**World community must shake its conscience**

Malik Muhammad Ashraf January 31, 2020

The right of the people to self-determination is a cardinal principle in modern international law. The concept of self-determination evolved as a by-product of the doctrine of nationalism. It found expression in the French and American Revolutions. The allies accepted self-determination as an aim for peace in the World War I. In his fourteen points--the essential terms for peace—US President Woodrow Wilson listed self-determination as an important objective for post-war world. The result was the fragmentation of the old Austro-Hungarian and Ottoman empires and former Baltic territories of Russia into a number of new states. After World War II, the promotion of self-determination among subject peoples became one of the chief goals of the UN. Even its predecessor League of Nations also recognized the principle.

Article 1(2) of Chapter I of the UN Charter which enunciates the Purpose and Principles of the World body mentions right of self-determination as one of its objectives in these words “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace” Pursuant to that objective the UN has adopted myriad of resolutions in the context of different conflicts around the world particularly Palestine and Kashmir. Resolution 2649 adopted in 1970 not only recognizes the right of self-determination of the subjugated people but also reiterates the adoption of any means by the concerned people to win their right of self-determination.

Pakistan has been tabling the resolution on right of self-determination in the UN General Assembly since 1981 which has invariably been endorsed without a vote every year. In last November also the 193-member third committee of the UN adopted a Pakistani resolution co-sponsored by 81 countries without a vote.

But it is regrettable to note that in spite of the continued denial of this right to the people of Kashmir over the last more than 72 years the UN and the global community has not fulfilled their obligation towards the people of Kashmir as enunciated in the UN resolutions and the commitments made by the then Indian leaders . What is now happening in IOK is actually the result of the indifference of the world community and the UN to the plight of the people of Kashmir, which encourages India to continue with its denial of right of self-determination to them as well as to continue the killing spree in the valley.

What the Modi government has done in IOK constitutes an affront to the conscience of the world community and the UN. Indian stance on Kashmir has no moral and legal basis. According to the Indian Independence Act, the rulers of princely states were given the choice to freely accede to either India or Pakistan, or to remain independent. They were, however, advised to keep the geographical proximity and demographic realities in view while deciding the accession. In case of Kashmir both these elements were negated. The revolt of Kahmiris against their ruler’s pretensions to join India and the resultant war between India and Pakistan is also a strong testimony to the fact that the people of Kashmir wanted to join Pakistan. Kashmir was contiguous to Pakistan and majority of its population was also Muslim. It had cultural and historic links with Pakistan and had remained under Muslim rule for centuries before Ranjit Singh annexed it.

In regards to the UN resolutions on Kashmir it is relevant to point out that in the wake of the war that broke out between the two countries after the landing of Indian forces in Kashmir, it was India which took the matter to the United Nations. The UN during the course of its deliberations on the subject passed twenty three resolutions, including two UNICEP resolutions of 13 August 1948 and 5th January 1949 calling for a plebiscite in Kashmir under the auspices of United Nations. It is quite evident that like the supposed instrument of accession and the partition plan, the UN resolutions also vividly recognized the right of the people to decide their own future through a process of self-determination.

It is also pertinent to mention that the UN through its resolutions 91 and 122 also repudiated Indian stance that the issue of accession of Kashmir had been resolved by the constituent assembly of Kashmir. These resolutions reiterated that the question of accession could not be resolved by any means other than enunciated in the UN resolutions on the subject. This proves beyond any doubt that the Indian claims on Kashmir are travesty of the facts and lack any legal basis.

In the wake of 1971 war between India and Pakistan, Simla Agreement was signed and clause 6 of the agreement emphasized the resolution of all disputes between the two countries including Kashmir through peaceful means, bilaterally. The very fact that India acknowledged Kashmir as a disputed territory in Simla Agreement, belied its claims of Kashmir being its integral part. But unfortunately the Indians have never shown honesty of purpose in resolving this issue and have used varying tactics to suspend or scupper the process of dialogue. It has always remained evasive on the core issue of Kashmir. The Indians also claim that in view of the Simla Agreement, Pakistan cannot internationalize the Kashmir dispute. That stance is also devoid of any legality. 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 UN resolutions are the only way available to settle the Kashmir dispute. The Modi government in pursuance of Hindutva philosophy has actually tried to nullify the UN resolutions on Kashmir and all the bilateral agreements between Pakistan and India to resolve the contentious issues, including the core issue of Kashmir. The continuation of the killing spree in IOK, a complete lockdown in the valley which has made the live of the people of Kashmir miserable and persistent hostile attitude towards Pakistan has put the peace and security of the entire regions at peril. The two nuclear powers stand face to face with each other and any miscalculation on either side could trigger a nuclear war which could have disastrous consequences for the entire world. Prime Minister Imran Khan while addressing the UN General Assembly had rightly warned the world community about the emerging situation and sought their intervention in stopping the hate philosophy in its tracks before it spelled disaster in the region and beyond. The world community must shake its conscience and fulfill its obligations towards the people of Kashmir instead of merely expressing concern on humanitarian situation in IOK. There is an imperative need to address the root-cause of the Kashmir dispute.