was no answer in the Pakistan reply with regard to Kashmir. It was all about Hyderabad and Junagadh, what V. P. Menon had said, and this, that and the other.

In the letter of 20 August 1948 the Prime Minister of India wrote to the Commission:

“Finally you agreed that part III, as formulated, does not in any way recognise the right of Pakistan to have any part in a plebiscite?”

And the Chairman of the Commission answered:

“The Commission requests me to convey to Your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its interpretation.”

May I explain here that a great deal has been said about the presence of the *Azad* Government and the *Azad* army. These are all developments that took place long after. There had been the prior passage of the resolutions and commitments by

both sides, and I read to the Council yesterday a passage in which it was said that the *Azad* Government was not to be recognised and that it would not change the situation at all. At one stage we demanded the disbanding and disarming of the *Azad* forces, and there was some doubt in the mind of the Commission whether it would be possible to disband them because they were part of the populations in that area. Leaving aside the question that the *Azad* army was composed of the population of the area, we insisted on the disarming and the disbanding of this army. Then Mr Lozano, on behalf of the Commission, agreed with us – if the Council so desires I will read the text, but it is unnecessary; I do not think it can be contradicted since it is all printed in the proceedings of the Council – that disarming meant disbanding. He said that disarming must include disbanding, or words to that effect. Disarming implied disbanding, and therefore the whole of the rebel army that had been built up by Pakistan had to disappear. Thus Pakistan has no *locus standi* in this matter at all. It comes here as an aggressor, and what an aggressor has to do is to mend its ways and vacate aggression. That is our position.

Accession of State Is Irrevocable

Now I want to say this quite firmly because, due to shortness of time, one tends to be rather abrupt. The second point is with regard to accession. I think that this question of accession has been argued and can still be argued until the cows come home, as it is said. But, to summarise our position, we regard the accession of the State of Jammu and Kashmir to the Union of India as full, complete and final, irrevocable and, what is more, perpetual. There is no way under our Constitution, whereby any part of the territory of India under the suzerainty of the Maharaja of Jammu and Kashmir before accession can be made over to anybody else legally. That is to say there is no unwinding of an accession, and all these passages read out about what the Prime Minister said at a particular time or about what someone else said at some other times will not cut any ice. The position is that this accession is full and complete.

Apart from all legal questions, the Government of India is entitled to hold the position that for the maintenance of its integrity and its security it cannot adopt the process whereby States can opt in and out at will, and no State at this table with a system of parliamentary or congressional government would accept that. Yesterday I quoted French, United States, British, Austrian and other instances and cases of international law in support of this. The United States, as I said, was engaged in the most sanguinary war in history in order to maintain the sanctity of the Union.

Change of Circumstances

Then we come to the *Azad* force again. What did the Commission say? We have been told that this force is part of the area. The Commission said,

“There is, indeed no doubt that the *Azad* forces now have a strength which change the military situation...”

The cease-fire was agreed to in the context of things as they were, and the whole idea of cease-fire is that there shall be a general stoppage – a tourniquet put on hostilities. That is, there must be a stand-still, but the Commission says in its report:

“There is, indeed, no doubt that the *Azad* forces now have a strength which changes the military situation and to that extent makes the withdrawal of forces, particularly those of India, a far more difficult matter to arrange within a structure which considers only the regular forces of two armies. Although it might be a matter of discussion whether the numerical strength of the *Azad* Kashmir forces was actually increased since August 1948, there is no question that those forces, who have since then been working in close co-operation with the Pakistan regular army and who have been trained and officered by that army, have increased their fighting strength. It is reasonable to suppose that if the Commission had been able to foresee that the cease-fire period would be prolonged throughout the greater part of 1949 and that Pakistan would use that period to consolidate its position in the *Azad* territory, the Commission would have dealt with this question in part II of the resolution of 13 August.”
(S/1430, para 225)

There are two matters that come out of this. One is the change of circumstances that has taken place. First of all, all the arrangements of 1948 and 1949 were in the context of thinking that there was a cease-fire and that in a few months - perhaps within a year – there would be a settlement of this matter. But in our submission the Pakistan Government by not carrying out part I of the resolution which I read out to the Council yesterday, made the truce conditions impossible *prima facie*. Over and above that, however, section A of part II was repudiated in action, and it has been set out in the Commission’s report itself that that was the position.

Sir Muhammad yesterday stated, as far as I can understand what was being said, that with regard to the Northern Areas they had no complaints to make. The Commission has stated – and I have repeatedly quoted this before the Council - that to its knowledge Pakistan at the time of the passing of these resolutions and the agreement on the cease-fire had no authority in those areas. It is quite true that the Government of India’s hand did not reach so far at that time, and the fighting situation ended soon after partition. The Commission said:

“It seems... very doubtful whether the Northern Areas were, in fact, in the autumn of 1948 under the ‘effective’ control of the Pakistan High Command, in the sense that the Commission understood the term ‘effective control’... The Commission was informed that it was for the

defence of the Western area that the Pakistan regular forces had entered the State of Jammu and Kashmir.” (Ibid., para 272)

That is to say, it was not for the purpose of abstract justice, of giving the people the Government they want, or anything of that kind. They had entered the Western area in order to defend the western area of Pakistan. It was purely a war action by a country in order to take another country that was necessary for its defence.

What was the answer to that? By January 1949, Pakistan undeniably held military control over the Northern Areas. I submit that that is a violation of the cease-fire agreement and completely changes the situation. And then they talk of plebiscite, after building up a huge army such as I have described, on the other side. They then wish to blame the whole matter on one side.

In document S/1430 of the Security Council proceedings, the question of Pakistan was considered. On 26 April 1949, nearly four months after the cease-fire, Mr Gurmani, Minister for Kashmir Affairs for the Government of Pakistan, disclosed the following in a letter to the United Nations Commission:

“Efforts are being made to make the route Gilgit (-Bunji)-Skardu also jeepable within a short period.”

They had no right to build these roads.

“There exist: a good all-weather Dakota strip at Gilgit; a good all-weather Dakota strip at Skardu; a Dakota strip at Chilas.”

This was all in the Northern Areas where we had temporarily withdrawn even from advanced positions, in order to make a peaceful settlement. That these air strips were constructed under Pakistan occupation is clear from the following:

“In addition to necessities of life, other goods such as fine cloth, soap, cigarettes, etc., have begun to move in fair quantities since the construction of Dakota strips at Gilgit and Skardu, the making of the Balakot-Gilgit road into a jeepable one.” (Ibid., Add. 1, annex 24, appendix).

I have no desire to read all these matters again. While it is true that it is very difficult for members of the Council to study these documents, they are all there and therefore, I am not going to go through the exercise of repeating these arguments again. Sir Muhammad, no doubt, if he had the time, would repeat them and would go on repeating them and I would then have to answer again. The facts are all there. So far as we are concerned, the accession is final. Pakistan has not only violated international law by aggression; what is more, she has withheld relevant and material facts from the Council. In the first place, they said that they

had no knowledge of the movements of the tribesmen, that they had not connived at them. Today the representative of Pakistan read from the letter of somebody of whom I have not heard before, as evidence of non-atrocities in Baramula. In any event, members of the Commission are ready even today to go to Baramula and to ask the people about the battle scars of that city, where practically every house has been burned down and, according to a newspaper report of that time, all but a few thousand of its inhabitants had fled the place; and the crimes were of a very heinous nature. It is useless to repeat all these matters.

Some Recent Acts of Aggression

Now we come to what I described as some of the new facts in the situation. Yesterday, partly because there was not much time, and since we know that perhaps some of these matters had better not be related, unless we are compelled to relate them, I withheld some of these observations on the continuing situation that now exists in that area. I spoke yesterday about 400 bomb explosions in the State of Jammu and Kashmir - and these are not children playing with fire-crackers. There has been loss of life and much communal trouble. They put a bomb in a Hindu temple and spread the story that Muslims are doing it. They put a bomb in a mosque and say the Hindus are doing it. Pakistan's entire policy towards us has been based upon the idea of creating division and hatred among different classes of people. This has been the history not only of Pakistan, but of its creators, the Muslims League, for the last fifty or sixty years.

There has been aggression into our territory. In 1958, the Pakistan Government in violation of the cease-fire agreement, organised a crossing of the cease-fire lines by civilians from the part of Kashmir under its unlawful occupation. There was no secrecy about it. There was a lot of propaganda to contact these so-called volunteers, who were comparatively well paid, to come over under the guise of civilians, to have a mass exodus into our territory, and conceal weapons in order to commit sabotage. At that time, the Chief Military Observer of the United Nations, at the instance of the Government of India, had to bring the matter to the Chief of the General Staff of the Pakistan Army. In his letter, No. CMO/92, dated 25 June 1958, the Chief Military Observer stated:

“I have drawn the attention of GHQ Pakistan to the advisability of exercising stricter control over the activities of civilians close to the cease-fire line, particularly in relation to the use of explosives.”

This was a few days before the organised movement to cross the cease-fire line began, to which I referred, that an attack along the cease-fire line had been planned. These crossings were the subject matter of two letters addressed by the Permanent Representative of India to the President of the Security Council, one dated 14 July 1958 and the other dated 15 August 1958. Meanwhile, we thought things were going to improve because the Chief Military Observer informed us in India as follows:

“I have had assurance from the Chief of Staff, Pakistan Army, that immediate steps will be taken to control the civilians in this area on the Pakistan side of the cease-fire line.”

And I am free to admit that when we received this assurance, our army people were more or less inclined to take it at its face value because, being soldiers, I suppose they do that sort of thing.

Since then, the Government of Pakistan has given assurances of good conduct on behalf of the civilians in the areas; none of these assurances was honoured. Since that time, Pakistan has used civilians as a screen to conceal its activities of aggression. Civilians have been encouraged not only to cross the cease-fire line or to fire across it, or to open fire on our army and police pickets and our villages, but also to occupy areas on our side of the cease-fire line and generally to promote instability in the region.

A large number of encroachments have taken place – as many as twenty-nine. The report which I have is nearly a year old now. But there were as many as twenty-nine encroachments along the cease-fire line on the international border.

It can be easily understood that the boundary between the area of Jammu and Kashmir, which is administered by India and Pakistan, is partly covered by the cease-fire line and partly covered by the international border which runs through Jammu. In Jammu for the last twelve years, certain areas had been in Indian territory and had been occupied by Pakistan's troops. But generally, with a desire to avoid large-scale conflict, we have not pushed them out. That is our territory on which aggression has been committed after the cease-fire, after the resolution and while all these discussions were going on. I think that perhaps the patience and the general restraint which we exercise in these matters is taken for granted. As I said yesterday, it is mistaken for subservience. These are acts of aggression, in complete violation of the cease-fire agreement. Pakistan objects to any encroachments being cleared, and we have tried to clear them either by talks or in other ways, on the ground that the activities of civilians are not covered by the cease-fire agreement.

We cannot push the civilians out because there might then be a skirmish and trouble. We cannot complain to the United Nations authority because they will claim that the people involved are civilians and not soldiers and therefore the United Nations cannot deal with them. That is the position. It draws support for its view from some of the awards given by the Chief Military Observer. This is not the place for us to express our opinion about the Chief Military Observer and his staff. That will be done elsewhere.

No Government worth the reputation of being a Government can allow this sort of thing to go on, least of all the Government of Jammu and Kashmir, which is

responsible for the administration, including law and order. Therefore, taking a cue, I suppose, from the military observers, they built police posts opposite the military posts built on the other side by Pakistan. The State Government of Jammu and Kashmir, not the Government of India and its Army, built police posts and, naturally, manned them with the necessary strength to control that area.

Here is the report on this matter. In order to deal with this mounting lawlessness, disorder, subversion and sabotage, the Jammu and Kashmir Government was compelled to open two additional police posts, one of which was in Balakote, within the 500-yards zone. There was an agreement that within 500 yards zone military people should not go. This was merely a restoration of a police station that had existed in this area before 1947. The second was at Tarakundi, 600 yards from the cease-fire line.

The local Superintendent of Police informed the United Nations Field Observer about this decision to set up these posts, and the latter raised no objection. The Government of India informed him that these posts would be built for the maintenance of law and order, and the United Nations Observer raised no objection. But, when the police post was set up, a United Nations Field Observer was also present in the area. These posts are intended to enable the police to discharge normal functions. However, no sooner were they set up than they came under continuous and heavy machine-gun fire and other fire from the Pakistan side. And, when we talk about a violation of the cease-fire line, I want to say that they are not just rifles or pistol shots or anything of that kind. Light machine guns, grenades and other war equipment is utilised. And it is not as though they fire one round: when they fire, it goes on the whole time, and practically there are little battles in these areas. United Nations Observers have seen the Balakote post being fired upon when it was being established, and also on subsequent occasions. Not satisfied with this, Pakistan armed forces and Pakistan police organised predetermined raids against these two posts. Indian Army authorities have lodged complaints.

If I read all this, it will take a very long time. At any rate, violations of this kind have been taking place.

India the Successor State

The representative of Pakistan has raised an argument of international law, and I would hate to join issue with him – because, after all, who am I to dispute what may be the very learned opinion of an ex-judge of the World Court? But I would like to say that India is the successor of the British Empire, of the British power in India. This is not something we invented. Certain orders were passed under the Government of India Act of 1935, as amended in 1947, which is called the Indian Independence International Arrangements Order, 1947. This was passed, I believe, somewhere around 6 or 7 August – anyway, before 15 August, before the

partition – under the signature of the Governor-General. This is equally binding on both States, and it says under article 1:

“The international rights and obligations to which India is entitled and subject immediately before the 15th day of August 1947 will devolve in accordance with the provisions of this agreement. Membership of all international organisations, together with the rights and obligations attaching to membership, will devolve solely upon the Dominion of India. For the purpose of these paragraphs, any rights or obligations arising under the final Act of the United Nations Monetary Fund...”

This is the only thing I am going to read. It is quite true that it had been said:

“Well there are many matters to be settled. The territory which is neighbouring the Dominion of Pakistan – she will carry it out.”

It will be noticed that, in the statement of the representative of Pakistan, he treats “successor Government” and “successor authority” as synonymous. There is a difference between a successor Government and successor authority. Pakistan was entitled, where it was a successor authority, to deal with these matters. But I do not think we need be satisfied with the Government of India Order, even though it is binding on Pakistan.

This matter came up before the United Nations – and this is not a secret document. The Secretariat of the United Nations, while dealing with Pakistan’s claim, found itself in the position of having to make an administrative decision with far-reaching legal implications, and it consulted the British Government. The British Government was of the opinion quite correctly, that Pakistan had not succeeded to the treaties of British India and that, in strict law, it commenced its life unfettered by conventional obligations. The Secretariat thereupon delivered the following opinion.

“From the standpoint of international law, the situation is one in which a part of an existing State breaks off to become a new State. On this analysis, there is no change in the international status of India. It continues a State with all treaty rights and obligations and membership in the United Nations. The territory which breaks off, namely, Pakistan, will be a new State. It will not have treaty rights and obligations of the old State. It will not, of course, have membership of the United Nations.”

So Pakistan was admitted as a new member, which Britain and we supported at that time. And it is too late in the day to argue the question of succession. India happened to be a successor State, and that is why I ventured on the question of paramountcy yesterday. I did not say that we inherited paramountcy from the British Crown, because paramountcy has been loosely used in relation to the King himself. I said that paramountcy had two aspects. One was a ceremonial or status

aspect, where the friend and ally of the King comes in. But there is a functional aspect. The position assumed by the King could not be carried out unless he had the instruments at his disposal – the money and the equipment and the people and the territory of British India. For this paramountcy to be effective, British India should be there. The King went away, and he could not use the forces of the United Kingdom or of his other Dominions in order to carry out these obligations. And so, rightly or wrongly, he told them: “So far as the Crown is concerned, this comes to an end.” But that does not put out the functional obligation.

That is all I said. And, what is more, while I did raise that point it was not said that the question of the relation or the membership of Jammu and Kashmir, of the territory of the Union, was based upon paramountcy. That is based upon the accession, so far as law is concerned – and, so far as the fact is concerned, upon the history of the past and the will of the people, whether it is exercised by plebiscite or not.

India Has Consulted Public Opinion in Kashmir

When we come to this question of plebiscite, I am free to confess – and we cannot deny it, for it is in the papers all over – the word “plebiscite” had been used many times. At one time it was thought that a plebiscite would be taken indeed. If it were possible, if Pakistan had honoured its obligations, if it had not concealed facts from the Security Council, if it had not indulged in provocations and egged on disturbances, and if the local authorities had remained as local authorities, if the Government of India had been allowed to garrison the Northern Areas as it was allowed to do under the resolutions, if it had been able to ward off other troubles - in those circumstances, a plebiscite could have been taken. But time passed and conditions changed.

Then we are asked: What is the meaning of the Mountbatten statement? Mountbatten did make a statement. He did not make it out of his own head. He was speaking as the Head of the Government of India, and we take full responsibility, as the Government, for what the Governor-General said, because he was a constitutional Governor-General. He simply meant, as I said yesterday, that we were not satisfied – not in legal terms, but we were not satisfied in political and moral terms – merely to have the signature of the Maharaja, in the same way that they got a nabob, running away with his dogs. That was not sufficient for our purpose. We wanted the moral authority of the people, and I said repeatedly yesterday that we followed the practice of the British Government, which consulted us as the great national movement of the country – not a parliament – not by a referendum, not by a plebiscite. India did not become independent by self-determination. I know of no British colony or no British dependency that became independent by self-determination. It was always by negotiation and by arrangement. So what Mountbatten’s letter meant was that we would take every step to ascertain that opinion. And we did that. Immediately this was done, we ascertained the will of the National Conference. We got their

consent. The Maharaja agreed that the head of the National Conference would be part of his Government. That is not what happened in Junagadh or anywhere else.

I have no intention of going into these extraneous problems. Kashmir is big enough for the Security Council – with the limitations on its time.

Secondly, who has stopped the ascertainment of public opinion in Kashmir? So far as the Indian-administered area of Kashmir is concerned, as I have said, there have been three elections. This was ridiculed by the representative of Pakistan two days ago, but I think wisdom prevailed and today he did not do so, because the facts were against him. There have been free elections lately organised under the Election Commission, open to the public in all ways. We have a free press and everything else. There have been three elections in the last twelve years. Therefore, the people over whom we have any authority have been able to express their opinion. The people who have not expressed their opinion are the people in so-called *Azad* Kashmir, because they have no parliament, they have no newspapers, they are not allowed to vote for the constituencies for which the Kashmir Constitution provides. Over and above this, when we came here last time, about 1957, the Constitution Assembly of Kashmir was sitting. Now, under our law, even if the Constituent Assembly decides in another way, the accession would not be changed.

But in fact the Constituent Assembly – not by some sort of rubber-stamp decision, but by debate for a very long time, with arguments on both sides and a real interesting parliamentary debate for a long period – came to the conclusion, as regards the alternatives, that they may do this, that they may do that, that they may do the other thing. They set out the consequence of doing this, that or the other, and they decided that the accession to India was necessary for Kashmir – and they were not speaking only for their part but for the whole of India.

Therefore, on the one hand there was the obtaining of the opinion of the national movement; there was the fact that over a period of years there was contentment and progress in that land. There have been no protests about going away. All the going away business is in Pakistan, not in Kashmir. It is not as though the Kashmir people want to go away, but an external authority, an invading country, wants to filch them away, which is an entirely different situation.

Secondly, there were free elections, the maintenance of public institutions, free debate and free communication. Over and above that there is a Constituent Assembly. I speak about the Constituent Assembly with this limitation: That Constituent Assembly has no sovereign authority in regard to the Union, but as an expression of opinion, as expressing the attainment of opinion, that is correct. Therefore, the only party which is preventing the right of the people to speak for themselves is Pakistan and its preachers in Kashmir. It is the Pakistan Army, with the augmentation of its forces both from its internal and external strength.

Therefore, India is not to be blamed; the Government of India is not to be blamed and the Security Council is not to be blamed if there has been no plebiscite in this matter. There is this word “plebiscite” again. Even the Commission said that if “plebiscite” is not possible, is not practical, then we will try other means. I do not know whether the Council would want me to read it. It is said in the Commission’s report that if plebiscite is not practicable, if it is not possible, then we shall try other means. This has also been said by Sir Owen Dixon in his report.

So the idea is not as though it is the law of the Medes and the Persians that cannot be changed. We submit to the Council that in so far as we have a moral obligation, which we will respect, we have taken every step to ascertain the will of the people. The will of the people in Kashmir is in affinity with the Union; they are part of the Union; they are citizens of India just like anybody else. The people who are being kept out are kept out by external force, by captivity by an empire under a colonial system. That is our contention. Therefore, there is no answer to this question except the vacation of aggression by Pakistan.

Opinion of Sir Owen Dixon

We also submit that the Government of India has at all times stated that Pakistan and ourselves cannot be treated on a plane of equality in this question. In this matter I must register my caveat at the continuous use of the word “dispute” by Sir Zafrulla Khan. In popular language anything is a dispute. If people differ in an argument, you can call it a dispute. But we are now speaking in the Security Council in the context of the Charter and its provisions. We have maintained from the very beginning that this is not a dispute but a situation. There is no dispute between us and Pakistan. How can there be a dispute between us and Pakistan in a matter in which Pakistan has no *locus standi*?

Pakistan, by its own unlawful action, has created a situation. That situation creates some difficulties for us. And as far as the Charter is concerned, I do not know if it is necessary for me to talk about it. Therefore, while I have no objection to using the word “dispute” in colloquial terms, in terms of the Charter, we are not engaged in a dispute either political, legal or anything else. A situation has arisen through a fact of aggression that has taken place, so far as our country is concerned.

Sir Muhammad Zafrulla Khan also made out as though we had quoted Sir Owen Dixon out of context. He is perfectly entitled to do so, because I pointed out instances to him where Sir Muhammad pointed out things out of context, only quoted things in part. Now what did Sir Owen Dixon say? He spoke about a number of occasions in the course of the period beginning with 1 January 1948, in the Kashmir dispute in the Security Council:

“... India had advanced not only the contention, to which I have already referred, that Pakistan was an aggressor, but also the further contention

that this should be declared. The Prime Minister of India, at an early stage of the meeting made the same contention and he referred to it repeatedly during the conference. I took up the position, first that the Security Council had not made such a declaration; secondly that I had neither been commissioned to make nor had I made any judicial investigation of the issue; but thirdly that, without going into the causes or reasons why it happened, which presumably formed part of the history of the sub-continent” – without going into that history – “I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed, on I believe 20 October 1947, by hostile elements, it was contrary to international law, and that when, in May 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State that too was inconsistent with international law.” (*Security Council Official Records*, Fifth Year, S/1791 and Add 1, para 21)

I submit the fact that the Security Council had not pronounced on it, that Sir Owen Dixon had not gone into the history of it, and in spite of that he insists that there has been a violation of international law. It strengthens the argument about violation rather than weakens it. If he had been asked to go into it, it would have been another matter. But even though he had not been asked to go into it, it stuck out a mile, that going into the territory where they had no business to go. After all, it was not no-man’s-land. Sir Owen Dixon goes on to say:

“I therefore proposed that the first step in demilitarisation should consist in the withdrawal of the Pakistan regular forces commencing on a named day. After a significant number of days from the named day, then other operations on each side of the cease-fire line should take place and as far as practicable, concurrently. What number of days should be fixed...” (Ibid., para 22)

That is to say, here again there is an argument that Pakistan forces only need withdraw, and so on, and then we withdraw, and so on, but the whole trend of the discussion has been that these are aggressors and they must go; and when they have gone we ought to do certain things in order to bring about peace.

Interpretation of Resolution

Now a great deal has been said about interpretation, so-called, of part II. Sir Muhammad Zafrulla Khan referred to interpretation in another context, something about the Cabinet Mission, which is not relevant to this. Anyway, I did not hear much of it. He spoke of his interpretation, the interpretation of Pakistan or whatever it was. It is my understanding that both in municipal law and international law, treaties, statutes, or whatever they may be, must be interpreted in their natural meaning. It is not necessary to refer to a tribunal when words have a certain meaning. That is the law inside civilised countries and between nations.

It is clear that part I, II and III of the resolution of 13 August 1948 form an indivisible whole and implementation of one part is conditional upon the implementation of the other. Thus, for example, part II of the resolution can be implemented only after part I has been carried out and the implementation of part II, B, withdrawal of Indian forces, is conditional upon the carrying into effect of part II, A, and finally part III – ascertaining of the free will of the people of the State of Jammu and Kashmir – is to be carried out only after part II has been carried out with discussion between the Commission and – not Pakistan – but between the Commission and the Government of India as to what is the best way of doing it. At no time did Pakistan come into the picture at all.

Moreover, various parts of the resolution stand or fall together. There cannot be one without the other. No other interpretation can be attributed to the above resolution if the various parts of it are read in their “natural and ordinary meaning.” A fundamental principle of interpretation is that words of a treaty or an international agreement must be given their “natural and ordinary meaning.” Thus in a case relating to “Competence of the General Assembly for the Admission of States to the United Nations” wherein the International Court of Justice was asked to give an advisory opinion, the Court stated:

“The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words. As the Permanent Court said in the case concerning the Polish Postal Service in Danzig (PP. C.I.J., Series B, No. II, p.39): ‘It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd.’

“When the Court can give effect to a provision of a treaty by giving to the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning.”

In this case, there is no difficulty, and the thing is set out there – the Pakistan Army, its nationals and the *Azad* forces must withdraw. They have no business to be there and had no business to have gone in there.

No One Is Preventing Pakistan Withdrawal

Both today and yesterday statements were made by the representative of Pakistan on behalf of his Government saying this, that and the other. One of these things is that they would withdraw their forces. I submit that during the last fourteen years we have not prohibited them from withdrawing their forces nor has the Security Council, and if the Government of Pakistan has not withdrawn them, and what is more in actual performance has acted in the reverse manner, what credence is to be attached to these statements? They are merely strings of words. If in the last fourteen years they have not withdrawn these troops but have augmented them and have improved them so that they are as good as the regular forces of the Pakistan Army – they are still on our frontier; they are equipped with air forces, weapons of modern character into the details of which I need not go – well, instead of withdrawing their forces they have been building them up. This argument has gone on during these fourteen years and all the time in the background before the Security Council, not only have the relevant facts been withheld but contrary versions have been given.

The late Mr Mohammad Ali Jinnah said he had no control over the tribesmen, but the same Mohammad Ali Jinnah, as I pointed out yesterday, was reviewing the tribesmen and egging them on. It was the same Mohammad Ali Jinnah who called Lord Mountbatten and said if you do this I will call the whole thing off. How could he call the whole thing off if he had no influence over them? It was the same Mohammad Ali Jinnah who gave orders to the British Commander-in-Chief to wage war against India. Fortunately, the British Commander had either the sense or the discretion not to do so.

These are the facts, and therefore to come here and say, in a vacuum, before the Security Council, that they will do this and they will do that – nobody is preventing them from doing it. If Pakistan withdrew its entire forces and all the works that go with them and cleared out of the place where they had no business to be, then a new situation would arise. In this new situation any member State of the United Nations would act according to the principles of the Charter against the background of the history of the case. But this is a conundrum. It is a conundrum. It is an argument, it is an offer, and we see nothing that is worthwhile in the matter. I submit that it is the very same representative who has told this Council time after time that they neither aided nor abetted the tribesmen, but that the tribesmen would go in and they could not stop them. It is like some of those people who train dogs, and say in the presence of the dog, “If you are not careful the dog will bite you.” It is practically an order to bite people. In the same way, they say these tribesmen will get in. If the Pakistan Government is so incompetent that the writ of its law does not run in its own territory, who can make a promise on behalf of that Government?

Pakistan's Negotiations with China

The Government of India does not stand here in sackcloth and ashes. It has carried out a very heavy responsibility and in spite of our moral, legal and every

other kind of obligation, in spite of the pressure of our public opinion, we shall not take the initiative in war-like action. But today, as I said, there are other circumstances. We read that a communiqué has been issued in Karachi or Rawalpindi or wherever the capital of Pakistan is for functional reasons and in it is stated that negotiations have been undertaken with a view to ensuring the tranquillity of the border and developing good neighbourly relations. That is to say, Pakistan has entered into an agreement, if the communiqué is true, with China in order to settle our borders. I have said that they have no right to dispose of property that is not theirs, and I want to say here on behalf of the Government of India that we shall not be bound by any agreement they may reach, temporarily, permanently, or in any other way. We shall not be bound by it or any agreement in which conditions are created inimical to the security of India. I want to submit that it is a violation of international law and a disregard of the resolutions of the Security Council to trade in the sovereignty of our territory, which has been agreed to at all times not only by the Security Council itself but by the representative of the United States, Mr Warren Austin, whose statement I read out the other day.

The sovereignty of the territory of Jammu and Kashmir lies with the Union of India. Jammu and Kashmir is now part of the Union and therefore it is not in the gift of Pakistan. She is not entitled to negotiate with China or anybody else and therefore in entering into international negotiations and trying to play off both sides against the middle she is violating international law. Not only is she violating international law, she is acting in a way which is in total disregard of the decisions of the Security Council with far-reaching consequences.

Secondly, I want to say on behalf of my Government that the Pakistan Government has no authority whatsoever to constitute any kind of polity in the area that is under her occupation. The Commission has very definitely laid it down that there shall be no consolidation. But consolidation has already taken place in regard to the areas under occupation. Annexations have taken place and now de-annexations will have to take place before there is peace. There has been a great deal of talk of *Azad* Kashmir as a kind of independent State. They have set up information offices in various places and this, that and the other; Pakistan has never recognised them but anybody who is opportunist enough to do so may recognise them. However, the creation of any polity in the territory of Jammu and Kashmir would be a violation of international law and a disregard of the decisions of the Security Council, and we shall not recognise them - and certain consequences follow from this.

Therefore, what I said yesterday is conditioned by these new circumstances. The Government of India and the people of India cannot be put into the position of having new States created in their own territory, nor can they concur in any agreement or alignments. The Government and people of India will not sit quiet and do nothing about it if we are forced to take action by changes made in our relations in Eastern Asia or on our frontiers.

Here, therefore, are very serious matters. It is not merely a question of scoring a debating point. I want it to go on record that no agreement, no negotiation, no understanding however temporary – because all things are temporary, since they take place in the context of time – will bind the Government of India. We shall not submit to the implications of any undertaking we may have given to our people, to the Security Council, or the world; all that is conditioned by these changed circumstances. The security of our country is something which we cannot barter away. Changes that take place on our borders – not outside our borders, but within our borders – are a matter of concern to us.

These conditions exist; these are the new circumstances which have arisen and it is the wish of my Government that we should submit to the Security Council, and place on record, that no changes that may take place in this way, either in the form of the demarcation and boundaries submitting certain areas to foreign jurisdiction or the demarcation of boundaries without consultation with us, will be binding upon us. No attempt to set up a government in *Azad* Kashmir and say that it is a government, in *Azad* Kashmir or any other country, will be binding upon us either, because under our Constitution it is only permissible to demarcate boundaries inside the Union. Therefore, the so-called territory of *Azad* Kashmir, and other areas alleged to have acceded to Pakistan in the Himalayan region, we say continue to be integral parts of the territory of the Union. This is one of those things on which the Government of India will not yield.

To conclude my observations, we are at all times prepared to find ways and means for reducing tension. We recognise that in this world it is not always possible to obtain logical solutions. We also recognise that aggression somewhere may well become aggression all over the place. We also recognise that conflicts are likely to spread. For all these reasons I repeat the undertaking on behalf of the Government of India – an undertaking which I am sorry to say Sir Muhammad thought he should ridicule, when it is his Government which for twelve continuous years has refused to enter into a no-war agreement with the Government of India – we say, whatever our differences, we will try and settle them or leave them unsettled but we shall not go to war. That proposal of ours has been turned down time after time from 1957 onwards. What they say is yes, we will enter into a no-war agreement with you when you have done what we want you to do. What is the point of agreement? It is not we who are on the war-path; we have enough constructive work to do in our own country. We are not exciting feelings in this way; we are not shaking the world in general by creating more tensions throughout East Asia.

Two-nation Theory

One more point: It has been said – and I think the Council should not be misled in this matter – that Pakistan is an Islamic State – a theocratic State. We do not quarrel with that; it is not our business at all what kind of State they have. There

has been propounded what is called a two-nation theory which certainly, even though it may apply to what was formerly partitioned, in a sense, there are some phrases somewhere where it is said that populations of one predominant type will be grouped that way, and others will be grouped this way. But the Prime Minister at the time, in his statements, and in the acts of Parliament, made it quite clear that it does not apply to the Indian States; and Sir Muhammad charges me with having suggested that he had said something about communal compositions and the claim of Pakistan – I do not know what that is – the claim of Pakistan, the claim of conquest, the claim of aggression, the claim of force, the claim of illegal occupation. But in answer to that, he says it is not the claim of religion, as such.

First of all, I want to remind him that he misquoted Lord Mountbatten in support of his argument, and said that accessions were to take place having regard to one – two - three – religious – or whatever it is – communal affiliations or something of that kind, quoting the name of V. P. Menon who is no longer an employee of the Government of India, who used Government records without permission and without authority.

We neither accepted nor repudiated it. Lots of people write books: it is one of the occupations of retired people. We are not bound, therefore, by what these people said; but I would like to read out to you the position of the Pakistan Government with respect to the internal changes taking place.

There is a well-known axiom of international behaviour that States do not die: Government may change. Therefore, the present Government of Pakistan repudiates it, and, by its conduct, indicates its repudiation. It is bound by the policies that have been expressed by its predecessors, both in public and, even more, in the Security Council. Therefore, I would like to read out to you what happened on 18 February 1957. The then Foreign Minister of Pakistan spoke to this Council on this matter of plebiscite, because we said at that time that religious consideration should be kept out of it:

“It would be perfectly legitimate in the case of a plebiscite to draw attention to religious, cultural, linguistic, geographic, strategic and other ties, affinities and considerations that might sway the choice. So long as nothing has been done to incite lawlessness or to exercise coercion, the exercise of all considerations that might affect the choice would be legitimate.

“I think that Mr Krishna Menon – and I bow before him for his knowledge of the English language – forgot to differentiate between the word ‘election’ and the word ‘plebiscite.’ Whereas in an election it is the duty of a Government to see that it is free and no religious arguments are brought in, in the matter of a plebiscite, wherever it is held, it is held because of religious differences or of ethnic differences or of geographic, linguistic or other differences. Therefore in a plebiscite it is quite legitimate for people

to appeal to the electorate for these reasons before they decide whether to accede to one side or the other. In the matter of an election, it is quite different. I am very sorry Mr Krishna Menon is not here today..." – and so on and so on.

And it is not only one passage. There are dozens of passages in the statements made by Pakistan leaders. In fact the whole idea is that.

No Plebiscites in India

Then Sir Muhammad says that we are not averse to plebiscites, and that we indulged in this practice before. His facts are wrong. I have some knowledge of this because I handled this matter. There was no plebiscite in the former North-West Frontier Province. What was done was this. The North-West Frontier Province at that time had a kind of parliament which had been given by the British, although it had no total responsibility. Since there was some dispute, and although the general expectation was that the North-West Frontier Province would remain with the Union we said, "If there is any doubt about it" – ultimately, after days of argument – "let there be a referendum." And there was a referendum in the North-West Frontier Province which for various reasons was boycotted by the majority. Out of the remaining minority Pakistan obtained the majority. Several thousand of them who boycotted it are now in gaol. And their leader, a man known as "Frontier Gandhi" in popular terms has been in Pakistan prisons for years and years. One of the pioneers of our national movement who had suffered imprisonment under the British and had been in various demonstrations and agitations in the past, indeed, a great national leader, he languishes in prison.

Anyway, what took place? There was a referendum. It is quite true that in Sylhet there was a referendum. Every country makes a mistake, and that was one of the mistakes we made. But that again was not in fact a plebiscite. It was a referendum. The difference is small, but it was not a plebiscite. We abided by that referendum and it has not been felicitous for the stability of that part of India. But it is wrong to say that, therefore, we are familiar with plebiscites, and the plebiscite is one of the things that we ordinarily use. It is wrong to say that as a reply to the argument which I quoted from the British Foreign Office documents to the effect that it was not a practice in parliamentary systems – not their practice. I quoted also Australian and other law against it, and to say in reply, "You are accustomed to plebiscite" again is a misstatement of fact.

India's Position

I conclude by saying that the Government of India holds the accession of the State of Jammu and Kashmir as full, not temporary or provisional, as final and perpetual. There is no power in India to cut asunder any part of this territory

except by an act of cession to be sanctioned by the Constituent Assembly. If there was a political agreement it would be our responsibility to do that.

Secondly we will not sit back if there are changes made which are in violation of the provisions of the Charter, the decisions of the Security Council and things of that character. Equally in spite of our legal, moral, political and every other right and interest we shall not take the initiative in war action – in the use of force - against Pakistan, because we know that over and above everything and over and above the Government, there are people in Pakistan who are friendly to us.

Thirdly, we shall not at any time submit this matter to what is called mediation or arbitration and we are not frightened by having it thrown in our face that this is a normal method of international settlement. There are many matters on which we will go to arbitration. We have gone to arbitration in regard to Pakistan itself on small matters, but we will not agree to arbitration or mediation on the question of the sovereignty of our territory. I said this in 1957 and I repeat it with the authority of my Government. The sovereignty of a country and its independence, like the honour of a man, are not the subject of arbitration, and I am quite certain that the other nations which sit here will appreciate this argument. Not one other country would be free if its sovereignty was to be subject to arbitration. Supposing two political parties of equal strength inside a country said, “Let us arbitrate. Let us go to somebody else and see who should govern this land.” Where would they go?

This is the fourth submission I have to make. We have come here on the basis of allegations that there was a threat to peace and security in that part of the area. If there are threats those threats and the conditions are created by the people who complain and we are not responsible for them. The remedy lies in the hands of those who have sought to come here.

No new factors have been adduced and a great deal of the time of the Council has been taken and there are new members present and for that reason we have had to repeat many things we have said before. There have been 105 or 107 meetings of the Council on the subject but irrespective of the number of meetings that we hold you cannot argue a nation into dependence. India is an independent country, with no desire to absorb or encroach upon other people's territory – but equally bound in honour, bound by its own interests, by its obligations to its own people, to safeguard its integrity and protect its frontiers. In doing so it will not be provoked by threats of aggression, but at the same time we look to the Security Council not to allow itself to be used as a forum for tendentious propaganda.

We have not violated any agreement that has been reached in the Security Council. The continuous calling of meetings of this kind, when no new circumstances have arisen, does not lead anywhere. We have been asked why we do not talk together as two neighbours. The Prime Minister invited the President of Pakistan to come and talk. We cannot negotiate because we are not equal in

this matter. We are equal in other ways, but in this matter we are not equal. We are, however, quite prepared to talk things over, but Sir Muhammad comes here and says that direct negotiation does not work. That is to say, even before they come they rule it out. You know, there are many people of goodwill, but the question is how do they apply it. If they think that no bilateral negotiations can produce any result, they are very much mistaken. We have no objection to talking to anybody, friend or foe, opponent or ally, but do not think that there is any room for the Security Council to order us or to instruct us to make suggestions about a thing of this kind. It has been said that India should give an undertaking that it will not violate the cease-fire line. That would be a very dishonourable thing, because we have not done anything of the kind; why should we keep on renewing a declaration when we have never violated a declaration?

My country stands here with no pangs of conscience of any kind. Our hands are clean in this matter. We came here on a charge of aggression and we expected you, the eleven members of the Security Council, to stand up and say the Charter should be defended. We have gone a long way, and we shall go a lot further, we shall not walk out of this Council at any time, even if the discussions do not lead anywhere. But if we have to sit here and listen to continual misrepresentations of our people, like the one given yesterday, for example, that a thousand people had been killed in West Bengal – whether this has any relevance to this matter or not, I tell you it is an utter falsehood.

And then there have been references to the refugees. What is the story of the refugees? There were 1,100,000 people who have come from Pakistan into India. Less than 100,000 people have gone from India into Pakistan after the great migrations. A million more people came from Pakistan to India even during the migrations. Sir Muhammad has quite unfairly drawn the attention of the Council to the grim atrocities of which both countries are ashamed. It is quite true that in the post-partition period there was tumult in India and other circumstances which it is not thought necessary to refer to at the present time. So far as my country is concerned, my Prime Minister and Mr Gandhi, everybody, repeatedly stated that it was something that the whole world, not our people, but all human beings, would be ashamed of – but that has nothing to do with this Kashmir situation. It had to do with other matters and the promotion of this communal rancour or the misrepresentation of men like my Prime Minister in public – all this is likely to create bad feeling and only lays the foundations for more difficulties in future.

Mr President, I have no desire to detain the Council any longer, I have made my statement and I have nothing whatever more to add.

22 June 1962³

³ Statement on the draft resolution proposed by Ireland (S/5134). *Official Records of the United Nations Security Council*, Seventeenth Year, pages 4-16.

We have sat at this Council table now for several days, listening patiently to find some reason for the convening of this meeting and to what its deliberations are likely to lead. We have now reached the stage when, from our point of view, the unfortunate position was reached yesterday when the United States received seven votes and was therefore able to continue this meeting. My Government has always taken the view that there was no reason for convening the Security Council because no new situation had arisen to aggravate any positions in Jammu and Kashmir, so far as we are concerned, although there might have been actions on the other side.

We understood that that was the position of a large number of countries and that this meeting was convened merely at the insistence of the State of Pakistan, to which others concerned agreed. My country, Government and people are mystified that, though the insistence was on the side of Pakistan, the initiative in the debate was taken over by the United States from the day the present sittings began.

This afternoon – though I did not see it only at this moment – I saw this draft resolution this morning – we still had hopes that, realising the consequences of the action that is proposed in the resolution on the general situation in Jammu and Kashmir, Ireland would refrain from putting its name to the draft resolution which we had expressly informed that Government would be regarded by us as an unfriendly act – I do not want to exaggerate this, I am sure my friend, Mr Boland, would accept it in the spirit in which it is made. I think that the sense of shock in our country about the Republic of Ireland being the spokesman – I would not use any other word – of this particular move would be very considerable. The relations between our two countries did not begin yesterday, and I mean the close relations between our two countries. They go back to the last century, right through the period of the struggle of the Irish people against repression and empire, to the dispossession of their lands and all the troubles that went on, to the days when the Mayor of Cork died in his defiance of the Empire. Later the Irish Free State was formed. However, Ireland was formed not by a process of agreement; it was formed through the imposition of force by the Empire. However that may be, I cannot but say, in sorrow – not in anger but in sorrow – that we deeply regret that Ireland has become the spokesman for this draft resolution although it is perfectly within its sovereign rights to do what it likes. Equally, so are we, to think as we are led to think about it.

When we come to the text of this draft resolution (S/5134) – we do not yet have the text of Mr Boland's speech in our hands, but I listened to it very carefully. The sentiment that ran right through it was that this draft resolution represented the consensus of opinion in this Council or the majority opinion. I have been at some pains after Ambassador Plimpton's speech yesterday, to analyse this assumption. In that analysis one finds that the statement does not reflect the opinion even of the majority; it reflects the opinion of Pakistan whose case has been somewhat ably argued by a number of members. First of all, it was said that seven members

– that is to say, the majority in this case – are supporting this position. Yesterday Ghana, on the one hand, and Venezuela entered their caveats against that statement. Mr Haseganu suggested when he spoke that the UNCIP resolutions were impracticable or that they could no longer be implemented. This is therefore not part of the majority view. The total number of members who supported this point of view would be five and not seven. The majority of the members did give expression to sentiments in regard to negotiations, so called, between Pakistan and India. Most of them – I believe with the exception of the United States and the United Kingdom – emphasised the necessity of creating the necessary atmosphere for fruitful talks. If I am wrong about that, I shall withdraw it. Ambassador Plimpton also quoted five members in support of the idea of the good offices of a third party. Two members – Ireland and Ghana – qualified their statements. The remaining three, even if we take all five as constituting a group, are still a minority. Ambassador Plimpton said yesterday that all members have not failed to comment on the responsibility of the Security Council in this matter.

We do not deny the responsibility of the Security Council. On the other hand, the main basis of our position would be that the Security Council has tremendous responsibility, but the question is whether, in exercising or discharging its responsibility, it is doing so to any benefit. Ambassador Plimpton quoted seven members in support of the view he had taken. Four members, the United Arab Republic, Ireland, Chile and France qualified their statements in this respect. The remaining three constitute a minority. I am not going to speak more about this aspect now; I will do so at a later stage.

Then we come to the draft resolution itself. We have no vote in the Security Council. We are here by invitation under the relevant article of the Charter in order to participate in these proceedings. It is the practice of the Council to hear the views of the party concerned as though it was a member except for the purpose of voting.

Preamble of the Draft Resolution

At the present moment I propose to confine myself to this draft resolution and not to the large number of statements which have gone into the record, statements which my Government cannot intend to leave uncorrected. The first paragraph of the preamble reads:

“Having heard statements from representatives of the Governments of India and Pakistan concerning the India-Pakistan question,”

I suppose this refers to the speeches made in April and May in regard to which the representatives of the United States and of the United Kingdom wanted time to contemplate. They contemplated for a month and a half, or approximately that time, and then acquiesced in calling this meeting under Pakistan’s pressure. They did call this meeting however and have expressed their opinions – no doubt, after

contemplation. They still wanted time to contemplate; that is to say, it is right to conclude that either they made those statements after consideration or without consideration. We decline to believe the latter. If they made their statements after consideration, my Government does not see any reason whatsoever for having dragged these meetings out, almost to the point of seeming dilatory. As I stated previously, this is hardly the way to treat a member State of the United Nations. Having suggested that there was some grave urgency in this matter, and after one of the Government concerned had communicated the difficulties it had in attending meetings of this kind - meetings which would serve no useful purpose whatsoever - the Security Council meets for a couple of hours each day, not for the purpose of further clarification here but no doubt for other reasons which we now see resulting in this resolution.

My Government, first of all, is against any resolution coming from this Council at this time because any resolution that would come out at this time, from our point of view, would not have any factual relevance. It would not be of any value unless it were a resolution calling upon Pakistan to vacate its aggression. That the Council is not yet ready to do. Some day it will do so; we do not consider it impossible. We think that any resolution from this Council, like the present, will only be interpreted in India on the one hand as a very partisan statement. The effect on Pakistan on the other would be to think that she has the moral support in this matter and in her aggression from the great Powers who occupy these chairs.

However, dismissing this aspect of it, we come to the preambular paragraph which reads:

“Having considered the Report of the United Nations Representative, Dr F. Graham,”

I presume that this means a private consideration because we have not considered the report in this Council. The report has been here for four years, it has never been presented and never been received. This does not worry us very much because Dr Graham's position is one to which we are not party. When the UNCIP was appointed after a certain amount of conversation, discussion, and so on, ultimately we became a party to it and we agreed to it. UNCIP dissolved itself, and afterwards, with the exception of Sir Owen Dixon, the various representatives were appointed on the unilateral decision of the Security Council, to which we are not a party.

Following the traditions of our country, however, whenever these famous gentlemen have visited our shores, we have offered them our traditional hospitality in so far as our poor resources would permit, and we treated them with the courtesy that is characteristic of our relations with visiting people. But apart from that, we have not recognised Dr Graham's position in regard to this matter. We would not be prepared at any time to say that these efforts have in any way

assisted in the solution of the Kashmir question, as it is now popularly called, but indeed it has aggravated it.

Operative Paragraphs of the Draft Resolution

Then we come to paragraph 1 of the draft resolution which reads:

“Reminds both parties of the principles contained in its resolution of 17 January 1948, and in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949;”

These three resolutions at least must be taken in two parts. The resolution of 17 January 1948 was an appeal to the two parties not to aggravate the situation.

For fourteen years, the Security Council knows – through the records and through the communications made to it by the UNCIP, and by all the facts of which, as lawyers would say, you can take “judicial notice” – that the resolution of 17 January 1948 has been continuously disregarded by Pakistan, by continuing and progressive aggression, which we fully discovered only afterwards and was uncovered before the Council, and also by the very considerable psychological warfare in the shape of what is called the propaganda for *Jehad*, the holy war against India.

With regard to the resolutions of 13 August 1948 and 5 January 1949, this is not the time to go seriatim into the various paragraphs. We want to say, however, and not merely for the purpose of the record, that we hope that even at this late stage some of the members would not allow preconceived notions on this problem to rule out the factual situation. These resolutions were hammered out between UNCIP on the one hand and, so far as we are concerned, our Government, mainly our Prime Minister on the other. In regard to each of them and the main parts of these resolutions, the UNCIP at that time gave us various and categorical assurances. Those assurances were not private assurances; they were not personal assurances; they were assurances of the Security Council and they are commitments on behalf of the Security Council.

Therefore, we submit that we cannot speak about the 13 August 1948 resolution or the 5 January 1949 resolution without taking the whole of them as one body and, what is more, in the context in which they were formulated, and, even more, leaving out the assurances. These assurances were to us very solid parts of whatever engagements we have entered into.

The word “obligations” has been used very freely, particularly by the United States. Speaking in the Security Council in 1957, my Government made it clear that while it would honour all international obligations, the resolutions of 13 August 1948 and 5 January 1949 – which, as I said, differ from the resolution of 17 January 1948 – were in the view of our Government engagements and not

obligations. Those engagements were carried out in the context in which they came about, and if the resolutions did not become implemented, the fault does not lie with us.

Therefore, to speak of the principles contained in the draft resolution as though in twelve or fourteen years no changes have taken place is not only unrealistic, but it is to disregard the political, economic and other realities, and the military realities, in regard to our two countries and in our part of the world. What is more, it is to disregard the continual violation and flouting of decisions and resolutions and the concealment of facts by Pakistan from the Security Council.

Mr Stevenson was at pains, in opening this debate in this particular continued series of meetings, to read out paragraph 1 of the resolution of 5 January 1949. It is of course possible to do that if one desired. It is possible to read the scriptures and prove anything by one paragraph. The whole of that resolution, first of all, is supplementary to the resolution of 13 August 1948, and until the 13 August resolution has been implemented, the 5 January resolution has no meaning.

Secondly, if paragraph 1 of 5 January resolution must be read, then paragraph 2 must also be read, and there are so many others that should similarly be read with it. I do not intend to elaborate on the matter at this stage, but I want to say that clause 1 of the paragraph of the present resolution is probably stronger than any resolution adopted here, although we have not accepted most of them. It is not in conformity with the facts as obtained now.

The only part of the resolution of 13 August that has been implemented by and large is the cease-fire. It is the intention of my country to observe that cease-fire until some one else seriously breaks it on a large scale and in such a way that you cannot maintain it any longer. So even though the other parts of the said resolution have not been implemented, and logically it would be right for us therefore even to disregard the cease-fire agreement, we do not intend to do so.

Then comes paragraph 2 of the draft resolution which:

“*Urges the Governments of India and Pakistan to enter into negotiations on the question at the earliest convenient time . . .*”

I will stop there and read the rest of it afterwards. Here I want to say that we have always taken exception to the fact of treating Pakistan and ourselves on the same basis in regard to this question. We are equal members of the United Nations; in that way we do not claim any differentiation. But in regard to this question they are the aggressors and we are the aggrieved.

We brought here a complaint. That complaint is in regard to the situation created by Pakistan in respect of Kashmir. The only answer Pakistan gave relevant to Kashmir, on 15 January 1948, was to say that it was not invading, that it was not

in Kashmir. Therefore, there is the first preliminary objection with regard to treating India and Pakistan as though they were two peas in a pod. This has been usual with the British always, but when it comes to a serious matter of this kind here, we have to go into the substance of it.

We have said that this Council is not a court of law. You are not the World Court. This body has no right to go into the legal questions or to judge upon them. At best it is a body representing the United Nations and basing itself on the principles of the political relations in terms of international morality and law, and I also submit that those who want remedies here must come with clean hands. But over and above that the immediate objection to this is that those who sponsor the draft resolution and, I fear, the majority of the members of the Council either are ignorant of the fact or refuse to accept the position that in the last few months – let alone past history – the Government of India, as expressed by the person of the Prime Minister, has repeatedly invited the head of the State of Pakistan to come and talk these things over – negotiations may not be the right word, but any way it was to talk these things over.

The Prime Minister during his visit to West Pakistan extended an invitation to President Ayub Khan on 23 September 1960. My Prime Minister went there. This invitation was renewed through Pakistan's Minister Mr Akhtar Hussain on 10 January 1962 when the latter met the Prime Minister in New Delhi. The invitation was again renewed by the High Commissioner in Karachi on 1 March 1962. The Security Council was informed of all these invitations in document S/5060 and document S/PV.990. Therefore we say that you cannot make a proclamation here now in the air "calling upon the two parties," when one party invited the other to come and they have refused. What is more, the other party said they preferred to come not to us, but here. Therefore, there has been no response to the move for bilateral meetings. If the resolution had said, "*Calls upon* the Government of Pakistan to respond to the repeated invitations of India and to go and talk to them," that would have been the reality. But the approach in the resolution is partial. I am certain that my Government is not prepared to accept this position.

As regards the second point, the representative of France, the President, has referred to it more than anyone else. The resolution says:

“... at the earliest time with the view to its ultimate settlement in accordance with Article 33 and other relevant provisions of the Charter of the United Nations;”

To a lay reader, the person who does not know the details and the nuances of these things, and if he reads this draft resolution alone it all looks very nice. What could be better than arbitration, conciliation and all those things that have been set out? Therefore, he would think this is a very equitable and honourable thing for nations to do, and what they expect of the members of the United Nations. But

what is forgotten is that this issue comes under Chapter VI, under the pacific settlement of disputes and not anywhere else.

It is our submission, and has always been our submission – and we will maintain it – that the Indo-Pakistan question, so called, that the position that exists in this connection, is not a “dispute” in terms of the Charter. It is a “situation” created by Pakistan’s aggression on our territory, by the annexation of it, by the repeated violations of the principles and resolutions of the United Nations, and that therefore Article 33 is inapplicable to this case in any way. But even if it is said that the substance of Article 33 can be defended on grounds of good conscience and should be accepted by nations – that is, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement – I submit that all but the last has been tried over all these years. We have had so many negotiations on this – here, in Geneva, in Paris, in all kinds of places. There have been men of goodwill who have come over and talked to us and we have talked to them. So there have been negotiations, direct and indirect, times without number. As to enquiry, I suppose even the Security Council would be satisfied with the volume of material which has come out as a result of enquiry. As to mediation, this has also been tried, in the sense that men of goodwill have talked to us including McNaughton, Dixon and Jarring.

However, when we come to arbitration, international law, as I shall point out at the appropriate time, lays down certain principles that are basic to arbitration. There are some things that are arbitrable, others that are not arbitrable. That is true in individual relations, domestic relations and international relations. There are some things beyond arbitration! The sovereignty of a country, its independence and integrity, are not subjects of arbitration. The belief that they are so arises from a fallacy for which there is no cause. United States delegation should not be guilty; Mr Warren Austin, speaking many years ago before this Council, laid it down without any reservations whatsoever that sovereignty was with India, and therefore there is no question that there has been any dispute on this matter.

We hold, therefore, that in so far as the substance of Article 33, which would be applicable in good conscience – the substance of it, not the form of it – has been carried out. The invoking of Article 33 in the resolution is a further tightening up on us in this matter. The Security Council is being used as a means of propaganda, so that the representative of Pakistan can come here and say, time after time: “Yes, we agreed and India did not agree.” What they agreed to is a different matter. “We agreed and India did not.” He has sometimes forgotten that the crucial resolution, the one of 13 August, was largely hammered out by us and, what is more, was accepted by the Government of India long before Pakistan touched it.

Threats from Pakistan

The draft resolution then says:

“*Appeals* to the two Governments to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of negotiations;”

We have no objection to this appeal. But, so far as we are concerned, it is pushing an open door – and those who push an open door are likely to fall on their noses!

The draft resolution “appeals to the Government to take all possible measures” – when, for years, we have informed this Council of the psychological war being waged and of the gathering of troops and intruders or threats of the same. Even this morning, the news from India is that, in the puppet state of so-called *Azad* Kashmir, they have been collecting people, and other agencies of Pakistan’s creation have been collecting people, in order to make so-called tribal invasions on India.

I do not know whether at this time you want me to read many things out. The main mouthpiece of the Pakistan Government, the newspaper founded by the first President of Pakistan – some people regard him as the founder of Pakistan – says:

“The final settlement of the Kashmir question is not going to be worked out in New York. The hands of the Indian tyrant will be forced by other means, leaving him no alternative but to liberate his victims.”

The same paper went on to say that, if India wanted a war, we would have one, and they would raze Delhi to the ground, and every city in India would be destroyed, and things of that kind. Fortunately, we take all these things in our stride.

On 9 May, the same paper said that, on BBC television – the BBC does not normally allow people to say things of this kind – I lived long enough in Britain to know this – the representative of the *Azad* Government of Jammu and Kashmir said:

“The faith of the Kashmiris in the United Nations Security Council has been shaken, and they might soon take up arms on the Algerian pattern.”

The same paper, reporting the answers to questions by Mr Ludwig Kennedy of the BBC, went on to say:

“Mr Khurshid declared that Kashmiris would take up arms rather than go breaking their heads against the stone wall of Indian intransigence. He confirmed that the recently elected Council in *Azad* Kashmir has adopted a resolution requesting China for assistance in the Kashmir struggle for freedom. He also expected the people and the Government of Pakistan to

help in Kashmir's fight for liberation from the yoke of Indian military colonialism."

Again, ten days afterwards, one of their leaders announced that

"the All-Jammu and Kashmir Conference has decided to resume the Kashmir liberation movement following the failure of the United Nations to solve the Kashmir issue."

A great deal has been said about the dignity, the responsibility and the role of the Security Council. Is the Security Council going to pass resolutions under threats of this kind – we had one when Sir Zafrulla began his speech on the last occasion – I am glad to say that he modified it towards the end?

"The All-Jammu and Kashmir Muslim Conference" – not a public meeting, you know – the main political party in so far as they have any political parties – "announced today its intention to resume the liberation movement by the middle of August of this year. This decision was taken at the annual session of the Conference, concluded today. The Conference decided to recruit 10,000 trained *mujahids* (crusaders) within three months from today."

They cannot find people from *Azad* Kashmir to undertake this "mission" and therefore, according to our information, 1947 is to be repeated, and the "tribal" people from the north-western part – what was formerly the North-Western Province – are to be enlisted.

Mr Bhutto, one of the Ministers of the Pakistan Government, said that last month, after we met here – these dates are important – after we met and concluded the last session, this Minister, who must presumably be reflecting the views of his Government even in a non-parliamentary system, told a news conference:

"Pakistan now realised that the Kashmir problem would have to be settled by 'our intrinsic strength,' and... the Kashmiris may rise to the same heights as the Algerians."

I will not tax the council with more editorials, because it can always be said that they have a free press and that nobody can stop anybody from saying that. But the President of the *Azad* Government again comes on 29 May, a few days after we met here, and reiterates that:

"The fight of liberation would have to be fought on three fronts – namely, the diplomatic front, the propaganda front, and on the ground."

He also said:

“He was glad that some people who, till recently, talked of peaceful agitation, had ultimately agreed with his point of view that the Kashmir liberation fight would have to be an armed struggle.”

The representative of Pakistan at this table is one of those people who have talked not about peaceful agitation, but about peaceful settlement. I suppose there is a difference between the two.

I would ask the Council not to dismiss this newspaper, though it is one of several newspapers – I would not say it is an official paper, I do not mean to say so – but it is usually regarded as expressing the voice of the Government in that country, not only in this regime but in previous regimes. It goes on to say:

“Pakistan must have the Kashmir question settled, no matter what it takes, no matter what it costs. Indeed, the repudiation by India of the Security Council resolutions, including the one calling for the cease-fire and the aggressive deployment of her forces, have made Pakistan’s task a little easier. The great impediment to the liberation of Kashmir, namely, our obligation to maintain the cease-fire, no longer exists. The grave danger to our territory, our interest and our people is mounting. Acts of violence, of intimidation and threatening speeches have become a common feature across the border to keep us away from liberating our Kashmir brethren.

“Pakistan is threatened with an all-out war if the *Azad* Government of Kashmir makes any move to alleviate the sufferings of the Kashmiris under Indian occupation, while that country’s determination to occupy the *Azad* territory is voiced on every conceivable occasion by the Defence Minister. These threats, of course, can have no fear for us. If India wants an all-out war, she will get one. If Lahore, Dacca and Karachi are bombed, Bombay, Amritsar and New Delhi will be razed to the ground.”

Nobody has said anything about bombing Karachi or any other place.

“For us in Pakistan, the virtues of peace are no different from the virtues of war of liberation” – a very old statement – if it is a war of liberation – and when a great newspaper does not know the difference between peace and war, you know what you are dealing with.

“The people of this country were prepared for the present aggressive posture of India and the repudiation by her of international commitments, having witnessed the impotence of the United Nations” – that is for you – “and of the big Powers in regard to the occupation of the Portuguese enclaves. We should no longer ask ourselves whether we should start defending our country only when the first bomb drops on our territory or when soldiers cross our borders. The time for active defence has come.” – that is preventive war, you know – “Now is the time to thwart the designs

of the Indian expansionists. The massing of forces within striking distance of our territory is an aggression of which we have to take note. The repudiation of the cease-fire is nothing but a declaration of war. We have never sought and do not seek a shooting war, but neither do we want peace so much that we are willing to pay for it by permitting India to perpetuate an occupation of Kashmir and constantly menace our very independence. To gain our objective – the liberation of Kashmir – we should readily accept aid or friendship from whatever quarter it comes. What does it matter if our friendship does not meet the nationalistic purpose of our allies? As we have said... Pakistan regards as real friends only those who stand by it on the crucial question of Kashmir.”

That may be the reason why some people subscribe to these things.

The Security Council says that it is appealing to the two countries to maintain a peaceful atmosphere. As I said earlier, the appeal loses its point because you are pushing against an open door on one side. Even in the highest circles in Pakistan, no attempt has been made to create a favourable atmosphere. As I pointed out, not only has there been no favourable response to India’s repeated requests for a no-war declaration but even the invitation from the head of our Government, to the head of the State of Pakistan who is also the Prime Minister, *de facto*, has not produced any response.

The representative of Pakistan in the Security Council has successfully made every attempt to keep this debate in progress and to create a sense of controversy in order, perhaps, to promote feelings of irritation with India and cause difficulties for her.

The fourth operative paragraph of the draft resolution:

“*Urges* the Government of India and the Government of Pakistan to refrain from making any statements, or taking any action, which may aggravate the situation;” (S/5134)

We have asked this Council repeatedly for the past twelve years to point out to us what statements we have made that are aggravating the situation, even though the fact remains that forty thousand square miles of our territory are occupied by the other side.

The fifth operative paragraph of the draft resolution:

“*Requests* the Acting Secretary-General to provide the two Governments with such services as they may request for the purpose of carrying out the terms of this resolution;” (Ibid.)

That part of the resolution is innocuous; it is one of those omnibus clauses that are added on to resolutions. Furthermore, we do not want to bring the Secretary-General into this controversy at all. In any case, since we are not likely to request these services, that paragraph is inoperative.

Draft Resolution Will Aggravate Situation

This, therefore, is the draft resolution which has been submitted when each of the Governments concerned knows for a fact that it will not lead to the solution of any question. It will only aggravate the situation and will be used in Pakistan for a purpose which is entirely different from what is intended. Besides, it is entirely contrary to facts.

The draft resolution ignores several very crucial points that were made by members of the majority in this Council. One of these points is that conditions have changed. In spite of the fact that the representative of Venezuela devoted most of his speech to arguing the case for Pakistan, he did point out that there is no question about Pakistan having any sovereignty in Jammu and Kashmir. If Pakistan has no sovereignty there, I do not know how she dares to do anything on our territory. The fact that there have been many changes in conditions was recognised here by France, by Ghana and by Romania – which is not part of the majority, but still a member of the Council. Ireland also spoke of this but it does not appear in her resolution. Venezuela, Chile and the Union of Soviet Socialist Republics all have said the same. Everyone has referred to these changed conditions and when the time comes for it, I propose to submit to the Council both the law and the facts which apply to these changed conditions in Kashmir.

It is not my intention to make a more detailed statement at the present time but I hope, in fairness to my Government and in view of the large number of misstatements that have been made in the Council – either out of ignorance or for political reasons – that I will be allowed to put the record straight so that, on a future occasion, it will not be said – as has been said so often – that the Government of India did not take exception to this, that or the other.

We have the same feeling as a lot of other people that the repetition of these things is becoming a bit tiresome. But then, if I neglect to object to any particular point, that omission is brought up at the ensuing meeting and it is said then that India had no objection to it. Therefore, we intend at the appropriate time, if that is the pleasure of the Council, to put our position with regard to this matter more fully on the record.

The other speech to which I should really refer is the statement made by the representative of the United Kingdom. I shall not do so for several reasons. The first is that it is expected; the other reason is that I have no desire to aggravate the relationship between our two countries. But I hope that they will stop speaking to us in the fashion which they have, abjuring us vaguely to preserve the status of

relations in the Commonwealth in regard to these matters. Pakistan is a military ally, not only one of the members of the Commonwealth. In the context of things as they appear therefore, such statements fall very unpleasantly upon our ears. But our relations with United Kingdom, in spite of everything, are very close and no doubt Sir Patrick Dean follows his instructions and his own wisdom in the matter.

I wish to reiterate to the Council that in passing this resolution it will not be, as Mr Boland has said, discharging a duty that will promote the purpose which motivates it. Besides, it is not the function of the Security Council to pass resolutions without purpose. If I may say so, we sometimes develop a habit of doing things and then do them whether they have a purpose or not. I remember being interviewed by a newspaper editor on television some time ago. He told me that I did not understand his difficulty, that sometimes great problems arise in the world that are so difficult that it becomes impossible for even statesmen to unravel them but they have to write editorials and pronounce on them in quick time. I told him that I could not understand the nature of an obligation to pronounce out of ignorance.

Similarly, there is no real obligation for the Security Council to pass a draft resolution which is not likely to lead to anything but which will only proclaim to the world that this question has not received the kind of consideration that it should from members of this Council and from nations that are committed to the same principles as we have observed in our country. Therefore, I submit, with all the earnestness at my command, that particularly the uncommitted countries should not now become parties, either passively or actively, to a resolution of this character.

I have no desire to analyse closely the other statements that have been made which will only give strength to forces of disruption either in India or in relation to India and Pakistan, and would not be calculated to lead to peace in our part of the world. Conditions have changed. Since I intend to refer to them more fully later, I will not do so now. Therefore, I request the members of the Security Council, even though a draft resolution is before them, not to complicate the difficulties in the situation by adopting it or even supporting it.

22 June 1962⁴

In my last statement when I spoke on the draft resolution I took care to reserve my position with regard to the various statements of the members of the Council. I deliberately did not make comments at that time in order that the Council might

⁴ Statement after the vote on Ireland's draft resolution. *Official Records of the United Nations Security Council*, Seventeenth Year, pages 36-47.

proceed with its business on the draft resolution. Even after I made that reservation and the voting had taken place, and there was another discussion which went on and on which it is not my business as a non-member of the Council to comment, I still had reservations with regard to entering into a debate again. Although the representative of Pakistan had all the time, from the fifteenth of this month onwards, had liberty to intervene in this matter he did not do so. He has spoken at the tail end now. It would hardly be fair to my country and Government to leave unanswered the statements which, if they remain unanswered on the record, might perhaps be taken as having no answers. That would not be proper. My Government and I would not be able to justify this to our people or to our Parliament.

Situation, not a Dispute

Although the representative of Pakistan, with all his skill and ability, has tried to condense these points, it is necessary to reply to them because what he has done has been to throw a number of stones – a stone can be a very small one but it can hurt a lot and its impact can be widespread. It is quite easy for Sir Muhammad to say that accession is in “dispute”; it is necessary for me to prove that it is not in dispute. The tactics is the same as in the cases of their infringements upon our border. They choose the place where to fight. If we shoot it will be into the jungle but they can shoot in our villages as they choose the place for aggression. This is always the tactics of people who do not follow the rules of war or peace.

I shall deal with these points one by one.

First, the representative of Pakistan said that the Government of India said that there is no dispute. This is certainly a “dispute” in popular language in the sense that there is a difference of opinion, there is a difference of views, there is a difference of interests; but there is no “dispute” in terms of the Charter. It is a “situation” which was created by the aggression of Pakistan over the territory of India. At one time it was admitted by Pakistan itself in that they said they were not there. Therefore other people who came there were not authorised to be there. We maintain that this is a situation of aggression and not a dispute. They have said that there are points in dispute, namely accession. Accession, even if it were in dispute, would not come here. Validity of accession at best is a legal point. There is no dispute about the fact of accession; the fact is with us. One-third or one-fourth may remain with them by illegal occupation. Therefore, even if the issue was merely a question of the legality of accession, it would not have come here.

Accession is Final

But since Sir Muhammad raises the question of accession again, what am I to do except to point out that, as we have repeatedly said, the accession of the State of Jammu and Kashmir to the Union of India, both by her Act and by our Constitution by the agreement of the British Government, Pakistan and ourselves,

is full, complete, final and irrevocable. Therefore, any removing of the State of Jammu and Kashmir, or any part of it from the Union, would be an act of cession and an act of disintegration of our country. Therefore, it is not right to say that accession is still in dispute.

As I said once before today and once on a previous occasion, this was admitted and was stated in this Council by no less a person than the representative of the United States, whose statement I quoted on the last occasion; Mr Warren Austin said that the sovereignty of Kashmir was with India and that is why she is here: otherwise she would not be here at all. Moreover on the question of accession, if it was a dispute, the Security Council still could not be seized of it. On the other hand, if Kashmir had not acceded to India, we would not be entitled to be here.

Assurances Given by the United Nations Commission

Then comes the question of the UNCIP resolutions. This is a matter which unfortunately requires very considerable elaboration. It does mislead a number of members of the Council who, I have no doubt, are well intentioned. It has been said more than once that the UNCIP resolutions – the two resolutions – wash out everything we contend about sovereignty etc. In fact, they do nothing of the kind. Each of the main paragraphs in this resolution was discussed by the Commission and by the Government of India, mainly by the Prime Minister, and when we agreed to it clause by clause or part by part it was in the context and on the basis of the assurances that were given to India. I could read the text to the members of the Council if they had time to listen. But I shall summarise the points of these assurances.

The first assurance was: “Responsibility for the security of the State rests with India.” This was not only agreed to by the Commission, but it was also stated in the resolution itself. When the Government of India was asked to maintain garrisons in the Northern Areas, to keep external forces from coming into our territories and to assist in the maintenance of law and order within the cease-fire lines in the places which are illegally now occupied by Pakistan and where, it was anticipated, they would evacuate and the territory would be returned to India.

Secondly, “The sovereignty of Jammu and Kashmir Government over the entire territory of the State shall not be brought into question.” On this particular matter – and I would like my colleagues to take note of this – pointed questions were asked by the Prime Minister and the answers were given by the Commission in the manner I have mentioned.

Thirdly, “Plebiscite proposals shall not be binding upon India if Pakistan does not implement parts I and II of the resolution of 13 August 1948.” Part I has not been implemented. The only part of this resolution that has been implemented is the cease-fire part. Mr Jarring, when he went to India, discovered that implementation was open to question. If you look at the resolution, you will see that part I, section

A, deals with cease-fire, which has been implemented. Section B follows: "The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir." That was on 13 August. The Commission itself found that they had organised forces, that battalions had come into existence. The Commission itself said that this created a "material change in the situation" and that therefore it could not be said that the provisions had been implemented. Therefore the whole of sections B and C remain unimplemented. Unless these are implemented, we do not come to the second part. In spite of that, we went on discussing truce terms envisaged in part II in the hope that they would be implemented.

The fourth of these assurances given was that: "there shall be no recognition of the so-called *Azad* Kashmir Government." I am bound to say that there has been no recognition by the United Nations although attempts have been made in that direction. But Pakistan is a party to this agreement. There were no *Azad* Kashmir forces recognised at that time, they cannot be recognised as an entity let alone as a government.

The fifth condition was that: "the territory occupied by Pakistan shall not be consolidated." Not only has it been consolidated, but it has been annexed to Pakistan under their constitutional law and some sort of accession obtained from some parts contrary to any provisions anywhere.

The sixth assurance refers to the:

"reversion of administration of the evacuated areas in the north to the Government of Jammu and Kashmir and its defence to the Government of India, and to maintain garrisons for preventing the incursion of tribesmen and to guard the main trade routes."

I want to submit that what I am reading were and are not demands by India, and were not proposals submitted to the Commission but are the assurances given to India on behalf of the Council.

The seventh of these assurances states: "*Azad* Kashmir forces shall be disbanded and disarmed." That is to say, since these *Azad* Kashmir forces were presumed to be at that time for the most part people from that area itself, they could not be sent away; they belonged there. Therefore, the only thing was that they should be disarmed and disbanded. There was some argument about this, and the Commission ultimately agreed that disbanding and disarming go together and cannot be separated.

Finally, there is: "the exclusion of Pakistan from all affairs of Jammu and Kashmir." Right through this argument there is no question of Pakistan having anything to do with this plebiscite except under the control of the Plebiscite

Commissioner at the time of the plebiscite. If it came about, they could have observers. The Plebiscite Commissioner was to be appointed by the Government of India, the administration was to be provided by the Government of India, as is the custom in taking plebiscites in Trust Territories. That was the position in regard to these assurances.

When speaking about this resolution, therefore, you cannot take it outside of these assurances and the other assurances that have been given at various times. As the President has asked me to be brief, I cannot do very much more on this question.

Obstruction by Pakistan

Then we are sometimes asked: Why is there no plebiscite? Apart from the question of “changed conditions,” the impossibility of taking it, how can we take a plebiscite even if we wanted to unless part I and then part II and part III of the resolution of 13 August are implemented? In the implementation of part III will come the discussion between the Governments of Pakistan and India separately with the Commission as to the manner of determining – it does not even say a plebiscite in the third part of the resolution – the future status of Jammu and Kashmir in accordance with the will of the people. Implementation of part III had been prevented not by us but by Pakistan from those days. We immediately proceeded to democratise the area under our control. Elections have taken place not only nationally, not only in towns and urban areas, but also in villages all over. There is democracy in the area administered as part of the Union right down to the village level. I know that this is not part of the pattern of Pakistan, but that does not mean that is not what was intended. We had never agreed to a plebiscite under any circumstances, but to a plebiscite at that time following all these things step by step. In any case, there has been no opportunity, even within the limitations that exist, for the people of the so-called *Azad* areas to express their views in any way whatsoever.

The texts of these resolutions are before you and, as I pointed out, each of these paragraphs were agreed to in this way. India accepted this resolution, Pakistan did not accept it at first. After three or four months of negotiations they said they accepted it.

Then came the 5 January resolution. Mr Stevenson has made reference to one paragraph in it. It should be understood that the 5 January resolution was supplemental to the previous one. It is like an architect’s plan, that is, when the third part of the resolution is implemented, then if we agree on a plebiscite the way of doing it was there. That was the idea of that resolution. It is clearly set out in paragraph 4(b). We have nothing to hide in this matter.

It is quite true that immediately after the cease-fire, which incidentally we helped to bring about – and it was done in the context of an advancing, not a retreating army – we did think of plebiscite as a solution when the State was rid of the

invader. The entire onus of delay in this matter, of prevarication and obstruction has been on the side of Pakistan largely, I am sorry to say, on account of the support given to it by other people; I do not mean military support only, I mean support largely by interpretation arising partly from lack of knowledge of this matter or for other reasons.

I will skip a number of other points and then come to this point raised by Mr Muhammad Zafrulla Khan which obviously will have a kind of superficial appeal to people, that is to say, the Security Council had promised the people who were fighting for liberty in Kashmir how it should be settled. Who were the people fighting for liberty in Kashmir? Pakistan and its predecessors were fighting for the British Government against the people who were fighting for liberty in Kashmir.

It was also said that the whole of the trouble in Kashmir arose because of the rebellion against the Maharaja by the people. As I said, unfortunately for me but perhaps fortunately for you, because you do not want to be bored by it, there is a whole set of papers here, which I cannot read out now. If it is the desire of the Council, we could either put it in as a document or read out to you. This is the diary of Major General Scott, the British Commander of the Maharaja's forces. He was not suppressing a rebellion. There is no instance in this diary, except in one or two places, where incidents had occurred in which the local population had joined the intruders. Apart from that, the diary of Major General Scott, which I intend to put in as one of the documents, states on 31 August 1947, that is to say, sixteen days after independence in a note:

“Encounter on 29th between the Military proceedings to Bagh and hostiles who were armed with modern rifles . . .”

I will not read all of it even though it is well documented. The Maharaja's army was not dealing with the population of Kashmir but with the people who had come from the trans-Kashmir area from and over the territory of Pakistan. We had been told by the then Prime Minister – which we accepted in good faith – that this invasion was not through their connivance or their assistance. The intruders, we were told, could not be stopped because they were co-religionists or something of that kind. They were however armed gangs from west of the Jhelum river and they had been at large in Western Poonch since 4 September.

We see an entry in General Scott's diary on 16 September 1947 as follows:

“Report is Pakistan Army visited Alibeg on 14th within State border and a Sikh centre.”

Unless this diary is read out fully, it does not convey the whole picture. In view of the President's appeal, I am however prepared to be brief and not do it. Therefore any idea the Council may have here of poor people being suppressed by a tyrannical Maharaja, whom we had gone to rescue, is an entirely wrong picture.

What happened was that the territory, after the breaking of the stand-still agreement by Mr Jinnah, who is no longer with us, was invaded by external forces and hordes. They committed plunder and rapine, burned even churches, committed atrocities on nuns and what not, and did everything I read out to you the last time. It was in those circumstances when nearly a quarter million of these people who came from outside were destroying the State that accession was offered by the Maharaja, not in the way suggested by the representative of Venezuela where he simply signed a form. He wrote saying that:

“my people have been destroyed, my State will be destroyed unless you come to our rescue. Since I know that India will not go beyond its borders with its armed forces, I have made up my mind now to accede to India.”

The argument that is repeatedly advanced is that Lord Mountbatten said something at that time and wrote a letter at that time. No one denies this. What is more, he wrote it on the advice of the Government of India for he was the constitutional Governor-General. What is to be remembered however is that there was a document of application for accession and an acceptance by the Governor-General which made the accession complete. This is not part of that document, it is a separate matter. Once accession is completed, anything else that is said is a unilateral declaration on our part, which may be moral or immoral for us not to implement, but it is not a matter for the Security Council. Since we could not implement it in the way we wanted to implement it because as we have said over there, and it has often been repeated in this Council, even by our friends, that Lord Mountbatten also said that when the country was rid of invaders – and the country has never been rid of invaders – it would be implemented. It was not as though any part of anything he said had been morally, legally or otherwise breached in performance.

Then, reference has been made to the Constituent Assembly of Kashmir. The United States delegation in 1957 was slightly misled on the question of the Constituent Assembly. In fact, they thought that the delegation of India had made long speeches in order to practise what is familiarly called in this country filibustering. I could not have filled in for five days in any case, but over and above that we have said from the very beginning – not *vis-à-vis* the Security Council but *vis-à-vis* the Constitution of India – that under our system the States may express the forms of government they want, and so on. It is quite unlike the United States where they have state rights vested in the States; our reserve powers are in the Centre. And so we say, well, of course, we will very gladly have you say all these things, but they will not be binding. They have or may have a moral effect no doubt, but they are not legally binding upon us. There was no need to drag in the Constituent Assembly here, but if the Constituent Assembly discussions are of validity, they are all against the case made by Pakistan. I have no desire to repeat all the details because they have all been placed on the record.

There have also been references to unilateral denunciations. We have made no unilateral denunciation of any treaty, but everybody is well aware that no country can carry on an agreement that is totally against its interests. We cannot, whatever may be pleaded, accept anything which will lead to the dismemberment of India.

We are told that we want a release from the UNCIP resolutions. Nothing of the kind as suggested or implied by those who say this. If we wanted to be released from the UNCIP resolutions, why do we honour the cease-fire line? Yet it is a cease-fire line which we have many reasons for terminating, because it is not always administered – according to us – with the degree of impartiality that is required of those concerned. What is more, Pakistan even after the marking of the cease-fire line has taken territory – which we could retake by force, but that would lead to an aggravation of the situation. So, striking a balance, we let them keep it for the present. There are other parts on the international frontier of Jammu and Kashmir, which have also been breached in this way by Pakistan. There have been as many as 140 violations of the cease-fire line in this year of 1962. There are on an average ninety or ninety-five incidents inside Kashmir organised by Pakistan, in the way of violence and sabotage, in which Pakistan, British and American ammunition has been found. I am not for a moment suggesting that either the British or the Americans gave it to them for this purpose, but what I am saying is, give a child a knife to play with and he will hurt somebody. He will not ask the permission of the parent to do that.

We have been asked why we do not go to the World Court for an advisory opinion. I certainly understand Mr Zafrulla Khan's respect for the World Court; he has been there for some time, but this is not a matter for the World Court for its advisory opinion. This is a political issue, what is more, we are both members of Sir Patrick's much-loved Commonwealth and under the terms of our adherence to the World Court we have made some exceptions in regard to the matters which can be referred to it; while there may be no reason why they or we should not change these reservations, we are not going to throw the baby out with the bath water without finding out what will be the consequences. What with the common and the uncommon markets, all kinds of disputes may arise and we shall find ourselves, instead of being in a fraternity, engaged in all kinds of litigation. That is my personal opinion. So the question of reference to the World Court does not arise.

Changed Conditions

Before I conclude, and I shall not take much more time, I would like to refer to the scepticism that exists in regard to our argument about changed conditions. Let me point out what it means. If I had the time I could quote instance after instance where the United States, from the time of the Revolutionary War and its independence right up to the time of President Roosevelt, has invoked this doctrine of *rebus sic stantibus* in order to get out of obligations which could no longer be applicable. However, there is no time to do so and I will leave it like

that, but it is not the United States alone; rather is it every important country in the world which has had to do this because the conditions under which agreements had been reached became no longer valid.

The United States invoked in 1881 certain changes of circumstances as a reason for the revision of the provision of the Clayton-Bulwer Treaty of 19 April 1850 between Great Britain and the United States. Lord Granville, who was the British Secretary of State at that time, replied that the opinions of acknowledged writers on international law could be quoted to support his own opinion that “The principles upon which the whole argument of the dispatch is founded... are novel in international law.” He therefore treated the matter from the side of the practical considerations it involved, reserving the legal dispute. That is to say that even the British Government, at that time, while having doubts about it did not reject it.

Then other Secretaries of State – in regard to the Panama Canal, a very sore subject – argued in 1882 and 1883 that the treaty was voidable because the articles relating to the Canal had become obsolete, and because Great Britain had violated important provisions of the treaty. The first contention was based upon an interpretation of the treaty, contested by Great Britain, according to which the treaty related “to a particular ship canal to be constructed by a particular company,” and so on. So, anyway, conditions had changed.

Then we come to the Secret Treaty of London of 1915. France, Great Britain and Russia agreed with Italy in 1915 that if the latter would enter the war against the Central Powers on the side of Allied Powers the former would consent to the extension of the frontiers of Italy in case of victory. But President Woodrow Wilson argued in 1919 and 1920 for a revision of the treaty of 1915 diminishing the rights promised to Italy because “the whole face of circumstances has been altered” since 1915. That was with regard to a secret treaty, which, at that time, was considered to be even more binding than an open treaty.

I shall not read many more of these. There are so many of them. There is your own country, Mr President. On 10 July 1929 France invoked precedent and practice in its support of the doctrine of *rebus sic stantibus*. Mr Paul-Boncour asserted that

“a series of diplomatic notifications emanated from the British Government which denounced, by virtue of the same clause *rebus sic stantibus*, a whole series of treaties concerning the abolition of the slave trade, believing that the treaties which had ruled a determined situation in the middle of the century no longer responded to present circumstances.”

He asks:

“What was the reception accorded to this act – this unilateral act – of a great Power declaring abrogated the treaties by the sole fact that they no

longer corresponded to present circumstances, though none mentioned it except Great Britain? What was the reception made of this unilateral application, pushed to the extreme, of the clause *rebus sic stantibus*?”

His conclusion is that no objections were raised, and that the incident constituted

“a whole series of examples which prove that it is a constant rule of public international law that, even when it is not expressed, the clause *rebus sic stantibus* is tacitly understood in treaties of unlimited duration.”

I want to say here and now, first, that because I have read only a few of these things that does not mean that there are not many more of them, and secondly, that we are not for a moment suggesting that either the resolutions of the Security Council or anything that takes place here have the status of a treaty. We are here saying that even if it were a treaty this is the position. We have not accepted the position that these are treaty obligations or even that they are obligations. We have said that they are “engagements” which we have entered into, and therefore they cannot be treated as treaty obligations.

Then it might be seriously asked whether these changed conditions, which we speak of, are so serious as to affect our position. Our answer is that conditions have changed in the sense that Pakistan, in violation of its obligations under international law, has annexed our territory, committed fresh aggressions after 13 August, taken over the territories in Gilgit and other parts of the Northern Areas, accepted accession – or similar things – from the small titular chiefs in the northern part of the Kashmir area, in Hunza and Nagar, thereby changing the whole political contours of this area, and has thus created changed conditions. Alliance with other countries, both of Asia and Europe, whereby - as representatives will find if they read the SEATO treaties – along with most of them, and as party to that agreement, Pakistan takes South Asia under protection. The political map changes thereby, and this was all done after the Kashmir situation.

Thirdly, conditions have changed because of the creation of *Azad* Kashmir – practically a separate entity. Sometimes we are told it is administered from Karachi, now from Rawalpindi, sometimes not. It may be that a separate State has been created, but conditions have changed by virtue of there being at least twenty-five to thirty battalions of so-called *Azad* Kashmir forces – which are front forces for the Pakistan Army – today equipped with modern weapons made available to Pakistan from its own resources or from its military allies.

It was expressly stated that the territory under aggressive occupation should not be consolidated. That was part of the undertaking given to us by the Commission. The consolidation, as I said, has taken place – in fact, so much so that they have a Minister for Kashmir Affairs in their Government.

I will not say anything about the psychological war that goes on making it impossible for a fair plebiscite to be obtained under the conditions. We are a secular State, all of our organisation is political and has nothing to do with the religious aspect of a people. We are not prepared to face the position where religious fanaticism is to be or is protected.

Over and above this has occurred the situation in which Pakistan today – not for any good reasons, but merely for nuisance value and as an instrument to pressurise us – has entered into negotiations and, I believe, has concluded agreements with the Central Government of the People's Republic of China. That agreement or negotiation is in total violation of any rights or authority she has, for she has no sovereignty over this State; it is not hers to trade away or to negotiate about. Secondly, it was not necessary even for circumstances relating to her own security. What is more, it has been done on a basis, which we cannot accept – that is to say, our position in regard to China and her claims, which is not under discussion before the Security Council.

Our frontiers are “delimited” and “demarcated.” For the most part, they are demarcated but it is all delimited. Our frontiers are delimited in their entirety by historical circumstances and all other factors that go with it, and demarcated in places. Now, Pakistan has agreed they are neither demarcated nor delimited! That is to say, they sold away our birthright in as far as they can. All these changes that have taken place in regard to our own territory and in Southeast Asia are matters which make the position, as you see in the book, no longer possible.

I am sorry, therefore, that some countries which, quite rightly, have an affinity for legalisms, take one clause out of an agreement and say that “We agree to self-determination” or something of that kind. This is not tenable.

I am sorry that other extraneous circumstances have lengthened the meeting to this extent, but mainly on account of your courtesy and the patience of your members I have made my very brief submissions. I would like to express my appreciation to you and to the Council. I do not suppose I have succeeded in boiling down *Anna Karenina* to ten pages, but I have tried to answer – I will not say the argument – but the impact of the stones thrown at us at the last moment, when there was plenty of time to do it on some other occasion.

India Will Not Initiate Use of Force

I want to say here and now that we are as anxious as anybody else that there should be no breach of the peace – of international peace and security in our area. Our people would suffer by it most. We are as much concerned about it as any other member of the United Nations is concerned with international peace and security. Even those who do not agree with us, I would hope, would not challenge that.

Secondly, I want to say that when the Security Council is asking us for direct talks on the one hand, and referring to the question of not changing the situation by force, I want this to be taken into account. On behalf of the Government of India – not only now but on all the occasions when we have met – we have said that irrespective of our legal, moral, political and equitable claims, or any other rights we may have, it is not the intention of the Government of India to change or redress the wrongs against us by taking the initiative through use of force.

We are not asked to make this statement; we volunteered it. What is more and must be obvious to all, despite the fact that no part of the agreement is implemented or honoured, the cease-fire is still observed.

In answer to our challenge of the attitude of the Government of Pakistan and compelled by our peaceful declaration, Pakistan, through Sir Muhammad Zafrulla Khan, said something the other day somewhat similar, but only somewhat like that. His statement goes on to say: “of course, if people come and invade the country, we cannot be held responsible.” So one (ours) is an unqualified and unreserved statement, in spite of our experience over the last ten years, in spite of our 5,800 miles of frontier with Pakistan – in spite of our experience all along our frontier with Pakistan, we have said we shall not take the initiative in the use of force. And I go further and say: we shall not even succumb to small acts of provocation, even though we are able to justify, in a logical kind of way, retaliation in the face of what is continually happening. We can take some of it, but if it really comes to an invasion of our country, I am sure there is no one around this table who would say that we are to submit to further aggression.

With regard to the “guarantee” of which Sir Muhammad spoke, as I have already said – it should however not be forgotten that this comes after the first statement a few days previously threatening us with war. He has said he would not seek to bring about a change in the situation by any except peaceful methods - that Pakistan will always have recourse to peaceful methods for a settlement. But he took care to say that he was

“bound to warn the Security Council that the situation may not always continue passive – not that the Government itself will do something to convert it into a tension, but tension might arise. That is not something anybody should raise his eyebrows over. How can it happen? It has happened. Governments are upset; new Governments take their places; and new Governments can change policies. People get out of hand. There is nothing extraordinary in what I have mentioned to the Council. I have merely stressed that there is a live dispute...”

There are likely to be changes in Government, more so in our country where there are elections, than anywhere else but we have not made reservations. Therefore, this is a very qualified statement compared to ours.

Finally, we are two members of the United Nations, and, as Sir Patrick would like to say, also member States of the Commonwealth. There is no reason why we should not talk to each other; we have talked to each other on quite a lot of things. But it is one thing for us to initiate talks in that way, and something else to talk under some mandate of the Security Council with its concomitant implication of a report back, and the same kind of controversy going on.

What I really want to point out is this: that during this year my Prime Minister, directly, in his own person, and through our respective representatives, has made at least two efforts to initiate this, and each of them has been turned down. So the Security Council turns around and says that the "two parties" should get together, and so on. I told my friend from Ghana the other day that I understand the desire for conciliation and peace. However, there should be a difference in approach as between those who do some things and those who do not. While it does not mean that you should not make an appeal for talks, the fact has to be taken into account that the fault is not on our side.

Therefore, I conclude these observations by saying that the Government of India will continue to pursue the path of conciliation and maintenance of the articles of the Constitution of the Union and all we are legally entitled to, refraining from the use of force on our initiative. But if a condition should arise where, on account of changes that are taking place, and that I read to you a while ago, that is, if they are going to have some tribal raids over the territory, we will take whatever police or military steps are required to meet them. When the situation arises, we shall meet them as we have tried to meet them in the past. Equally, if there are alliances promoted between any part of sovereign India though under illegal occupation of any other country, that is Pakistan, then a new situation arises.

There is a great deal of loose talk about doing this or that or the other. The only good thing that has emerged from all these deliberations of this Council over the years, as well as from our efforts and their efforts, is the willy-nilly cease-fire line. In spite of all provocation, I say, in all conscience – I know something about this – in spite of all provocation, we have not allowed war to break out. I hope the Security Council, in spite of all the other extraneous circumstances that may condition the thinking of some of its members, whatever side they may belong to, will take into account the fact that, for us, this is a question of great and vital importance on which is centred the unity of India, the secular character of our State, and, what is more, internal peace of the country, where there is a population of so-called minorities of nearly a hundred million, where very large economic and social experiments – if you would like to call them that – are taking place, sometimes shaking the out of date foundations of an age-worn society.

If it is your desire to see progress take place, it is not achieved by passing resolutions which have no meaning, which cannot apply in the present circumstances, and which would be used by Pakistan only in order to prove to their people that "We have big people outside to assist us and therefore you can

do what you really want to do" - that is, attack India, provoke her and be intransigent.

It is not our desire to create more trouble in the world than there is. But at the same time, the Council should not mistake our desire to continue the state of quietude and patience in this matter as an attitude of weakness or subservience or a willingness to surrender our sovereignty under pressure. Our sovereignty we shall never negotiate; our sovereignty we shall never surrender. But we will make a very peaceful effort to prevent the situation from developing into one that would threaten the peace of the world and, wherein it would threaten the peace of India as well. The Union of India, its integrity and progress, is a matter of vital concern to us. We are often told by our friends who are concerned for our well-being of their great concern for us. Do they really mean that? If they do, they will bear this in mind.

I thank you and the members of the Council for your kindness and patience.