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The Kashmir Dispute: Waiting for a Solution

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Introduction

The Kashmir dispute is now 60 years old—and going strong. However, the current India-Pakistan ‘dynamic’ is arguably the most positive ever. Since January 2004, India and Pakistan have been engaging in a serious ‘composite dialogue’ on eight issues, including Jammu and Kashmir (J&K). Four rounds of discussions have taken place. As yet, no resolution to the Kashmir dispute has been achieved, despite the enthusiasm and supposedly ‘out of the box’ thinking about possible solutions by Pakistan’s president, General Pervez Musharraf.¹ India has not been keen to rush the process. Indeed, given Pakistan’s (and General Musharraf’s) political, constitutional and Taliban-type problems, India may be watching to see what happens before it chooses to act—if it acts at all. Nevertheless, some people on whom this issue impacts are waiting for a solution to the Kashmir dispute. This paper does not look at how the Kashmir dispute began. Rather, it discusses why a solution to the Kashmir dispute does not yet appear to be in sight.

Some turning points

In the history of the Kashmir dispute, there have been some important and significant turning points that have changed either how the dispute has been perceived or the way that India and/or Pakistan have dealt with it. These are worth examining briefly in the context of understanding why a solution to the Kashmir dispute has not yet emerged. Indeed, these turning points provide ingredients to suggest why the Kashmir dispute remains unresolved.

India’s involvement of the United Nations (UN) in the Kashmir dispute in late 1947 was one such turning point. An unsatisfactory outcome caused ongoing Indian disenchantment with the UN Security Council (UNSC) in relation to J&K. In 1947, India was already mistrustful of Pakistan because of the partition experience and

because of what India believed was a Pakistan-inspired invasion of J&K by Pushtoon tribesmen² on 22 October 1947 (which resulted in the Maharaja of J&K (finally) acceding to India on 26 October 1947). India very quickly became disenchanted after the UNSC refused to condemn what India considered to be this Pakistani aggression into J&K. Soon thereafter, India also became disinterested in having a UN-supervised plebiscite conducted for the people of J&K to enable them to determine whether J&K, in its entirety, should join India or Pakistan.³ It considered that the unrepresentative (Indian) J&K Constituent Assembly had confirmed the maharaja's accession to India. New Delhi also used the excuse of the Cold War and Pakistan's membership of some United States-led military alliances to further couch its disinterest in a plebiscite. Similarly, Pakistan was mistrustful of India because of the partition experience and because of Indian 'fraud and violence' in obtaining the maharaja's accession.⁴ Pakistan was also displeased by India's unwillingness to hold the plebiscite. The significance of this mutual mistrust is still being felt today (as discussed below).

Another turning point was the 1971 India-Pakistan war that resulted in the emergence of Bangladesh. This war significantly strengthened India's position. It also enabled India to conclude an accord with Pakistan that fulfilled India's desire to exclude all other parties from the Kashmir dispute. This was achieved via the Simla Agreement (or Accord) in 1972. In this agreement, India, which was in the far stronger position as the war's victor, and Pakistan 'resolve[d] to settle their differences by peaceful means mutually agreed upon between them'.⁵ For India, this meant that the Kashmir dispute would now be a bilateral issue only. The plebiscite was not mentioned and was now seemingly irrelevant; no other nation or body would be involved in resolving the dispute, although, vicariously, the 'principles and purposes' of the UN charter were to 'govern the relations between the two countries'.⁶ Thereafter, and often using this agreement as justification, India has steadfastly refused to countenance any outside involvement in the Kashmir dispute. Despite Pakistani preparedness to accept outside mediation of the Kashmir dispute, India will not countenance it.

Confronted by India's stance that the Kashmir dispute was a bilateral issue between it and Pakistan, the UNSC and Pakistan eventually took similar positions. The cumulative result of these actions is that a UN-supervised plebiscite is now off the agenda of possible solutions to the Kashmir dispute. In 1996, the UNSC

attempted to take the Kashmir dispute off its 'list of matters of which the Security Council is seized' as it had not looked at the question of J&K in the last five years. (Indeed, it had not specifically looked at this issue since 1965.)⁷ Now Pakistan must annually ask formally for the 'India-Pakistan question', i.e. its dispute with India over J&K, to remain on this list.⁸ Equally, despite General Zia ul-Haq reinstating Pakistan's policy of calling for a UN plebiscite to decide the issue of J&K's international status, the latest military ruler of Pakistan, General Pervez Musharraf, has realised that Pakistan has no choice but to negotiate with India over J&K. Evidence for this realisation came in late 2003 when the general told a journalist that Pakistan had 'left aside' the UNSC resolutions dealing with the Kashmir dispute.⁹ Since then, Musharraf has sought to engage in 'out of the box' thinking in which he countenances other possibilities and ways to resolve the Kashmir dispute.¹⁰ This military-style diplomacy attempts to pressure New Delhi to resolve the issue quickly—and on as many of the general's terms as possible. Musharraf's problem is that India won't be rushed. Pakistan still talks of somehow consulting the people of J&K. This will not be done via a plebiscite, which is now well and truly dead.

A further turning point occurred in 1989 when a violent anti-Indian uprising erupted in the Kashmir Valley. Initially, this confirmed India's lack of popularity among ethnic Kashmiris.¹¹ Subsequently, Pakistan has also become unpopular because of its stance of only militarily and economically supporting pro-Pakistan militants since 1993. To ethnic Kashmiris, this has made Pakistan appear to be more interested in the Kashmir Valley as real estate than in their welfare. Not surprisingly, 87 per cent of ethnic Kashmiris in Srinagar who responded to a question in a recent survey about Kashmir's status stated that it 'should be an independent country'.¹² Unfortunately for them, the only matter on which India and Pakistan agree in their entire dispute over J&K is that neither the former princely state, nor any part of it, can become independent. Nevertheless, the Kashmiris' response confirms that they are disenchanted with both India and Pakistan. Both nations need to take account of this factor.

Two final turning points occurred in 1998 and 1999. In 1998, India and Pakistan tested—and confirmed—their nuclear capabilities. This suggested that neither nation could capture all of J&K via a military action and/or that any future war between them was unlikely as this could escalate to involve the use of nuclear

weapons. Nevertheless, in 1999, the Indian military and pro-Pakistan ‘militants’¹³ engaged in a short, sharp conflict over the Line of Control (LOC) that divides J&K into Indian-controlled and Pakistan-administered areas.¹⁴ This action occurred in the strategic Kargil area of J&K after the militants seized Indian positions on the LOC which the Indian Army had vacated for winter and had not yet re-garrisoned. After US president, Bill Clinton, applied some significant pressure on Pakistan, it withdrew the militants to the Pakistan side of the LOC, which effectively ended the fighting. This skirmish—some consider it a war as more than 1,000 men were killed—showed that India and Pakistan could fight a limited conventional conflict in J&K (or elsewhere) without it going nuclear. More importantly, the Kargil conflict re-internationalised the Kashmir dispute by drawing world attention to it. But most importantly, Kargil secured the United States’ attention—and involvement.

The interest of the United States in the Kashmir dispute and its increased involvement in the subcontinent since the 11 September 2001 (‘9/11’) terrorist attacks are a further turning point. Since 9/11, the US’s role and influence have increased in the subcontinent. The US has been seeking to engage India strategically, possibly as a counter to China. Washington has had some success, as the India-US agreement on civilian nuclear cooperation suggests.¹⁵ The US is also heavily involved with Pakistan which, since 9/11, has become a frontline state in the US-led ‘Global War on Terror’ (GWOT). To serve its interests, Washington wants, and needs, a stable subcontinent. Normalised—or, even better, enhanced—India-Pakistan relations help US interests. US encouragement for India and Pakistan to seriously engage with each other may partly explain why both nations initiated, and have now concluded four rounds of discussions in, their composite dialogue.

The effect of these turning points

The current state of the Kashmir dispute reflects the various turning points discussed above. First, the United Nations no longer has any role to play in resolving the Kashmir dispute. Its sole connection now with J&K is via a small monitoring force that still operates there.¹⁶ Second, there is no military option, conventional or nuclear, that can solve the Kashmir dispute. Neither India’s nor Pakistan’s military can conquer this disputed state, nor is the use of proxy elements a viable tactic. Third, Pakistan has not been able to defeat India on the battlefield using conventional or

unconventional forces, in the UNSC, via a plebiscite, via a proxy war in the Kashmir Valley, or through the use and influence of third party ‘friends’, chiefly the United States. It needs a new strategy. Fourth, despite the Pakistan-supported, anti-Indian uprising in the Kashmir Valley, India still has the part of J&K that both it and Pakistan want: the Kashmir Valley. Finding a satisfactory and peaceful way to resolve this contest appears to be more important than placating the disgruntled ethnic Kashmiris. Fifth, India is now in the superior position in relation to resolving the Kashmir dispute. Possessing the best part of J&K and having proven largely inflexible for almost 60 years, New Delhi has been able to successfully insist that India and Pakistan deal with J&K not as a separate issue, but as part of a discussion of *all* of their major bilateral issues. Pakistan has had little choice but to acquiesce in India’s desired dialogue. It is the weaker nation in the weaker position. It is currently distracted by a number of major internal problems. It seemingly has few positive international attributes, such as a booming economy or a successful secular democracy or a growing list of influential international friends, including the United States—although its recent involvement in GWOT has helped its cause.

A further ramification of all of these turning points is that the Kashmir dispute now is not about whether India or Pakistan should possess J&K in entirety, but it is about which nation should possess which part of J&K. Evidence for this contention is reflected in the various statements that General Musharraf has made since late 2003 when he first ruled out the plebiscite as an option—and certainly in his statements since he began his ‘out of the box’ thinking in January 2006. Equally, India’s prime minister, Dr. Manmohan Singh, has negated India’s hardline position on J&K that the former princely state belonged to it by virtue of the maharaja’s accession, and that the only issue was when Pakistan would vacate those areas of J&K that it (Pakistan) illegally occupied. Singh also has diluted India’s softer position that the LOC in J&K should be converted into the international border. Indeed, Singh, who claims to be ‘not afraid of discussing Jammu & Kashmir or of finding, pragmatic, practical solutions’, has suggested that the LOC should become largely irrelevant:

...borders cannot be redrawn but we can work towards making them irrelevant—towards making them just lines on a map. People on both sides of the LOC should be able to move more freely and trade with one another.¹⁷

With such softening of the positions of India and Pakistan, it now seems possible that they may conclude an agreement to the Kashmir dispute.

The current state of play—and the likelihood of progress

The current situation is that the Kashmir dispute now appears to be just another issue. This is because it is now only one of the eight items in the composite dialogue that India and Pakistan have been engaging in since January 2004.¹⁸ India is also increasingly treating Kashmir this way as it mounts the world stage and takes on other significant—and distracting—strategic challenges. This stance is facilitated by India's booming economy, as a result of which the relative cost of maintaining India's military role in the Kashmir dispute diminishes daily. For Pakistan, the name of which is an acronym in which the 'k' stands for 'Kashmir', Kashmir also has just become another issue in the range of political problems that it currently confronts. However, in terms of Kashmir's strategic significance, the emotions that it can arouse and the amount of press coverage for it, the Kashmir dispute is still the most significant, contentious and closely followed of all of the issues in the composite dialogue—and in India-Pakistan relations.

Regardless of improving India-Pakistan relations, General Musharraf and Dr. Manmohan Singh's current political problems suggest that, despite their seeming desire to do so, they may not have the 'clout' to deliver a solution to the Kashmir dispute. For Pakistan, its current political problems are significant. They include constitutional uncertainty over Musharraf's position as president of Pakistan and chief of the Pakistan Army, the validity and inclusivity of the forthcoming presidential and national elections, and dealing with anti-social religious elements, particularly the Taliban. A wary—or perhaps opportunistic—India appears to be going slowly and awaiting developments in Pakistan. As a result, progress on resolving the Kashmir dispute appears to have stalled. The heavily-distracted General Musharraf is no longer able to push the process; India doesn't need to rush. Indeed, should Musharraf lose his leadership position, the next leader of Pakistan would almost certainly not be in a position to drive the process so determinedly and doggedly. Equally, however, Manmohan Singh has his own problems in India. Singh is the leader of the United Progressive Alliance (UPA) ruling coalition. This is a minority government

supported by the Left Front, which remains outside the government. The Left Front, which has a strong anti-American bent, is currently very displeased with the India-US civilian nuclear cooperation agreement. Indeed, this contentious agreement has the potential to bring down the Congress-led UPA government via a no-confidence motion. A resolution to the Kashmir dispute would be as contentious as the India-US civilian nuclear cooperation agreement—if not more so. Singh's opponents could politically exploit any solution that he proposes that appears to 'short change' India—or that they could argue does so. The Kashmir dispute therefore is very shaky ground for any democratically-elected Indian leader. Musharraf's position is stronger as he is really only answerable to the Pakistan military, which he essentially controls. However, while Musharraf and Singh are prepared to be flexible and visionary on Kashmir, and while they have a good personal relationship, neither presently has the popularity, personal standing or authority to deliver a solution to the Kashmir dispute.

Another significant recent development provides a litmus test as to whether the Kashmir dispute can actually be solved or not. This relates to the demilitarisation of Siachen Glacier, one of the eight topics in the India-Pakistan composite dialogue. Both nations want to get their troops off this inhospitable glacier. However, increasingly, the Indian Army has been strongly suggesting that any withdrawal should not take place until the actual position on the ground of the Indian and Pakistan armies has been fully authenticated.¹⁹ This reflects strong Indian suspicions that, should its forces vacate the glacier, Pakistani forces will sneak back and occupy the superior tactical position that the Indian Army now apparently holds—and would then have to re-capture. These Indian fears arise as a result of some previous underhanded episodes involving Pakistan, such as the invasion of the Pukhtoon tribesmen into Kashmir Province in 1947, the infiltration of Pakistani agents into J&K in 1965 (which resulted in the second India-Pakistan war), and the Kargil episode in 1999. All three events led to military action involving the Indian Army. Conversely, Pakistan, which mistrusts India because of issues such as underhandedly obtaining the maharaja's accession in 1947 and dismembering Pakistan in 1971, is not keen on authentication. Islamabad fears that India will use the Pakistan position to mark the outer limits of Indian territory in J&K, to which New Delhi will then make a formal claim.²⁰ The result is currently a stalemate, although discussions continue.

India and Pakistan need to overcome their ‘trust deficit’ in order to be able to agree to permanently demilitarise Siachen Glacier—and to resolve the Kashmir dispute. However, this trust deficit is deep, insidious and persistent. It saturates the psyches and perceptions of many Indians and Pakistanis, including many of their leaders, politicians and senior bureaucrats. It also is not readily reducible because there is little actual contact between Indians and Pakistanis and little trade between the two nations. If both nations can overcome their suspicions and, in some cases, hatred of the other, and permanently demilitarise Siachen Glacier, then this will show that the trust deficit is significantly lessening. This would be a major step in the right direction in improving India-Pakistan relations. It also might pave the way for some sort of meaningful solution to the Kashmir dispute. At this point of time, however, such a reduction in the trust deficit still seems unlikely, particularly as the development of broad, meaningful, popular and deliverable confidence building measures is moving slowly. This factor, coupled with the weak positions of India and Pakistan’s leaders, suggests that a resolution to the Kashmir dispute is some time away. We are still waiting for a solution.

¹ ‘Musharraf thinks out-of-box to resolve Kashmir’, *The Financial Express*, 26 January 2006.

² Pushtoons are also called Pukhtoons or Pashtoons; the British called them Pathans.

³ For a discussion of the UN plebiscite, see Christopher Snedden, ‘Would a Plebiscite Have Resolved the Kashmir Dispute?’, *South Asia: Journal of South Asian Studies*, Vol. XXVIII, no. 1, April 2005.

⁴ *Keesing’s Contemporary Archives*, London, Longman, Volume VI (1947), p. 8931.

⁵ ‘The Simla Agreement’, part ii, as contained in Ijaz Hussain, *Kashmir Dispute. An International Law Perspective*, Islamabad, Quaid-i-Azam University, 1998, p. 264.

⁶ ‘The Simla Agreement’, part i, as contained in Hussain, *Kashmir Dispute*, p. 264.

⁷ *United Nations Security Council*, S/1996/603*, 22 August 1996, <http://domino.un.org/UNISPAL.NSF/3822b5e39951876a85256b6e0058a478/c0924183a7f95851852563a900544efa!OpenDocument> [accessed 18 July 2007]. The ‘Hyderabad question’ was also on the ‘list of matters of which the Security Council is seized’, even though it hadn’t been discussed by the UN Security Council since 24 May 1949!

⁸ *United Nations Security Council*, S/1996/704, 29 August 1996, <http://daccessdds.un.org/doc/UNDOC/GEN/N96/223/44/PDF/N9622344.pdf?OpenElement> [accessed 18 July 2007].

⁹ ‘Pakistan, India need to be bold on Kashmir: UN resolutions can be “set aside”’, *Dawn*, Karachi, 19 December 2003, <http://www.dawn.com/2003/12/19/top1.htm> [accessed 19 December 2003]. While, according to Musharraf, Pakistan was in favour of the UN resolutions, he conceded that ‘both sides need to talk to each other with flexibility, coming beyond stated positions, meeting halfway somewhere’.

¹⁰ ‘Musharraf thinks out-of-box to resolve Kashmir’, *The Financial Express*, 26 January 2006.

¹¹ The terms ‘Kashmir’ and ‘Kashmiri’ mean different things in India and Pakistan. In India, unless referring specifically to ‘the Kashmir dispute’ (which concerns all of the territory of the former princely state of J&K), the term ‘Kashmir’ generally refers to the Kashmir Valley. Similarly, a ‘Kashmiri’ refers to a member of the ethnic group called Kashmiris who populate the Kashmir Valley. In Pakistan, however, the term ‘Kashmir’ refers to all of the former princely state of J&K. Similarly, the term ‘Kashmiri’ refers to any person who inhabits, or whose forebears have inhabited, this former princely state.

¹² '60 years on, Kashmir core issue[;] Srinagar, Jammu poles apart', *Dawn*, Karachi, 14 August 2007, www.dawn.com/2007/08/14/top1.htm [accessed 14 August 2007].

¹³ According to Brian Cloughley, *A History of the Pakistan Army*, Karachi, Oxford University Press, second edition, 2000, pp. 376-377, they actually either were members of the Pakistan-armed and -trained Baltistan Light Infantry or were heavily supported by this force.

¹⁴ Indian-controlled J&K comprises Jammu, the Kashmir Valley and Ladakh. Before the plebiscite became a non-issue for Islamabad, Pakistan was 'administering' the two areas of J&K under its control (Azad (Free) Jammu and Kashmir and the Northern Areas) until this poll resolved the issue of J&K's status. Presumably Pakistan now is administering both areas until India and Pakistan themselves—and not the people of J&K—resolve the issue of J&K's status.

¹⁵ At the time of writing (4 September 2007), this agreement has not yet been fully confirmed. An Indian parliamentary committee will examine the serious concerns held by parties on the Indian political left. See Gargi Parsai, 'Committee to go into Left concerns', *The Hindu*, <http://www.hindu.com/2007/08/31/stories/2007083159160100.htm> [accessed 21 August 2007].

¹⁶ The United Nations Military Observer Group in India and Pakistan. It comprises 44 soldiers from Chile, Croatia, Denmark, Finland, Italy, Republic of Korea, Sweden and Uruguay. See <http://www.un.org/Depts/dpko/missions/unmogip/facts.html> [accessed 21 August 2007].

¹⁷ 'PM's speech on launch of Amritsar – Nankana Sahib Bus Service', *Dr. Manmohan Singh, Prime Minister of India* website, 24 March 2006, <http://pmindia.nic.in/speech/content4print.asp?id=302> [accessed 21 August 2007].

¹⁸ The eight issues in the composite dialogue are: peace and security, including confidence building measures (CBMs); Jammu and Kashmir; Siachen Glacier; the Wullar Barrage/Tulbul Navigation project (by India in the Kashmir Valley); Sir Creek (a disputed waterway near the Arabian Sea); terrorism and drug-trafficking; economic and commercial cooperation; and, the promotion of friendly exchanges.

¹⁹ Sandeep Dikshit, 'Army once again sets its face against demilitarising Siachen', *The Hindu*, 12 November 2006, www.thehindu.com/2006/11/12/stories/2006111204541200.htm [accessed 15 August 2007].

²⁰ 'No thaw on Siachen', *The Hindu*, 9 April 2007, www.hindu.com/2007/04/09/stories/2007040902381000.htm [accessed 15 August 2007].