

Jammu & Kashmir Self-Determination Movement

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I thank the organizers for giving me the opportunity to speak on the important issue of self-determination in regards to the Indian state of Jammu and Kashmir, called simply “Kashmir” for brevity.

What is the genesis of this demand, how did it come about, where do things stand today, and what do I foresee for the future? These are the topics that I will address in detail.

The idea of self determination in Kashmir comes from three historical events. First, it is construed to be part of Kashmir’s accession to India in 1947. Second, it is mentioned in the UN resolutions on Kashmir in 1948. Third, and perhaps most importantly, it is a fundamental right granted by the UN Charter of Universal Rights. I intend to take each of these items in sequence.

However, before I do that let me begin with the crux of the issue being discussed today – which is that why is the self-determination in Kashmir movement still going strong in the West and particularly in the U.K., USA and Canada? Is that because these nations are democracies that have championed for the human rights of the disfranchised, even ignoring for a minute how the same countries have treated their own citizens of color or its own indigenous people? As you dig deeper into it, you find out that even in these three democracies, it is mostly a specific set of political class - the Labour Party in the U.K., the Democratic Party in

the US, and the Liberal Party in Canada, that are making it an issue more than the rest. Why is that so?

Here-in lays the tale of global geopolitics, international security in the de-colonized era, and simply intrigue by the major powers that brought these three Western nations, ***with the above named political parties in power***, to focus on India when it became independent in 1947. I will go one step further and publicly identify one man named Philip Noel-Baker, from UK, who put together the political architecture in 1948 to ensure that the Kashmir issue will become an open and turbulent issue at the center of regional geopolitics in the Indian subcontinent for years to come. Mr. Noel-Baker, who incredibly won a Nobel Peace Prize in 1959, died in 1982 but his Kashmir legacy of wars, deaths, violence, terrorism, and ethnic cleansing in what was once a beautiful and peaceful land lives on.

So who was Lord Noel-Baker (also remembered as Baron Noel-Baker) and why is he crucial to the Kashmir self-determination movement? Until a few decades back all we knew about him is that before he became a cabinet minister in the Lord Atlee Government, he served as the Secretary of State for Commonwealth Relations Office (CRO), and in effect was the senior-most bureaucrat in the British civil service in-charge of India-Pakistan affairs following their independence in 1947. Not much was publicly known about his precise involvement in Kashmir affairs during his tenure in that position from 1947 through 1950 until the U.K. Government declassified many of the “political and secret” India Office Records in the custody of CRO – now called the Foreign and Commonwealth Office (FCO) – and made these accessible to public at the British Library Asia Collection in London. As the big picture emerged, jig-saw puzzle began to take shape.

The first piece of the puzzle was when the Maharaja of Jammu and Kashmir signed the Instrument of Accession on 26th October 1947 which was duly

accepted without changes or exceptions by the Governor-General of India on 27th October 1947, then why did Lord Mountbatten feel the need to issue a separate letter to the Maharaja on the same day in his personal capacity suggesting that the “accession should be decided in accordance with the wishes of the people of the State.” After all the Instrument of Accession signed between the State and the Dominion of India was identical to those that all 562 princely states had signed.

So you can see the British mischief had already set in. In a sense it was to be expected given the agreement that Lord Mountbatten had extracted from Hindu, Muslim and Sikh political leaders of India, called the 3rd June 1947 Plan, where the parties agreed to the partition of India. That date in my view is the “Indian subcontinent version of the date which will live in infamy.” The Mountbatten Plan was subsequently codified in the Indian Independence Act, 1947 by the British Parliament, and the rest as they say is history.

The 6-point Mountbatten Plan included two points related to Princely States:

- Princely States could either join Pakistan or India by agreeing to the Instrument of Accession
- Provinces could become a separate nation other than Pakistan or India

After having been informed of a few declassified diplomatic cables and messages between Philip Noel-Baker, Lord Mountbatten and other key players like the British High Commissioners to India and Pakistan, as well as the internal communications by these personalities with Lord Atlee, it became obvious to me that:

- The U.K. Government expected the Princely State of J&K to remain independent and perhaps encouraged the Maharaja to do so given its continuing security and geo-political interests in the region

- However, the carefully laid out plans by the British Government were greatly upset by the “Operation Gulmarg”, launched by Pakistan to capture the State militarily on 22nd October 1947

The Maharaja was left with no choice but to sign the Instrument of Accession with India, and from the perspective of the British Government Maharaja’s acceptance of Sheikh Abdullah as the paramount political leader of the State created a new opening to preserve their geo-strategic interests. The die was cast, and hence the accompanying letter from Lord Mountbatten (in his personal capacity and not as the Governor-General of India) to the Maharaja dated 27th October 1947 as noted previously.

Next, the theatre of political skullduggery on Kashmir moved on to the United Nations Organization (UN), a deal forced upon Prime Minister Nehru by Lord Atlee in return for approving India’s request to militarily retake the whole of the Poonch region which it could have done with ease given that the tide of war had turned in India’s favor by November 1947. The declassified documents are very clear and precise on what happened and how Nehru was betrayed in the end by both Lord Atlee and Lord Mountbatten because once India took the Kashmir conflict to the UN at their nudging, the U.K. Government immediately called for a cease-fire by both India and Pakistan.

The documents are also very clear that the British government did not want the Indian territory of Kashmir to adjoin the North-West frontier region of Pakistan. As the British High Commissioner to Pakistan, Sir Laurence Barton Grafftey-Smith put it succinctly, *“Indian Government’s acceptance of accession of Kashmir is the heaviest blow yet sustained by Pakistan in her struggle for existence. Strategically, the frontier of Pakistan which must be considered as requiring defense is very greatly extended since India would gain direct access to the North-West Frontier*

and tribal areas where infinite mischief can be made with "Pathanistan" or other slogans." (File I/P&S/1845, dated 29th October 1947)

The stage was set for Lord (or Baron) Noel-Baker to give finishing touches to his grand plan for the future of Kashmir at the UN. Consulting with various members of the UN Security, but especially with the US and Canada (all having like minded left-leaning governments), he came up with the UNSC Resolution 39 of 20th January 1948. The UNSC Resolution proposed a three member commission with majority deciding on the course of action, effectively ensuring that settlement of the Kashmir dispute will be dictated from New York. Apart from treating the aggressor and the victim on par, Lord Noel-Baker also tried to persuade India to accept his proposal of creating an impartial administration in Kashmir under the auspices of the UN. The administration was to be headed by a neutral Chairman selected by the UN, and the security was to be guaranteed by a joint Indo-Pakistan military force headed by a Commander-in-Chief appointed by the UN. Needless to say Lord Noel-Baker's ideas were so outlandish that even Americans shied away from it. The proposal was dropped but it clearly exposed the hidden intentions of the British Government. For Lord Noel-Baker the bogey of self-determination in Kashmir was just a ruse to create an independent state that would fall under the suzerainty of the Western powers.

The UNSC Resolution 39 was subsequently superseded by the UNSC Resolution 47 that was adopted on 21st April 1948. It recommended a three-step process for the resolution of the dispute which we all know and I will not repeat here.

In summary, the first two reasons behind the issue of self-determination in Kashmir - Mountbatten Letter to the Maharaja dated 26th October 1947, and the UNSC Resolution 47 dated 21st April 1948 – are intertwined and were the product of a colonial mind set bent on pursuing its hegemony on a Dominion State which is both unethical and immoral by contemporary standards. And, the fact that

Pakistan failed to meet the first step in the three-step process described in the UNSC Resolution means that not only was the Kashmir issue born out of deceit and treachery by major western powers, but also the solution proposed was unimplementable given that Pakistan, and not India, backed out of the deal. A question arises that since both India and Pakistan now have agreed to consider Kashmir as a bilateral issue under the Shimla Agreement of 1972, then why is the UN still holding on to the Kashmir file?

Let me now address the topic of self determination in contemporary terms. The right of self-determination is a cardinal principle in modern international law and is recognized as an international legal right after it was explicitly listed as a right in the UN Charter. However, the principle does not state how the right of self-determination is to be made, or what the outcome should be. Therefore when the Republic of India calls its autonomous national election authority as the guarantor of the peoples right to self determination within the framework of Indian democracy, it is legally in tune with the UN Charter on self-determination. That applies to the state of Jammu and Kashmir as well.

But can a state once it has acceded to the Union change its mind? It is for each nation to define its benchmarks and legal processes on how that can be done. In the U.S., we have a case of “Texit” meaning when the State of Texas wanted to secede from the Union and filed a case on 15th February 1867 in the U.S. Supreme Court. In a ruling called the “Texas vs. White,” the Court ruled in December 1868 that the accession of Texas to the Union was complete, perpetual and indissoluble, meaning that Texas cannot secede from the United States of America. I bring up this case mainly because the UN Charter specifically points to the US Constitution as representative of the idea of self determination. It is appropriate to mention here that like the US, India is a federal democracy and its Constitution borrows heavily from the US Constitution.

So let me close by saying that that the entire exercise of self-determination in Kashmir came originally not from its subjects but from a mischievous colonial and hegemonic attitude of certain western powers who continue to foster the issue for reasons that can only be speculated. India simply has to learn live with false and fake narratives that have gone viral on the social media and while it should continuously challenge falsehoods that are being spread, it should also make clear that India has no intention on buckling to such devious pressures. In fact India has the moral and legal obligation to ensure that all its citizens, be it from Jammu and Kashmir or from any other province of India, fully enjoy the freedoms and rights enshrined in the Indian Constitution.

Thank you.