

Role of UN on J&K under International Law: A Paradigm Shift from Active Mediation to Passive Engagement

Adnan Rahman *
Ataullah Khan Mahmood†
Saqib Shahbaz ‡

p- ISSN: 2708-2458

e- ISSN: 2708-2466

L- ISSN: 2708-2458

Vol. V, No. III (Summer 2020)

Pages: 120 – 127

DOI: 10.31703/glsr.2020[V-III].15

URL: [http://dx.doi.org/10.31703/glsr.2020\[V-III\].15](http://dx.doi.org/10.31703/glsr.2020[V-III].15)

Abstract: *The purpose of this paper is to critically analyze the role of the UN on the conflict of J&K. The Kashmir Issue has been on the agenda of the UN since 1948. There are many stages of the UN's intervention for the resolution of this protracted conflict. There is a need to critically analyze the role of the UN in the conflict of J&K. This research paper will analyze the role of the UN in a critical manner to explore the causes and circumstances responsible for the failure of the UN in resolving this conflict. The findings of this paper will be based upon the literature review on the conflict of J&K and UN's mediation. This study can be very useful in the future to analyze the role of the UN in resolving international disputes and to evaluate the causes of the failure of the UN in different protracted conflicts.*

Key Words: UN, Conflict of J&K, Mediation, Resolutions on J&K, Paradigm Shift, and Passive Engagement

Introduction

The conflict of J&K is a longstanding conflict that has jeopardized the peace, prosperity, and development of this region. The nuclear powers: India, China, and Pakistan are directly related to this conflict, and the escalations at Line of Control (LoC) between India and Pakistan and at Line of Actual Control between China and India are very common. This tug of war between the belligerents might lead to the worst humanitarian crises and dilemmas affecting the lives and peace of entire South Asia.

J&K was one of the 565 princely states of the Indian Subcontinent, and on the independence of the Indian subcontinent through the Indian Independence Act, 1947, British India was divided into dominions of India and Pakistan and all the princely states had joined either India or Pakistan except three princely states of Hyderabad, Junagadh and J&K. However, India militarily occupied Hyderabad and Junagadh and also sent her forces to occupy J&K on October 27, 1947, in the garb of controversial Instrument of Accession allegedly signed by Maharaja Hari Singh with India. [\[Lamb, A., 1991\]](#)

However, before this controversial Instrument of Accession, the local Muslims of J&K revolted against the Maharaja of J&K and liberated a part of the erstwhile state of J&K, which is called AJ&K. When India sent her troops to J&K, a war broke out between Indian Forces and local people fighting against Maharaja and later on, this limited war was converted into a full-fledged war between India and Pakistan known as first Kashmir war. [\[Saraf, M, U., 1979\]](#) As a result of this war, AJ&K and GB came under the administrative control of Pakistan, and the remaining part is occupied by India against the wishes and aspirations of the people of J&K. That part is called Indian Administered Jammu and Kashmir (IaJK) and has been the highest militarized zone of the world due to the presence of almost nine lacs Indian occupational forces. The Indian occupational forces have been committing incremental genocide, killings, rapes, tortures, and many other war crimes and crimes against humanity within the legal umbrella of immoral draconian laws.

During the first Kashmir war between India and Pakistan in 1947, India took the issue to UNSC under Article 35 of the UN Charter on January 01, 1948. The state of Pakistan also submitted its reply to UNSC on January 15, 1948, and then UNSC passed around 18 Resolutions on J&K from 1948 to 1967. [\[Hussain, I., 2000\]](#). UNSC also established United Nations Commission for India and Pakistan

* Ph.D. Scholar, Department of Law, Faculty of Sharia and Law, IIUI/ Faculty Member of Law, Department of Law, Faculty of Humanities and Social Sciences, University of Azad Jammu and Kashmir, Muzaffarabad, Pakistan.

Email: mir.adnan.rahman@gmail.com

† Assistant Professor, Department of Law, Faculty of Sharia and Law, International Islamic University Islamabad (IIUI), Pakistan.

‡ Assistant Professor, Department of Law, Faculty of Social Sciences and Humanities, Mirpur University of Science and Technology (MUST), Mirpur, AJ&K, Pakistan.

(UNCIP) in 1948 through a resolution of UNSC for the peaceful settlement of the conflict of J&K through meaningful engagements with both the parties to the conflict. (UNSC Resolution, No. 39, dated 20th of January, 1948) However, UNCIP failed to conduct a plebiscite in J&K due to the difference of opinion between India and Pakistan on the modus operandi and terms and conditions of the withdrawal of forces on both sides of the LoC. [\[Korbel, J., 1954\]](#) UNCIP also passed two resolutions on J&K., But the UN Mediation on J&K was successful to convinced both India and Pakistan to enter into a ceasefire agreement and also to agree on the permanent deployment of the United Nations Military Observers Group in India and Pakistan (UNMOGIP) to monitor the ceasefire-line and report the ceasefire violations to UNSC for implementation of the ceasefire agreement. The Ceasefire Line (Now called as LoC since 1971) and UNMOGIP are still present in the erstwhile state of J&K, and conflict of J&K is still an unfinished agenda of the UN since 1948.

The conflict of J&K is an intractable and complex conundrum that has jeopardized the peace and prosperity of entire south Asia. [\[Schofield, V., 1997\]](#) This issue is the product of the hidden conspiracy between the British Imperialism, local feudal lord and authority of India present at that time in 1947. There are three core parties of the conflict of J&K: Pakistan, India, and people of erstwhile state of J&K. The people of the erstwhile state of J&K have the primacy of being the principal party of the conflict. This conflict is not a mere territorial dispute between India and Pakistan; rather, it is the question of the right to self-determination of people of the erstwhile state of J&K. The states subjects of J&K have been struggling for their inalienable, fundamental and basic right to self-determination as recognized by the resolutions of the UNSC and UNCIP. India also abrogated Article 35 - A and amended and revoked Article 370 of the Constitution of India to illegally and non-democratically abolish the autonomy and special status of the UK. [\[Noorani, A.G., 2011\]](#). The main purpose of this constitutional aggression was to bring demographic changes in the UK and to sabotage the implementation of the resolutions of the UNSC and UNCIP on J&K. [\[Rahman, A., & Munir, S., 2020\]](#). The nomenclature of IaJK also includes the regions of the Laddakh and Jammu along with the valley of Kashmir. [\[Dewan, P., 2003\]](#) The Indian occupational forces have been committing gross and systematic violations of the human rights in IaJK. In the occupied territory of IaJK, womenfolk are the most vulnerable segment of the society, and children are also the most suppressed victims of the conflict. The half widows are the unique and most vulnerable form of oppression in the IaJK who have been waiting for their lost husbands and have no idea at all whether their husbands are alive or dead. The draconian laws have been used by India to suppress the liberties and human rights of the Kashmiris and to carry out the agenda of settler colonialism against the innocent and oppressed Kashmiris by killing, maiming, and arresting them without following any principles of justice and the rule of law.

There are many perspectives of the conflict of J&K. It has political, legal, social, humanitarian, and economic perspectives. All the perspectives are very important, but the most important perspective is the humanitarian perspective of the conflict, and the absence of peace has aggravated the situation of human rights in the UK. [\[Ahmad, I, & Bashir, A., 2004\]](#). India has mercilessly killed, maimed, tortured, and imprisoned thousands of Kashmiris in the IaJK. This humanitarian aspect is the most important and sensitive aspect which needs to be highlighted. There is a dire need to transform the conflict through constitution-building processes for a transition period till the final settlement of this protracted conflict. [\[Hart, v., 2001\]](#).

The Kashmir issue is the unfinished agenda of the partition plan of 1947 and has been pending in the UN since 1948. India took the Kashmir issue to the UNSC on January 01, 1948. [\[Hilali, A. Z., 1997\]](#). The UN failed to resolve the conflict of J&K, which has been the longstanding humanitarian crisis and has caused three full-fledged wars and thousands of instances of skirmishes on LoC between India and Pakistan, border skirmishes between China and India on Line of Actual Control and killings, and rapes including many other forms of war crimes and human rights violations in IaJK. [\[Razdan, O., 1999\]](#) The main issue is about the title and right to self-determination. The issues of human rights violations, war crimes, and constitutional onslaught are ancillary and also very important, but the core issue is the issue of the right to self-determination through a plebiscite under International auspices.

The Issue of J&K is a residual problem of liquidation of colonialism. [\[Akbar, M.J., 2016\]](#) It is the product of Imperialism in two aspects: The territory of J&K was handed over to the feudal chief by the Imperial power in 1846 and continued to hold the paramountcy power with internal interference till 1947. Secondly, an unelected and despotic Maharaja being the successor of the feudal chief, had signed the controversial instrument of accession with India in 1947. Thus in the triangular collision between the receding colonial power, the emergent authority in India and the feudal ruler of Kashmir lies the root and origin of Kashmir.

Jammu and Kashmir in the United Nations

A cursory perusal of the role of the UN vis a vis the conflict of J&K, reveals that during the mediatory efforts of the UNSC, around twenty resolutions were passed by UNSC and UNCIP on J&K between 1948 to 1967 in addition to numerous reports and rounds of discussions with the representatives of India and Pakistan. [\[Qadeer, Muhammad Abdul., 2018\]](#) During this period, the UN made active mediation and established UNCIP. Moreover, UNSC also sent missions and mediators to peacefully mediate the conflict of J&K between India and Pakistan, but all the efforts were fruitless, and in spite of resolutions of UNSC, mediators, and involvements of India and Pakistan as no consensus could be attained between the two states on the proposed framework of the way forward. However, UNSC changed its approach to the conflict of J&K after 1967, and no significant and effective effort or the specific resolution of the UNSC on the conflict of J&K has been passed from 1967 to till date. During this period, one can find statements of the General Secretary of UN, UNSC closed-door meetings, two reports by the UN Human Rights Commission, and a few statements condemning the human rights violations of India in the UK. But the role of the UN during this period remained mostly passive, that is why, it is generally stated that the role of the UN in the first period from 1948 to 1967 as "Active Meditation" and the role from 1967 to 2021 in the second period as "Passive Engagement". [\[Cheema, P.I., 2014\]](#).

During this period, UN representatives and mediators were negotiating with India and Pakistan on 12 proposals with two UNCIP resolutions as a reference frame, but both the Governments were agreed on 8 proposals and had serious reservations on the four remaining proposals.

Five Phases of the UN's Involvement in the Conflict of J&K

The period of the conflict of J&K in the UN can be logically categorized into five different phases on the basis of the intervention of the UN, responses of the parties to the dispute, nature of mediation, and frequency of the negotiations between all the parties with UN being the principal negotiator. These five important phases are as under:

- a) The first phase was the direct UNSC intervention during the first six months of 1948 before the establishment of the UNCIP.
- b) The second phase and its work was very much important and made significant contributions with respect to the conflict of J&K. This phase comprised of the period from July 1948 to December 1949 when UNCIP passed two resolutions of 13 August 1948 and January 05, 1949, duly accepted and signed by both India and Pakistan.
- c) The third phase can be considered as the period of informal mediation, which is marked by the visit of General AGL McNaughton, President of the UNSC at the end of 1949. He came to this region and interacted with the representatives of India and Pakistan and also put forwarded his proposal for the peaceful settlement of the conflict of J&K. The Canadian permanent representative to UNSC, General McNaughton, tried his best to mediate with his proposals but failed. He submitted his final report on February 03, 1950, and with the submission of his report, this phase of informal mediation came to its logical end.
- d) The fourth phase was the period of the proposals of Sir Owen Dixon, Australian Jurist, and Diplomat, in his capacity as UN Representative for India and Pakistan from April to September 1950. Sir Owen Dixon had visited both India and Pakistan as well as J&K to interact with all the stakeholders of the conflict of J&K. Sir Owen Dixon, former Chief Judge of Australian High Court, was sent by UN in 1950 with the mandate to implement the McNaughton "Demilitarization Scheme" of both sides of the ceasefire line to pave the way for an impartial plebiscite. This Dixon Mediation was also failed.
- e) The fifth phase of the UN mediation based on the active efforts of Dr. Frank Graham from April 30, 1951 to March 1953 to secure the agreement of the parties to a program of demilitarization for a mutually acceptable plebiscite. This phase also include the joint efforts of Gunnar Jarring and Dr. Frank Graham in 1957. But later on, the regional politics of South Asia have had adverse effects on the UN mediation on the conflict of J&K. Gunnar Jarring of Sweden, former President of UNSC, also made his efforts for the mediation on the conflict of Jammu and Kashmir. Dr. Frank Graham was appointed by the UNSC as the UN representative for India and Pakistan on 30 April 1951. Dr. Frank Graham also tried to implement demilitarization prior to the plebiscite but failed. On 27 March 1953, Dr. Graham presented his report to the UNSC. He made more efforts, and after almost six mediatory efforts, he submitted his final and last report on J&K in 1967, which

concluded all the efforts of the UN. He also highlighted the main causes of the deadlock between India and Pakistan and the failure of the mediatory efforts of the UN. [\[Cheema, P.I., 2016\]](#)

During these five phases of the UN Involvement in the conflict of J&K, all the efforts of the UN failed to resolve the deadlock between India and Pakistan, which led both the states to fight wars of 1965 and 1971 and scores of LoC and International border skirmishes and escalations between the rival neighbors.

Role of the UN in Resolution of the Conflict of J&K

It is important to critically analyze the role of the UN for the resolution of the conflict of J&K to explore the causes and factors responsible for its failure and negligence to resolve the conflict of J&K in accordance with the resolutions of the UNSC and UNCIP as well as engagements entered into between India and Pakistan on August 13, 1948, and January 05, 1949. The UN failed to resolve the conflict, and mediation was concluded by the UN in the 1960s, but no significant effort has been made by UNSC after this long phase of mediation so far. The issue of J&K was taken in the UNSC by India in 1948, and then a long process of mediation was started by UNSC to peacefully settle this protracted dispute as a political dispute. [\[Fai, G.N., 2012\]](#) When UNSC established UNCIP in 1948 to resolve this newly emergent issue between India and Pakistan, the UNCIP headed by Joseph Korbel as Chairman along with other members took the following important actions through long deliberations and negotiations as well as through mutual agreement between India and Pakistan:

- a) Cessation of hostilities effected on 1 January 1949,
- b) Establishment of Ceasefire Line on July 27, 1949 (with peacekeeping UNMOGIP).
- c) The agreement is that Fleet Admiral Chester W Nimitz will be a plebiscite administrator.
- d) Made two UNCIP Resolutions of August 13, 1948, and January 05, 1949, on the procedure and methodology of the ceasefire, truce agreement, and plebiscite with terms of reference from both India and Pakistan. These two resolutions of the UNCIP were formally negotiated, agreed and signed by India and Pakistan and endorsed by UNCIP and are equal to the International engagements. The resolution passed by UNCIP on January 05, 1949, categorically recognized the right to self-determination of the people of J&K. [\[Bursac, S., 2010\]](#)

After the actions and working of the UNCIP, General A.G.L McNaughton came to India and Pakistan with the proposal of delimitation preparatory to the Plebiscite for the final settlement of the conflict of J&K. This is also called as the progressive delimitation, which was presented by General A.G.L McNaughton as his proposal for the resolution of the conflict of J&K. After the termination of UNCIP, UNSC appointed Sir Owen Dixon on 14th March 1950 to mediate between India and Pakistan on the conflict of J&K. He reached Delhi on May 27, 1950, and by the time he arrived in Delhi, almost ten weeks of five months were already lapsed. Then he went to Karachi on June 01, 1950, and left for Srinagar, IaJK in June 07, 1950, where he interacted with the local Kashmiris till July 12, 1950. Interestingly, when Sir Owen Dixon arrived in India and Pakistan, both the Prime Ministers were not in their respective countries, and he had to see the second and third-tier leadership of India and Pakistan. After meeting with both the Prime Ministers in Delhi, he submitted his final report to the UNSC on September 15, 1950.

After the failure of Dixon to convince both the states on a mutually agreed plan of demilitarization and plebiscite, Dr Frank Graham was given this gigantic task to settle the differences between India and Pakistan on the proposed solutions within the larger framework of the two resolutions of the UNCIP as agreed and signed by both India and Pakistan. The first report of Dr Frank Graham was submitted on 15 October 1951 containing the draft agreement for the demilitarization plan to be implemented within 90 days. Dr Frank submitted his second report on December 19, 1951, where he suggested to both India and Pakistan to reduce the strength of armed forces on the Ceasefire Line in proportion to the strength of the Armed forces of India and Pakistan present on 1 January 1949. He gave a timeline till 15 July 1952 to both the states to act upon this proposal, but this effort was also failed.

Dr. Frank submitted his third report on July 16, 1952, where he suggested to Pakistan to keep a force from 3000 to 6000 in Pakistani administered J&K (AJK) and to India to keep armed forces in IaJK from 12000 to 18000. Dr. Frank submitted his fourth report on 2 September 1952, in which he suggested Pakistan to keep 6000 forces in AJK and to India for keeping around 18000 armed forces in IaJK, including state forces. The fifth report of Dr. Frank Graham was submitted on 27th March 1953 with the suggestions to Pakistan to keep 6000 forces in AJK and to India to keep 21000 forces, including state forces in IaJK. After the failure of the Dr. Frank Graham, UNSC sent Gunnar Jarring

through the resolution of 24 January 1958 to settle the conflict of J&K between India and Pakistan. He submitted his report on March 28, 1957.

On the report of the Gunnar Jarring, UNSC passed a resolution on December 02, 1957, and authorized its Representative for India and Pakistan to visit both the states for another round of negotiation on the proposed demilitarization plan and possible plebiscite. Dr. Frank Graham again visited India and Pakistan, and after negotiations with both the states, he submitted his sixth report on March 28, 1958. From UNCIP to General McNaughton to Sir Owen Dixon to Dr Frank Graham to Gunnar jarring, most of the proposals and suggestions for the demilitarization and methods for the plebiscite were rejected by India. The Government of India was not willing to give the right to self-determination through a plebiscite to the people of the UK. After the final report of the Dr. Frank Graham, UNSC did not send any more representatives to India and Pakistan and also failed to pass any significant resolution on the conflict of J&K. In 1962, UNSC directed the Governments of India and Pakistan to settle the dispute of J&K through direct negotiations. This paradigm shift of the UNSC from active mediation to passive engagement caused great setbacks for the efforts of the settlement of the conflict of J&K in a peaceful and effective manner. However, other international organizations and mediators made efforts to bring peace across LoC through systematic efforts of conflict transformation and peacebuilding from 2004 onward, but the bilateral enmity and lack of trust between India and Pakistan dominated all the efforts of the peacebuilding and conflict transformation.[\[Cheruj, S., 2014\]](#)

Why did the UN fail to mediate between India and Pakistan on J&K

Now questions arise that what are the causes of this paradigm shift in the approach of the UN towards the conflict of J&K, and why UN adopt the approach of passive engagement towards the conflict of J&K in the post-1967 scenario? After a careful analysis of the literature review of the available material on this subject and the syllogistic analysis of the different events and circumstances, the following seems as the primary causes for the paradigm shift of the UN from active mediation to passive engagement:

- i) The provision of veto powers to five big states has influenced the role of the UN. This causes a lot of hindrance in the resolution of the conflict of J&K, especially in post-1947 scenario due to strong opposition of the Soviet Union against the stance of Pakistan on the issue of J&K,
- ii) UNCIP and subsequently all the mediators tried their best to reach an agreement with India and Pakistan as per two UNCIP resolutions, but it became a deadlock between both the states.
- iii) The Shimla Agreement, 1972 between India and Pakistan, after which India unilaterally announced that this agreement has superseded the UN Resolutions, and now India and Pakistan should bilaterally resolve this issue through peaceful means of settlement. This interpretation of India was baseless and against the spirit of the UN Charter and even the Shimla Agreement itself, but it has also affected the perceptions about the legal aspects of the conflict of J&K as well as the bilateral engagement between India and Pakistan. [\[The India-Pakistan Simla Agreement, 3 July 1972\]](#)
- iv) There have been consistently intentional and long delays, hostile atmosphere, wars, skirmishes, and rejections of suggestions and viable proposals that caused the failure of the implementations of the UNCIP resolutions on J&K.
- v) The development that India declared J&K as its constitutional and integral part through J&K Constitution, 1956 and the introduction of Article 35-A in the Constitution of India also caused a great setback towards the efforts for the settlement of the conflict of J&K. This unilateral act of India was also a reason for disturbing the positive atmosphere necessary during the mediation process between India, Pakistan, and UN. [\[Ganguly, R., 1998\]](#)
- vi) The bilateral negotiation process between India and Pakistan through various bilateral agreements and peace processes have also affected the role of the UN on J&K as during these periods of bilateralism, the dispute of J&K could not be internationalized in any forum of the world. [\[Cheema, Pervaiz Iqbal, 1980\]](#)
- vii) The rapidly changing global and regional geopolitical and economic realities have also transformed the shift of the UN from active mediation to passive engagement on the question of J&K.
- viii) Under Article 33 of the UN Charter, the UN resorted for mediation, conciliation, negotiation and proposals for arbitration on the question of J&K, but all efforts were failed, and nothing could break the deadlock. However, after the failure and continuous deadlock, the UN did not go for alternative ways to settle this dispute to maintain peace and harmony in the region.

- ix) The complete change in ground realities in J&K and an indigenous, strong, and protracted armed insurgency against Indian occupation demanded a similar and effective response from the UNSC, but nothing happened to address that highly aggravated situation as well.
- x) The event of 9/11 had also changed the perception of the world towards the right to self-determination due to the significance of right of territorial integrity. This shift in global politics has also eclipsed the attention of the world community towards the Kashmir issue in post 9/11 scenario.
- xi) During the whole process of mediation on conflict of J&K, UN did not meaningfully engage the representative of the divided regions of the erstwhile state of J&K who have been the principal party to the longstanding conflict of J&K.
- xii) One of the important reasons that the world community has been reluctant to respond to the longstanding conflict of J&K was the economic interests and the bitter fact that India is one of the biggest economies of the world.

Other causes of the failure of the UN Mediation on J&K

There are many other causes responsible for the failure of the UN in mediating the issue of J&K effectively and timely. A few very salient causes of the failure of the UN in resolving the longstanding conflict of J&K are as under:

- i) When the J&K issue was taken to the UN, it was dealt with by the UN politically and not from a legal perspective. This is also a very important reason for the failure of the UN in mediating the conflict of J&K ineffective and prompt manner.
- ii) Secondly, the UN did not realize the urgency and significance of the issue and showed very negligent and delayed responses to the humanitarian crises unfolding rapidly in the erstwhile state of J&K, particularly after the occupation of India.
- iii) The another important perspective was the leadership crises in Pakistan after deaths of Quaid - e -Azam Muhammad Ali Jinnah and Khan Liaquat Ali Khan, first Prime Minister of Pakistan.
- iv) Another important factor is the inconsistent policies of the Government of Pakistan towards the conflict of J&K in the period from 1948 to 1965. The most obvious example is the fact that the leadership of Pakistan had preferred direct negotiations and settlement of the conflict of J&K through bilateral dialogue in 1953/54 when UNSC was negotiating with the Governments of India and Pakistan for the UN Supervised plebiscite.
- v) The other important reason was the inability of the Government of Pakistan to counter the lawfare and maneuvering of the mechanisms and processes of the UNSC and International law by India on the conflict of J&K to exploit it in her own favor by using various overt and covert tactics. The Government of Pakistan has now shifted its focus on the lawfare and use of law as a tool in the diplomacy and foreign policy on the conflict of J&K, but this initiative is too late.
- vi) Then, the rapidly changing global politics in the backdrop of the cold war between two powers of the USA and USSR had also affected the conflict of J&K in the UNSC.
- vii) The geopolitics of the region was also very pivotal in influencing the choices and responses of the world powers towards the conflict of J&K, [\[Ganguly, S 2016\]](#).
- viii) The composition of the UNSC with five big states having veto powers and control of the big powers on the decisions of the UNSC has also been an important factor that failed the UN to peacefully settle the conflict of J&K since 1948.
- ix) The support of Western Powers to India during and after Sino - India war of 1962 had also badly affected the UN mediation on J&K.
- x) The direct negotiations between India and Pakistan on J&K outside the already accepted framework of UNSC resolutions and bilateral agreements of India and Pakistan particularly Shimla have also caused a set back to the peaceful resolution of the conflict of J&K so far.
- xi) Another important factor that failed the mediation of the UN on J&K was the lack of understanding of the local context and politics of the Indo - Pakistan sub-continent by the mediators sent by UNSC to mediate between India and Pakistan.
- xii) The last but very important reason was the controlled mediation by the Western powers on the conflict of J&K due to their monopoly in the affairs of the UNSC.

Conclusion

It is concluded that the UN has been failed to effectively mediate on the conflict of J&K. The peaceful resolution of the conflict of J&K is very important as this is a nuclear flashpoint between three

neighboring nuclear states: Pakistan, India, and China. Due to the veto system present in the working of the UNSC, the UN dispute resolution mechanism is highly political and the existing global politics affects the decisions and dispute resolution mechanisms of the UNSC. Due to the cold war politics, the conflict of J&K could not be effectively resolved and mediated by the UNSC during the period of the effective mediation of J&K from 1948 to 1965. After the period of 1948 -1965 and particular in post Shimla Agreement, 1972's scenario, a paradigm shift was made in the UN on J&K from active mediation to passive engagement. In post Shimla Agreement, 1972's scenario, the UNSC did not send any commission or representative to the erstwhile state of J&K for the peaceful mediation. The one reason of this passive engagement of the UNSC was the unilateral withdrawal of the India from the UN Resolutions on the argument that the Shimla Agreement has superseded all the UN Resolutions on J&K and now this issue has become bilateral. Whereas, the other reason was the attitude of the UNSC which changed its approach on the J&K due to the change in the patterns of the global politics which directly affect the decision making mechanisms of the UNSC.

The Government of Pakistan and Azad Government of the state of J&K should focus on Lawfare to take up the issue of J&K effectively and legally as per the relevant provisions of the International Law. The special Think Tanks should be established on the conflict of J&K dealing with law, security, policy and diplomacy with a focus on conflict of J&K for advising the Governments of Pakistan and AJK. This would also pave the way to endeavor for the fresh mediation of UNSC on J&K. This is the need of the hour to take effective diplomatic, political and legal measures to convince the UNSC through its permanent members to again shift its approach to the active mediation on the J&K. Moreover, the Government of Pakistan can also invoke the universal jurisdiction of few states to try the perpetrators who carried out war crimes, incremental genocide and crimes against humanity in IaJK. Besides, the jurisdiction of the ICC can be invoked through the civil society organizations to initiate an investigation into the incremental genocide, crimes against humanity and war crimes being committed by India in IaJK. This can be easily done on the request of any civil society organization of erstwhile state of J&K to the Prosecutor of the ICC.

In the same way, it is also important to further build the case of J&K on the two reports issued by the Office of the United Nations High Commissioner on the Human Rights regarding the gross and systematic violations carried out by India in IaJK. The Government of Pakistan should show consistency and aggressive diplomatic attitude for the revival of the active mediation of the UNSC on the conflict of J&K. The effective diplomacy is the key and it is also necessary to transform the conflict of J&K during the transition period to minimize the violations of the human rights. Lastly, Pakistan needs to take the Kashmir issue both legally and politically to present a balanced, logical and effective policy on J&K for its peaceful and early resolution in accordance with the resolutions of the UNSC and UNCIP through a free, fair and impartial plebiscite.

References

- Ahmad, I, & Bashir, A. (2004). *India and Pakistan: Charting a Path to Peace, The Society for Tolerance and Education*, Pakistan, 49.
- Akbar, M. J. (2016). *Kashmir behind the Vale*. Roli Books.
- Bursac, S. (2010). The Right of Peoples to Self-Determination. *Medjunarodni Problemi* 62 (2), 276-313.
- Cheema, P. I. (1980). *Conflict and Cooperation in the Indian Ocean: Pakistan's Interests and Choices*. Strategic and Defence Studies Centre, Research School of Pacific Studies, Australian National University.
- Cheema, P. I. (2014). The Kashmir Dispute: Key to South Asian Peace. *IPRI Journal XIV*, (1), 1 - 20.
- Cheema, P.I. (2016). Resolving Kashmir Dispute Analyzing Various Approaches. *Margalla Papers20* (1), 23-36.
- Cheryl, S. (2014). *Constitutional Review in Conciliation Resources, Legitimacy and Peace Processes. Accord*, 25.
- Dewan, P. (2003). *Jammu, Kashmir, Laddakh*, Men's Publications.
- Fai, G. N. (2012). Resolution of the Kashmir Dispute. *Strategic Studies*, 32 (Winter 2012), 2-3.
- Ganguly, R. (1998). India, Pakistan and the Kashmir Dispute. *Assembly*, 1-12.
- Ganguly, S. (2016). *Deadly Impasse*. Cambridge University Press..
- Hart, V. (2001). Constitution-Making and Transformation of a Conflict. *PEACE & CHANGE*, 26(2), 153 - 176.
- Hilali, A. (1997). Kashmir dispute and UN mediation efforts: An historical perspective. *Small Wars & Insurgencies*, 8(2), 61-86. <https://doi.org/10.1080/09592319708423174>.
- Hussain, I. (2000). *Kashmir and International Law Perspective*. National Institute of Pakistan Studies.
- Korbel, J. (1954)]. *Danger in Kashmir*. Princeton University Press.
- Lamb, A. (1991). *Kashmir a Disputed Legacy 1846 - 1990*. Oxford Printing Press.
- Noorani, A.G. (2011). *Article 370: A Constitutional History of Jammu and Kashmir*. Oxford University Press.
- Qadeer, M. A. (2018). United Nations Resolutions on Kashmir and Their Relevance. *Journal of Strategic Affairs*, 2 (2), 81.
- Rahman, A., & Munir, S. (2020). Demographic Changes in Indian Administered Jammu and Kashmir: A Legal Perspective. *Journal of Pakistan Vision*, 21 (2), 75 - 86.
- Razdan, O. (1999). *The Trauma of Kashmir: The Untold Reality*. Oxford University Publishers.
- Saraf, M, Y. (1979). *Kashmiris Fight for Freedom*. Feroz Sons Ltd.
- Schofield, V. (1997). *Kashmir in the Crossfire*. London: IB Tauris& Co.
- The India-Pakistan Simla agreement, 3 July 1972. (1972). Survival, 14(5), 242. <https://doi.org/10.1080/00396337208441358>.*
- United Nations Commission on India and Pakistan was established by Security Council Resolution, No. 39, dated 20th of January, 1948, comprising three members, one was nominated by Pakistan, another by India and third was designated by both the nominated members.