

**Frameworks for
a
Kashmir Settlement**

G PARTHASARATHY & RADHA KUMAR

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Preface

There has been an intense and multi-faceted dialogue between Indians and Pakistanis of all shades of opinion over the past seven years. This has been reinforced over the past two years by a number of meetings in which people from all communities and sectors of public life on both sides of the Line of Control in Jammu and Kashmir engaged with each other. During the course of these meetings, a broad consensus emerged that there needs to be the widest and most inclusive discussion of solutions for Jammu and Kashmir, taking the fears and aspirations of all groups into account. At the same time, there was a broad consensus that the ongoing violence makes any prospect of moving ahead more complex and difficult.

We believe that the agreement between the leaders of India and Pakistan on making borders and boundaries “irrelevant,” addressing issues of self-governance, and ending the violence, constitutes the best hope for moving ahead on a Jammu and Kashmir settlement that will be acceptable to all concerned. The two papers in this booklet have been written separately by us, after extensive discussions with people on both sides of the Line of Control. They suggest ways in which the complex factors related to a solution for Jammu and Kashmir could be addressed.

G Parthasarathy, Radha Kumar
June 30, 2006

Mechanisms and Modalities for Promoting Cooperation and Making Boundaries “Irrelevant” in Jammu and Kashmir

G Parthasarathy

For several years progress in moving towards a resolution of the issue of Jammu and Kashmir was frozen, as there was no meeting ground between Pakistan’s insistence on a “plebiscite” in the State, and India’s assertion that the entire State was an integral part of India and that the only issue to be discussed was the withdrawal of Pakistani forces from areas of Jammu and Kashmir occupied by it. But, in the recent past, the two countries have been trying to find common ground, by exploring suggestions that both find acceptable. President Musharraf has urged that there should be four elements in any solution to the Kashmir issue. He has proposed that:

- (1) Jammu and Kashmir should be divided into seven distinct regions.
- (2) There should be a process of “demilitarization” in identified regions. He has specifically demanded withdrawal of Indian forces in Kupwara, Baramulla and Srinagar.
- (3) There should be “self-governance” in Jammu and Kashmir. He has not indicated whether this will be equally applicable to Pakistan Occupied Kashmir (POK) and the Northern Areas.
- (4) India and Pakistan should agree to “Joint Management” of the State. He has not indicated whether “Joint Management” will apply equally to POK and the Northern Areas.

Prime Minister Manmohan Singh, in turn, has outlined his vision of how to move forward in resolving the issue of Jammu and Kashmir. Speaking at the inauguration of the Amritsar-Nankana Sahib bus service on March 24, 2006 Dr Singh made the following points:

- (1) Borders cannot be redrawn, but we can work towards making them irrelevant – towards making them “just lines on a map”.
- (2) People on both sides of the Line of Control (LOC) should be able to move more freely and trade with one another.
- (3) A situation can be envisaged where the two parts of Jammu and Kashmir can, with the active encouragement of the Governments of India and Pakistan, work out cooperative and consultative mechanisms, so as to maximize the gains of cooperation in solving problems of social and economic development of the region.

Pakistan’s suggestion of “demilitarization” of Kupwara, Baramulla and Srinagar has been rejected by India. These have traditionally been centers that have been the objective of takeover by armed groups, operating with support from the Government of Pakistan. There has also been an aversion to accepting any proposal for “demilitarization” because this would amount to relinquishment of the sovereign right to deploy armed forces in any part of India’s territory. Further Jammu and Kashmir is the lifeline for deployment of India’s forces on its western borders with China.

President Musharraf’s proposal for dividing the State into seven regions, which is a variant of a similar proposal by the New York based Kashmir Study Group, has been rejected by India on the grounds that any further division of Jammu and Kashmir on communal or sectarian lines is unacceptable. This view is largely endorsed by people in Jammu and Kashmir. But there are grievances about regional disparities in economic development and allocation of funds that need to be addressed. In Jammu and Kashmir just 1569 of the State’s 2700 *Panchayats* (village councils) exist even on paper, and fewer still provide anything resembling grassroots

democracy. Across the LOC, there is no system of grassroots democracy in place.

When he met participants at the Pugwash Conference in Islamabad in March 2006, President Musharraf acknowledged that while he did not have any models of what constitutes “self-governance”, devolution of power was an important ingredient of self-governance. Evolving a consensus within Jammu and Kashmir on what exactly self-governance means is going to be a difficult exercise, in the absence of a political consensus on the issue. At the same time, harmonizing the extent of self-governance on both sides of the Line of Control will also be a complex issue involving the bringing together of representatives from both sides of the LOC, with representatives in the Governments of India and Pakistan.

While both President Musharraf and Dr. Manmohan Singh have agreed that while boundaries cannot be changed they will have to be made “irrelevant”, considerable thought needs to be given to precisely how this can be achieved. Within Jammu and Kashmir, a novel system of travel documents has been devised that obviates the need for International Passports for travel across the LOC. This system works for residents of Jammu and Kashmir traveling by the Srinagar-Muzaffarabad and Poonch to Rawlakot bus services. New bus routes are being explored for travel across the LOC between Jammu and from Kargil to Skardu. India has identified five meeting places along the LOC where divided families can meet. These are at Mendhar, Poonch, Suchetgarh, Uri and Tangdhar.

There has been considerable and legitimate criticism of the cumbersome procedures devised for traveling across the LOC. Simplifying these procedures, eliminating arbitrary denial of permission and opening more avenues for cross-LOC travel will be a first step towards “softening” of boundaries. This has necessarily to be followed by extending facilities for travel across the LOC by people from all parts of India and Pakistan and for foreign tourists. The establishment of a modern international airport at Srinagar and development of facilities for travel across the LOC for tourists, business men and mountaineering expeditions will be a major step towards

addressing aspirations in Jammu and Kashmir, by restoring the connectivity that existed in the State of Jammu and Kashmir before August 1947.

Opening the Srinagar-Muzaffarabad road for trade is now under consideration. But, in practice, India adopts highly restrictive regimes and adopts impractical payment systems for what is described as “border trade” with its neighbors like Myanmar, China and Bangladesh. China, on the other hand, treats the Myanmar market as an extension of its Yunnan Province market. It deals similarly with issues of border trade with other neighbors like Kazakhstan and Russia. There has to be a paradigm shift on how officials of Economic Ministries in New Delhi, who have no understanding of the ground situation in border areas, deal with issues of border trade. As a first step, we need to study how border trade is conducted between Yunnan and Myanmar.

While such an approach will enable us to look at issues of border trade more realistically, it is unlikely that at the outset Pakistan will accept liberal trade and payment norms for exchange of goods across the LOC. We need to put in place procedures wherein agricultural and industrial products produced in Jammu and Kashmir can be easily traded across the LOC. This process can be liberalized and the borders made irrelevant for the free movement of goods, services and investment between India and Pakistan only when India and Pakistan decide to usher in a new era of economic operation and economic integration.

Pakistan has, for years, taken the position that it can have normal, good-neighborly trade and economic ties with India only after the Kashmir issue is resolved to its satisfaction. But Pakistan itself cannot be immune to the winds of change for economic integration that are blowing across Asia.

In June 1998 a “Group of Eminent Persons” constituted at the Ninth SAARC Summit in Male submitted a detailed report to the Heads of State and Government of SAARC member States. The Report was entitled “*SAARC Vision Beyond the Year 2020*”. The Report defined a long range

vision for SAARC and identified the elements of a perspective plan of action for promoting regional economic, social, cultural and even political cooperation within South Asia. The Report noted that “mega-groupings” had emerged in Europe, the Americas and the Asia-Pacific. Those outside these groupings including in South Asia were being progressively marginalized in the world economy, especially in the absence of cooperation in “core economic areas.” Given this reality, the report concludes that SAARC member States should establish a **South Asian Economic Union** by 2020. India and Pakistan expressed their commitment to implement the recommendations of the Report during the Lahore Summit of 1999.

The SAARC Vision 2020 document envisaged that at the first stage SAARC Member States should work towards establishing a South Asian Free Trade Area by 2010 so far as the least developed members are concerned and by 2008 as far as other members are concerned. At the second stage, SAARC countries would move towards creating a Customs Union by 2015, requiring the establishment of single tariffs on imports from non-member countries and agreement on non tariff barriers and other measures for regulation of trade by all member states. The third stage of moving towards the establishment of a South Asian Economic Union will initially require substantial integration in areas like telecommunications, transport and energy infrastructure, and the adoption of common standards. There has already been a slippage of almost 8 years on the establishment of SAFTA from the time frame envisaged in the Vision 2020 report. It would, therefore, be prudent to assume that the establishment of a South Asian Economic Union can now come about only by 2025.

Any negotiating process that seeks to make borders and boundaries irrelevant must, in the light of the foregoing, be presumed to extend till 2025. It is, therefore, imperative for the peace process to move forward that India and Pakistan should set the pace within SAARC, for moving in a committed and time bound manner to achieve the goals outlined in the Vision 2020 report, by 2025. As neither India, nor Pakistan can formally agree to the LOC in Jammu and Kashmir being declared as an international border, the endeavor should be to devise documents other than passports

that facilitate travel. Perhaps a common SAARC passport/travel document can be devised that can be issued by all member countries to facilitate travel between member states. Procedures could simultaneously be devised that enable people to travel easily across the LOC. Given the present environment of mutual distrust it is obvious that it is going to take time to move in this direction. But, it would be useful to outline a vision for the future in such terms.

Mechanisms for Cooperation Across the LOC

Governance in Jammu and Kashmir on the Indian side of the LOC is conducted in accordance with the provisions of Article 370 and other related articles of the Indian Constitution and the provisions of the Jammu and Kashmir Constitution. Across the LOC in Pakistan Occupied Kashmir (POK), powers are effectively wielded by the “Azad Jammu and Kashmir Council” and in the Northern Areas by the Northern Areas Council. These “Councils” are presided over by the President/Prime Minister of Pakistan in the former case, and a Pakistani minister in the latter case. Power in administrative, financial and political terms is wielded by the Ministry of Kashmir Affairs in Islamabad. Though President Musharraf spoke of “devolution” being an aspect of “self-governance” there is really no system of grass roots devolution of powers to village and township level in POK and the Northern Areas. It would, therefore, be necessary as a first step, to carry out a detailed study by a group of constitutional experts from India and Pakistan that would include eminent jurists from both sides of the LOC in Jammu and Kashmir to harmonize provisions for administrative, financial and legislative self-governance on both sides of the LOC.

This study would need to take into account the fact that while people from outside Jammu and Kashmir have not been permitted to acquire property and facilitate permanent residential status on the Indian side of the LOC, there has been a significant influx of settlers from outside Jammu and Kashmir that has affected the ethnic/demographic composition of the Northern Areas.

This issue, along with the issue of the travails of internally displaced Kashmiri Pandits and those who crossed into POK in the wake of the commencement of militancy in 1990, needs to be frankly and transparently addressed. Such an exercise could proceed side by side with separate efforts on either side of the LOC to build a consensus within Jammu and Kashmir on precisely what the provisions of self-governance and good governance are to be within the entire state. It would necessarily include the establishment of mechanisms like empowered regional development councils within Jammu and Kashmir to address issues of regional economic disparities, especially in the allocation of financial resources.

A large number of institutions and mechanisms to address issues of common concern can be put in place once agreement is reached on precisely what the extent of self-governance within Jammu and Kashmir is to be. These could include consultative bodies made up of Parliamentarians from India and Pakistan and legislators from both sides of the LOC. But in the meantime, borders and boundaries could be “softened” by extensive cooperation in areas like health, education and environment.

To start with, students from POK and the Northern Areas could be admitted for professional courses like engineering and medicine in universities in Jammu and Srinagar. Similar facilities could be sought in Muzaffarabad for students from Jammu and Kashmir. A system of having visiting professors and lecturers, especially for professional colleges could be introduced. As a first step, a Committee of Vice Chancellors from universities on both sides of the LOC could be set up to suggest the modalities for implementing such a scheme and moving to more ambitious projects like say a “University of Jammu and Kashmir” for students from both sides of the LOC that could be set up in Gilgit, with funding from the Governments of India and Pakistan. This University could seek affiliation with institutions of excellence in India like the Indian Institutes of Technology, the Indian Institutes of Management, the Lahore University of Management Studies (LUMS), apart from reputed institutions abroad. Collaborative studies in subjects like International Relations could be

undertaken by this University in Gilgit with institutions like the *Jamia Millia Islamia* University and the Jawaharlal Nehru University in Delhi and Faculties of International Relations in Universities in Lahore and Karachi.

Similarly, both governmental and private sector involvement could be sought for establishing world class medical facilities in Jammu and Kashmir. As a first step, Health Ministers and officials can meet to work out mechanisms and modalities for establishing such institutions, with support from authorities in New Delhi and Islamabad.

Tourism, agriculture and horticulture will remain major sources of employment and revenue in Jammu and Kashmir. Economic cooperation across the LOC can be fostered by setting up Joint Committees of experts on how Srinagar can be made an international hub for trade in the entire State, by projects in areas like horticulture exports, on both sides of the LOC.

As cooperation grows, Srinagar can also become a port of landing for people of the State who have taken up residence abroad and wish to visit centers like Muzaffarabad or Gilgit through Srinagar. This will necessarily involve the establishment of institutions that can devise methods for immigration and transit that are free from cumbersome bureaucratic hurdles that one now experiences in travel across the International Border or the LOC. The practices adopted in the European Union can serve as a useful model to examine on such issues. A Joint Jammu and Kashmir Tourism Development Board needs to be constituted for promoting the entire State as a hub for domestic and international tourism. Despite its vast hydro-electric potential, hydro-electric projects in Jammu and Kashmir face huge hurdles before they can come on stream. While the provisions of the Indus Waters Treaty have sought to provide for equitable sharing of river water resources between India and Pakistan, getting mutual consent for hydro-electric projects has been a major hurdle. Where agreement was reached bilaterally, as in the case of the Salal Hydro-electric Project, there have been complaints that India was compelled to reduce the height of the

dam so much to secure Pakistani concurrence that excessive silting has substantially reduced the benefits flowing from the project for the people of Jammu and Kashmir.

In other cases, like the Baglihar Project, there have been delays because in the absence of bilateral agreement the issue has been referred to a neutral expert. Mutual agreement has yet to be reached on construction of a relatively innocuous project like the Wullar Barrage/Tulbul Navigation Project. The worst sufferers of such delays have been the people of Jammu and Kashmir. The establishment of joint mechanisms to obviate such delays has to be accorded high priority. Further, as integration of energy grids will be an important facet of moves towards establishing a South Asian Economic Union, linking of energy grids on both sides of the LOC should be a high priority in moves towards making boundaries “irrelevant”.

Environmental protection is yet another area where Joint Mechanisms will be useful in addressing issues of common concern. There has been a proposal for a science park jointly managed by India and Pakistan near the Siachen and Salto Glacier. This proposal could be pursued once India and Pakistan reach a mutually agreeable settlement on the Siachen issue.

All these mechanisms for making the LOC “irrelevant” could be reinforced by the establishment of a high powered “Council for Jammu and Kashmir”. This Council could be jointly chaired by the Heads of Government of India and Pakistan and include high functionaries from the Governments of India and Pakistan and high level representatives from both sides of the Line of Control in Jammu and Kashmir. This Council can have subsidiary bodies to oversee implementation of decisions taken by it.

Conclusion

The Dialogue Process to resolve the issue of Jammu and Kashmir would thus have several facets. There would firstly have to be groups that will work separately and jointly to arrive at a common and mutually acceptable framework for self-governance in Jammu and Kashmir. There would also

be moves within Jammu and Kashmir to promote travel, tourism, trade and economic cooperation across the LOC. These processes will have to move in tandem with measures to establish a South Asian Economic Community.

A note of caution has, however, to be introduced while considering all these moves. This pertains primarily to the role of militant Islamic groups within Pakistan and Pakistan Occupied Kashmir and their links with influential sections of the military establishment in Pakistan. It is essential that the present levels of suspicion and mistrust between India and Pakistan are replaced progressively by enhanced cooperation and mutual trust.

Much will depend on whether and how President Musharraf fulfills his assurance of January 6, 2004 in which he pledged that he would not allow any territory under Pakistan's control to be used for terrorism against India. With Afghanistan having been admitted to SAARC, Kabul will be an integral part of any South Asian Economic Community. It is important that Kabul's concerns about Pakistani soil being similarly used for support to the Taliban should also be satisfactorily addressed for the entire region to be able to attain its full potential for amity and mutually beneficial cooperation.

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Set of Ideas for a Draft Framework on Self-Governance in Jammu and Kashmir

Radha Kumar

Please note: This is a set of ideas based on summaries of existing political and administrative arrangements that will have to be changed and harmonized for a mutually implemented self-governance agreement.

Application

The framework for self-governance will be jointly agreed by the leaders of India, Pakistan and Jammu and Kashmir, and will apply to the territories of the erstwhile princely state that are held by India and Pakistan – Jammu and Kashmir, Pakistan-administered “Azad Kashmir” (AJK), and the Northern Areas (Gilgit and Baltistan).

Guiding Principles of Self-Governance

- (a) Self-governance will comprise a special relationship for Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas.
- (b) The norms and institutions of self-governance will be democratic and pluralist, and will reflect the aspiration of *Kashmiriyat* in its widest and most inclusive sense.
- (c) There will be a three-tier structure of self-governance: centre-state, state-region, region-district-*panchayat*/local unit.

- (d) Self-governance will include intra-Kashmiri and India-Pakistan-Kashmiri mechanisms for cooperation.

Extent and Limits of Self-Governance

The chief agreements laying down the relations between Jammu and Kashmir and India, and Pakistan-administered “Azad Kashmir” and the Northern Areas and Pakistan, are the **Delhi Agreement** of 1952 and **Article 370** of the Indian Constitution for Jammu and Kashmir, the **Karachi Agreement** of 1949 for the Northern Areas, and the **Interim Constitution** of 1974 for Pakistan-administered “Azad Kashmir”. Of these, the Delhi Agreement, which has been modified by subsequent amendments, offers the greatest measure of self-governance.

Under the Delhi Agreement of 1952 and Article 370 of the Indian Constitution, the people of Jammu and Kashmir were entitled to a special federal relationship with India in which the ministries under central control would be defense, foreign affairs and communications. Subsequent amendments have resulted in a number of changes/modifications to the Delhi Agreement and several Union laws are now applicable to Jammu and Kashmir.

Key features of the Delhi Agreement

- (a) Indian Parliament would have no residuary powers over Jammu and Kashmir; the Jammu and Kashmir Assembly would be solely responsible for legislative acts.
- (b) The Head of State, *Sadr-i-Riyasat*, would be elected by the Jammu and Kashmir Assembly, not nominated by the President of India, but would serve at the President’s pleasure.
- (c) The State Assembly could confer special rights and privileges on ‘state subjects’ in view of the State Subject Notifications of 1927 and 1932.

- (d) The President of India could grant reprieves, pardons and remission of sentences in Jammu and Kashmir.
- (e) The Supreme Court of India would have only appellate jurisdiction in Jammu and Kashmir.
- (f) Article 352 of the Indian Constitution, empowering the President to proclaim a general emergency in the State, would apply in the exercise of the center's powers over defense (Item 1 on the Union List), but the President would only proclaim a general emergency on account of internal disturbance "*at the request or with the concurrence of the Government of the State.*" Article 356 would not apply.
- (g) Jammu and Kashmir would have its own flag, in addition to the Indian flag.

By contrast, the **Karachi Agreement** of 1949 ceded the Northern Areas to direct rule by Pakistan (since when it has occupied a grey area as neither part of Pakistan nor part of Pakistan-administered Kashmir, which is considered by most Pakistanis to comprise "Azad Kashmir" or AJK only. In this paper, however, "Pakistan-administered Kashmir" refers to AJK and the Northern Areas together.)

The Karachi Agreement also severely restricted the powers of the AJK administration. Pakistan would conduct defense, foreign affairs, refugee affairs, "publicity" and negotiations with the UN. The AJK administration's powers were divided into two spheres: one government, and the other a formerly Valley-based Muslim political party.

Matters within the purview of the AJK Government

1. Policy for administration of "Azad Kashmir" territory and its overall supervision.
2. Advising the Pakistani Minister in charge of negotiations with the UN.

3. Development of economic resources of “Azad Kashmir” territory (this clause did not apply to water resources).

Matters within the purview of the Muslim Conference

1. Organization of political activities in Pakistan-administered “Azad Kashmir” and Jammu and Kashmir.
2. Field work and publicity in Jammu and Kashmir.
3. Political work and publicity amongst Kashmiri refugees in Pakistan.
4. Advising the Pakistani minister in charge of negotiations with the UN.
5. Arrangements, publicity and organization of plebiscite.

These powers were further restricted under the **Interim Constitution of 1974**, which laid down that:

- (a) All election candidates have to take an *oath of allegiance* to Kashmir’s accession to Pakistan.
- (b) All Pakistan-administered “Azad Kashmir” government employees have to take a similar oath.
- (c) No person or political party in “Azad Kashmir” is permitted to *propagate against, or take part in activities prejudicial to, the ideology of the state’s accession to Pakistan.*

The 1974 Interim Constitution also created an AJK Council, to be chaired by the Prime Minister of Pakistan (it is currently chaired by the President of Pakistan). The Council comprises 5 members from amongst Pakistani Ministers and/or MPs; and 6 members from Pakistan-administered “Azad Kashmir”, who are elected by the Legislative Assembly. The Council supersedes the Legislative Assembly; and bills/acts passed by it do not

require ratification by the Legislative Assembly, or the assent of the AJK President.

Furthermore, Pakistan would not only control defense, foreign affairs and communications; it would also control trade, investment, taxes, education, and the civil and judicial systems.

Thus, under the Interim Constitution of 1974 all executive powers in Pakistan-administered “Azad Kashmir” are effectively wielded by the federal Government of Pakistan through the Kashmir Council and the Ministry of Kashmir Affairs.

Self-Governance Tier One: Centre-State

In the light of the foregoing, the Delhi Agreement (despite subsequent alterations), is a better foundation for a framework on self-governance than the Karachi Agreement or the Interim Constitution; indeed both of the latter would have to be replaced if there is a mutually agreed framework which will apply across the former princely state, but this should not be difficult since both the Karachi Agreement and the Constitution are interim.

It is, however, also true that over fifty years down the road, many features of the Delhi Agreement no longer apply. Even so, it provides a basis for discussion of the extent and limits of self-governance. If some of its provisions were incorporated, *Tier One of Self-Governance* would comprise a federal relationship between Jammu and Kashmir and the Indian Union on one side, and between Pakistan-administered “Azad Kashmir”, the Northern Areas and Pakistan on the other side, based on a broad consensus on how the Delhi Agreement can be modified/restructured to include measures for internal regional and/or local devolution to meet the aspirations and needs of people inhabiting different regions of Jammu and Kashmir.

There has, for example, to be a consensus on whether the authority of constitutional bodies like the Election Commission of India and the Supreme

Court add or subtract from the freedoms that an individual living in Jammu and Kashmir enjoys. These organizations play a key role in conduct of free and fair elections and in guaranteeing the fundamental rights of citizens. A similar consensus has to be obtained in Pakistan-administered Kashmir, to ensure that there is harmonization of self-governance throughout the former princely state, on both sides of the LOC, though in this case organizations like Pakistan's Election Commission and Supreme Court might have to be restructured.

After agreement is reached that Pakistan-administered "Azad Kashmir" and the Northern Areas would enjoy self-governance, discussions could be held to seek a consensus on how the amendments that have been effected to the Delhi Agreement need to be applied in future. Any consensus would necessarily involve acceptance by people in the Valley, Jammu, Kargil and Ladakh regions of Jammu and Kashmir, and Mirpur, Muzaffarabad, Gilgit and Baltistan in Pakistan-administered "Azad Kashmir", so that there is no residual feeling in any region of being discriminated against. The issues that could figure in such discussions are:

- (a) *What are to be the powers of the Legislative Assemblies for Jammu and Kashmir, Pakistan-administered "Azad Kashmir" and the Northern Areas? If only residual powers are to vest in the national Parliaments in New Delhi and Islamabad, what would be the provisions for allocation of federal funds for the constituent units of Jammu and Kashmir? Quite obviously, any allocation of federal funds for Jammu and Kashmir will involve monitoring of how these funds are utilized.*
- (b) *While the Executive Heads of Governments in Jammu and Kashmir, Pakistan-administered "Azad Kashmir" and the Northern Areas will be chosen by members of the elected Legislative Assemblies, how are the Governors/Presidents to be appointed ? As the Constitutions of India and Pakistan and issues of national security of both countries are involved, what is the mechanism*

that could be used for appointing persons whose responsibility will primarily be to see that the Constitutions of India and Pakistan are respected, along with the devolved federal relationships?

- (c) The Assemblies could confer special rights and privileges on ‘state subjects’ in view of the State Subject Notifications of 1927 and 1932, but in coordination with each other and the governments of India and Pakistan.
- (d) The state governments of Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas would have *at least* the same measure of fiscal autonomy as other Indian states. (We take this yardstick because Pakistani states have less fiscal autonomy than Indian states).
- (e) The Delhi Agreement took the view that the Supreme Court of India and Pakistan would have only appellate jurisdiction in Jammu and Kashmir, and by extension the Supreme Court of Pakistan would have only appellate jurisdiction in Pakistan-administered “Azad Kashmir and the Northern Areas. Would such a provision be acceptable in Jammu and Ladakh, where there are fears of Valley domination, or in the Northern Areas, where there is fear of AJK domination?
- (f) Similarly, if the Delhi Agreement were to be accepted across the former princely state, the Presidents of India and/or Pakistan could proclaim a general emergency in Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas respectively, in exercise of the centre’s powers over defense, but would only proclaim a general emergency on account of internal disturbance *“at the request or with the concurrence of the Government of the State”*. How can this be reconciled with the requirement that a national emergency in India or Pakistan may be deemed necessary on account of developments inside Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas?

Additional

India, Pakistan and Kashmiri representatives will also need to discuss whether a **Refugee/Displaced Persons Commission** should be also part of any settlement, given the numbers involved (from the 1947-8 war on) and their uncertain status regarding rights of return/compensation, etc.

Further, from 1980 on, many outsiders, especially from Pakistan's North-West Frontier Province and Panjab, have been encouraged to settle in the Northern Areas. This has resulted in a change in the demographic/sectarian balance in the Northern Areas, leading to sectarian conflict between armed militias, especially in Gilgit. The issue of the future of these **settlers** and their rights within the Northern Areas needs to be discussed as persons from outside Jammu and Kashmir are not regarded as State citizens.

Self-Governance Tier Two: Internal Devolution, Jammu-Kashmir-Ladakh, Pakistan-administered Azad Kashmir-Northern Areas

Internal differences in Jammu and Kashmir and Pakistan-administered Kashmir, and between Pakistan-administered "Azad Kashmir" and the Northern Areas, make clear that self-governance will need to apply both at the federal level and within and between the regions and districts. Today the majority in Ladakh, and probably in Jammu, desire closer relations to India than either the Delhi Agreement or Article 370 provide, while many in the Kashmir valley want additional provisions guaranteeing self-governance and interconnectivity across the former princely state.

Similarly, in Pakistan-administered "Azad Kashmir" Muzaffarabad is closely integrated to Pakistan, while Mirpur is anxious to have ties to Jammu; and the majority in the Northern Areas want autonomy both in Pakistan and from Pakistan-administered "Azad Kashmir".

To arrive at a mutually acceptable framework for self-governance that will satisfy all aspirations to the largest possible extent, internal self-governance could comprise a devolved relationship between Jammu, the

Valley and Ladakh on one side, and the districts of Pakistan-administered “Azad Kashmir” and the Northern Areas on the other side, comprising greater powers, especially fiscal, administrative and developmental, to the regions. The devolved relationship will offer the same degree of self-governance as is offered by *Tier One*, without vitiating regional rights.

This will mean altering the status of Ladakh. Though the Hill Councils have gone a long way towards improving Ladakh’s position, it is absurd that it should remain a district of the Valley. Given Ladakh’s size, geography and cultural distinction, the region needs a separate status within Jammu and Kashmir.

Opt Out Clause

One of the questions which needs to be debated is whether the regions should be permitted to opt out of the federal relationships of *Tier One*, and the devolved relationships of *Tier Two*, to form their own separate relationships with India or Pakistan respectively. This note is clearly against such a clause, but we can anticipate that the issue will arise if self-governance is agreed and implemented.

The issue is of especial concern to Gilgit, whose people feel they were “included” in the territories of the former princely state a short while before the British withdrew from India only to keep them hostage to the Kashmir dispute. The feeling, however, does not have a legal basis to it because Gilgit has been part of the princely state from the nineteenth century.

Legislature:

A. Legislative Assemblies

Under the Jammu and Kashmir Constitution, the Jammu and Kashmir legislature consists of two houses, the Assembly and the Council. The Jammu and Kashmir Legislative Assembly was to comprise 100 seats, 25 of which were kept vacant as a considerable part of the state was held by Pakistan. As a result the proportion of members from Jammu was lower than it should have been (because “Azad Kashmir” was partitioned from Jammu, so most of the vacant seats were from Jammu’s quota).

Today the Legislative Assembly comprises 87 members (i.e., 12 new constituencies), of which 46 are from the Valley, 37 from Jammu, and 4 from Ladakh. A very recent decision by the Jammu and Kashmir government has increased the number of seats by 8 – 4 for the valley and 4 for Jammu – so the strength of the Assembly will soon go up to 95.

But this increase still leaves Ladakh with only 4 seats, a palpably absurd position given Ladakh's physical size and strategic location. Assuming that there will no longer be a need to keep seats vacant for Pakistan-administered "Azad Kashmir", in the event of a mutually agreed settlement between India, Pakistan and the various peoples of the former princely state, the actual strength of the Jammu and Kashmir Assembly could grow to 110, with 10 more seats for Ladakh, and the remaining 5 seats reserved for minorities, such as Kashmiri Pandits and Sikhs. *It is proposed that 1 seat be kept for the internal refugees of the 1947 war, who are currently settled in Jammu.*

Similarly, the "Azad Kashmir" Assembly has 12 seats reserved for Jammu and Kashmir, which could be used to ensure better district representation within Pakistan-administered "Azad Kashmir".

The Northern Areas would have to be allowed to elect an Assembly. At present they only have a Legislative Council, with primarily advisory powers, which was headed by a civil servant from Pakistan and is currently headed by a federal government Minister. The Northern Areas Legislative Assembly would have the same powers and status as the AJK Legislative Assembly, and would be made up of elected legislators from the devolved regions of Gilgit and Baltistan (unless the former chooses a different relationship). It could link to the Pakistan-administered AJK Assembly, with loose ties between Baltistan and Kargil in Ladakh.

B. Legislative Councils

The Pakistan-administered "Azad Kashmir" and Northern Areas Legislative Councils would need to conform more closely to the Jammu and Kashmir

Legislative Council model, which comprises 36 seats, 1/3rd each for Jammu and the Valley, with reserved seats for scheduled castes, teachers, etc. The Jammu and Kashmir Legislative Council too needs reforms – for example Ladakh should have weighted representation that takes its size and strategic importance into account.

At a broader level, as the Legislative Councils are a form of upper house, they could be constituted quite differently, as non-political bodies that would guarantee Kashmir's pluralism and democracy – with minority weightage and emphasis on preserving cultural diversity, local administration, constitutional and judicial experts, etc.

Self-Governance Tier Three: Devolution to District & Municipality/ Panchayat

The general structure of internal devolution should be transfer of economic powers – development planning proposals, implementation – and devolution of administrative powers to regions, districts and municipal councils/*panchayats*.

Instead of a top down approach of devolution from region to district to local unit, there could be an additional structure for planning and administration in which the local unit – *panchayat* or municipality – could be the primary centre. The Jammu and Kashmir Constitution, in fact, suggests that the *panchayat* will be the core unit, though this has not been fully implemented on the ground or in the legislation.

Pakistan too has a similar system of self-governance. Under the 2000 devolution package in Pakistan, *tehsils* and local councils headed by *nazims* have similar autonomy from the federal unit as under the *panchayats*, but elections are conducted by army appointed commissions, which has led to accusations of manipulation. An independent election commission might therefore be required to harmonize with devolution under the Jammu and Kashmir Constitution.

Pakistan's local self-governance system has not yet been applied in Pakistan-administered "Azad Kashmir" and the Northern Areas, so no

constitutional changes would be required to introduce a system for local self-governance that would be harmonized with the system for Jammu and Kashmir.

At the same time, **cross-regional minority and cultural rights** need to be a part of the devolution package. Minority representation in the legislature, judiciary, police and administration should be mandatory (it is missing from all the Constitutions of Kashmir). Minorities should nominate representatives to the States' Human Rights Commissions. The separate State Minorities' Commissions should be autonomous bodies not dependencies of the State government.

District and local relations between Jammu and Kashmir, Pakistan-administered "Azad Kashmir" and the Northern Areas could also be considered as part of devolution, for example *panchayat to nazim* twinning. *Panchayat-nazim* twinning could comprise cultural and people to people relations, as well as local developmental programmes.

Fiscal Devolution

This is a point that is being stressed by the People's Democratic Party, and it has different dimensions. Overall, fiscal devolution would also be three-tiered: from centre to state, state to region, and region to district to municipality/*panchayat*, and it would comprise proportional allocations within the budget to regions, districts and local councils.

If the local council is taken as the primary unit, as it is under the Jammu and Kashmir Constitution, a separate provision could also be made for direct allocation of (a part of the required) fiscal resources from the state to the local councils (with the other part covered by allocations to the regions and/or districts). Such a system would allow for cross-cutting measures of accountability rather than a single line of allocation.

Secondly, there is the question of Jammu and Kashmir (and by extension Pakistan-administered "Azad Kashmir" and the Northern Areas)

participation in infrastructure and resource development and/or management programmes, which is addressed in Ambassador Parthasarathy's note.

Thirdly, there is the issue of what will be the **financial relationships** of the self-governing territories to India and Pakistan respectively – will each country continue to provide the same budgetary resources as earlier or will this change? Will the two countries have to make their budgetary provisions uniform, or will Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas be free to negotiate their fiscal relations separately? This is an issue that needs to be debated by the peoples and leaders of the former princely state.

Military Arrangements

Before any framework agreement can come into force, the armed groups will need to cease-fire and commit themselves to a “Disarmament, Demobilization and Reintegration Plan”, with a firm timetable of DDR actions. In order to be effective, and pave the way for self-governance, the DDR plan would have to apply to Jammu and Kashmir, “Azad Kashmir” and the Northern Areas.

Ideally there should be a cease-fire right now, so that the other elements of a DDR plan can be discussed and negotiated at the same time as the plan for self-governance. This would not only allow the different Kashmiri groups to form their positions free of pressure, it would allow armed groups to come on board the peace process and put forward their own plans for self-governance.

The cease-fire would have to be by Pakistani as well as Kashmiri armed groups, and there would be three separate but parallel DDR processes: Kashmiri armed groups would be in a DDR process with the Jammu and Kashmir and Indian governments; Pakistani armed groups would withdraw from all parts of Kashmir (including the Northern Areas) and be in a DDR process with the Pakistani government.

In actual fact, Pakistan might need to have two separate DDR processes, one for armed groups operating out of “Azad Kashmir”, and one for armed groups operating in the Northern Areas, especially Gilgit, as the former groups are specifically concentrated on waging war in Jammu and Kashmir, and the latter groups are engaged in sectarian warfare within the Northern Areas.

India and Pakistan could form a *joint DDR monitoring group* in order to satisfy themselves that the parallel DDR processes are being properly implemented.

Following DDR commitments, India and Pakistan could progressively reduce forces in Jammu and Kashmir on both sides of the LOC as well as in the Northern Areas. The aim of the two countries will be to eventually deploy forces only on the borders, with the usual provision of making forces available to aid civil power, though a limited number of forces will be stationed in cantonments in Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas, as in other parts of India and Pakistan. But such a situation is only likely to occur when the armed groups have disarmed and disbanded.

The phases of cessation of violence and troops’ reduction generally occur in the following succession/timetable, which would apply to Jammu and Kashmir, “Azad Kashmir” and the Northern Areas:

1. Cease-fire by armed groups, reciprocated by security forces;
2. Training of local police and security forces;
3. Placing of arms beyond use by armed groups; return of administration to affected areas, and first phase of troops’ reductions;
4. Reform/retraining of rule of law institutions – judiciary, prisons;
5. First phase of demobilization by armed groups, and reintegration of demobilized; this process to be continuous;

6. Gradual restoration of security on the ground – as measured by the absence of fear of violence;
7. Second phase of troops' reductions;
8. Final demobilization of armed groups;
9. Functioning local administration, legislature, judiciary, local security;
10. Redeployment of troops to borders.

Building Consensus on a Solution

These and other ideas need to be debated by Kashmiri political, government and civil society groups if a sustainable solution is to be found, as well as by Indian and Pakistani equivalents. Some dialogue has been ongoing on this side of the LOC, in Delhi, Jammu and Srinagar, both between civil society from Jammu, Ladakh, the valley and Delhi, and between civil society from Jammu and Kashmir, Pakistan-administered “Azad Kashmir” and the Northern Areas, Delhi and Islamabad. But while Pugwash and the World Social Forum have provided forums for intra-Kashmiri and India-Pakistan dialogue in Lahore and Islamabad, there have not been similar dialogues in Pakistan-administered “Azad Kashmir” and the Northern Areas.

A key step, therefore, is for Track II groups to be encouraged by the Pakistani government to hold dialogues on frameworks for a solution in Pakistan-administered “Azad Kashmir”, both between their civil societies and with the civil societies of Jammu and Kashmir, and the wider Indian and Pakistani public.

Secondly, elected legislators, political and civil society groups also need to debate possible frameworks for a solution, so that if any agreement is reached there will be no spoilers to its implementation.

Thirdly, those that have influence over armed groups need to bring them on board the peace process, and encourage them to consider a solution that will be acceptable to all.

Finally, while the Prime Minister of India has begun a dialogue with Kashmiri separatist groups, elected legislators and civil society representatives, and President Musharraf has had his first encounter with elected legislators from Jammu and Kashmir, a few additional steps could help. The most important step is to institutionalize the dialogue, including at the intra-Kashmiri level, and draw up a road map whereby any agreed solution will have across the board public support. The Indian government's decision to set up working groups in Jammu and Kashmir to examine all aspects of a settlement is a step in that direction; similar working groups on the other side of the LOC, in Pakistan-administered "Azad Kashmir" and the Northern Areas, would help in the harmonization exercise, and towards evolving a consensus.

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Official Kashmiri Track:

The Indian Prime Minister's Working Groups

In May 2006, the Indian Prime Minister held a Round Table Conference in Srinagar, the capital of Jammu and Kashmir, at which 5 working groups were set up to produce ideas on how to move the Kashmir peace process forward. The working groups are on:

- Strengthening relations across the Line of Control (LoC);
- Center-State Relations;
- Good Governance;
- Infrastructure and Economic Development; and
- CBMs within Jammu and Kashmir, including for widows and orphans of violence, return of displaced persons, and return of people who crossed over during the insurgency.

The composition of the working groups is: representatives of Kashmiri political parties, regional and civil society leaders. Azaadi or independence/separatist groups are invited but have so far stayed away.

Four working groups presented their recommendations to the Prime Minister's third Round Table, held in Delhi in April 2007. The working group on strengthening relations across the Line of Control (LoC) recommended:

- Open the Kargil-Skardu, Jammu-Sialkot, Turtuk-Khapulu, Chamb-Jorian, Gurez-Astoor-Gilgit, Teetwal-Chilhan and Jhanger-Mirpur routes across the LoC;
- Lift restrictions on who could travel to include pilgrims, patients and tourists, if necessary unilaterally by India;
- Create a free trade area between Jammu and Kashmir and Pakistan-held Kashmir.

And the Working Group on CBMs within Jammu and Kashmir recommended:

- Review the Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act (DDA) and if it was possible in the light of the improved situation, revoke them;
- Start an unconditional dialogue process with militant groups to find a sustainable solution to the problem of militancy in the state;
- Make the return of Kashmiri Pandits a part of state policy;
- Provide better relief and rehabilitation for widows and orphans of violence in the state, including widows and orphans of militants; and
- Facilitate the return of Kashmiris stranded across the LoC, many of whom had crossed over for arms training but now wished to return peacefully.

Several of the recommendations of the group on CBMs aroused ire at the discussion stage (in particular, on AFSPA, DDA, dialogue with militants and return of former militants), and the BJP and Panun Kashmir (Pandit) leaders walked out of the group while the recommendations were being discussed.

The Working Group on Centre-State Relations met first in December 2006 and then twice in early 2007. A fourth meeting is scheduled for September 2007. It has yet to produce its report.