

ADDENDUM TO UNITED NATIONS COMMISSION FOR
INDIA AND PAKISTAN

THIRD INTERIM REPORT

MINORITY REPORT OF THE CZECHOSLOVAK DELEGATION

The third interim report of the Commission places on record the failure of a seven month's effort to fulfil its task of causing, by its mediation, the Governments of India and Pakistan to settle the Kashmir dispute by the peaceful means of a plebiscite. From the said failure of the Commission's mediation mission it has to be concluded that the resolutions of 13 August 1948 and 5 January 1949 which are the starting points of all negotiations, are out of keeping with the actual, present-day situation in the State of Jammu and Kashmir and that no compromise acceptable for both the Governments can be reached on their basis.

In putting on record the impossibility of attaining a positive result, the majority of the Commission proposes that the task the Commission had been charged with should best be entrusted to one mediator, and in the paragraph 286 of its report indicates also the road to arbitration.

The report, together with a description of the various phases of the negotiations and relevant documentation is to show that the mediation proceedings were handled correctly and in every way objectively, and that the negotiations that were conducted on the basis of the resolutions of 13 August 1948 and 5 January 1949, were wrecked on account of the intransigent attitude of the two Governments.

The Czechoslovak delegation co-operated to full extent with the Commission to achieve the solution of the Kashmir problem and in presenting its views in a separate report it wishes to throw light on those phases of the Commission's mediation efforts where the majority report lacks to state clearly the reasons of the failure.

It is of course quite obvious that as a mere holder of a mandate from the Security Council, the Commission could, on taking over its task, only take cognizance of the given situation, and no fault can be ascribed to it as far as the core of the dispute proper is concerned.

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On the other hand, however, it is necessary to state that the mediation efforts of the Commission did not contribute in a constructive way to the positive solution of the whole problem.

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It needs placing on record that

(a) the Commission has made a serious mistake that it cancelled the joint political conference which had been convened with the assent of both the Governments for 22 August 1949, to New Delhi

(b) by its unauthorized proposal for the arbitration of the Truce Agreement it overstepped its terms of reference

(c) the secret arbitration offer of the Commission was, before being presented to the Governments of India and Pakistan, placed at the disposal of the Governments of the United States of America and the United Kingdom and President Truman and Prime Minister Attlee, in a synchronized action, made use of it for a public interventionary pressure

(d) the verbatim text of the secret arbitration memorandum came into the hands of the British High Commissioners in New Delhi and Karachi at the same time or even sooner than it was officially presented to the Indian Government, without even an attempt on the part of the Commission - despite urging by its chairman at the time - to institute due investigation of both cases of a flagrant breach of the integrity of the Commission's proceedings

(e) the Commission did not show sufficient sagacity when presenting its basic proposal of a solution of the Kashmir problem, the proposal which was adopted as the resolution of 13 August 1948, in which the Commission deeply underrated the significance of the "Azad Forces" and failed altogether to take into account the situation in the "North Area", on which two problems subsequently all the Commission's work kept on foundering

(f) the Commission did not succeed to win over the public confidence on neither side and on the contrary left the sub-continent charged by the press, both before the conclusion of its labours and after its departure, of pusillanimity and even of double-dealing.

The Commission stated itself in its first interim report that it came on sub-continent uncertain how it will be received and whether it will acquire the necessary co-operation of both Governments. This lack of confidence in its mission, however, can be seen throughout its labours. Instead of taking a firm stand on definite issues, where it was necessary, the Commission preferred to go by way of clarification promises compromising thus its own position and achieving on the whole in a positive way nothing.

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The failure of the Commission's mission is therefore not solely ascribable to the intransigence of the Governments of India and Pakistan, both of whom understandably tried in the course of repeated negotiations to gain the most advantageous position for each other; the reasons must be also looked for in the activities of the Commission per se, with a proper light thrown on the substance of the whole problem of Kashmir.

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The report of the Commission sets forth the three most important obstacles which balked its efforts to reach agreement:

- (a) Disposal of Azad Kashmir Forces
- (b) Withdrawal of regular forces from the State, and
- (c) The Northern Area

The reasons for the insolubility of these problems must be sought just in the shortcomings of the resolution of 13 August 1948. In its Part II, the full implementation of which is the basic condition for any further measures that would ensure a fair and unhampered carrying out of a plebiscite, there is no mention whatever of "Azad Forces", because the Commission did not assume that the cease-fire line would be of such long duration. The "Azad Forces" meanwhile grew by the spring of 1949 into 32 disciplined and fully armed battalions, which according to an evaluation by the military adviser of the Commission represent a "formidable force". Owing to this fact, which is at variance with Part I, Section B of the said resolution forbidding both parties any increasing of their military potential, the situation has materially undergone an absolute change and so a new problem was created as to what within the meaning of the resolution represents a "bulk" of the Indian army in Kashmir. From this have arisen logically further difficulties concerning the disarming of the "Azad Forces" and the synchronization of the withdrawal of military troops.

Similarly, due to the lack of sagacity on the part of the Commission, the situation was rendered more difficult also for the solution of the other main problem, the "Northern Area".

When dealing with its proposal to both Governments, adopted as the resolution of 13 August 1948 first by the Government of India - and subsequently sanctioned in the resolution of 5 January 1949 also by the Pakistan Government - the Commission entirely omitted to concern itself with the situation in strategically very important territory to the North of Kashmir.

/Having ascertained

Having ascertained this shortcoming the Government of India submitted a reservation in respect of the resolution, dated 13 August 1948, concerning its right to administer the northern territory, of which, on the basis of the military situation then existing, it maintained that it could not be put on par with the "Azad territory" to the West of Kashmir. Instead of rectifying the aforesaid shortcoming by a formal rider to the resolution - which in fact the Government of Pakistan sanctioned only five months later - the Commission replied by a letter dated 25 August 1948, in which it acknowledged to the Prime Minister of the Indian Government the receipt of his reservation and stated that "the question might be examined when the resolution of 13 August 1948 was implemented".

This obligation of the Commission, which - due to the Commission's own faulty judgment - therefore did not represent any formal part of the resolution of 13 August 1948, the Commission now explains as only a declaration of an intention to study later on the situation in the North, outside of the scope of the Part II, of the said resolution.

From the legal point of view, the Government of Pakistan does not, therefore, consider the Commission's letter of 25 August 1948 as legally binding on it, because it was only a question of the exchange of correspondence between the Commission and the Indian Government. Moreover, the situation in the "Northern Area" had meanwhile undergone a material change, in that the Pakistan army, which was not bound by the resolution of 13 August 1948, conquered many strategically important places during the interval before, by the resolution of 5 January 1949, it was also sanctioned by the Government of Pakistan.

It is only natural that, each from its own standpoint, the Governments of India and Pakistan should hold views diametrically opposed to each other.

The Government of India and Pakistan evaluate the legal weight of the Commission's letter of 25 August 1948, each from its own standpoint quite contrarily, of course. In this regard it has to be pointed out, that as early as of 3 September 1948, the Government of Pakistan notified to the Commission its definition of evacuated territory "as referring to the territories in the State of Jammu and Kashmir, which were at that time under the effective control of the Pakistan High Command". And here - due to the Commission's lack of understanding of the situation - is the core of all subsequent legal contentions affecting the Northern Area, which the Commission has not been able to abridge.

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While the Government of India made on 20 August 1948 a clear reservation regarding the position in the Northern Area - two weeks after that, Government of Pakistan, in its aforesaid notification made a claim of great consequences mortgaging practically the political future of vast territories in the State of Jammu and Kashmir where the Pakistan army or forces under its High Command could have gained upper hand.

The Commission claims that at that time had no practical means to its disposal to verify the factual situation in the different parts of the State of Jammu and Kashmir. This is, however, exactly the reason why the Commission should have been firm at least on the legal ground and not to have taken course to empty promises. The Commission facing later on the materially changed situation in the Northern Area is bound to admit that while the reservation of the Government of India of 20 August 1948 may be legally valid, it is physically impossible to implement it.

The letter of the Pakistan Minister for Kashmir Affairs of 26 April 1949, contending that the definition of 3 September 1948 brought the whole of the Northern Area inside the "evacuated territory" is a logical sequel to the Pakistan's position of 3 September 1948, and at the same time a reflection of the Commission's shortsightedness.

Whatever are the reasons for not rectifying the oversight in the resolution of 13 August 1948, by a proper formal, legal instrument, it is to a great extent the Commission's own fault that its mediatory efforts to solve this second main problem have not proved successful.

In this connection it has to be pointed out another matter of real importance: Legal question of retroactivity of the resolution of 13 August 1948. The Belgian and Czechoslovak delegations requested the Legal Adviser of the Commission to submit a working paper showing the Commission's position in this regard. The said working paper - through no fault of the Legal Adviser whose efforts should be rather appreciated - amounts to a master-piece of evasiveness. The Commission itself cannot clarify its own legal instrument.

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After the rejection of its proposal of 28 April 1949, to bring about a Truce Agreement, to which both Governments lodged material reservations, the Commission's majority considered on the whole any further efforts in mediation as futile and, from the beginning of June 1949, the USA delegation strove to bring the Commission round to the idea of solving the question of the truce by arbitration.

/In its declaration

It its declaration which took the form of a resolution - document S/AC.12/233 - the Czechoslovak delegation on the other hand argued that "it is the conviction of the Czechoslovak delegation that there exists on the part of the Commission a legal and at the same time even a moral duty to send invitations to both Governments to attend a joint political meeting before taking into consideration any other means of solution".

The Commission was prepared to accept the Czechoslovak proposal but only subject to a successful termination meanwhile of the planned negotiations for the fixing of a definitive line of demarcation, on the realization of which the Czechoslovak delegation insisted with all the weight at its command.

This tying-up with a favourable result of the military negotiations in Karachi the Czechoslovak delegation declined with the basic declaration that "it is a serious political matter which must be considered on its own political grounds without any junction with military talks in Karachi, whatsoever might be their result." The majority of the Commission nevertheless adhered to its standpoint that the ultimate decision on the convening of a joint political meeting of both Governments will be made according to the result of the military consultations.

The pessimistic attitude of the Commission toward any negotiations for an agreement on the fixing of a definitive line of demarcation was shown to be entirely unjustified, and after their complete success the Commission approved in its morning session on 29 July 1949 - with the only exception of the USA delegation, which abstained from voting - the Czechoslovak proposal for the calling of a joint political conference of both Governments.

However, the measure of mistrust with which the Commission took this last of its important steps in mediation can be gauged from the fact that on the same day, 29 July in its afternoon session, it also passed - the Czechoslovak delegation abstaining - the proposal of the USA delegation of arbitration proceedings for a Truce Agreement, for which the Governments of India and Pakistan were recommended to accept as arbitrator Admiral of the Fleet Chester W. Nimitz.

The reasons given for the hasty passing of the arbitration proposal of the USA delegation was the much stressed anxiety that the joint political conference might end in failure and that, in order to save time, it was necessary to have a new proposal in readiness.

The Governments of India and Pakistan actually did accept the proposal of a joint political conference which was to make a start on 22 August 1949 in New Delhi, with members of the cabinets of both Governments taking part. However, four days prior to its inauguration, the Commission decided in its session on 18 August 1949, to send telegrams to both Governments, saying that the Commission itself was cancelling the joint political conference.

The reason for which this decision was made was the finding of unbridgeable conflicts in the answers of both Governments as to their ideas of the programme of the conference. A detailed explanation in this respect is being set forth in the majority report. What the report omits to mention, however, is that these conflicting points of view were well known previously not only to the Commission itself but also to the two Governments. The Czechoslovak delegation agreed with the view that a possible failure of the joint political meeting might give a worse turn to the situation, but it maintained that the responsibility rests with the Governments of India and Pakistan, which had expressed their willingness in principle to enter into direct negotiations with each other under the chairmanship of the Commission. A prepared conference that had already been widely announced by the international press can be cancelled only by the participating Governments. They would in that way themselves offer proof that mediation is excluded when they cannot even be persuaded to make any start whatever with the discussion of questions in dispute.

These fully reasoned arguments fell rather flat, however, and in spite of the warnings uttered by the Czechoslovak delegation that an infringement of the terms of reference was involved, the Commission forthwith set about preparing the arbitration action it has passed in advance on 29 July 1949.

How out of order it was, however, to cancel on the Commission's own responsibility an already convened joint political conference could be seen at the end of August 1949, on the occasion of the handing over of the arbitration offer to the two Governments. The Pakistani Minister of Foreign Affairs, Sir Zaffrullah Khan informed the chairman of the Commission on 29 August 1949 in Karachi - in presence of the principal secretary to the Commission - that the Pakistan Government was greatly surprised that the Commission had cancelled the conference. Something to the like effect was also said on 30 August 1949, in New Delhi to the chairman of the Commission and its principal secretary by a representative of the Indian Ministry of Foreign Affairs and, two days later, by the Prime Minister of the Indian

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Government, Pandit Nehru, who manifested great astonishment and expressed disappointment at the decision of the Commission. The reason for their standpoints was the conviction they voiced that parties to a dispute need not have identical views - for that is why disputes are being carried on - but they must sit down round a table and must at least start discussions if any solution is to materialize.

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The course of the discussions on the offer of the arbitration of the Truce Agreement - to which the Commission was not even authorized on the basis of its terms of reference - made it clear indeed that the Commission was not free from outside influences, although it was to act only according to the mandate of the Security Council in the interest of the United Nations Organization as a whole. The interventions by President Truman and Prime Minister Attlee were only made possible on the basis of precise and timely information emanating from the Commission itself. This reality needs examining, just as it is necessary to subject to investigation the circumstances that and how it should be possible for a secret memorandum of the Commission on the subject of arbitration to get into the hands of British High Commissioners in New Delhi and Karachi at the same time or earlier than it could be officially presented to the Government of India.

In this connection it should be also observed that since May 1949 there appeared in the press of the USA frequent notices of the shortly to be expected arrival of Admiral Chester W. Nimitz on the sub-continent. At the beginning of June the American press brought the news - said to be emanating from Lake Success - that the Commission would take the road of arbitration proceedings. This news was published a day ahead of the time when the USA delegate placed before the Commission his first arbitration proposal. The reports of the American press were of course explained as pure speculation on the part of journalists but by a rather strange coincidence they did find precise expression for proposals which were just being handled by the Commission in its non-public sessions. Coupled with information conveyed time and again by Admiral Nimitz to the press the Commission considered it as an interference with its work, and its secretariat repeatedly drew by means of cables the attention of Lake Success to the necessity of remedying matters.

/As far as

As far as Admiral of the Fleet Chester W. Nimitz is concerned, there is no doubt that he acted in good faith. In his various utterances there was, however, a lack of reticence in connection with the cool and reserved wording of the letter of 18 March 1949, by which the Indian Government acquainted the Commission with its consent to the Admiral's designation as Plebiscite Administrator. The Commission, however, did not - as it was highly advisable - convey to the Admiral Nimitz the verbatim text of the said notification and ~~bears~~, therefore, itself the responsibility for the lack of moderation on the part of the designated Plebiscite Administrator.

The climax to the undesirable publicity came with the article datelined Lake Success, 23 August 1949, transmitted by FTI under the headline: "Kashmir deadlock may be referred to an arbitrator". The Commission took up this matter in its meeting on 24 August 1949, and in expressing its concern over this type of publicity, considered it unanimously an interference with its work and prestige. In the course of an exchange of views it was decided to address a telegram to the President of the Security Council asking that the Secretary-General should be requested to publish in the press a statement stressing that it lay with the Commission itself to decide what action it should take and counter thus the impression that the Commission derived initiative from the press or any other sources - document S/AC.12/SR.223.

A question all on its own is the case of a member of the United Nations Secretariat, Mr. Cordier - document S/AC.12/257 - who, on 26 August 1949, withheld the aforesaid cabled protest of the chairman of the Commission, at the time a Czechoslovak delegate, to the chairman of the Security Council, at that time a delegate of the Soviet Union, against outside interference with the work of the Commission. The cablegram was unanimously approved and voted upon by all members of the Commission, which only got to know through Mr. Cordier's cabled reply of 4 September 1949, that he had not delivered the complaint which was addressed to the Chairman of the Security Council personally. In this connection it should be particularly stressed that this interference of the Secretariat with the competence of the Commission and the Security Council at the same time exactly coincides with the time of the Anglo-American intervention, which was carried out on 31 August 1949. The explanations given to the Commission by cables of Sir Alexander Cadogan and the Secretary-General of the United Nations, Mr. Trygve Lie, rejecting the Commission's telegraphic complaint of 6 September 1949, are not only inadequate, but both cables are actually drafted so as to constitute a reproach to the Commission - they were dealt with in the statement of the Czechoslovak delegation of 16 September 1949 - document S/AC.12/257.

/The Commission

The Commission conducted a series of strenuous negotiations and did a considerable amount of paper work without a positive result. Besides the shortcomings springing from its own faulty judgment of the two fundamental problems, the "Azad Forces" and the "Northern Area", the Commission was handicapped by the fact that it judged its task for the greater part only from the technical angle, without a capacity for seeing and drawing its conclusions from the whole political background of the Kashmir problem.

On the other hand the offer of arbitration that exceeds the scope of the Commission's terms of reference was in no way an accidental one. The USA delegation strove - as already mentioned - for arbitration from as early date as June of the current year with the quite frankly avowed intention to bring Admiral Nimitz at the earliest possible moment to the sub-continent in the capacity of arbiter. The Commission on its part was favourably inclined toward the arbitration proposal because it did itself not greatly believe in its mediating mission, mainly because it was clear on the whole how difficult would be the implementation of the resolution of 13 August 1948.

Even if both Governments had signed a Truce Agreement, it would have remained doubtful nevertheless whether the conditions of the carrying out of a free and unhampered plebiscite in the spirit of the said resolution would really be capable of realization. In any arrangement of a truce by means of arbitration there was a great probability that the truce arbiter could practically become the arbiter of the dispute as a whole.

The Kashmir dispute, however, is an affair of the whole forum of the United Nations, and in its solution all preliminary conditions and guarantees of its just settlement must be preserved. If every one of the member States of the United Nations Organization would take a similar course of action to that of the United States of America and the United Kingdom in their interventions under absolute disregard of the competence of the appropriate organs of United Nations Organization, each and every mediation action would be made impossible and the United Nations Organization would be seriously undermined.

If peaceful solution of the dispute is to be attained it has to be prevented that the Commission does not become an instrument of policy of certain Great Powers.

The mediation efforts aimed at the solution of the Kashmir problem and first of all the basic conditions for any further successful work of the mediation organ itself must be put on a new basis enjoying a unanimous support of the Security Council.

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It cannot be, indeed, deduced from the failure of the Commission's mission that any further mediation in the Kashmir dispute is precluded. All it needs is a proper evaluation of the actual facts.

The resolution of 13 August 1948, due to its many serious shortcomings, cannot - in its present form - remain the basic legal instrument of new mediation efforts. All these shortcomings should be thoroughly analysed and exposed before a decision be reached upon new terms of reference. The interdependence of provisions of the said resolution with those of the resolution of 5 January 1949 - especially with regard to the demilitarization of the State of Jammu and Kashmir - should be replaced by broader provisions of new terms of reference, since under the present situation not only the attainment of the Truce Agreement but its implementation likewise is impossible.

The conclusion presented in the majority report expressing doubts about the flexibility of the Commission composed of five members is unwarranted. It was not a lack of flexibility but rather too much flexibility - as demonstrated by so many and so important clarifications, elucidations etc. - which considerably contributed to undermine the Commission's position, as a result of a vain attempt to please both parties to the dispute at the same time.

After the experience of the past it is quite clear that the new mediation organ must be really independent and untrammelled by any outside interference.

A guarantee of full independence would be enjoyed by a Commission consisting of representatives of all the members of the Security Council.

The new Commission taking advantage of being in a possession of all the necessary facts, duly evaluated by the Security Council itself, would be in a position to carry out its mediation task without delay, at Lake Success, in an atmosphere much more suitable for reaching the Truce Agreement than when on the sub-continent.

Prior to this, however, it should be taken into consideration, that both the governments of India and Pakistan - as already stated - voiced strong and concurrent protests that the joint political meeting did not materialize. It should be, therefore, recommended to the Representatives of both Governments to avail themselves of the opportunity of the Commission being present here, to reach now, in a joint meeting at Lake Success, an understanding at least on the most outstanding differences emanating from the resolutions of 13 August 1948 and 5 January 1949 respectively.

Such a procedure would constitute the best premise for the new mediation effort and would contribute in a simple and constructive way to its success, if not eventually settling the problem of the Truce Agreement.