UN not fulfilling its obligations

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Notwithstanding the fact that Kashmir is globally acknowledged as a nuclear flash-point by the world community and a threat to regional peace and security, no worthwhile efforts are coming forth from the UN and the international community to help the two countries to resolve the dispute in conformity with the UN resolution. The resolution of the Kashmir dispute in fact is the mandatory obligation of the UN. But it has never shown credible interest in fulfilling its obligations towards the people of Kashmir.

The world community and the UN have been exhibiting indifference to the atrocities being perpetrated on the people of Kashmir by the Indian security forces. Even the first ever report on human rights violations by the UN High Commission for Human Rights and its call for setting up a commission to probe the issue has not elicited the required support, except for the UN Secretary General merely endorsing the proposal verbally while at the same time urging Pakistan and India to resolve their disputes bilaterally. Kashmir issue cannot be resolved without involvement of UN as is quite evident from the failure of the bilateral mechanism. Rhetoric and cosmetic measures are not going to help.

Reportedly the United Nations Secretary-General António Guterres announced the appointment of Major General José Eladio Alcaín of Uruguay, as Head of Mission and Chief Military Observer for the United Nations Military Observer Group in India and Pakistan (UNMOGIP) in the first week of July, who will succeed Major General Per Gustaf Lodin of Sweden. It is pertinent to point out that the UNMOGIP—- which was set up in 1949 in the backdrop of first war between India and Pakistan — is no more considered relevant by India. The Indian government on July 8, 2014 even asked the group to wind up and vacate its premises in New Delhi. The spokesman of the Indian foreign ministry Syed Akbaruddin told reporters, “We have said that as far as we are concerned, the UNMGOIP has outlived its relevant. This is a consistent stance that we have articulated on several occasions.”

Indian stance is premised on two factors. The first is that Kashmir is its integral part and the second is that after the signing of Simla Agreement between the two countries which stipulates the resolution of all disputes between them through bilateral engagement, UN has no role to play. The Indian argument is not only legally but also logically wrong. The status of Kashmir as disputed territory whose fate is to be decided in conformity with the UN resolution has not changed at all. When the Indian government took a somersault on its commitment to implement the UN resolutions—-repeatedly reiterated by Nehru—- on the plea that the constituent assembly of occupied Kashmir through a resolution and adoption of a constitution for the state had acceded Kashmir to India, the UN through its resolutions 91 and 122 unequivocally rejected the Indian proclamation. The resolutions said that the question of accession of the state could not be resolved by means other than a plebiscite held under the auspices of the UN. That has never happened and as far as UN is concerned, no material change has occurred in the nature of dispute and Kashmir remains a disputed territory. This proves beyond any doubt that the Indian claims of Kashmir being its integral part are a travesty of the facts and lack any legal basis.

The Indian contention, that after the signing of Simla Agreement between the two countries the UN has no role to play, is also a crude attempt by India to mislead the world and the conceal the facts. It is pertinent to point out that the Simla Agreement at the outset says “That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries.” Both the Countries, while committing themselves to find a peaceful and negotiated solution to all disputes, did acknowledge the ascendency of the UN Charter.

The signing of the Simla Agreement did not in any way make the UN irrelevant. Article 103 of UN Charter says “In the event of a conflict between the obligations of the members of the UN under the present charter and their obligations under any other international agreement, their obligations under the present charter will prevail.” What it means is that the UN resolutions on Kashmir will take precedence over all other international agreements on the same issue.

The last paragraph of the Agreement reads “Both governments agree that their respective heads will meet again at a mutually convenient time in the future and that in the meanwhile the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization of relations, including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.” It is significant to note that the Agreement did recognize Kashmir as a disputed territory when it mentioned pendency of its final settlement, thus nullifying Indian claims of Kashmir being its integral part.

Unfortunately, the Indians have never shown honesty of purpose in resolving the issue of Kashmir and have used varying tactics to suspend or scupper the process of dialogue. In view of the prevailing situation and the barbarity being enacted against the freedom loving people of Kashmir, the resolution of the dispute exclusively remains the obligation of the UN. Merely appointing the head of UNMOGIP, which is no more considered relevant by India, is of no consequence. The UN needs to do more than that as a peace making body and create conditions for settlement of the dispute in accordance with its own resolutions on the subject.

The US and its western allies who cry hoarse from every convenient roof-top to espouse the cause of human rights, besides bandying around their commitment to global peace and security, also need to remove the blinkers from their eyes and clear their stuffed ears to see and listen the cries of the people of Kashmir and the images of brutality emanating from the valley. Their indifference to the miseries of the people of Kashmir is in fact encouraging India to continue with its oppression with impunity. What is happening in Kashmir is an affront to the conscience of the world community and reflects negatively on the UN as a peace promoting entity.

n          The writer is a freelance columnist