

**MR. V. K. KRISHNA MENON'S MARATHON SPEECH LASTING FOR EIGHT HOURS ON
KASHMIR AT THE UNITED NATIONS SECURITY COUNCIL'S SEVEN HUNDRED AND SIXTY
SECOND MEETING ON 23RD JANUARY 1957.**

PART ONE OF THREE

Mr. Krishna Menon : The Government of India has given consideration to the statement made by the Foreign Minister of Pakistan before the Security Council on 16th January, (761st meeting) that is, a statement coming from a neighbouring country with which it is our desire to establish, maintain and continue the most intimate friendship, and made by a person who has been associated with the service of India for well over generation and who today occupies a place of prominence in his government.

2. Before I deal with the subject that is before us, I would like to make this preliminary observation. Yesterday In India, India and Pakistan signed a trade agreement. If this were merely a trade agreement for the exchange of commodities, as might happen between any people, it would not be of any importance. This, like so many other agreements reached between our two countries, which marks a further step forward in the effort. in justice, to get over the difficulties which have arisen from time to time, touches not the feelings so much as the standards of living of our people on both sides. With that background I will endeavour, therefore, not to introduce invective or anything irrelevant to the subject before us or which would in any way swim against the current of co-operation and fraternity between our two countries.

3. The present consideration of this matter arises from a letter dated 2 January 1957 from the Minister for Foreign Affairs of Pakistan to the President of the Security Council (S/3767). It is important for me to mention this because, as I develop the position on behalf of the Government of India, it will be obvious to the Security Council that in this matter, it is necessary to place developments, phases, incidents and events in their right perspective. It is not possible to understand a problem, especially a complex problem which has engaged, in the first instance, the attention of the two countries, and the attention of other parties, including the Security Council, over the years-to which I shall refer later-without having the whole pictures so that the signifiacnce of documents, arrangements and declarations can become realistic and true to fact.

4. The Statement made in this Council by the representative of Pakistan on 16 January began, it is true, with a brief mention of the partition of India. It then went on the position that India accepted "a spurious offer of accession" of the State of Kashmir, and it would appear that what was sought to be conveyed was that we are here in regard to a dispute about territory.

5. Mr. President, I believe that you and all but one or two members of the Security Council are newcomers to this subject. It is quite true

that it is not individuals but States that represent Government here. And even with regard to States, apart from the five permanent members of the Security Council, most of them, if not all of them, are newcomers to this subject. I have the duty to the Security Council and to my Government, as well as to the cause of international peace and security, to present this problem, even at the risk of trying the Council patience with detail, in such a way as to enable the picture to be true to fact.

6. It will be recalled that the last time the security council considered this matter was on 23 December 1952, which is more than four years ago, a fact which is not without significance because, at a later stage in his remarks the representative of Pakistan attempted to convey to the Council the feeling that there was a crisis developing in this matter. I shall refer to that factor in a moment.

7. It was the Government of India that came here in the first instance. The Government of India came here on 1 January 1948. It is not usual for a Government of average ability and intelligence, as mine is, to come before the Security Council and to invite its attention to the wrongs it has done. In this particular case it has done nothing wrong, and in any case the matter is clear in itself.

8. Therefore, I shall now refer to document S/1100, annex 28 page 139, contained in the supplement for November 1948 of the Official Records of the Security Council. The original text is in English, and it is dated 1 January 1948. I hope the Secretary-General will bear with me when I say that it is essential for us to quote these documents, with all the details, because, at variance with the practice of the General Assembly, the Security Council's documents require considerable research if you wish to find some particular point in them. There is no volume of resolutions on this subject; you have to search for the resolutions and put them together. That may be a good thing, because one learns more about them. I should like to read the beginning and the end of this:

"Under Article 35 of this Charter of the United Nations{- which means that we did not come here with a request for drastic action as we were entitled to do-"any Member may bring any situation"-and I emphasize this word "situation" for we did not bring a dispute but a situation-"whose continuance is likely to endanger the maintenance of international peace and security to the attention of the Security Council. Such a situation now exists between India and Pakistan..."(S/.1100, annex 28 para 1)

9. We felt, as indeed my predecessor in this chair pointed out to the Council at that time, that there is no dispute about territory. If it were a dispute about territory, I say with great respect that the Security Council would be incompetent to deal with it because that would be either a political or a juridical question, and under chapter VI or Chapter VII of the Charter the Security Council would only deal with questions of international peace and security. so we brought here a situation and not a dispute.

10. But that is not the most important part. we went on to say:

"The Government of India request the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance,"-

immediately, on 1 January 1948, and today we are nine years away from it- "which is an act of aggression against India." (Ibid.).

11. I shall quote these words more than once before I have concluded, in order to discharge my responsibility as the representative of my Government: "...which is an act of aggression against India". That is the crux of this question. What we are considering here is not merely various resolutions or the method by which a problem may be resolved otherwise. What is before us, and I shall point out later, is this question of aggression, because the whole United Nations is founded upon the basic principles of International law and behaviour. That is based upon equity, and he who asks for equity must come with clean hands.

12. Therefore, our starting point is that we came here in order to file a complaint, to ask for redress on a charge of aggression. If Pakistan does not mention this starting point, then we have to point out why we were so concerned about it. After all, there are difficulties sometimes. Even today we have frontier raids one way or another. But why did we then ask the Security Council to deal with this matter? If Pakistan does not do so, that is to say, halt the aggression, the Government of India may be compelled in self-defence-and I interpolate that self-defence is not only a right of the Member States of the United Nations but, I submit it is an obligation that Member State have under the Charter because they have an obligation to maintain the sovereignties of their own countries - the Government of India may be compelled in self-defence to enter Pakistan territory, which we did not do, in order to take military action against the invaders. The matter is, therefore, one of extreme urgency and calls for immediate action by the Security Council for avoiding a breach of international peace.

13. As the delineation of this picture becomes more complete it will be clear that the efforts of India and of the Security Council and the approaches made to Pakistan by mediators and so on have at earlier stages been primarily addressed to the halting of hostilities.

14. Therefore, our country was faced with the position that part of its territory was invaded, and that invasion had to be resisted; it had to be pushed back. The normal practice of war would have been to defend by attacking the invader. But this was in 1947, and it was a fact, which remains true to us at any rate today, that these were the same people who were part of our country but ten years ago. What is more, between January 1947, when we came here, and October, when these things started, our two countries had only just passed through the holocaust of fratricide, that is, of Indian people killing Pakistanis, and Pakistanis killing Indians. We had witnessed an orgy of violence, and it was the desire of our Government that nothing should be done to re-kindle these embers which were still burning at that time.

15. That was the original position, and I shall keep coming back to it. We are here on a complaint of aggression. That aggression has not been resolved, it has not been got rid of. So long as there are forces of other countries in a place where they have no right to be, irrespective of our rights, I think the Security Council is called upon under the provisions of the charter to act accordingly.

16. In this context, so many trees have grown, and a very considerable amount of undergrowth, that it is impossible to see the wood properly, and it will be my attempt to present it as best we can. We shall try to assist the Security Council to see this picture as it was. As I said, five years ago we debated this, and in five years- even apart from the nine years-a great many things happen. It is part of the inevitable practice of nations that the changes in conditions that time brings about and which may go to the root of a question have also to be taken in to account.

17. From there, with great respect to my colleague, the Foreign Minister of Pakistan, I shall follow his example of looking at this problem from the time of the partition of India.

18. India became an independent country on 14 August 1947. We are not concerned here with the political issues but with the constitutional and other issues relevant to this problem. The independence of India was attained by an act of the United Kingdom Parliament. The Indian Independence Act of 1947 is that Act, and at later stages we shall draw attention to the causes relevant to these matters. On 18 July 1947 the United Kingdom Parliament passed the Indian Independence Act whereby India was created as a self-governing dominion and as a successor State of British India. Popularly, we speak about the British Parliament partitioning the country in two, constitutionally that is not correct.

19. What happened was that British India obtained independence. India under the British Crown, obtained independence and in that process Parliament Constituted certain territories- on which we had agreed politically beforehand-into another dominion. Therefore, as regards our State, for example, in the United Nations, we did not have to be admitted a new. We came here as a successor State to the India that signed the Covenant of the League of Nations, that signed the Treaty of Versailles, and which also went to San Francisco to help in establishing this Organizations, at which time my distinguished colleague from Pakistan was one of the representatives. So India became the successor State by this Act of 1947. The 1935 Act, that is to say, the Government of India Act the British Parliament passed in 1935 and which became effective somewhere around 1937, became the Constitution Act. It was amended by us in order to deal with certain anomalies, such as the reference to the Crown ass the Viceroy, and so on. Such various amendments were made during that period. That is the Constitution Act. Now this Act - and it is important to remember it-deals with the Federation of India.

20. British dominion in India or British suzerainty in India consisted of the over-lordship of what is now called by that very ugly word, the sub-continent, that is, the Indian peninsula. The territory consisted of two political groups, one was the British provinces directly ruled under the ultimate direction of the Secretary of State from London, and the other was the Indian states. So far as I recollect, there were 562 of them when we obtained independence. Therefore, the problem rose as to what was to be done with the states, because the states were not directly ruled, they were indirectly ruled.

21. The British Government, with the wisdom which is often not credited

to it but which in fact exists, had foreseen that India was likely to become independent. Therefore, as early as the third decade of this century they had tried to define the relations between the British Crown and these states by what is called a doctrine of paramountcy. It is necessary, for purposes of the record and for any future troubles that may arise- not in the particular issue-to state that we do not necessarily accept everything that everybody says about the doctrine of paramountcy. It does not appear anywhere else in international law.

22. Roughly speaking, for this purpose, the doctrine of paramountcy is this, that when we speak of the relations between the Indian states-and here again let me emphasize that when the British speak about the relations between or we speak about the constitutional law- it is the relations between the Crown and the head of the State, because all treaties were between the Crown and the Princes. There were no treaties ratified by any parliaments or legislatures. Therefore, it is argued that the relationships were established on account of the treaties, which are really a kind of charters between the British Crown and the Princes. And the British Government of the day, the Viceroy of the day, argued that this established a privity between them, a privity of contract, a privity of relationship between them, and expounded for the first time, in 1926, this doctrine of paramountcy.

23. Under the doctrine of paramountcy, when India gained independence the British Government proposed that the Crown should withdraw. The Crown was withdrawing from the peninsula. The crown was withdrawing from effective control of British India. And that is a point which I particularly would like the representative of the United Kingdom to take special note of.

24. Why were these changes necessary in the relations between the Princes and the Crown? Because the Crown was going on a legal theory fixed in a two-fold way, through the Viceroy on the one hand and the Governor General on the other. It was the fact that he had the Indian army, it was the fact that he had Indian revenue, it was the fact that he had Indian police, it was the fact that he had the Indian customs organization which enabled him to arrange the relations with the States.

25. Some gentlemen around this table are well aware, in constitutional practice, of the difference between status and function. Functionally, therefore, it was the British Government of British India that maintained these relations. It is quite true that there was a constitutional aspect. Therefore, for the purpose of the record we want to read into it that whatever remains in us, in the British Government, by virtue of this function, remains in the Government of India by virtue of its succession. Therefore, the doctrine of paramountcy is limited by this phraseology.

26. In order that there may be further support for this argument, I wish to draw the attention of the council, and particularly the representative of the United Kingdom, to the fact that a distinguished jurist who was Viceroy of India in this period when these changes were dreamed of in 1926, told the Princes that they have no sovereignty and that they had no independence at any time. There is a classic phrase which says: "over and above all treaty obligations are certain rights

that rest in the Government." Therefore at no time, as has been brought in so many times, even by us, the independence of the Indian States was not the kind of sovereign independence that would enable them to become Members of the United Nations. It is quite true, as it is said in the Cabinet Mission's Memorandum, that they were competent to discuss some other political relationship other than accession; that is possible. But they would not have been independent, like Colombia, or Cuba, or France or any of the countries around here, because they had no international status. The British Government, or any Government in the world, cannot just make a country like that. Independence rests upon function, upon territory, upon the capacity to exercise sovereign rights and, what is more, upon the recognition of the world. Therefore, when we speak about the three alternatives, this has to be borne in mind.

27. My Government, in view of the complications that arise in these matters, is anxious that this should be on the record somewhere, even though it might not have an immediate bearing on what you are going to consider. The mission of the British Cabinet was in India in 1946, and on 12 May 1946 it issued a statement in the form of memorandum. The memorandum to which I have just referred appears in our annex IV as document No. 1. For the convenience of the Council, my delegation has prepared these documents for the purpose of ready reference. I shall, at some stage, ask for these documents to be circulated as United Nations documents. I believe we are entitled to ask that. But for the purpose of reference, the President has a copy, and copies have also been given to the other members of the council.

28. The President: May I interrupt the representative of India. The documents that he wishes to have made part of the speech which he is now delivering are quite bulky. They amount almost to a book.

29. Mr. Krishna Menon: Several Books.

30. The President: ... and while we are allow the representative of Pakistan to include all pages with is speech, I should really like to know the opinion of the Council on whether we should allow all these documents to be included in the statement of the representative of India.

31. I place myself in the hands of the council and would ask if there is any objection.

32. Sir Pierson Dixon (United Kingdom): As I understand him, the representative of India is asking that these documents shall be circulated as United Nations documents. It seems to me that there is perfectly proper.

33. The President: I think the representative of India wants them included as part of his statement.

34. Mr. Krishna Menon: No Sir, I hope that they will not be made part of my statement, because if there were, my statement would be unreadable. I want them made available as United Nations records because, strange as it may seem, while there are thousands of pages of material on this question, there appear to be only a few documents, which have been

served on the side, so to say, and it is useful for the United Nations archives to have these documents, apart from anything else.

35. Mr. Lodge (United States of America): In the more than four years during which I have been here I have only once seen material incorporated as part of a speaker's statement when he did not actually make the remarks himself. That was last week, in connexion with the speech of the representative of Pakistan, and if the representative of India asks for the same privilege today I would certainly be willing to grant it to him.

36. However, I do not think that we ought to do it again. I feel that it is a very bad practice to have the record appear as if a representative said something when in fact he did not. I hope, therefore, that we shall be very careful about this, because if we adopt it as a custom it can lead to tremendous abuses, and also to very considerable expense.

37. Mr. Nunez Portuondo (Cuba): It is the understanding of the delegation of Cuba that the representative of India has not requested that these documents be included as part of his statement. He has asked that they be circulated to Council members as United Nations documents. I believe that is logical and acceptable. There is therefore no problem.

38. The President: If there is no objection to the inclusion of these documents as an annex to the statement, and not as part of the statement. I shall so order. **It was so decided.**

39. Mr. Krishna Menon: May I state my position on this question? It would be a great embarrassment to me if these documents were made part of my statement because, as I have already said, the statement would then be unreadable. The purpose of these documents in our view-although we may be wrong-is to assist the Council to appreciate what I am, in a muddled way, trying to talk about. These documents are not available - some of them are not even available in the United Nations library-but they are documents in which the words have very specific meanings. I do not even ask that they should be annexed to my statement. If my delegation circulates them they will have no more value than newspaper cuttings. I want just to place them above that so that they are authenticated documents. That is all I am asking.

40. The President: The representative of India may proceed.

41. Mr. Krishna Menon: It will be seen that in our annex IV, at the end of document No. 1 - which for convenience, we have handed to the President and his colleagues in the Council- the position is briefly set out. I do not want to take up the time of the council by reading out the whole of this document, but it says in part:

"This means that the rights of the States"-and the important word is "rights"- "which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States" (S/PV.762/Add.1, annex IV, document NO.1).

This is one statement. The reference is to rights, there is no reference to the other relationships that have been created, and it will be seen that this is referred to in the British Minister's statement in Parliament, because, over the above rights, there are functional relationships set up. Paragraph 5 of the document goes on to say:

"Political arrangements between the States on the one side and the British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them."

42. Now this is the basis to which my colleague has referred as being the relationship between the States and India in the future. And, therefore, when the British withdrew from India the "Pax Britannica", of which we had heard a great deal, became limited by this fact. This new State that had been set up had to weave the threads of unity afterwards. The greater part of the States were in geographical and other contiguity to India, and therefore, both in the British House of Commons and in the chamber of Princes-which then was the organization for consultation between the mission and the Princes, and of which my colleague sitting behind me was at that time the Chancellor-the representative of the Crown, the Viceroy of India, made his announcement as to what all this meant.

43. There is a statement of what Lord Mountbatten actually did say which appears in Mr. Noon's statement, and we want to deal with that. It says:

"The Viceroy and Governor-General, Lord Mountbatten who represented the suzerain- he King of the United Kingdom and Emperor of India-however, advised the Princess of India on 25 July 1947 that in deciding the question of accession, they must pay due regard to the communal composition, the wishes of their peoples and the geographical location of their States"(761st meeting para 13).

44. I am not willing to rely on my memory in regard to this carefully considered document. We have done all the research we can; we are familiar with the subject. There is no such statement of that character. What is more, the statement does not refer to communal representation. What it says in effect in this:

"You people are now free to join either Dominion, or you can be even, in a sense, independent, but of course you cannot evade geography, you cannot evade all that has happened in the past. So you people have to make up your mind."

45. This is the statement of 25 July 1947 by Lord Mountbatten in the chamber of Princes (S/pv.762/Add.1, annex IV, document No.3):

"It was necessary to set up two State Departments.... But when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded. Out of something like 565 States, the vast majority are irretrievably linked geographically with the Dominion of India. The

problem therefore is of far grater magnitude with the Dominion of India than it is with Pakistan. In the case of Pakistan the States, although important, are not so numerous, and Mr. Jinnah, the future Governor-General of Pakistan, is prepared to negotiate the case of each State separately and individually."

The rest of it refers to our internal arrangements. The Viceroy went on to say that, in order that there might be a smooth passage-over, he was arranging to have a clause inserted in the Independence Act in regard to internal arrangements.

46. Further in the document it is stated:

"Let us turn for one moment to the Cabinet Mission Plan of 16 May 1946. In this plan the proposal was that the States should surrender to the Central Government three subjects-Defence, External Affairs and Communications. That was a plan which, to the best of my belief, every ruler and every State accepted as reasonable, fair and just."

But the key phrase in his statement is this:

"You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible. Whatever may be your decision, I hope you feel that I have at least done my duty by the States."

47. I have spent some time on this statement because there is reference here to a distinguished national of the United Kingdom who performed such great services in both our countries and to the Commonwealth and to whom we referred as the Representative of the Suzerain of India at that time, and it is essential that there should be no mistake in this matter. Lord Mountbatten did not at that time- nor did the British Parliament at any time in regard to the States-ever refer to communal representation, by which, in India, is meant the grouping of Hindus and Moslems. There was no such reference, and it was not the idea of that time that the States should be referred to in that way in any of these documents.

48. But then the other document on which my distinguished colleague relies is the document of 3 June 1947, which is a statement by Mr. Attlee, then Prime Minister of the United Kingdom, in the British Parliament on the transfer of power. I will not labour the Council by reading this document, but it will be found that this document definitely says that this is concerned exclusively with British India. This is which the Minister for Foreign Affairs of Pakistan says:

"The basis of partition of the British Empire in India"- if by that is meant British India plus the States- "as set forth in the statement of the then Prime Minister of the United Kingdom on 3 June 1947 was that Pakistan would be constituted by the contiguous Muslim-majority areas in the north-west and north-east of the sub-continent, and India would comprise contiguous non-Muslim-majority areas. It was thus universally assumed that, following the basis adopted for partition, Princely States with a Muslim majority in population contiguous to Pakistan would accede

to Pakistan". (761st meeting para.14 and 15)

49. There is nothing like this in the 3 June document. What is more, it makes a special reservation to say that this does not concern the Indian States, but is exclusively concerned with British India. And it is not splitting hairs on this matter, because he was trying to explain the basis on which the grouping of territories in the partition had taken place. This is merely an explanation of that character. It is explained in paragraph 8 of Mr. Attlee's statement.

50. Therefore, I submit that this 3 June document has nothing to do with this matter, and I have said that, because there is some irrelevancy as to such claims as Pakistan puts forward for Kashmir.

51. Now it will be seen from that, that, while these territories were enabled to be independent, as I have said before, there were a large number of practical arrangements between these various areas. There are 565 States scattered all over India from north to south and east to west. A great many of them are islands. A great many of them are territories which were separated by bits of British Indian territory. There were questions of communications, questions of customs, questions of postal arrangements and various other matters, and over and above those there was the question of defence. I shall not read out that part; but it will be noted that the Viceroy refers to this question as follows. You Princes cannot defend yourselves; you have to be in a larger grouping. That is the only way to do it.

52. In the statement made later in the British Parliament by the Prime Minister, he referred to the fact that arrangements should be made to carry on in the intervening period. that was at the time when the British were still ruling India and when we had not been partitioned de jure. The Viceroy and Governor-General and still the head of the Government and, at that time, prior to the partition, these arrangements were being carried on, and it was suggested that a standstill arrangement should be made by the two States with whoever they wanted to function.

53. Therefore, the first part is contained in Section 7 of the Indian Independence Act of 1947, which says:

"His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;

"The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between his Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise..."

54. Therefore, there was a void which had to be filled and that is done

by a proviso:

"Provided that, notwithstanding anything in paragraph (b) or paragraph (c)"- which I have just read-"of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements."

This is the period between 18 July, when this Act was passed, and 15 August, when we become independent, and 14 August, when they become independent. (We are the younger State by six hours).

55. Arising from this, standstill agreements, as they were called, were formulated. The purpose of the standstill agreements was to carry on business in this way indicated here, and, so far as we were concerned, that included the matter of the security of the country, because, as I have said, there were areas interspersed all over. They were on our coasts, and they were very vulnerable in the post-war era. Therefore, the two Dominions had to make their own arrangements in this connexion, as the Viceroy had pointed out Mr. Jinnah, who afterwards became Governor-General of Pakistan, was to negotiate with these States separately.

56. Sir Zafrullah Khan, who represented Pakistan in the Security Council meeting on 16 January 1948, referred to these arrangements, so far as they were concerned with Pakistan, and pointed out what they actually meant. He said:

"In any case be"- the Maharaja-"had entered into a standstill agreement with Pakistan. It is necessary to explain what a "standstill agreement" is. India, being one political entity before the division on 15 August 1947, had a common system of defence, of railways, post offices, telegraphs, telephones, and a host of other matters. If on 15 August, when at least a nominal division took place between these two Dominions- in some places, the actual divisions also took place on that date-all these matters had had to be adjusted, the situation would have been impossible. A new currency could not be started merely by a stroke of the pen...' (228th meeting. p.66)

Sir Zafrullah Khan went on to say:

"Each State would come to a standstill agreement with the Dominion of India, or the Dominion of Pakistan, according to its own situation and requirements, providing that these matters-mainly communications, and so on-should continue to run on the old basis" Ibid., pp 66 and 67).

57. There was a further statement by Sir Zafrullah Khan. At the Security Council meeting on the next day he said:

"I explained yesterday to the Security Council what the standstill

agreements mean. Kashmir had arrived at a standstill agreement with Pakistan with regard to her communications, supplies, and post office and telegraphic arrangements." (229th meeting, p. 101)

58. I want the Security Council to take note of this last part, it was with regard to communications, supplies, and post office and telegraphic arrangements, and nothing else. Sir Zafrullah Khan went on to say: "This agreements became operative on 15 August."

59. The history of the standstill is contained in the telegrams exchanged between the Prime Ministers of Jammu and Kashmir on the one hand and the Prime Minister of Pakistan on the other, and there was a similar series of telegrams between the responsible Minister in New Delhi and the Prime Minister of Jammu and Kashmir.

60. As a result of the telegrams that passed between the Prime Minister of Pakistan and the Prime Minister of Kashmir, a standstill agreement was arrived at. The contents of that agreement have been submitted to this Council by no less an authority than Sir Zafrullah Khan, who was Foreign Minister of Pakistan at that time. It must be stated there were no signatures on these, because they were agreed between the Government by means of telegrams.

61. So far as the Government of India is concerned, on the same date an identical telegram was sent to the government of India. The telegram from the Prime Minister of Jammu and Kashmir to the Government of India stated:

"Jammu and Kashmir Government would welcome standstill agreements with Union of India on all matters on which these exist at the present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreements."

It may be said here that "existing arrangements" comprised the use of Indian forces if there was internal rebellion in one of the States. That had been practised for a long time, but it is not necessary for me to bring that out.

62. The Government of India telegraphed back:

"Government of India would be glad if you or some other Minister duly authorised in this behalf could fly Delhi for negotiating standstill agreement between Kashmir Government and Indian Dominion. Early action desirable to maintain intact existing agreements and administrative arrangements.

63. Before the Prime Minister could come to discuss these matters, Kashmir was invaded. Therefore, the standstill agreements which they were trying simultaneously to conclude with the two countries were interrupted, not by the action of the government of Kashmir or by the Government of India, but by the active aggression complained of. Therefore, it was not possible for the standstill agreement contemplated

to go on, and other developments followed.

64. There is only one matter to which I wish to refer. We propose to put in, for the reference of the Security Council, the standstill agreement used by the Government of India with regard to all the Dominions and States. This document is important, because we did not cook it up for Kashmir. It is a standard document, and every one of the 500-odd people with standstill agreement had to sign it. There are no other agreements and, therefore, if Kashmir had concluded an agreement with us, the purpose of it would have been as contained in this document. I will not read the text, since it would take too long, but the schedule of this document is important and the standard form was different from the substance given of it by Sir Zafrullah Khan.

65. I am pointing out the difference between the standstill agreement of India and the standstill agreement of Pakistan. The schedule included air communications, arms and equipment, control of commodities, currency and coinage, customs, Indian States forces, external affairs, extradition, import and export control, irrigation and electric power, motor vehicles, national highways, opium, posts and telegraphs and telephones, railways, salt, central exercises, relief from double income tax and other arrangements relating to taxation, etc. All these subjects are contained in the schedule of the standstill agreement. Therefore, if there had been no interruption by invasion, it is normal to conclude that a standstill agreement would have been concluded and that that standstill agreement would have included external affairs, control of State forces and of other matters which spring from the sovereignty of a country.

66. I should like to say that there is nothing inconsistent in a State concluding a standstill agreement with two different countries, especially a State of this kind, where there were railway communications and postal communications with Pakistan. That is why Sir Zafrullah Khan, with great accuracy, pointed out what they had, and this is what we would have had, because this is a pattern which is not altered; but at that time the invasion of Kashmir began.

67. There is telegram No.1, the chronology of which is important, I have already referred to the telegrams sent in connexion with this matter by the Prime Minister of Kashmir to the Government of India. The representatives will note that the date of this telegram is 12 August 1947. On 16 August, only four days later, the Government of Pakistan telegraphed that it had agreed to a standstill agreement and a few days later the Chief of Staff of the Jammu and Kashmir forces, Major General Scott, a British officer, submitted his first report to his government, the Kashmir Government which still had not acceded to anybody, on the border raids from Pakistan. That does not mean there had been no raids before. All of us know, especially now with all our discussions about United Nations forces, that it takes some time for this sort of thing to travel. Anyway, on 31 August 1947, the Chief of Staff of the Jammu and Kashmir army submitted a report to his Government on border raids from Pakistan. So the invasion had begun. That was what prevented the officials of the Kashmir Government coming over to India at that time.

68. On 4 September, on the basis of a telegraphic report submitted by its Chief of Staff, Major-General Scott, the Kashmir Government protested by telegram to the West Punjab Government against armed Muslims from Rawalpindi district infiltrating into the State. Protests were also made to the Deputy Commissioner. Two days later there was a marked increase in this activity.

69. On 6 September a patrol visited Alibeg, twelve miles west of Bhimbar and Major-General Lovett, commanding the Seventh Infantry Division- that is to say, presumably of the Pakistan forces-was informed. On 13 September, a Pakistan Army patrol visited Alibeg and Jatlai, fourteen miles west of Bhimbar, both in the State territory. They are all contained in the diary kept by General Scott.

70. On 17 September-we are now only one month from independence-a band of 400 armed raiders, twelve miles southeast of Ranbirsinghpura drove away herds of cattle belonging of State nations.

71. On 18 September, railway service between Sialkot and Jammu was suspended by Pakistan authorities without any reason and in contravention of the standstill agreement. So if there was an agreement it was broken by the conduct of the Pakistan Government on 18 September-and this action is not isolated. Armed gangs entered Kashmir in Palandri (Poonch), across the State border. By 18 September the invasion had gained momentum.

72. On 28 September hundreds of armed men with service rifles, automatic and spears attached in Kashmir State patrol near Chak Harka. On 30 September hundreds of armed Pathans entered Dhirkot Than inside the State territory.

73. On 3 October, the Jammu and Kashmir Government protested telegraphically to Pakistan against hundreds of armed people from Murree Hills in Pakistan operating in Poonch-part of which is now occupied by Pakistan, part of which is in the other side; it also protested against the essential supplies, including petrol, rice, salt and cloth, being withheld. That is the second violation of the standstill agreement.

74. On 4 October armed men renewed their activities in the chiralala area and near the Jhelum river and fighting between the raiders and State forces began. Now we have reached a state of war.

75. On 10 October two sections of the Pakistan Army followed by an armed gang attacked Pansar village in Jammu. I submit with great respect and a sense of responsibility that what I have now read out is one of the key points in the consideration of the whole of this question-that is to say, Pakistan informed us that they were not involved in this matter. They said they were trying to stop them. The Security Council asked them not to get involved and not to do anything. Even as early as 10 October, long before the Indian forces had been there, Pakistan had invaded the State of Kashmir. How does it become important? Because irrespective of whatever claims, whatever relations, whatever titles the Indian Government may have on Kashmir, Pakistan certainly had no rights because it had no accession, no relationship of any kind. At best it was

foreign territory. It was an act of aggression.

76. So on 10 October 1947, the invasion began. And here the diary says that two sections of the Pakistan Army followed by an armed gang attacked the village. And this item appeared in the Pakistan papers.

"The North-West Frontier Province Premier is reported to have announced that fire-arms would be distributed among the people liberally so that all except the 'enemies of Pakistan' can have them"(S/PV.762/Add.1, annex 1, No.12).

A very familiar sound.

77. On 13 October 1947 the following was stated in a newspaper:

"Pakistan has cut off from Kashmir supplies of petrol, sugar, salt and kerosene oil, although a standstill agreement between them has been signed" (Ibid., No/13).

Norman Cliff, who was the correspondent of the London "News Chronicle", not an Indian paper from Kashmir, published this news, in that newspaper.

78. On 15 October the Maharaja appealed to the British Prime Minister, probably by force of habit, because that was the practice in the past days. The Kashmir Government cabled to the British Prime Minister about the economic blockade on the State by Pakistan and the beginning the invasion from Pakistan in Poonch. He goes on to say:

"People all along the border have been licensed and armed with modern weapons under the pretext of general policy which does not appear to have been followed in the case of internal districts of West Punjab...whereas military escorts are made available for several other purposes, none is provided for safe transit of petrol and other essentials of life. Protests merely elicit promises which are never implemented. As a result of obvious connivance of the Pakistan Government, the whole of the border from Gurdaspur side up to Gilgit is threatened with invasion which has actually began in Poonch" (Ibid. No.14)

that is to say, away from the western border, the western district towards the south of the State right up to the mountain area on the frontiers of sin Kiang, the Soviet Union and other countries.

79. Some days later, on 22 October, the Jammu and Kashmir Prime Minister telegraphed the Prime Minister of the North-West Frontier Province-that is, a province of Pakistan-and the Deputy Commissioner of Rawalpindi, both in west Pakistan, about people armed with modern weapons infiltrating from Hazara and Rawalpindi district in West Pakistan into the State and asked them to stop the infiltration. The invaders continued their progress along with Jhelum Valley road towards Srinagar, (Srinagar is the summer capital of Kashmir, founded about 2,300 years by the great Emperor Asoka). Their triumphant march was temporarily stemmed at Uri, a town fifty miles from Srinagar, by a

demolition of a bridge and the gallant resistance of about 150 men under the command of a Brigadier of the Kashmir Army who was killed fighting a memorable last-ditch battle. The raiders managed to construct a diversion about mile long, requiring considerable engineering skill, since, according to "Dawan" of Karachi of 7 December 1947, it was completed in two days- that is to say, in this invasion the Pakistan appears or engineer regiments-their REME-must have participated. It was not possible for them to do otherwise. A fact will be noticed here to which I will refer later. These men were resisted only by the national militia, by the local populations. They were not welcomed as liberators. They fought a last-ditch battle; they resisted these people. That was on 22 October.

80. On 24 October the Maharaja, who is the head of the State, appealed to India for military help-and it makes no difference in this particular matter whether the Maharaja is constitutional, whether you like his face or you do not like it or what is the nature of his domestic life, that does not come into it. Here is a question of State theory. He is the head of the State and, according to the constitution, the only person competent to sign an accession; nobody else can do it.

81. May I halt here for a moment. Until now no one from India, neither Army, nor ministers, nor anyone, has gone into Kashmir to persuade the Maharaja. No police have been sent. We did not put any pressure on him; in fact, if I may interpolate, in a previous period Lord Mountbatten, on behalf of the Government of India, told the Maharaja of Kashmir, "You will accede to Pakistan if you wish and we will not take it as an unfriendly act" because the Government of India at that time was concerned about not having these States suspended in a vacuum, being the centres of trouble and difficulty, especially a frontier area. If they had acceded in the normal way, we would have accepted it, as indeed we accepted the sorry partition to which we subscribe and which we have no desire to undo. The Maharaja appeared to India.

82. On 25 October Lord Mountbatten attended the Defence committee at which General Lockhart, the Commander-in-Chief in India, read out a telegram from the headquarters of the Pakistan Army-and this is of importance of my colleagues of Australia and the United Kingdom-stating that some 5,000 tribesmen had attacked and captured Muzaffarabad and Domel and that considerable tribal reinforcements could be expected. Reports showed that they were already little more than thirty-five miles from Srinagar. It was quite normal for those two British officers to exchange telegrams, especially at that time, Pakistan had not acknowledged its invasion. Obviously the Commander-in-Chief and British Officers were working outside the policy region.

83. On 26 October 1947 the Maharaja asked for protection-I shall deal with this letter when we come to the question of accession- and he offered accession to India.

84. This is the position up to 26 October and I will deal with the document regarding accession to India of Kashmir and the surrounding state later, but it is necessary for me to dwell at some length of the history of this period, between the time and the cease-fire. If the members of the Security council will look at the pages of document No. 1

(S/PV.762/Add.1 annex 1), they will see what happened in Kashmir. It is stated in No.20:

"...It is a fact that several top-ranking British officers serving in Pakistan did have an linking of these preparations and plans, though I do not suggest that they took any hand in their execution.

"We came to know later"-that is, the government of India came to know later-"that, as soon as the June 3rd plan was announced, Kashmir became the subject of attention and study in certain military circles. Why was there a demand on the survey of India for so large a number of maps of Kashmir? - that is, from our Ordinance Department in Delhi? "What was the mysterious 'operation Gulmarg', copies of orders in respect of which fell into the hands of those who were not meant to receive them?"

This was because the Government of India also had an intelligence service. The document goes on to say:

"...the appearance at the psychological time of Jinnah's private secretary at Srinagar, the presence of Jinnah himself at Lahore, cannot be ascribed entirely to coincidence..."

85. On 28 October 1947 it is recorded in a diary written at the time:

"In the middle of today's Defence Committee, Auchinleck was a British Field-Marshal and Supreme Commander of Armed Forces in charge of the partition of personnel and physical assets of these forces-"from Lahore to say that he had succeeded in persuading Jinnah to cancel orders given the previous night for Pakistan troops to be moved into Kashmir"(S/PV.762/Add11, annex I, No.21).

86. I have read this in order to convince the Council that as early as 28 October 1947 the invasion by Pakistan, by a State and not by irregulars, not by a lot of holligans, but under the command of the Governor-General, had already taken place. The Pakistan Commander-in-Chief was a British Officer at that time who, in the absence of General Masservy telephoned the Military Secretary of the Governor of the West Punjab, with whom Jinnah was staying. General Douglas Gracey replied that he was not prepared to issue any such instructions without the approval of the Supreme Commander; that is to say, in those transitory stages it was not quite clear-in fact Pakistan voiced and published a complaint that Gracey had no business to disobey these commands. He was under the command of Auchinleck.

"At Gracey's urgent request, Auchinleck flew to Lahore this morning and explained to Jinnah that an act of invasion would involve automatically and immediately the withdrawal of every British Officer serving with the newly formed Pakistan Army". (Ibid.)

87. I would like to say that in all these matters, the British officers who served with our Army and, so far as we know, the bulk if not the whole of the British officers serving with the Pakistan Army, remained aloof from the lethal operations.

88. An order given by Mohammed Ali Jinnah in 1947 for Pakistan troops to launch an attack on the province of Jammu was ignored by General Douglas Gracey, who was then acting as Commander-in-Chief of the Pakistan Army. This was revealed on 20 March 1956 at a meeting of the Kashmir Liberation Conference held in Dacca under the auspices of the All-Pakistan-Millat-e-Islam Convention by ex-Major-General Akbar Khan of the Pakistan Army. This is the ex-Major-General Akbar Khan who afterwards appeared on the Kashmir scene under the name of General Tariq or something of that kind, who later was charged by the Pakistan government with the offence of treason, or something like that- I forget what it was - and went to prison. Major-General Akbar Khan said that General Gracey thus jeopardized the chance then available of liberating Kashmir. This was the view of the senior Pakistan officer at that time; that the British Commander-in-Chief, by refusing to carry out these orders, had thrown away the chance of liberating Kashmir.

89. Mr. Jinnah gave his order after a conference held on 27 October 1947 at Lahore with Pakistan Army chiefs. General Gracey said that before launching the attack he would confer with Field-Marshal Auchinleck, who was then responsible for superintending the partition of the old Indian army and the transfer of troops from it to the new Indian and Pakistan armies. Mr. Akbar Khan said that Mr. Jinnah's directive was correct and wise, the General Gracey's insistence on conferring with Field-Marshal Auchinleck was unjustified because Auchinleck was not in any way concerned with the operations of the Pakistan army- and there is something to be said for Mr. Akbar Khan's arguments. He then described the acceptance of the United Nations cease-fire order in Kashmir and Jammu as inopportune. Instead, Pakistan should have accepted the United Nations mediation in 1948 when the District of Poonch was under the control of the "Azad" Kashmir Government.

90. During this period, various acts of brigandage, of rapine and plunder took place, and if I had the time I would go into this at great length. But what is the political importance of this? The political importance is that if the Kashmir territory was aligned with Pakistan by kinship, by links of blood, race or religion, that was a strange way of showing the friendship-by invading its country, and the rapine and plunder of the raiding forces continued up to Baramulla, which is only a few miles from Srinagar. The town was sacked and burned. In spite of the risk that I may take of prolonging this statement, it is necessary at least to look into some parts of this situation.

91. In his budget speech to the Legislative Assembly of the Frontier Province on 7 March 1949, Premier Abdul Qayyum Khan advocated a special grant for the tribesmen and justified an allotment in these words:

"The House will recall with pride the fact that in our greatest hour of danger the Masuds responded to our call by rushing to the rescue of the oppressed Muslims of Jammu and Kashmir state" (Ibid. No.22)

I know of no rule of international law which confers upon a State the right to go and protect someone else in another State, even if he is oppressed. If that were the case, no State would be stable.

92. On 31 October 1947 the Prime Minister of India telegraphed to the

Prime Minister of Pakistan:

"...Raiders from the Frontier Province or along the Murree road come from Pakistan territory and it is the easiest thing in the world to stop them at the two bridges which connect Pakistan territory to Kashmir".

We did not blow up those bridges because at that time we were very careful not to go anywhere near Pakistan territory.

"They were not so prevented" says Pandit Nehru "and their equipment and arms including artillery and automatic weapons bear witness to every help being given to them. We are credibly informed that regular officers of the Pakistan Army are advising the raiders" (Ibid. No. 23)

The Minister of Health in Sind, another province of Pakistan, at the time appealed to all trained and demobilized soldiers to proceed as volunteers to the Kashmir front.

93. The Prime Minister stated that there could be no doubt whatsoever that all these invaders had come across from Pakistan territory. He said:

"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 forwards a neighbour country?"

At least on this point, the United Nations Representative found that it was a violation of international law. The Prime Minister continued:

"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" (Ibid. No. 24).

94. Now comes perhaps the most important evidence of the direct implication of Pakistan is this raid. While this was going on, the Government of India was still trying to settle matters and attempting not to have a repetition of what had happened in the previous months in the north-west of India and the north-east of Pakistan. It is so that the telegrams mentioned by the Foreign Minister of Pakistan refer and to which I shall come in a moment.

95. Mr. Jinnah invited the Prime Minister to go to Lahore, but he was unable to go owing to ill health. However, the Governor-General went, and what happened? At that time discussions took place and it was said that both sides should call off their troops; that is to say, the Indian Army should be withdrawn and the raiders, as they were then called should also leave. But the Pakistan side, represented by Mr. Jinnah, had all along been saying: "We really cannot do anything about these people. They are co-religionists. How can we stop them?" Therefore, either the Pakistan government had no control over them, or they were abetting them, or there was a combination of both Mr. Jinnah, therefore, proposed that both sides should be withdrawn. Lord Mountbatten asked the common-sense question of how Mr. Jinnah could be responsible for withdrawing

the tribesmen if he had no control over them, to which Mr. Jinnah replied: "If you do this I will call the whole thing off."

96. Independent evidence has been offered by London newspapers which in no way could be regarded as being disposed too favourably towards India in these matters at that time. Alan Moorehead, correspondent of the London "Observer" in Pakistan, wrote as follows: "The Pakistanis look on this as a holy Muslim war." "I read that deliberately, because that is the position even today. This afternoon when we go into these questions we shall be able to cite evidence that that is the position, that is to say, that India is threatened by a campaign of hatred and preparation for an aggression against its territory. We shall not fire a shot and we shall not allow a soldier to leave our borders, but just the same as anyone else we shall discharge our duty of self-defence. The correspondent wrote: "They look on this as a holy Muslim war. Some of them I have seen talk widely of going to Delhi. "Alan Moorehead motored to Peshawar and the Khyber Pass from where this crusade began. He wrote: "Everywhere recruiting is going on... This is happening not only the tribal territory...but inside Pakistan itself" (Ibid No/.24). That was at the end of October and beginning of November 1947.

97. There is also photographic evidence. As Associated Press photographer, presumably an American, flew over a section of Kashmir and said that he saw more than twenty villages in flames. The villages, in an area ten miles long and eight miles wide, apparently had been set fire to by the Muslim invaders who were scouring the valley and moving in the direction of Srinagar.

98. In a report in the "New York Times" by Robert Trumbull, dated 10 November 1947, we read the following:

"Baramula, India, 10th November-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 a retired British Army Officer, known only as Colonel Dykes, and his pregnant wife, were slain. When the raiders rushed into town on 26th 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 of a normal population of about 14,000" (Ibid NO.26).

99. Here again is another account concerning Father Shanks, who was one of the Christian missionaries working in the area. It is a story that Father Shanks would never tell. He describes the attack on the Convent without mentioning 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 20 year old Indian nurse, Philomena, tried to protect a Moslem patient whose baby had just been born. She was shot dead first. The Patient was next.

"Mother Superior Aidetude rushed into the ward, knelt over Philomena and was at once attacked and robbed. 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 the 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 the stomach.

"Mrs. Dykes ran from her husband's room to help him. She too was shot dead.

"While this went on Mr. Gee Boretto, an Anglo-Indian, was killed in the garden before nine nuns. Then the nuns were lined up before a firing squad.

"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 features of human quality in these incidents-"He had been told his men were raiding a Convent, and had run all the way from the town. That saved all our lives by a few seconds.

"We did not find Mrs. Dykes until the following day. She had been thrown down a well" (Ibid. No.27)

100. We have another report, as follows:

"A Pakistan Army convoy was sent to 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" (Ibid)

101. Then we have the following report:

"In Baramula the townspeople told me of a young Muslim shopkeeper who had sacrificed his life rather than recant in 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.

"He-Mir Maqbool sherwani-must have been a sort of Robin Hood character, from the stories the towns-people 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 up the resistance

of the people against their many oppressions.

"When the tribesmen invaded Kashmir and terrorized the countryside, Sherwani, who knew every footpath in the Valley, began working behind the lines, keeping up the morale of the besieged villages, urging them to resist 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 skillfully 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" (Ibid).

102. On 22 December 1947, in Delhi, the Prime Minister of India handed over to the Prime Minister of Pakistan a letter requesting the Government of Pakistan to deny to raiders (1) all access and use of Pakistan territory for operation against Kashmir (2) all military and other supplies, and (3) all other kinds of aid that might tend to prolong the struggle.

103. I should like to draw the attention of the Council to that date; namely 22 December 1947. We waited one week before coming here. Our complaint was the same, that is that our country had been invaded. What was our request? This is what should be taken into account when there is an adjustment of values in the minds of members. Our territory had been invaded and the army was in a hopeless position, having been sent to Kashmir on less than twenty-four hours notice. I shall later disprove, if it is necessary, that there was any preparation on the Indian side. We have documents signed of their own will by the British Commander-in-Chief, the British Air-Marshal of the Indian Air Force and other personnel of the Indian army at that time, that the matter was never even broached by anyone before the question of defence arose.

104. I shall now state briefly what I fear, I shall have to say again later. In this context, if any other country, any other people—and it is not surprising that we did because we were the same people—had been faced with a situation of this kind, would it not have been answered by an ultimatum of war on their territory? We accepted at face value the statements made that these were marauders.

105. The Security Council, even though it has sat on this for over nine years, cannot forget the facts of history and its obligations to the Charter. We made this moderate request for not giving this aid. I am sure that everyone around the Security Council table would say that a country so invaded has the right under normal practice to say, "We shall retaliate and we shall not withdraw until such and such a time". This was merely a request from one friendly Government to another, proving that we were not in a state of war even then.

106. Nothing happened after eight days. We would not have come here if any improvement had taken place. On 1 January 1948, India complained to the Security Council under Article 35 of the Charter. Even then we did not come here with the idea of using international forces to restrain, or impose economic sanctions, or remove Pakistan from its seat in the assembly, or anything of that kind. We came here to complain to the Security Council under Article 35 of the Charter, requesting that the

Government of Pakistan be asked to prevent tribal and Pakistan nationals from taking part in the fighting in the State of Jammu and Kashmir and to deny to the raiders access to and use of its territory in operations against Kashmir, military and other supplies, and all other kinds of aid that might tend to prolong the fighting in Kashmir.

107. Are these the words either of a belligerent Government or of a government with expansionist ideas, with the desire to follow its neighbour-as often pointed out, a neighbour far stronger than we are military today? Is this the language they would use.

108. We came here asking the Security Council to do these things, and it was a modest request. That is still what is pending before the Security Council. The issue that is pending before the Council is one that its members dare to evade only if they are prepared to defy the Charter. Everything else that has gone afterwards making no difference. I go so far as to say that it makes no difference even if for argument's sake it is said that we were guilty of evasions after this incident, because international law is based upon equity. Anyone who comes here must come with clean hands, and I submit that our hands were clean.

109. What is more, we did not use our strong arm even at that time. We came here with a limited purpose. It may well be that, if we had forced that position is that time and not relied upon the processes that followed afterwards, perhaps this matter would have been resolved long ago and, what is more, we would not have been given the material for the kind of ill-informed adverse propaganda that goes on everywhere. We would not have sown the seeds of doubts in the minds of people sitting around this table.

110. Therefore, I repeat this point, to which we shall come back again and again, that it must be planted firmly in your minds that the issue is aggression. The issue is invasion; it is a violation of territory. It is not necessary for me to prove the unquestioned sovereignty of India in regard to Kashmir. It is sufficient for me to prove that we were in possession-even, if you like, in a state of temporary possession- but I am not going to concede that. I want it to be shown on the record that I am not going to concede that, because we have suffered often here by accepting a hypothetical proposition and by saying, "Let us assume this for argument's sake", or saying, "If A, B, C and D happened, then we will do D". Then we discuss D, everybody forgets A, B and C, and we are committed to course D. Therefore, I urge the Council to be extremely careful.

111. However, suppose, for example, that that was the position. I ask my South American friends to think of the doctrine on which their countries are based. We were in possession legally and in fact. They were invaders, and they had no standing in international law or international practice or according to the Charter, other than as wanton, naked aggressors into the territory of India.

112. While we made this complaint and it was being considered, what happened? I have not the records here, but I am sure the Secretariat will inform us that the Pakistan Government certainly must have not notice before 11 January, for ten days is a long time. On 11 January,

the Foreign Minister of Pakistan, Sir Zafrullah Khan, who is now a judge of the International Court of Justice- a jurist of standing- informed the Reuters correspondent that it was impossible for Pakistan to guarantee that no Pakistan national or other people passing through Pakistan should not go to Kashmir and "participate in the struggle for freedom". That is to say, we were two sister States brought together under the struggle of partition and with feelings of understanding. we agreed to the partition of India as the price of our freedom and also in order to save much bloodshed. Having done that, we came under the same act of the British Parliament. **Here in one part of the country is this rapine going on, and that is called a struggle for freedom. I say with great respect to them- and I do not want to be misunderstood-that we in India, I think, know something of the struggle for freedom. It was that great struggle for freedom that made the independence of Pakistan possible.**

113. Now we turn to be most respectable of the journals of the world, that is, the London "Times". On 13 January 1948, that is, twelve days after we came here, it stated:

"That Pakistan is unofficially involved in aiding the raiders is certain. Your correspondent has first-hand evidence that arms, ammunition and supplies are being made available to the "Azad Kashmir forces" (S/PV.762/Add.1, annex 1. No.31).

114. Here may I interpolate that my Government uses the words "Azad Kashmir" without accepting the connotation of the word "Azad". Although "Azad" means "free", we do not accept the term as meaning free Kashmir forces. They are enslaved Kashmir forces or whatever they are. But we have to use the language as it is given, and it should be understood that we do not regard it in its literal sense.

115. The "Times" went on to say that a few Pakistani officers were also helping to direct their operation and that, however much the Pakistan Government might disavow intervention, moral and material support was certainly forthcoming.

116. Both in the municipal laws of many countries and in international law, aiding and abetting either before or after the fact is participation in the act itself. Let us assume for a moment that the units of the Pakistan Army were not operating, which we are not prepared to admit. The reason, of course, is that our army officers and their army officers were brother officers. They had met them in Kashmir. They knew them by their first names. They had all worked together in the same regiments before being divided by the partition. We do not want any documentation of this. Let us assume that there was not participation of the regular army, as it was suggested that there could not be. According to this "Times" correspondent, if there was no intervention, there was moral and material support. If the correspondent of the "Times" or of any other newspaper suggested this is an article in this way, that would not be sufficient for the conduct of affairs of nations, but it is the start of a whole series of incidents. Certainly it comes from a source that was not biased in our favour.

117. Now we come to the stage before the Security Council. We came here

with a request that the aggression must be halted. If the Security Council were to tell us that in that letter we did not ask for more drastic action, that we did not ask the condemnation, that we did not ask for Pakistan to be declared an aggressor, we plead guilty. We plead guilty in the sense that we were not prepared and we had no intention at that time, nor have we now, to aggravate the situation. What we wanted was the undoing of the wrong rather than finding fault with somebody. That is why in that letter, which is phrased in language that is not that language of war, we are simply asking from people who are committing rapine and murder to remove the weapons and not do let them go on with it. That is all we wanted.

118. Therefore, if the Security Council takes the view that generosity and moderation in these matters, and not asking for the extreme remedy, is a misdemeanor, then I am afraid we must plead guilty, but I hope that the time will not come when the United Nations takes that view.

119. So we came here on 1 January. On 15 January, 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". This is the letter dated 15 January 1948 from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General of the United Nations (S/1100, annex6). I do not know whether the security Council wants me to read the whole of it, but this is an official letter submitted as truth to the Security Council. And what does it say? It says:

"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" (Ibid. document I, para. 3)

120. There are three statements thee to which I would request the Security Council to address itself. One is the denial of giving aid and assistance, and the other is that they do not regard the so-called invaders, the rapine in Kashmir, as invasion of territory which is beyond their border. The third statement is that they plead not guilty to aggression. Either they deny the fact or they deny that indirect assistance is not aggression. In either case, I say that it is a serious violation of all canons of international behaviour.

121. The letter goes on to say:

"On the contrary and solely with the object maintaining friendly relations between the two dominions the Pakistan Government have continued to do all in their power to discourage the tribal movement by all means short of war".(ibid)

122. That is to say, not only did they deny it, but they came and told the Security Council that they were taking deterrent action to prevent it. I ask any members of the Security Council to tell me whether, even assuming that they were exclusively border raiders, whether it was possible for their army to march across long distance over Pakistan territory, whether they could get fuel anywhere, especially at that time, and where these trucks and this machinery came from, and where the

officers came from, and where the weapons came from?

123. If it is true that Pakistan could not stop the raiders from going across their country, by what right does this Member State come and say here "we shall take Kashmir under our protection", if they cannot prevent libertines and marauders from walking across their country and making themselves free with the resources that are there? And if a Pakistan Government were to tell us that they cannot stop a belligerent force from marching across that territory, by what right then can that Member State say that they are competent to take anybody over? That means it is not a State, it is a territory over which anarchy prevails, if that is true.

124. But I submit that it is not true. The Pakistan Government at that time had an Army which was in no way inferior to the Indian Army. It was part of the Indian Army. They had the division of the forces, according to their size, and so on, as decided by the British Government and the two States. They had all the material. What is more, what was required here was not militant action, but its denial.

125. Can anyone tell the Security Council that the march of people across long distances over Pakistan territory could not have been stopped by an organized Government? But if that is true alone, it would not be as strong as it is and as condemnatory as it is. But side by side with it stand all the statements I read out to you, where these Ministers call upon person after person, and they call them heroes, they call it liberation; they ask people to give assistance, they ask for volunteers, they ask for funds. The Prime Minister of the Punjab, afterwards accused in certain financial matters, said that he spent this money on Kashmir. And not without evidence-there is is.

126. Then in a subsequent part of the letter, the following is said (S/1100, annex 6, document III, para 23):

"The Governor-General of Pakistan" - that is Mohammad Ali Jinnah, the founder of Pakistan-"explained that he had no control over the forces of the "Azad" Kashmir government or the independent tribesmen engaged in the fighting...."

There is the same Mr. Jinnah who was asked by Lord Mountbatten: "How can you be responsible for these people?" Then he said, "I will call the whole thing off". I will tell the Council in what context later.

127. The United Nations Commission for India and Pakistan in the first interim report says:

"Another element, the significance of which had not been fully appreciated before the Commission's departure from the sub-continent, was the 'Azad' Movement which constitutes an organized political and military body, is assisted by the Pakistan High Command, and is engaged in active revolt against the existing Government. This Movement has cooperated since October 1947 with invading tribesmen and individual Pakistani nationals" (S/1100, para 125).

128. I submit that if I did not say anything else, and only read out this paragraph where the United Nations Commission reports that the 'Azad' Movement was an organized political and military body which has cooperated with invading tribesmen and individual Pakistan nations and has been assisted by the Pakistan High Command and has engaged in active revolt against the existing government, with which the Pakistan Government has co-operated since October 1947, (before the complaint came here) but which it has denied- that one statement alone, coming from United Nations sources founded on fact, not on opinion but on fact, would, in my submission, be adequate to prove the charge of aggression.

129. In view of the composition of the Security Council, I will ask the members to look at some evidence that comes from American sources.

130. Russel K. Haight Jr., a former American soldier who served for two months in the 'Azad' Kashmir Army, gave a secret interview to 'The New York Times' correspondent, Robert Trumbull, in Lahore and stated that Pakistan had provided petrol. The following is the report:

"Mr. Haight also found Pakistan Army personnel running the 'Azad' Kashmir radio station, relaying messages through their own Pakistan Army receivers" - I repeat, 'relaying messages through their own Pakistan Army receivers'- 'organizing and managing 'Azad' encampments in Pakistan, and supplying uniforms, food, arms and ammunition which, he understood, came from Pakistan Army stores through such subterfuges as the 'loss' of ammunition shipments.. Mr. Haight characterized the 'Azad' Kashmir Provisional government, headed by Sardar Mohammad Ibrahim Khan as 'Pakistan puppets'. He also deeply implicated high Pakistan Government officials, notably the Premier of the North-West Frontier Province" (S/PV,762/ADDL.1, annex I, No.33).

This is from "The New York Times" of 29 January 1948, and it is also quoted by Lord Birdwood who has written a book on Kashmir, again not a friendly book to India. Those are the facts.

131. The next authority probably will be regarded as sympathetic to India, although many things have been written. Therefore, I will not read it. However, the representative of Australia would be interested to know what was said in the Australasian Continent about this. I do not have an Australian extract here, I could find many. But there is "Kashmir and the United Nations" by "Criticus" in the News Zealand Labour Party's weekly "The Standard" (Wellington) and it was published in India. It was carried on 28 November 1951 in "The Standard"- It reads:

"....thousands of Muslim tribesmen equipped with arms by the Pakistan Government invaded Kashmir, This was obviously an act of open aggression" (Ibid NO. 34)

132. I think it will be admitted that Lord Birdwood with his background as a Field Marshal acquainted with India, had contact with the British Officials and Pakistan, and this is what he says:

"At GHQ in Rawalpindi"- that is the main army headquarters of Pakistan, as far as I know-"In so far as they were prepared to discuss the mater,

I was assured that no regular unit was moved before May" - That is, May of 1948-"Yet a battery of mountain guns with an infantry escort were in action in an unsuccessful attack on Poonch on 17h March, while on the Indian side General Russell believed that regular (Pakistan) troops were involved in January." (General Russell was a British Officer serving in the Indian Army.) "He accordingly ask to be relieved of his command..." (Ibid. NO.35)

We readily agreed because e did not want British officers to fight British Officers on other side, and we did not want to involve the United Kingdom in any trouble between Pakistan and ourselves. Although General Russell was a very loyal and an extremely able officer, he asked to be relieved the moment he knew the Pakistan Army was in action. And what did the Government of India do? We would have been entitled - and I ask the representative of the United Kingdom to bear with me - to tell this man, " you have signed an agreement with the Indian Army, and this is ordinary military duty". We did not do anything of the kind. We relieved him, and we asked the General Cariappa, as Commander-in-Chief, to take over. And General Cariappa, when the British Government left, was a brigadier. It was not as though we had ready-made officers to deal with these matters.

133. The statement adds that General Cariappa was convinced that at this stage Pakistan was using regular forces. General Cariappa, by the way, was an army officer who recently retired, and who must be very familiar of my Australian colleague, since he was High-Commissioner for two or three years afterwards. General Cariappa, the statement says, based his opinion on the fact that a number of prisoners of regular units had been taken. Now it cannot be said that the Pakistan Army sent a few persons to be taken prisoner for no reason. General Cariappa faced his Pakistan friends with the charge-and anyone who knows General Cariappa would understand how he does this. The Statement adds:

"This he was able to do since an invitation to the Pakistan Armoured Corps "Week" in Lahore came through to him from his old friend, Major-General Iftikar, who was then commanding the 10th Pakistan Division in Lahore (Ibid)".

All these men had been brother officers in the same Army only a few days before.

134. Now this is the position. I should like to stop there so far as the invasion is concerned, and to come back to the political aspect. On 1 January we made our complaint. I read out to the Council a while ago what Sir Zafrullah Khan said on the 11th. I read out all the details between that date and Pakistan's reply. Nine years ago, on 1 January, we made this complaint, and I read out what the complaint was. On 17 January 1948 the Council passed a resolution. That resolution was based upon our letter and took into account Pakistan's reply. I propose to deal with this reply in the afternoon, because it requires a great deal of analysis.

135. Broadly speaking, what is that reply ? It is a denial of the charge; it is a denial that they had given any assistance, it is a denial that there had been any aggression, and then it is a counterclaim

on various other matters. But there is no principle of international law or international behaviour which says that if, in respect of a situation or particular problem, a complaint is brought, other misdemeanours in something else can be pleaded in bar. Therefore, I do not propose at this stage to go into the irrelevant intrusion of other complaints made by Pakistan. If the Security Council so desires in its judgement, it is up to it, but so far as I am concerned I propose to keep to the subject of Kashmir. That itself will take up some time.

136. Therefore, the position is that we made certain complaints. We asked for certain remedies. Pakistan denied the facts that we alleged. A little later that denial was disproved, not only by what I have read out to the council from outside sources but by the United Nations Commission itself. Then-I ask as a simple matter of analysis- what remains? We make a complaint, we assert certain facts; those facts would amount to aggression-and I presume the Security Council would not argue that they do not amount to aggression. If those facts amount to aggression and the answer is a denial that the facts took place, and if, afterwards, the Security Council finds that that denial was not incorrect, then what remains? All that remains is the aggression.

137. The defence is taken away, and therefore, in the letter that was put before the Security Council, the answer they gave was:

"The situation in their view is due to the aid which the invaders, consisting of nationals of Pakistan and of tribesmen from territory immediately adjoining Pakistan from the north-west are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the Dominion of India and is part of India".

That is quoted in the reply, which goes on to say:

"They have requested the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression against India. They have also threatened that if Pakistan does not do so, the Government of India may 'enter Pakistan territory, in order to take military action against the invaders'." (S/1100, annex 6, document I, para 1).

138. At the moment I want to refer to that last paragraph. I have read out what we said. Does that amount to a threat? what we said to the security Council was, "We want to refrain from doing this. We may be driven to a position where we have nothing else to do, because invasion must lead to war and must spread." Therefore, what we said to the Security Council was not, "If you do not do this we are going to invade". that is not what we said. In fact, right through the Kashmir operations, at a great cost of human lives, we kept this was restricted. That is a story by itself.

139. Then comes the denial. The letter from the Minister of Foreign Affairs of Pakistan to the Secretary General of the United Nations dated 15 January 1948 says:

"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." (Ibid., para 3/)

That is a total, straight denial. They deny they are giving aid and assistance to the "so-called" invader, or that they have committed any act of aggression. The documents continues:

" On the contrary and solely with the object of maintaining friendly relations between the two dominions, the Pakistan government have continued to do all in their power to discourage the tribal movement by all means short of war." (Ibid)

140. This is elaborated in document II. Paragraph 3, sub-paragraph 5, is a reference to Kashmir, and states:

"That India obtained the accession to the State of Jammu and Kashmir by fraud and violence, and that large-scale massacre, looting and atrocities on the Muslims of Jammu and Kashmir State have been perpetrated by the armed forces of the Maharajah of Jammu and Kashmir and the Indian Union and by the non-Muslim subjects of the Maharajah and of the Indian Union." (Ibid. document II, para 3).

Now let us assume that all these facts have substance, I do not for one moment say that they have; in fact, they are entirely untrue. But supposing they were true, what right under the Charter does Pakistan have to go and punish somebody else for that reason? that is not the function of a neighbouring State. So that the aggression is justified by the fact that, first India obtained an accession by fraud and by violence-something which we shall go into this afternoon-and that, therefore, they are entitled to invade. In other words, it is taking the law- if it was the law- into their own hands. That is war. That is aggression. If one returns to that, then it will be a case of each side claiming right on its own side, and I say that, irrespective of the truth or otherwise of this matter, this entry would amount to aggression.

"That numerous attacks on Pakistan territory have been made by the Royal Indian Air Force, by armed bands from the Indian Union and the State of Jammu and Kashmir." (Ibid.)

This has been denied by Indian Army Officers. No preparations were made for going into Kashmir; in fact, we lost all our men who went there on the first day.

141. The Security Council met for the first time on 6 January 1948, we complained on 1 January, the Council met on the 6th and did some preliminary business, and Pakistan filed a reply on the 15th from which I have read. On 17 January 1948 the Council adopted the following resolution:

"The Security Council

"Having heard statements on the situation on Kashmir from representative of the Government of India and Pakistan,

"Recognizing the urgency of the situation,

"Taking note of the telegram addressed on 6 January by its President to each of the parties and of their replies thereto in which they announce their intention to conform to the Charter,

"Call upon both the Government of India and Pakistan to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation, and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation.

"And further requests each of those Governments to inform the Council immediately or any material change" - I request you, Mr. President, to take note of this phrase "to inform the council immediately of any material change" because it appears afterwards - "in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration of the Council, and consult with the Council thereon.

142. My Government submits that from that day onwards, the basic ideas, the basic principles of the Security Council's resolutions have been violated by our sister State of Pakistan because the appeals to the people were in the opposite direction, as I pointed out. Nothing was done to improve the situation. More help followed and, what is more, as the years went on, this became, as was said by the Commission, a large-scale undeclared war, and, therefore, from the very beginning, if it is true that there was the regrettable behaviour of committing aggression and then trying to defend it, it was even worse when the Security Council called upon the party concerned to take no further action, and that is part of the answer which the Government of India has to give at this stage, to point out how, during these nine years, every one of these have been violated, and violations are continuing. **That is why I said in the beginning that it is not sufficient to catch an argument somewhere at a cross-section and say that that is the picture. You have to look at what is behind, at what is going on, and what is likely to go on in the future in the words of the Minister for Foreign Affairs of Pakistan are to be construed in their proper meaning.**

143. Now, the "material change" to which I referred. On 20 January, three days later, the Security Council further considered the matter and this is its resolution:

"The Security Council,

"Considering that it may investigate any dispute or any situation which might, by its continuance, endanger the maintenance of international peace and security; that, in the existing state of affairs between India and Pakistan, which an investigation is a matter of urgency,

"Adopts the following resolution"

(I want to point out that this resolution of 20 January 1948 is one which binds the Security Council. It was a decision of the Council in

regard to its own conduct)

"A. A Commission of the Security Council is hereby established, composed of representative of three Members of the United Nations, one to be selected by India, one to be selected by Pakistan, and the third to be designated by the two so selected,

"Each representative on the Commission shall be entitled to select his alternates and assistants.

"B. The Commission shall proceed to the spot as quickly as possible. It shall act under the authority of the Security Council and in accordance with the directions it may receive from it."

That sentence gives all the weight that is necessary to the findings to which I previously referred. It is not as though the Commission's report were an unofficial document. It was in obedience to this mandate.

"It shall keep the Security Council currently informed of its activities and of the development of the situation." I regret to say that, as a material matter, the commission did no do so-"It shall report to the Security Council regularly, submitting its conclusions and proposals.

"C. The Commission is invested with a dual function:

"(1) To investigate the facts pursuant to Article 34 of the Charter;

"(2) The exercise, without interrupting the work of the Security Council, and mediatory influence likely to smooth away difficulties, to carry out the directions given to it by the Security Council; and to report how far the advice and directions, if any, of the Security Council, have been carried out.

"D. The Commission shall perform the functions described in clause C:

"(1) In regard to the situation in the Jammu and Kashmir State set out in the letter of the representative of India addressed to the President of the Security Council, dated 1 January 1948, and in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948, and

"(2) In regard to other situations set out in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948, when the Security Council so directs."

So I submit that, even according to that resolution, any reference to all these irrelevant matters is outside the competence of this resolution. This was what we both accepted.

"E. The Commission shall take its decision by majority vote. It shall determine its own procedure..."

.....

"G. The Secretary-General of the United Nations shall furnish the Commission with such personnel and assistance as it may consider necessary." (S/1100, annex 1).

144. These two resolutions may be taken together for consideration. The Government of India accepted the resolution of 20 January. It accepted that resolution, despite its undisputed and irrevocable claim to sovereignty over its territory, in view of the fact that the situation was likely to lead to difficulties, and because of its faith in the United Nations- then perhaps more fresh than it is today, but still a faith that is founded in the Charter and the recognition that, whatever, may happen in the intervening period, by and large, truth catches up. Governments that have a responsibility for their own territories will not sit back and brook aggression from a neighbour. Therefore, we accepted these two resolutions and agreed to the setting up of the Commission in order that it might perform its dual function, and I submit that, in the performance of the first of these functions, the Security Council has before it the facts. It would take me many a long day to sift all the paragraphs, all the statements, all the questionnaires, and assurances given in the great deal, but the fact does remain- and this is to be corroborated after-that the Commission did report that there was aggression, that there was material change in the situation-of which the Security Council was kept in the dark. At that time changes were occurring in the situation, and it is not as though those changes stopped there, those changes still continue, so as to make it impossible to pursue the root of the matter on the lines that were thought of five years ago.

145. The Security Council, therefore, adopted its resolution of 20 January and, having done so went on to inquire about various things. Meanwhile the Security Council changed the title to the "India-Pakistan Question". We stated at that time that we had no objection to the use of any words which might be desired, but we maintained that the Kashmir question was the subject of the complaint.

146. On 21 April 1948, the Council adopted another resolution (S/726). That resolution was a modification, and it gave new instructions to the Commission providing for the withdrawal of the troops and the holding of a plebiscite, and the membership of the Commission was increased to five. On 5 May of that year, the Government of India formally informed the Security Council of its rejection of certain parts of this resolution, and that correspondence is contained in document S/734/Corr.I. India, however, expressed its willingness to confer, with the Commission. The letter stated:

"The Government of India have given the most careful consideration to the resolution of the Security Council concerning their complaint against Pakistan over the dispute between the two countries regarding the State of Jammu and Kashmir. The Government of India regret that it is not possible for them to implement those parts of the resolution against which their objections were clearly stated by their delegation, objections which, after consultation with the delegation, the Government

of India fully endorse.

"If the Council should still decide to send out the Commission referred to in the preamble of the resolution, the Government of India would be glad to confer with it." (S/1100, annex 3.)

That letter was signed by Mr. Nehru, the Prime Minister and Minister for External Affairs of India.

147. Irrespective of the fact that we did not agree to the expansion of the terms of reference, the Government of India felt that it would be inhospitable and discourteous to the United Nations not to see the members of the Commission. There are cynics who say that that was where our troubles began, but it would be wrong to take that view, because if nations, out of risks and fears in this direction, would not enter into negotiations, then they would not be able to assist in the implementation of the functions of the charter. But, and I say this in all sincerity, that carries with it the fact that one should not penalize those who necessarily do not stick to the letter of their communication, that is to say, they do not confine themselves to that, but are prepared to go a little further in exploration. Therefore, while we rejected this resolution and refused to accept it, we agreed to receive the Commission.

148. At that time, Mr. Gopaldaswami Ayyangar, who was the Minister in the Indian Cabinet responsible for these affairs, spoke before the Security Council and he registered objections. I will not read the whole of his speech which was very long, but it is apparent from the preliminary discussion in January 1948 that it all turns upon what we agreed to. I have made no comment on this, but if I were to do so, I could say that perhaps it was a little previous and it went to the substance, Mr. Gopaldaswami Ayyangar said:

"I would now proceed to review briefly some of the detailed provisions of the draft resolution presently under consideration. By way of anticipating a possible claim from the other side, I desire to say a few words on the question of accession..."whether the State of Jammu and Kashmir is to accede to India or Pakistan". The contention has been advanced"-and this is our position-"that the accession is for a temporary period"-to do that it will be necessary to repeal an Act of Parliament-"and a limited purpose, and when that period elapses and that purpose has been served, it ceases to be operative." (285th meeting, p.13).

That was the contention. Mr. Gopaldaswami Ayyangar went on to say:

"We, on our side, repudiate this claim."- This is as early as 1948, so it is not an afterthought-"The accession which took place on 26 October 1947 was both legal and lawful. 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. She is now resisting those who are attacking the integrity even today. She is protecting the State's large 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."

That has been the basis of our position from 1948 onwards, it has never moved. Mr. Gopalaswami Ayyangar went on to say: "Until then, Pakistan has no constitutional position in Jammu and Kashmir".

149. He went on to make a statement which is very important from our point of view:

"After the fighting ceases, the whole of the State will have to come under one Government. By the whole of the State, I include also the area which is now under the control of the rebels and raiders. When the whole of the State thus comes under one administration- and that, the administration of the State of Jammu and Kashmir- India's garrisons will need to be planted at her outer frontiers on the west of the Jammu and Kashmir State. This planting is necessary for enabling India to discharge her obligations for the defence of the State which she has taken over under the Instrument of Accession" (Ibid. para 14)

150. This is an undertaking which is not only sanctified by our Constitution. It is enjoyed by an Act of Parliament of the United Kingdom, which is the basis of our Constitution. These obligations that we are carrying out were also agreed to by the Security Council. The Security Council at no time challenged either the sovereignty of Jammu and Kashmir or the validity of the accession, and that is the only thing that stays. Therefore, wherever the resolution of 21 April 1948 goes into the question of treating the two countries as through they were two parties to a complaint, we have resisted that position and we have not subscribed to that part.

151. If it were necessary, I would go into the details of the 21 April resolution, but I do not think it is necessary because we are now covered by the resolution that followed. The Commission was appointed by the 21 April resolution. We did not accept that resolution, but what did Pakistan do? Pakistan protested against the resolution without accepting it. It, however, chose Argentina as a member of the Commission on the same day. We objected to certain parts of it, but we agreed to receive the Commission. Pakistan protested and said they would not accept the resolution.

152. so if the resolution of 21 April has any value, then it depends upon the juridical argument: what is the status of a Security Council resolution under Chapter VI of the Charter which makes recommendations. And it can have value as part of the process of conciliation only if the two parties agree. In the first instance, we did not agree entirely but we did agree to its function. Pakistan rejected it. Then Pakistan came in as a matter of conduct. By conduct it ratified parts of it, and therefore it has been necessary for the Security Council to examine the conduct and how far and into what regions this conduct travels. And so when, in the observations of the representative of Colombia and Cuba the other day, it was hinted-not said but hinted-they were, quite rightly, concerned about the position of the Security Council, it became necessary to look into the substance of it and see what we agreed to and

what we did not agree to.

153. As a result of this resolution, and in spite of the fact that both sides were unhappy about it, the Commission did go and it was well received in India. We did our best to make it acceptable in Kashmir and the Commission spent a great deal of them.

154. The President: we will continue this discussions at 3 o'clock this afternoon.

FIRST PART OVER

[CLICK HERE TO CONTINUE FOR PART TWO OF KASHMIR STORY](#)