



KENYA MODEL UNITED NATIONS

20TH SESSION

BACKGROUND GUIDE

AGENDA: THE KASHMIR CONFLICT

DAIS ADDRESS

Excellencies,

It is of the highest honour and utmost privilege that we get to preside over the Kenya Model United 1st preliminary session of the United Nations Security Council. We congratulate you for having risen up to the call of duty, relentlessly executing your mandate, with all the powers vested upon you to grace your presence to this high-level council.

We have unreserved confidence in the abilities of all those chosen to represent the nations that sit at the United Nations Security Council. Pursuant to this, the dais is in no doubt that the level and quality of deliberations and proceedings shall be quintessential.

We rest assured that the matter on the table shall be meticulously researched upon, conclusively deliberated and comprehensively resolved as the buck stops with the UNSC.

In order to belabour in fact and objectively, relative to your states stance, make reference with full understanding to your state's foreign policy

The dais is in support of its call for stronger international human rights mechanisms to remedy the humanitarian violations as ostensibly seen in the Rohingya Muslims of Myanmar

We are looking forward to having received Position papers of your representative and respective states by or on the **21st March 2021, 2359hrs.**

Forward this to the Council's email address: Securitycouncil@kenyamodelun.or.ke

Yours in service,

Signed

Sanaa Khandwalla

David Kariuki

Samuel Mue

THE SECURITY COUNCIL



The United Nations consist of a total of 6 principal organs, out of which, one is the United Nations Security Council (UNSC). Following the objectives of the UN, the UNSC is charged with maintaining international peace and security while also being in charge of accepting new member states into the UN and approving any changes that are to be made to the United Nations charter.

The council is made up of a total of 15 member states, out of which 5 are permanent members while the other 10 non-permanent members gain their seats through a series of lobbying and voting.

The five permanent members are often referred to as the founders of the UN and include:

- The United States of America
- The United Kingdom of Great Britain
- The French Republic

- The Russian Federation
- The People's Republic of China

The current non-permanent members are India, Kenya, Mexico, Norway, Ireland, Vietnam, Niger, Saint Vincent and Grenadines, Tunisia and Estonia.

MANDATE OF THE UNSC

In accordance with Chapter V of the Charter of the United Nations, the powers and functions of the Security Council defined in Article 24, 25 and 26, the United Nations confers the UNSC's primary responsibility to be the **maintenance of international peace and security** and allows the Council to act on its behalf whilst performing the aforementioned functions.

Binding the council to work within the boundaries of the Purposes and Principles of the United Nations, Chapters VI, VII, VIII and XII of the Charter shed light on the specific powers bestowed on the Council.

Under Article 39, Chapter VII, which states, "The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression..." The council has exclusive powers to recognize aggressors and the following article, Article 40, calls upon the involved parties to comply with "provisional measures".

Article 41 authorizes the Council to take measures not involving the use of armed forces (i.e.: trade sanctions, embargoes, etc.) whereas the succeeding article, Article 42, clearly states, "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security...".

Hence, these articles contained within Chapter VII of the UN Charter provide guidance to the Council, on its working and probable course of action during an international conflict (that fits the given criteria).

PROCEDURAL AND SUBSTANTIVE MATTERS OF THE UNSC

On procedural matters, each member yields one vote that is requisite of nine affirmative votes for matters of such a nature to pass.

On substantive matters, each member yields one vote that is required of an affirmative vote of nine, fully inclusive of the votes of the 5 permanent members that yield **VETO** powers. It is imperative to note that a permanent member may abstain from voting without impairing the validity of the aforesaid decision.

Any state, regardless of its membership or lack thereof, can bring a case to the floor of the council. Pacific methods are given precedence as the interim and immediate dispute resolution mechanisms. If and when they fail to achieve the desired effect, international peacekeeping forces may be deployed.

In addition to several standing and ad hoc committees, the work of the council is facilitated by the Military Staff Committee, Sanctions Committees for each of the states under sanctions, Peacekeeping Forces Committees, and an International Tribunals Committee.

HISTORY OF CREATION OF KASHMIR

Before the year 1947, India, formerly known as British India, was a large country consisting of two main religions: Islam and Hinduism. Now while both religions were widely spread throughout the country, the majority still followed the Hindu way of life, thus posing a threat to the Muslims of the state. This threat and the fear of survival of the Muslim population is what brought about the partition. While under the British rule, the Muslims in India were protected and so were their rights. However, as the independence of the state inched closer to reality, so did the question of the protection of the minorities.¹ The Muslims questioned whether they would continue enjoying the protection they had under the British rule or would they be discriminated against and be the victims of racism. The Hindus on the other hand also asked whether they needed to continue giving place to people in the country who did not follow the same religion and way of life as them. As such, the quickest and most agreeable solution was to split one big country into two smaller states; thus creating what we now recognise as India and Pakistan.²

¹ S. Ansari, 'How the Partition of India happened – and why its effects are still felt today', The Conversation, August 2017
<https://theconversation.com/how-the-partition-of-india-happened-and-why-its-effects-are-still-felt-today-81766>

² Britannica, The Editors of Encyclopaedia. "Kashmir". Encyclopedia Britannica, 31 Oct. 2019,
<https://www.britannica.com/place/Kashmir-region-Indian-subcontinent>.

The process of this historic separation began in early March of 1940, when the Muslim League proposed the creation of a separate state or even states for the Muslim minority to call their own; this state being Pakistan. Now although on paper, this looked like a perfect solution, the practicality of it was in fact quite complicated. After many agreements and disagreements, violent riots and even peaceful protests, in August of 1947, this partition finally took place.³ However, dividing one country into two separate ones brought about the problem of dividing the areas of that country by two as well. One such area was Kashmir. Both the newly created Pakistan and the newly uncolonised India wanted to lay claim on the full area of Kashmir. However, owing to the geographical location of the city, the only possible solution was to divide it between the two countries. Thus, Kashmir was divided into two parts. Pakistan was given both the northern and eastern borders, which comprise three areas; Azad Kashmir, Gilgit and Baltistan. India on the other hand included the southern and southern-east portions within their borders, comprising Jammu and Kashmir as well as Ladakh.⁴ In the 1950s, China also claimed a portion of Kashmir and now controls the northeastern part of Ladakh. Now it is expected that India and China would be having border problems given their constant competition, however it is in fact India and Pakistan that have been fighting over the areas of Kashmir from the time the area was divided between the two countries. The India-Pakistan controlled portions are divided by what is referred to as a 'line of control' (loc) however both countries refuse to recognise this line as an actual international border, thus causing the root of the problem.⁵

STATEMENT OF THE PROBLEM: THE CURRENT SITUATION IN KASHMIR

Over the years, violence has worsened in Kashmir especially in the state of Jammu and Kashmir in Indian-administered Kashmir. On 5th August 2019, India revoked Article 370 of the Indian Constitution, that gave Kashmir special status since it is the only Muslim-majority state in India. Article 370 gave Kashmir autonomy as they could have their constitution, separate flag and

³ W. Dalrymple, 'The Great Divide; The violent legacy of Indian Partition.' The New Yorker, June 2015 <https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple>

⁴ S. Asrar, 'How India, Pakistan and Bangladesh were formed', Al Jazeera, August 2019 <https://www.aljazeera.com/news/2019/8/14/how-india-pakistan-and-bangladesh-were-formed>

⁵ V. Doshi, N. Mehdi, '70 years later, survivors recall the horrors of India-Pakistan partition,' Washington Post, August 2017 https://www.washingtonpost.com/world/asia-pacific/70-years-later-survivors-recall-the-horrors-of-india-pakistan-partition/2017/08/14/3b8c58e4-7de9-11e7-9026-4a0a64977c92_story.

autonomy on all matters except foreign affairs, defence and communications. Also, Jammu and Kashmir were split into two federally administered territories. Mehbooba Mufti, one of the former chiefs of Jammu and Kashmir, said that the revoking of Article 370 would “make India an occupational force in Jammu and Kashmir and that today marks the darkest day in Indian democracy”.⁶

Additionally, in May 2020, new domicile rules were introduced that removed protection for those that were in the Kashmir region especially minority groups. According to seven UN rapporteurs, the introduction of new laws and loss of autonomy for Kashmir could pave the way for the change in the demographics of the region and the undermining of minorities which could be the intentions of the Indian-ruling party. Pakistan strongly condemned the move calling it illegal, and it downgraded its diplomatic ties with India increasing tensions. Shehryar Afridi, the head of the Pakistani parliament committee on Kashmir, urged the UN-Secretary general to “impose sanctions on India for its demographic terrorism in Jammu and Kashmir.”⁷ China, who also has a border dispute with India in Kashmir, condemned the move by India as it challenged the sovereignty of Kashmir.

The revoking of Article 370 in August 2019 came with a military crackdown and restrictions on communication in Indian-administered Kashmir. According to the United Nations High Commissioner for Human Rights, Michelle Bachelet, “raids on human rights defenders in Indian-administered Kashmir show continued restrictions on civil society, which impair the public’s rights to impart and receive information and debate the government policies affecting them.”⁸ The restrictions on communication have had a great impact on civic participation, education, health care, access to information and businesses. There have also been extrajudicial killings, which are staged gunfights, and they have been strongly condemned by Pakistan and international human rights groups. India retaliated at the 46th UN Human Rights Council session, where they said that Pakistan should focus on the human rights violations happening in their own country instead of pointing fingers.

Kashmir remains one of the most militarized regions in the world with no amicable solution between India’s and Pakistan’s territorial claims. The Line of Control which separates

⁶ <https://www.bbc.com/news/10537286>

⁷ <https://www.aa.com.tr/en/asia-pacific/un-rights-chief-concerned-over-kashmir-restrictions/2159492#>

⁸Ibid

Indian-administered and Pakistani-administered Kashmir remains a hot point of contention even after the border ceasefire was agreed upon in 2003 at the Line of Control. According to the Indian Ministry of Home Affairs, Pakistan violated the agreement 5,133 times in 2020, while Pakistan accused India of violating the agreement more than 1,600 times. ⁴ In 2019, tensions escalated quickly between the two nuclear-armed states when 40 Indian soldiers were killed by a car-bomb allegedly from Pakistani militia. This brought retaliatory airstrikes between the two nations who were almost at the brink of another war. However, there seems to be hope as the Director Generals of military operations of the India and Pakistan militaries agreed to strictly observe the ceasefire among other agreements in hopes of promoting peace and reducing civilian casualties.

CHRONOLOGY OF EVENTS

1947 – India received independence from Great Britain (August) and at the same time, a new state, Pakistan was also created. Kashmir, a region split between both borders chooses not to be part of either independent state. Thus begins the long standing and still ongoing battle over the region.

1948 – The Kashmir territorial sovereignty is raised at the UN security council and this raises the question of holding a referendum to decide on the position of the state. A UN Resolution also calls for a ceasefire and for the withdrawal of troops by both India and Pakistan from the state of Kashmir.

1949 – After a year of war, the first day of 1949 marks the day of an agreed ceasefire between India and Pakistan.

1950 – There are accession attempts by Kashmir to India through various means; referendums, government ratification et al.

China slowly also takes interest in Kashmir and occupies the eastern side of Kashmir.

1965 – India and Pakistan war over various fronts in Kashmir again but resort back to a ceasefire and withdrawal of troops

1971 – India and Pakistan go to war again over Kashmir and its disputed territories.

1972 - Both India and Pakistan Agree yet to another ceasefire, this time resulting in the landmark Simla Agreement of 1972. A line of control between India controlled Kashmir and Pakistan controlled Kashmir is established by the Simla Agreement .

1989 – An insurgency rises after elections by pro-independence Muslim militias whom India places blame on Pakistan for fueling and funding the insurgency.

1999 – Pakistan and India once again go to war after militants cross from the Pakistani side into the India Kargil district. This leads to a severing of diplomatic ties between India and Pakistan

2003 – Both Heads of state and government from India and Pakistan agree to meet and the product of their meeting is a ceasefire. This is after constant war over the past couple of years prior to that.

2003 – 2015 - Markedly an ostensibly peaceful period of time with no major wars. Trade links are

open between India and Pakistan from the peace they enjoy.

2016 – Civil and military unrest in Kashmir is witnessed with 68 civilians dead, and 9000 others badly injured from 50 days of civil strife.

PAST UNITED NATIONS SECURITY COUNCIL ACTIONS

The United Nations Security Council has always been heavily invested in the peace-keeping missions between India and Pakistan, especially on matters regarding Jammu and Kashmir, dating all the way back to when the two states were given independence.

S/RES/38: This was the first resolution passed by the UNSC and was brought to the council by India itself. The resolution asked both the concerned states to implement means and methods that

would improve the situation within the divided areas of Kashmir and to also refrain and avoid taking any action that could potentially worsen the situation.⁹

S/RES/39: Seeing that the situation was worsening rather than becoming better, this resolution set up the UN Commission for India and Pakistan (UNCIP), which was promptly mandated to investigate the ongoing disputes between the two countries as well as exercise 'mandatory influence' to solve the situation.¹⁰

S/RES/47: This resolution could be viewed as an addition to the previous one, due to the new additions this resolution planned to make to the UNCIP. This resolution caused an increase in the membership of the commission as well as going a step further to actually discuss measures that would lead to a stop in the fight between India and Pakistan. The resolution also touched on the issue of whether Jammu would belong to India or Pakistan. Under this resolution, India was to appoint an impartial plebiscite that would reach a conclusion as to whether Jammu would accede to India or Pakistan.¹¹

S/RES/51: This resolution passed in the year 1948 and simply directed that the commission be dispatched to the area of dispute immediately and ensure that the terms agreed upon in resolution 47 were followed through as soon as possible¹²

S/RES/80: By the year 1950 both states started to heavily arm their side of the LOC, which just furthered the tension between both countries and put the lives of all the people around the LOC at risk. As such, after various peacekeeping missions this resolution passed. Firstly this resolution called upon both states to demilitarise their area of control and to continue abiding by the earlier agreed upon cease-fire. Furthermore, unlike earlier agreed upon, where Pakistan was supposed to remove the forces from their area of control first, this resolution asked for both

⁹ RESOLUTIONS ADOPTED AND DECISIONS TAKEN BY THE SECURITY COUNCIL IN 1948
RESOLUTIONS ADOPTÉES ET DÉCISIONS PRISES PAR LE CONSEIL
https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_38.pdf

¹⁰S/RES/39,1948

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_39.pdf

¹¹S/RES/47,1948

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_47.pdf

¹²S/RES/51,1948

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_51.pdf

states to remove their forces from their respective areas simultaneously which also giving power to the plebiscite administrator to overlook this demilitarisation program and report to the council.¹³

S/RES/91.¹⁴ The UN representative resigned and a new one was appointed through this resolution. furthermore, both the concerned states were told to put into effect the demilitarisation. This resolution also asked the states to agree to arbitration if the UN representative failed to come up with a solution to all the differences between the two countries.

S/RES/96.¹⁵ This resolution passed after a speech from the newly appointed UN representative who voiced his methods of demilitarisation, which the council approved of. In addition to that, the resolution also touched on the continuation of the ceasefire between both India and Pakistan. The resolution also included points on the plebiscit, under which it was agreed that the accession of Jammu and Kashmir would be done through a free and impartial plebiscite, under the guidance of the UN.

S/RES/98.¹⁶: In 1952, as witnessed in this resolution, the UNSC was still urging both India and Pakistan to demilitarize in order to maintain peace around the LOC. The resolution urged both states to enter into a negotiation to discuss and agree upon the number of troops each state was allowed to appoint within their area of control along the cease-fire line (the LOC).

¹³S/RES/80,1950

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_80.pdf

¹⁴S/RES/91,1951

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_91.pdf

¹⁵S/RES/96,1951

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_96.pdf

¹⁶S/RES/98,1952

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_98.pdf

S/RES/122,¹⁷ S/RES/123,¹⁸ S/RES/126¹⁹: These three resolutions were all passed in the year 1957 and are often viewed as an extension of one another. The first one, being resolution 122 simply stated that the solutions reached by the assembly set up in Jammu and Kashmir did not meet the standard of a ‘solution’ as set out in resolution 91. the second resolution passed that year, that is resolution 123 then states that in order to meet the standard expected for the ‘solution’ to this long and still ongoing dispute, it would be in the best interest of both the states that the President of the United Nations Security Council himself go to Jammu and Kashmir, and along with the governments of both states, find viable means and methods to solve this dispute. Finally, resolution 126 reiterated that both states are to refrain from taking any action that would worsen the situation and that the UN representative for both India and Pakistan are to visit the sub-continent and report their findings to the UN.

S/RES/209,²⁰ S/RES/210,²¹ S/RES/211,²² S/RES/214,²³ S/RES/215²⁴: These were all passed in the same year of 1965 and all called for the two countries to actually act upon the ceasefire they had agreed upon. When the situation between the two countries worsened, they both took steps to arm and militarise their areas of control and began to engage in hostilities. Resolution 209 was then passed, urging the countries to abide by their previous agreements and to take steps to cease any sort of fight between the militaries of both countries. When this resolution fell

¹⁷S/RES/122,1957

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_122.pdf

¹⁸S/RES/123,1957

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_123.pdf

¹⁹S/RES/126,1957

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_126.pdf

²⁰S/RES/209,1965

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_209.pdf

²¹S/RES/210,1965

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_210.pdf

²²S/RES/211,1965

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_211.pdf

²³S/RES/214,1965

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_214.pdf

²⁴S/RES/215,

1965https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_215.pdf

through, resolution 210 was passed, including the same terms as the previous resolution, however, both countries failed to put this resolution into practice. This caused the creation of resolution 211, asking the countries to stop fighting, which also failed thus leading to resolution 214. Much like the previous resolutions, this resolution also asked the states to send back the military to its original position and stop any sort of armed conflict between the military of the two states, however, once again, both countries failed to follow through with this resolution. Finally, when all else failed, resolution 215 asked the representatives of both states to meet with the representative of the UN Secretary General to discuss methods of withdrawal of their forces, [S/RES/307²⁵](#): Finally in 1971, this adopted resolution put forward the council's demand of a durable ceasefire between the two states until the time that both states could fully withdraw from the Jammu and Kashmir areas. The council also asked for international assistance in dealing with the relief of suffering as well as the rehabilitation of refugees who suffered a great loss due to the constant battle between India and Pakistan.

for more information regarding the past actions of the UN click here: https://www.securitycouncilreport.org/un_documents_type/security-council-resolutions/page/2?ctype=Jammu+and+Kashmir&cbtype=jammu-and-kashmir#038:cbtype=jammu-and-kashmir

WHAT SHOULD THE IDEAL SITUATION BE

There are various UN instruments in place such as the UN Charter, the UDHR, the ICESCR and even the ICCPR that ensure fundamental rights and freedoms to people. Over the years, many of these rights which should be enjoyed by the people of Kashmir within the Indian border have been violated. This is clearly a breach of the various resolutions passed by the UNSC as well as a complete violation of the agreements signed and accepted by India. Various methods of intervention by Pakistan, the UN and even the international community at large have failed and the fate of the people of Jammu and Kashmir is still unknown. Their wishes and demands have been set aside and the future they were promised has been disregarded. This has happened for too many years now and a solution must be found. As such, being that the UNSC is mandated to ensure international peace and security it is upon the council to deal with this matter. However,

²⁵S/RES/307,1971

https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_307.pdf

in order for this to happen, all members of the UNSC need to work collectively in order to come up with solutions that satisfy all states, while also ensuring that the principle of sovereignty is not in any way undermined. As such, the ideal situation regarding the future of the people of Kashmir is that all states of the UNSC are able to work together to create a resolution that is conformity with the United Nations Charter while also ensuring that at no point is India's or Pakistan's sovereignty breached. Furthermore, states must also come up with resolutions that protect fundamental rights and freedoms contained within the Universal Declaration of Human Rights, ICESCR and ICCPR of both states as well as of the people of Kashmir.

QUESTIONS A RESOLUTION MUST ANSWER (QARMAS)

1. What measures can the member states of the UNSC take that are practical as well as enforceable in order to alleviate the tension between the two states?
2. What measures can be set in place in order to remedy the situation and ensure the enforcement of the international laws and customs contained in the UN Charter, UDHR and various other international instruments?
3. What method can be adopted by both states in order for them to stand by the agreements they have both signed with respect to Kashmir?
4. How can the international community help in making sure that both the involved states respect the wishes of the people of Kashmir as promised in the various agreements?

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