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CHASING A MIRAGE: THE QUESTION OF PEACE IN KASHMIR

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CHASING A MIRAGE: THE QUESTION OF PEACE IN KASHMIR

By Maj Satish K. Sinha

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ABSTRACT

Kashmir has been a ‘hot-spot’ on the international landscape for the past 63 years and continues to remain in dispute today. Many initiatives, bilateral or otherwise, have failed to achieve a permanent solution to the dispute, and peace continues to be an elusive creature in the region. This paper is an enquiry into the reasons for the absence of peace in Kashmir. The high degree of mistrust prevailing between India and Pakistan has been detrimental to various initiatives to resolve the Kashmir issue. This mistrust, rooted in the partition of the British Indian subcontinent, has been fuelled largely by Pakistan’s military and political manoeuvres.

The independent state of Jammu and Kashmir was invaded by Pakistan in 1947 with soldiers donning the guise of tribesmen, and the same scheme was used in 1965 and 1999 in the guise of Mujahedeen. Pakistan also shares a major portion of the blame for inciting and maintaining a violent movement in Kashmir based on religious fundamentalism and an ideology of hate. This insurgency in Kashmir accounts for a large number of casualties and the destruction of assets, besides destroying the social harmony of its society. Pakistan’s internal dynamics have ensured that a hard line stand, often detached from realities on the ground, has been maintained by successive governments.

India and Pakistan now need to move away from their respective rhetoric and reconcile their positions. A solution for the Kashmir issue, from a realistic view point, could be based on two themes: granting a significant autonomy to Kashmir on both sides of the Line of Control, and bringing stability and permanence to the Line of Control. In the meantime, avenues other than the Kashmir issue must be explored to bridge the trust deficit between India and Pakistan.

The Kashmir dispute has guaranteed that a state of tension should continue in being between the two great powers of the Indian subcontinent [India and Pakistan].

Alastair Lamb, *Crisis in Kashmir: 1947 to 1966*.¹

INTRODUCTION

Cradled in the lap of the majestic mountains of the Himalayas, Kashmir is the land of sparkling rivers, sleepy lakes, startling gardens and regal Chinar trees.² For its breath taking natural beauty, the region was named as the “paradise on the earth.”³ Why then did this ‘paradise’ turn into a source of seemingly never ending tension, unrest and conflicts? For the past 63 years, Kashmir has been a ‘hot-spot’ on the international landscape, carrying different meanings to the various concerned parties. A result of the chequered legacy of the ‘great game,’⁴ Kashmir presently stands sandwiched between the two nuclear states of South Asia, India and Pakistan.

The high degree of prevailing mistrust between India and Pakistan has ensured that peace remains elusive in the region. The strained Indo-Pak relationship is marked by events such as the first Kashmir War (1947-48), the subsequent Indo-Pak wars (1965 and

¹Alastair Lamb, *Crisis in Kashmir: 1947 to 1966* (London: Routledge & Kegan Paul, 1966), 1.

²Kashmir Information Network, “Kashmir,” <http://www.kashmir-information.com/>; Internet; accessed 20 February 2011.

³Mesmerised by the scenic beauty of Kashmir, the Moghul emperor, Jehangir, is said to have exclaimed, “If there is paradise anywhere on earth, it is here, it is here, it is here.” Kashmir Information Network, “Paradise turned into Hell,” <http://www.kashmir-information.com/>; Internet; accessed 01 February 2011.

⁴The power struggle between the Soviet Union and the United Kingdom in the Indian subcontinent during the second half of the 19th century is referred to as ‘great game.’ The British Empire, “The Great Game,” <http://myweb.tiscali.co.uk/kenanderson/histemp/thegreatgame.html>; Internet; accessed 01 February 2011.

1971), the rise of an insurgency movement in Kashmir (1989), and the limited war in Kargil (1999). On the other hand, much hyped events and peace initiatives such as the United Nation's (UN) intervention on the issue; the post-war Indo-Pak agreements; the 2005 earthquake in the region and cease fire agreement along the line of control (2005); the opening of trade and passenger services across the line of control (2008), and numerous rounds of talks/summits/track two diplomacy efforts creating euphoria and optimism have produced less significant results, and definitely none have achieved a satisfactory permanent solution to the dispute.

India and Pakistan both conducted nuclear tests in 1998, but this too changed little. The following year, a limited war was fought in the Kargil⁵ and thus, the prediction of 'no conventional war' in the light of a newly acquired nuclear capability was proved false. With 63 year old legacy of tense and frosty relations, the stands taken by India and Pakistan have been hardened. For over six decades, both countries have made sacrifices for the sake of this disputed territory.

The situation, to a casual outsider, may seem relatively simple. However, a number of proposals have been made to date, none of which have proved to be workable. Suggestions such as allocating the entire Jammu and Kashmir (J&K) state to India or Pakistan, or complete independence for the state have been rejected by India or/and Pakistan. Other models took a 'middle of the road approach.' They include conversion the present line of control into an international border; the soft border concept; joint administration over Kashmir by India and Pakistan; holding a plebiscite to ascertain the people's choice; allowing greater autonomy to the state; dividing the state into regions

⁵Kargil is a small town in the Indian Jammu and Kashmir state. It lays about 204 Km North East from Srinagar, the capital of the Indian state.

and then holding the plebiscite; division along the religious/ethnic make up of the region, etc. None have advanced the cause of a peaceful solution.

It does not serve the present purpose to take a particular model and advocate its efficacy over others. These options, with their pros and cons, are well known, at least in the concerned circle of stake holders. However, there are some basic factors which obstruct the success of the peace efforts. This paper is an enquiry into the aspects which keep peace elusive from Kashmir. Until stumbling blocks are removed, no model, however balance or fair, is likely to succeed.

The genesis of the problem can be traced back to the decade prior to the independence of the subcontinent. The British policy of ‘divide and rule’ created a rupture in Indian society along religious lines and gave rise to the mistrust between communities.⁶ The resultant Hindu-Muslim divide culminated in the partition of India. The British Empire’s hurry to leave India left a number of issues unresolved, Kashmir being the most prominent one.

At the time of India’s partition, Kashmir had all the potential preconditions of being a wicked problem: a Muslim majority state ruled by a Hindu ruler, the Maharaja’s (king) confused stance on independence or whether to join one of the newly created dominions (as India or Pakistan were known at that time), and the dwindling popularity of the Maharaja’s government among the population of the state.

⁶The British followed a policy of differentiating between Hindus and Muslims. The Montagu-Chelmsford Reforms (1919), for the first time, catered for seats in the local elections based on communal representation. Similarly, separate electorate were allocated to Muslims in 1937 provincial elections. The Partition of India, “Reasons for Partition,” <http://english.emory.edu/Bahri/Part.html>; Internet; accessed 15 April 2011.

Pakistan's efforts to gain control over Kashmir started with the economic blockade of Jammu and Kashmir in October 1947, which was followed by an armed aggression against the province. India responded militarily after the Instrument of Accession was accepted by the then Governor General of India, Lord Louis Mountbatten. With the signing of the cease-fire agreement (Karachi, 1949) under the United Nations Organisation auspices, armed conflict was theoretically brought to an end. But, both India and Pakistan reserved the right to interpret the terms for their own purposes.

A high degree of mistrust has prevailed between India and Pakistan since that time, and the subsequent wars and agreements have mattered little in bridging this trust deficit. There is plethora of factors acting as catalysts in the process. The bitter memories of partition and the communal riots have created an atmosphere of hatred for each other, which has solidified with the passage of time rather than fading into history. The rise of Islamic fundamentalism in Pakistan, the attachment of rhetoric over Kashmir by India and Pakistan, and the populist domestic politics of India and Pakistan have done a great disservice to the cause of finding a solution.

The Pakistani Army deserves a special mention in the affair. By design or default, the Army in Pakistan has wielded a disproportionate effect in the national decision making process. Army generals have ruled Pakistan for 33 years out of its total 63 years of statehood and continue to steer its foreign policy. Unfortunately, a central plank of maintaining its power base and dominance is also based on its anti-India and Kashmir centric approach.

India and Pakistan see Kashmir through different lenses. India views J&K as an integral part of India, which acceded to the union of India through the Instrument of

Accession. India holds that the position is legal, final and irreversible.⁷ In India's view Pakistan has no *locus standi* on the Kashmir issue.

Pakistan, on the other hand, views Kashmir as the “unfinished agenda of the partition,”⁸ disputes the Instrument of Accession, and claims the state mainly on the basis of religion.⁹ Over a period of time, the issue has attained an overriding psychological dimension which has overshadowed everything else. The important question of water sharing of the rivers originating from Kashmir has been resolved with the signing of Indus Water Treaty of 1960. There are meagre resources in the area and the population of the state is sparse. The logic of retaining the entire state for the security of either country also does not hold any basis in reality, as both countries have defended themselves using the areas currently under their control, neither making their adversary's position untenable. Essentially, the issue has been kept fuelled by emotional and political impulses.

Understanding the stumbling blocks in the path of the peace process is the first logical step towards solving the dispute. The developments since the pre-independence era have impacted the present situation, with various players having significant roles in

⁷India, Embassy of India in Washington, D.C., “Indian Position on Jammu and Kashmir,” http://www.kashmirlibrary.org/kashmir_timeline/kashmir_files/Indian_Position.html; Internet, accessed 15 April 2011.

⁸Wajahat Habibullah, *My Kashmir: Conflicts and Prospects of Enduring Peace* (Washington, D.C.:United States Institute of Peace Press, 2008), 133.

⁹Azad Jammu and Kashmir Government, “Jinnah and Kashmir,” http://www.ajk.gov.pk/index.php?option=com_content&view=article&id=66&Itemid=22; Internet; accessed 15 April 2011.

the process. This paper offers an insight into the reasons why the many peace initiatives have failed.

Pakistan, since its creation, has been suffering from a sense of incompleteness without Kashmir being on its map, and as a result has continuously been trying to gain Kashmir by military and political manoeuvres. *This paper will demonstrate that the deep seated mutual mistrust between India and Pakistan, originating during the partition of British India, and further reinforced by post-partition Pakistan's military and political manoeuvres in the region, is the major obstacle for the return of peace in Kashmir.* The paper examines historical as well as contemporary developments to establish its thesis.

Chapter 1 provides a historical overview outlining major events in the region until 1998. *Chapter 2* covers the important developments in the last 12 years (1998 to the present time). The period 1998-99 was historic for more than one reason. In 1998, India and Pakistan became nuclear states. However, the following year was even more dramatic as the Indian Prime Minister, Atal Bihari Vajpayee rode a bus to Lahore to start what was later known as the 'Lahore Process'. This hyped bus ride was immediately followed by an armed confrontation between India and Pakistan in the Kargil region in the months of April and May.

Chapter 3 examines three key issues related to the Kashmir: the legality of accession of J&K to India; a plebiscite or self determination for Kashmiris; and, the insurgency in Kashmir. Both the countries have their own supporting and subjective narratives on the above issues, which and unfortunately have no room for compromise or commonality. Finally, *Chapter 4* highlights the reasons for the existing mistrust between Indian and Pakistan. Some measures have also been suggested to alleviate this mistrust.

CHAPTER 1 – KASHMIR: A HISTORICAL OVERVIEW

The ultimate verdict of history may be that Britain deserves the greatest share of blame for the enduring Kashmir problem.

Charlotte P. Nicholson, *The Kashmir Power Keg*¹⁰

Early History: A Sacred Land

The authenticity of the earliest known history of Kashmir lies between the historical facts and the mythological legends. It is mentioned for the first time in the ‘Nilmat Purana’¹¹ which describes the valley of Kashmir as a vast lake, formed from the waters of melting snow from the mountains encircling it. The story relates to how the water from this lake was drained by Rishi (Saint) Kashyap on the orders of the God Brahma’s command, and the water-borne monster named ‘Jalodhbhava’ living in it was slain in the fierce combat that followed. The name ‘Kashmir’ is derived from the name of the Rishi.¹²

¹⁰Charlotte P. Nicholson, *The Kashmir Power Keg* (New York: Nova Science Publishers, Inc., 2002), 30.

¹¹Purana means old. It also means a story of the ancient times. Puranas deal with the creation and destruction of the universe, with the lives of Saints and Sages, with the dynasties of Kings, with the importance of Gods and Goddesses, places of pilgrimage, rivers and rivulets, with festivals, customs and rituals etc, prevalent among the Hindus in olden times. So, Puranas have a great religious and social significance. Nilmat Puran is named after the King Nila of the Nagar dynasty that ruled Kashmir in the beginning. Prithvinath Bhatt, “Living Rituals of Nilmat Purana,” *Koshur Samachar* ; available from <http://www.koausa.org/KoshSam/NilmatPurana.html>; Internet; accessed 01 February 2011.

¹²As per the ancient legends, Kashmir word is derived from word ‘Kash-yap-mar’ meaning ‘abode of Kashyap.’ Turkkaya Ataov, *Kashmir and Neighbours: Tale, Terror, Truce* (Aldershot: Ashgate Publishing Limited, 2001), 7; Lt Gen (Dr) MC Bhandari, *Solving Kashmir* (New Delhi: Lancer Publishers and Distributers, 2006), 39, 40.

Most of the information about early Kashmiri history is drawn from the writings of a Kashmiri poet and historian, Kalhana, who lived in the twelfth century and authored a book 'Rajtarangini' (River of Kings). According to his writings, Kashmir was originally ruled by Buddhist rulers starting from Ashoka (274-237 BC), who founded the Kashmiri capital, Srinagar.¹³ By the seventh century, rule of the state had passed to Hindu overlords. Major Hindu dynasties included Karkota (until 855 AD) and Utpala (until early 14th century), and this period also produced some well known rulers such as Lalitaditya (724AD to 760AD) and Avantivarman (855AD-883AD). These rulers expanded their influence throughout India and Central Asia.¹⁴

Medieval Times: Islamic and Sikh Influence

In the early 14th century, Islam made its appearance in the Kashmir, and by 1320 Kashmir had slipped into the hands of Muslim rulers.¹⁵ Kashmir became part of the Indian Empire, once again, when the Moghul (Muslim) emperor, Akbar, conquered the state in 1586. In the waning days of the Moghul Empire, Kashmir returned to Afghan rulers following the battle of 1753. Afghan rule of Kashmir was marked by misrule and tyranny by corrupt governors.¹⁶ With mass public support, Ranjit Singh, a Sikh ruler,

¹³Iffat Malik, *Kashmir: Ethnic Conflict, International Dispute* (Oxford: Oxford University Press, 2002), 17; Bhandari, *Solving Kashmir*, 37.

¹⁴*Ibid.*, 17.

¹⁵Wajahat Habibullah has differentiated between two forms of Islam that came to India, the imperial Islam and the Sufi Islam (a tolerant version of Islam). He states that it was Sufi Islam which made appearance in Kashmir. Habibullah, *My Kashmir: Conflicts and Prospects of Enduring Peace*, 18.

¹⁶Bhandari, *Solving Kashmir*, 47.

routed the combined Afghan and Kashmiri forces in 1819 and thus Kashmir came under the control of Punjab (Sikh Darbar). After the death of Ranjit Singh, the Sikh empire deteriorated to the point that the local ruler of Kashmir valley, Gulab Singh, a Dogra¹⁷ ruler, became almost independent. During the same time period, the British were consolidating their position in India and were watching the Punjab and Kashmir carefully. They found a valuable ally in Gulab Singh who was to be used against the Sikhs.

The British Paramountcy: Sale of Kashmir and Pseudo Independence

The Treaty of Amritsar (1846), concluded after the defeat of Sikhs in the Anglo-Sikh War, saw the Sikhs cede large territories including J&K. The latter was awarded to the British ally, Gulab Singh, for his ‘good conduct’ during the war. In return, he was to pay one crore (10 million) rupees and annual token items to the British Raj.¹⁸ Thus, with ‘the sale of Kashmir,’ Dogra rule started in Kashmir.

During British paramountcy, the state underwent some changes, areas such as Northern Territories (Gilgit, Hunza, Nilt, etc.) came under its administrative control, primarily to ward off the Russian threat. The princely state was thus given a token independence to maintain a buffer between the British Indian Empire and the Russian

¹⁷The word ‘Dogra’ is believed to be originated from ‘Duggar’ (meaning land of two lakes). Dogra is a Hindu community which lives mainly in the northern Indian states of Himachal Pradesh, Jammu and Kashmir and Punjab. Historically, Dogras have been considered as a martial race. Indian Religion, “Dogra Hindu Community,” http://www.indianetzone.com/27/the_dogras_hindu_community.htm: Internet; accessed 15 April 2011.

¹⁸The payment of 25 lakhs (2.5 million) rupees was waived off as British retained some areas initially promised to Gulab Singh. Bhandari, *Solving Kashmir*, 52.

Empire. The resultant power struggles between Britain and Russia in this region is known as the ‘Great Game.’¹⁹

Some social changes were also implemented in Kashmir on the advice of the British Resident (a senior British officer who was stationed at Srinagar to advise the Maharaja).²⁰ The last king of the Dogra dynasty and ruler of J&K prior to the partition was Maharaja Hari Singh, who ascended the throne of J&K on 25 September 1925.²¹ The latter part of his rule from 1930 to 1947 bears closer examination as it witnessed the widening of the Hindu-Muslim divide, and the marginalisation of the Muslim population in Kashmir with subsequent political ramifications.

In 1932, the Muslim Conference was founded in J&K with Sheikh Abdullah as its president. Abdullah had a secular outlook and changed the name of party from the ‘Muslim Conference’ to the ‘National Conference’ to reflect his secular ideals.²² The National Conference was then aligned with the Congress Party in India which was then fighting for the independence of India from the British Empire. In J&K, Sheikh Abdullah gained political popularity at the expense of Maharaja Hari Singh, who was becoming increasingly unpopular in the state. Abdullah was subsequently jailed by the Maharaja’s administration, but was later released later when his mass following put tremendous pressure on the J&K government.

¹⁹The British Empire, “The Great Game,” <http://myweb.tiscali.co.uk/kenanderson/histemp/thegreatgame.html>; Internet; accessed 01 February 2011.

²⁰*Ibid.*, 58.

²¹Habibullah, *My Kashmir: Conflicts and Prospects of Enduring Peace*, 19.

²²Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 44; Sumit Ganguly, *The Crisis in Kashmir: Portents of War, Hope of Peace* (New York: Press Syndicate of the University of Cambridge, 1997), 7.

With the political efforts of Sheikh Abdullah some small but significant democratic changes were introduced in Kashmir. During this lead-up to Indian independence, Kashmir saw very low level of communal strife as compared to rest of India.²³ In 1946, Abdullah launched a ‘Quit Kashmir’ campaign advocating the transfer of power from the Maharaja to the people of the state.²⁴ Whilst in India, some radical developments were taking place that would impact Kashmir.

The Seeds of Mistrust: Development in the Rest of India (1937-1947)

Elections in India were conducted in 1937 for the formation of provincial governance as per the provisions of the Government of India Act of 1935.²⁵ The Congress Party, not surprisingly, won a majority in eight of the eleven provinces. By contrast, the Muslim League fared poorly even in the Muslim majority areas which led to rancour between the two major parties.²⁶ After this election, the Congress Party, which was formed and run on secular ideology, launched a mass campaign to attract Muslim voters. The disgruntled Muslim League, fearing the loss of further support started campaigning based solely upon religious ideology in order to polarise Muslims voters.

²³Muslim league had no following in Kashmir. Mahatma Gandhi was impressed by prevailing social harmony despite the bad situation in the rest of India. Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 46.

²⁴Nicholson, *The Kashmir Power Keg*, 16.

²⁵The Government of India Act of 1935 was aimed at introducing full self rule at the provincial level. It provided separate voting for Muslim seats in the provinces where Muslims formed the majority of the population. First elections were held in 1937 to form provincial legislature. Dennis Kux, *India-Pakistan Negotiation: Is Past Still Prologue?* (Washington, D.C.: United States Institute of Peace Press, 2006), 5-6.

²⁶Muslim League was formed in 1906 solely to look after the interest of the Muslim population in the Indian subcontinent.

American political scientist Dennis Kux highlights this divisive approach based primarily on fear:

In response [to the 1937 poll results], Jinnah [Mohammad Ali Jinnah, President of Muslim League] and his colleagues decided upon a radical change in strategy that set India on the road to partition. The League no longer sought cooperation between Hindus and Muslims. Instead it adopted the opposite approach by stressing inter-communal differences. . . . To mobilise political support among the poor Muslims masses, the League stirred religious sentiments by adopting the emotionally charged slogan of “Islam in danger” in a Hindu dominated India.²⁷

After the elections, the ‘two nation theory’ which advocated that India was not one but two nations, a Hindu India and a Muslim India, became a cornerstone of the League’s ideology.

By 1939, the provisions of the Government of India Act of 1935 had lapsed, but the polarisation of Muslims and Hindu-Muslims continued apace as a direct result of the League’s communal politics in the name of “Islam in Danger.”²⁸ Membership in the League grew due to its religious campaign, and the League subsequently adopted ‘Pakistan resolution’ on 23 March 1940 in Lahore.²⁹ An era of communal disharmony commenced, was entered into, primarily due to the League’s communal politics fomenting and promoting a Hindu-Muslim divide for the ultimate creation of a Pakistan. As a result, Hindu right wing organisations also made the occasional appearance as a result of this extremism, but fortunately they largely remained marginalised in the political arena.

²⁷Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 7.

²⁸M. J. Akbar, “Two Nation Theory has Bred Practice of Hatred,” *The Times of India*, 7 December 2008.

²⁹ Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 9.

By 1946, the League had abandoned the legal apparatus, and on 29 July 1946, the Muslim League President Mr. Mohammad Ali Jinnah called for a “direct action to achieve Pakistan.”³⁰ He made his intentions clear to the League working committee:

Today, we have said good-bye to constitutional methods and talks...I am also going to make trouble now. Throughout the painful negotiations, the two parties [the Congress and the British] with whom we bargained held a pistol at us; one with power and machine at us; and the other with non cooperation and a threat to launch a mass civil disobedience. This situation must be met. We also have a pistol.³¹

The days of the failing British Raj were coming to an end. War-ravaged Britain’s inability to hold on to India any further was confirmed with their announcement that the British rule would end by June 1948. That milestone appeared to be plenty of time for serious partition issues to be addressed. When Lord Louis Mountbatten, the newly appointed Viceroy, reached India, he, however, decided that partition was inevitable and advanced the date of independence by one full year, without considering the second and third order effects of that critical decision.³²

The plan for the partition of the subcontinent and the creation of two new nation states was announced on 3 June 1947. The process was to be completed by 15 August 1947. This permitted only 73 days to complete all the necessary diplomatic, economic,

³⁰Mohammad Ali Jinnah appealed to all Muslims to take to the streets on 16 August 1946 to protect their rights. The agitation soon turned into Hindu-Muslim communal violence. Calcutta (now Kolkata) was the worst hit city where an estimated 5,000 people died and 100,000 thousand people were rendered homeless. This incident is known as “Direct Action for Pakistan.” Ashvini Agrawal, “Modern History: India 1945 to 1949,” in *World and Its People: India and Its Neighbours Part I* (New York: Marshal Cavendish Corporation, 2008), 390.

³¹*Ibid.*, 10.

³²*Ibid.*, 11.

security and administrative arrangements to affect the partition.³³ In an environment of mutual distrust, a period of 73 days was grossly inadequate to solve complicated problems such as the division of assets and liabilities, and the realignment of both government's processes and procedures for a country of the size of a sub-continent.³⁴

Additionally, with the mass migration of approximately 13 million people uprooted from India to Pakistan and vice versa, communal violence invariably erupted and consumed a quarter million lives.³⁵ The communal hatred and mistrust stirred up between Hindus and Muslims prior to partition of British India, although changed in its form and reduced in degree with passage of time, continues today as mistrust and rivalry between India and Pakistan after the partition.

On the day of independence of the subcontinent, when peace and stability could have been ensured with adequate preparation and mutual agreement with Britain acting as the honest impartial broker, the prevailing atmosphere instead was highly volatile, and filled with mistrust. Pakistan, which was born of Islamic religious ideology, has since viewed India strictly from a religious angle rather than accepting Indo-Pak relations as that of two sovereign modern states. This, despite the fact that, India is the largest secular Muslim nation in the world. The entire Pakistani approach to the Kashmiri question is driven by this same uncompromising religious ideology.

³³Bhandari, *Solving Kashmir*, 66; Verghese Koithara, *Crafting Peace in Kashmir: Through a Realist Lens* (London: Sage Publications, 2004), 33.

³⁴Verghese Koithara, *Crafting Peace in Kashmir: Through a Realist Lens Ibid.*, 29.

³⁵*Ibid*; Nicholson, *The Kashmir Power Keg*, 15.

The Mountbatten plan, technically and legally, gave authority to former princely states of the Raj such as J&K to remain independent. On the Independence Day, when J&K ultimately decided to join neither the dominion of India or Pakistan, the former principedom became independent with the termination of the British paramountcy.

Independent J&K (15 August 1947–26 October 1947)

The independence of J&K was short-lived - only 72 days. The independent J&K state comprised an area of 222,236 square Km, which included the Kashmir Valley which accounted for 10% of the total area.³⁶ A census conducted in 1941 puts its total population at 4.02 million. Muslims comprised 77% of this total with Hindus comprising 20% of the population, and the difference a smattering of other religious faiths.³⁷ The map below at figure 1.1 shows its juxtaposition to other nation states in the region.

³⁶Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 30.

³⁷*Ibid.*; Habibullah, *My Kashmir: Conflicts and Prospects of Enduring Peace*, 20.



Figure 1.1: Map of Jammu and Kashmir³⁸

Source: Kashmiri Photos, "Kashmir: The Paradise on Earth."

<http://www.kashmirphotos.info/>; Internet; accessed 01 February 2011.

³⁸222,236 square Km is the total area of J&K state. Pakistan occupied approximately 37.4% of the territory during the first Kashmir War (1947-48). The Pakistan occupied Kashmir (POK) is divided between Azad Kashmir and the Northern Area. Aksai Chin, accounting for about 16.9% of the area and no population, was occupied by China during 1950s. In 1963, Pakistan ceded 2.33% of the area to China as part of China-Pakistan border settlement. Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 30.

The short-lived state had a common border with India, Pakistan, China, and Afghanistan. It was considered strategically important by India and Pakistan, and potentially could give either country an access to the central Asian region. In addition, three major rivers, the Indus, Jhelum and Chenab, which drain the plains of Pakistan, originated in the mountainous region of J&K. Also, the mountains of J&K were suitable launch pads for attacking the Punjabi plains, which was a fertile landscape adjacent to mountains and was spread on both sides of the border.

Maharaja Hari Singh deferred the decision to join either the dominion of India or the Pakistani dominion, or to remain independent permanently.³⁹ He sought a standstill agreement with India and Pakistan until such time that he could decide. This standoff formulated in writing was quickly accepted by Pakistan, whereas India postponed the agreement until further negotiation.⁴⁰ The text of the standstill agreement is attached as Appendix 1.

At this point in time, it was well realised in Pakistan that all political advantages of Kashmir joining the dominion of India were in the favour of India.⁴¹ Maharaja Hari Singh being a Dogra (Hindu) was not particularly keen to join Pakistan and his principle political opponent, Sheikh Abdullah, was also aligned towards India.⁴² Pakistan, however, had geographical advantage in terms of road connectivity and decided to pre-

³⁹Bhandari, *Solving Kashmir*, 102.

⁴⁰*Ibid.*, 67; Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 33..

⁴¹Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 15.

⁴²Sheikh Abdullah spoke to the United Nation in February 1948 and said, “We shall prefer death rather than joining Pakistan.” Habibullah, *My Kashmir: Conflicts and Prospects of Enduring Peace*, 20.

empt any political decision by Kashmiris to democratically choose their future.

Unfortunately, Pakistan's patience ran thin and it was decided arbitrarily by Pakistan to violate the standstill agreement and covertly annex the state by use of force.⁴³

The Genesis of the Dispute: First Kashmir War (1947-48)

The roots of today's Kashmir disputes lie in the 1947-48 War fought between India and Pakistan over Kashmir. Pakistan always believed that Kashmir, by virtue of being a Muslim majority state, rightfully belonged to it from the outset, and that J&K could not join secular India at any cost. After Pakistan's negotiations for the merger of J&K into Pakistan failed, the Pakistani government first resorted to an economic blockade of the state as the major roads of supply emanated from that part of the former British Raj.⁴⁴

When this endeavour failed, Pakistan, sought to gain control over J&K by on 22 October 1947 by covert aggression against the state of J&K. Approximately 15,000⁴⁵ armed tribesmen mounted on trucks moved along the Muzzafrabad-Domel-Mahura-Baramula-Srinagar road with an intention of capturing the entire J&K state. While it is universally agreed that the invaders came directly from Pakistan, it cannot be proven conclusively that the Pakistani government and its army directly supported the attack.

⁴³Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 15.

⁴⁴Bhandari, *Solving Kashmir*, 68; Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 57; Malik, *Kashmir: Ethnic Conflict, International Dispute*, 65; Nicholson, *The Kashmir Power Keg*, 18.

⁴⁵The number of invaders has been widely disputed. Pakistan claimed them to be much smaller whereas India claimed it to be higher. Even there is no internal consistency in the figures provided by Indian or Pakistani authors.

India holds the view however, that the invasion was a deliberately planned and executed operation with the complicit direction, control and resources provided by the Pakistani army.⁴⁶ Evidence gathered during/after the war showed that the tribesmen participating in the invasion were trained and led by regular Pakistani Army personnel dressed as tribesmen. Also, the weapons captured by the Indian Army included .303 rifles, Bren and Sten guns, two and three inch mortars, 3.7 howitzers and anti-tank rifles utilized by the Pakistani Army which reinforces the Indian government's position.⁴⁷

The letter to Lord Mountbatten from Maharaja Hari Singh and the reply by Lord Mountbatten, the Instrument of Accession, and the extract of the Indian complaint to the UN Security Council (UNSC) are attached as Appendix 2, 3 and 4 respectively.

Some authors have claimed that this operation was codenamed OPEARTION GULMARG, and was led by Colonel (later Major General) Akbar Khan of the Pakistani Army.⁴⁸ Akbar Khan later admitted that he was contacted on behalf of the Prime Minister by a senior Muslim League leader, who enlisted him in an unofficial scheme "to help the Kashmiri Muslims to prevent the state's accession to India."⁴⁹ Akbar Khan has noted in his book that:

⁴⁶Malik, *Kashmir: Ethnic Conflict, International Dispute*, 66; Ganguly, *The Crisis in Kashmir...*, 12; Lamb, *Crisis in Kashmir: 1947 to 1966*, 52.

⁴⁷Invaders were using man pack radio sets and were employing Mark II mines. They wore Pakistan Army uniforms. It is widely believed that generous leave was granted to the soldiers and officers of the Pakistan Army, and they were encouraged to participate in the operation. Rahmatullah Khan, *Kashmir and the United Nations* (Delhi: Vikas Publications, 1969), 13; BL Sharma, *The Kashmir Story* (London: Asia Publishing House, 1967), 2; Malik, *Kashmir: Ethnic Conflict, International Dispute*, 67; Ganguly, *The Crisis in Kashmir...*, 10.

⁴⁸Few writers such as Bhandari and Ataov have claimed that he was directly conducting operations under a pseudo name 'General Tariq.' Others believe that he supported indirectly. Bhandari, *Solving Kashmir*, 68; Atoav, *Kashmir and Neighbours: Tale, Terror, Truce*, 56, 57.

⁴⁹Akbar Khan, *Raiders in Kashmir* (Karachi: Pak Publishers Limited, 1970), 11.

The [Pakistani] authorities needed a lot of assistance from the Army, in the shape of plan, advice, weapon, ammunition, communication and volunteers. They did not ask for it, because the whole thing had to be kept secret from the Commander-in-Chief and other senior officers who were British.⁵⁰

A. H. Suharwardy, a retired Pakistani civil servant, commented that a few sympathetic army officers diverted some condemned ammunition for the use of tribal raiders but “they were getting no pay, no uniform, not even arms from the Pakistan government in an adequate or open manner.”⁵¹ He further said,

“Whether they liked it or not, the Pakistan government did get involved. . . . Could any man with a common sense believe that without the Pakistan government’s help, however meagre, untimely and grudging, the Azad troops and the Pathan tribesmen could liberate two-thirds of the entire Jammu and Kashmir state [in the period from October 1947] up to about May 1948?”⁵²

However, Pakistan’s stance remained that it was a liberation movement launched on local tribesmen initiative and that the Pakistani government had no control over them, and further that the Pakistani government did not support the attack. “The Pakistani representative to the UN, Zafrullah Khan [Foreign Minister of Pakistan], denied any complicity in the aggression, but he acted [there] as an advocate of the tribesmen.”⁵³

Irrespective of the involvement of the Pakistani Army, it is beyond doubt that it was a case of a blatant aggression against the independent state of J&K. It was the first major Pakistani politico-military manoeuvre to assail any future peace in Kashmir, and

⁵⁰*Ibid.*, 13, 14.

⁵¹A.H. Suharwardy, *Tragedy in Kashmir* (Lahore: Wajidalis, 1983), 113-114.

⁵²*Ibid.*, 209.

⁵³Sharma, *The Kashmir Story*, 27.

added fuel to the mistrust between the fledging nation states of India and Pakistan. The Kashmiri history was to witness similar manoeuvres time and again.

The mysterious invaders easily brushed aside the J&K state forces, already weakened due to defection and reached Baramula on 24 October 1947 where they started wide spread looting, arson and rape.⁵⁴ Maharaja Hari Singh, the internationally recognised leader of the small state, left with no other option, made an appeal for military assistance from India.⁵⁵ Two days later, on 26 October, when the invaders had reached the outskirts of Srinagar, the Maharaja acceded his state to India and the formal Instrument of Accession was signed between the Maharaja and Lord Mountbatten, the Governor General of (independent) India.⁵⁶ See the Instrument of Accession at Appendix 3. However, this Instrument of Accession is disputed by Pakistan to this very day, and ironically maintains that this accession was obtained by “fraud and violence.”⁵⁷

The Pakistani argument, that the accession is invalid, centers on two main issues. First, that the Kashmiri people had already established a legitimate government at Muzzafrabad (in Pakistan occupied Kashmir) on 24 October 1947. Hence Maharaja had no legal right to decide the fate of the state. Second, that Maharaja was arm twisted by the Indian Home Minister Sardar Vallabhbhai Patel into such agreement.⁵⁸

⁵⁴Robert G. Wirsing, *India, Pakistan and the Kashmir Dispute: On Regional Conflict and Its Resolution* (New York: St. Martin Press, 1994), 39.

⁵⁵Bhandari, *Solving Kashmir*, 69; Atoav, *Kashmir and Neighbours: Tale, Terror, Truce*, 58.

⁵⁶Bhandari, *Solving Kashmir*, 69.

⁵⁷Khan, *Kashmir and the United Nations*, 17.

⁵⁸Victoria Schofield, *Kashmir in conflict: India, Pakistan and the Unending War* (London: I.B. Tauris and Co., 2003), 44.

Indian first troops to respond for assistance landed in Srinagar on 27 October 1947, and the first Kashmir war commenced.⁵⁹ Indian troops pushed the tribal invaders back from the outskirts of Srinagar, liberated Baramula and moved beyond the town of Uri. Peace efforts also paralleled the fighting. India-Pakistan meetings were held in Delhi and Lahore from 30 October to 8 December 1947 but no agreement could be reached while the forces manoeuvred for position and advantage on the ground. On 1 January 1948, India lodged a formal complaint with the UN under article 35 of the UN Charter accusing Pakistan of being an aggressor in the conflict.⁶⁰ See India's complain to UNSC at Appendix 4.

In considering India's complaint, the UNSC disregarded some basic aspects of the complaint, and appeared to ignore the fact that one country was clearly the aggressor and that the other had acted legally in the defence of its territory that had been recently acceded to it. Unfortunately, the UNSC, firmly under the influence of the USA and UK, chose to treat both, India and Pakistan, as aggrieved parties to the conflict, even when Pakistan denied being a party (by virtue of denying its role in the aggression).⁶¹ Essentially, an act of aggression by Pakistan was not condemned but was validated as fait accompli. Furthermore, Pakistan's attempt to complicate the issue by linking the issue with the accession of other princely states, the unjustified distribution of assets, and the oppression of Muslim Kashmiri population under a Hindu ruler resulted in the change of title of the complaint to the UN from "The Jammu and Kashmir Question" to "The Indo-

⁵⁹Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 34.

⁶⁰*Ibid.*, 35; Lamb, *Crisis in Kashmir: 1947 to 1966*, 55.

⁶¹Sharma, *The Kashmir Story*, 23.

Pakistan Question.”⁶² The Pakistani political manoeuvre had achieved its twin objectives of saving Pakistan from getting condemned for the aggression against J&K, and complicating the issue to gain some *locus standi* in the case.

After an initial resolution seeking restraint by both parties, the UNSC passed a subsequent resolution on 20 January 1948 setting up a three member United Nation Commission for India and Pakistan (UNCIP).⁶³ On 1 January 1949, a cease fire agreement was signed between India and Pakistan and the cease-fire line came into being. A UN Military Observer Group for India and Pakistan (UNMOGIP) was also set up to monitor the cease fire line.⁶⁴

Almost one third of the state remained with Pakistan which is referred to as “Pakistan occupied Kashmir” (POK) by India and as Azad (meaning free) Kashmir (AK) by Pakistan.⁶⁵ The part of Jammu and Kashmir under Pakistan’s control has further been divided into Northern Areas and Azad Kashmir. The area which remained under Indian control is referred to by Pakistan as India Held Kashmir (IHK). This territorial division has remained almost unchanged for the past 63 years. For the remainder of this paper, J&K will mean the entire Jammu and Kashmir state (including areas under Indian as well as Pakistani control), POK will mean part of J&K under Pakistani control (includes AK and Northern Areas), and Indian J&K which will mean part of J&K administered by India.

⁶²Wirsing, *India, Pakistan and the Kashmir Dispute ...*, 57; Nicholson, *The Kashmir Power Keg*, 21.

⁶³Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 35.

⁶⁴Malik, *Kashmir: Ethnic Conflict, International Dispute*, 118.

⁶⁵Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 148.

Period from 1948 to 1997: Sequel of Failures

The already strained pre-independence relationship between India and Pakistan was exacerbated by the First Kashmir war. Indo-Pak relations in the post-war period witnessed a number of challenges. Negotiation efforts by the UN for a permanent settlement of the Kashmir issue did not bear fruit mainly because of two contentious issues – a plebiscite and the demilitarisation of the state. The UNSC resolution 47 of 21 April 1948 set a precondition of complete withdrawal of the Pakistani Army, tribesmen and nationals from J&K. India, on the other hand, was to maintain a minimum presence of military personnel to maintain law and order in the state.⁶⁶ Once these conditions had been achieved, a plebiscite was to be held in J&K. The resolutions of the UNSC dated 21 April and UNCIP resolution dated 13 August 1948 are attached as Appendices 5 and 6 respectively. Indian and Pakistani divergent views on the issue of plebiscite will be covered in detail in Chapter 3.

General A.G.L. McNaughton (Canada), President of the UN Security Council, proposed another plan for the complete demilitarisation of the state and the holding of a plebiscite on 22 December 1949. This plan was rejected by India who saw itself as the representatives of law and order, and argued that the Pakistani Army should vacate J&K as they were the aggressors. In 1950, under Owen Dixon of Australia, UNCIP proposed a regional plebiscite to be held instead of treating the entire state as one entity. This plan was rejected by Pakistan, and further proposals by subsequent UNCIP heads such as

⁶⁶UNSC Resolution 47 dated 21 April 1948. See Appendix 5.

Frank Graham (US) and Gunnar Jarring (Sweden) also proved unsuccessful.⁶⁷ Bilateral negotiation efforts also shared a similar fate.

In the mean time, India started the democratic process in the Indian J&K. The state of Indian J&K was awarded special status through article 370 of the Indian constitution when it was adopted on 26 January 1950.⁶⁸ Elections were held in the Indian side of J&K and the state constituent assembly ratified the accession to India on 15 February 1954.⁶⁹ In May 1954, the jurisdiction of the central government was extended to cover all subjects in the Union List, not just the three (external affairs, defence and communication) as was the case until then. The following years witnessed increasing integration of the state with the Union of India. The Indian J&K was brought under the purview of All India Services in 1958, and in the same year it was brought under the financial control of the central government. In 1959, the permit system for non-J&K Indian visitors to the state was lifted and the jurisdiction of the Supreme Court of India was extended over the entire state.⁷⁰

In 1962, India lost the Indo-China War, and thus was heavily reliant on western support. In 1963, as part of US-UK effort, the Commonwealth Secretary Duncan Sandy and US diplomat W. Averell Harriman, managed to start India-Pakistan negotiations over J&K. But in the middle of negotiations, Pakistan announced its border settlement with

⁶⁷Malik, *Kashmir: Ethnic Conflict, International Dispute*, 119.

⁶⁸Article 370 restricts Indian Parliament's legislative power with regard to J&K to external affairs, defence and communication. Other provisions of the Indian constitution could be extended to J&K only with prior concurrence of the state government. Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 55.

⁶⁹*Ibid.*, 58.

⁷⁰*Ibid.*

China. This settlement caused Pakistan to cede 5,180 square Km of POK territory to China.⁷¹ The stated purpose behind this settlement was to settle the China-Pak boundary dispute, but was also a ploy aimed at complicating the Kashmir issue further by involving China. India claimed that Pakistan had no authority to cede the J&K territory and walked out of the negotiations. Thus an opportunity with tremendous potential for success ended in failure, yet again due to a Pakistani manoeuvre.⁷² Two years later, tensions between India and Pakistan resulted in yet another war.

Claims and counter claims exist regarding which party actually triggered the 1965 Indo-Pak War. Pakistan denies any involvement with the mass infiltration of guerrilla into Indian J&K in 1965. By then, India had suffered a humiliating defeat by China, and the Indian armed forces were considered to be weak. In Delhi, Lal Bahadur Shastri, who was perceived to be a weak politician, had succeeded Jawahar Lal Nehru as the Indian Prime Minister. At the same time, a civil unrest was occurring in Indian J&K due to the disappearance of the *Moe-e-Muqaddas* (a strand of hair of the Prophet Mohammad kept at the Hazaratbal shrine), and the re-arrest of Sheikh Abdullah. The situation thus appeared ripe for the Pakistani leadership to incite a revolt in Kashmir which could then justify a timely and convenient intervention by the Pakistani Army.⁷³ As British historian

⁷¹B.L. Kak, "China-Pak Dispute Across J&K LoC," *The Daily Excelsior*, 3 October 2004. Also available from <http://www.jammu-kashmir.com/archives/archives2004/kashmir20041003b.html>; Internet; accessed 4 February 2011.

⁷²Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 26.

⁷³"Pakistan plan, (code named OPERATION GIBRALTER) was based on the absurd presumption that Indian forces were weak and that people in the state would rise in mass rebellion against the India Government." Bhandari, *Solving Kashmir*, 77; Atavov, *Kashmir and Neighbours: Tale, Terror, Truce*, 125, 126.

Alastair Lamb has noted, “It looked as if what the Azad Forces and tribesmen failed to do in 1947 might be achieved in 1965.”⁷⁴

Bands of trained guerrillas started infiltrating into Indian J&K from training camps in POK in early 1965. India responded by moving into POK and captured some mountain passes being used by infiltrators in order to effectively check further infiltration.⁷⁵ Accusing India of launching a war, Pakistan responded by launching an armoured offensive into Jammu. See map 1.1 on page 16. India responded, in turn, by launching a counter-offensive to capture Lahore in Pakistan.⁷⁶ In a state of stalemate a ceasefire took effect on 23 September 1965 and the Tashkent Agreement was signed through USSR assistance.⁷⁷ The Tashkent Agreement established *status quo ante bellum*. The extract of the agreement is attached as Appendix 7.

Six years later, India and Pakistan fought another war, but this time the catalyst was in East Pakistan (now Bangladesh). The Indo-Pak war of 1971 resulted in the independence of Bangladesh, and approximately 93,000 Pakistani soldiers surrendered to the Indian Armed Forces. This time India had a slight upper hand, and took the opportunity to attempt restoring some lasting stability to Kashmir. The Simla Agreement, which was concluded at the end of the war, brought two changes to the J&K issue. It facilitated a joint delineation of the cease fire line by commanders of the Indian Army and the Pakistani Army, and this line was renamed as line of control (LOC). The second

⁷⁴Lamb, *Crisis in Kashmir: 1947 to 1966*, 119.

⁷⁵Ganguly, *The Crisis in Kashmir...*, 56; Lamb, *Crisis in Kashmir: 1947 to 1966*, 121.

⁷⁶Malik, *Kashmir: Ethnic Conflict, International Dispute*, 122.

⁷⁷*Ibid.*, 123.

change saw both parties agree that the Kashmir issue would be solved bilaterally using peaceful means.⁷⁸ An extract of the agreement is attached as Appendix 8.

A difference in interpretation of the LOC turned the Siachen Glacier, although away from Kashmir Valley proper, into the highest battlefield in the world. The LOC was not delineated north of map reference NJ 9842 as there was no presence of troops or civil population in that area. India and Pakistan made their different interpretation of the LOC beyond NJ 9842, and a race between the Indian and the Pakistani armies to capture maximum territory commenced. With small skirmishes, both the armies settled into fixed positions and the line between them is known as the Actual Ground Line Position (AGPL). Running for about 124 Km along some of the most treacherous terrain of the world, the AGPL remains the source of disagreement this date.⁷⁹

The 1987 state election for the J&K assembly triggered another phase in the history of J&K. A general perception ran through the Kashmir valley that the election was rigged at the behest of Delhi. This led to a sharpening of differences between some local Kashmiri parties and Delhi. The result was widespread protests and violence in Indian J&K and the seeds of an insurgency with the fervour of *Azadi* (freedom) appeared on the scene.⁸⁰ This was a dream situation for Pakistan.

By this time, Pakistan's Inter Services Intelligence (ISI), supported by Central Intelligence Agency (CIA), had mastered the art of training, funding and organising irregular warriors in the name of religion to fight against the USSR in Afghanistan. The

⁷⁸Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 68.

⁷⁹For more details on Siachen dispute, see Bhandari, *Solving Kashmir*, 135-139.

⁸⁰Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 62; Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 129; Bhandari, *Solving Kashmir*, 120.

spin-off was that these specially trained insurgents could also be used by the Pakistani Army in Indian J&K. Pakistani policy of boosting Islamic fundamentalism in Indian J&K by creating a rift between Srinagar and Delhi since 1970 began to show some results. With the abrupt withdrawal of the USSR from Afghanistan in 1989 and a near simultaneous eruption of the insurgency in Indian J&K provided a unique opportunity for Pakistan. Soon, the irregular warriors from the Afghan war (Mujahedeen) and all its US funded equipment and training could be diverted towards Indian J&K.

The separatist, home-grown pro-independence insurgency was slowly usurped by Pakistan's ISI. The J&K Liberation Front (JKLF) was ultimately sidelined by ISI sponsored pro-Pakistan organisations such as Hizbul Muzahiddin (HM) and Jamat-e-Islami (JeM).⁸¹ The Kashmir valley (part of Indian J&K) quickly witnessed a surge of foreign terrorists with a number of camps established in POK to train irregulars to wage war against Indian security forces. A local insurgency turned into sponsored terrorism and later in a proxy war against India.

India accused Pakistan of exporting terrorism to the Kashmir valley and responded by deploying the Army into Indian J&K. In retrospect, however, India's stand that the Kashmiri insurgency had no local roots and was purely a proxy war being waged by Pakistan, as well as the Pakistani denial of support in terms of weapons, training and finance to the terrorist organisation in the valley, appear to be inaccurate.⁸² However, there is little doubt that Pakistan has exploited the existing discontent within a segment of the Kashmiri population, and built upon it for its own purposes. The spread of terrorism

⁸¹Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 43.

⁸²Ganguly, *The Crisis in Kashmir...*, 16.

in Kashmir has only widened the distance between India and Pakistan. The insurgency is the greatest enemy of peace in Kashmir. The Indian and Pakistani perceptions of insurgency in Kashmir (‘sponsored terrorism’ vs. ‘struggle for independence’) will be further explored in Chapter 3.

It is surprising that amongst the numerous failures of negotiations on J&K, a successful treaty, the Indus Water Treaty, was concluded between India and Pakistan in 1960. Through this treaty, “waters of three western rivers (the Indus, Jhelum and Ravi) were entirely reserved for Pakistan and all the waters of three eastern rivers (the Chenab, Beas and Sutlej) were to be for India’s exclusive use.”⁸³ Although this treaty has little impact on the territorial dispute in Kashmir, it demonstrated that a genuine desire to solve a common problem could provide successful results.

The half-century from 1948 to 1997, is also marked by a number of other developments, in this case, not as successful. These include the unsuccessful 1954 India-Pakistan talks on J&K, the Benzir Bhutto and Rajiv Gandhi (Prime Ministers of Pakistan and India) parleys in the late 1980s, and the discussion between Nawaz Sharif and I.K. Gujral (Prime Ministers of Pakistan and India) in the mid 1990s.⁸⁴ These initiatives were neither fundamentally different from others nor did they make any substantial progress on the issue. Hence, these have not been covered in detail.

The period of post 1998 however, is regarded as a watershed in the political relationships between India and Pakistan for it marks the beginning of the nuclear era on

⁸³Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 24.

⁸⁴*Ibid.*, 19.

the Indian subcontinent. This period was marked by some high profile peace adventures as well as the Kargil War (1999) which will now be addressed in the next Chapter.

CHAPTER 2 – RECENT DEVELOPMENTS: HIGH PROFILE INITIATIVES AND SPOILERS

There is [a] reason to believe that the parties are still thinking tactically, not strategically. It is the lure of possible international pickings from a peace process, rather than any desire to secure the large and lasting gains from peace itself, that seems to be driving the process at this stage.

Verghese Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*⁸⁵

The Three Dramatic Years (1998 to 2001)

May 1998 saw the dawn of a new era on the Indian sub continent. On 11 and 13 May 1998, India conducted a total of five underground nuclear tests, after breaking a 24 year self-imposed moratorium. Fifteen days later, Pakistan followed suit by claiming five nuclear tests on 28 May, and an additional one on 30 May 1998. These tests were not only a serious setback to the non-proliferation efforts, but they added a very dangerous dimension to the traditional rivalry between India and Pakistan. The strained relationship between the two new nuclear states, and the potential for massive destruction, resulted in the global community at large, and in particular the US government putting the weight of their diplomatic efforts into encouraging the resumption of Indo-Pak dialogues.⁸⁶ Ironically, these nuclear tests helped in the improvement of the bilateral relations in the short term.

⁸⁵Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 296.

⁸⁶Nicholson, *The Kashmir Power Keg*, 3, 4; Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 40.

The Indian Prime Minister (PM), Atal Bihari Vajpayee, in an effort to build good relations with Pakistan, took a historic bus ride from Delhi (India) to Lahore (Pakistan) on 20 February 1999 to inaugurate bus service between those two cities. This historic undertaking did not go well with those in Pakistan who were spreading anti-India ideologies, and in particular Jamaat-i-Islami, a major Islamist party. The Pakistani military service commanders chose not to greet India's prime minister at the border; instead they were welcoming a Chinese military delegation in Islamabad. One observer noted that, "Their absence suggested that the army leadership was not overtly enthused about Sharif's [Pakistan's Prime Minister] hopes for the détente with India."⁸⁷

Despite these issues, the eagerness and enthusiasm for the prospects of peace were significant. PM Vajpayee asked all to "Put aside the bitterness of the past, and let us together make a new beginning." Similar views were echoed by the Pakistan's PM. He claimed that, "The time is not very far away when Pakistan and India will be able to live as the United States and Canada do—in peace."⁸⁸ In the midst of high hopes and media glare, the two prime ministers signed the "Lahore Declaration" in which they agreed, among other things, to intensify efforts to resolve all issues including J&K, and to refrain from future interference in each other's internal affairs.⁸⁹ The full text of the Lahore declaration is attached as Appendix 9.

The optimism and even higher hopes emerging from the Lahore declaration did not last long. In May 1999, Pakistani Army regulars and mercenaries belonging to at least

⁸⁷Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 42.

⁸⁸*Ibid.*, 41.

⁸⁹Nicholson, *The Kashmir Power Keg*, 5.

four terrorist organisations crossed the LOC into Drass-Kargil-Batalik sector of Indian J&K and occupied about 130 points along the 160 Km on the LOC that the Indian Army had vacated for the winter.⁹⁰ In some places they moved over 15 Km deep inside Indian territory.⁹¹ This LOC, established by the mutual consent of Indian and Pakistani leaders, and was delineated on the ground jointly by the respective military commanders of both the countries, had been violated without any warning or provocation.

The Simla Agreement in effect since 1972 between India and Pakistan had stated that “...neither side shall seek to alter it [LOC] unilaterally, irrespective of mutual differences and legal interpretations.” Both sides had also promised “to refrain from threat or use of force in violation of this line.”⁹² Pakistan’s actions were inexplicable and with this military misadventure, the ongoing proxy war in Kashmir took on new dimensions.⁹³

The intrusion by Pakistan into Indian territory specifically threatened a key supply route to Kargil, Leh and Ladakh in J&K. Map 1.1 on page 16 can be referenced. Pakistan, as oft time before, claimed that the forces involved in the LOC violations were Kashmiri Mujahedeen with no ties to the Pakistani Army. However, “the US administration and most international opinion refused to accept that such a large scale, well supplied offensive could have been planned or executed without Pakistan support.”⁹⁴ Subsequently, the active involvement of Pakistan’s Northern Light Infantry (NLI) in this

⁹⁰Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 156.

⁹¹Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 44.

⁹²Simla Agreement paragraph 4(ii).

⁹³*Ibid.*, 156.

⁹⁴Nicholson, *The Kashmir Power Keg*, 6.

massive incursion was proven.⁹⁵ Seven years later, Chief of the Pakistani Army of that time, General Musharraf proudly admitted the Pakistani Army's direct involvement and that "considered purely in military terms, the Kargil operations were a landmark in the history of the Pakistani Army."⁹⁶

In response to this aggression, India used its military power to evict the intruders, acting with restraint, in that it ordered its army not to move beyond the LOC and to restore the status quo. Militarily, the army should have exploited beyond the line to capture choke points, thus cutting off the supply routes of the intruders, but chose not to in order to ensure that the situation in Kargil did not escalate into an all out war between India and Pakistan. It was only when Indian military might started showing results on the battlefield that Pakistan's Prime Minister, Nawaz Sharif, met with U.S. President, Bill Clinton, on 4 July 1999 in Washington, D.C., to agree "to use his [Sharif's] influence to bring about the withdrawal of Pakistani fighters from across the LOC."⁹⁷

During these meetings Sharif consistently claimed ignorance about Pakistan's military initiative in Kashmir.⁹⁸ General Parvez Musharraf, Chief of the Pakistani Army during the conflict and later the President of Pakistan, noted that "Sharif agreed to an unconditional withdrawal during his meeting with the U.S. President."⁹⁹

⁹⁵Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 156.

⁹⁶Parvez Musharraf, *In the Line of Fire: A Memoir* (New York: Free Press, 2006), 93.

⁹⁷Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 43; Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 157.

⁹⁸Staff Reporter, "I was Kept in Dark about Kargil Operations, Says Nawaz," *Pakistan Tribune*, 13 July 2006.

⁹⁹Parvez Musharraf, *In the Line of Fire: A Memoir*, 95.

In fact, it was General (retired) Musharraf, who was the mastermind behind the Kargil intrusion, and he has devoted a full chapter in his autobiography to the Kargil conflict. He showered praise on Northern Light Infantry (NLI) troops for their fighting skills during the conflict and stated bluntly that it was his view that the occupation heights on the Indian side of the LOC in question was not a violation of any agreement. He has stated that “the move to establish our defences along the line [LOC] was approved at both the corps and the army headquarters. The army briefed the prime minister in Skardu on 29 January 1999; and in Kel on 5 February 1999.”¹⁰⁰

The mystery, whether or not Pakistan’s political leadership or even chiefs of the Pakistan Air Force and the Pakistan Navy had knowledge of Pakistani military operation in Kargil, is not yet solved. The version narrated by Musharraf has constantly been refuted by then Pakistan’s PM Nawaz Sharif¹⁰¹ and Lieutenant General (retired) Jamshed Guljar Kiyani,¹⁰² who was serving as a Major General in the ISI during the Kargil conflict and later a Corps Commander, as well as the former chiefs of the Pakistan Air Force and the Pakistan Navy.¹⁰³ It is difficult to establish with certainty as to what was the degree and circle of awareness in Pakistan among people from other services and government departments about the Pakistani Arm’s involvement in Kargil. However, it is

¹⁰⁰*Ibid.*, 96.

¹⁰¹Press Trust of India, “Mush Kept Govt in Dark on Kargil: Nawaz Sharif,” *Express India*, 10 October 2004.

¹⁰²Interview of Jamshed Guljar Kiyani to Geo TV, available from <http://www.paklinks.com/gs/video-gallery/430696-1t-gen-jamshed-gulzar-kiyani-exposes-pakistan-on-kargil-war.html>; B. Raman, “Pakistan: Did Musharraf Tell Nawaz About Kargil Palms?,” *South Asia Analysis Group*; available from <http://www.southasiaanalysis.org/%5Cpapers28%5Cpaper2728.html>; Internet; accessed 13 February 2011.

¹⁰³PAF Falcons, “PAF’s Chief of the Air Staffs,” <http://www.paffalcons.com/cas/parvaiz-mehdi.php>; Internet; accessed 13 February 2011.

clear that the Pakistani Army spearheaded the operation, and probably went well beyond the Pakistani government's original mandate. Clearly, the civilian and military leadership in Pakistan were aware if not involved in the planning and execution of the deliberate attack, in the name of Mujahedeen, against India. This was done during a time during a time when the summit level dialogue process was under way at Lahore, and may have been done deliberately to sabotage the process.

Notwithstanding the claimed bravery of Pakistan's NLI troops and Mujahedeen, the intruders were evicted by the Indian Armed Forces by July 1999. This represents the third time (1947, 1965 and 1999) that Kashmiri history had repeated itself. This time the Pakistani manoeuvre was more military in nature than political, but the end results were similar; tremendous violence resulting in loss of lives in Kashmir, and an escalation of the extant mistrust between India and Pakistan.

This betrayal by the Pakistani Army severed relations, as "the Indians felt badly deceived and were in no mood to proceed with either the 'composite dialogue,' or nuclear confidence building measures. Back channel discussions were also aborted."¹⁰⁴ Thus, the high profile Lahore process was indeed sabotaged by the Kargil debacle and widened the rift between the civilian and the military leadership of Pakistan, which finally resulted in a military coup. The decision of the Pakistan government to withdraw the Pakistani fighters from Indian territory, ostensibly without any military or diplomatic advantage, did not sit well with the military leadership. On 12 October 1999, Pakistan, yet again,

¹⁰⁴Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 43.

plunged into another military dictatorship for the fourth time, with General Musharraf seizing power from Prime Minister Nawaz Sharif.¹⁰⁵

The mistrust between India and Pakistan created by the Kargil conflict was further fuelled on 10 August 1999 by the shooting down of a Pakistani naval airplane, which violated Indian air space.¹⁰⁶ The subsequent hijacking of Indian Airlines flight IC 814 on 24 December 1999 put further strain on Indo-Pak relation. The hijacked plane landed in Lahore for refuelling before it finally moved to Kandahar (Afghanistan). India strongly suspected the entire incident had been masterminded by the Pakistani Inter Service Intelligence (ISI) agency.

The atmosphere of animosity and distrust continued to fester throughout 2000-2001, in which Kashmir saw a tremendous increase in cross LOC firing incidents by the Pakistani Army regulars, and high intensity of insurgency in Indian J&K. Refer to Figure 2.1 below.

¹⁰⁵Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 45; Musharraf, *In the Line of Fire: A Memoir*, 106.

¹⁰⁶India, Embassy of India in Washington, D.C., "Press Release on Shooting Down of a Pakistan Naval Aircraft," <http://www.indianembassy.org/prdetail1324/press-release-on-shooting-down-of-a-pakistan-naval-aircraft>; Internet; accessed 29 January 2011.

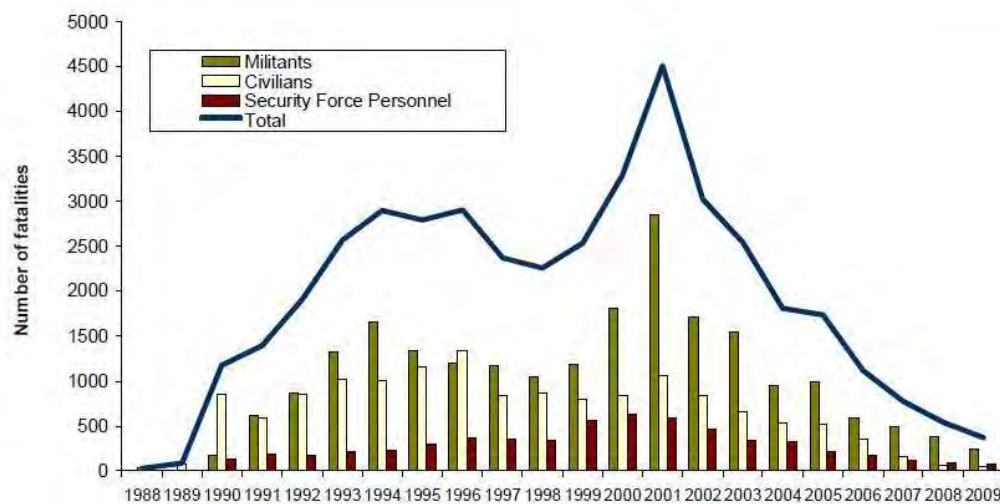


Figure: 2.1 Deaths Related to Kashmiri Separatist Conflict (1988-2009)

Source: Adapted by CRS. Data from the Institute of conflict Management, New Delhi. <http://majorlyprofound.wordpress.com/2010/11/12/strapping-the-suicide-vest-on-the-kashmir-issue/>; Internet; accessed 15 April 2011.

India and Pakistan, as usual, reverted back to their traditional rhetoric: India accusing Pakistan of sponsoring terrorism in Indian J&K, and of resorting to cross LOC firing, while Pakistan claimed it was only providing political and moral support to the liberation movement in Indian J&K.¹⁰⁷

In November 2000, India in a conciliatory move, announced that it would halt of its military operations in Kashmir valley during the holy Muslim month of Ramadan. The move was followed by Pakistan, which announced in December 2000, that its forces deployed along the LOC would observe maximum restraint. The initial impact of this initiative was positive as it reduced the violence and infiltration in Indian J&K. The

¹⁰⁷Nicholson, *The Kashmir Power Keg*, 7.

cease-fire continued, through extensions, until it was suspended by the Indian government on 23 May 2001 in the light of increased fatalities due to insurgent related activities. See figure 2.1 above. This time, India decided to invite the military ruler of Pakistan, General Musharraf, to Agra for a summit meeting. PM Vajpayee's invitation called for the two leaders to "pick up the threads again, so that we can put in place a stable structure of cooperation and address all outstanding issues, including J&K."¹⁰⁸

Musharraf, who had appointed himself as the President (earlier he was known as Chief Executive), arrived in India on 15 July 2001 to what was a highly publicised event. The delegations from both the sides sat down with no common agenda. The Pakistani side demanded that the Kashmir dispute to be registered as a key issue that needed to be addressed, while the Indian side was ready to acknowledge the importance of Kashmir, but also wanted Pakistan to agree to reduce its unacknowledged support for the insurgency in J&K. On 17 July 2001, mid-summit, Musharraf made several anti-India remarks during a live television interview. "He made clear his strong feelings about Kashmir, comparing this issue to the Palestinian struggle with Israel."¹⁰⁹

In reaction to what India felt as Musharraf's breach of diplomatic protocol, the Indian stance hardened. The fragile Indo-Pak negotiations collapsed, and the summit ended without any joint declaration. This time a political utterance by a military man served to end of summit abruptly. The Pakistani government put forth a different story, which was also supported by Musharraf in his autobiography, that a joint declaration was ready to be signed which was agreed between the two prime ministers, but the Indian

¹⁰⁸*Ibid.*, 8

¹⁰⁹Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 45.

Cabinet and some hawkish Indian leaders rejected the proposed declaration.¹¹⁰

Irrespective of the blame game, the event turned out to be the most dramatic event, but again a dead end.¹¹¹

On 13 December 2001, the Indian Parliament was attacked by the terrorists, who were believed by India to belong to a Pakistan based organisation, Lashkar-e-Toiba (LeT).¹¹² India responded, this time, with tough diplomatic measures towards Pakistan. These measures included the withdrawal of ambassadors, a sharp reduction of embassy staff, stoppage of all transport links between the two countries, and the banning of all over-flights by Pakistani aircrafts. The Indian Armed Forces were also mobilised followed by the mobilisation of the Pakistani military. The danger of a war was real.

However, on 12 January and 27 May 2002, Musharraf spoke against terrorism in Kashmir, albeit in a slightly “hedged manner.”¹¹³ He declared that, “We will never budge an inch from our principled stand on Kashmir. . . No organisation will be allowed to indulge in terrorism in the name of Kashmir.”¹¹⁴ India sensed this as a change in Pakistan’s policy and, called off the deployment on 15 October 2002.

Thus, the three dramatic years (1999-2001) of the Indo-Pak roller-coaster ride ended without any tangible result worth noting. Pakistan initiated politico-military

¹¹⁰Musharraf, *In the Line of Fire: A Memoir*, 300, 301; Kux, *India-Pakistan Negotiation: Is Past Still Prologue?*, 45, 46.

¹¹¹Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 45.

¹¹²BBC, “Suspects Held over Parliament Raid,” http://news.bbc.co.uk/2/hi/south_asia/1710191.stm; Internet; accessed 14 February 2011.

¹¹³*Ibid.*, 46.

¹¹⁴Smruti S. Pattanaik, “Pakistan’s Kashmir Policy: Objectives and Approaches,” http://www.ciaonet.org/olj/sa/sa_apr02pas01.html; Internet; accessed 16 April 2011.

manoeuvres had again stalled any prospects for peace in Kashmir despite India's best efforts to conciliation.

Developments Since 2002

Once the hysteria brought on by the attack on the parliament subsided, peace initiatives were restarted. On 22 October 2003, Delhi proposed twelve significant non-military confidence building measures (CBMs), including cross-LOC road travel. Pakistan under General Musharraf responded positively on 23 November by offering a unilateral cease fire along the LOC.¹¹⁵ India reciprocated positively, and on 25 October 2003, a cease fire came into effect covering the entire LOC and the AGPL (Siachen area).

The goodwill generated by these efforts facilitated the resumption of the composite Dialogue Process (initially started in 2002) between Pakistan and India with the efforts of PM Vajpayee and General Musharraf in January 2004. Both countries agreed to discuss the eight contentious issues including J&K, peace and security including CBMs, Siachen, Sir Creek, Wullar barrage, terrorism and drug trafficking, economic and commercial cooperation, and the promotion of friendly exchanges in various fields.¹¹⁶

Improved Indo-Pak relations also saw the start of bus services in April 2005 on the Srinagar-Muzaffrabad road, and in June 2005 on the Poonch-Rawalakot road to

¹¹⁵*Ibid.*, 47.

¹¹⁶Samarjit Ghosh, *Indo-Pak Composite Dialogue 2008: A review* (New Delhi: Institute of Peace and Conflict Studies, 2009), 1.

facilitate easier movement of passengers from J&K across the LOC.¹¹⁷ Three months later, a natural calamity offered another opportunity for the betterment of Indo-Pak relations. The region (including Indian J&K and the POK) was struck by a devastating earthquake, of magnitude of 7.6, on 8 October 2005. India was one of the various countries which provided humanitarian assistance to Pakistan.¹¹⁸ These events helped Indo-Pak relations improve to a point where the trade service of approved items (also known as the Positive List items) also commenced between both the sides J&K in October 2008.¹¹⁹

In the mean time, additional diplomatic efforts were started to reduce the lack of trust between the two countries, and by extension to bring peace and prosperity to the state of J&K. Cricketing ties were restored between India and Pakistan (also known as “cricket diplomacy”). However, this era of good relations, like its predecessors, also did not last long.

On 26 November 2008, India’s commercial capital, Mumbai, witnessed a coordinated terrorist attack at five locations in the city. In these terror attacks, 166 persons (civilian and security personnel), including 26 foreigners, were killed and 304 persons were injured.¹²⁰ India claimed that these attacks were sponsored by Pakistani agencies. Later, Indian investigation agencies established that the terrorist attack was

¹¹⁷Habibullah, *My Kashmir: Conflicts and Prospects of Enduring Peace*, 184.

¹¹⁸Azad Government of the State of Jammu and Kashmir, “Earth Quake, 8 October 2005,” http://www.ajk.gov.pk/index.php?option=com_content&view=article&id=195&Itemid=50; Internet; accessed 29 January 2011.

¹¹⁹Athar Parvaiz, “Trade, Trade across Devided Kashmir Stalled,” *IPS News*, <http://ipsnews.net/news.asp?idnews=45933>; Internet; accessed 29 January 2011.

¹²⁰The Institute of Strategic Studies, “India Pakistan Relations: Post Mumbai Attacks,” *Reflections* no 1 (2009), 1.

executed by the Pakistan based terrorist group LeT, and that the attack was planned in Pakistan. Pakistan, as usual, denied any involvement in the attack initially, but the mounting evidences could not be denied for long.

Ultimately, after two months, when in the face of mounting evidence further denial was becoming embarrassing, Pakistan's Interior Minister, Rehman Malik, admitted on 12 February 2009, that the lone surviving terrorist, Ajmal Kasab, was a Pakistani national, and that part of the planning and preparation for the Mumbai attack was done in Pakistan. Although, this admission by the Pakistani Interior Minister still left gap between the Indian claims and Pakistani admission, this was nevertheless, a positive development. At this point some LeT terrorists were arrested for their roles in the incident.¹²¹

This was proclaimed to be too little and too late by India. The atmosphere, however, was vitiated due to the initial outright denials, and later the slow progress on bringing the culprits of Mumbai attacks to justice. India suspended the composite dialogue process, and since then has been demanding that Pakistan dismantle the anti-India terror network operating from its soil for the resumption of the composite dialogue.

In the post-Mumbai attack period, India became determined to make 'terrorism' a core issue, whereas Pakistan has been insisting on keeping the J&K issue at the core of any peace process between the two countries.¹²² Several talks have been held in the

¹²¹Al Jazeera, "Pakistan Admits Mumbai Attack Link," <http://english.aljazeera.net/news/asia/2009/02/2009212134151817760.html>; Internet; accessed 29 January 2011; India Today, "Pakistan Admits LeT's Role in 26/11," <http://indiatoday.intoday.in/site/Story/52324/LATEST%20HEADLINES/Pakistan+admits+LeT's+role+in+26/11.html>; Internet; accessed 29 January 2011.

¹²²Shree Haran, "India and Pakistan Talk, but 'Composite Dialogue' Not Resumed," available from <http://www.wsws.org/articles/2010/mar2010/indi-m03.shtml>; Internet; accessed 29 January 2011.

aftermath of the Mumbai attacks, including the Indian and Pakistani prime minister level talks at Sharm-el-Sheikh (Egypt, July 2009), and the foreign secretary level talks (New Delhi, February 2010), but nothing significant has emerged out of these talks.¹²³ In the recent times, civil societies in both the countries have increased their participation in bridging the people to people gap. The two leading news paper groups, the *Jang* group from Pakistan and the *Times of India* group, have launched an initiative *Aman Ki Asha* (meaning ‘Hope for Peace’) for facilitating the quest for peace.¹²⁴ India’s 5 million US dollar aid package to Pakistan for reconstruction after devastating floods (August 2009) is another most recent good gesture displayed towards Pakistan.¹²⁵

During this period separatist related violence has also been on the decline in Indian J&K. See figure 2.1: Deaths Related to Kashmiri Separatist Conflict on page 39. This troubled Indian state is fast returning to normalcy, but the territorial claims of India and Pakistan remain where after the first Kashmir War. Presently, both India and Pakistan look eager, as evident from statements made by foreign secretaries of both the countries (6 February, 2011: Thimphu), to resume a meaningful dialogue on all issues including J&K.¹²⁶ However, the predictability of such initiatives remain highly uncertain, especially in the light of a treacherous historical record. India and Pakistan are at

¹²³Financial Express, “India- Pakistan Foreign Secretary Level Talks End,” http://www.thefinancialexpress-bd.com/more.php?news_id=93464; internet; accessed 29 January 2011.

¹²⁴ Aman Ki Asha, “Aman Ki Asha,” <http://amankiasha.com/default.asp>; Internet; accessed 29 January 2011.

¹²⁵BBC, “Pakistan Accepts \$ 5 Million Flood Aid from India,” <http://www.bbc.co.uk/news/world-south-asia-11046139>; Internet; accessed 14 February 2011.

¹²⁶Sify News, “India, Pakistan Agree to Carry Forward Dialogue Process,” <http://www.sify.com/news/india-pakistan-agree-to-carry-forward-dialogue-process-news-international-lcqxEdfedh.html>; Internet; accessed 14 February 2011.

impasse, and the lack of trust between the two countries continues to dominate any initiative for restoration of peace in Kashmir.

Both India and Pakistan have divergent perspectives on key issues related to Kashmir, such as whether or not the accession of J&K to India was legal, whether the ongoing round of violence in Kashmir is a proxy war or a freedom struggle, and whether or not a plebiscite is still relevant in Kashmir. These key issues have been examined in the next Chapter.

CHAPTER 3 – THE INDIAN AND PAKISTANI PERSPECTIVES ON KASHMIR: A PUZZLE OF DIVERGENT IDEAS

There are truths on this side of Pyrenees, which are falsehood on the other.

Blaise Pascal.¹²⁷

Introduction

Both India and Pakistan claim J&K based upon arguments suiting their individual positions. The UN was drawn into the dispute due to India's efforts, and both the cliental states have been making their cases before the UN in order to strengthen their own positions, while at the same time to discredit the other's claim. There is no agreement between India and Pakistan on the most basic question as to what constitutes the Kashmir dispute. Other important and related issues, such as the legality of the accession of J&K to India; the plebiscite in the region; and the nature of regional violence (struggle for freedom vs. sponsored terrorism), are viewed altogether differently by India and Pakistan. These divergent perspectives are a major obstacle in the path of peace returning to Kashmir, and hence the chance of success of any peace initiative remains bleak until some common ground is agreed to by both parties. Unfortunately, both countries have vigorously stuck to their stances, and each claims that its position is more justified as compared to that of the other. This chapter examines three important issues related to

¹²⁷Quote Garden, "Quotations of Perspective," <http://www.quotegarden.com/perspective.html>; Internet; accessed 11 February 2011.

Kashmir, on which India and Pakistan have completely divergent perspectives, in order to gauge the element of righteousness in the discourses being propagated by both countries.

The Legality of Accession of J&K to India

The Pakistani position claims Kashmir based on the principles of the partition of the British Indian subcontinent such that “Pakistan would be constituted by the contiguous Muslim-majority areas. It was thus universally assumed that following the basis adopted for partition, states with a Muslim majority in population contiguous to Pakistan would accede to Pakistan.”¹²⁸ Therefore, Pakistan claims that J&K, being both a Muslim majority state and contiguous to Pakistan, should have been awarded to Pakistan. However, these two factors were only considerations, at most suggestive, to the rulers of the princely states. Moreover, India was a secular state where Muslims were also welcome to live, and J&K was contiguous to India as well. Besides, the princely states had a third option of becoming independent states by not joining India or Pakistan.

Pakistan also disputes the Instrument of Accession signed between the Maharaja of J&K and the Governor General of India. In order to determine the legal status of the Instrument of Accession, two facts need to be established: first, whether or not the J&K state was a sovereign entity entitled to decide its future; and second, whether the Maharaja was empowered to join any dominion (India or Pakistan) he chose.

The British Cabinet Mission Plan of 16 May 1946 stated, “Paramountcy can neither be retained by the British Crown nor transferred to new government [of India and

¹²⁸Aman Hingorani, *The Kashmir Issue: Differing Perceptions* (Zurich: International Relation and Security Network, 2007), 5.

Pakistan].”¹²⁹ Similarly, Paragraph 5 of the *Memorandum of States Treaties and Paramountcy* presented by the Cabinet delegation on 22 May 1946 held that:

His Majesty’s Government will cease to exercise the power of paramountcy. This means that the rights of the States which flow from their relationship with the crown will no longer exist and that all the rights surrendered by States to the paramount power will return to the States.¹³⁰

Finally, Section 7 (1) (b) of the Indian Independence Act of 1947 declared that “the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States.”¹³¹ It is an irrefutable fact that with the lapse of the British Paramountcy, J&K became a legally sovereign state, and therefore could decide its own future.

Section 6 of The Government of India Act of 1935 stated that “a state shall be deemed to have acceded to the federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the ruler thereof.”¹³² Therefore, all rulers of the princely states had the authority to decide on behalf of their provinces to join any dominion. On 30 June 1947, about a fortnight prior to independence, Mr. Mohammad Ali Jinnah, the Governor General Designate of the dominion of Pakistan, said:

¹²⁹British Indian Government, “The Statement of the British Cabinet Mission, Section 14,” in *Modern History of Jammu and Kashmir: Ancient Times to Simla Agreement*, ed. S.P. Agrawal (New Delhi: Concept Publishing Company, 1995), 20.

¹³⁰Agrawal, *Modern History of Jammu and Kashmir...*, 22.

¹³¹UK statute Law Data Base, “Indian Independence Act, 1947,” http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf; Internet; accessed 12 February 2011.

¹³²The British Library, “Government of India Act 1935,” <http://library.du.ac.in/xmlui/bitstream/handle/1/3571/Ch.4%20Provisions%20of%20the%20government%20of%20India.....pdf?sequence=4>; Internet; accessed 12 February 2011.

The legal position is that with the lapse of paramountcy on the transfer of power by the British, all Indian states would automatically regain the full sovereign and independent status. They are therefore free to join either of the two dominions or to remain independent.¹³³

Various princely states acceded to India and Pakistan through similar provisions (i.e., the rulers signing the Instrument of Accession). Why then should the Instrument of Accession signed by Maharaja Hari Singh be disputed? Apparently, Pakistan saw advantage in disputing the Instrument of Accession by linking it with other issues such as, the genocide of Muslims in India, the unfair treatment of Pakistan during partition of the British Indian assets, and claiming that the ruler of Kashmir signed the agreement under duress.¹³⁴

It can hardly be disputed that the situation in J&K prior its accession into India clearly abnormal. The state was under attack, and the Indian leaders might have leveraged the situation, although no concrete proof for the same is available. Similarly, Pakistani leaders must have had reasons for their dissatisfaction with the division of assets between India and Pakistan. Finally, the argument of genocide against Muslims presents, at best, half picture of the communal violence at the time of independence. Both communities Hindus as well as Muslims shed each other's blood. So, the Pakistani arguments, although bearing the element of truth, probably in a slightly distorted manner, yet do not provide any solid ground for disputing the Instrument of Accession.

¹³³A. G. Noorani, *The Kashmir Question* (Bombay: Manktalas, 1994), 22.

¹³⁴Sharma, *The Kashmir Story*, 24.

Also, it is worthwhile to examine whether Pakistan has any right to dispute the agreement between J&K and India.¹³⁵ Aman Hingorani, a legal scholar, notes that “it is a well known principle of international law that third states do not have a right to veto the act of accession or secession.” He further states that “Pakistan was not a party to the accession of the princely Indian state to the dominion of India and, hence, has no standing with respect to the accession.”¹³⁶

In fact, the Chief Justice of India, Justice A.S. Anand drew an analogy between the merger of Texas with the USA and the accession of J&K to India. No protest from Mexico was entertained when in March 1845, the US Army moved into Texas because Texas had declared independence after ceding from Mexico. The US reply to the Mexican protest was as follows:

The government of the United States did not consider this joint resolution as a violation of any of the rights of Mexico, or that it offered any just cause or offence to its government; that the republic of Texas is an independent power, owing no allegiance to Mexico, and constituting no part of her territory or rightful sovereignty and jurisdiction.¹³⁷

Texas, at one point in time, had been part of Mexico. However, J&K never owed any allegiance to Pakistan, nor did the provincial territory form part of Pakistan or was subject to its sovereignty. However, despite being a third party to the agreement between India and the sovereign state of J&K, Pakistan continues to dispute the Instrument of Accession. Surprisingly the idea has been sold to the UN in particular, and the world community at large, that consider that J&K is a disputed territory.

¹³⁵Pakistan does not consider the Instrument of Accession as legal. See Alastair Lamb, *The Kashmir Problem: A Historical Survey* (New York: Frederick A. Praeger, 1967), 35.

¹³⁶Hingorani, *The Kashmir Issue: Differing Perceptions*, 12.

¹³⁷*Ibid.*

Another argument brought forward by the Pakistani side relates to revolt within the state, and thus delegitimizing its ruler.¹³⁸ It is worth mentioning that Pakistan had entered into the Standstill Agreement with the same ruler in August 1947 (See Appendix 1). This argument, that through a disturbed law and order situation a government loses its legitimacy, does not hold water either. From a strict legal and technical point of view, the Pakistani argument against the accession of J&K to India is unsound. The aspect of plebiscite bears further examination.

Plebiscite

A plebiscite, or the right of self determination by Kashmiris, is another area where perspectives differ by a wide margin. Pakistan has been asking that a plebiscite be held in J&K as per the UN resolutions,¹³⁹ and it was India which first suggested this idea of plebiscite and desired to hold one. Nevertheless, why is it then that no plebiscite could be held, despite both the parties appearing to be willing for the same, is puzzling. The key lies in a timeframe and the demilitarisation of the area. India wanted a plebiscite shortly after the ceasefire in 1949, and after meeting the conditions laid down under the UN resolution (i.e. vacation of the J&K territory occupied by Pakistan). Pakistan, on the other hand, kept delaying the plebiscite until the situation in Kashmir became favourable for

¹³⁸Pakistan, Ministry of Foreign Affairs, *Kashmir Dispute: Background*, available from <http://www.mofa.gov.pk/pages/Brief.htm>; Internet; accessed 5 February 2011.

¹³⁹*Ibid.*

it.¹⁴⁰ Then, it was India's turn to change its stance in the light of changed scenario in Kashmir.

The letter from Lord Mountbatten to Maharaja Hari Singh contained a clause that “the question of the state's accession should be settled by a reference to the people.”¹⁴¹ Even prior to the First Kashmir War, India had applied the plebiscite principle in the settlement of the princely state of Junagarh.¹⁴² In the case of Kashmir, India agreed that “once the soil of the state had been cleared of the invader and normal conditions restored, its people would be free to decide their future by the recognised democratic method of plebiscite or referendum.”¹⁴³ On 2 November 1947, Indian Prime Minister Jawahar Lal Nehru stated in a broadcast that, “India was prepared, when peace and law and order had been established, to have a referendum held under international auspices like the United Nations.”¹⁴⁴

If Pakistan too, had faith in a plebiscite, there was no requirement to launch a covert armed aggression against J&K in the first place. And yet, the Indian complaint against the Pakistani attack was matched by a demand for the plebiscite. Referring to the proposal of the Indian Prime Minister, Liaquat Ali Khan, the Prime Minister of Pakistan said, “It is presumably after such extermination that the Indian Government proposes that a referendum should be held. What use is a referendum after the voters have been driven

¹⁴⁰Lamb, *The Kashmir Problem*, 57.

¹⁴¹Reply from Lord Mountbatten to Maharaja Hari Singh. See Appendix 2.

¹⁴²Sharma, *The Kashmir Story*, 125.

¹⁴³Hingorani, *The Kashmir Issue: Differing Perceptions*, 9.

¹⁴⁴Hinduatan Times, 3 November 1947: Sharma, *The Kashmir Story*, 129, 130.

away from their homes, or silenced in death?”¹⁴⁵ Probably, the Pakistani leadership wanted a plebiscite while the invading tribesmen were in the control of affairs in Kashmir.

In the light of atrocities committed by the tribal invaders, and given the prominence of Sheikh Abdullah in Kashmir, the Pakistan government did not want a plebiscite. Alastair Lamb, a well known expert on the subject, has noted that “in the early stages of the Kashmir problem when the memory of the horrors of the tribal invasion of 1947 was still fresh in Kashmiri minds, thoughtful Pakistani leaders cannot have convinced that the vote would in fact go in their favour.”¹⁴⁶ Instead, the Pakistani government made all efforts to keep postponing the plebiscite by raising irrelevant issues, advocating measures which were unacceptable to India, and by harping on India’s intransigence in order to place blame on the Indian Government.

The UNSC resolution dated 17 January 1948, called upon India and Pakistan to immediately take all measures within their power to improve the situation. The last paragraph of the resolution reads:

And [the UNSC] further requests each of those governments to inform the Council immediately of any material change in the situation which occurs or appears to either to them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon.¹⁴⁷

On 5 July 1948, when the UNCIP reached Karachi, the Foreign Minister of Pakistan informed the commission that three brigades of the Pakistani Army had been on J&K

¹⁴⁵Bashir Ahmed, “Kashmir Problem Needs to be Resolved,” *Dawn* (Karachi), 5 November 1947.

¹⁴⁶Lamb, *The Kashmir Problem*, 57.

¹⁴⁷UN Security Council, “Resolution 38 (1948) of 17 January 1948,” <http://www.ummah.com/kashmir/unres/res2.htm>; Internet; accessed 25 February 2011.

territory since May 1948.¹⁴⁸ Pakistan, until then, had been denying any role in the invasion of Kashmir. The UNCIP noted that the presence of Pakistani troops in Kashmir constituted a “material change” in the situation. In light of this development, the UNSC resolution of 21 April 1948 asked Pakistan “[t]o secure the withdrawal from the state of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the state for the purpose of fighting and. . .”¹⁴⁹

The above UNSC resolution contained provisions for the *Restoration of Peace and Order* and a *Plebiscite* in the region. The measures mentioned for the *Restoration of Peace and Order* were preconditions for a plebiscite to be held. Under these provisions, Pakistan was to withdraw its complete force, regular or irregular, whereas India was to maintain a minimum force required for the support of the civil power in the maintenance of law and order. Surprisingly, the UN resolution on a plebiscite or self determination considered only two options for the people of J&K, joining India or Pakistan, and the option for independence of J&K was not even considered. Notwithstanding that, Pakistan never accepted a complete withdrawal of its forces from J&K, and therefore did not set the conditions for the plebiscite to be held.

The Secretary General of the UN appointed Fleet Admiral Chester W. Nimitz of the US as the plebiscite administrator. The Indian Prime Minister suggested that the plebiscite administrator be replaced by some other person hailing from one of the smaller states, and also proposed a regional plebiscite.¹⁵⁰ “Had Pakistan had the slightest interest

¹⁴⁸Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 59.

¹⁴⁹UNSC Resolution dated 21 April 1948. See Appendix 5.

¹⁵⁰For the regional plebiscite in J&K, the state was divided into five regions. Each region could vote to decide its own future.

in a plebiscite, its government should have jumped at these suggestions and put India to the test. Instead the government of Pakistan rejected both the proposals.”¹⁵¹

For any plebiscite to be held in J&K, the territorial unity of the state was of vital importance as mandated by the UNSC resolution. Soon after the first Kashmir War, Pakistan accepted the accession of Hunza and Nagar (forming part of present day Northern Areas of Pakistan) into Pakistan directly. A large chunk of the territory was renamed as the ‘Northern Area,’ and was brought under the direct rule of Islamabad. The small remaining area was renamed as ‘Azad (free) Kashmir.’ Yet again, in 1963, Pakistan ceded 5,180 square Km of J&K territory to China. See Map 1.1 on page 16. These developments continually increased the degree of difficulty in holding the plebiscite.¹⁵²

By 1964, the context of holding the plebiscite in Kashmir had changed significantly. Elections were held in the Indian J&K in 1952 and 1957, and the J&K government, elected by universal voting, had ratified the merger of J&K to India.¹⁵³ The Indian government held that the will of the people of J&K has been expressed through this ratification of the state’s accession to India. The territorial integrity of the state had been lost, and parts of its territory lay spread under the control of three countries: China, India and Pakistan. Furthermore, all three countries had brought significant administrative changes in the territories under their control for better governance.

Following India’s defeat by China in 1962, Pakistan had decisively colluded with China, further fuelling the Indo-Pak mistrust. This, along with changes in the Kashmiri

¹⁵¹Sharma, *The Kashmir Story*, 139.

¹⁵²*Ibid.*, 143

¹⁵³Kashmir Politics, “A Chronicle of Important Events and Dates in J&K's Political History” http://www.jammu-kashmir.com/basicfacts/politics/political_history.html; Internet; accessed 12 February 2011.

internal dynamics, including the disappearance of the Prophet Mohammad's hair from the Hazratbal Mosque, destroyed the communal harmony in Indian J&K.¹⁵⁴ By no stretch of one's imagination were the conditions prevailing in J&K comparable to that of 1949, and under these circumstances India withdrew its offer of supporting a plebiscite.¹⁵⁵

From a strict legal and technical view point, India's agreement for holding a plebiscite in J&K did not constitute an 'international obligation.' Rather it was a conditional 'international engagement' that falls within the domestic jurisdiction of India. Further, since Pakistan had not vacated its occupation and withdrawn its troops, nationals and tribesmen from the Pakistani held Kashmir under the terms of UNCIP resolutions, India's international engagement could not be effected. Later on, India was released from this engagement due to significant changes in the circumstances, and on the principle of *rebus sic stantibus*.¹⁵⁶

Pakistan, despite obstructing the plebiscite in the initial period following the attack in Kashmir, has continuously been espousing a separatist agenda based on religious ideologies. In the 1990s, this "ideology of hatred" brought a new violent phase to Indian J&K based on communal animosity, resulting in the targeted killing of the Kashmiri Pandits. Approximately 400,000 Kashmiri Pandits were forced to leave Indian J&K in order to save their lives.¹⁵⁷ It is difficult to believe that Pakistani leaders are not

¹⁵⁴Ataov, *Kashmir and Neighbours: Tale, Terror, Truce*, 66; Lamb, *The Kashmir Problem*, 64.

¹⁵⁵Hingorani, *The Kashmir Issue: Differing Perceptions*, 10.

¹⁵⁶*Rebus sic stantibus* is a term used in the international law meaning that the duration of the binding force of a treaty remains valid as long as the relevant facts and circumstances remain basically the same. *Ibid.*, 10.

¹⁵⁷Kashmir Information Centre, "Islamic Terrorism and Genocide of Kashmiri Pandits," <http://www.kashmiri-pandit.org/sundry/genocide.html>; Internet; accessed 12 February 2011.

conversant with the altered situation in Kashmir and the impracticality of a plebiscite, yet Pakistan continues to press for the plebiscite in the state.

Holding a plebiscite is the ideal solution for deciding the fate of a territory being claimed by more than one state. However, such a proposition for Kashmir suffers from pragmatic difficulties, a consensus among China, Pakistan and India being a major one. The nature of violence in Kashmir will be discussed next.

Freedom Struggle or Sponsored Terrorism

The insurgency movement in Indian J&K deserves the largest share of blame for the absence of peace in the state. This violent movement erupted in 1988-89, and since then has resulted in the loss of approximately 40,000 lives; producing more deaths than all three Indo-Pak wars combined together.¹⁵⁸ Besides disrupting tranquility in Kashmir, which has adversely affected the lives of common citizens of the state, this insurgent movement has also emerged as a major obstacle in the dialogue process between India and Pakistan. In this instance as well, it was a Pakistani politico-military manoeuvre which destroyed the atmosphere for bilateral Indo-Pak talks through escalating mutual mistrust, and by extension destroyed the prospects of peace in Kashmir.

¹⁵⁸Strategy Page, "Kashmir Calamity," <http://www.strategypage.com/htm/htwin/articles/20110202.aspx>; Internet; accessed 12 February 2011.

Pakistan views the on-going struggle in Kashmir as a genuine freedom movement and claims to support the movement morally, politically and diplomatically.¹⁵⁹ The Pakistan Government views India as an illegal occupational force in Indian J&K, and accuses Indian security forces of mass human right violations. Pakistan's foreign policy states:

Over half a century, the people of Kashmir are awaiting the exercise of their right to self-determination. Non-implementation of the Security Council resolutions coupled with the massive violations of the human rights by the Indian Security Forces has compelled the people of IoK [Indian Occupied Kashmir] to resist Indian occupation. . . .India sought to suppress their movement with massive use of force, killing hundreds of innocent men, women and children.¹⁶⁰

The President of Pakistan, Mr. Asif Ali Zardari, said:

We reiterate our unwavering political, moral and diplomatic support to the just struggle of our Kashmiri brethren to safeguard their fundamental rights including the right to self determination, as enshrined in the UN Charter and relevant UN resolutions. We shall stand always with them in their just struggle.¹⁶¹

It is utopian to think that there will be no human rights violation by security forces while combating a violent insurgent movement. But, the Indian Army has a “zero-tolerance” policy towards human right abuse, and necessary mechanisms are in place for the

¹⁵⁹Mubashar Nizam, “PM Reiterates Pakistan’s Support to Kashmir Cause,” <http://www.pak-times.com/2010/10/09/pm-reiterates-pakistans-support-to-kashmir-cause/>; Internet; accessed 12 February 2011.

¹⁶⁰Pakistan, Embassy of the Islamic Republic of Pakistan in Prague, “Kashmir Issue,” <http://www.pakembassy.cz/foreignPolicy.htm>; Internet; accessed 16 April 2011.

¹⁶¹“Pakistan to extend full moral, diplomatic, political support to Kashmiris: Zardari,” *The Nation*, 5 February 2011. Available from <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/05-Feb-2011/Pakistan-to-extend-full-moral-diplomatic-political-support-to-Kashmiris-Zardari>; Internet; accessed 16 April 2011.

effective implementation of this policy. Cases of human rights violations, which are definitely few in number, are dealt with promptly.¹⁶²

Notwithstanding human rights, there are two major shortcomings in the Pakistani discourse: first, its support to Kashmiri insurgents has been much more than what is publically admitted by Pakistan, and second, as per established international norms, a country should not incite a violent movement within a neighbouring country. These two aspects will be analysed below in the same order.

The origin of the insurgency movement in Kashmir is deeply linked to the high handed policies of Delhi towards Srinagar, and more specifically, the alleged rigging of the state assembly election in 1987. Although unethical and a not-so-good-neighbourly-policy to follow, Pakistan was swayed in its temptation to support the insurgency. For Pakistan, the internal trouble within India offered potentially huge benefits in terms of the prospects for both gaining control over Kashmir, and tying down the Indian Army. This would create near military parity between armed forces of both countries, and at a much lesser cost (the philosophy of a “war of thousand cuts”) than direct military confrontation.¹⁶³ In an environment where the ideological zeal and strategic and political considerations coalesced, Pakistan unleashed a proxy war in Indian J&K.

Dimensions of the low intensity, low technology, local and secular Kashmiri insurgency have been fundamentally altered since the involvement of Pakistani agencies. A Rand Corporation study commented that due the Pakistani involvement in the

¹⁶²“Indian Army has Zero-Tolerance towards Torture: Lt Gen Nehra,” *The Hindu*, 7 February 2011. Available from <http://m.thehindu.com/news/national/article965074.ece/>; Internet; accessed 16 April 2011.

¹⁶³Samina Yasmeen, “Kashmir: The Discourse in Pakistan,” *Economic and Political Weekly* Vol 37, no 7 (16 February 2002): 611.

Kashmiri insurgency “the nature of Kashmir’s conflict has been transformed from what was an originally a secular, locally based struggle to one that is now largely carried out by foreign militants and rationalised in pan-Islamic religious terms.”¹⁶⁴

It is difficult to believe that the Pakistani support to the insurgency in Kashmir is limited to moral, political and diplomatic spheres only. In fact, “the Pakistani assistance to Kashmiri insurgents covers the ambit of training, logistics, financial, and doctrinal support.”¹⁶⁵ Indians claim that the active support provided to the insurgency was deliberately planned, funded and run by Pakistani government agencies. The anti-India terror network, that was established, includes an ideological indoctrination in Madrassas (the number of unregistered Madrassas in Pakistan is estimated at about 35,000 to 45,000),¹⁶⁶ imparting training to ‘holy warriors’ in the specially set up training camps in POK, supply of weapon-ammunition and other military equipments, and funding of the insurgency. This support resulted in a dramatic increase of the militants’ capability and a resulting increase in the loss of life.

In 2001, India identified as many as 120 terrorist training camps operating in the POK region of Pakistan.¹⁶⁷ Hon. Bill McCollum of Florida, who was heading the Task

¹⁶⁴Peter Chalk, *Pakistan’s Role in the Kashmiri Insurgency*, (Washington, D.C.: Rand Corporation, 2001), 2. Also available online from <http://www.hvk.org/articles/0503/166.html>; Internet; accessed 12 February 2011.

¹⁶⁵*Ibid.*

¹⁶⁶*Ibid.*

¹⁶⁷CNN News, “India Identifies Terrorist Training Camps,” September 19, 2001, <http://archives.cnn.com/2001/WORLD/asiapcf/central/09/19/inv.afghanistan.camp/>; Internet; accessed 12 February 2011.

Force to identify the Pakistani role in the terrorism in Kashmir, made this explicit statement in the US House of Representatives:

The ISI provides these [J&K terrorists] and other terrorists with new weapons. For example, in the summer of 1993, the Kashmiri Mujahedeen were provided with powerful long-range missile- called ‘chemical missiles.’ In fact these are ‘Saqr’ missiles which were developed in the 1980 with help from the United States for use by the Mujahedeen in Afghanistan.¹⁶⁸

The recovery of sophisticated weapons such as 60 mm mortars, 40 mm automatic grenade launchers, SVD Dragnov rifles, and 12.7 mm heavy machine guns by the Indian security forces established the link between Kashmiri terrorism and Pakistan.¹⁶⁹

Infiltration by terrorists has been continuing from POK to Indian J&K, but as usual, the Pakistani authorities keep denying any involvement.

The ISI provided a pan-Islamic ideology to a local insurgency. This has been of immense help in easy financing of the terror network with money drawn from other Islamic countries, especially from Saudi Arabia.¹⁷⁰ Furthermore, a number of foreign fighters also make their way into Kashmir, albeit in reduced number in the recent times, to contribute towards the so-called “holy mission” of liberating brother Muslims from the tyranny of the Indian rule. “Many of these fighters wage war on behalf of the people

¹⁶⁸Hon. Bill McCollum, “Pakistan Supports Terrorists Rebels in Kashmir,” Report prepared for the United States House of Representative, available from http://www.kashmir-information.com/Miscellaneous/Pak_terrorism.html; Internet; accessed 12 February 2011.

¹⁶⁹Hindubooks, “Pakistan’s Support to Terrorism,” <http://www.hindubooks.org/Kashmir/ch6.htm>; Internet; accessed 12 February 2011.

¹⁷⁰Peter Chalk, *Pakistan’s Role in the Kashmiri Insurgency*, 1.

whose language they do not even speak.”¹⁷¹

There is a significant amount of evidence which runs contrary to the Pakistani claim that its support for the Mujahedeen in Kashmir is limited to only political, moral and diplomatic areas. Jonah Blank commented that even on the streets of Lahore few believe this Pakistani claim.¹⁷² The Kargil military offensive in 1999 by the Pakistani Army was also staged in the guise of the Kashmiri Mujahedeen. Could such a military operation be launched with only moral, diplomatic and political support?

Time and again, tribesmen, Pakistani regular soldiers, and plain Pakistani nationals have been pushed into Indian J&K to create internal security problems or to annex the state forcibly. Contrary to this, the Pakistan government keeps denying any role other than moral, diplomatic and political support. The present insurgency in Kashmir is not different than that of its predecessors. The traditional *Kashmiriat* culture, which is known for tolerance and respect towards other religions, has lost the battle to the ideology of hate and intolerance being propagated by Pakistan-sponsored fundamentalist elements.

Finally, after decades of blunt denial of any significant involvement in the Kashmiri insurgency, an admission of guilt came from none other than the head of the Pakistani state. The Pakistan’s President, Asif Ali Zardari, admitted on 8 July 2008, that “militants and extremists were deliberately created and nurtured in the country [Pakistan]

¹⁷¹Jonah Blank, “Kashmir: Fundamentalism Takes Root,” *Foreign Affairs*, vol 78, no. 6, 42 (36-53).

¹⁷²*Ibid.*

as a policy to achieve some short term tactical objectives. Let's be truthful and make a candid admission of the reality'¹⁷³

The 9/11 terrorists' attack brought a new era in the world and Pakistani policies toward support to terrorists' network underwent some changes. The candid admission by Pakistan's President needs to be seen in the light of the above changed scenario. But has Pakistan been really sincere in the dismantling of the anti-India terror network? The Lashker-e-Taibaet (LeT) and Jaish-e-Mohammed (JeM) were banned in Pakistan in 2002, followed by banning of about 25 more such organisations 2009.¹⁷⁴ All discourses in Pakistan, however, continue to stress the difference between terror elsewhere and terror in Kashmir, which is justified in the name of supporting a freedom struggle. The rhetoric of extending moral, political and diplomatic support to the Kashmiri terror network continues. This issue must also be examined from legal point of view.

Legally, no state has the right to intervene in the domestic affairs of another state (UN Charter, Article 2, paragraph 7), and all states should refrain from the threat or use of force (UN Charter Article 2, paragraph 4) except in self defence (UN Charter Article 51).¹⁷⁵ Under these articles, the recruitment and use of mercenaries in armed conflict would be considered as a form of foreign intervention. Pakistan has been violating the UN Charter by recruiting, training and infiltrating mercenaries, including foreign terrorists, into Kashmir.

¹⁷³Times of India, "Zardari Admits Terrorism Nurtured by Govt for Tactical Use," 9 July 2009, <http://timesofindia.indiatimes.com/world/pakistan/Zardari-admits-terrorism-nurtured-by-govt-for-tactical-use/articleshow/4755029.cms>; Internet; accessed 12 February 2011.

¹⁷⁴Defence Forum of India, "Pakistan Bans JuD, LeT, JeM," <http://defenceforumindia.com/showthread.php?t=4081&page=1>; Internet; accessed 12 February 2011.

¹⁷⁵United Nations Organisation, "Charter of the United Nations," <http://www.un.org/en/documents/charter/chapter1.shtml>; Internet; accessed 12 February 2011.

States are also prohibited from engaging in or supporting international terrorism and subversive activities.

Customary international law confers an obligation on each state to prevent hostile expeditions from its territory, and itself to refrain, directly or indirectly through organisations receiving from it financial or other assistance or closely associated with it by virtue of the state's constitution, from engaging in or actively supporting subversive activities against another state.¹⁷⁶

Pakistan's support for the insurgency in Kashmir violates the non-interference clause of the international law which prohibits any state or international organisation from interfering in the domestic matters of another state.¹⁷⁷ An analogy could be drawn from the example of the case of Nicaragua vs. USA in the International Court of Justice (ICJ).

The ICJ ruled that:

. . . the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.¹⁷⁸

Pakistan has been claiming that India's non-adherence to its commitment of holding a plebiscite in Kashmir is the principal reason for Pakistan's extension of its support to the

¹⁷⁶Hingorani, *The Kashmir Issue: Differing Perceptions*, 13.

¹⁷⁷For more details on the principle of non-interference in international law, see <http://eng.hi138.com/?i165007#>; Internet; accessed 12 February 2011.

¹⁷⁸International Court of Justice, Judgment on the Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), <http://www.icj-cij.org/docket/index.php?sum=367&code=nus&p1=3&p2=3&case=70&k=66&p3=5>; Internet; accessed 12 February 2011.

separatist movement in Kashmir. However, such a claim is not legally correct. It is pertinent to cite a further text from the same ICJ judgement:

. . .even supposing that such a political pledge had had the force of legal commitment. . .even supposing the United States were entitled to act in lieu of the organisation, it could hardly make use of the purpose of methods which the organisation could not use itself; in particular, it could not be authorised to use force in that event. Of its nature, a commitment like this one of a category which, if violated, can not justify the use of force against a sovereign state.¹⁷⁹

There is no legal or technical basis for Pakistan to support insurgency in Indian J&K. Unfortunately, Pakistan continues to pursue a policy which supports the separatist movement in Kashmir and is responsible for wide spread death and destruction. Is it realistic, then, to expect the return of peace to Kashmir in the light of such policies from a neighbouring country? The next Chapter will establish the centrality of Indo-Pak mistrust as the main reason behind the absence of peace in Kashmir, further an insight will be given in the internal dynamics of Pakistan which keep fuelling Indo-Pak mistrust. Finally, some measures for mitigation of this mistrust will also be outlined.

¹⁷⁹Hingorani, *The Kashmir Issue: Differing Perceptions*, 14.

CHAPTER 4 – DEMYSTIFYING THE ISSUE OF MISTRUST: CAUSES AND COUNTERMEASURES

Indo-Pak Mistrust: A Root Cause

One cursory look into the causes of Kashmir's misery brings a number of issues to the forefront, and these issues can be classified into two broad categories. The first category comprises invariables, which are likely to remain constant over a longer period of time, such as the geographical location of the state, its distinct ethnicity, the religious character of the area, and the region's historical evolution. The second category or variables, comprises issues which are more dynamic in nature such as the interpretation of the former category, perceptions about Kashmir, and the politico-military manoeuvres based on perceived interests. The former category contains more stable issues, yet they are still significant as they provide base causes upon which Indians, Pakistanis and Kashmiris make their cases. However, it is the latter category of issues which holds the key to peace or conflict in Kashmir. Unfortunately, it is these variables that are the root of the trouble that has prevented peace in Kashmir.

Over six decades of history that has passed since the independence of India and Pakistan is marked by a number of failed initiatives to find a permanent settlement to the Kashmir dispute. A number of superficial reasons could be mentioned for the failures of these initiatives, such as the following of populist policies by India and Pakistan, the change of governments in both countries with the new governments abandoning the policies of their predecessors, the different interpretations of the clauses contained in various agreements, and the mistimed political and military offensives which were

targeted against the other country. Why has no bilateral agreement brought peace to Kashmir? Why could not a common plebiscite administrator be agreed upon by both parties? Why does no party want to withdraw its military from Kashmir? Why did Kashmir turn into a battlefield thrice (1947-48, 1965 and 1999)? Why do the clauses of the Simla agreement, especially with respect to sanctity of the LOC and a bilateral solution to the Kashmir issue, mean different things to both India and Pakistan? It is all because of mistrust; even when India and Pakistan speak, they speak with a high degree of mistrust towards each other.

Domestic politics and hardliners on both sides have played their role in an escalating anti-India and anti-Pakistan feelings in both countries. Pakistan accuses India of not holding a plebiscite in Indian J&K, and of human rights violations in the state. Pakistan also wants India to consider J&K as a disputed territory contrary to the Indian position of treating J&K as an integral part of India. India's move to integrate Indian J&K with India, particularly the dilution of article 370 (See Chapter 1, page 25), has also created resentment in Pakistan. But against India's subtle moves, Pakistan has made major politico-military manoeuvres towards Kashmir which have left wide scars on the issue of mutual trust.

Soon after independence, Pakistan launched a covert invasion on Kashmir in 1947-48, and 17 years later, it tried the same approach by infiltrating guerrillas into Kashmir, followed by Pakistani regular soldiers. In a similar scheme of things, the Kashmiri insurgency has slowly been turned into a proxy war against India, and most recent incident being occupation by Pakistani regulars of territory on the Indian side of Kashmir in Kargil (1999). Similarly, Pakistan's political manoeuvres have boosted the

existing anti-Pakistan mistrust within India. Pakistan's collusion with China immediately after the Sino-Indian War of 1962, and the subsequent ceding of J&K territory to China, widened the gap between India and Pakistan.

Pakistan's claim over Kashmir is based on a vague 'peoples will,' which has not been fully defined or ascertained, yet Pakistan continues to project itself as a champion of the Kashmiri cause. "Pakistan's thrust on a military solution to the issue whether in the guise of tribal invasion or providing support to the militants, reflects Pakistan's mindset with regard to the issue of Kashmir."¹⁸⁰ There are some underlying reasons behind Pakistan's conduct in such a manner. Internal Pakistani dynamics along with its obsession with Kashmir must be considered.

The Dynamics in Pakistan and its Obsession with Kashmir

Some scholars believe that since its inception, Pakistan has suffered from an identity crisis. It was born as a secessionist state in opposition to the Indian nationalist movement, and since then it has suffered from a negative identity defined in terms of it not being India, rather than defining what Pakistan is.¹⁸¹ Dr. Farzana Shaikh, a UK based Pakistani scholar, argues that:

The construction of [a] negative identity predicated on opposition to India. In the absence of consensus over what Pakistan stood for, the definition of Pakistan's

¹⁸⁰Smruti S. Pattanaik, "Pakistan's Kashmir Policy: Objectives and Approaches," *Strategic Analysis*, vol. XXVI no. 2 (April-June 2002) [journal on line]; available from http://www.ciaonet.org/olj/sa/sa_apr02pas01.html; Internet; accessed 20 February 2011.

¹⁸¹Hasan Suroor, "Making Sense of Pakistan's Identity Crisis," available from <http://www.hinduonnet.com/2009/06/12/stories/2009061254710800.htm>; Internet; accessed 20 February 2011.

identity, coherence and unity came to rest on rivalry with India. This in turn had significant implications.¹⁸²

Religion, which was the basis for the creation of Pakistan, could not hold the state together as its eastern wing (East Pakistan, now known as Bangladesh), despite being of the same religion, chose independence in 1971. Pakistan has construed Kashmir to be part of its Islamic identity. In this scheme of things, the anti-India sentiment has emerged as one of the common themes to unite the otherwise fragmented Pakistani society.

General Ayub Khan, the Military dictator of Pakistan, said, “India, particularly, has a deep pathological hatred for Muslims, and her hostility to Pakistan stems from her refusal to see a Muslim power developing next door. By the same token, India will never tolerate a Muslim grouping near or far from her border.”¹⁸³ India has always been portrayed as an unreasonable power with a hegemonic design and a constant threat to Pakistan. This perception has gained strong roots in the military and political leadership circles in Pakistan.

Pakistan sees Kashmir as an area of immense strategic importance. Kashmir is a viewed as an area which could add strategic depth to Pakistan against India. Moreover, Indian J&K is the origin of three rivers that drain Pakistan’s plains. Along a religious line too, Pakistan could justify the ‘two nation theory’ by amalgamating the only Muslim majority state of India with Pakistan. So, Kashmir serves a convergence of three sets of interests for Pakistan: an anti-India rivalry, the culmination of the religion based ‘two nation theory,’ and strategic importance. No doubt Pakistan has remained obsessed with

¹⁸²Farzana Shaikh, “Making Sense of Pakistan,” available from <http://pakteahouse.net/2009/08/25/making-sense-of-pakistan/>; Internet; accessed 20 February

¹⁸³Ayub Khan, *Friend Not Monster* (London: Oxford University Press, 1967), 183.

Kashmir, and the trend is likely to continue. Mr. Zulfikar Ali Bhutto, Foreign minister and later Prime Minister of Pakistan, stated in the UNSC, “The people of Jammu and Kashmir are part of the people of Pakistan in blood, in flesh, in culture, in geography, in history and in every way and every form. . . If necessary Pakistan would fight to the end.”¹⁸⁴

Major General Akbar Khan of Pakistan’s Army, who played a lead role in the First Kashmir War, stated that, “. . . Kashmir’s accession to Pakistan was not simply a matter of desirability but of absolute necessity for our separate existence.”¹⁸⁵ Similar sentiments were expressed by the Pakistani Minister of State for Science and Technology, Javed Jabbar, when he proclaimed, “Kashmir is an issue, a concept, a principle, that is as fundamental to Pakistan as Pakistan itself. The very creation of the issue is linked with the creation of Pakistan. . . Kashmir poses the single biggest challenge for the foreign policy of Pakistan.”¹⁸⁶

The importance of Kashmir to Pakistan can be appreciated by the fact that the Pakistani government, while presenting their balance sheet on governance, highlights their achievements in Kashmir. The hardline stance taken by the government is portrayed as a positive achievement. This uncompromising attitude is interpreted as guarding the ‘national interest’ of Pakistan by withstanding pressure from various sources.¹⁸⁷ Kashmir, due to Pakistani obsession, has held Indo-Pak relations as a hostage.

¹⁸⁴Pattanaik, *Pakistan’s Kashmir Policy: Objectives and Approaches*

¹⁸⁵Akbar Khan, *Raiders in Kashmir*, 10.

¹⁸⁶Pattanaik, *Pakistan’s Kashmir Policy: Objectives and Approaches*

¹⁸⁷*Ibid.*

Hasan Zaheer, a Pakistani writer, states that, “Pakistan’s policy is determined by its claim over the whole of Kashmir, and its commitment to enforce it by any means, including the military, has resulted in the consequent state of armed confrontation with India.”¹⁸⁸ It is an absolute requirement for the survival of political leaders in Pakistan to remain loyal to the Kashmir cause. The imposition of the Kashmir tax by Nawaz Sharif, and the call by Benazir Bhutto for a thousand years of war with India to wrest away Kashmir, should be seen in that light.¹⁸⁹ Interestingly, the Pakistani government continues to organise the Kashmir solidarity day, 5th February, to express solidarity with the people of J&K. By adopting such measures, the Pakistani position grows more rigid.¹⁹⁰

The centrality of Kashmir and anti-India rhetoric in Pakistan has given rise to the emergence of the Pakistan military as its most dominant state institution and key arbiter.¹⁹¹ No civilian government has been in a position to challenge the policies followed by Pakistan’s Army in regard to India, and the Army, enjoying a continuous build up and increased budgetary allocation due to this perceived threat, is not going to change that. The Army and ISI having executed the Kashmir policy on their own, have

¹⁸⁸Hasan Zaheer, *Rawalpindi Conspiracy 1951* (Karachi: Oxford University Press, 1998), xix.

¹⁸⁹Pakistan’s former Prime Minister, Nawaz Sharif, during his rule imposed Kashmir tax and had established Kashmir Fund to support the Kashmiri freedom struggle against India. Similarly, when Benazir Bhutto was Prime Minister of Pakistan, she stated that “Pakistan was willing to fight a ‘thousand-year’ war for control of Kashmir.” Pattanaik, *Pakistan’s Kashmir Policy: Objectives and Approaches*; Country Studies, “India: A Country Study” <http://countrystudies.us/india/123.htm>; Internet; accessed 17 April 2011.

¹⁹⁰A News Hub, “Kashmir Solidarity Day 2011 on 5 February” <http://www.anewshub.com/kashmir-solidarity-day-2011-on-5-february/853221/>; Internet; accessed 20 February 2011.

¹⁹¹Farzana Shaikh, *Making Sense of Pakistan*.

relied on the civilian government to keep the façade of diplomacy alive, thus providing the required diplomatic cushioning to military-led foreign policy.¹⁹²

The [Pakistan's] Army has pulled the strings in Pakistan since 1958, regardless of whether the country has a democratic or a military façade at a given time. Possession of nuclear weapons has enhanced its status. Wielding direct or indirect power for forty five years, it has both experience and confidence. It now dominates political institutions and processes even when exercising indirect control.¹⁹³

The image of India has been profiled in such a manner that the Pakistan Army's India policy automatically obtains legitimacy. Over a period of time, this Indian image has been deliberately nurtured for the vested interests of individual Pakistani agencies especially the Pakistani Army and the ISI.

Pakistan has little faith in bilateral negotiations with India, and has always been trying to tarnish the Indian image. Pakistan's Kashmir strategy, in terms of defaming India, is summed up in the words of Lieutenant General K.M. Arif of the Pakistan Army:

To keep the issue alive, Kashmir must hit the headlines in the press and electronic media in the West. . . My suggestion is that we should project India as a usurper of human rights. . . India should be portrayed as an occupation force, a country which is holding Kashmiris against their will. We should portray India hurting minorities. Kashmiris are suffering because they happen to be Muslims in a Hindu state.¹⁹⁴

The growth of Islamic fundamentalism in Pakistan has also contributed towards developing an obsession with Kashmir. Though earlier governments used Islamic parties for political objectives, it was under General Zia-ul-Haq, the military dictator of Pakistan,

¹⁹²Pattanaik, *Pakistan's Kashmir Policy: Objectives and Approaches*.

¹⁹³Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 275.

¹⁹⁴Lieutenant General K.M. Arif, "Kashmir Problem: An Overview," in *Kashmir Problem: Challenges and Responses*, ed. Tariq Jan and Col. (ret'd) Gulam Sarwar, (Islamabad: Institute of Policy Studies, 1999), 65.

that a top down campaign was launched to Islamise Pakistan. “Pakistan’s intervention in Afghanistan and the Islamic policies at home gradually turned the country into the epicentre of global Islamic militancy.”¹⁹⁵ The fundamentalist movement in Pakistan has twin objectives: setting up an Islamic state and Jihad.¹⁹⁶ The Pakistani government seems to be intimidated by Pakistani militant Islamic groups.¹⁹⁷ The Pakistani government bowing to the demands of the religious-militant alliance for the establishment of a religious judicial system, called *Nizam-e-Adl*, in the Swat valley is one such example, demonstrating the growing influence of fundamentalism in Pakistan.¹⁹⁸ Religious and fundamentalist parties have been adopting a tough stand on Kashmir, and the Pakistani government can ignore their demands at its own peril. In fact, religious fundamentalism in Pakistan has become a powerful and dangerous force to dictate the Kashmir policy.¹⁹⁹

Time and again Pakistan has expressed its claim over the whole of J&K, and its unhappiness with the current situation (i.e. partition of Kashmir) prevails. Pakistan’s former Foreign Minister Khurshid Kasuri said, “We consider the LOC as part of the problem, and not a solution. Pakistan has made it clear that we cannot agree to any proposal, which could be seen as altering the existing temporary status of the LOC and

¹⁹⁵Kalim Bhadur, “Regional Implications of the Rise of Islamic Fundamentalism in Pakistan,” Strategic Analysis vol. 30 (January 2006): 212.

¹⁹⁶*Ibid.*

¹⁹⁷Hamza Alavi, “The Rise of Religious Fundamentalism in Pakistan,” available from <http://secularpakistan.wordpress.com/2009/03/10/the-rise-of-religious-fundamentalism-in-pakistan-hamza-alavi/>; available from Internet; accessed 20 February 2011.

¹⁹⁸Pak makes peace with Taliban, Accepts Sharia Law in Swat, The Indian Express, 17 February 2009, <http://www.indianexpress.com/news/pak-makes-peace-with-taliban-accepts-sharia/424447/>; Internet; accessed 20 February 2011.

¹⁹⁹Hamza Alavi, *The Rise of Religious Fundamentalism in Pakistan*.

turning it into a permanent border.”²⁰⁰ Clearly, by arousing public sentiment and becoming highly uncompromising, Pakistan has placed itself in a tight corner with little space for manoeuvre on the issue of Kashmir.

Surprisingly, Pakistan sees no problem worth mentioning in the areas under its own control. The POK region, occupied by Pakistan during the First Kashmir War, is ruled directly by Islamabad. Pakistan holds that the AK government is autonomous, but the UN Human Rights Watch has commented that:

Azad Kashmir remains for all intents and purposes under Pakistan's strict control, exercising no real sovereignty of its own. From the outset, the institutional set up in the territory was designed to ensure Pakistan's total control of the area's affairs.²⁰¹

The people of POK (which includes AK and the Northern Areas) are denied constitutional status, basic human rights, and a constitutional government. Development of the area has been abysmal; the literacy rate is 15% overall (68% in Indian J&K) with the female literacy rate even lower at 3% (58% in Indian J&K).²⁰² Per capita income is

²⁰⁰Kasuri Says No to LOC-based Kashmir Solution, *Hindustan Times*, 4 April 2006, <http://www.hindustantimes.com/Kasuri-says-no-to-LoC-based-Kashmir-solution/Article1-82893.aspx>; Internet; accessed 20 February 2011.

²⁰¹Human Rights Watch, *"With Friends Like These": Human Rights Violations in Azad Kashmir*, 21 September 2006, C1812, <http://www.unhcr.org/refworld/docid/4517b1a14.html>; Internet; accessed 20 February 2011.

²⁰²World Bank, "Education Project to Improve School Quality and Access in Northern Pakistan's Remote Mountain Regions," <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20015735~menuPK:64282138~pagePK:41367~piPK:279616~theSitePK:40941,00.html>; Internet; accessed 20 February 2011. For data concerning Indian J&K, see Indian Express, "J&K Literacy Rate Soars to 68%," <http://www.indianexpress.com/news/jandk-literacy-rate-soars-to-68/773272/>; Internet; accessed 17 April 2011.

half of that found in rest of Pakistan.²⁰³ Sectarian violence and the struggles for freedom continue in POK also, but security agencies crush such movements ruthlessly.²⁰⁴

Appalled by the situation, the Supreme Court of Pakistan declared in 1999, that steps should be taken to ensure that the people of the Northern Areas enjoy constitutional rights.²⁰⁵ This gross under development in the region also explains why it is easy to find recruits in this area for waging Jihad against India's alleged atrocities in Kashmir. Acts of India have also been interpreted to suit the narrative being run in Pakistan, and that will be discussed next.

Interpretation of India's Acts

India has been advocating for a broad-based relation with Pakistan rather than allowing Kashmir to hold Indo- Pak relation a hostage. It is India which has been proposing talks on less contentious issues with desire to then switch to Kashmir once some degree of confidence has been built between the two countries. In contrast to Pakistani manoeuvres, India has not launched any offensive to capture the J&K territory under Pakistan's control, nor does India support any insurgency in POK. Although the Indian administration has been blamed for human rights violations in J&K, and for not

²⁰³Ahmad Naeem Khan, "Pakistan's Neglected Northern Areas Now on Development Map," available from <http://ismaili.net/heritage/node/26375>; Internet; accessed 20 February 2011.

²⁰⁴Human Rights Commission of Pakistan, "HRCP mission to the Northern Areas," <http://www.hrcp-web.org/showfact.asp?id=9>; Internet; accessed 20 February 2011.

²⁰⁵Institute of Policy Study, Islamabad, "Northern Areas of Pakistan-Facts, Problems and Recommendations," <http://www.ips.org.pk/international-relation/pakistan-and-its-neighbours/1118.html>; Internet; accessed 20 February 2011.

holding a plebiscite in the state, the Indian response to the issue has been much more peaceful.

The mistrust in Pakistan towards India has been constructed around a number of issues, including Kashmir, which allegedly was usurped by India despite it rightfully belonging to Pakistan. India is held solely responsible for not holding a plebiscite in J&K, and no reference is made to the withdrawal of the Pakistani Army from J&K as a precondition for such a plebiscite. Indian assistance to native Bengali Muslims during the civil war of 1971, which ended with the creation of Bangladesh, is utilised as main source of mistrust against India. However, in the same narrative, other related aspects such as India's walking away from Bangladesh, or the release of 93,000 Pakistani prisoners of war, without any ostensible advantage, are not mentioned.²⁰⁶ In more recent times, the issue of mistrust has been constructed around a number of topics, sharing of river waters and Afghanistan being important ones.

The Indus Water Treaty, signed in 1960 under the auspices of the World Bank, continues to regulate the flow of water into Pakistan. The water commission in both countries, along with neutral observers, continuously monitors the flow of water to Pakistan from India. A recent dispute regarding the height of a dam on the Chenab River has been satisfactorily settled with a verdict announced by the World Bank.²⁰⁷ But still,

²⁰⁶Parvez Musharraf termed India's action as "India stabbed Pakistan in the back." See Parvez Musharraf, *In the Line of Fire: A Memoir*, 53, 54.

²⁰⁷Baglihar Power Project Gets World Bank Approval, *The Financial Express*, 13 February 2007. Also available from <http://www.financialexpress.com/news/baglihar-power-project-gets-world-bank-approval/187742/>; Internet; accessed 21 February 2011.

India is accused of being a 'water stealer,'²⁰⁸ and it is projected to be a threat because the rivers originate in Indian J&K. Asif Ali Zardari, Pakistan's President, spoke in a threatening language, "the water crisis in Pakistan is directly linked to relations with India. Resolution could prevent an environmental catastrophe in South Asia, but failure to do so could fuel the fires of discontent that lead to extremism and terrorism."²⁰⁹

The Indian Military doctrine of 'Cold Start' is viewed as a threat to Pakistan.²¹⁰ Similarly, any development made by India in missile or rocket technology is interpreted as threat to Pakistan.²¹¹ More recently, the Indian involvement in Afghanistan has become a further source of mistrust between the two countries. Pakistan is concerned that India is trying to encircle it by gaining influence in Afghanistan.²¹²

After India opened consulates in Herat, Mazar-e-Sharif, Jalalabad, and Kandahar, Pakistan charged that these consulates provide cover for Indian intelligence agencies to run covert operations against Pakistan, as well as foment separatism in Pakistan's Balochistan province.²¹³

²⁰⁸India is Stealing Water of Life, Says Pakistan, *The Independent*, 26 March 2009. Also available from <http://www.independent.co.uk/news/world/asia/india-is-stealing-water-of-life-says-pakistan-654291.html>; Internet; accessed 21 February 2011.

²⁰⁹Pakistan accuses India of 'stealing' water, *The Telegraph*, 21 February 2011. Also available from <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/5052150/Pakistan-accuses-India-of-stealing-water.html>; Internet; accessed 21 February 2011.

²¹⁰'Cold Start' was an Indian Army doctrine for the rapid deployment of the Indian Forces. Manu Pubby, "No 'Cold Start' Doctrine, India Tells US," *Indian Express*, 9 September 2010.

²¹¹Farzana Shah, "Cold Start: Indian Threat to Pakistan & China," available from <http://pakaalert.wordpress.com/2010/01/20/cold-start-indian-threat-to-pakistan-china/>; Internet; accessed 20 February 2011.

²¹²Jayshree Bajoria, "India-Afghanistan Relations, Council on Foreign Relation," available from <http://www.cfr.org/india/india-afghanistan-relations/p17474>; Internet; accessed 20 February 2011.

²¹³*Ibid.*

Pakistani Interior Minister, Rehman Malik accused India that “Indian consulates in Afghanistan on its borders with Pakistan were assisting the insurgency in Balochistan.”²¹⁴ India has no military presence in Afghanistan, yet Pakistan’s position is such that any Indian involvement in Afghanistan is anti-Pakistan by nature. Pakistani policy makers strongly believe that India has incited an anti-Pakistan insurgency in Balochistan, but these claims lack supportive proof or evidence.

India, despite all these obstructions from Pakistan, has been assisting Afghanistan. India is the sixth largest bilateral donor to Afghanistan (\$ 1.2 billion), and is delivering a number of developmental projects such as the construction of roads, the parliament building, wells, and schools.²¹⁵ The Indo-Pak mistrust was captured by Wall Street Journal, which noted that “for years, Pakistan refused to allow overland shipment of fortified wheat biscuits from India to feed two million Afghan schoolchildren. India instead had to ship the biscuits through Iran, driving up costs for the program.”²¹⁶

A perception runs on the Indian side that in order to deter Indian involvement in Afghanistan, Pakistani agents orchestrated the bombing of the Indian embassy in Kabul on 7 July 2008. The Pakistani involvement in this bombing was also endorsed by Afghan President, Hamid Karzai.²¹⁷

²¹⁴Nirupama Subramanian, “India Backing Baloch Insurgency,” *The Hindu*, 26 July 2008. Also available from <http://www.hindu.com/2008/07/26/stories/2008072653741400.htm>; Internet; accessed 17 April 2011.

²¹⁵Narayan Lakshman, “India Keeps up Afghan Effort despite Security Concerns,” *The Hindu*, 18 December 2010.

²¹⁶Peter Wonacott, “India Befriends Afghanistan, Irking Pakistan,” *Wall Street Journal*, available from <http://online.wsj.com/article/SB125061548456340511.html>; Internet; accessed 20 February 2011.

²¹⁷Sanjay Suri, “Pak Behind Bombing on Indian Embassy: Afghan Prez,” *CNN-IBN*, available from <http://ibnlive.in.com/news/pak-behind-bombing-on-indian-embassy-afghan-prez/68966-2.html>; Internet; accessed 20 February 2011.

Chris Alexander, a former Canadian diplomat who had served in Kabul until 2009, has written that:

General Kayani [Chief of Pakistan Army] told Mr. Karzai this spring that the condition for peace in Afghanistan would be the closing of several Indian consulates. This is not an empty rhetoric. Gen. Kayani is saying he wants to call the shots in Kabul. To do so, he is prepared to support the principal outfit launching suicide attacks in Afghanistan's cities. The Pakistan army under Gen. Kayani is sponsoring a large-scale, covert guerrilla war through Afghan proxies.²¹⁸

Pakistan has been a traditional supporter of Taliban, and has very limited monetary wherewithal to support any developmental programme in Afghanistan. On the other hand, India's support of reconstruction efforts in Afghanistan is seen as anti-Pakistan by definition by authorities in Pakistan.

Assurances from India in this regard have not been able to break the ice. The Indian Foreign Minister, S. M. Krishna, while speaking about Pakistani apprehension on Indian involvement in Afghanistan, noted, "I think that is a baseless allegation." He further clarified that:

India's role in Afghanistan is to help them to stabilise on their infrastructure development. That's our immediate concern. That is the reason why we were asked to come to Afghanistan. We are building roads, we are building school buildings and we are building transmission lines.²¹⁹

The continuing mistrust that exists between India and Pakistan on various issues, and especially on Kashmir, is founded on the ignorance of certain realities. Fortunately,

²¹⁸NDTV, "Kayani Wants India out of Afghanistan: Ex-Canadian Envoy," <http://www.ndtv.com/article/india/kayani-wants-india-out-of-afghanistan-ex-canadian-envoy-41601>; Internet; accessed 17 April 2011.

²¹⁹Arun Kumar, "India Dismisses Pakistani Fears Over Involvement in Afghanistan," *Thaindian News*, available from http://www.thaindian.com/newsportal/business/india-dismisses-pakistani-fears-over-involvement-in-afghanistan_100251379.html; Internet; accessed 20 February 2011.

this deficit of trust could be bridged if both the parties adopt a pragmatic approach to their relations. What needs to be accomplished will be discussed next.

A Way Forward

India, as well as Pakistan, both have to realise that “neither country has a real need– in security, resource and internal coherence terms– for the part of J&K that is with the other country.”²²⁰ Also, neither country will agree to cede territory which is currently under its control. As the former Chief Minister of J&K, Farooq Abdullah said, “Neither is India going to leave this part, nor is Pakistan going to leave that part. Whether we have hundred wars or thousand wars, it is just not going to happen. We are just going to bleed each other dry.”²²¹ As similar views were expressed by Robert D. Blackwill, a former strategic adviser to US President George W. Bush, that “unless and until Pakistan reconciles itself to accepting the LOC as the border, the Kashmir dispute will go on for a very long time and cross-border terrorist violence from Pakistan against India would resume.”²²² There is a growing understanding that the LOC has to become a permanent border at some point, but to accept this fact the Pakistani government has to move from its position of claiming the entire J&K territory.

Another intermediate measure, worth adopting, in Kashmir could be awarding a significant autonomy to the state by both the parties for the areas under their control. In

²²⁰Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 295.

²²¹Pattanaik, *Pakistan's Kashmir Policy: Objectives and Approaches*.

²²²Press Trust of India, “Kashmir to be an Issue Till Pak Sees LoC as Border,” <http://www.indianexpress.com/oldStory/71021/>; Internet; accessed 20 February 2011.

this manner Kashmiris will have a say in their governance, and the insurgency movement will lose a vital reason for waging war. However, this can only be feasible if India's security related fears are allayed by Pakistan. By implication, this means that Pakistan will have to denounce its support to the separatist movement in Kashmir.²²³

Stoppage of Pakistani support to anti-India terrorists has tremendous prospects for normalising Indo-Pak relations. Such a move could bring peace and harmony to the violence ravaged Kashmir. On the other hand, "Pakistani decision to ignore its commitment to prevent Jihad infiltration across the LOC would severely damage any normalisation prospects."²²⁴

The dominance of the Pakistani Army-ISI over the formulation and execution of Pakistan's Kashmir policy has to be reduced, so that the civilian government could make progress without the fear of reprisals from the strongest, and some what unpredictable, state institution. Similarly, Pakistan's religious hawks in Pakistan need to be declawed. Presently, Pakistan has a strong reason to "clip the wings" of the self styled custodians of religion as it is faces tremendous sectarian violence incited by the religious leaders. However, the task of reducing religious, as well as the Army's influence, is an extremely difficult, perhaps suicidal task, for any government in Pakistan to accomplish. Until such time, not obtaining the Pakistani Army's concurrence for any solution for peace in Kashmir is a recipe for failure. The rhetoric in the Pakistani discourse that the entire Kashmir region belongs to Pakistan will have to be mellowed down.

²²³Koithara, *Crafting Peace in Kashmir: Through a Realist Lens*, 295.

²²⁴Dennis Kux, *India-Pakistan Negotiation: Is Past Still Prologue?* 64.

Until confidence is built on the Kashmir issue, dialogue must proceed on lesser issues. Both countries possess tremendous opportunities for bilateral trade, energy sharing, exchange of artists, etc. which could be tapped. Such developments would be beneficial to both nations. An intensified movement of people between India and Pakistan could also increase public pressure in favour of an accelerated progress towards normalisation.²²⁵

However, the vicious cycle of accusation-counter accusation and mistrust continues. Pakistan's uncompromising claim over Kashmir and its reluctance to talk on issues other than Kashmir is likely to continue. India, on the other hand, is unlikely to part with the area of Kashmir under its control. In this atmosphere of mistrust, Pakistan-based terrorist acts against India may trigger another phase of strained relations.

Presently, both countries seem interested in developing trust and have shown interest in solving the Kashmir dispute. Nevertheless, finding a solution to the Kashmir problem is a lengthy and difficult task. "Genuine normalisation will involve tough often painful negotiation, and difficult concessions by both Islamabad and New Delhi."²²⁶ In the present situation, developing and sustaining a comprehensive negotiation process could be a start point. However, steps such as the diminishing of differences, the development of mutual trust, and the normalisation of relations seem lying beyond the horizon.

²²⁵*Ibid.*

²²⁶*Ibid.*, 65.

CONCLUSION

For over six decades peace has remained elusive in Kashmir. Positions taken by India and Pakistan, over this period of time, have hardened rather than softened. A number of complex factors and challenges over this time have been responsible for turning any prospective peace initiatives into dismal failures.

It has been argued that a high degree of mistrust, resulting due to Pakistan's politico-military manoeuvres, has been the primary reason for the current state of affairs that exists in Kashmir, and it is owing to this mistrust that words and deeds are often interpreted with completely different meanings than those envisaged by the state of origin. This issue of mistrust pervades the current situation, and means that even after 63 years of talk India and Pakistan do not agree on the most basic issues. Definitions on what constitutes the Kashmir dispute or what legal status the Instrument of accession holds remain nebulous. Mistrust is the key explanation as to why three wars have been fought between India and Pakistan, and why one solution has not been agreed to by both countries over Kashmir. This mistrust, however, is not a recent phenomenon. Indo-Pak mistrust has a history as long as that of India- Pakistan itself. This mistrust has ensured that a permanent state of tension and conflict continues in Kashmir. In retrospect, despite mistrust being a two way street, Pakistan has earned the lion's share of responsibility in keeping this mistrust alive.

The origin of this mistrust could be traced back to an undivided British India. The 'divide and rule' policy of the British Indian government was quickly embraced by the Muslim League as their principle strategy. Soon, the League turned highly communal,

demanding a separate nation in the name of Islam. Unfortunately, the ensuing violence unleashed on migrants at the time of partition proved a pill too bitter to swallow; rather it was reinforced by subsequent developments.

The indecision displayed by the Maharaja of J&K on the question of joining either the dominion of India or Pakistan, further exacerbated the problems associated with of the partition of British India. Nevertheless, J&K could have been a thriving independent secular state today had Pakistan not decided to seize the J&K by proxy force. The October 1947 Pakistani aggression towards J&K in the name of tribesmen was the first major military manoeuvre by Pakistan. The Maharaja's later signing of the instrument of accession with India, further complicated the situation as it brought India and Pakistan, which did not share an iota of trust, closer to a confrontation. Pre-partition Hindu-Muslim mistrust gained a boost during the First Kashmir War (1947-48), although the war was not fought along religious lines.

The following years were marked by increased UN involvement in finding a peaceful and permanent solution to the Kashmir problem. It was due to Pakistan's efforts that a simple problem was turned into a highly complex issue, enlarging the scope of the problem from the "Kashmir issue" to the "India-Pakistan issue". Pakistani political manoeuvres during the war made two immediate gains: Pakistan was not condemned for its aggression on J&K, and at the same time was acknowledged as a party in the Kashmir dispute.

After achieving a cease fire in Kashmir, subsequent UNSC resolutions centered around two issues. First, the complete withdrawal of Pakistani soldiers, tribesmen and nationals, as well as the partial withdrawal of Indian Forces. Second, a plebiscite was

required thereafter. Pakistan never fulfilled the first condition, and therefore a plebiscite could not be held in J&K.

The border disputes between India and China led to the Indo-China War in 1962 in which India fared poorly. Soon, thereafter, Pakistan colluded with China. This Pakistan-China relationship took its toll on Kashmir as well. A part of the area, which Pakistan had occupied in J&K, was given to China in 1963. Thus, a fourth party was added to the Kashmir dispute, and by extension Pakistan further reduced the prospects of finding a solution to the Kashmir problem.

Two years later, a strategic miscalculation by Pakistan led to another war in Kashmir. Sensing weaknesses in India's military and political situation, as well as a communal disharmony in Indian J&K, Pakistan tried to repeat the model tested in 1947. This time, however, the war could not remain limited to Kashmir alone. The all out Indo-Pak war of 1965 was followed by the Tashkent Agreement in which both countries reverted back to their pre-war territorial claims. This unnecessary war reinforced the mistrust.

India emerged as a clear victor after the 1971 Indo-Pak War with 93,000 Pakistani soldiers surrendering to Indian Forces, and with the independence of Bangladesh. Considering that the view points of both countries were beyond reconciliation, at least on Kashmir, India proposed measures to bring stability to the ceasefire line. As a result of the Simla Agreement, the present LOC was delineated jointly by military commanders from both sides.

In 1977, with General Zia-ul-Haq's overthrowing of the civilian government, Pakistan started its journey down a religious-fundamentalist path. By adopting this

approach, Pakistan played a vital role in the winning the war against the USSR in Afghanistan, under the name of Mujahedeen. Assets, experience and holy warriors from this conflict were slowly diverted from Afghanistan to Kashmir. By 1989, the USSR had withdrawn from Afghanistan and local turmoil in Kashmir had erupted. This time the ISI and Pakistan's Army got decisively engaged in Kashmir in order to repeat the success story of Afghanistan.

A local insurgency soon turned into a proxy war against India. The sudden surge in violence hijacked the life of the average Kashmiri. Terrorist activities did not remain confined to Kashmir only; rather various targets deep within the Indian mainland were also subjected to attacks. The hijacking of an Indian Airline passenger flight, the terrorist attack on the Indian Parliament, and the attacks on Mumbai are a few high profile incidents, threads of which were linked to Pakistan. For the last two decades, Pakistani establishments have adopted cross LOC infiltration and terrorism as state policy. Such manoeuvres result in not only avoidable loss of life but it pushes the prospect of peace in Kashmir further away.

The last military confrontation between India and Pakistan occurred during the summer of 1999 in the Kargil sector of J&K. This time peace initiatives were in progress at the summit level. The prime ministers of both countries had pledged their full hearted support for the normalisation of Indo-Pak relations. This time, it was the Pakistani Army which decided to annex Kargil by force. Pakistan's army pushed into India, covertly in the guise of Mujahedeen, without any provocation. The subcontinent was brought to the brink of an all out war, with a nuclear backdrop, by this reckless military manoeuvre. However, India responded with restraint, and the war remained limited to the Kargil

sector only. Time, however, can only heal the scars left behind by the loss of life and the breach of trust in Kargil.

The anti-India and Kashmir centric feelings in Pakistan emerge from many deep rooted issues, including its internal dynamics, which have shaped an inflexible response on the Kashmir issue. Pakistan continues to view Indo-Pak relations based on a religious divide, and this identity crisis of Pakistan keeps fuelling anti-India sentiments. Similarly, the Mulla-Military alliance has ensured that the strongest possible hardliner stand is adopted by Pakistan's government on the Kashmir.

Pakistan's stand on Kashmir has become inflexible by its frequent, rhetoric laden, public claims over the entire J&K, and with its expressed displeasure regarding the turning of the LOC into a permanent border. Pakistani discourse on Kashmir is based on religion, deep anti-Indian antipathy, and a perceived rivalry with India. State institutions, such as the Pakistan Army and the ISI, have ensured a continuation of this discourse, and yet the high cost of this approach is ignored in the name of nationalism.

The Indian portion of J&K is fast returning to a state of normalcy. 2010 has witnessed the least level of violence since upsurge of insurgency in Kashmir,²²⁷ and the last state assembly elections recorded more than 60% polling, despite calls to boycott the vote by the separatist elements.²²⁸ It is a time to reconcile differences, and Pakistan can play a big role in bringing peace to Kashmir by stopping its support to insurgency-turned-terrorism within the state, and by adopting a flexible and realistic stance on the issue.

²²⁷South Asia Intelligence Review, "Jammu and Kashmir Assessment - Year 2011," <http://www.satp.org/satporgrp/countries/india/states/jandk/index.html>; Internet; accessed 17 April 2011.

²²⁸Thaindia News, Defying Separatists, "Jammu and Kashmir Sees 64 Percent Polling," http://www.thaindian.com/newsportal/politics/defying-separatists-jammu-and-kashmir-sees-64-percent-polling-second-intro-roundup_100120306.html; Internet; accessed 23 February 2011.

Ideally, a plebiscite is the best option for deciding the fate of J&K. However, it has some practical difficulties since the J&K territory is spread over three countries, namely China, India and Pakistan. All three would need to come to a consensus. In the given situation, the most pragmatic solution to the Kashmir issue could be based around two themes. First, significant and real autonomy could be awarded to J&K on both sides of LOC. Second, stability and permanence to the LOC itself could be brought. In the meantime, and until enough confidence is built between the two countries over Kashmir, other areas must be explored such as; trade and commercial activities, and people to people contact.

Despite the recent resumption of Indo-Pak talks, the present situation remains uncertain, and mistrust between the two countries continues. Pakistan's early reconciliation with reality holds the key for the stability in J&K, and in the region at large.

KASHMIR-PAKISTAN STANDSTILL AGREEMENT

**Telegram from Prime Minister, Kashmir State, to Sardar Abdur Rob Nishtar,
States Relations Department, Karachi, dated 12th August, 1947.**

Jammu and Kashmir Government would welcome Standstill Agreements with Pakistan on all matters on which these exist at present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreement.

**Telegram from Foreign Secretary, Government of Pakistan, Karachi, to Prime
Minister of Jammu and Kashmir Srinagar, dated 15th August, 1947.**

Your telegram of the 12th. The Government of Pakistan agree to have a Standstill Agreement of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution of fresh agreements.²²⁹

²²⁹Kashmir Information Centre, "Kashmir-Pakistan Standstill Agreement," <http://www.kashmir-information.com/LegalDocs/111.html>; Internet: accessed 24 February 2011.

**LETTER FROM MAHARAJA HARI SINGH TO LORD
MOUNTBATTEN ON THE EVE OF PAKISTAN'S INVASION ON
J&K IN 1947**

My dear Lord Mountbatten,

I have to inform Your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. As Your Excellency is aware, the State of Jammu and Kashmir has not acceded to either the Dominion of India or Pakistan. Geographically my State is contiguous with both of them. Besides, my State has a common boundary with the Union of Soviet Socialist Republics and with China. In their external relations the Dominion of India and Pakistan cannot ignore this fact. I wanted to take time to decide to which Dominion I should accede or whether it is not in the best interests of both the Dominions and of my State to stand independent, of course with friendly and cordial relations with both. I accordingly approached the Dominions of India and Pakistan to enter into standstill agreement with my State. The Pakistan Government accepted this arrangement. The Dominion of India desired further discussion with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government under the standstill agreement is operating the post and telegraph system inside the State. Though we have got a standstill agreement with the Pakistan Government, the Government permitted a steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infiltrate into the State, at first in the Poonch area, then from Sialkot and finally in a mass in the area adjoining-Hazara district on the Ramkote side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at several points simultaneously, so that it has become difficult to stop the wanton destruction of life and property and the looting of the Mahura power house, which supplies electric current to the whole of Srinagar and which has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my government, as a first step to overrunning the whole State. The mass infiltration of tribesman drawn from distant areas of the North-West Frontier Province, coming regularly in motor trucks, using the Manwehra-Mazaffarabad road and fully armed with up-to-date weapons, cannot possibly be done without the knowledge of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated appeals made by my Government no attempt has been made to check these raiders or to stop them from coming into my State. In fact, both radio and the Press of Pakistan have reported these occurrences. The Pakistan radio even put out the story that a provisional government has been set up in

Kashmir. The people of my State, both Muslims and non-Muslims, generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the instrument of accession for acceptance by your Government. The other alternative is to leave my state and people to free looters. On this basis no civilized government can exist or be maintained.

This alternative I will never allow to happen so long as I am the ruler of the State and I have life to defend my country. I may also inform your Excellency's Government that it is my intention at once to set up an interim government and to ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State is to be saved, immediate assistance must be available at Srinagar. Mr. V.P. Menon is fully aware of the gravity of the situation and will explain it to you, if further explanation is needed.

In haste and with kindest regards,

Yours sincerely,

Hari Singh

October 26, 1947

Reply from Lord Mountbatten to Maharaja Hari Singh

My dear Maharaja Sahib,

Your Highness' letter dated 26 October 1947 has been delivered to me by Mr. V.P. Menon. In the circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.

Meanwhile, in response to Your Highness' appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir, to help your own forces to defend

your territory and to protect the lives, property, and honour of your people. My Government and I note with satisfaction that Your Highness has decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister.²³⁰

Mountbatten of Burma
October 27, 1947

²³⁰Kashmir Information Centre, "Letter from Maharaja Hari Singh to Lord Mountbatten," http://www.kashmir-information.com/LegalDocs/Maharaja_letter.html; Internet: accessed 24 February 2011.

**INSTRUMENT OF ACCESSION EXECUTED BY MAHARAJAH
HARI SINGH ON 26 OCTOBER, 1947**

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshahipati, Ruler of Jammu & Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Hari Singh

Maharajadhiraj of Jammu and Kashmir State.

ACCEPTANCE OF ACCESSION BY THE GOVERNOR GENERAL OF INDIA

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.²³¹

Mountbatten of Burma

Governor General of India.

⁴Jammu and Kashmir, "Instrument of Accession Executed by Maharajah Hari Singh on October 26, 1947," http://www.jammu-kashmir.com/documents/instrument_of_accession.html; Internet: accessed 24 February 2011.

TEXT OF INDIA'S COMPLAINT TO THE SECURITY COUNCIL, 1 JANUARY 1948

Letter Dated 1 January, 1948, from the Representative of India to the President of the Security Council (S/628).

The Government of India have instructed me to transmit to you the following telegraphic communication :

“1. Under Article 35 of the Charter of the United Nations, any Member may bring any situation whose continuance is likely to endanger the maintenance of international peace and security to the attention of the Security Council. Such a situation now exists between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining Pakistan on the north-west, are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the Dominion of India and is part of India. The circumstances of accession, the activities of the invaders which led the Government of India to take military action against them, and the assistance which the attackers have received and are still receiving from Pakistan are explained later in this memorandum. The Government of India request the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance, which is an act of aggression against India. If Pakistan does not do so, the Government of India may be compelled, in self-defence, to enter Pakistan territory, in order to take military action against the invaders. The matter is, therefore, one of extreme urgency and calls for immediate action by the Security Council for avoiding a breach of international peace.

2. From the middle of September 1947, the Government of India had received reports of the infiltration of armed raiders into the western parts of Jammu Province of the Jammu and Kashmir State; Jammu adjoins West Punjab which is a part of the Dominion of Pakistan. These raiders had done a great deal of damage in that area and taken possession of part of the territory of the State. On 24 October, the Government of India heard of a major raid from the Frontier Province of the Dominion of Pakistan into the Valley of Kashmir. Some two thousand or more fully armed and equipped men came in motor transport, crossed over to the territory of the State of Jammu and Kashmir, sacked the town of Muzaffarabad, killing many people, and proceeded along the Jhelum Valley road towards Srinagar, the summer capital of the Jammu and Kashmir State. Intermediate towns and villages were sacked and burnt, and many people killed. These raiders were stopped by Kashmir State troops near Uri, a town some fifty miles from Srinagar, for some time, but the invaders got around them and burnt the power house at Mahora, which supplied electricity to the whole of Kashmir.

3. The position, on the morning of 26 October, was that these raiders had been held by Kashmir State troops and part of the civil population, who had been armed, at a town called Baramulla. Beyond Baramulla there was no major obstruction up to Srinagar.

There was immediate danger of these raiders reaching Srinagar, destroying and massacring large numbers of people, both Hindu and Muslims. The State troops were spread out all over the State and most of them were deployed along the western border of Jammu Province. They had been split up into small isolated groups and were incapable of offering effective resistance to the raiders. Most of the State officials had left the threatened area and the civil administration had ceased to function. All that stood between Srinagar and the fate which had overtaken the places *en route* followed by the raiders was the determination of the inhabitants of Srinagar, of all communities, and practically without arms, to defend themselves. At this time Srinagar had also a large population of Hindu and Sikh refugees who had fled there from West Punjab owing to communal disturbances in that area. There was little doubt that these refugees would be massacred if the raiders reached Srinagar.

4. Immediately after the raids into the Jammu and Kashmir State commenced, approaches were informally made to the Government of India for the acceptance of the accession of the State to the Indian Dominion. (It might be explained in parenthesis that Jammu and Kashmir form a State whose ruler, prior to the transfer of power by the United Kingdom to the Dominions of India and Pakistan, had been in treaty relations with the British Crown, which controlled its foreign relations and was responsible for its defence. The treaty relations ceased with the transfer of power on 15 August last, and Jammu and Kashmir like other States acquired the right to accede to either Dominion.)

5. Events moved with great rapidity, and the threat to the Valley of Kashmir became grave. On 26 October, the ruler of the State, His Highness Maharaja Sir Hari Singh, appealed urgently to the Government of India for military help. He also requested that the Jammu and Kashmir State should be allowed to accede to the Indian Dominion. An appeal for help was also simultaneously received by the Government of India from the largest popular organisation in Kashmir, the National Conference, headed by Sheikh Mohammed Abdullah. The Conference further strongly supported the request for the State's accession to the Indian Dominion. The Government of India were thus approached not only officially by the State authorities, but also on behalf of the people of Kashmir, both for military aid and for the accession of the State to India.

6. The grave threat to the life and property of innocent people in the Kashmir Valley and to the security of the State of Jammu and Kashmir that had developed as a result of the invasion of the Valley demanded immediate decision by the Government of India on both the requests. It was imperative on account of the emergency that the responsibility for the defence of the Jammu and Kashmir State should be taken over by a government capable of discharging it. But, in order to avoid any possible suggestion that India had utilised the State's immediate peril for her own political advantage, the Government of India made it clear that once the soil of the State had been cleared of the invader and normal conditions restored, its people would be free to decide their future by the recognised democratic method of a plebiscite or referendum which, in order to ensure complete impartiality, might be held under international auspices.

7. The Government of India felt it their duty to respond to the appeal for armed assistance because :

(1) They could not allow a neighbouring and friendly State to be compelled by force to determine either its internal affairs or its external relations;

(2) The accession of the Jammu and Kashmir State to the Dominion of India made India really responsible for the defence of the State.

8. The intervention of the Government of India resulted in saving Srinagar. The raiders were driven back from Baramulla to Uri and are held there by Indian troops. Nearly 19,000 raiders face the Dominion forces in this area. Since operation in the Valley of Kashmir started, pressure by the raiders against the western and south-western border of the Jammu and Kashmir State has been intensified. Exact figures are not available. It is understood, however, that nearly 15,000 raiders are operating against this part of the State. State troops are besieged in certain areas. Incursions by the raiders into the State territory, involving murder, arson, loot, and the abduction of women, continue. The booty is collected and carried over to the tribal areas to serve as an inducement to the further recruitment of tribesmen to the ranks of the raiders. In addition to those actively participating in the raid, tribesmen and others, estimated at 100,000, have been collected in different places in the districts of West Punjab bordering the Jammu and Kashmir State, and many of them are receiving military training under Pakistani nationals, including officers of the Pakistan Army. They are looked after in Pakistan territory, fed, clothed, armed and otherwise equipped, and transported to the territory of the Jammu and Kashmir State with the help, direct and indirect, of Pakistani officials, both military and civil.

9. As already stated, the raiders who entered the Kashmir Valley in October came mainly from the tribal areas to the north-west of Pakistan and, in order to reach Kashmir, passed through Pakistan territory. The raids along the south-west border of the State, which had preceded the invasion of the valley proper, had actually been conducted from Pakistan territory, and Pakistan nationals had taken part in them. This process of transmission across Pakistan territory and utilisation of that territory as a base of operations against the Jammu and Kashmir State continues. Recently, military operations against the western and south-western borders of the State have been intensified, and the attackers consist of nationals of Pakistan as well as tribesmen. These invaders are armed with modern weapons, including mortars and medium machine-guns, wear the battle dress of regular soldiers and, in recent engagements, have fought in regular battle formation and are using the tactics of modern warfare. Man-pack wireless sets are in regular use and even mark V mines have been employed. For their transport the invaders have all along used motor vehicles. They are undoubtedly being trained and to some extent led by regular officers of the Pakistan Army. Their rations and other supplies are obtained from Pakistan territory.

10. These facts point indisputably to the conclusion

- (a) That the invaders are allowed transit across Pakistan territory;
- (b) That they are allowed to use Pakistan territory as a base of operations;
- (c) That they include Pakistan nationals;
- (d) That they draw much of their military equipment, transportation, and supplies (including petrol) from Pakistan; and
- (e) That Pakistan officers are training, guiding, and otherwise actively helping them.

There is no source other than Pakistan from which they could obtain such quantities of modern military equipment, training or guidance. More than once, the Government of India had asked the Pakistan Government to deny to the invaders facilities which constitute an act of aggression and hostility against India, but without any response. The last occasion on which this request was made was on 22 December, when the Prime Minister of India handed over personally to the Prime Minister of Pakistan a letter in which the various forms of aid given by Pakistan to the invaders were briefly recounted and the Government of Pakistan were asked to put an end to such aid promptly; no reply to this letter has yet been received in spite of a telegraphic reminder sent on 26 December.

11. It should be clear from the foregoing recital that the Government of Pakistan are unwilling to stop the assistance in material and men which the invaders are receiving from Pakistan territory and from Pakistan nationals, including Pakistan Government personnel, both military and civil. This attitude is not only un-neutral, but constitutes active aggression against India, of which the State of Jammu and Kashmir forms a part.

12. The Government of India have exerted persuasion and exercised patience to bring about a change in the attitude of Pakistan. But they have failed, and are in consequence confronted with a situation in which their defence of the Jammu and Kashmir State is hampered and their measures to drive the invaders from the territory of the State are greatly impeded by the support which the raiders derive from Pakistan. The invaders are still on the soil of Jammu and Kashmir and the inhabitants of the State are exposed to all the atrocities of which a barbarous foe is capable. The presence, in large number of invaders in those portions of Pakistan territory which adjoin parts of Indian territory other than the Jammu and Kashmir State is a menace to the rest of India. Indefinite continuance of the present operations prolongs the agony of the people of Jammu and Kashmir, is a drain on India's resources and a constant threat to the maintenance of peace between India and Pakistan. The Government of India have no option, therefore, but to take more effective military action in order to rid the Jammu and Kashmir State of the invader.

13. In order that the objective of expelling the invader from Indian territory and preventing him from launching fresh attacks should be quickly achieved, Indian troops would have to enter Pakistan territory; only thus could the invader be denied the use of bases and cut off from his sources of supplies and reinforcements in Pakistan. Since the

aid which the invaders are receiving from Pakistan is an act of aggression against India, the Government of India are entitled, under international law, to send their armed forces across Pakistan territory for dealing effectively with the invaders. However, as such action might involve armed conflict with Pakistan, the Government of India, ever anxious to proceed according to the principles and aims of the Charter of the United Nations, desire to report the situation to the Security Council under Article-35 of the Charter. They feel justified in requesting the Security Council to ask the Government of Pakistan :

- (1) To prevent Pakistan Government personnel, military and civil, from participating or assisting in the invasion of the Jammu and Kashmir State;
- (2) To call upon other Pakistani nationals to desist from taking any part in the fighting in the Jammu and Kashmir State;
- (3) To deny to the invaders : (a) access to any use of its territory for operations against Kashmir, (b) military and other supplies, (c) all other kinds of aid that might tend to prolong the present struggle.

14. The Government of India would stress the special urgency of the Security Council taking immediate action on their request. They desire to add that military operations in the invaded areas have, in the past few days, been developing so rapidly that they must, in self-defence, reserve to themselves the freedom to take, at any time when it may become necessary, such military action as they may consider the situation requires.

15. The Government of India deeply regrets that a serious crisis should have been reached in their relations with Pakistan. Not only is Pakistan a neighbour but, in spite of the recent separation, India and Pakistan have many ties and many common interests. India desires nothing more earnestly than to live with her neighbour-State on terms of close and lasting friendship. Peace is to the interest of both States; indeed to the interests of the world. The Government of India's approach to the Security Council is inspired by the sincere hope that, through the prompt action of the Council, peace may be preserved.

16. The text of this reference to the Security Council is being telegraphed to the Government of Pakistan.”²³²

²³²Jammu and Kashmir, “Text of India's Complaint to the Security Council, 1st January 1948,” <http://www.jammu-kashmir.com/documents/jkindiancomplaintun.html>; Internet: accessed 24 February 2011.

UNSC RESOLUTION 47 OF 21 APRIL 1948

The Security Council,

Having considered the complaint of the Government of India concerning the dispute over the State of Jammu and Kashmir,

Having heard the representative of India in support of that complaint and the reply and counter-complaints of the representative of Pakistan,

Being strongly of the opinion that the early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about a cessation of all fighting.

Noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite,

Considering that the continuation of the dispute is likely to endanger international peace and security,

Reaffirms its resolution 38 (1948) of 17 January 1948;

Resolves that the membership of the Commission established by its resolution 39 (1948) of 20 January 1948 shall be increased to five and shall include, in addition to the membership mentioned in that resolution, representatives of ... and ..., and that if the membership of the Commission has not been completed within ten days from the date of the adoption of this resolution the President of the Council may designate such other Members or Members of the United Nations as are required to complete the membership of five;

Instructs the Commission to proceed at once to the Indian subcontinent and there place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration of peace and order and to the holding of a plebiscite, by the two Governments, acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of the action taken under the resolution; and, to this end,

Recommends to the Governments of India and Pakistan the following measures as those which in the opinion of the Council are appropriate to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan:

A. Restoration of Peace and order

1. The Government of Pakistan should undertake to use its best endeavours:

(a) To secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;

(b) To make known to all concerned that the measures indicated in this and the following paragraphs provide full freedom to all subjects of the State, regardless of creed, caste, or party, to express their views and to vote on the question of the accession of the State, and that therefore they should co-operate in the maintenance of peace and order.

2. The Government of India should:

(a) When it is established to the satisfaction of the Commission set up in accordance with the Council's resolution 39 (1948) that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for with-drawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order;

(b) Make known that the withdrawal is taking place in stages and announce the completion of each stage;

(c) When the Indian forces have been reduced to the minimum strength mentioned in (a) above, arrange in consultation with the Commission for the stationing of the remaining forces to be carried out in accordance with the following principles:

(i) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;

(ii) That as small a number as possible should be retained in forward areas;

(iii) That any reserve of troops which may be included in the total strength should be located within their present base area.

3. The Government of India should agree that until such time as the Plebiscite Administration referred to below finds it necessary to exercise the powers of direction and supervision over the State forces and police provided for in paragraph 8, they will be held in areas to be agreed upon with the Plebiscite Administrator.

4. After the plan referred to in paragraph 2 (a) above has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the re-establishment and maintenance of law and order with due regard to protection of

minorities, subject to such additional requirements as may be specified by the Plebiscite Administration referred to in paragraph 7.

5. If these local forces should be found to be inadequate, the Commission, subject to the agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

B. Plebiscite

6. The Government of India should undertake to ensure that the Government of the State invite the major political groups to designate responsible representatives to share equitably and fully in the conduct of the administration at the ministerial level while the plebiscite is being prepared and carried out.

7. The Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a plebiscite as soon as possible on the question of the accession of the State to India or Pakistan.

8. The Government of India should undertake that there will be delegated by the State to the Plebiscite Administration such powers as the latter considers necessary for holding a fair and impartial plebiscite including, for that purpose only, the direction and supervision of the State forces and police.

9. The Government of India should, at the request of the Plebiscite Administration, make available from the Indian forces such assistance as the Plebiscite Administration may require for the performance of its functions.

10.

(a) The Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed to be the Plebiscite Administrator.

(b) The Plebiscite Administrator, acting as an officer of the State of Jammu and Kashmir, should have authority to nominate his assistants and other subordinates and to draft regulations governing the plebiscite. Such nominees should be formally appointed and such draft regulations should be formally promulgated by the State of Jammu and Kashmir.

(c) The Government of India should undertake that the Government of Jammu and Kashmir will appoint fully qualified persons nominated by the Plebiscite Administrator to act as special magistrates within the State judicial system to hear cases which in the opinion of the Plebiscite Administrator have a serious bearing on the preparation for and the conduct of a free and impartial plebiscite.

(d) The terms of service of the Administrator should form the subject of a separate negotiation between the Secretary-General of the United Nations and the Government of India. The Administrator should fix the terms of service for his assistants and subordinates.

(e) The Administrator should have the right to communicate directly with the Government of the State and with the Commission of the Security Council and, through the Commission, with the Security Council, with the Governments of India and Pakistan and with their representatives with the Commission. It would be his duty to bring to the notice of any or all of the foregoing (as he in his discretion may decide) any circumstances arising which may tend, in his opinion, to interfere with the freedom of the plebiscite.

11. The Government of India should undertake to prevent, and to give full support to the Administrator and his staff in preventing, and threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite, and the Government of India should publicly announce and should cause the Government of the State to announce this undertaking as an international obligation binding on all public authorities and officials in Jammu and Kashmir.

12. The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the press, speech an assembly and freedom of travel in the State, including freedom of lawful entry and exit.

13. The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose.

14. The Government India should ensure that the Government of the State releases all political prisoners and take all possible steps so that:

(a) All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens;

(b) There is no victimization;

(c) Minorities in all parts of the State are accorded adequate protection.

15. The Commission of the Security Council should at the end of the plebiscite certify to the Council whether the plebiscite has or has not been really free and impartial.

C. General provisions

16. The Governments of India and Pakistan should each be invited to nominate a representative to be attached to the Commission for such assistance as it may require in the performance of its task.

17. The Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of the measures indicated in the foregoing paragraphs.

18. The Security Council commission should carry out the tasks assigned to it herein.

*Adopted at the 286th meeting.*²³³

²³³UN Security Council, "Resolution 47 (1948) of 21 April 1948, 21 April 1948, S/RES/47 (1948)," <http://www.unhcr.org/refworld/docid/3b00f23d10.html>; Internet; accessed 25 February 2011.

**RESOLUTION ADOPTED BY THE UNITED NATIONS
COMMISSION FOR INDIA AND PAKISTAN ON 13 AUGUST 1948
(Document No.1100, Para. 75, dated the 9th November, 1948)**

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN
Having given careful consideration to the points of view expressed by the Representatives, of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and Being of the opinion that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in effecting a final settlement of the situation, Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal:

**PART I
CEASE-FIRE ORDER**

[A] The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

[B] The High Commands of Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir. (For the purpose of these proposals '-forces under their control' shall be considered to include all forces, organised and unorganised, fighting or participating in hostilities on their respective sides).

[C] The Commanders-in-Chief of the Forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

[D] In its discretion, and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both commands will supervise the observance of the cease-fire order.

[E] The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

PART II
TRUCE AGREEMENT

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

A.

(1) As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

(2) The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

(3) Pending a final solution the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

B.

(1) When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission.

(2) Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

(3) The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known

that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

C.

(1) Upon signature, the full text of the Truce Agreement or communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

PART III

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

The UNCIP unanimously adopted this Resolution on 13-8-1948.
Members of the Commission: Argentina, Belgium, Colombia, Czechoslovakia and U.S.A.²³⁴

²³⁴UNCIP Resolution, "Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948," <http://www.mtholyoke.edu/acad/intrel/uncom1.htm>; Internet: accessed 24 February 2011.

TASHKENT DECLARATION, 10 FEBRUARY 1966

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Pakistan.

(i) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighbourly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region and particularly in the Indo Pakistan subcontinent and, indeed, the interests of the peoples of India and Pakistan were not served by the continuance of tension between the two countries. It was against this background that Jammu and Kashmir was discussed, and each of the sides set forth its respective position.

(ii) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than 25 February, 1966, to the position they held prior to 5 August, 1965, and both sides shall observe the ceasefire terms on the ceasefire line.

(iii) The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based on the principle of noninterference in the internal affairs of each other.

(iv) The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country and will encourage propaganda which promotes the development of friendly relations between the two countries.

(v) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan to India will return to their posts and that the normal functioning of diplomatic missions of both countries will be restored. Both governments shall observe the Vienna Convention of 1961 on diplomatic intercourse.

(vi) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications as well as cultural exchanges between India and Pakistan, and to take measures to implement the existing agreements between India and Pakistan.

(vii) The Prime Minister of India and the President of Pakistan have agreed that they will give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

(viii) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue the discussion of questions relating to the problems of refugees and evictions/illegal immigrations. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agree to discuss the return of the property and assets taken over by either side in connection with the conflict.

(ix) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue meetings both at the highest and at other levels of matters of direct concern to both countries. Both sides have recognised the need to set up joint IndianPakistani bodies which will report to their governments in order to decide what further steps should be taken.

The Prime Minister of India and the President of Pakistan record their feelings, deep appreciation and gratitude to the leaders of the Soviet Union, the Soviet Government and personally to the Chairman of the Council of Ministers of the USSR for their constructive, friendly and noble part in bringing about the present meeting which has resulted in mutually satisfactory results. They also express to the government and friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and generous hospitality.

They invite the Chairman of the Council of Ministers of the USSR to witness this declaration.

Prime Minister of India

President of Pakistan

Lal Bahadur Shastri

Mohammad Ayub Khan

Tashkent, 10 January 1966.²³⁵

²³⁵Jammu and Kashmir, "The Tashkent Declaration, 10th February 1966," <http://www.jammu-kashmir.com/documents/jktashkent.html>; Internet ; accessed 24 February 2011.

SIMLA AGREEMENT, 2 JULY 1972

This agreement on Bilateral Relations between India and Pakistan was signed after the 1971 India-Pakistan War, in which Pakistan was defeated conclusively and which resulted in the creation of Bangladesh. India refrained from attacking or finishing off Pakistan and signed this agreement with the hope that henceforth the countries in the region would be able to live in peace with each other. The then Pakistani Prime Minister, Zulfikar Ali Bhutto, also promised the then Indian Prime Minister, Mrs Indira Gandhi, that his country would accept the Line of Control (LOC) in the state of J&K as the de facto border and would not try to de-stabilize it. This was not formally entered in the agreement because Bhutto said it would cause domestic problems for him at this juncture. Mrs Gandhi magnanimously accepted his promise and did not formalise that part of the agreement. But Pakistan, as later events were to prove, never kept its part of the deal.

The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the sub-continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

In order to achieve this objective, the Government of India and the Government of Pakistan have agreed as follows:

- (i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the countries;
- (ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.
- (iii) That the pre-requisite for reconciliation, good-neighbourliness and durable peace between them is a commitment by both countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;
- (iv) That the basic issues and causes of conflict which have bedeviled the relations between the two countries of the last twenty-five years shall be resolved by peaceful means;

(v) That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;

(vi) That in accordance with the Charter of the United Nations, they shall refrain from the threat or use of force against the territorial integrity or political independence of each other;

(II) Both Governments will take all steps within their power to prevent hostile propaganda directed against each other.

Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them;

(III) In order progressively to restore and normalize relations between the two countries step by step, it was agreed that;

(i) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including over flights;

(ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country;

(iii) Trade and co-operation in economic and other agreed fields will be resumed as far as possible;

(iv) Exchange in the fields of science and culture will be promoted.

In this connection delegations from the two countries will meet from time to time to work out the necessary details.

(IV) In order to initiate the process of the establishment of durable peace, both Governments agree that:

(i) Indian and Pakistani forces shall be withdrawn to their side of the international border;

(ii) In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat of the use of force in violation of this line;

(iii) The withdrawals shall commence upon entry into force of this Agreement and shall be completed within a period of thirty days thereof.

(V) This Agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the Instruments of Ratification are exchanged.

(VI) Both Governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.²³⁶ Representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of a durable peace and normalization of relations, including the questions

Sd/-
Indira Gandhi
Prime Minister
Republic of India

Sd/-
Zulfiqar Ali Bhutto
President
Islamic Republic of Pakistan

²³⁶Jammu and Kashmir, “Simla Agreement, 2 July 1972,” <http://www.jammu-kashmir.com/documents/simla.html>; Internet ; accessed 24 February 2011.

LAHORE DECLARATION, 21 FEBRUARY, 1999

The Prime Ministers of the Republic of India and the Islamic Republic of Pakistan:

Sharing a vision of peace and stability between their countries, and of progress and prosperity for their peoples;

Convinced that durable peace and development of harmonious relations and friendly cooperation will serve the vital interests of the peoples of the two countries, enabling them to devote their energies for a better future;

Recognising that the nuclear dimension of the security environment of the two countries adds to their responsibility for avoidance of conflict between the two countries;

Committed to the principles and purposes of the Charter of the United Nations, and the universally accepted principles of peaceful co-existence;

Reiterating the determination of both countries to implementing the Simla Agreement in letter and spirit;

Committed to the objective of universal nuclear disarmament and non-proliferation;

Convinced of the importance of mutually agreed confidence building measures for improving the security environment;

Recalling their agreement of 23rd September, 1998, that an environment of peace and security is in the supreme national interest of both sides and that the resolution of all outstanding issues, including Jammu and Kashmir, is essential for this purpose;
Have agreed that their respective Governments:

- shall intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir.
- shall refrain from intervention and interference in each other's internal affairs.
- shall intensify their composite and integrated dialogue process for an early and positive outcome of the agreed bilateral agenda.
- shall take immediate steps for reducing the risk of accidental or unauthorised use of nuclear weapons and discuss concepts and doctrines with a view to elaborating measures for confidence building in the nuclear and conventional fields, aimed at prevention of conflict.
- reaffirm their commitment to the goals and objectives of SAARC and to concert their efforts towards the realisation of the SAARC vision for the year 2000 and beyond with a view to promoting the welfare of the peoples of South Asia and to improve their quality of life through accelerated economic growth, social progress and cultural development.
- reaffirm their condemnation of terrorism in all its forms and manifestations and their

determination to combat this menace.

· shall promote and protect all human rights and fundamental freedoms.

Signed at Lahore on the 21st day of February 1999.²³⁷

Atal Bihari Vajpayee Prime Minister of the Republic of India

Muhammad Nawaz Sharif Prime Minister of the Islamic Republic of Pakistan

²³⁷ Association for Communal Harmony in Asia, "The Lahore Declaration, February 21, 1999," <http://www.asiapeace.org/acha/kashmir110.htm>; Internet; accessed 24 February 2011.

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