

THE KASHMIR DISPUTE AND UNITED NATIONS RESOLUTIONS: LEGAL CHALLENGES AND PROSPECTS FOR PEACEFUL RESOLUTION

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Abstract

The UN has created a set of norms for resolving the conflict, but in a context of deep-seated political animosities and competing national narratives, implementing them may be difficult. The ongoing disconnection between the hopes and ideals of UN resolutions and their implementation is indicative of a broader problem in international governance in the context of sovereignty claims. This research is both theoretical and practical, as it provides an understanding of the issues and opportunities ahead for arriving at a peaceful and legal resolution.

Keywords: India, Kashmir, Pakistan, peace, UN

Introduction

The Kashmir dispute is one of the enduring post-colonial conflicts, which started with the Partition of British India in 1947 (Lone, 2023). The disputed accession of Jammu and Kashmir to India caused a conflict, which eventually involved the UNSC (Akhtar, 2023a). The UNSC passed several resolutions, such as Resolution 47 (1948), calling for a ceasefire and a plebiscite to determine the status of Kashmir (Effendi, 2021). These resolutions introduced new legal considerations into the apparent inter-state territorial dispute between two new states (Anwar, 2024). They brought in key principles of international law, such as self-determination, which have underpinned legal arguments about Kashmir (Akhtar, 2023b). However, their application has been highly contested because of the divergent views of India and Pakistan (Connah, 2022).

India claims Kashmir as a fundamental and indivisible part of the country while Pakistan sees it as a disputed territory that needs to be resolved through international intervention (Aamir, 2022; Balcerowicz & Kuszewska, 2022b). This has been the case for over 70 years, despite attempts at peaceful resolution (Rakisits, 2021). The present study aims to explore the relevance of the UN resolutions on Kashmir in terms of their bindings, the problems associated with their implementation, and their relevance in international law today (Babar, 2023; Dash, 2021). The dispute has also generated increasing concerns regarding human rights, regional stability, and competing national narratives in South Asia (Balcerowicz & Kuszewska, 2022a; Kuszewska, 2022; Shabbir et al., 2021). Furthermore, political approaches adopted by successive governments in India and Pakistan have continued to influence the diplomatic and legal dimensions of the issue (Balcerowicz & Kuszewska, 2022c; Rauf & Asif, 2021). The research explores the dispute in a historical and theoretical framework, including legal doctrines and

international practices. It also points to the opportunities and challenges of settling the Kashmir dispute through international law.

Research Justification

Although there are some United Nations resolutions and repeated attempts at diplomatic resolution, it has persisted for over 75 years and is the subject of critical analysis of the role of international law in resolving politically sensitive and protracted disputes. The present study is therefore contextual, topical, and relevant in the international context, as it explores the r/s between legal normativity and the political situation for its implementation. This study can contribute to the current debate on international law by raising questions about whether UN resolutions can be enforced and about the challenges of enforcing them in situations where states' sovereignty and geopolitical interests make enforcement difficult.

Lastly, the current research will fill the gap between theory and practice. The study seeks to provide useful information to academics, policymakers, and international lawyers engaged in resolving long-standing international issues by systematically and critically analyzing UN resolutions on Kashmir. The research aims to yield insights that are not only relevant to the Kashmir issue as such, but also to the broader question of how international law can become effective and active in settings where political resistance is sustained.

Literature Review

The role of the UN as a neutral third-party mediator was emphasized by the research, which could provide a neutral ground where the direct talks between India and Pakistan could be held (Rakisits, 2021). In this case, the UN was perceived as a legitimate international organization whose rulings should help in the peaceful resolution of the conflict by negotiation and observed political procedures (Akhtar, 2023b). This more idealistic view was later modified by writers who focused on the structural deficiencies of the United Nations, particularly its inability to enforce its policies, given the contradictory geopolitical interests of the SC's permanent members (Connah, 2022; Lone, 2023). All these works point to the role of the UN as being significant in law but limited in practice in politically sensitive cases such as Kashmir (Anwar, 2024).

The inability to conduct the promised plebiscite is a great failure of the mechanisms of enforcement of international law and has created an uncertain legal situation in the area (Akhtar, 2023a; Effendi, 2021). Conversely, some authors take a critical approach, suggesting that neither India nor Pakistan has tried to resolve legal problems but further their political agendas through legal and historical narratives (Babar, 2023; Rauf & Asif, 2021). Without the continued political commitments and consensus, law cannot resolve deep-rooted political conflicts (Balcerowicz & Kuszewska, 2022c).

The third view is that the Kashmir conflict is viewed in the framework of international law, including IHRL and IHL (Kuszewska, 2022). The current interpretation of the UN resolutions should consider the changing legal perspective, including the protection of civilian life in accordance with the Geneva Conventions and the promotion of human rights (Shabbir et al., 2021). This strategy changes the matter to one of humanitarian protection rather than a territorial one (Balcerowicz & Kuszewska, 2022a; Dash, 2021).

Overall, the literature indicates that although UN resolutions provide a perfect legal platform to address the Kashmir conflict, the effectiveness of these resolutions has been limited by the political realities, conflicting national interests, and the absence of effective international enforcement mechanisms.

Historical Context of Kashmir and the UN Resolutions

The Kashmir conflict can be traced to the partitioning of British India in August 1947 and the ultimate establishment of the independent states of India and Pakistan (Aamir, 2022). Under the partition plan formulated under the Indian Independence Act of 1947, princely states were allowed a choice of either joining one of two newly constituted dominions (Anwar, 2024). The state of Jammu and Kashmir, under the rule of Maharaja Hari Singh, first desired to become independent, to save its special multi-religious and multi-ethnic nature, which could not be preserved within the borders of either of the dominions (Balcerowicz & Kuszewska, 2022b).

Nevertheless, following a tribal invasion of the country by the northwest, which is widely believed to have been aided by Pakistan, the Maharaja signed the Instrument of Accession to India in October 1947 in exchange for military support and protection (Rauf & Asif, 2021). Since then, this decision has been a subject of intense legal and political debate, with Pakistan challenging the circumstances of the decision, as well as the legal validity of the accession (Lone, 2023).

In January 1948, India submitted the matter to the United Nations Security Council, which passed Resolution 47 and established the United Nations Commission for India and Pakistan (UNCIP) (Akhtar, 2023b). This resolution recommended a cessation of hostilities, withdrawal of Pakistani and Indian forces, and conduct of an impartial plebiscite to determine the wishes of the people of Kashmir regarding their future political affiliation (Akhtar, 2023a). The plebiscite was envisaged as a democratic and internationally supervised process in which Kashmiri people could exercise their right to self-determination, a principle which had increasingly become recognized in the immediate post-World War II international order (Effendi, 2021). Even though a ceasefire was later to be agreed upon, the plebiscite never actually occurred, and the legal question of the ultimate status of Kashmir remained unanswered (Connah, 2022).

The lack of the plebiscite left an enduring legal vacuum, which has remained to frame the lines of the disagreement (Balcerowicz & Kuszewska, 2022c). Over time, both India and Pakistan took more entrenched positions, and India insisted on the finality of accession, and Pakistan insisted on the finality of the vote (Babar, 2023). Further agreements, including the Simla Agreement in 1972, changed the focus to bilateral negotiations and explicitly reduced the role of the UN as a mediator or monitor (Rakisits, 2021). However, the legal position of Kashmir is still disputed, and the initial UN resolutions continue to be a source of reference in the international jurisprudence of the dispute (Dash, 2021; Kuszewska, 2022). The historical curve of the conflict demonstrates how the initial failures of implementation may create the conflict in seemingly intractable positions (Balcerowicz & Kuszewska, 2022a; Shabbir et al., 2021).

Theoretical Context of Kashmir and the UN Resolutions

The theoretical principles of the legal analysis of Kashmir are based on several fundamental principles of international law. The doctrine of self-determination, which was expressed in the UN resolutions on Kashmir of 1967, and more specifically in the International Covenant on Civil and Political Rights (1966), will be the foundation of the analysis of the validity and further moral relevance of the UN resolutions on Kashmir of 1967. According to this principle, people are entitled to decide on their own political future, and states have the corresponding duty to respect and fulfil the right. Self-determination, both as a legal claim and as a political rallying cry, has offered a normative basis to the demand of a plebiscite and, at the same time, complicated seeking to impose a negotiated settlement.

Territorial integrity and state sovereignty is the doctrine which goes against self determination as stated in Article 2(1) of the UN Charter. The concept of territorial integrity is always the primary principle used by India to decide the Kashmir issue, which India has stated that the Instrument of Accession is a binding resolution on Kashmir's sovereign status. This is the interplay of the two principles - sovereignty and territorial integrity - which is at the heart of the Kashmir issue and can also be applied in a larger theoretical framework in international law on the question of the right to external intervention or international control over the internal affairs of a State. The conflict between these principles is not alone in Kashmir but is a case of several other unresolved territorial issues of other parts of the world today, and hence an important case in the international legal doctrine. Also important to the analysis are international relations theory, especially realist views that have put the national interest and the politics of power at the center, rather than international legal norms.

Laws Regarding Kashmir and the UN Resolutions

The legal framework surrounding Kashmir is complex and consists of United Nations Security Council (UNSC) resolutions, principles of international law, and various agreements concluded between India and Pakistan. The most important instrument is UNSC Resolution 47 (1948) that constituted the UNCIP, demanded an immediate ceasefire, called for the withdrawal of foreign forces, and provided for a plebiscite under conditions of freedom and impartiality to enable the people of Kashmir to exercise their right of self-determination. This resolution stands today, but is not implemented.

The UN Charter offers the broader framework. Article 1(2) acknowledges the right to self-determination, and Article 33 requires parties to a dispute to settle it by peaceful means, such as negotiation, mediation, and arbitration. The Simla Agreement between India and Pakistan in 1972 led to a preference for bilateral negotiations, which effectively diminished the role of multilateral and the operational role of the UN in the dispute. This bilateralism has been invoked by India to reject international engagement.

The Kashmir conflict is also subject to international humanitarian law. The Geneva Conventions (1949) and Additional Protocols require all parties to the conflict to spare the civilian population from the impact of the conflict. Moreover, international human rights treaties, such as the International Covenant on Civil and Political Rights and the Convention Against Torture, oblige the states involved in the control of the situation. However, the status of the UNSC resolutions under Chapter VI of the UN Charter is not as binding as resolutions under Chapter VII. This has been exploited by states to dispute the binding nature of the Kashmir resolutions, thus undermining the enforcement mechanism and leading to the current situation.

Challenges for Kashmir and the UN Resolutions

A key problem in the implementation of the UN resolutions on Kashmir is the lack of an effective enforcement mechanism. The UN is dependent on member states, and when there is a reluctance by the powerful states, with vested interests, to cooperate, the resolutions become more normative. The ability of the permanent members of the Security Council to exercise a veto has also made the adoption of an enforcement mechanism even more difficult.

The second problem is the disagreement on the interpretation of legal principles. Pakistan seeks to rely on the right to self-determination as the key legal justification for the plebiscite, while India stresses the principles of territorial integrity and the finality of the accession. This uncertainty regarding the applicable law has led to a lack of a common understanding of how to interpret the UN resolutions and has made it very hard for the parties to compromise on compliance.

The third set of challenges relates to geopolitics. The status of the major powers is based on their geopolitical interest, and not on their disinterested interest in international law. They have been more or less involved in the Kashmir issue since independence and have always frustrated the Security Council from taking an effective and coherent course in the matter. Finally, the constant allegations of human rights violations in the area bring another dimension of legal considerations. The incidents of excessive force to quash protesters, restriction of civil liberties, and displacement of people are of concern in the context of international humanitarian and human rights law, which have not been effectively implemented and monitored to address these issues.

Opportunities for Kashmir and the UN Resolutions

While there are many hurdles to bringing the UN resolution on Kashmir to fruition, there are also opportunities that could enable a solution. One important opportunity is the principle of self-determination, which is already well recognized in international law. This provides a very strong normative basis for the upcoming negotiation process in Kashmir. If both parties were to take it seriously in good faith, this principle could lead to a more equitable political solution. While it may not have been put into practice as hoped, the concept remains relevant and significant from a legal perspective.

Another potential avenue is the increased significance of international human rights law. Global coverage of the Kashmir conflict has increased due to the development of online and social media. When used properly, these can be an input into developing a negotiation environment. In general, these opportunities indicate that there have been significant hurdles to resolving the Kashmir dispute in the past; however, it is possible to take steps towards a sustainable, legal, and widely accepted resolution.

Discussion

The issue of incongruence between the normative goals of UN resolutions and the political actions of states is brought to the fore in this paper in an ancient, deeply rooted way. The principles of self-determination and the peaceful settlement of disputes have been well established in the resolutions, but they have not been put into practice due to a lack of enforcement measures and divergent national interests among the relevant actors.

This is a legal tangle between two equal and valid principles of international law: self-determination and state sovereignty, which bilateral and multilateral diplomacy has not been able to solve completely. Furthermore, the case becomes complicated because human rights and accountability principles are the main principles of international law. The trends suggest that the legal discussion of Kashmir cannot be constrained within the provisions of the 1948 resolutions.

Conclusion

The Kashmir dispute is a prime example of the difficulties faced when attempts are made to apply established legal principles against strong political and geopolitical interests. Various UN resolutions, such as UN Resolution 47 of 1948, provided an important legal and moral basis for resolving the Kashmir dispute, including the affirmation of the right of the Kashmiris to self-determination. However, the non-enforcement of these resolutions, despite more than 75 years, makes it clear that there is a need for political will and for the enforcement of international law.

While legal and moral principles such as self-determination and the protection of human rights are important, they are insufficient to bring about positive change. They need active state engagement and the effective application of legal principles. This should be a multifaceted approach – legal and political – with strong diplomatic engagement and renewed international

engagement. International support and respect for the UN legal principles are necessary to resolve the Kashmir issue peacefully, justly, and sustainably.

Research Limitations

This research is based on secondary information and existing literature because state-classified documents and official records are not accessible. This limits the ability to explore some elements of the analysis in detail. Second, the situation in Kashmir is evolving, and there may have been political or legal developments since the period covered in the sources used, which may necessitate some revision in the future.

Third, the study is limited in its focus on the legal aspects of the dispute and does not delve into the socio-economic and demographic aspects, which are also relevant to the dispute. Fourth, the research does not include empirical field work or analysis from the perspective of Kashmir's civilian population and could benefit from such insights. However, the study provides a structured and coherent addition to the legal literature on the Kashmir conflict.

Research Implications

The research has significant implications to the international law and highlights the existing gap between the normative framework that is established in the United Nations resolutions, and the political factors in the enforcement. The study provides information to scholars and stakeholders in the fields of international conflict management, self-determination, and international legal norms. The practical implications of the research on policymakers and other international organizations also underscore the need to have more effective institutional mechanisms of monitoring and enforcement of Security Council resolutions, especially in the current conflict situations, where bilateral diplomacy has proved to be ineffective in delivering results.

It shows the necessity to make sure that the political support has been secured prior to turning to the law. Moreover, the research provides an insight into the argument concerning the connection between law and politics in international relations. It helps to believe that the legal and diplomatic strategies must be followed simultaneously to achieve peace and a permanent settlement of the conflict.

References

- Aamir, O. (2022). Kashmir imbroglio: Moving beyond the horizon. *SSRN* 4267400. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4267400
- Akhtar, Z. (2023a). Genocide in Kashmir: Right of self-determination, UNSC resolutions and holding India to account under international humanitarian law. *Groningen Journal of International Law*, 10(1), 43-72. <https://ugp.rug.nl/GROJIL/article/view/41067>
- Akhtar, Z. (2023b). Kashmir's right to self-determination: UNSC resolutions, human rights violations and culpability under international law. *Athens Journal of Law*, 9, 139.
- Anwar, I. (2024). *An analysis of the Kashmir dispute*. Abo Akademi University. <https://www.doria.fi/handle/10024/188852>
- Babar, B. A. (2023). Re-annexation of Indian Occupied Kashmir: Challenges and options for Pakistan. *Journal of Public Policy Practitioners*, 2(1), 62-97. <https://journals.umt.edu.pk/index.php/jppp/article/view/4314>
- Balcerowicz, P., & Kuszewska, A. (2022a). *Human rights violations in Kashmir*. Routledge.
- Balcerowicz, P., & Kuszewska, A. (2022b). *Kashmir in India and Pakistan policies*. Routledge.

- Balcerowicz, P., & Kuszewska, A. (2022c). *Law and conflict resolution in Kashmir*. Taylor & Francis.
- Connah, L. (2022). International Law vs. Domestic Law in Kashmir. *Peace Review*, 33(4), 488-494. <https://doi.org/10.1080/10402659.2021.2043008>
- Dash, S. P. (2021). Kashmir conflict: Reflections in media after abrogation of special status. *The Journal of Indian and Asian Studies*, 2(1), 2150002. <https://doi.org/10.1142/S2717541321500029>
- Effendi, M. (2021). *Right of self determination and Kashmiris: A conceptual understanding and perspective*. National Defence Academy.
- Kuszewska, A. (2022). The India-Pakistan conflict in Kashmir and human rights in the context of post-2019 political dynamics. *Asian Affairs*, 53(1), 198-217. <https://doi.org/10.1080/03068374.2022.2041288>
- Lone, F. N. (2023). International law and the Kashmir dispute: A critical reflection. In *The Palgrave Handbook of New Directions in Kashmir Studies* (pp. 153- 172). Palgrave McMillan. https://doi.org/10.1007/978-3-031-28520-2_10
- Rakisits, C. (2021). Diplomacy in South Asia: A four-step grand plan for Kashmir. *Australian Journal of International Affairs*, 75(1), 1-9. <https://doi.org/10.1080/10357718.2020.1787334>
- Rauf, S., & Asif, M. H. (2021). Modi and Imran regime: Foreign policy on Kashmir dispute. *Human Nature Journal of Social Sciences*, 2(1), 12-22. <https://hnpublisher.com/ojs/index.php/HNJSS/article/view/8>
- Shabbir, T., Ali, Z., Uddin, S., Wazir, M., & Gopang, M. A. (2021). A critical study about the human rights concerns in the Kashmir valley. *South Asean Journal of Social Studies*, 1(1), 66-83. <https://doi.org/10.26858/human.v1i1.20586>