**Kashmir and positive duty of the Security Council**

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January 20, 2020

I met the President of Pakistan, Chairman, Parliamentary Committee on Kashmir, DG ISPR, President and Prime Minister of Azad State of Jammu and Kashmir and people from various other disciplines. The common thread of discussion in these meetings was the continued lockdown and internet blockade of 168 days and Kashmir case. Prime Minister of Azad Kashmir, himself a member of a divided family, could directly relate to the suffering and pain and President of Azad Kashmir, as a career diplomat has continued to watch Kashmir, too had an immediate feel of the pain inflicted through a collective punishment imposed by the State of India.

The political phrase of a member of a divided family, has to be stinging and different from others not subjected to a pain of continued and brutal separation. This might make Prime Minister of Azad Kashmir, quite rightly, look at times belligerent and angry. It needs a patient and humane understanding. Government of Pakistan and Government of Azad Kashmir, have a template of relationship, created through Provisional Declaration of 24 October 1947, Karachi agreement of April 1949, and the Constitution Act of 1974. Government of Pakistan has assumed responsibilities in Azad Kashmir under UNCIP Resolutions. This shared constitutional relationship under UNCIP Resolutions and article 257 of the Constitution of Pakistan, should create a comfortable zone in their relationships. The litmus test should always remain the PRINCIPALITY of the people and dignity of the Government of Azad Kashmir. It should be a relationship in equity.

Under the circumstances caused by Indian actions after 5 August 2019, the Government of Azad Kashmir has to be a responsible and representative Government, prepared to walk along with the support of Government of Pakistan, all around the world to speak to the world. The role of the Kashmiri People living on both sides of the cease fire line and in India and Pakistan has been duly recognised by the UN Security Council in 1952.

United Kingdom at the 606th meeting of UN Security Council held on 06 November 1952, has highlighted the role of people. UK representative Mr. Gladwyn Jebb recognising the role of the people has said, “Efforts of the people of Kashmir on both sides of the cease fire line and indeed, of the peoples of India and Pakistan also, would be concentrated on the task of organizing the methods and procedures to enable the people of Jammu and Kashmir to express freely their wishes…” We need to encourage the roles of various peoples identified by the United Nations. United Nations Representative for India and Pakistan has equally acknowledged that, “The people of Jammu and Kashmir through a free and impartial plebiscite would signal through the darkness of these times a ray of hope that, not by bullets but by ballots, not through conflict of armies but through co-operation of peoples, is the enduring way for people to determine their own destiny and way of life.” The non-knowledge of Kashmir case and the UN Resolutions has proved fatal.

India may exact concessions in peace but it could not win any war against Pakistan or the people of Kashmir. Size and conventional armour, would not have any place, in the future war between India and Pakistan. Pakistan’s nuclear ability and war preparedness, has neutralised Indian size and there is an equity of strike

The Review on Kashmir situation held on 15 January 2020 at the UN Security Council, at the request of Pakistan and supported by China, may be poopooed by India, but it would be a vain effort to keep the ‘face’. Deep down Government of India, knows that the review is an advance of the first indoor meeting of UN Security Council held on 16 August 2019. The review has helped to engage the Security Council members, in particular, Russia to consider their obligations to mankind under the Charter.

An important feature, which we need to highlight is the “positive duty” of the Security Council, pointed out in respect of Jammu and Kashmir Situation in February 1957. United States of America was the first UN Security Council member to address the question of a “Positive Duty of the Security Council”.United States of America at the 768th meeting of the UN Security Council held on 15 February 1957 pointed out that Security Council had a ‘positive duty’ and “unless the parties are able to agreeupon some other solution, the solution which was recommended by the Security Council should prevail.”

United States of America has said in Para 26. “Thus the Council again has a positive duty to assist the parties in finding a just and equitable solution. The Security Council’s overriding endeavour in connexion with Kashmir has always been to secure an amicable settlement acceptable to both parties. In doing this, it has sought to build upon the gains which have been made in the past and upon agreements which have been reached by the parties. As the Secretary of State of the United States said on 5 February1957at a press conference: “We continue to believe that unless the parties are able to agree upon some othersolution, the solution which was recommended by the Security Council should prevail,which is that there should be a plebiscite.”

Para 27. We listened attentively to the forthright presentations of the representatives of India and Pakistan with this in mind.We were pleased to find that a common basis for agreement still exists upon which the Security Council can build in its efforts to assist the parties in finding a pacific solution.One basis for agreement is the continued recognition by the parties “of their international obligations under the resolutions of the United Nations Commission for India and Pakistan dated13 August 1948 and 5 January 1949. Affirmations of this adherence were made by the representative of Pakistan at the 766th meeting and by “the representative of India at the 767thmeeting. The representative of Pakistan stated: “The only international obligations which the Governments of India and Pakistan have undertaken in regard to the Kashmir dispute are embodied in the two resolutions of the United Nations Commission for India and Pakistan13 August1948 and 5 January 1949.” [766th meeting, para.4.]

The representative of India stated: “These are the engagements. If they were of a formal character, they might be treaties, but, at any rate, they are the engagements we have entered into-the resolutions of 13 August1948 and 5 January1949.”[767th meeting, para.97.] De-escalation and enhancing the trust between India and Pakistan is essential for the three peoples, namely, people of Kashmir, people of India and people of Pakistan and for the region. Disengagement between India and Pakistan is dangerous and engagement at the UN Security Council and at other forums is very important. There is no room or future for turning backs on each other. India and Pakistan shall have to rave courage to face each other and engage each other in a good neighbourly spirit. There is no doubt that India has wronged the peace, the people and the habitat in Jammu and Kashmir and relations in the neighbourhood. Belligerent rhetoric and punishment of Muslims in Kashmir and in India may win an election to BJP but it has a limited sell by date. Kashmiris have a history of centuries old struggle and they have sustained exploitation and armed conflicts.

Indian Government has to revert back to its bilateral pledge made in the bilateral agreement of 27 October 1947 and her commitment made at the UN Security Council on 15 January 1948, and tender its claim for a UN supervised Plebiscite so that the people of Jammu and Kashmir are able to realise their right of self-determination. India may exact concessions in peace but it could not win any war against Pakistan or the people of Kashmir. Size and conventional armour, would not have any place, in the future war between India and Pakistan. Pakistan’s nuclear ability and war preparedness, has neutralised Indian size and there is an equity of strike. Let us join Dr. Frank Graham UN Representative for India and Pakistan and pray for ‘peace’ on Gods earth.

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