



General Assembly

Distr.: General
22 February 2011

English only

Human Rights Council

Sixteenth session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Gilgit and Baltistan

The institutional wisdom of the various constituents of United Nations continues to graduate in the service of the human kind. The decision of the Security Council which normally deals with country-specific issues of war and peace to hold a day-long high level debate on 11 February 2011 on the root causes that fuel conflict in the world, like poverty and under-development marks beginning of a new understanding of the challenges in the world today. Secretary-General Ban Ki-moon opened the meeting with a fresh wisdom that “Peace, security and development are interdependent,” and rightly sounded a warning that recent events are a “sharp reminder” of the need for political stability to be anchored in opportunity and decent standards of living.

There could be no other authoritative statement than that of Mr. Ban that “Evidence abounds. Nine of the 10 countries with the lowest Human Development Indicators have experienced conflict in the last 20 years. Countries facing stark inequality and weak institutions are at increased risk of conflict. Poorly distributed wealth and a lack of sufficient jobs, opportunities and freedoms, particularly for a large youth population, can also increase the risk of instability.”

Another important statement that increments the constituency of human rights has been made by United Nations human rights chief Mme Navi Pillay at a press conference in Jerusalem following her week-long visit to Israel and the occupied Palestinian territory. She has rightly pointed out that “International human rights law and international humanitarian law are not negotiable. No individual or State can be considered exempt, if they violate the law”. International human rights and humanitarian law is constantly being cast aside amid politics as we see in Middle East politics.

There is a similar case of a people and their habitat which although have continued to remain a subject of the UN interest from January 1948 yet continue to remain ignored. The UN Security Council Resolution [S/2017/Rev.1] of 30 March 1951 made a vital finding that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. The resolution cautioned the Jammu and Kashmir National Conference that the convening of a constituent assembly for the purposes of determining the “future shape and affiliation of the State of Jammu and Kashmir” would not be valid because the constituent assembly and the area from which such a constituent assembly would be elected is only a part of the whole territory of Jammu and Kashmir. The resolution carried that “the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations”.

The resolution has further carried that “any action that assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle”.

In fact the resolution remains mindful of the State territory defined in article 4 of the Jammu & Kashmir Constitution. Therefore, the three assemblies headquartered at Srinagar, Muzaffarabad and Gilgit equally remain under the caution of the UN Security Council Resolution stating that these three assemblies and the area from which each assembly would be elected is only a part of the whole territory of Jammu and Kashmir. Each one of the three assemblies continues to embed a representative infirmity if it acts on its own.

India as a party to the dispute before assenting to UNCIP Resolution of 13 August 1948 sought assurances on a number of issues in particular, (a) that the sovereignty of Jammu and Kashmir would not be brought into question, (b) that no recognition would be afforded

to Azad Kashmir Government, (c) that the territory occupied by Pakistan troops would not be consolidated to the disadvantage of the State, (d) that there would be a large scale disarming and disbanding of the Azad Kashmir forces and (e) that the question of northern area would receive consideration in the implementation of the Commission's proposals.

UN Resolutions have conserved the territorial entirety of the State and have warned against any disruption in this regard. Pakistan in general has remained supportive of the right of the people to self-determination but has at large maintained its claim on Kashmir on the basis that if "Kashmir acceded to India, India would be in a position to control the whole irrigation system of Western Pakistan; and the defence of Western Pakistan, which was based on two main road and railway systems running parallel to and within a few miles of Kashmir border, would be impossible".

This approach is flawed and does not accord the people of Kashmir their status as 'equal people' for the title to self-determination. Out of the three people living and represented in three assemblies at Srinagar, Muzaffarabad and Gilgit, the third people living in the territory called Gilgit and Baltistan have a year ago been given a political system for the first time since 1948. The system is regarded as a step forward in the lives of the people in the territory but it remains at variance with the UN mechanism which has defined a political system for the area. It is also a violation of the agreement of 28 April 1949 between the Government of Azad Kashmir and the Government of Pakistan on the shared responsibilities in the administration of these territories. The decision of the Government of Pakistan to install a political system of its choice in Gilgit and Baltistan is also a violation of the High Court of Azad Kashmir judgement on the status of these areas.

There is a growing concern that China is expounding keen interest in Kashmir in particular in the territories called Gilgit and Baltistan. Two debates one at Royal United Services Institute (RUSI) in London on 25 January 2011 and the other at a meeting organised in the House of Lords in the British Parliament on the subject of "Gilgit and Baltistan – The Emergence of China" focussed more or less on Kashmir, Gilgit and Baltistan and China. The debates in aggregate were very critical of China and failed to highlight the role of China in the overall UN wisdom on Kashmir. There may be a case for a genuine concern for some countries but it would be unwise if Kashmiris join this trend and allow the jurisprudence of Kashmir case being misrepresented at various forums. JKCHR has on both occasions challenged the ignorance of the speakers in respect of Chinese involvement in Kashmir.

In fact it was China that made a case for 'pacification' at the 241st meeting of the UN Security Council on February 5, 1948 and recommended to the Government of Pakistan that its "legal and moral influence should be thrown in the direction of pacification and that the tribesmen should be stopped from further fighting". In addition China recommended that "the Council should appeal to the Government of India to withdraw its troops gradually from Kashmir. China suggested that after the fundamental principles had been determined by the Council, large discretionary powers should be left to the Commission".

On March 18, 1948 China presented Articles of Settlement to the two Governments of India and Pakistan to settle the Kashmir question. Chinese resolution brought in the concept of "Maximum agreement and margin of disagreement". China proposed to achieve 'maximum agreement' and leaving a margin of 'some disagreement'. Pakistan opposed the Chinese resolution and maintained that the Chinese resolution was not going far enough and was not providing adequate safeguards.

JKCHR on the basis of its rigorous liaison with the United Nations (and its various bodies) since UN World Conference on Human Rights in Vienna in June 1993 when the organization was elected to represent the Unrepresented Peoples and Nations of the World and had the privilege to address the Plenary and the Main Committee of the Conference

wishes to urge the distinguished members of the Human Rights Council to revisit their collective wisdom on Kashmir and examine the fractured opinions, mostly polarised, being tendered before the Council as a sterile routine. There is a risk that the good work of various NGOs of all manner on the subject of Kashmir may degenerate into a harmful reflex of the national agendas of India and Pakistan.

All people of the State of Jammu and Kashmir represented in the three assemblies at Srinagar, Muzaffarabad and Gilgit in the course of the realisation of their basic rights, have an urgent need for political stability, which has to be anchored in opportunity and decent standards of living. These people have a process of life and we need to encourage them to gain a quality of life as well.
