

“The India-Pakistan Question” and China

Shri Asoke Kumar Mukerji, IFS (Retd)[®]

Abstract

The initiative taken by China to revive discussions on “The India-Pakistan Question”, which had been lying dormant on the agenda of the United Nations Security Council (UNSC) since December 1971, has potentially significant implications for India. This article looks at the details of “The India-Pakistan Question”, including the manner in which the UNSC twisted India’s complaint against Pakistani aggression on India’s territory in Jammu and Kashmir to broaden the scope to apply the “two-nation theory” on the basis of which the United Kingdom had partitioned British India and re-opened the accession of the Princely State of Jammu and Kashmir to India. The UNSC acknowledged that its resolutions failed to be implemented due to the inability of the Security Council to vacate the Pakistani aggression on India.

China (represented permanently in the UNSC by the Republic of China (ROC) till October 1971) was party to UNSC resolutions on “The India-Pakistan Question”. China did not adopt an activist role in drafting these resolutions between January 1948 to October 1971. After the unseating of the ROC from the UNSC and its replacement by the People’s Republic of China (PRC) in October 1971, an assertive China tried to use “The India-Pakistan Question” to counter India’s actions during the December 1971 India-Pakistan war which led to the independence of Bangladesh. The PRC cast its first veto against the admission of Bangladesh to the UN in August 1972.

[®]Ambassador Asoke Mukerji, IFS (Retd) is an elected member of the USI Council. He is a former Permanent Representative of India to the United Nations in New York. *Journal of the United Service Institution of India*, Vol. CXLIX, No. 618, October-December 2019.

UNSC resolutions on this issue were overtaken by the bilateral treaty signed between India and Pakistan at Simla in July 1972. China's latest diplomatic initiative on this subject goes against five decades of inactivity of the UNSC on "The India-Pakistan Question". It presages China's attempt to use her permanent membership of the UNSC to exploit "The India-Pakistan Question" as a negotiating tactic to retain Chinese occupation of India's territory in Jammu and Kashmir.

Introduction

The India-Pakistan Question" was first placed on the UNSC's agenda on 22 January 1948.¹ The UNSC discussed this issue with diminishing frequency until 1971. Following the signing of the Simla Agreement between India and Pakistan in July 1972, the UNSC did not hold any meeting on this subject till August 2019.

China's initiative to convene a UN Security Council (UNSC) meeting on "The India-Pakistan Question" on 16 August 2019² is a significant indicator of changing perceptions that impact directly on India's foreign and security policies. In this context, it is useful to survey China's role in the UNSC resolutions on "The India-Pakistan Question".

Background

At the Washington Conference on 01 January 1942, 26 participating "Allied" countries (including China and India) issued the "Declaration by United Nations".³ The Declaration endorsed the principles and objectives of the 1941 Atlantic Charter between the United States and United Kingdom, including the outline of an "international postwar system". This launched the process to create the modern United Nations.

In the period between January 1942 and June 1945, when the UN Charter was negotiated and adopted at the San Francisco Conference, India and the Republic of China (ROC) cooperated within the broad framework of the "Declaration by United Nations". In the area of coordinated military action, for example, Ramgarh (in Jharkhand) was used by the United States⁴ to train almost 50,000 soldiers of the ROC's Army who fought in the China-Burma-India theatre in Asia between 1942-1944.⁵

China and the UN Security Council

The ROC's primary objective in participating in the UN process was to gain international recognition as an international power. The Dumbarton Oaks meetings⁶ between October 1943 and February 1945 provided the ROC with a platform to secure this objective in the political sphere. At the Cairo Conference of 1943,⁷ the ROC secured its objectives including the consolidation of its territories occupied by Japan after the war.

In February 1945, the United States, United Kingdom and Soviet Union met at Yalta to agree on the veto rights of the permanent members of the proposed Security Council of the United Nations for any substantive decisions by the UNSC. Both the ROC and France, which did not participate at the Yalta Conference, acquired the veto, as well as the right to be self-selected without election as permanent members of the UN Security Council.⁸ The delegation of China at the San Francisco Conference included a representative of the Communist Party of China (CPC), Dong Biwu.⁹

India's Complaint to the UNSC, 1948

"On 1 January 1948, the Government of India reported to the Security Council details of a situation existing between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and tribesmen from the territory immediately adjoining Pakistan on the North-West, were drawing from Pakistan for operations against Jammu and Kashmir, a State which, having acceded to the Dominion of India and the Government of India has declared it to be part of India. The Government of India considered the giving of this assistance by Pakistan to be an act of aggression against India, and likely to endanger the maintenance of international peace and security, since in self-defence India might be compelled to enter Pakistan territory in order to take military action against the invaders."¹⁰

India's complaint was brought under Article 35 of the UN Charter and focused on Pakistan's "act of aggression against India". At no stage did India refer to the territory of Jammu and Kashmir which was being attacked as being in "dispute". As India clarified in the UNSC, "the act of accession of Jammu and Kashmir

to India was an international act, the legality of which, however, was beyond challenge and not in question and which involved no issue of international peace and security. The only issue of the latter kind was the aggression committed by Pakistan.”¹¹

The UNSC Resolutions

Between January 1948 and December 1971, the UNSC adopted 17 resolutions on “The India-Pakistan Question” and endorsed the 1949 Karachi Agreement which established a cease-fire line agreed to by India and Pakistan, to be monitored by the UN Military Observer Group in India and Pakistan (UNMOGIP). The ROC was permanently represented in the UNSC meetings when all these resolutions were adopted.

The Period from 1948 to 1952

The first set of eight UNSC resolutions expanded the scope of India’s original complaint significantly (at the instigation of the United Kingdom) to bring in the “two-nation theory” which created Pakistan. The idea of a plebiscite in Jammu and Kashmir grew out of this expanded scope. However, the “insurmountable” difficulties in vacating Pakistan’s aggression (through “demilitarization”) overtook the idea of any plebiscite.

UNSCR 38: On 6 January 1948 the UNSC invited both India and Pakistan to present their case. On 15 January 1948, Pakistan responded by expanding scope of the issue to include Junagadh and the treatment of Muslims in India. On 17 January 1948 the UNSC adopted its first resolution on this issue, calling on both India and Pakistan to refrain from escalating the situation on the ground. It asked both governments to report any “material change” of the situation on the ground.

The ROC voted in favour of adopting the resolution. The Soviet Union and Ukrainian SSR abstained on this vote.¹²

UNSCR 39: At the recommendation of United Kingdom, the President of the UNSC (Belgium) was authorized to directly deal with two parties to find solution by 20 January 1948. On 20 January 1948 Pakistan again requested that the scope of the issue be expanded to include Junagadh and the treatment of Muslims in India. The Security Council adopted its second resolution on this issue on 20 January 1948. The resolution established a fact-finding

UN Commission for India and Pakistan (UNCIP) of three members (one nominated by India, other nominated by Pakistan, and a third designated by the Indian and Pakistani nominees) to visit the ground in respect of "the situation in Jammu and Kashmir State". The Commission was empowered to take decisions by a majority vote.¹³

The ROC voted in favour of this resolution, while the Soviet Union and Ukraine SSR abstained.

UNSCR 47: On 21 April 1948, the UNSC adopted its third resolution on what it had decided to call "The India-Pakistan Question" on 22 January 1948 without consulting India. The resolution sought to restore peace and noted that both India and Pakistan desired that accession of Jammu and Kashmir to either India or Pakistan should be decided through a democratic plebiscite after withdrawal of Pakistani and Pakistan backed persons "not normally resident" in the State. The resolution increased the number of the Commission to five (Czechoslovakia nominated by India, Argentina nominated by Pakistan, Belgium, Colombia), who were joined by the United States (appointed by President due to failure of Czechoslovakia and Argentina to designate a third member).¹⁴

The ROC joined Belgium, Canada, Colombia, United Kingdom and United States in voting in favour of this resolution.

UNSCR 51: On 3 June 1948 the UNSC adopted its fourth resolution on this issue. This exhorted the UNCIP to visit the areas of where the conflict between India and Pakistan was taking place and reaffirmed its support for work of Commission.¹⁵

The ROC abstained on this resolution, along with the Soviet Union and the Ukraine SSR.

When India objected through a letter to the UNSC for mandating the Commission to look at issues not related to the Jammu and Kashmir Question, the ROC persuaded the UNSC to convey to India that "what the Security Council did...was to tell the Commission to go ahead, to deal first with the Kashmir question, and then, when it deemed it appropriate, to study and report on the other three questions raised by the delegation of Pakistan"¹⁶ (in Pakistan's letter of 15 January 1948, as reflected in Section D of UNSCR 39, regarding Junagadh and the treatment of Muslims in India).

UNSCR 80: On 14 March 1950, India was present in the UNSC discussion on “The India-Pakistan Question” for the first time as a newly elected non-permanent member. The Council adopted its fifth resolution on the issue. This terminated the mandate of the UNCIP and called on India and Pakistan to execute a programme of demilitarization in the Jammu and Kashmir state. Subsequently, a UN Representative for India and Pakistan (Sir Owen Dixon) was appointed by the UNSC.¹⁷

The ROC voted in favour of this resolution, along with seven other members of the Council. India and Yugoslavia abstained.

UNSCR 91: On 30 March 1951, the UNSC adopted its sixth resolution on the issue, proposed by the United States and the United Kingdom. It acknowledged the report of the UN Representative for India and Pakistan, Sir Owen Dixon, which conveyed that without agreement on demilitarization, the proposed plebiscite could not take place in Jammu and Kashmir “State”. The resolution accepted the resignation of Sir Owen Dixon and decided to appoint his successor.

Significantly, the resolution also took note of the proposal of 27 October 1950 to convene a constituent assembly in Jammu and Kashmir made by the “All Jammu and Kashmir National Conference”, and affirmed that such a constituent assembly would not substitute for the “will of the people” through a plebiscite.¹⁸ Frank P. Graham was appointed subsequently to replace Sir Owen Dixon. On 29 May 1951, India conveyed to the President of the UNSC that the proposed constituent assembly of Jammu and Kashmir “is not intended to prejudice the issues before the Security Council or to come in its way”.¹⁹

The ROC voted in favour of this resolution, while India, Yugoslavia and the Soviet Union abstained.

UNSCR 96: On 10 November 1951, the UNSC adopted its seventh resolution on the issue, which took note of Frank P. Graham’s report on the need for demilitarization before taking up the plebiscite and asking him to report within 6 weeks the results of his continued efforts.²⁰ The report of the UN Representative dated 18 December 1951 was considered by the UNSC on 17 January 1952 (by which date India had left the UNSC on completion of her two-year term on 31 December 1951). In its

decision dated 31 January 1952 the UNSC referred to the UN Representative's report of "almost unsurmountable obstacles" for demilitarization in Jammu and Kashmir and extended his term by two more months to implement his mandate.

The ROC voted in favour of this resolution, while India and the Soviet Union abstained.

UNSCR 98: On 23 December 1952, the UNSC adopted its eighth resolution on the issue, asking both India and Pakistan to make extra efforts to agree on demilitarization in Jammu and Kashmir. It took note of the reports of the UN Representative dated 22 April 1952 and 16 September 1952, which proposed a 12-point plan for demilitarization, and called on India and Pakistan to "enter into immediate negotiations" to implement this plan.²¹ Following the adoption of the resolution, the UN Representative met India and Pakistan in February 1953 in Geneva. This meeting ended on 19 February 1953 with the conclusion "in agreement with the representatives of the Governments of India and Pakistan" that "there was no ground left" to continue the meeting.

The ROC voted in favour of this resolution, with only the Soviet Union abstaining.

During the Year 1957

A second set of three UNSC resolutions were adopted in response to the decision on 15 February 1954 of the Constituent Assembly of Jammu and Kashmir to ratify the accession of the State to India. The Constitution of the State was adopted on 17 November 1956, coming into effect on 26 January 1957.

UNSCR 122: Adopted on 22 January 1957, it reflected the majority view of the UNSC that any action by the constituent assembly of Jammu and Kashmir would not "constitute a disposition" of the State according to the "will of the people" through a plebiscite.²²

The ROC voted in favour of this resolution with the other 9 members of the UNSC. The Soviet Union was the only country to abstain.

UNSCR 123: The UNSC mandated Sweden as its President on 21 February 1957 to consult with India and Pakistan proposals "likely to contribute towards the settlement of the dispute".²³

The ROC voted in favour of this resolution with nine other countries of the UNSC. The Soviet Union was the only country to abstain.

UNSCR 126: Sweden had nominated Mr Gunnar Jarring to implement the mandate of UNSCR 123. The UNSC adopted a resolution on 2 December 1957 accepting the Jarring Report and asking India and Pakistan to act to implement previous resolutions on the holding of a plebiscite after demilitarization.²⁴

The ROC voted in favour of this resolution with nine other countries of the UNSC. The Soviet Union was the only country to abstain.

Special Status” of Jammu and Kashmir

On 16 January 1964, Pakistan asked the President of the UNSC to convene an “immediate meeting” of the UNSC to discuss India’s steps to “destroy the special status” of Jammu and Kashmir. Although India rejected this narrative, the UNSC agreed to meet on “The India-Pakistan Question” from 3 February 1964. The Council met six times on the issue till 18 May 1964. India reiterated that the accession of Jammu and Kashmir to India could not be re-opened by Pakistan, as “legally or constitutionally the whole of Kashmir had become an integral part of India when the Ruler of Kashmir had executed the Instrument of Accession to India, and the Governor-General of India had accepted the Instrument.” At the end of this protracted debate, the outcome remained inconclusive in the UNSC.

1965 War

On 5 August 1965, Pakistan initiated an armed conflict to wrest Jammu and Kashmir militarily from India. Pakistan’s violation of the 1949 Cease-Fire Line initiated action by the UNSC, which adopted 5 resolutions on “The India-Pakistan Question”. The UNSC decision on an arms embargo forced Pakistan to the negotiating table. Both sides agreed to the Soviet Union as a mediator. Talks to bring the conflict to an end were held at Tashkent in January 1966.²⁵

UNSCR 209: On 04 September 1965, the UNSC adopted its 12th resolution on “The India-Pakistan Question”. It called for an immediate cease-fire and for cooperation with the UN Military

Observer Group in India and Pakistan (UNMOGIP) to supervise the observance of the cease-fire.²⁶

The ROC joined all other members of the UNSC in adopting this resolution unanimously.

UNSCR 210: The failure to heed UNSCR 209 led to the UNSC adopting its 13th resolution on "The India-Pakistan Question" on 06 September 1965. This mandated strengthening UNMOGIP to bring about a cease-fire.²⁷

The ROC joined all other members of the UNSC in adopting this resolution unanimously.

UNSCR 211: On 20 September 1965, after receiving the report of the UN Secretary General, the UNSC adopted its 14th resolution on "The India-Pakistan Question". Both India and Pakistan addressed the UNSC. The resolution reiterated the demand for a cease fire and suggested that India and Pakistan use a third party as provided under Article 33 of the UN Charter to resolve their dispute.²⁸

The ROC voted in favour of this resolution, in which Jordan was the only UNSC member to abstain.

UNSCR 214: On 22 September 1965, the UNSC was informed by its President that a cease fire had been agreed to by India and Pakistan. However, since the cease fire did not hold, the UNSC adopted its 15th resolution on "The India-Pakistan Question" on 27 September 1965 asking both countries to honour the cease fire.²⁹

The ROC joined the other members of the UNSC in adopting this resolution unanimously.

UNSCR 215: On 5 November 1965, the UNSC adopted its 16th resolution on "The India-Pakistan Question". The resolution called on both countries to honour their commitment to cease fire and asked them to meet with the representative of the UN Secretary General to formulate an agreed plan for the cease fire.³⁰

The ROC voted in favour of this resolution. The Soviet Union and Jordan abstained.

The Year 1971

Between 1965 and 1971, “The India-Pakistan Question” did not feature in any meeting of the UNSC. The PRC replaced the ROC as the representative of China in the UN on 25 October 1971, in a UNGA vote supported by India.

At the meeting of the UNSC on 4 December 1971 during the India-Pakistan war, the PRC said that “India, using the question of East Pakistan, had committed armed aggression” against Pakistan and asked the Security Council to “condemn this act of aggression and to demand the immediate and unconditional withdrawal of all armed forces of India from Pakistan.”³¹

China continued with its aggressive pro-Pakistan and anti-Bangladesh policy in the UNSC on 5 December 1971. China adopted a strong position to reject the participation of any representative of “Bangladesh” in the discussions in the UNSC.³² The deadlock in the UNSC on adopting any decision through a resolution continued until India conveyed to the UNSC President on 16 December 1971 that India had announced a cease fire following the surrender of the Pakistani armed forces in Bangladesh.

UNSCR 307: This was the background to the eventual adoption of the UNSC’s 17th resolution on “The India-Pakistan Question” on 21 December 1971. The resolution focuses on the cessation of hostilities in Bangladesh and calls for the treatment of the Pakistani soldiers taken prisoner under the 1949 Geneva Conventions, while asking India and Pakistan to “respect the cease fire line in Jammu and Kashmir” supervised by UNMOGIP.³³

The PRC voted in favour of adopting the resolution. The Soviet Union and Poland abstained.

India, invited to participate in the meeting of the UNSC, informed the Council that in “order to avoid the repetition of such incidents, India proposed to discuss and settle with Pakistan certain necessary adjustments in the cease-fire line so that it would become more stable, rational and viable.”

The Simla Agreement, 1972

India’s statement to the UNSC was followed up by the negotiation and signing of the bilateral treaty between India and Pakistan (Simla

Agreement) of 02 July 1972. The Simla Agreement is registered in the UN Treaty Database under Article 102 of the UN Charter and is invokable "before any organ of the United Nations".³⁴ Effectively, the treaty subsumes earlier UNSC resolutions on "The India-Pakistan Question".

Conclusion

At the heart of China's diplomatic initiative is its interest in keeping possession of Indian territory occupied by it in Aksai China in the 1950s, and the Shaksgum Valley and other territory ceded from Pakistan-occupied Jammu and Kashmir to China under the 1963 Sino-Pakistan Agreement.³⁵ China's efforts to revive "The India-Pakistan Question" in the UNSC in August 2019 need to be seen in this perspective. China would have to contend with the fact that its initiative of 16 August 2019 did not get traction among the other 14 members of the UNSC, who refused to even authorize a public account for the media after their closed-door meeting. However, as a permanent member of the UNSC, China is now placed to use "The India-Pakistan Question" at a time and manner of its choice to conduct its bilateral diplomacy with India. Only India's success in reforming the UNSC will remove this option for China.

Endnotes

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¹⁰ United Nations, Repertoire of the UN Security Council, "The India-Pakistan Question", p. 344. Available at https://www.un.org/en/sc/repertoire/46-51/Chapter%208/46-51_08-16-The%20India-Pakistan%20question.pdf

¹¹ United Nations, Repertoire of the UN Security Council, "The India-Pakistan Question", pp. 112-113, statement by the representative of India at the 762nd meeting of the Council on 23 January 1957. Available at https://www.un.org/en/sc/repertoire/56-58/Chapter%208/56-58_08-7-The%20India-Pakistan%20question.pdf

¹² United Nations, UNSCR 38, 17 January 1948. Available at <http://unscr.com/en/resolutions/38>

¹³ United Nations, UNSCR 39, 20 January 1948. Available at <http://unscr.com/en/resolutions/39>

¹⁴ United Nations, UNSCR 47, 21 April 1948. Available at <http://unscr.com/en/resolutions/47>

¹⁵ United Nations, UNSCR 51, 3 June 1948. Available at <http://unscr.com/en/resolutions/51>

¹⁶ United Nations Security Council, 315th meeting, 8 June 1948. Available at https://www.un.org/en/sc/repertoire/46-51/Chapter%208/46-51_08-16-The%20India-Pakistan%20question.pdf

¹⁷ United Nations, UNSCR 80, 14 March 1950. Available at <http://unscr.com/en/resolutions/80>

¹⁸ United Nations, UNSCR 91, 30 March 1951. Available at <http://unscr.com/en/resolutions/91>

¹⁹ United Nations Security Council, 548th meeting, 29 May 1951. Available at https://www.un.org/en/sc/repertoire/46-51/Chapter%208/46-51_08-16-The%20India-Pakistan%20question.pdf

²⁰ United Nations, UNSCR 96, 10 November 1951. Available at <http://unscr.com/en/resolutions/96>

²¹ United Nations, UNSCR 98, 23 December 1952. Available at <http://unscr.com/en/resolutions/98>

²² United Nations, UNSCR 122, 24 January 1957. Available at <http://unscr.com/en/resolutions/122>

²³ United Nations, UNSCR 123, 21 February 1957. Available at <http://unscr.com/en/resolutions/123>

²⁴ United Nations, UNSCR 126, 2 December 1957. Available at <http://unscr.com/en/resolutions/126>

²⁵ United States Department of State, Office of the Historian, "The India-Pakistan War of 1965". Available at <https://history.state.gov/milestones/1961-1968/india-pakistan-war>

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²⁷ United Nations, UNSCR 210, 6 September 1965. Available at <http://unscr.com/en/resolutions/210>

²⁸ United Nations, UNSCR 211, 20 September 1965. Available at <http://unscr.com/en/resolutions/211>

²⁹ United Nations, UNSCR 214, 27 September 1965. Available at <http://unscr.com/en/resolutions/214>

³⁰ United Nations, UNSCR 215, 5 November 1965. Available at <http://unscr.com/en/resolutions/215>

³¹ Repertoire of the UN Security Council, "The India-Pakistan Question", 1969-1971. P. 157. Available at https://www.un.org/en/sc/repertoire/69-71/Chapter%208/69-71_08-13-Situation%20in%20the%20India-Pakistan%20subcontinent.pdf

³² Ibid.

³³ United Nations, UNSCR 307, 21 December 1971. Available at <http://unscr.com/en/resolutions/307>

³⁴ UN Treaty Database, Treaty Series, Cumulative Index No. 14, p. 98. Available at <https://treaties.un.org/doc/Publication/Cumulative%20Index/UNTS%20Volume%20No%20851-900/cumindex.chrono.en.pdf>

³⁵ A comprehensive account of India's position on this issue was conveyed in Government of India's reply in Parliament to Starred Question No. 339 on 14 December 2006. See <https://www.mea.gov.in/rajya-sabha.htm?dtl/8120/q+339+transkarakoram+pass>