

UNMOGIP: A Subcontinental Relic

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Introduction

The recent sparring by India and Pakistan over the United Nations (UN) observer group at the Line of Control (LC) has again brought in focus this long drawn and perhaps irrelevant UN group whose utility and role is now a question of debate. This group, called United Nations Military Observer Group in India and Pakistan (UNMOGIP), a legacy of the 1947-48 Pakistan sponsored tribal intrusion in Jammu and Kashmir (J&K) and the resultant Indo-Pak war, struggles to find its identity and role in the current scenario where the subsequent agreements between India and Pakistan have resolved to settle their differences through bilateral negotiations. In India, the UNMOGIP is increasingly viewed as symbol of the idealism based foreign policy of the Nehruvian years and the ghost of a failed third party intervention in J&K which needs a quick burial.

As recently as on 22 January 2013, during a UN Security Council (UNSC) debate on peacekeeping, incidentally organised by Pakistan as a non-permanent member of the 15-nation Security Council, India's Ambassador to the UN Hardeep Singh Puri stated that UNMOGIP's role has been overtaken by the 1972 Shimla Agreement, signed by the Heads of the two governments and ratified by their respective parliaments and even went on to suggest that it would be better to spend resources allocated for the observer group elsewhere in the difficult economic times.¹ Today, India and Pakistan play cricket, allow artists to perform in each other's country, have agreed upon for increased people-to-people contact and an easier visa regime. The closure of UNMOGIP shall remove a symbolic obstacle between the two nations and may encourage Pakistan to adopt a pragmatic foreign policy.

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Nehru's Ideal World Fails

It was India which had formally referred the case of Pakistani aggression in Kashmir to the UNSC under Article 35 of the UN Charter on 01 January 1948. Under Article 35, any country is allowed to bring a dispute to the attention of the UNSC or the General Assembly. While it was the first armed conflict for the young and somewhat dreamy India, the UN was also confronting its first set of conflicts in the post World War II era commencing with the Israel - Palestinian issue and followed by the Korean War. On 20 January 1948, the UNSC adopted Resolution 39 (1948) establishing the United Nations Commission for India and Pakistan (UNCIP) to investigate and mediate the Kashmir issue.

Initially, Pakistan denied that its troops were present but when a three-member UN delegation, subsequent to the *ibid* UNSC resolution 39, visited the actual scene of fighting, the Pakistan government admitted the presence of its troops. The first team of unarmed military observers arrived in the mission area in late January 1949 to supervise the ceasefire between India and Pakistan. The Karachi Agreement between India and Pakistan was concluded on 27 July 1949 which established a ceasefire line to be supervised by UN military observers. Subsequently, on 30 March 1951, following the termination of UNCIP, the UNSC by its Resolution 91 (1951) decided that UNMOGIP should continue to supervise the ceasefire in J&K.²

The UN involvement in Kashmir was active for the first few years wherein the various UN appointed mediators, from UNSC President, General AGL McNaughton in 1949 to Gunnar Jarring in 1957, tried to resolve the issue. The UN involvement ebbed to a superficial level after the 1965 Indo-Pak War wherein it was the erstwhile USSR rather than the UN which negotiated the Tashkent Peace Agreement. The UN involvement completely stopped after the 1971 Indo-Pak War which resulted in the Shimla Agreement. Nothing exemplifies the engagement levels better than the number of resolutions. Between 1948 and 1971, the UNSC passed 23 resolutions on the Kashmir issue, and none thereafter till date as the Shimla Agreement fundamentally altered the nature of the dispute from a supposedly international to a purely bilateral issue. The last UNSC resolution (307) that, *inter alia*, dealt with Kashmir was passed in the wake of the 1971 Indo - Pak War, where J&K

in any case was not at the centre of the conflict and could be passed only after India had declared a unilateral ceasefire.

Pandit Nehru went to the UN with high hopes and faith in the recently established World body. However, soon the disillusionment set in with the complex proposals and resolutions, which though asking Pakistan to withdraw its forces, did not directly, blame Pakistan which was the evidently aggressor in spite of clouding its actions behind a smoke-screen of tribal *lashkars*. In fact, the arrival of UN mediators had quite the opposite effect for India – it internationalised the issue in spite of J&K legally being a part of the Union of India.

From New York to Shimla

The 1972 Shimla Agreement was a game changer. Among other things, it was mutually agreed that the two countries have resolved to settle their differences by *“peaceful means through bilateral negotiations”*. Post this agreement, India took the position that the mandate of UNMOGIP had lapsed, since it related specifically to the ceasefire line under the Karachi Agreement. Pakistan, however, did not accept this position. Meanwhile, the UNMOGIP continued its mission in spite of differences as reflected on its website wherein it states that *“despite the disagreement between India and Pakistan over UNMOGIP’s mandate and functions, the mission has remained in the area to observe the 1971 ceasefire arrangements.”* The UN maintains that the Secretary-General’s position has been that UNMOGIP could be terminated only by a decision of the Security Council. In the absence of such an agreement, UNMOGIP has been maintained with the same arrangements as established following 17 December 1971 ceasefire, and has remained in the area to observe developments pertaining to the strict observance of the ceasefire and report thereon to the Secretary-General.³

On the contrary, Indian diplomats often point out that UNMOGIP’s role was only to supervise the ceasefire line, which was created in J&K as a result of the Karachi Agreement of 1949. This line no longer existed and a new line came into existence on 17 December 1971.⁴ The current Chief Minister of J&K also seems to have similar opinion wherein he recently said the UNMOGIP had failed to maintain the sanctity of the Line of Control (LC).⁵

Current Status

The group is currently headed by Major General Young-Bum Choi

from the Republic of Korea who is the Chief Military Observer and Head of Mission. He is assisted by 39 military observers and 25 international civilian personnel with the total budget of the group for the financial year 2012–13 being US\$ 21,084,900. The military observers are mainly drawn from the far-off and generally neutral countries like Chile, Croatia, Finland, Italy, Sweden and Uruguay. UNMOGIP currently has four offices located at Muzaffarabad in Pakistan-Occupied-Kashmir (POK), Islamabad, New Delhi and Srinagar. Post Shimla Agreement, India has lodged no complaints with UNMOGIP since January 1972 and has imposed certain restrictions on the activities of the UN observers on the Indian side while logistic assistance and other facilities are still being provided to the observers. However, Pakistan continues to lodge complaints with UNMOGIP about ceasefire violations. Pakistan has also provided the UNMOGIP staff members in Islamabad and Muzaffarabad direct access to LC at Chakothi in POK.

Changing International Opinion

The first signs of the changing global opinion on the Kashmir issue came in 1990 wherein the USA changed its stance after nearly four decades and no longer urged for a plebiscite in Kashmir, saying the dispute should be settled through direct negotiations between India and Pakistan.⁶ Soon the 'bilateral talks' view was endorsed by most of the Western nations. In November 2010, in a significant blow to Pakistan's attempts to internationalise the issue, J&K was removed from the UN list of unresolved disputes. While the UN continues to mention Middle East, Cyprus, Western Sahara, Nepal, Guinea Bissau, Sudan, Somalia and the Democratic Republic of Congo (DRC) as disputes, as a reflection of changed ground realities in the Indian sub-continent, J&K no longer finds place in this UNSC list.⁷ Incidentally, its omission was first noticed by Pakistan, whose envoy Amjad Hussain B Sial then moved to file a protest. Soon, the Kashmir-issue was a big no-no at the international forums while the US moved to arrest a Pak-sponsored Kashmiri activist named Syed Ghulam Nabi Fai in July 2011 who was being paid about US \$ 700,000 per year by the ISI to organise pseudo-seminars in the US to falsify facts about Kashmir.

Au contraire, nothing much has changed for Pakistan even if there are no takers. As usual, in September 2012, President Asif Ali Zardari raked up the issue at the 67th session of the UN General

Assembly wherein he stated that Kashmir remains a symbol of failure of the UN system and Pakistan's principled position on territorial disputes remains bedrock of its foreign policy. Pakistan uses the official UN map of Kashmir region though quietly it has absorbed the Northern Areas, part of the erstwhile princely state of J&K, into Pakistan and is in the process of changing the demographic composition of these areas which are much larger in size than the so-called 'Azad Kashmir'. Pakistan also misuses the pretext of UN presence to continue to show J&K as a disputed territory while dishonouring almost all the UNSC resolutions, starting from withdrawal of troops from POK to blatant and often craven ceasefire violations.

The Psyche and a Tool

The existence of a UN group, coupled with the past UN resolutions on Kashmir, meanwhile has done nothing to prevent proxy war by Pakistan, but it has nevertheless influenced the Kashmiri political identity. It played on the psyche of Kashmiri people which was already wounded by the treacherous court-politics of the 19th century and the brutal tribal invasion of 1948. This cumulatively led few of them to think differently and attempt to carve a distinct political identity, of course with generous assistance from Islamabad. The misplaced sense of alienation and the liberal democratic practices of India have enabled the separatists to submit many memorandums to the UNMOGIP office in Srinagar, demanding implementation of UN resolutions or related demands. Consequently, this well-located office in Sonawar has served as a destination for many separatists led marches in Srinagar. Kashmiri writers like Wajahat Ahmad claim that the presence of UNMOGIP office in Kashmir continues to symbolically affirm the Kashmiri sentiment that their land is not yet another Indian State but an internationally recognised dispute.⁸

While the separatist leaders employ UNMOGIP as a useful propaganda tool, they resent the framing of the Kashmir issue in the inter-state (India-Pakistan) context by the UN rather than as a nationalist movement which has prevented international recognition to them. They forget that a former princely state had no legal status after decolonisation and even the British strongly discouraged any state from maintaining independence. Prominent hard-line separatist leader and Hurriyat Conference (G) chairman

Syed Ali Geelani reiterated in January 2013 that since the Kashmiris as a party were not included in Shimla Agreement, thus the accord has not overtaken the role of UN observers in the region. They publicise the continued presence of UN observers in J&K as a proof that Kashmir remains disputed and its resolution with regard to its future political destiny is yet to be resolved.⁹ For once, the two factions of the Hurriyat are united. Around the same time, Mirwaiz Umar Farooq, the Chairman of Hurriyat Conference (M), stated that the presence of UN in Srinagar was enough indication that Kashmir was a dispute and the amalgam will not allow winding up of its office from J&K till the issue is resolved.¹⁰

Between the Lines

The UN resolutions regarding the Kashmir issue are not self-enforceable. In other words the resolutions are recommendatory in nature and can be enforced only if the parties to the dispute consent to their application.¹¹ It has its origins in India lodging the initial complaint under Article 35 (Chapter VI) of the UN Charter which authorises the UNSC to issue recommendations but does not give it power to make binding resolutions. Such resolutions have been operative only with the consent of all parties involved, and this was no exception, as stated by the UN Secretary General Kofi Annan in 2002 that the UN resolutions on Kashmir were not "enforceable in a mandatory sweep". Traditionally, Chapter VI has not been interpreted to support collective intervention by member states in the affairs of another member state.¹² As such, taking *de facto* cognisance of the Shimla Agreement, if not a *de jure* cognisance or a formal note, no resolution on Kashmir has been thereafter passed by the UN.

The UNMOGIP has some other peculiarities. Besides the milder Chapter VI, it is not a mission in classical sense but only an observer group. On the other hand, where required the Chapter VII missions have well armed military peacekeepers who can 'enforce peace', as in Democratic Republic of Congo (DRC), Somalia, Haiti or in the Gulf War I. Under Chapter VII, UNSC was granted broad powers essentially as a reaction to the failure of the League of Nations, and it may impose measures on states that have obligatory legal force and therefore need not depend on the consent of the states involved. Further, from the beginning, it was called 'UN Military Observer Group in India and Pakistan' and not

as 'UN Military Observer Group in J&K', thus fundamentally denoting a ceasefire related issue rather than questioning of the legality of succession of the erstwhile princely state of J&K to India, which is a settled issue by all international laws.

Therefore, the mandate of the group was only to monitor, investigate and report complaints of cease-fire violations along the "ceasefire line" in Kashmir to the UNSC. More precisely, it is monitoring along the erstwhile "ceasefire line" which is not existing any longer and therefore the Indian position that the mandate of UNMOGIP had lapsed, since it related specifically to the ceasefire line under the Karachi Agreement. In the 1971 War, a number of positions changed hands. Thus, the previous "ceasefire line" and the now LC, as promulgated in the 1972 Shimla Agreement from NW 6055 to the famous NJ 9842, are two different entities with the former no longer in existence.

Way Ahead

While the UNMOGIP remains in Kashmir, the reports of normalcy and return of tourists to the Valley shall always sound less than credible, besides providing a propaganda tool to the separatists and their handlers across the LC. Further, India – the world's largest democracy, an aspiring permanent member of the UNSC and itself a major troop contributor for the UN missions across the globe – cannot continue to have a UN group in a territory which India rightfully asserts to be an integral part. While the Pakistan may maintain that the UNMOGIP should continue to function because no resolution has been passed to terminate it; to avoid any controversy India can restrict the group to its existing office in New Delhi with no field presence, pending further diplomatic action to officially close the group, preferably after Pakistan relinquishes non-permanent membership of UNSC on 31 December 2013.

Things are changing in J&K. In 2011, Centre's interlocutors on J&K stated that most people who met them were not in favour of implementation of the UN resolutions seeking plebiscite on Kashmir, but favoured socio-economic and political empowerment of people and devolution of power. The fancifully-named house boats and the *Shikaras* in the Dal lake are filling up again, after some of them had rotted in the water due to disuse, an elegant five-star hotel now overlooks the lake and the thieves in Srinagar

have become bold enough to steal ATMs in the night – admittedly a strange sign of normalcy but earlier they wouldn't have dared to venture out after sunset. In the lovely Vale of Kashmir, the UN is now something in New York. There is talk of missed opportunities, of inviting the Kashmiri Pandits back to the Valley, concerns about rising marriage expenses and a sharply divided opinion about a three-girl band called *Pragaash* which has quit playing. Essentially, there is hope for the future and amidst this infectious hope, a relic from a troubled past is inconsistent with the changed realities.

Endnotes

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3. Ibid.
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9. UN mission in Kashmir of vital importance: Geelani, Rising Kashmir News, January 24, 2013. See at <http://www.risingkashmir.in/news/un-mission-in-kashmir-of-vital-importance-geelani-40510.aspx>
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11. *Wajahat Ahmad*. Loc. cit.
12. Collective Insecurities, *Azeem Suterwalla*, Harvard International Review, 22.4, Winter 2004, pp 8-10.