KASHMIR:

LEARNING FROM THE PAST

4 December 2003

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EXECUTIVE SUMMARY

While its roots predate Indian and Pakistani independence, the Kashmir conflict's current directions can best be understood in the light of the nationalism and state building that followed the end of British colonial rule. Domestic factors, including the imperatives of regime legitimacy and consolidation, remain important influences in both countries.

Evaluation of the failure of past and present Indian and Pakistani approaches suggests caution about any strictly bilateral process that disregards the regional and international dimensions of the crisis. Nor is any solution viable that ignores the sense of historical unity that underlies the social and religious diversity across the current Line of Control (LOC) dividing the former Dogra Kingdom into Indian and Pakistani-administered Kashmir.

This report examines the history of the crisis and past efforts to resolve it. ICG is releasing simultaneously two additional reports that lay out the public and private positions of the governments in Islamabad and New Delhi respectively on Kashmir and bilateral relations. An earlier report examined views from within the Kashmir Valley. Taken together, reports in this series analyse the positions and look at the constraints in terms of ending the conflict as they are perceived on all sides.[1] A subsequent final report will offer extensive recommendations on how to move forward with a process of reconciliation between India and Pakistan and within Kashmir.

Past international endeavours to resolve the Kashmir crisis have failed largely due to Indian and Pakistani domestic constraints. Bilateral efforts by the parties have faltered in important part because Kashmiri representatives were excluded from the negotiating process and subsequent settlements. Given Kashmir's internal dynamics, present Indian and Pakistani unilateral approaches also face serious obstacles. While international actors such as the United Nations can play an influential role in buttressing a peace process, any viable solution will ultimately hinge on the two parties' domestic dynamics, particularly their willingness and ability to negotiate and then implement a compromise solution that also takes into consideration the nationalist aspirations and demands of Kashmir's diverse population.

India's preferred solution (privately but not yet publicly embraced) involves transformation of the LOC into an international border; internal reorganisation of Jammu and Kashmir within the Indian Union; reconciliation through autonomy and elections; and reliance on coercion to quell Kashmiri dissent and demands. The 2002 elections within Indian-administered Kashmir helped restart the political process, but on their own they are no solution. They failed to satisfy Kashmiri demands for consultation and participation on the many issues that divide New Delhi from the political and armed militants in Srinagar and the Valley.

Islamabad's unilateral measures to integrate Pakistani-administered Kashmir have been accompanied by attempts – mainly through support for the cross-border insurgency – to force India to the negotiating table. Pakistan's preferred approach has failed to gain any tangible concessions from India and indeed has been counter-productive. Its proxy war in Kashmir has undermined international support, and in the post-11 September environment,

[1] ICG Asia Report N°35, *Kashmir: Confrontation and Miscalculation*, 11 July 2002; ICG Asia Report N°41, *Kashmir: The View from Srinagar*, 21 November 2002; ICG Asia Report N°68, *Kashmir: The View from Islamabad*, 4 December 2003; ICG Asia Report N°69, *Kashmir: The View from New Delhi*, 4 December 2003.

Pakistan faces increased international pressure to change its Kashmir policy.

If history is a guide, any sustainable solution will require Indian, Pakistani and Kashmiri negotiators to adopt a novel and far-reaching approach to the interlinked territorial and constitutional issues. A solution will have to take into consideration the two countries' political and security interests as well as Kashmiri aspirations. Strategies for peace will be complex and require leadership and compromise on all sides. The concerned actors – India, Pakistan and the various elements of Kashmiri political opinion alike – will have to reconsider current policies and preferences.

Pakistan's military leadership will have to change its policy of support for militant groups active in the armed struggle against India across the LOC and responsible for the continuing violence against civilians within Jammu and Kashmir. Pakistan will have to assert control over the militant organisations and persuade them to opt for talks instead of violence in their dealings with New Delhi.

India will have to rethink its reluctance to accept Pakistan as a genuine party to the conflict and restart a peace process in Kashmir with it. India will also have to follow up its promising recent offer to engage in a dialogue with the All Parties Hurriyat Conference (APHC) by demonstrating that it is prepared to make genuine concessions to that group as well as other Kashmiri political representatives. Abandoning the emphasis on coercion by its security forces, India should support the Sayeed government's efforts at political reconciliation, including by releasing militants held without trial.

Recent initiatives announced by the two sides, in particular India's offer in October 2003 of a series of confidence building measures and Pakistan's announcement on 23 November 2003, subsequently accepted by India, of a ceasefire along the Line of Control, have been universally welcomed though their substance remains to be tested. If and when India and Pakistan embark in earnest on a peace process, with Kashmiri consultation and acceptance, that process would benefit from international mediation and assistance. UN, U.S. and EU involvement, including the facilitation of communications and verification of implementation, could play a vital role in overcoming impediments during and after the negotiation process.

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KASHMIR: LESSONS FROM THE PAST

I. HISTORICAL BACKGROUND

A lasting solution to the Kashmir crisis will require the parties to take "the long view". The complexity of the crisis can be explained, in part, by its history. Choosing the starting point is itself, of course, a highly political act. Although the nature and form have changed over time, the crisis is still shaped by the dual processes of de-colonisation and nationalist consolidation.[2]

This report aims to set out a brief history of the conflict while focusing on what has befallen Indian-administered Jammu and Kashmir since 1989. It investigates why earlier attempts at resolution failed and identifies the problems and opportunities that presently exist.

The importance of resolving a conflict that has claimed thousands of lives in the last fourteen years is difficult to overstate.[3] Given the nuclear status of both India and Pakistan, the longer the conflict continues, the more likely it will become part of a general crisis in regional security with global implications.

A. THE DOGRA KINGDOM OF JAMMU AND KASHMIR

The former Dogra Kingdom of Jammu and Kashmir is bordered by China to the north and the east, the Indian states of Himachal Pradesh and Punjab to the south, and Pakistan's Northwest Frontier Province (NWFP) to the west, with the former Gilgit agency abutting Afghanistan. The former princely state is approximately 86,000 square miles, of which 30,000 is administered by Pakistan, 39,000 by India, and 17,000 by China. Nearly 70 per cent of the some 13.65 million people, however, are within Indian-administered territory.[4]

In 1846 the British concluded the Anglo-Sikh War by forcing the Sikhs to sell them territory centred on the Kashmir Valley, extending into Ladakh, Gilgit and Chamba, and down towards the Punjab plains in the vicinity of Jammu. This kingdom was then sold on to two Hindu brothers, the elder known as Gulab Singh, who although a vassal of the former Sikh Empire, had assisted the British. For the notional sum of £750,000, the Dogra Rajputs founded a kingdom, which over 50 years consolidated in a socially and religiously diverse area that became known as the princely state of Jammu and Kashmir.[5]

The princely state was centred on the legendary and beautiful vale of Kashmir, with a predominately Sunni Muslim population, but it also contained regions of significant Buddhist and Hindu

[2] See Ayesha Jalal, *Democracy and Authoritarianism in South Asia* (New York, 1995).

[3] The Indian government officially estimates 30,000 deaths since 1989. Kashmiris, including the All Parties Hurriyat Conference (APHC), estimate between 80,000 to 100,000 deaths, primarily civilian. Most observers estimate the total to be more than 60,000 deaths, again mostly civilian. The calculations are profoundly political, and no accurate figure is available because of the insecurity in Kashmir and India's frequent practice of banning foreign journalists and non-governmental organisations, including Amnesty International. See ICG Asia Report N°41, *Kashmir: The View from Srinagar*, 21 November 2002.

[4] The Kashmir Study Group estimates that approximately 9.45 million people live in Indian-administered Kashmir and approximately 4.2 million live in Pakistani-administered Kashmir. There is no permanent habitation in the Chinese area. http://www.kashmirstudygroup/com/awayforward/mapsexplan/population.html.

[5] See Alastair Lamb, *Kashmir: A Disputed Legacy 1846-1990*, third edition (Oxford, 2001). Vernon Hewitt, *Towards the Future? Kashmir in the 21st Century* (London, 2001).

settlement. This regional social and religious diversity was a notable feature of the kingdom and a reflection of Kashmir's strategic location, close to the land routes into the South Asian peninsula from central and eastern Asia. Hindus were dominant in the plains, Buddhists to the northeast. Muslims of various sects – especially Shia and Ismaili – were also within the kingdom, along with a few Sikhs. With differing territorial configurations, Kashmir has seen Hindu, Muslim, Sikh and Buddhist rulers. Nomadic groups – notably the Gujjars and Bakarwals – also co-existed within this complex milieu and retained an animist religion with close associations to some Hindu and Muslim practices.

The Dogra Rajputs' control of a diverse, predominantly Muslim area was not in itself unusual. Since the coming of Islam to South Asia in the twelfth century, Muslims had ruled Hindu territories, first as foreigners and then, through conversions and conquest, alongside indigenous Muslim elites. Moreover, many Muslim rulers had collaborated with Hindu princes, especially Rajputs, and had awarded them territorial grants and the rights of revenue collection, such as *jagir* (fiefdom) and *zamindari* (land ownership). Hindu Rajputs became a mainstay of Mughal (Muslim) power throughout India, holding high office in the Muslim court. In other parts of India, Muslim leaders ruled predominately Hindu populations.

Throughout India, this proximity of social and religious differences sparked conflict as well as collaboration and synthesis. In the Kashmir Valley, the emergence of Kashmiri as a common language, and shared cultural traits drawn from a rich Buddhist and Hindu past, created what many refer to as *Kashmiriyat*, a separate Kashmiri identity. This emphasis on the dominance of language and shared cultural values implied that there existed a basis for an effectively secular, non-Islamic Kashmiri identity that could contain Muslims, Hindus (Pandits especially) and Buddhists alike.[6]

Many writers contest *Kashmiriyat's* historical extent and question its contemporary relevance, while others continue to argue that its existence is critical to our understanding of contemporary Kashmir identity and aspirations. The emphasis on a community based on language is an important corrective to the view, reiterated by Dixon in 1950, that "the state of Jammu and Kashmir is not really a unit, geographically, demographically or economically. It is an agglomeration of territories".[7] However, if the extent of the *Kashmiriyat* is judged by language alone, its cultural and social cohesion weakens once out of the Valley.

To the south and west, as the Jhelum moves into the Punjab plains, languages are drawn predominately from the Indic family, Dogri, Punjabi, and various dialects and languages related to Hindi. There are also areas within the valley to the south where different languages are spoken. The LOC that divides Indian from Pakistani-administered Kashmir closely approximates, with a few notable exceptions, the split between Kashmiri speakers, and Punjabi-speaking Kashmiris situated in Punch and the hills.

B. JAMMU AND KASHMIR WITHIN THE BRITISH EMPIRE

The Dogra Rajput Kingdom of Jammu and Kashmir was an integral part of princely India, which made up effectively two thirds of the British Indian Empire and consisted of approximately 600 kingdoms, ruled by the British through the principles of paramountcy. Only 28 of these states had populations of over 50,000. Devised as an expedient for cheap administration, paramountcy made the princes vassals of the British Raj.

Princely India shielded significant parts of South Asia from the intrusive, reformist thrust of British colonialism, yet from the first quarter of the twentieth century onwards, many princes were pressured to "modernise" their political institutions by embarking upon some political reform and demonstrating willingness to provide for social need and investment. Princes were not slow to realise that they could improve their standing within paramountcy by showing political and economic flexibility.

1. Political Dynamics Prior to British Withdrawal

Turning the kingdom of Jammu and Kashmir into a constitutional monarchy was complicated by the

[6] Two illuminating texts on various aspects of culture and religion are M. Ishaq Khan, *Kashmir's Transition to Islam: The Role of the Muslim Rights*, (New Delhi, 1994) and T. N. Madan, *Non-Renunciation: Themes and Interpretations of Hindu Culture* (New Delhi, 1987).

[7] Sir Owen Dixon, "The Dixon Report", New York, UN Secretariat, 1950, p. iii.

extent of Muslim grievance. By 1933, Dogra rule was unpopular. The British frequently expressed concerns over the inequities of land ownership between Hindus and Muslims, the poor quality of Muslim education, and their poor employment prospects generally. The Glancy Report of 1932 (ordered to investigate Dogra repression against a Muslim strike in 1931) pushed for reform within Jammu and Kashmir and compelled Maharaja Hari Singh to set up an elected assembly, known as the Praja Sabha. It was to consist of 37 members, 35 of whom were to be elected by communal constituencies (on a very limited franchise), and to advise the prince on social and economic policy. Its views and proposals were not binding.

Popular disturbances occurred from around the late 1920s onwards. Rent strikes and attempts to resist tenant eviction were particularly common in the area of Punch, where Muslims resisted Hindu landlords. Local grievances were complicated in the 1930s by legal action aiming to claim that the Punch area (and the adjacent Punjabi hills) was in fact a separate *jagir* under the Treaty of Amristar. Labour unrest and grinding poverty were evident throughout the Valley.

Leading these grievances was an articulate group of Sunni Muslims, associated in some cases with the all-India agitations of the 1920s (especially the Khalifat Movement to restore the religious institution Attaturk abolished in Turkey after the collapse of the Ottoman Empire). Individuals like Sheikh Abdullah, Ghulam Abbas, and G. M. Sadiq had all been educated away from the Valley and thus exposed to the social, political and cultural ferment present throughout India. Also active was the spiritual leader of the Kashmiri Sunni Muslims, the Mirwaiz, who helped form the Muslim Conference and who contested the elections to the newly established Praja Sabha in 1933. Drawn clearly from a communal constituency, this first generation of Kashmiri politicians saw themselves as Muslims and sought to use Islam as a political force to expose the religious difference between the Maharaja and his population, as well as senior members of his government who were predominantly Kashmiri Pandits.

By 1938, some leaders, principally Sheikh Abdullah, rejected a narrow communal platform as counter-productive and embraced instead a secular political agenda that opened their political movements to non-Muslims. In doing so, Sheikh Abdullah broke with the Muslim Conference and founded his own party, the National Conference (NC), in 1939 as a secular force, closely aligned with the Indian National Congress. In 1938 Sheikh Abdullah had met Jawahalal Nehru, leader of the Indian National Congress, and both had been profoundly impressed by their similar outlooks. To those like the Mirwaiz, however, such secularism meant little to Muslims and was irrelevant to Kashmir's future.

The National Conference and Muslim Conference competed at elections but both sought to pressure the Maharaja for greater reform. Sheikh Abdullah called for the abolition of Dogra rule and the implementation of a social reform program to modernise the Valley. In 1939, Abdullah's party won a majority in the Praja Sabha, only to suffer defections into a revived Muslim Conference in 1941, instigated in part by the Maharaja, who paid for defections from the National Conference. In the wake of his 1946 agitation against the Dogras, Abdullah was arrested by the Maharaja and imprisoned.

2. The Communal Divide Within British India

The British had entered World War II in 1939 committed to Indian reform and self-government within the Empire, partly because of changed international priorities but largely as a result of Indian Congress agitation for independence. By 1946 the new Labour leadership was committed to total independence no later than 1948, a date later moved forward to August 1947. However, the British confronted not one main Indian movement for self-determination but two. Jawahalal Nehru's secular Indian National Congress (formed in 1885) claimed to represent all citizens of India regardless of their religious identity. The Muslim League (formed in 1906) claimed that the Muslims of imperial India constituted a separate nation. Although the majority in several provinces, Muslims constituted only about 18 per cent of the total population of the British Indian Empire and were in a minority across a wide expanse of Northern India. In June 1947, the British accepted partition and the creation of two separate sovereign states as inevitable.[8]

[8] Since the mid-1980s, there has been considerable debate and controversy over the exact scope and nature of Jinnah's demands. See Ayesha Jalal, *Jinnah: The Sole Spokesman* (Cambridge, 1985). For an overview of some of these ideas see also Mushirul Hasan, ed., *India's Partition: Process, Strategy and Mobilisation* (New Delhi, 1993).

It is within this context that secular and religious Kashmiri leaders operated by the mid-1940s. There was a clear affinity of political agendas between the National Conference and the Indian National Congress, added to which was the personal friendship between Abdullah and Nehru, a Kashmiri Pandit, who often expressed a romanticised view of the Valley in particular. The affinity between the Mirwaiz, Ghulam Abbas, and other leaders of the Muslim Conference with the Muslim League is less apparent, and was certainly more problematic at the time.

Muslim League leader Mohammed Ali Jinnah's call for a separate state for Muslims was premised on a sense of cultural difference from Hindus. Although he made use of Islam, Jinnah remained wedded to a conception of a secular Pakistan. As such, he had little in common with the Mirwaiz of Kashmir, whom he considered a religious leader who based his political agenda on religious sentiment. Jinnah was as unenthusiastic about the Islamic political colourings of the Muslim Conference as he was sceptical about the capabilities of its leaders.

3. Public Interest and Support

As the British rushed to grant independence to their Indian colony, the fate of the princely states was unclear. For a while, the British believed that, following the collapse of the Raj, these states might become fully sovereign. Many princes warmed to this idea, until the British ruled it out in 1946 under pressure from Indian nationalist politicians who believed that it would Balkanise the two successor states, India and Pakistan. Nonetheless, the Maharaja of Jammu and Kashmir grew increasingly committed to the idea of an independent Kashmir.

The Indian leadership was convinced that Sheikh Abdullah was pro-Congress, and he had indeed made various statements supporting the Indian National Congress. Members of the Muslim Conference clearly opted for Pakistan. However, there is evidence that both Sheikh Abdullah and influential members of the Muslim Conference were also sympathetic to an independent Kashmir, although one in which the Maharaja was reduced to a constitutional monarch or removed altogether. This sentiment provided the only commonality between the disparate forces. The commonality is significant from a contemporary standpoint because it highlights the degree to which the idea of an independent Kashmiri state, Islamic or secular, was very much present at the start of the crisis. Subsequent Indian and Pakistan historical interpretations have consistently downplayed this element.

In fact, Indian support for Sheikh Abdullah was marked from the onset with anxiety over his desire to lead an independent state. Such sentiments, expressed unambiguously in his work *New Kashmir* (released in 1944), predated his arrest and imprisonment by Indian authorities in 1953. The Muslim Conference leader, Mohammed Ibrahim, later surprised the Pakistan government by calling for Kashmir's independence as a member of the Pakistani UN delegation.

How popular were the Kashmiri parties of the National Conference and the Muslim Conference and their respective visions of independence, or inclusion into India or Pakistan? Unfortunately little is revealed by elections prior to 1947, which were held with a limited franchise that empowered a mere 3 per cent of the population. There is some evidence that Abdullah's support was dominant in the Valley, while the Mirwaiz and the Muslim Conference were dominant in the Punch district and the Jhelum Valley in the vicinity of the North West Frontier Province (NWFP) where Punjabi cultural and linguistic influences were powerful. Again this is mainly an impressionistic view since solid evidence is lacking.

Correspondence between Nehru and officials within the Raj continually pressed the point that Sheikh Abdullah was a popular leader, supporting union with India, and that his detention by the Maharaja was an implicit way of frustrating the will of the people. Yet, in 1946, the Mirwaiz was well received in Srinagar on a visit to the Hazratbal Mosque, where he called for the accession of the kingdom to Pakistan although Abdullah was still in prison.

Webb, the last British Resident in Kashmir, provided what was probably an accurate reflection of the situation in July 1947:

> His Highness, the Dogras and the Hindu communities incline towards India but [the] bulk of the population are Moslem and if consulted, would probably favour Pakistan, especially Mirpur, Poonch(sic) and Muzaffarabad.[9]

[9] Lt. Col. W. Webb, *13 August 1947, The Transfer of Power* (HMSO, 1983), p. 696.

It is evident that Webb downplayed the desire for Kashmiri independence, although he had earlier reported that this was the preferred option of the Maharaja himself. In early August 1947, Webb concluded his last memo with the prophetic comment that the "Kashmir government are in [a] grave dilemma as a decision to join either Dominion will result in serious trouble that might also have repercussions outside [the] State".[10]

C. KASHMIR AND THE DIVISION OF BRITISH INDIA

The British Raj appointed two boundary commissions, one for Bengal and the other for Punjab, both under the chairmanship of Sir Cyril Radcliffe. Known collectively as the Radcliffe Commission, these bodies were empowered to demarcate the future border between India and Pakistan by grouping contiguous Muslim majority areas to form a coherent territory. Ultimately this culminated in the establishment of a two-winged state in Pakistan on either side of the new Republic of India. West Pakistan contained the NWFP, Baluchistan, west Punjab and Sindh. East Pakistan consisted of east Bengal. The demarcation process did not take account of culture, nor in the main did it propose a separate recourse to public opinion through a referendum (with the notable exception of NWFP).

The British left it to the princes to decide the future of their territories but in effect pursued a policy of territorial contiguity. Where princely states were surrounded by territory that would become part of the Indian Republic, their rulers were pressured to join India. This was the case with the princely state of Hyderabad situated in the very heart of India, which desired first to be independent and then part of Pakistan. Eventually its ruler was coerced into joining India. Likewise, with the Kingdom of Kalat, in what is now the Pakistani province of Baluchistan, where the ruler, the Khan of Kalat, sought independence and then to join India. Eventually, he was pressured to join Pakistan. Real controversy would arise not necessarily in circumstances where the princes were of a different religion to the majority of their subjects, but where the princely state was so geographically located as to hold out the possibility of joining either state. Such was the case of Jammu and Kashmir.

[10] Ibid, p. 697.

The princes decided their fate by signing two documents, a Standstill Agreement and an Instrument of Accession. The former enabled a princely state to maintain connections with the surrounding territories of British India during its transition to Dominion Status (be it India or Pakistan) in vital areas of supplies and communications. The latter was, in effect, a transfer of sovereignty from the prince to either India or Pakistan. The documents were deemed to work in tandem. Princely states signed a Standstill Agreement with their respective Dominion subject to negotiations over the Instrument of Accession. The Instrument of Accession gave either India or Pakistan the right to run foreign policy, defence and communications, subject to any necessary further negotiations.

Jammu and Kashmir, because of its unique geographical location, signed Standstill Agreements with both India and Pakistan on 12 August 1947. But its Dogra ruler prevaricated on signing the Instrument of Accession.

D. THE CRISIS ERUPTS: THE FIRST KASHMIR WAR

The demarcation of the international border dividing India and Pakistan in the Punjab produced widespread communal violence in 1947 and a massive exchange of populations as Muslims situated on the Indian side of the border streamed westwards, and Hindus and Sikhs moved in the opposite direction. It has been calculated that 12.5 million people moved across Radcliffe's boundary awards, one of the largest population movements in modern history and one accompanied by hundreds of thousands of deaths.[11] It was against this background of widespread violence and administrative chaos that violence erupted in Kashmir in late September 1947.

Communal tensions were high in the Dogra Kingdom, especially within the Punjabi-speaking areas on the east of the Jhelum, which were most

[11] See Ian Talbot, *Freedom's Cry: The Popular Dimension in the Pakistan Movement* (Karachi, 1996); also D.A. Low and H. Brasted, eds., *Freedom, Trauma, Continuities: Northern India and Independence* (New Delhi, 1998). Estimates of the number of deaths vary widely from perhaps a quarter million to 500,000 or even 1 million. See also "Old Journeys Revisited", *The Economist*, 10 February 2000, and John F. Burns, "Pakistan at 50: Much to Be Proud of, Much to Regret", *The New York Times*, 15 August 1997.

directly affected by the killings in the Punjab. These areas, centred on Muzzafarabad and Punch, had long been witness to protests aimed at the Dogra court. In the charged atmosphere of partition, and amid the horror stories reaching the hills of killings and murders across the plain, a rebellion took place within the Punch area that had an explicit pro-Pakistan leaning. Subsequent Indian historiography has tended to misrepresent the nature of this rebellion as a mere law and order issue, involving indiscriminate looting and violence. This underplays the political and indeed structural nature of the violence itself. Leading members of the Muslim Conference were at the forefront of this insurrection.

From August to September 1947, both the Congress and the Muslim League started to see Kashmir not so much as a peripheral issue to the partition process but as something fundamental to their emergent national identities. Both sides saw Kashmir ideologically as essential for legitimating wider political positions. As a party representing the Muslim demand for a separate state, the Muslim League believed that Kashmir had to be part of Pakistan because it was overwhelmingly Muslim. Jinnah himself had reminded the viceroy that the 'K' in Pakistan stood for Kashmir and that without it Pakistan would be incomplete. Jinnah was already concerned by the British decision to award Pakistan only a part of the provinces of Bengal and Punjab. For Nehru, Kashmir's importance partly lay in the fact that India's claims to be a secular state would be enhanced through the retention of one Muslim majority area. But, more evidently, Kashmir's accession to India reflected what Nehru thought the Kashmiris themselves desired.

Indian diplomatic pressure had secured the release of Sheikh Abdullah by late September 1947, at a time when Pakistan was accusing the Indians of manipulating the Maharaja. By early October, the Dogra ruler accused the Pakistani authorities of withholding essential supplies to his state (especially oil and grain) in contravention of the Standstill Agreement. More seriously, by early October, Muslim Pashtun tribals from the vicinity of the Northwest Frontier were moving to assist their fellow Muslims in the Punch rebellion. It was also clear that the insurgents had wider designs to "liberate" their Muslims brethren from Hindu rule in Srinagar itself and acquire some plunder en route. Making use of the concept of jihad, they attacked the Dogra army sent against them.[12]

News of the tribal invasion added a sense of urgency to the Maharaja's deliberations. On 24 October 1947, he wrote to the Indian governor general and former viceroy, Earl Mountbatten, requesting immediate military assistance. The Dogra army had proved singularly ineffective, and indeed some of its Muslim troops had defected. The letter was placed before the Indian Defence Committee on the morning of 25 October. The governor general stated that military assistance could only be offered on condition that the Maharaja signed the Instrument of Accession. Subsequently V. P. Menon, head of the States' department with overall responsibility for the integration of the princely states into India, was sent to Srinagar with a letter from Mountbatten and a blank Instrument of Accession.

On his return to Delhi, V. P. Menon brought with him the signed Instrument of Accession and a letter by the Maharaja addressed to the governor general that said the rebellion gave him no option but to ask for help from India: "Naturally they cannot send the help asked for without my state acceding to the Dominion of India. I have accordingly decided to do so".[13] He also stated that he was swearing in Sheikh Abdullah as interim prime minister.

In a reply sent to the Maharaja, now residing in the relative safety of Jammu, dated 27 October, the governor general acknowledged receipt of the Instrument. Mountbatten also stated that it was the position of the Indian government to settle the matter finally with reference to ascertaining the wishes of the Kashmiri people. Such a referendum – along the lines of that in Junagadh – would be held when "law and order had been restored, and when the kingdom had been freed of the invader".[14] This phrase was to provide the basic recommendation from the Indian side when the matter was referred to the United Nations.

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[12] Alastair Lamb, *Birth of a Tragedy, Kashmir 1947* (Hertsfordshire, 1994). Lamb's interpretations of specific events, such as the Punch rebellion for example, remain controversial.

[13] For the official documentation, see V.M. Hewitt, *Reclaiming the Past*: *The Search for Political and Cultural Unity in Contemporary Jammu & Kashmir* (London, 1995), p. 37; also Alan Cambell-Johnson, *Mission with Mountbatten* (London, 1951), pp. 240-243, 246.

[14] Hewitt, *Reclaiming the Past*, op. cit., p.39.

In the wake of the receipt of the Instrument of Accession, the Indian authorities began a military airlift to help repel the invading tribal forces. This led to protests from Pakistan, coupled with denials that it was orchestrating events. By March 1948, Pakistan military personnel had joined with the Pashtun tribals (known within Pakistani literature as irregulars) to fight the Indians directly. Heavy fighting took place in and around Punch, the town of Kargil, and over the Zoji-la pass into Ladakh. The first Kashmir war ended in July 1949 as the parties agreed to a ceasefire that gave India control of the Valley and territories to the south and east, and Pakistan control of the hill areas, Gilgit and part of Baltistan.

The movement of the Pashtun tribals into the Dogra Kingdom has long been taken by the Indian authorities and indeed the Maharaja's administration as proof of official involvement by the Pakistan government. The evidence is ambiguous, however, and has been confused more than clarified by subsequent testimonials and journals published from the 1950s onwards. In his autobiography, Pakistani Major General Akbar Khan claimed to have been involved in planning the tribal raids, emphasising that such plans were kept secret from senior British civilian and military officers.[15] Lord Birdwood, writing not long after these events took place, believed that the real blame, if any, lay with the provincial authorities of the NWFP, and "the existence of knowledge and tacit consent" for failing to stop and then in assisting an armed insurrection on the simple grounds that they were sympathetic to the cause.[16]

To argue that the Pakistani government ordered the attack, and that Jinnah was personally responsible for it, misconstrues the degree of disorder prevalent at the time and greatly exaggerates the institutional abilities of the Pakistani state in the first months of its creation. Coercion was indeed used in other instances – the Indian police action in Hyderabad and the Pakistani use of force in Kalat, to cite just two examples. As will be seen below, one of India's motives for referring the matter to the United Nations was to have Pakistan branded as the aggressor, but to its disappointment, the newly formed Security Council did not presume to allocate blame given the overall chaos and violence associated with partition.

II. ATTEMPTED SOLUTIONS

A. UN INITIATIVES AND STALEMATE

The 1949 ceasefire (the Karachi Agreement) came about ostensibly through a bilateral process between India and Pakistan, facilitated by Britain and the UN. India had referred the dispute to the world body in late December 1947 under Article 35 of the charter. This invited the UN to investigate the matter as a potential threat to international peace and to issue advisory, non-mandatory findings to aid a peaceful resolution. The Indian side, apparently confident that it had sufficient political support within Kashmir to win a vote in such circumstances, also recommended that a referendum be held once peace was restored and all tribal and Pakistani forces withdrawn.

Nehru's decision to submit the Kashmir dispute to the UN, thus inviting its internationalisation, was a mistake from the Indian viewpoint. Yet, there is a tendency to exaggerate the UN's role in the Kashmir dispute and to give too great a consideration to its numerous documents and publications. The dynamics of the crisis have always remained within India and Pakistan, and the UN has little power to influence them directly.

Initially, the Security Council issued a series of resolutions calling for restraint on both sides. It set up the United Nations Commission for India and Pakistan (UNCIP) and subsequently the United Nations Observer Group for India and Pakistan (UNOGIP), which remains in existence today. Pakistan has continued the practice of appealing for UN involvement in resolving the conflict on numerous occasions, throughout the 1960s and then, after a significant lull, ever since the 1990s.

The Security Council passed four resolutions (38, 39, 47 and 51).[17] Once the 1949 ceasefire was settled, it set about the more substantive job of suggesting conditions, including the withdrawal of Pakistani forces, under which a referendum could be held to "ascertain the wishes of the people" as to whether they wished to belong to India or to Pakistan.[18] Both successor states to the Raj claimed the former kingdom in its entirety and neither

[15] Akbar Khan, *Raiders in Kashmir* (Karachi, 1970), p. 43.
[16] Lord Birdwood, *Two Nations and Kashmir* (London, 1956), p. 55; also Lamb, *Birth of a Tragedy*, op. cit., for a novel interpretation of the events of late 1947 onwards.
[17] Lamb's *Disputed Legacy*, *op. cit.*, has a summary overview of the UN involvement, in particular chapter nine.
[18] Lars Blinkenberg, *India-Pakistan: The History of Unresolved Conflicts* (Copenhagen, 1998).

entertained the idea of allowing it to become independent. Deliberations over the technicalities of the referendum continued until it became clear that no formula could be found to satisfy both sides.

India would not agree to a referendum in Kashmir under UN auspices. Occupying roughly a third of the state, Pakistan in turn refused to believe that a referendum held under Indian administration would be free and fair. The UN explored the possibilities of a referendum under a "neutral administration", staffed by its own members, but India considered that such a device equated its administration, based on the legality of an agreement between the Dogra Kingdom and the Indian Union, with Pakistan's unlawful occupation of what became known as Azad (free) Jammu and Kashmir, and the Northern Areas.

The UN commissioned a series of reports but events in South Asia quickly marginalised its influence. However, the report by Sir Owen Dixon, the Australian jurist, submitted in 1950, was one of the first documents to grasp the necessity of dealing with Kashmir as a series of overlapping territories that needed to be disaggregated down to the district and *tehsil* (sub-district) levels in order to do justice to the state's high degrees of social, cultural and religious pluralism. Drawing upon an exhaustive trip to the area, Dixon noted the regionalisation of such cultural and religious pluralism, and the divergence of political loyalty implicit within it. He was aware that the Pakistan-administered territories were quite distinct from the political and cultural identities of the Valley area, Ladakh and the Jammu hills. If a referendum were held at the state level of the former Dogra Kingdom, a simple majority could result in considerable injustice.

Throughout Dixon's report is a candid recognition that the solution to the Kashmir problem does not lie in a referendum at all. Implicit within it is an acknowledgement that a solution might well lie in disaggregating the former kingdom and partitioning it between the successor states of India and Pakistan. Such a solution would have the advantage of approximating the status quo and the de facto partition by the ceasefire line itself. Yet, the ceasefire line, then and now, gives Pakistan no stake in the Valley, which remains the heart of the former kingdom and by far its most populous and prosperous area.[19]

Partly because the situation on the ground had changed and the ceasefire line left it in possession of the most populous parts of the former kingdom, and partly because it was disappointed by the failure of the UN to condemn Pakistani aggression and obtain the withdrawal of Pakistani forces, India abandoned its multilateral approach for one premised on bilateralism and physical occupation. This involved an implicit acceptance of the loss of Azad Jammu and Kashmir and the Northern Areas. Pakistan remained attached to the UN approach for the simple reason that it had benefited from India's initiative in the first place and was unhappy with its position on the margins of the Valley. Throughout the 1950s, Pakistan raised its concerns about Indian policy at the UN.

The Security Council continued to debate Kashmir but without any sense of direction or purpose, and without even reaffirming earlier resolutions. The use of the veto by permanent members also began to add to the logjam, with India increasingly relying on the Soviet Union to buttress its position. Subsequent resolutions were passed in the years up to the 1966 Tashkent Declaration (Resolutions 80, 91, 96, 98, 122 and 126 in 1957) but the Security Council debate had become a sideshow.

B. UNILATERALISM: INTEGRATING JAMMU AND KASHMIR

1. Indian Policies

India, initially with the cooperation of Sheikh Abdullah and the National Conference, negotiated the Delhi Agreement of 1952, which limited its involvement in Jammu and Kashmir to matters of foreign policy, defence, and communications. Out of this emerged the premise of Article 370 of the Indian constitution, which:

- promised Kashmir a unique place within the Indian federal system and ensured its autonomy in the face of powerful centripetal forces;
- guaranteed certain titles for office holders, the use of the old flag, tax and settlement rights, and importantly, placed restrictions on land purchases and migration into the Valley from India; and
- provided that, unlike other states within the Union of India, the Kashmir government could

[19] The Dixon Report, op. cit.

be dismissed by the central government only if this was ratified by its own state assembly.

State elections conducted in 1951 on the basis of universal franchise confirmed Abdullah's popularity within Indian-administered Kashmir.

However, clear differences existed between Nehru's view of the Kashmiri settlement and Abdullah's. These led to Abdullah's imprisonment in 1953 on the grounds that he was acting against the interests of the Indian Union, that he had been in contact with foreign powers, and that his administration from 1948 onwards had been corrupt, authoritarian and communal.[20]

In the wake of his election as leader of the state assembly in 1951, Sheikh Abdullah had set up a working committee on a draft constitution. It was evident that the degree of autonomy envisaged by Nehru was not what the National Conference wanted. Of particular irritation to the Indian side were enabling clauses within Abdullah's proposal that any constitutional settlement was provisional upon a referendum and eventual re-unification of Kashmir. Indeed, Abdullah was thinking of independence and a Kashmir, in "association" with India and Pakistan, a "bridge between two states".[21]

Aware of New Delhi's determination to limit these ambitions, Abdullah entered into correspondence with leaders of the Muslim Conference, Ghulam Abbas in Indian and Sheikh Mohammad Ibrahim in Pakistan-administered Kashmir. Given the difficulties faced by Muslim Conference leaders in Pakistan, it is not unreasonable to speculate that the correspondence involved a common program of action and independence. From prison, Abdullah worked closely with a party called the Plebiscite Front.

In 1956, the National Conference, led by a Congress favourite, Bakshi Ghulam Mohammed, adopted a constitution without any reference to a referendum and pushed ahead with the integration of Jammu and Kashmir into the Indian Union under that Article 370 which has remained the lynchpin of India's defence of its governance in Kashmir.

India had come to believe that it had fulfilled its pledge to ascertain the "will of the people" through state elections rather than referendum. But intervention from New Delhi, working through its influence on the National Conference, fudged the NC's distinction from the state Congress party and Congress ideology even as it eroded the basis of Article 370. The NC leaders it used were often corrupt, dictatorial, conscious of their political dependence on New Delhi, and hence willing to accept and assist the growing interventions of central government. This pattern – so catastrophic after 1987 – has a long pedigree.

Sheikh Abdullah was released from prison in 1968, and for a time the Plebiscite Front was allowed to operate unhindered, despite Indian concerns that it remained a secessionist party, challenging the premise of Kashmir's integration into India. On his return to Srinagar, Abdullah was widely acclaimed, and his party's membership grew. To contain Abdullah and to keep in check his political vision of Kashmir, Indira Gandhi pressured him to form an electoral pact with her state Congress party in the run-up to the 1972 elections. His refusal led to renewed detention in 1971 and designation of the Plebiscite Front as an illegal organisation. Congress won the elections, but in 1975, following discussions with Mrs Gandhi, Abdullah was released and put in charge of a Congress state government to ensure that he cooperated closely with New Delhi.

2. Pakistani Policies

Pakistan also experienced the disconnect between official policy and Kashmiri aspirations, although its dilemma has been less publicised because Azad Kashmiri politics have had only a marginal effect on the Pakistani polity. The leaders of the Muslim Conference attempted to ensure a degree of autonomy from a Pakistani state that said it recognised the "special nature" of Azad Jammu and Kashmir, as well as its provisional status within the Pakistani constitution. From the outset, however, there was ambiguity about the exact relationship between a "quasi-autonomous" Kashmir and the central government. Pakistan was more than willing to act in its own wider interests at the expense of Kashmiri sentiment.

The 1954 and 1964 Kashmir Acts clarified the autonomous status of Azad Jammu and Kashmir by providing for an elected assembly. However, the Gilgit Agency area, Hunza and the Pakistani-

[20] See Hewitt, *Towards the Future*, op. cit., Chapter Two.
[21] Text of Abdullah's address to the Constituent Assembly at www.kashmir-information.com/LegalDocs/Sheikh_Speech.html.

administered part of Baltistan were incorporated into a separate entity, the Northern Areas, which became a centrally administered region run by a separate bureaucracy and/or senior members of the military. This arrangement was clarified in 1972 by Prime Minister Zulfikar Ali Bhutto but the inability of people within the Northern Areas to participate in Azad Kashmir elections has continued to be the source of much legal and political agitation.[22]

Pakistan's policy of division and integration had led to political opposition within Azad Jammu and Kashmir as well as demonstrations in Srinagar. It implied to the leaders of the Muslim Conference that the territorial integrity of the Dogra Kingdom had been compromised. Nevertheless, the various constitutional settlements for Azad Jammu and Kashmir have remained under the control of Pakistan's central authorities, although the nature of that control has varied from regime to regime.

During periods of military rule, Islamabad has favoured nomination of Azad Jammu and Kashmir leaders over election. During periods of elected government in Pakistan, Azad Jammu and Kashmir has had a bicameral arrangement with an elected president and an appointed prime minister. Nominations by Islamabad of Kashmiri parliamentarians, as well as the presence of federal ministers for Kashmir affairs, however, have always limited the scope of elected Kashmiri officials.

As India with the National Conference, Pakistan has not shied from dismissing Azad Kashmiri leaders or imprisoning them when they threatened the status quo. Like Sheikh Abdullah, their old comrade and opponent, Sardar Ibrahim, Yusaf Shah, Hamidullah Khan, Ghulam Abbas and others condemned Pakistan as often as they praised it. Many would form their own political parties and groups out of the factions of the old Muslim Conference, which would work towards the vision of an independent Kashmir.

3. Kashmiri Response

As noted above, Sheikh Abdullah's Plebiscite Front worked closely with political forces in Pakistan-administered Kashmir. Likewise K. H. Khurshid's Kashmir Liberation Movement, formed in 1958, worked closely with political forces in the Valley. The Jammu and Kashmir Liberation Front (JKLF), formed in 1965, combined forces drawn from both sides of the ceasefire line, demanded recognition of the former Dogra Kingdom as an independent, sovereign state and periodically attempted marches across the ceasefire line.

Ironically, since the mid-1970s, the only common ground between New Delhi and Islamabad has been their determination to marginalise and indeed to repress calls for Kashmiri independence. Given that the basis of UN mediation, the Security Council resolutions, did not mention independence, the emergence of Kashmiri nationalism emphasises the hollowness of those resolutions as a way forward.

C. BILATERALISM AND THE SIMLA ACCORD

In 1965, the Pakistan military launched "Operation Gibraltar", the infiltration of insurgents and regular forces across the ceasefire line. It relied upon the population of the Valley throwing off Indian domination to join Pakistan. The expectation turned out to be ill-founded. Many Kashmiris cooperated with India. Although this support should not be construed as an endorsement of Kashmir's union with India, it showed a clear rejection of Pakistan's position and its use of force. The subsequent war between India and Pakistan that year, which achieved no significant modification of the ceasefire line, was resolved at peace talks in Tashkent in 1966.[23]

Islamabad intervened again in Kashmir in 1971, with a strike aimed at preventing India from expanding its support for Bengali separatists in the civil war in East Pakistan. Unlike 1965, however, Pakistan's break-up, after a humiliating military defeat in the east and the emergence of Bangladesh, transformed both the regional balance of power and India and Pakistan's approaches towards Kashmir.[24] The new situation was reflected in the Simla Accord of 1972, signed by Prime Ministers Indira Gandhi and Zulfikar Ali Bhutto in July in the former summer capital of the British Raj.

This agreement was seen as a major breakthrough in bilateral relations, particularly on Kashmir. In

[22] See Hewitt, *Towards the Future?*, op. cit., Chapter Four; also Ian Talbot *Pakistan A Modern History* (London, 1998).

[23] See Sumit Ganguly *The Origins of War in South Asia* (Boulder, 1986); also Lamb, *A Disputed Legacy*, op. cit., for a more nuanced discussion of the origins of the 1965 war.

[24] A comprehensive overview of these events is in Robert Sisson and L. E. Rose, *War and Secession: Pakistan, India and the Creation of Bangladesh* (Berkeley, 1990).

many senses it preserved the peace well into the 1980s. But from the onset, elements were deeply controversial, and, it emerged, profoundly flawed.

For India, Simla was an attempt to remove the dispute from the UN once and for all. It converted the ceasefire line into a modified LOC, which represented a "soft border" between Indian and Pakistani-administered areas of the former Dogra Kingdom. Quasi-autonomous governments in Muzzafarabad and Srinagar were to be allowed to develop relationships with each other. There was also a tacit agreement to allow population movements between areas that shared cultural and familial ties but had been divided by the ceasefire line. Simla appeared to abandon the principle of a referendum and move the parties at least part way toward accepting that the answer to the Kashmir question lay in partitioning the former Dogra Kingdom along the ceasefire line. Subject to some alterations, this de facto partition was meant to conclude the matter.

However, the Simla Accord had many gaps. These, in turn, reflected the political difficulties Gandhi and Bhutto faced and the extent to which both India and Pakistan's positions on Kashmir had become hostage to wider national forces. Implementation of the tacit as well as written portions of the agreement proved extremely difficult, despite India's military supremacy.

Critically, India fudged the attempt to eliminate the basis for UN involvement by referring to the international organisation in the wording of the accord itself: "That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries".[25] The Indian delegation saw this as a commitment to resolve any subsequent difficulties in a spirit conducive with UN principles by avoiding war and forgoing the use of force. Pakistan saw the reference to the UN Charter as a continuing commitment to resolve the issue in line with the various UN resolutions.

More significantly, the implicit understanding between the prime ministers on a soft border – a critical acknowledgement of the unity of the former Dogra Kingdom – was not actually spelled out. Nowhere in the document is the term "Line of Control" used or acknowledged as a soft border, nor are there provisions that would allow a relationship between Azad Kashmir and Jammu and Kashmir to evolve over time.

Ultimately, the problem of the Simla conference was the lack of any explicit Kashmiri representation other than that implied by an elected government under the Indian constitution (and the irony that several of Indira Gandhi's advisers were Kashmiri Pandits).

Significantly, the news of the Simla Accord provoked political demonstrations and some rioting on both lines of the revised ceasefire line. The envisaged soft border concession to national sentiment was downplayed. And the Simla Accord's formula for resolving the Kashmir crisis came up against insuperable domestic constraints in both India and Pakistan.[26]

[25] Simla Accord 1972, Article 1. The full text is available at www.kashmir-information.com/LegalDocs/SimlaAgreement.html.

[26] See the account of Simla in P. N. Dhar, *Indira Gandhi, the `Emergency' and Indian Democracy* (New Delhi, 2000).

III. THE CRISIS ESCALATES

A. INTERNAL DYNAMICS

The administrations of both Azad Jammu and Kashmir and Jammu and Kashmir witnessed turmoil and change in the decades that followed the Simla Accord. The crisis in Kashmir that evolved from 1987 onwards is centred on the Indian side of the former kingdom, but it cannot be taken in isolation. It has had wider repercussions throughout Azad Jammu and Kashmir and for Pakistan as well.

There is considerable evidence to suggest that *Kashmiriyat*, the basis of a secular Kashmiri identity, was waning by the middle of the 1980s. In part this was due to Islamic political revivalism in the wake of the Iranian revolution. More specifically, it was related to the rise of Muslim educational facilities throughout India and within Indian-administered Kashmir. This expansion in private and religious educational facilities partly resulted from the state's failure to provide alternatives. Despite considerable outlays from the centre, Kashmiris perceived that they were neglected by New Delhi relative to other states within the Indian Union.[27] Added to this was a decline in employment prospects for Kashmiri youth and a growing sense that the mainstream secular leadership had failed through corruption and nepotism. With no tangible benefits deriving from association with India or autonomy, a new generation of Kashmiris was open to new forms of political mobilisation, premised on mullah and mosque.[28]

The emergence of Islamic sentiments within the Kashmir Valley is a complex issue. Those sentiments were never entirely absent. The return of the Mirwaiz from Pakistan in the late 1950s underscored the importance of Sunni Islam and the holy places of Srinagar for the Muslims of the Valley. The Mirwaiz, along with other devout Muslims, was instrumental in forming the Action Committee in the wake of the theft of a holy relic – a single hair believed to come from the beard of the Prophet Mohammad – from Hazratbal in 1963, which generated great concern through the Indian-administered state. The importance attached to returning and verifying the relic showed how close to the surface of Kashmiri culture religious sentiments were.[29]

Yet, the most vital explanation for the rise of Islamic sentiment lies in New Delhi's continuing intervention. Sheikh Abdullah's Congress administration ended suddenly in 1977 when, in the wake of Mrs Gandhi's defeat in national elections, a realignment of political forces allowed him to emerge at the head of a National Conference party with a clear majority in the state assembly. Abdullah's government, however, was suspected of corruption and incompetence. Ladakh and Jammu were also increasingly resentful about the political domination of the Valley, and supported greater autonomy from it, through new hill councils.

Abdullah died in 1982 and passed the party to his son, Farooq Abdullah, who had little first hand experience of Kashmiri politics. The 1983 state election, in which the Indian National Congress pitted itself against the National Conference, was a bitter one, the first in which violence was associated with campaigning, as bombs were thrown at rival party meetings. Although he headed a party with a secular platform, the younger Abdullah showed himself willing to use and manipulate Islamic sentiment within the Valley. Controversially, he also passed a resettlement bill that allowed 60,000 Kashmiris to return to the Valley from Azad Jammu and Kashmir, an issue that concerned Delhi, although it was evidently in keeping with Article 370's conception of autonomy and the ideals of the Simla Accord.

Once again prime minister after 1980, Indira Gandhi dismissed Farooq Abdullah from office in retaliation for his earlier refusal to ally with the Congress and in flagrant violation of Article 370. Following her assassination, the new prime minister, Rajiv Gandhi, undermined the National Conference, managing, through incentives and pressure, to persuade the party to oust Farooq Abdullah. G. M. Shah – a relative of Abdullah – became chief minister because he was seen as compliant to New Delhi. Abdullah

[27] Until the early 1990s, financial outlays were reasonably good in comparison to other states, but central grants and loans were often perceived to be the subject of political manipulation. See the state government's submission to the Sarkaria Commission report 1984.

[28] For a detailed discussion on religious and cultural mobilisation, see V. Hewitt, "An Area of Darkness, Still? The Political Evolution of Ethnic Identities in Jammu and Kashmir 1947-2001", in S. Fenton and S. May, eds., *Ethnonational Identities* (London, 2002.)

[29] Victoria Schofield, *Crisis in Kashmir* (London, 2001), p. 32.

assumed a lead role in confronting New Delhi and demanding the dismissal of Shah's cabinet.

The incompetent Shah administration presided over a growing sense of alienation within the Valley.[30] Unemployment grew, despite increased central government assistance. Islamic social movements, linked to issues such as education, and youth organisations and women's groups rapidly grew in importance, reflecting the failure and arguably the irrelevance of party politics in Kashmir. Political activity increasingly coalesced around Islamic and religious symbolism. Yet Farooq Abdullah's decision to align with Rajiv Gandhi during the 1987 elections still took Kashmiris by surprise. This opportunistic alliance was motivated by mutual anxiety in the face of new, angry and radical Kashmiri movements, which included sections of the JKLF student wing, and an increasingly assertive and broad coalition of Islamic movements that formed the Muslim United Front (MUF) to contest the elections.

Like the Plebiscite Front before it, (and in some ways anticipating the All Parties Hurriyat Conference), sections of the MUF were Islamic and saw the state election as a chance to obtain power and then declare union with Pakistan or outright independence.[31] But the MUF also contained Muslim moderates who saw the need to distance themselves from the fiasco of the NC-Congress coalition.

Understandably concerned that Abdullah could lose to anti-Indian elements, New Delhi decided to manipulate the election. Abdullah's subsequent victory was widely perceived in Kashmir to be the result of massive electoral fraud. Although it is unlikely that the MUF was actually denied power, there is compelling evidence that significant MUF electoral gains were annulled in order to prevent the rise of a political alliance that New Delhi perceived as containing secessionist elements. The consequences of this manipulation were evident: "Unable to express dissent in an institutional context, this new generation of Kashmiris resorted to violence".[32]

The political process in Jammu and Kashmir came to a standstill. Unrest, political kidnappings and arson were widespread. Tourists started to stay away. Responding to threats printed in local newspapers and arson attacks, Kashmir's Hindu Pandit community fled its ancestral homes.[33] Law enforcement agencies – and even the V.P. Singh government in New Delhi – appeared incapable of preventing the violence from escalating. In fact, the centre capitulated to some demands of the militants. For example, in a step of considerable consequence for the standing of such groups, the kidnapping of the Home Minister's daughter – a Muslim – resulted in the release of several JKLF militants. New Delhi dismissed the Abdullah government and placed Jammu and Kashmir under central administration in early 1990.

In the following five years, Jammu and Kashmir was swept by a political insurrection. The leading force behind the wave of violence was initially the JKLF, under the leadership of Amanullah Khan (based in Azad Jammu and Kashmir), which demanded a sovereign Kashmir consisting of all the territories of the former princely state. Following the arrest in 1990 of Yasin Malik, who headed the JKLF unit in Jammu and Kashmir, other militant groups came to the fore. By 1996 considerable numbers of "guest" militants, including Afghans, Uzbeks, and Arabs, were involved. Many groups relied on covert Pakistani support in training and infiltrating militants over the LOC but the roots of the conflict remained local – a critical point to reiterate.[34]

B. PAKISTANI INTERVENTION AND ISLAMIC EXTREMISM

A precise understanding of the degree of Pakistani involvement within Indian-administered Kashmir is as vital as it is difficult. General Zia-ul-Haq's military regime (1977-1988) was crucial to the changes that took place throughout Pakistan and

[30] See Sumit Ganguly, "The Crisis in Kashmir", Washington DC, Woodrow Wilson Centre Series, 1997, Chapter Five.
[31] ICG interview, New Delhi, June 2000.
[32] Ganguly, "The Crisis in Kashmir", op. cit., p. i.

[33] Jag Mohan, *My Frozen Turbulence in Kashmir* (New Delhi, 1992). Some 350,000 Kashmiri Hindus (Pandits) have been internally displaced by violence since 1989. A number of Kashmiri Pandits also became refugees after the communal riots that accompanied India and Pakistan's partition in 1947.
[34] In official Indian estimates, the proportion of foreign militants (estimated between 1,000 and 2,500 in recent years) to indigenous Kashmiris is 2:3. Another calculation reverses this ratio to 3:2. Brian Cloughley, "Risk-Reduction Measures in Kashmir", in Michael Krepon and Chris Gagne, eds., *Nuclear Risk Reduction in South Asia* (New Delhi, 2003), p.182.

within Azad Jammu and Kashmir since the Pakistani military aligned itself with new radical Islamic movements within both Pakistan and the region.[35]

Despite later disagreements between them, there is considerable evidence that Zia-ul-Haq prioritised and promoted the issue of Indian "occupied" Kashmir as primarily a religious issue of Muslims under Hindu rule with the help of the Jamaat-i-Islami (JI).[36] Official Pakistani patronage of the Hizbul Mujahidin in Jammu and Kashmir, the Jamaat's militant wing, was seen as a way of undercutting the secular forces initially at the forefront of the Kashmir agitation, such as the JKLF. Zia's intervention in Afghanistan and his use of Islamic forces opposing the Soviet occupation had profound consequences for the Islamisation of the Pakistani polity and for Islamabad's stakes in Kashmir long after his death in a suspicious airplane crash in 1988.

Islamic extremist forces in Jammu and Kashmir such as the Lashkar-e-Tayaba and Jaish-e-Mohammad emerged out of a tradition of active Islamic movements, premised on the Sunni and Wahhabi radical theology of some Pakistani religious seminaries. Such groups, many linked to educational and welfare organisations, encouraged the overt politicisation of Islam around symbolic ideas of a jihad or a purified religion stripped of non-Islamic culture – an intolerant, militant theme alien to wider Pakistani Sunni traditions.[37]

Pakistan's use of Islamic extremists in Kashmir continues. The rise of an organised and assertive religious right in Kashmir and in Pakistan itself, such as the United Jihad Council (an umbrella organisation containing numerous small groups), keeps the Kashmir issue at the heart of policy. It also affects the Pakistani state, as growing sectarian violence indicates.

During the 1980s, Zia made use of his own religious sentiments to manipulate and control Islamic social movements, and his military successors continued to pursue the jihad in Kashmir. Deprived of a policy-making role on sensitive issues and concerned about an adverse military response, elected civilian politicians between 1988-1999 acquiesced in this strategy. Despite their poor electoral performance, Islamic parties have on a number of occasions been vital to the survival of coalition governments and so were able to bring influence to bear out of all proportion to their actual power.[38]

The military-backed success of the Islamic parties, combined in a six-party group, the Muttahida Majlis-i-Amal (MMA), in the 2002 elections has resulted in the formation of an MMA government in the NWFP and the MMA's participation in a coalition government, headed by the pro-military Pakistan Muslim League (Quaid-i-Azam, or PML-Q) in Baluchistan.[39] The religious right's political resurgence ensures the continuation of the Kashmir jihad policy, with the Pakistan military's blessings.[40]

Pakistan's experience of training and controlling insurgents during the Afghan insurrection of the 1980s against the Soviets provided ready experience for intervention in Indian-administered Kashmir when the opportunity arose after 1989. The military high command used its intelligence arm, the Inter-Services Intelligence Directorate (ISI), to facilitate covert operations in Afghanistan and later Kashmir.

A product of military mistrust of civilian government, the ISI was revamped in the late 1970s to coordinate both domestic and foreign intelligence under Zia. By the late 1980s, it commanded a considerable budget and was run by a senior army officer accountable to Zia alone. It remained unaccountable to parliament and the subject of considerable rivalry between civilians and the military even after the restoration of democracy in 1988.[41]

The Kargil conflict of 1999 provides the most dramatic illustration of the debilitating effect these

[35] See Talbot, op. cit.; also Safdar Mahmood, *Pakistan Political Roots and Development 1947-1999* (Karachi, 2000), especially Chapters Four and Five.

[36] See Seyyed Vali Reza Nasr, *The Vanguard of the Islamic Revolution: The Jama'at-i Islami of Pakistan* (Berkeley, 1994).

[37] Syed Saleem Shahzad, "Pearl: A Victim of Pakistan's Grim Legacy", *Asia Times*, 26 February 2002.

[38] For example, Benazir Bhutto found it necessary to take the JUI-F into her coalition government.

[39] ICG Asia Report N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003.

[40] MMA political power in the NWFP and Baluchistan has implications for a continuation of jihad in Afghanistan as well.

[41] Sumit Ganguly "The Flash Point of South Asia: Kashmir in Indo-Pakistani Relations", in Amita Shastri and A. J. Wilson, eds., *The Post-Colonial States of South Asia* (London, 2002), pp. 311-325. The U.S. and its Western allies, of course, supported Pakistani military intervention in Afghanistan during the Soviet-Afghan war.

interconnected trends have had upon regional stability.

Kargil is a remote town in Indian-administered Jammu and Kashmir, roughly half way between Srinagar and Leh. In the spring of 1999, India discovered that a large number of Pakistan-backed insurgents had intruded several miles inside the Indian side of the LOC. Attempts to dislodge the militants, who were accompanied by regular Pakistani troops, at first proved unsuccessful. As casualties mounted, India threatened to take the conflict across the LOC. Concerned that the Vajpayee government would carry out its threat of war, the military high command almost certainly directed Prime Minister Nawaz Sharif to seek U.S. mediation. The crisis was defused through President Clinton's active involvement, as Sharif accepted India's demand for the unconditional withdrawal of Pakistani troops and irregulars back across the LOC.[42]

Concerned about the domestic backlash of a misadventure that had cost many Pakistani lives, Sharif attempted to place the blame publicly on Chief of Army Staff Pervez Musharraf, and the high command retaliated both directly and indirectly. While its religious allies conducted disturbances throughout the country accusing Sharif of a Kashmir sell-out, in October 1999 the military ousted the elected government, installed Musharraf as president and imposed military rule.

The Kargil conflict had close parallels to the tribal invasions of 1947 and Pakistan's infiltration of the ceasefire line in 1965. The policy decision on both occasions was taken by the military. Both in 1947 and in 1999, the civilian leadership was ill-informed of the military implications of intervention. With its return to power in 1999 and consolidation of its control through manipulated elections in 2002, the military is more than likely to continue to run Pakistan's Kashmir policy in line with its institutional preferences, and with the support of its religious allies.[43]

C. THE INDIAN CRACKDOWN

India's immediate response to the upsurge in Kashmiri militancy after 1989 was to deploy and use force. By 1994 there were in excess of 500,000 security personnel in Jammu and Kashmir, drawn from the army and paramilitary units such as the Border Security Forces. Initially, crude and ineffective counter-insurgency measures were applied that resulted in massive human rights violations, dislocating life in and around Srinagar and producing a groundswell of anti-Indian sentiment. Such measures included security cordons that separated men from women for long periods, the arbitrary arrest of Kashmiri Muslim males and a high incidence of custodial deaths associated with detentions without trial or judicial review.

By 1994-1995, India's response had become somewhat more nuanced. The Terrorism and Disruptive Activities Prevention Act (TADA) was scrapped in 1995 due to national and international pressure and the appreciation that it had not worked. Between 1987 and 1995, over 76,000 people had been arrested under TADA throughout India with less than 2 per cent of detainees being convicted.[44] Despite some shift from military to political means to counter Kashmiri militancy, however, New Delhi continued to believe that coercion would restore order. For instance, in March 2002, the Indian parliament, at a special joint sitting, passed a draconian anti-terrorism bill that was denounced by its own Human Rights Commission.

Beginning in 1995-1996, India also sought to regain Kashmiri trust by holding elections to restore elected government. During this period, however, the crisis in Kashmir shifted from insurrection to full insurgency, with numerous foreign militant groups fighting both each other and the Indian security forces and often resorting to extortion to control the local population.[45] India's shoot-to-kill policy also encouraged, in the opinion of independent observers, faked "encounter" killings.

Since the mid-1990s, more than 50 militant groups have been active in Kashmir, including militants who have switched sides and are involved in counter-

[42] ICG Asia Report N°35, *Kashmir: Confrontation and Miscalculation*, 11 July 2002.
[43] Eshan Awari, "Pakistan's Army Lays a Political Smokescreen", *Asia Times*, 2 April 2002.
[44] Human Rights Commission of India, "Report on Kashmir", New Delhi, 2001, p. 21.
[45] John F. Burns, "New Delhi Sets Dates for State Elections in War-Torn Kashmir", *The New York Times*, 8 August 1996.

insurgency operations on behalf of the Indian state.[46] As deaths of civilians, militants, and security forces continue to rise, so does Kashmiri alienation.

The National Conference had virtually withdrawn to Jammu, in part because of sectarian violence against its leaders. In the vacuum, the All Parties Hurriyat Conference (APHC) – an alliance formed in 1993 – had consolidated itself behind the call for a three-option referendum: independence, accession to Pakistan or accession to India. The APHC was a broad coalition, containing some 38 parties and factions, some extreme, others moderate, some, like the Jamaat, linked to Pakistan, others not. Many APHC parties had their own militant wings operative in the field against the Indian security forces and against each other.

Under the leadership of Omar Farooq, the young Mirwaiz, and the chairmanship of veteran Muslim Conference leader Abdul Ghulam Bhatt, the APHC tried to maintain coherence, despite its factionalism. There were considerable doubts that it could resolve its disagreements without collapsing. To minimise internal rifts, the APHC left crucial issues undecided such as whether the new state it aspired to create would be secular or theocratic.

The 1996 election returned Farooq Abdullah to power but with a low turnout and amid widespread violence and intimidation by both Indian security forces and the militant groups. Indeed, it took time and some central pressure to convince Abdullah to run at all. The APHC refused to participate in the election and called for a boycott.

The main policy platform of Abdullah's National Conference was Article 370, but it was clear that the situation within Kashmir generally, and within the Valley in particular, needed something more imaginative. There was virtually no conviction that Article 370 could solve the Kashmir crisis on its own, especially given the emergence of a coalition government in India in 1998 led by the Hindu nationalist BJP party that Farooq pragmatically decided to support in the national parliament. Subsequent attempts by Farooq to redefine and re-invigorate his concept of autonomy led to disagreements with the BJP, elements of which wanted to abolish Article 370 altogether.[47] He also tried, equally unsuccessfully, to address issues of custodial deaths and encounter killings.

This combination of collaboration with New Delhi and failure to improve the security and economic situation on the ground led to the National Conference government's defeat in the 2002 state elections.

In September 2000, over 200,000 Kashmiri Hindus were still living as refugees, fearful of returning to Srinagar. Between 1990 and 1998, there was a slow improvement in the economic situation within the Valley, with substantial outlays offered by the central government to encourage local businesses and former militant youths to become active in the local economy.[48] The tourist industry remained devastated, though there were some signs that domestic tourism was reviving. Nonetheless, an entire Kashmiri generation has been exposed to the immediacy and apparent glamour of violence.[49]

A special report submitted by the Indian government to the National Commission on Human Rights in 1998 pointed out that 758 educational institutions within the state had been destroyed.[50] The report did not state that in part this reflected the conversion of schools and colleges to army barracks. A majority of schools in the vicinity of Srinagar, Punch and Anantag have re-opened but enrolment is poor. A 2001 report by the Indian government disclosed that nearly all the sports and recreational facilities of the state were closed or damaged.[51]

The 2002 state elections produced fresh outbursts of violence, with many militants determined to spoil the ballot. The turnout, however, was higher than expected, around 44 per cent, although there were considerable variations at the district level.[52]

Since the decision to stand for elections entailed an acceptance of Jammu and Kashmir's status as defined by the Indian constitution, the APHC

[46] *The Times of India*, 20 February 2002.
[47] See "Kashmir State Report on Autonomy", Government of Jammu and Kashmir, June 2000.
[48] Financial budget outlays of Jammu and Kashmir Government, 2000-2001, Srinagar, 2001.
[49] Chindu Sreedharan, "The Lost Generation: The Story of Children in Kashmir", National Foundation of India, New Delhi, 2002.
[50] National Commission on Human Rights, "Special Report on Kashmir, 1997-98", New Delhi, 1999.
[51] Interim Report, ministry of sports and welfare, New Delhi, 2001.
[52] The turnout was lower than for elections held before the 1989 uprising.

boycotted the polls. At the same time, the election exercise was accompanied by the continual intimidation of militant organisations. In 2002, as in 1997, militant Islamic groups carried out disruptive attacks on polling stations and against candidates. Hundreds were killed, including political activists and even several candidates, including the much-respected Law Minister Lone.[53]

Many National Conference leaders are well aware of the links between Kashmiri alienation, militancy and central intervention.[54] Yet the National Conference's acceptance of the framework of the Indian constitution, its links with the centre and abuse of power in government has undermined the party's domestic standing. Its poor showing in 2002 confirms the sense that it is largely perceived as a spent force in Kashmir and that its platform is irrelevant.

Although there is now greater accountability and oversight of the activities of Indian security forces in Jammu and Kashmir thanks to the establishment of national and state level Human Rights Commissions, continued abuses have held back the normalisation of state politics.

Significantly, both the Congress and the Peoples Democratic Party (PDP), which favoured negotiations with militants, out-performed the National Congress in the 2002 elections.[55] Heading a coalition government with Congress, PDP leader Mufti Mohammed Sayeed, a Sunni Muslim from the Valley and a former Indian home minister whose loyalty to India is not in question, has made overtures to the APHC, and called upon New Delhi to open a dialogue with the separatists.

Sayeed's attempts at political reconciliation include the release of some militants detained under state emergency provisions and the establishment of a special tribunal to investigate allegations of corruption against the former state government. More importantly still, the coalition government has created a committee within the State Assembly to study all autonomy-related issues, including revitalising Article 370, "full autonomy", and greater regional autonomy within the state itself.

Sayeed made it clear in a statement to the State Assembly that the autonomy issue should be tackled after reaching a consensus with the APHC and its various militant groups. But his government, sensitive to New Delhi, has not made any specific overtures to Pakistan.[56] Sayeed is also lobbying New Delhi for economic assistance for energy and tourism projects in Jammu and Kashmir.

A year after the state elections, it is difficult to gauge the extent to which the Sayeed government does indeed represent normalisation. Violence, including terrorist attacks and retaliatory action by the Indian security forces, continues unabated. New Delhi has adopted a critical (if not confrontational) posture towards the chief minister. Home Minister L.K. Advani, for instance, opposes the release of militants, and mixed signals are being sent about an APHC role in any future discussions. Ironically, members of the former ruling party, the National Conference (still represented in the BJP-led coalition government in New Delhi), now advocate open-ended, unconditional talks with the APHC, along the lines of the Nagaland peace process.

Confusion and interference from New Delhi complicate Mufti Sayeed's attempts to engage in a dialogue with APHC leaders whom the BJP government denounces as "Pakistani stooges" one week, while inviting them for talks the next. This strategy is most likely deliberate, however. It puts pressure on differing elements within the APHC and has contributed to the factionalism within the umbrella organisation, including the removal of the moderate leader, Maulana Abbas Ansari, by the APHC general council, under pressure from factions close to Pakistan and the Jamaat.

Now under two leaderships, Ansari's and the Jamaat's Syed Ali Geelani's, divided into pro-independence and pro-Pakistan segments (with the former tempted to join talks with India that would exclude Pakistan and the latter insisting on Pakistan's inclusion in any negotiations on Kashmir's future), anxious also to retain unity and influence, the APHC appears increasingly marginal. However, it remains far from certain that the organisation, hawks and doves alike, can be safely left out of any meaningful debate on the future of

[53] "Firing at Hurriyat Meeting: Lone Killed", Press Trust of India, www.rediff.com/news/2002/may/21lone.htm.
[54] ICG interviews with National Conference Members of Parliament, Srinagar, 2000.
[55] Amy Waldman, "Ruling Kashmir Party Suffers Severe Setback", *The New York Times*, 9 October 2002.
[56] *The Statesman*, 3 December 2002.

Jammu and Kashmir. Meanwhile, the on-again off-again attempt at a normalisation process between India and Pakistan staggers on over the head of the Kashmir state government.

From 1952 onwards, the lessons are stark. Unilateral attempts to resolve the Kashmir dispute provide at best interludes of deceptive calm, but they do not affect the roots of the dispute, which will remain alive and a danger until a comprehensive settlement is brokered between the three concerned parties, India, Pakistan and the Kashmiris.

IV. POST-11 SEPTEMBER

The post-11 September international environment has further complicated both India and Pakistan's positions and policies towards Kashmir. During the last days of the Clinton administration, India was relatively successful in isolating Pakistan, especially in the wake of the military coup that brought Pervez Musharraf to power in October 1999.[57] In the context of Kashmir, India appeared to consolidate the gains it had made after the Kargil crisis, which included an explicit U.S. and an implicit Pakistani recognition of the sanctity of the LOC. From India's perspective, however, Pakistan's increased importance for the U.S. in its "war against terrorism" let Islamabad off the hook.

Pakistan returned to the limelight much as it had after the Soviet invasion of Afghanistan. But the new environment is both an opportunity and a crisis for its military leadership. Bowing to U.S. pressure, President Musharraf was forced to distance himself publicly from the Taliban, despite the origins of the movement within Pakistan itself in the early 1990s. He also pledged to clamp down on Islamic extremists as a way back to friendship with the West and to ease international pressure to restore democracy.

Many of the steps taken by the military-led government have, however, been cosmetic. For example, in January 2002, more than 2,000 Islamic radicals were arrested but most have been released. Pakistan has banned a number of Islamic extremist organisations, including the Lashkar-e-Tayyaba and the Jaish-e-Mohammad, the most active of the Pakistan-backed groups operating in Indian-administered Kashmir. However, as with other banned organisations, they re-emerged under different names and remained active across the LOC. In November 2003, Islamabad once again banned many of the renamed organisations, including the Jaish.[58] It remains to be seen if this ban will prevent the groups from once again re-emerging under changed names.

Under U.S. pressure, Musharraf had also ostensibly sought to restructure the ISI, responsible for

[57] See text of Vajpayee-Clinton Joint Vision Statement, *The Times of India*, 21 March 2002.
[58] Staff Reporter, "Three more outfits put under ban: Offices' sealing ordered", *Dawn*, 21 November 2003.

overseeing the Kashmir jihad, by removing its chief, Lt. General Mehmood Ahmed.[59] But the ISI still continues, under the guidance of the military high command, to play a proactive role in implementing interventionist policies in Kashmir. In Afghanistan, too, the resurgence of the Taliban and its use of Pakistani territory to conduct attacks on the U.S.-led coalition and the Kabul government is perceived by many analysts as the result of a revived policy of intervention by the Pakistan military.[60]

If there is growing unease in U.S. policy circles about President Musharraf's failure to implement his pledges of non-intervention in Afghanistan and Kashmir, India is even more sceptical of the Pakistani military's changed rhetoric.[61] Indeed, there is independent evidence to confirm that infiltration continues across the LOC and that several banned organisations have remained operational, at the very least in recruitment.[62]

It has taken the threat of war with India for the Pakistan military to impose some, most likely temporary, curbs on militant crossings. Following terrorist attacks on the Indian parliament in December 2001, for which the Jaish and the Laskhar were held responsible by India, the BJP government upped the military ante. While direct diplomatic links with Pakistan were suspended and all communications links closed, India massed its troops along the LOC and the international border. As Pakistan also moved forces into forward positions, war appeared close. Reiterating its "moral" support for Kashmir, the Musharraf government denied training and supporting militants, a claim that convinced no one in India. While India has withdrawn its troops from offensive positions along the international border, the threat of war has not disappeared.

If deteriorating relations with India pose a threat to regime stability, the military-run government has also failed thus far to gain domestic legitimacy. Should President Musharraf's standing at home continue to fall, a challenge to him cannot be ruled out. So long as Musharraf receives U.S. support and is seen as capable of providing the goods to his parent institution, however, the military high command would be averse to replacing him with another army chief.

U.S. support, however, is contingent, not only on the military's willingness to turn over al-Qaeda personnel but also on effective measures to prevent Taliban insurgents from using Pakistani bases to conduct attacks on U.S.-led coalition forces and their Afghan allies. Moreover, the Pakistan military's aversion to ending its support for the cross-border insurgency in Kashmir could result in yet another major terrorist attack and trigger an Indian military response. The U.S. might then have to choose between its two South Asian allies.

India, too, has difficulties in separating the Kashmir crisis from wider issues of national prestige and concerns about domestic stability. The BJP-led coalition contains Hindu nationalist forces that would see any compromise on Kashmir as a sell-out, a variant of so-called Muslim appeasement. Prime Minister Vajpayee and his ministers are well aware of the destructive potential of these forces, demonstrated most recently in the anti-Muslim violence in Gujarat.

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[59] President Musharraf subsequently named Mehmood to head Fauji Fertiliser, one of the many industrial enterprises owned by the Pakistan military.

[60] For an informed perspective on the role of Pakistani intervention generally within the region and its dynamics with radical Islam, see an interview with Ahmed Rashid at www.asiasource.org/news/special_reports/rashid.cfm

[61] "Bush raises infiltration issue with Musharraf", *The Hindu*, 25 June 2003.

[62] Dexter Filkins, "Kashmiri Militants Angry at Being Blocked From India", *The New York Times*, 9 June 2002.

V. SEARCHING FOR SOLUTIONS

A. ASSESSING THE ACTORS

1. Indian Preferences

It has already been noted that New Delhi's privately preferred option for Kashmir rests upon Pakistan's recognition of the existing LOC as the international border, an end to militancy (seen as entirely the result of Pakistani intervention), and reconciliation and reorganisation of the state within the Indian Union. Nonetheless, at times since 1998, the Indian government has appeared to suspect that an elected government within the Indian Union could not by itself provide an answer.

The extent to which India's preferences have been advanced by the PDP-Congress coalition is evident from the limited progress made by the chief minister in advancing his agenda of internal reconciliation during his first year in office. It is highly unlikely that, on its own, the Sayeed government can deliver a lasting solution to the Kashmir crisis. Nonetheless, the election of a respected and capable Muslim from the Valley has opened up promising new political space in which a wider consensus could possibly be achieved. However, how critical is the APHC to this process?

New Delhi has made guarded overtures to the APHC and to factional groups under its umbrella to try and identify particular political groups that might wish constructive talks. Earlier, New Delhi's efforts had focused on the Yasin Malik faction of the JKLF. But because of Malik's radicalism, he is possibly perceived as more of a risk to New Delhi than other moderate Kashmiris. Nor is he likely to accept New Delhi's current plan of elections and reform within the Indian Union, which would risk alienating him from his own radicals.

Then APHC president Abdul Ghulam Bhat expressed willingness to talk to India in October 2002 and reiterated this in principle a year later in response to Home Minister Advani's offer to meet with the APHC. The sticking point may remain how the two sides define the supposedly unconditional nature of the proffered dialogue and the extent to which the militant wings of political parties affiliated to the APHC are not under their direct or immediate control.[63]

India's stance has contributed to the increasing factionalism within the APHC. After the Kashmir state elections in September 2002, the APHC has continued to divide along moderate and extremist lines, including as to whether to insist that Pakistan be part of any discussion with India about Kashmir's future. It is also divided between religious and secular factions, with the former, in particular the Jamaat and the Hizbul Mujahidin, remaining dominant over a disintegrating JKLF. It is further divided between factions that want to press their claims through elections or continued violence, though some groups wish to do both.

In September 2003, under pressure from some Pakistan-backed groups, tired of Indian tactics over talks about talks, and reacting to the shoot-to-kill policy of Indian security forces,[64] the APHC split again. This latest schism also appeared related to the discovery that sections of the organisation, in defiance of the boycott decision, had stood in the state elections through proxy, an indication of how much some factions want to legitimate themselves.

Prior to the state elections in 2002, there was some evidence that New Delhi was looking for a potentially novel way of dealing with the Kashmir crisis. Significantly, in 1998 the workings of the Kashmir Study Group reached the attention of the Indian public through the widely distributed Livingstone Report.[65] The Indian government

[63] Advani offered talks described as unconditional to the APHC, though he added significantly that there "will be no compromise on the country's unity and sovereignty". Iftikhar Gilani, "Advani hits at Kashmir 'decentralisation'", *J&K News*, 24 October 2003, at www.jammu-kashmir.com/archives/ archives2003/kashmir20031024a.html.

[64] The Indian security agencies' shoot-to-kill policy was most dramatically illustrated on 23 September 2003 by the death of Ghazi Baba, the operations commander of the Jaish-e-Mohammed.

[65] See "Kashmir: The Way Forward, 1998" at www. kashmirstudygroup.net. The Kashmir Study Group is headed by Farooq Kathwari, an American of Kashmiri descent. Its members have political, diplomatic, business and academic backgrounds and search for innovative solutions to the conflict in Kashmir. The group's ideas are described below.

publicly dismissed the report but in fact gave it serious consideration.[66]

There is considerable evidence to suggest that the BJP government is still considering the logic of a regional approach to Kashmir, premised on creating new states and administrative units within the Indian constitution.[67] It is also clear that the Sayeed government is looking for ways to ensure greater autonomy within the state. In a radical departure from the past, New Delhi has offered to enter into an unconditional dialogue with the APHC.[68] However, it is not yet known whether India would be willing to make concessions to the Kashmiri separatists that go beyond its long-standing offers of limited autonomy.

2. Pakistani Policy Directions

It is at least unclear that the military has concluded that covert help to militants in Jammu and Kashmir will not promote Pakistan's cause, especially in the changed international environment, much less that support for radical Islamic parties and groups in Kashmir undermines domestic stability. It is for this latter reason, however, that most mainstream Pakistani political parties, including the Pakistan People's Party and factions of the Pakistan Muslim League, support a peaceful resolution of the Kashmir dispute.

Given that the political elite is excluded from policy-making, abandonment of Pakistan's support for the proxy war in Kashmir depends on the military leadership realising the high costs of conflict with India as well as the adverse implications of the growth and influence of Islamic groups within Pakistani society. Even in the absence of such an internal rethinking, concerted international, in particular U.S., pressure could raise the costs of continued intervention across the LOC.

The international community's task of pressuring Pakistan to change its Kashmir policy would be greatly eased by Indian acceptance of the historical associations between Pakistan and Kashmir, however modified since 1947. A sustainable peace in Kashmir is thus more likely if India were to accept that Pakistan has legitimate interests in Kashmir that will need to be taken into consideration in the resolution of the crisis.

3. The Kashmiri Factor

Finally, any settlement that ignores Kashmiri demands for independence will not end the violence. It might produce a lull but the dispute would remain. A historical view of the Kashmir conflict reveals that both India and Pakistan have often worked in fear of a genuine Kashmiri "third force" making political headway.

India has frequently appeared committed to a democratic Kashmir but it fears that offering its people a genuine choice would give the state away, with wider implications for national unity. This is the dilemma, time and time again, of the Indian position, which would rest on open government in Jammu and Kashmir within the constraints of the Indian Union, but maintains this democratic space through ordinances and preventive detention. The case is no different in Azad Jammu and Kashmir, as endless testimony of frustrated Azad Kashmir prime ministers and presidents bears witness.

An independent Kashmir as a fully sovereign state may well not be the answer but India and Pakistan must set out to guarantee the uniqueness of the region in a way that is radically different from all past attempts.

The 2002 state elections in Jammu and Kashmir, however successful, do not in themselves answer the question about what Kashmiris want. The poll was deemed fair by outside observers, but the turnout was low. And with the boycott of separatist parties, the coalition government is not in itself a clear expression of public will. The APHC must share the blame since it failed to meet the challenge of standing. Had it done well, it could have used its mandate to pressure New Delhi for a more inclusive peace process.

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[66] See, for example, *Frontline*, Vol. 17, N°7, April 2000. The analysis seeks to link the Livingstone report to official U.S. and UK attempts to mediate.

[67] The National Conference was hostile to this approach, as were other elements within India, although the talk of a tripartite division of the state, supported by the BJP, has engendered an ongoing debate in the media. Such an initiative is supported in Ladakh and in Jammu.

[68] "Advani to lead Hurriyat talks, but Vohra stays", *Hindustan Times*, 22 October 2003.

B. RETHINKING KASHMIR: OPTIONS CONSIDERED

1. The Livingstone Report

While India and Pakistan's current approaches appear unlikely to resolve the Kashmir crisis, a number of efforts have been made by scholars and other non-official persons to sketch out what a radically different solution might look like. A recent suggestion is contained in the Livingstone Report.[69] Produced by some members of the Kashmir Study Group, in consultation with several Indians and Pakistanis, the report made a series of novel recommendations involving territorial changes aimed at "rationalising" the LOC and then attempted to describe a hypothetical Kashmiri state or states. The actual territorial configuration of the state or states would be determined by a series of referendums to accommodate specific regional aspirations and take into consideration Indian and Pakistani security concerns.

The report proposed that the hypothetical state or states would not be independent and sovereign but would have full control over all matters except foreign policy and defence, which would remain under Indian and Pakistani control. India and Pakistan could exercise territorial control within Kashmir in two different ways, "1) separately, although for all other purposes the (Kashmir) entity would be integrated and possess the same self-governing powers throughout Kashmiri territory; or 2) jointly, through a form of condominium or other shared rule".[70] The phrase used was independence short of a "recognised international personality". The report also noted that the constitution of this state (or states) would be secular and democratic.

The Livingstone Report contained a comprehensive list of acts that would fall under the jurisdiction of the new polity and specified that India and Pakistan would have to withdraw their forces from the area and treat it as a de-militarised zone. An additional memorandum within the report cited international legal opinion supporting the credibility and feasibility of independent states without recognised international personalities.[71]

The report has many weaknesses. For instance, its commitment, in advance, to a secular constitution failed to recognise the manner in which Kashmiri ethnic identity and hence political mobilisation has occurred along religious lines, particularly in the Valley. Further, the manner in which the report used the term "independence", in a different sense from sovereignty, would complicate any negotiation. Different actors could read its language differently – as an acceptable compromise to retain the status quo, albeit thinly disguised, or as supporting sovereign independence. Many Kashmiri political groups within and outside the APHC, for instance, would interpret the report's use of the term "independence" to mean full sovereignty, disregarding its discussion about autonomous bodies without an "international personality". India, however, would reject from the outset any discussion of an independent Kashmir.

These weaknesses should not, however, detract from its insights. Like Owen Dixon's early UN report, the Livingstone document grasped the difficulties of treating Indian and Pakistani-administered Kashmirs as if they were a single entity. While it held out the possibility of merger, it recognised that there is a distinct possibility there will be two territories, with the LOC as a "soft" border between them. Moreover, the Livingstone Report also recognised that there are sections of the former Dogra Kingdom that would want to remain where they are (in effect under either Indian or Pakistani control) and thus anticipated further divisions of the state beyond the conversion of the LOC into an international border.

In vital respects, the report's recommendations drew upon an insight of the Simla Accord – the importance of the LOC and the de facto partition of Kashmir.[72] Indeed, it asserted that this line approximates meaningful and tangible cultural and political realities "on the ground" and could not be dismissed, in entirety, as arbitrary.

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[69] Text of report at www.kashmirstudygroup.net/ awayforward/proposal.html. For the Kashmir Study Group, see fn. 61 above.

[70] Memorandum prepared by Hurst Hannum, Professor of International Law at Tufts University in the U.S.

[71] This perhaps most difficult part of the report was prepared by Hannum. Many of the cases cited are so marginal and obscure that their relevance to Kashmir is to be doubted. It is less an issue of legal precedent than whether any of those discussed provide a basic comparison to the rather unique situation in Jammu and Kashmir.

[72] This explains some of the hostility to the recommendations within sections of the Indian, and indeed some of the Kashmiri, press.

As noted, the Livingstone Report looked further back to the 1950 Dixon Report's recognition of the importance of regionalism. Clearly, a kernel of the answer to Kashmir's crisis lies here. Sufficient commitment to Kashmiri autonomy is needed to avoid the complexity and/or unworkable aspects of the Livingstone recommendations. Nor should any proposed formula confront either India or Pakistan with a strategic impossibility.

2. Independence

According to Kashmiri parties such as the JKLF, "Jammu Kashmir is an indivisible political entity", and that "State or any part of it is not a constitutional part of India or Pakistan or any other country". These parties support the reunification of Kashmir and its conversion into a "fully independent and truly democratic sovereign State".[73] Creation of a single and fully sovereign Kashmiri state, or of two smaller sovereign states, has been opposed by both India and Pakistan in the past, and it can be assumed the idea would continue to face stiff opposition at this time. While proposals to this effect might have some internal logic, they would immediately compromise the negotiating flexibility of the two old foes.

Two "new" states in South Asia would be dependent upon the surrounding states and might well add to the competitive element between India and Pakistan, while a single Kashmir would contain within itself quite radically different political identities.[74]

C. THE INTERNATIONAL ROLE

A degree of international involvement is essential for any peaceful solution of the Kashmir crisis. India and Pakistan have fought three wars since 1947, and their dispute over Kashmir has acquired an even more threatening dimension since both states acquired nuclear weapons capabilities. Given the risks of nuclear use, there is urgent need for a more proactive international role. On several occasions since 1990, the U.S. has intervened diplomatically to pull the two rivals back from war. While both sides have settled into a pattern of escalating rhetoric and threats and then waiting for Washington to step in, there has been little sustained effort by any U.S. administration to move them more permanently away from confrontation.

India has traditionally rejected external involvement in its dispute with Pakistan over Kashmir, saying that the issue can only be handled directly. Indeed, New Delhi and Islamabad do need to deal with each other bilaterally but they also need help, and some pressure, if they are to resolve their problems. Without fuller engagement by the friends of both governments, such as the U.S. and the European Union, the potential for a war that could spiral to the nuclear level remains unacceptably high.

The primary stumbling block in this respect is India. Pakistan has generally favoured international engagement but India's position on third party involvement remains unchanged, at least in open or official dialogue. Its aversion to international mediation dates back to its decision to refer the Kashmir question to the UN during the 1947-1948 war and the Security Council's subsequent failure to censure Pakistan.

Despite concerns that third party mediation could undermine the legitimacy of its claims to Kashmir, however, India has given some indications of flexibility on the matter. In June 2002, for instance, Foreign Secretary J. N. Dixit implied to the European Union Parliament that India could allow the international community a facilitating role.[75] He was clearly thinking along the lines of the Quartet mechanism that was being used in an attempt to restart the Middle East peace process.[76]

The principle of bilateralism in India-Pakistan relations, insisted upon by India in 1972 and enshrined in the Simla Agreement, has in fact significantly eroded, not least because of India's acceptance of a U.S. role in defusing crises with Pakistan, including the Kargil conflict of 1999 and the near-war of 2001-2002. Indeed, the administration of Prime Minister Vajpayee is currently working with the U.S. to resolve its differences with Pakistan. The BJP government's many calls for external, in particular U.S., pressure

[73] See JKLF manifesto at shell.comsats.net.pk/ _jklf/i2.htm.
[74] A "separate but associated" solution, however, could allow the two regions to adopt their own distinct constitutional settlements.

[75] Hearings before the Foreign Affairs Committee of the European Parliament on the Kashmir Dispute, Brussels, 22 June 2002. See also "Kashmir Not a Territorial Dispute", *The Hindu*, 22 June 2002.
[76] The Quartet refers to the informal grouping of the U.S., the European Union, Russia, and the UN Secretary General.

on Pakistan to end cross-border "terrorism" in Kashmir have further served to internationalise the dispute. Not surprisingly, therefore, Indian officials express support in private conversations for a greater degree of international involvement in finding solutions to India-Pakistan problems. However, a more public commitment is needed by both states to a quiet but effective international facilitation role.

The involvement of international organisations in the first instance, particularly the UN, would be crucial to any India-Pakistan negotiation on the Kashmir crisis. UN involvement could facilitate communications and the exchange of views and also reassure one side or the other over difficult issues as they arose. The European Union might be able to play a similar role, using its economic and political ties to influence both India and Pakistan.

The UN could also provide personnel to oversee, alongside troops or officials from the two parties, any negotiated settlement, for example, involving the modification of borders or the holding of referendums. Similarly, international guarantees could accompany Indian and Pakistani commitments to the revised status of the Kashmir Valley and Azad Kashmir respectively.

VI. CONCLUSION

Any solution of the Kashmir crisis will require goodwill and compromises from all of the major state and non-state actors involved, and their ability to implement an agreed policy. The challenges are enormous. Negotiations will require genuine leadership since any settlement will fall well short of the ideal for any single participant. As has often been the case in Kashmir, moderates will be exposed to particular risk.

In Pakistan, an elected government has serious and immediate limitations since the military leadership controls Kashmir policy. As yet averse to an innovative approach and using the religious right to retain its power, the military is unlikely to change course on Kashmir in the absence of sustained international, particularly U.S., pressure.[77] Without the restoration of democracy, mainstream moderate parties that have repeatedly denounced violence and support a peaceful resolution of differences with India over Kashmir will have little chance to curb military adventurism.

In India, where hardliners inside and outside government are equally averse to any compromise, innovative approaches will likely be resisted unless there is both a domestic incentive and external persuasion. Indian sensitivities about third party help will have to be set aside.

Some non-state Kashmiri actors have no immediate interest in a solution. Where they represent complex social movements that are not easily controlled or responsive to direction from political or external patrons, these actors could wreck agreements.

Nonetheless, if the will and imagination are there, the political leverage available to Indian and Pakistani decision-makers, the various Kashmiri groups, and key elements of the international community can break the stalemate that has beset the region since the late 1980s. However, any workable solution would have to bridge widely disparate Indian, Pakistani and Kashmiri aspirations.

Above all, a solution to the Kashmir crisis requires Indian and Pakistani goodwill, leadership and constraint. Clearly, powerful domestic forces within the two states have made a settlement difficult. It is

[77] See *The Mullahs and the Military*, op. cit.

not unlikely that either India or Pakistan could yet opt for war as a means of achieving a final settlement. However unthinkable it may seem, powerful domestic players within both national governments could, through frustration and impatience, seek to annex territories in order to "seal" the border and/or change the status quo. They could also press ahead for an irreversible integration of their respective Kashmir areas. That domestic pressures for such strategies are increasing is further evidence of the imperative for a serious and lasting settlement.

In the final analysis, India and Pakistan must understand that Kashmiri identity is unique, but it also draws from a shared and composite social pluralism. If the right approach is adopted, Kashmir could provide a bridge that draws the two states closer together. It is hard to imagine but not inconceivable that what now so divides India and Pakistan bilaterally, and the Kashmiris from both, could provide the basis for greater cooperation and stability.

Islamabad/New Delhi/Brussels, 4 December 2003

APPENDIX A

MAP OF KASHMIR

APPENDIX B

GLOSSARY OF ACRONYMS

APHC All Parties Hurriyat Conference; a coalition of political parties opposed to Indian rule in Kashmir formed in 1993.

BJP Bharatiya Janata Party; party of Indian Prime Minister Atal Bihari Vajpayee, founded in December 1980.

ISID Pakistan's Inter-Services Intelligence Directorate (also ISI).

JKLF The Jammu and Kashmir Liberation Front; anti-India, pro-independence party in the APHC led by Yasin Malik.

LOC Line of Control; de facto border dividing the former Dogra Kingdom into Indian and Pakistani-administered Kashmir.

MMA Muttahida Majlis-i-Amal; a six-party Islamic group in Pakistan.

MUF Muslim United Front; coalition of parties opposed to the National Conference in the 1987 election.

NC National Conference; the secular All Jammu and Kashmir National Conference, the political party founded by Sheikh Abdullah in 1939.

NWFP Northwest Frontier Province.

PDP Peoples Democratic Party the political party led by Mufti Mohammad Sayeed that won the 2002 state elections in Jammu and Kashmir and now heads a coalition government with Congress.

TADA The Terrorism and Disruptive Activities Prevention Act (1987); widely used to detain people in Jammu and Kashmir without charge or formal judicial proceeding. Officially lapsed in 1995.

UNCIP United Nations Commission for India and Pakistan.

UNOGIP United Nations Observer Group for India and Pakistan.

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 90 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers. ICG also publishes *CrisisWatch*, a 12-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York, London and Moscow. The organisation currently operates thirteen field offices (in Amman, Belgrade, Bogotá, Cairo, Freetown, Islamabad, Jakarta, Kathmandu, Nairobi, Osh, Pristina, Sarajevo and Tbilisi) with analysts working in over 30 crisis-affected countries and territories across four continents. In Africa, those countries include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone, Liberia, Guinea, Ethiopia, Eritrea, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in Europe, Albania, Bosnia, Georgia, Kosovo, Macedonia, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: the Australian Agency for International Development, the Austrian Federal Ministry of Foreign Affairs, the Canadian Department of Foreign Affairs and International Trade, the Canadian International Development Agency, the Royal Danish Ministry of Foreign Affairs, the Finnish Ministry of Foreign Affairs, the French Ministry of Foreign Affairs, the German Foreign Office, the Irish Department of Foreign Affairs, the Japanese International Cooperation Agency, the Luxembourgian Ministry of Foreign Affairs, the Dutch Ministry of Foreign Affairs, the Royal Norwegian Ministry of Foreign Affairs, the Swedish Ministry for Foreign Affairs, the Swiss Federal Department of Foreign Affairs, the Republic of China Ministry of Foreign Affairs (Taiwan), the Turkish Ministry of Foreign Affairs, the United Kingdom Foreign and Commonwealth Office, the United Kingdom Department for International Development, the U.S. Agency for International Development.

Foundation and private sector donors include Atlantic Philanthropies, Carnegie Corporation of New York, Ford Foundation, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, Henry Luce Foundation Inc., John D. & Catherine T. MacArthur Foundation, John Merck Fund, Charles Stewart Mott Foundation, Open Society Institute, Ploughshares Fund, Sigrid Rausing Trust, Sasakawa Peace Foundation, Sarlo Foundation of the Jewish Community Endowment Fund, the United States Institute of Peace and the Fundação Oriente.

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* The Algeria project was transferred from the Africa Program to the Middle East & North Africa Program in January 2002.

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