

A Kashmiri Equation

Dr. Parasaran Rangarajan*

Abstract

"The issue of the Kashmiri question is the longest dispute as of today going back to the formation of the United Nations in 1947. There have been many solutions put forward to find a solution which has been suggested involving all five stakeholders in this complex equation; The Republic of India, The Islamic Republic of Pakistan, The People's Republic of China, Azad Kashmir, and independence organizations with each having its own claim to a part of this region. In addition, the newly formed BJP led government of India would like to have a debate on Article 370 of the Constitution of India and possibly abrogate it since it gives autonomy and special territory status to the Indian state of Jammu & Kashmir. Questions such as are what are the legal repercussions of removing the article for the Indian side of the border considering Indian national legislation such as The Delhi Accord (1952) or 1974 Indira-Sheikh Accord? Is there any future for the current bi-lateral treaties (ex: The Simla Agreement (1972) or Washington Accord (1999)) between India and Pakistan to play a role in the final status of Kashmir taking into account The Vienna Law of Treaties (1969) under international law? Will the Jammu & Kashmir of India as we have known it be left without any link to the Union if Article 370 is abrogated, therefore, liberating it? Or will it default to the Union like an automatic resulting trust would when there is no certainty on the subject matter are valid and good questions to ask. The Pakistani side of the border of the once Kingdom of Jammu & Kashmir; namely Gilgit-Baltistan's (aka formerly known as "Northern Areas") relationship with Pakistan is also examined and how that will factor into a political equation considering the political parties operating there and local aspirations. Will separatist movements gain anything by sustaining or abrogating Article 370 or executing the bi-lateral treaties to find a political solution? To what extent does China's role extend to with its claim to Aksai Chin in the context of an entire political solution? We will examine the legal implications of abrogating Article 370 first including the validity of bi-lateral treaties and second, examine a political solution which was endorsed by pro-Indian Sheikh Mohammad Abdullah, the Indian state of Jammu & Kashmir's first Prime Minister before the position was abolished in the 1965; namely a "condominium" based on the principles of "joint sovereignty" under international law with considerations to a "coregency" as well."

* Consultant for South Asia Analysis Group and Editor-in-chief for the International Law Journal of London (Note: This article does not represent the views of the organisations mentioned but of the author only, he may be contacted at parasaran@gmail.com for interest in publication or otherwise.)

I. Introduction

The issue of the Kashmiri question is the longest dispute as of today going back to the formation of the United Nations in 1947¹. The history of Kashmir has its roots with Hindu, Muslim, and Christian backgrounds. In the context of Hinduism, Kashmir dates back to 14,000 BC and it believed in Hinduism that Hindu Sage Kashyapa drained a lake to produce what is known as Kashmir today as much of it was immersed underwater if we look at the topography from that time². On these religious lines, there is also the issue of the many Hindu pundits who have been displaced through the years after the independence of India. Christian beliefs in the Kashmir Valley are rooted with the belief that Jesus Christ was buried in the tomb of "RozaBal" after surviving his crucifixion in his "lost years" which are not documented in the Holy Bible. Documentaries describing this have been screened by the British Broadcasting Channel (BBC) and the government of India have been taken to describe this in detail³. The Muslim aspect who are the current majority in Jammu & Kashmir is traced back to the Mughal conqueror King Akbar who annexed Jammu & Kashmir from the rest of India which is dated in the 14th century⁴. The former

Supreme Leader of Iran, Grand Ayatollah Imam Ruhullah Khomeini (R.A.) who changed the history of The Islamic Republic of Iran also has his ancestral roots in Kashmir increasing the importance of the region to the Islamic community⁵.

There have been many solutions put forward and suggested to find a



solution which have been suggested including accepting the current Line of Control (LoC) between the two sides; India's Jammu & Kashmir and Pakistan's GilgitBaltistan (otherwise known as "Northern Areas") including Azad Kashmir with China's claim on Aksai Chin as final or land swaps in regards to the Siachen Glacier and Sir Creek⁶ sought by the government of

¹"Kashmir | Timeline 1947." *Kashmir | Timeline 1947*. Kashmir Library, n.d. Web. <http://www.kashmirlibrary.org/kashmir_timeline/kashmir_chapters/1947.shtml>.

²"History of Jammu & Kashmir - Know More." *History of Jammu & Kashmir - Know More*. Peace Kashmir, n.d. Web. <<http://www.peacekashmir.org/jammu-kashmir/history.htm>>.

³"Jesus In Kashmir (India) - Documentary by Indian Govt." *YouTube*. YouTube, n.d. Web. <https://www.youtube.com/watch?v=e_Ecm4gMhiM>.

⁴Lawrence, Walter R. *The Valley of Kashmir*. London: H. Frowde, 1895. 194. Print.

⁵Safvi, Syed. "Khomeini, the Man Who Changed Course of World History, Was a Kashmiri." *World Kashmir Awareness News*, 4 June 2011. Web. <<http://www.kashmirawareness.org/Article/View/6649>>.

⁶Phem, Phenom. "Sir Creek and Siachen Issue: Pak Willing to Resolve Bilateral Disputes with India, Says Khar Read More At: [Http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html](http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html)." *Sir Creek and Siachen Issue: Pak Willing to Resolve Bilateral Disputes with India, Says Khar Read More At: [Http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html](http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html)*. India Today, 12 July 2012. Web. <<http%3A%2F%2Findiatoday.intoday.in%2Fsto>

India; one of the main stakeholders which has drawn flank for this issue from Islamic nations, but none that all can agree on as of yet although the relationship between the nations continue to greatly improve. In addition, the newly formed BJP led government of India would like to have a debate⁷ on Article 370 of The Constitution of India⁸ and possibly abrogate it since it gives autonomy and special territory status to the state of Jammu & Kashmir through the Constitution of India.

Many separatist movements also exist on both sides of Jammu & Kashmir and some of the major groups include the Jammu & Kashmir Liberation Front (JKLF), Balawarastan National Front (BNF), etc who seek a fully independent state. Although all separatist groups seek independence, each have differences on how to achieve this as the JKLF operates more on the Indian side of the border in Jammu & Kashmir but favors Pakistan for support while the BNF operates solely on the Pakistani side of the border in GilgitBaltistan but favours India for support due to various reasons. India has long claimed that the Pakistan's External Intelligence Agency (Inter-Services-Intelligence - ISI) has been a cause of militancy intruding into the Indian border of Jammu & Kashmir but at the same time admits it has reduced dramatically in the past decade and has made it clear that Al-Qaeda or the

Afghan Taliban will not be coming to the Indian territories of Kashmir⁹.

Questions such as are what are the legal repercussions of removing the article? Is there any future for the current bi-lateral treaties between India and Pakistan to play a role in the final status of Kashmir? Will the Jammu & Kashmir of India as we have known it be left without any link to the Union if Article 370 is abrogated, therefore, liberating it or will it default to the Union like an



automatic resulting trust would when there is no certainty on the subject matter are valid and good questions to ask. Will separatist movements gain anything by sustaining or abrogating Article 370 or executing the bi-lateral treaties to find a political solution? To what extent does China's role extend to with its claim on Aksai Chin. We will examine the legal implications of abrogating Article 370 first including the validity of bi-lateral treaties and second, examine a political solution which was endorsed by Sheikh

ry%2Fsir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india%2F1%2F207682.html>.

⁷Prakash, Satya. "Repealing Art 370 Will Put India in Tight Spot: Experts - Hindustan Times." *Repealing Article 370 Will Put India in Tight Spot* Hindustan Times, 3 Dec. 2013. Web. <<http://www.hindustantimes.com/india-news/repealing-article-370-will-put-india-in-tight-spot/article1-1158449.aspx>>.

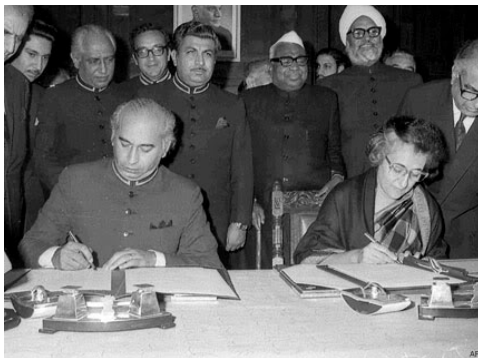
⁸"Constitution of India." (n.d.): n. pag. Government of India. Web. <<http://www.cgsird.gov.in/constitution.pdf>>.

⁹"The Al Qaeda Is Coming to Kashmir." Rediff, n.d. Web. <<http://www.rediff.com/news/report/slide-show-1-the-al-qaeda-is-coming-to-kashmir-vicky-nanjappa/20140616.htm#1>>.

Mohammad Abdullah in the 1960's¹⁰; namely a "condominium" under international law.

II. Legal Analysis Of Indo-Pak Treaties And Article 370

First, to discuss the issue of Article 370 is required to move toward a final resolution on Kashmir as the government of India has spoken of



abrogating Article 370 justifying this by stating Jammu & Kashmir will become a regular state of India giving it government benefits it is not receiving currently. Reviewing the bi-lateral treaty of the Simla Agreement (1972)¹¹ is also of upmost importance as it is responsible for the current bi-furcation and international borders of the state which seeks unity. Section IV (ii) in the the Simla Agreement negates any legal interpretations from to change the LoC which is reinforced with the Washington Declaration (1999)¹² signed

by Pakistani Prime Minister Sharif at the end of the Kargil War in 1999. However, Article 60 and Article 54 (a) of the Vienna Convention on the Law of Treaties (1969) makes it clear that breaches of the treaty such as violations of the ceasefire on the LoC in the same provision cited of The Simla Agreement allows for termination of the bi-lateral treaty and in this case; The Simla Agreement and the Washington Accord (1999).

Due to the daily firing on the LoC disturbing the cease-fire among other violations required by The Simla Agreement including any violations of the U.N. Charter which the parties are bound by via Section I (vi) of the treaty; Pakistan or India may terminate The Simla Agreement and go to the International Court of Justice (ICJ) for an advisory opinion on the issue of Kashmir under international law. The Washington Accord would automatically be void as it is based on upholding Simla. A similar case was filed in *Armed Activities in the Territory of the Congo (Congo v. Uganda)* where Congo sought legal opinion for the Luksa Ceasefire Agreement and received a positive opinion for the case at the ICJ¹³. The ICJ is not only limited to giving advisory on legal matters such as terminating bi-lateral treaties but also including political issues as the ICJ stated in issuing an advisory opinion on the Legality Of The Threat Or Use Nuclear Of Weapons stating that;

"The fact that this question also has political aspects, as, in the nature of things, is the case with so many

¹⁰"Instrument of Accession of Jammu and Kashmir State." *Docstoc.com*. N.p., n.d. Web. <<http://www.docstoc.com/docs/430666/Instrument-of-Accession-of-Jammu-and-Kashmir-State>>.

¹¹"Nawaz Sharif's Second Stint in Office - V." Ghazali, n.d. Web. <<http://www.ghazali.net/book1/Chapter10a/update10d.html>>.

¹²Cannizzaro, Enzo, Mahnoush H. Arsanjani, and Giorgio Gaja. "Page 325." *The Law of Treaties beyond the Vienna Convention*. Oxford: Oxford UP, 2011. N. pag. Print.

questions which arise in international life, does not suffice to deprive it of its character as a "legal question" and to "deprive the Court of a competence expressly conferred on it by its Statute". Nor are the political nature of the motives which may be said to have inspired the request or the political implications that the opinion given might have of relevance in the establishment of the Court's jurisdiction to give such an opinion."¹⁴

Therefore, the ICJ is certainly within its boundaries and mandate to issue advisory opinion for a new legal bi-lateral agreement with a "condominium" as an option discussed later in this article. It is worthy to re-state that neither Pakistan nor India can benefit in regards to changing the LoC as long as The Simla Agreement is in effect. Article 66 of The Vienna Convention on the Law of Treaties provides the administrative procedure for terminating the treaty due to violations by submitting a request to that effect to the Secretary-General of the United Nations:

"(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annexe to the Convention by submitting a request to that effect to the Secretary-General of the United Nations."

While such a move may re-spark tensions including possible threats of

war between the nuclear weapon armed nations, there are no other options for any party to seek an effective legal opinion to the issue of Kashmir while The Simla Agreement is in effect. Furthermore, international law on treaties are very clear where due to the constant violation of The Simla Agreement, each party is certainly justified in requesting termination. Turning to the ICJ after termination of this treaty will provide useful for those in Kashmir who seek a peaceful and legal resolution. In fact, Gujarat's Courts in India have already declared Pakistan has violated

the Simla Agreement by failing to release 54 prisoners from the 1971 war and threatened to approach the



ICJ in 2012¹⁵. It must also be clarified that the abrogation of Article 370 is not related with The Simla Agreement as the latter is a bi-lateral treaty to determine the final status of Kashmir with Pakistan while Article 370 deals with Jammu & Kashmir's exclusive relationship with the Union.

¹³"LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS - Advisory Opinion of 8 July 1996." *International Court of Justice*. International Court of Justice, 8 July 1996. Web. <<http://www.icj-cij.org/docket/index.php?sum=498&code=unan&p1=3&p2=4&case=95&k=e1&p3=5>>.

¹⁴"HC Gives Defence Ministry 2 Weeks to Approach ICJ." *The Indian Express HC Gives Defence Ministry 2 Weeks to Approach ICJ Comments*. The Indian Express, n.d. Web. <<http://indianexpress.com/article/cities/ahmedabad/hc-gives-defence-ministry-2-weeks-to-approach-icj/>>.



Article 370 is abolished without a new "Instrument of Merger" agreement being signed and following legal instrument which came before Article 370 as precedent, namely the "Instrument of Accession"¹⁶ signed by Lord Mountbatten and Maharajah Hari Singh on October 26th, 1947, the state of Jammu & Kashmir on the Indian side will automatically secede as a resulting trust would. This is because the Instrument of Merger expressly states that accepting to accede to India does not mean it is accepting the Constitution of India in Article 7 of the Instrument of Accession which is why the special status agreement and Article 370 was introduced as a "temporary measure" during the era of the first Prime Minister of India Jawaharlal Nehru who advocated for a U.N. plebiscite through the United Nations Commission for India and Pakistan (UNCIP) in 1947.

Furthermore, India stated that it would not withdraw its military from Kashmir until Maharajah Hari Singh signed the Instrument of Accession clearly proving duress. The ICJ has stated:

There "can be little doubt, as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of

Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void."

Therefore, it can be argued that the Instrument of Accession is void due to duress and threat of force as several authors contributing to the *Stanford Journal of International Relations* have stated¹⁷.

It must be understood that the Instrument of Accession is only that, accession to the Union but without following the Constitution of India leaves the state in a unique position. If Article 370 is abrogated, it will lead to automatic secession as a resulting trust would with a fall back on the Constitution Act (1934)¹⁸ as short of any political memorandums and communique's between Maharajah Hari Singh, Indian Congress, and the British Empire; the only legally binding document before the Instrument of Accession of 1947 is the Constitution Act when a unified Jammu & Kashmir was the Kingdom of Jammu & Kashmir. This was when a unified Jammu & Kashmir including the "Northern Areas" was independently ruled by Maharajah Hari Singh by virtue of the Kingdom of Jammu & Kashmir under provisions of the British Empire, not the Union of India.

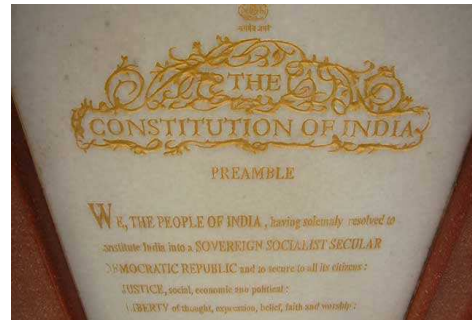
¹⁵"INSTRUMENT OF ACCESSION 1947 (TEXT)." *INSTRUMENT OF ACCESSION 1947 (TEXT)*. Association For Communal Harmony In Asia (ACHA), n.d. Web. <<http://asiapeace.org/acha/kashmir104.htm>>.

¹⁶Kapur, Vikas, and Vipin Narang. "SJIR: The Fate of Kashmir : International Law or Lawlessness?" *The Fate of Kashmir : International Law or Lawlessness?* Stanford Journal of International Relations, n.d. Web. <http://www.stanford.edu/group/sjir/3.1.06_kapur-narang.html>.

¹⁷"Legal Documents No 52--Constitution Act, 1934." *Constitution Act, 1934*. Kashmir Information, n.d. Web. <<http://www.kashmir-information.com/LegalDocs/52.html>>.

Shortly after Indian Prime Minister Nehru advocated for the U.N. to resolve Kashmir, war broke out soon after and Sir Gopalaswami Ayyangar, the first Minister of the Union of India without a portfolio, drafted Article 370 to legally link the state of Jammu & Kashmir as author of the Constitution of India; Dr. B.D. Ambedkar, refused to do so. The autonomous state then drafted the Constitution of Jammu & Kashmir¹⁹ via by resolutions of the Constituent Assembly of Jammu & Kashmir and the Constituion of Jammu & Kashmir formally came into effect on November 17th, 1956. While Article 3 in Part II of the Constitution of Jammu & Kashmir states that it is an integral part of India, it was the state legislative branch which drafted the Constitution of Jammu & Kashmir which allowed for the position of "Prime Minister" which was endorsed by The Delhi Accord (1952)²⁰. This was changed in 1965 after the imprisonment of then Prime Minister Sheikh Mohammad Abdullah who eventually regained his position as the "Chief Minister" of the state through the 1974 Indira-Sheikh Accord which stated that the state will continue to be governed by Article 370. However, Article 370 by Sir Gopalaswami Ayyangar was drafted by the state's legislative assembly so only the state will be able to repeal as it desires and the central government does

not have the power to abrogate it by itself.



To this day, Article 370 is the only legal link between the state of Jammu & Kashmir to India as the Constitution of Jammu & Kashmir was only for the state while Article 370 is part of the Constitution of India. Arguments have been put forth that the central government of India via the President of India may repeal the only legal link between the two entities by virtue of Section 3 of Article 370 but the statute states that the President may only do this with recommendations by the Constituent Assembly of the state, further reinforcing the power of the state of Jammu & Kashmir to all treaties relevant to Article 370.

Jammu & Kashmir is not bound by the Constitution of India and although it may have acceded, there would be no legal violations of the Constitution of India or repercussions since it never accepted the Constitution through the Instrument of Accession. Nor can the state be legally bound by bi-lateral treaties such as The Simla Agreement or Washington Accord either when the state is not legally bound by the Constitution of the Union. Furthermore, in Indian Constitutional Law, the states of the Union must be listed in the First Schedule in the Constitution of India which came into effect at a later date and by virtue of the Instrument of Accession, Jammu & Kashmir is not bound to

¹⁸"Constitution of Jammu & Kashmir." *Constitution of Jammu & Kashmir* (n.d.): n. pag. Government of Jammu & Kashmir - Department of Law, Justice, and Parliamentary Affairs. Web. <http://www.jklaw.nic.in/Costitution_of_J&K.pdf>.

¹⁹"The Delhi Agreement, 1952." *The Delhi Agreement, 1952*. Government of India, n.d. Web. <http://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi_agreement_1952.htm>.

follow this clause in the Constitution of India so it will not affect the status with abrogation of Article 370. This is in line with legal scholars at Yale University explaining how acts passed by the government of India are only applicable to the state of Jammu & Kashmir via Article 370²¹.

Therefore, the abrogation of Article 370 of the Constitution of India without creating new provisions for re-merger of Jammu & Kashmir into the Union will leave it independent without any connection to the Union through following the precedent of the Constitution Act (1934) drafted during the rule of Maharajah Hari Singh as the Instrument of Accession signed by Lord Mountbatten and Maharajah Hari Singh in 1947 states that the accession does not include following the Constitution of India so that cannot be relied upon for keeping the state as a part of the Union and may be considered a legal agreement signed in duress. The topic of Aksai Chin is also of relevance and is quite simple as it was lost territory during the Indo-Sino War of 1962 and since then, there have been discussions on returning it to India if India gives up Arunachal Pradesh which will be explained in part



As mentioned, by terminating The Simla Agreement and Washington Accord citing the many violations including daily violations of the cease-fire, the doors at the ICJ at The Hague will be open to have substantial legal effect on the Kashmiri issue between India and Pakistan.

III. A Kashmiri “Condominium”

The issue of a “condominium” under international law implementing principles of “joint sovereignty” between India and Pakistan for an undivided Kashmir would be good for debate as it will remain an “integral part of India and an “integral part of Pakistan”; while giving Kashmir the unification and autonomy with negotiations it desires on mutually understood and agreed matters.

In the 1960’s, pro-Indian Kashmiri Leader Sheikh Mohammad Abdullah in the 1960’s advocated for a condominium on Jammu & Kashmir and Gilgit-Baltistan which lost traction after Indian Prime Minister Jawaharlal Nehru’s death in 1964²³ and the subsequent wars between the two nations in 1971 and



three²².

²⁰India - Summary and Analysis. Milano: GMA, 1991. Yale University. Web. <<http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/india/frontpage.pdf>>.

²¹Shukla, Saurabh. "India 'ready to Let China Keep Aksai Chin' If Neighbour Country Drops

Claim to Arunachal Pradesh." *Mail Online*. Associated Newspapers, 28 Nov. 2013. Web.

²²Behera, Navnita Chadha. *Demystifying Kashmir*. Washington D.C.: Brookings Institution, 2006. 42. Print.

1990's. However, since then, relations between all three nations including China have greatly improved and the option of a condominium of a united Kashmir should be revisited regardless of China's decision to return Aksai Chin as Gilgit-Baltistan, Azad Kashmir, and Jammu & Kashmir make up the majority of the once Kingdom of Jammu & Kashmir. India has been holding negotiations with China on Arunachal Pradesh which is directly linked with Aksai China where India has asked China to respect "One India" policy with regards to Kashmir in exchange for India's acceptance of a "One China" policy²⁴. More recently, Norwegian scholar Prof. Johan Galtung who is a member of the Advisory Council of the Committee for a Democratic United Nations (U.N.) shared this view by reviving it in 2007 by writing about in an article for *The Daily Times*.²⁵

While new pre-requisites have been put forth by each nation since then such as India's request to accede Azad Kashmir into one state or Pakistan's request for a consulate in the context of Jinnah House in Mumbai, an agreement on Kashmir was nearly reached in 2006 according to the former Pakistani Foreign Minister Kurshid Mahmud

Kasuri²⁶. A condominium can serve as the base platform for a solution as there were many areas where India and Pakistan were ready to issue "joint declarations" according to the former Pakistani Foreign Minister.

When nations agree to have "joint sovereignty" in a condominium over the disputed territory, a Head of State from the shared area giving local representation comes into effect. As previously mentioned, a "Head of State", usually a title held for independent nations was expressly advocated in The Delhi Accord of 1952 although the Indira-Sheikh Accord of 1974 changed but this to limit the highest position in the state as "Chief Minister" which can be attributed to securing the borders of the region at that time after the 16 day liberation war Bangladesh or East Pakistan as it was known at the time. Former chief of India's External Intelligence Agency, Dr. B. Raman the Research Analysis Wing (R&AW) in his book; *The Kaoboy of R&AW* even questioned why former Indian Prime Minister Indira Gandhi did not use the opportunity she had at that time to unify both sides of the border but as stated, this is a question we will likely never know²⁷.

The approach of "joint sovereignty" was also advocated by Prof. Fred Foldvary of San Jose State University who has suggested the parties

²³Samanta, Pranab Dhal. "One China? What about One India Policy: SushmaSwaraj to Wang Yi." *The Indian Express One China What about One India Policy SushmaSwaraj to Wang Yi Comments*. Indian Express, 12 June 2014. Web.

<<http://indianexpress.com/article/india/india-others/one-china-what-about-one-india-policy-sushma-to-wang/>>.

²⁴Gilani, Iftikhar. "Norwegian Expert Suggests Pak-India Condominium in Kashmir." *Norwegian Expert Suggests Pak-India Condominium in Kashmir*. Jammu & Kashmir, 31 Jan. 2007. Web. <<http://www.jammu-kashmir.com/archives/archives2007/kashmir20070131a.html>>.

²⁵Abrar, Mian. "Kashmir Is at Best with Kashmiris." *Pakistan Today*, 15 July 2014. Web. <<http://www.pakistantoday.com.pk/2014/06/15/national/kashmir-is-at-best-with-kashmiris/>>.

²⁶Raman, B. "Role of R&AW in Liberation of Bangladesh." *Indian Defence Review*, 16 Mar. 2011. Web. <<http://www.indiandefencereview.com/spotlights/role-of-raw-in-liberation-of-bangladesh/>>.

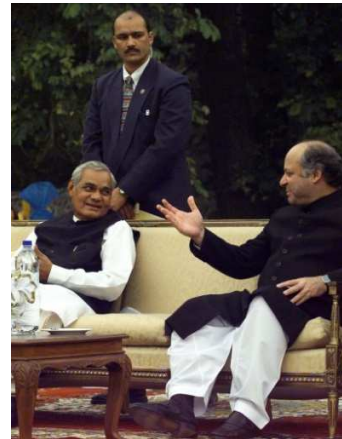
going to the ICJ to seek validity of all agreements, etc and has predicted The Hague would give an advisory opinion of “joint sovereignty” to the parties.²⁸ As previously mentioned, one party would have to terminate The Simla Agreement and Washington Accord by citing daily violations of the cease-fire agreement among other violations of the treaty for any legal interpretation from the ICJ to have effect.

Following precedent by citing similar cases, the ICJ would be likely to issue a legal opinion for to request all parties to draft a new bi-lateral treaty leaving the political option of a condominium open if the prior agreements are terminated by one of the parties due to ineffective following for a new agreement. Such an agreement suggested by the ICJ would likely include former Indian Prime Minister Atal Bihari Vajpayee’s policy of “Insaniyat” (humanity). This approach was accepted by the senior Kashmiri leaders in the All Parties Hurriyat Council (APHC)²⁹ formed in 1993. The creation of the APHC is linked with removal of the separatist Jammu Kashmir Liberation Front from the “banned organisation” list maintained by the government of India in the mid 1990’s after its leader; Chairman Yasin Malik renounced violence.

The election or selecting a Head of State from either side of the border

would likely be from a separatist organization as both government of India and government of Pakistan political parties would be pushed to the right and left corners. This would include a local Kashmiri President or Prime Minister as Head of State. There also remains the issue of who takes the first step in this as Kashmiri’s cannot approach the ICJ as they are not party to the Simla Agreement and more so not a “state” as per the 1933

Montevideo Convention. Terminating the Simla Agreement as previously



mentioned would likely seem that Pakistan would likely have the political will to take this step as it reportedly funds many separatist organisations on both sides of the border in Gilgit-Baltistan, as well as Jammu & Kashmir including the JKLF³⁰.

²⁷Foldvary, Fred E. "Foldvary: Joint Sovereignty for Kashmir." *Foldvary: Joint Sovereignty for Kashmir*. Progress, n.d. Web.

<<http://www.progress.org/fold250.htm>>.

²⁸TVK. "Ready to Cooperate If New Delhi Follows Vajpayee's Insaniyat Policy: Mirwaiz - The Vox Kashmir." *The Vox Kashmir*, 6 Nov. 2013. Web.

<<http://www.thevozkashmir.com/2013/11/06/ready-to-cooperate-if-new-delhi-follows-vajpayees-insaniyat-policy-mirwaiz/>>.

²⁹John, Wilson. "Daily Describes Activities of ISI in India." *Daily Describes Activities of ISI in India*. Federation of American Scientists, 30 June 1999. Web.

<<http://www.fas.org/irp/world/pakistan/isi/india.html>>.



The other Indian border of the state of Jammu & Kashmir in Pakistan is known as Gilgit-Baltistan, was previously referred to as the “Northern Areas” until 2007³¹ in the Constitution of Pakistan³². Since its removal from the Constitution of Pakistan, there is no constitutional link between Pakistan and Gilgit-Baltistan or “Northern Areas”. The only exception is other than a judicial opinion by the Supreme Court of Pakistan that it is already a state³³. This is still under dispute as Chairman of the Gilgit-Baltistan National Movement (GBNF) has filed a case challenging the validity of Gilgit-Baltistan being Pakistan’s 5th province as it does not maintain any constitutional link and if anything; Pakistan would have to give it an independent status similar to “Azad Kashmir”^{34,35}. In addition, groups such as

the BNF state atrocities committed by ISI agents in suppressing the Kashmiris as persons on that side of the border cannot even approach the legal system in Pakistan making it the only region in the world without constitutional rights³⁶.

One may also have negative perceptions on "joint sovereignty" under a Kashmir condominium since it would be shared by the two states and some may perceive their Head of State to be at the mercy of two nations instead of one. However, negotiations for the powers of the Head of State often offer vast powers in relation to condominiums. There is also the concept of a “coregency” which can be applied if there is doubt where normally one Head of State would be appointed, two or more can assume the role required to bring a balance of power. For example, there can be an Indian, Pakistani, and Kashmiri leader of a united state at the same time for one year and the next year, another equation of “joint sovereignty” may also be implemented with each party ruling the unified state in full for certain periods of the year (Ex: 4 months Kashmiri rule, 4 months Indian rule, 4 months Pakistani rule, variant equations, etc). This will satisfy power sharing needs in full on alternative years and will require cooperation on every other year. Through these equations; changing the demographics of the area is unlikely except for volunteer entries and exits as

³⁰“Discord in Pakistan's Northern Areas.” International Crisis Group, 2 Apr. 2007. Web. <<http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/131-discord-in-pakistans-northern-areas.aspx>>.

³¹“Constitution of Pakistan.” (n.d.): n. pag. Government of Pakistan, 20 Apr. 2010. Web. <<http://www.na.gov.pk/publications/constitution.pdf>>.

³²Mir, Shahbbir. "Gilgit-Baltistan Part of Pakistan, Declares Court." The Express Tribune, 9 July 2010. Web. <<http://tribune.com.pk/story/26648/gilgit-baltistan-part-of-pakistan-declares-court/>>.

³³Singh, Priyanka. "GilgitBaltistan: Neither ‘in’ Pakistan Nor ‘of’ It?" Institute For Defence Studies and Analysis, 6 Mar. 2012. Web. <http://3A%2F%2Fidsa.in%2Fidsacomments%2FGilgitBaltistanNeitherinPakistanNorofit_psingh_060212>.

³⁵“Gilgit-Baltistan Only Region of the World without Constitutional Rights”, SAC Bar Association." Pamir Times, 1 Oct. 2013. Web. <<http://3A%2F%2Fpamirtimes.net%2F2013%2F10%2F01%2FGilgit-baltistan-region-world-without-constitutional-rights-sac-bar-association%2F>>.

³⁶ Stephen R. Graubard, (ed.). *Exit from Communism*. Transaction Publishers, 1993. Pp. 153-154.

a visa scheme based on the fair principles of the U.N. Charter can be implemented as is for all new configurations of autonomous states these days.

It is worth to mention the Indian state of Jammu & Kashmir already maintains an administrative protocol to switch its official capital from Jammu to Srinagar depending on the season so the capital among administrative matters may also be changed with the seasons as it already is. However, a variation of this equation can be formulated based on the consensus of all parties as well as some may prefer to uphold one administrative method in full. It is worth mentioning again that the basic principles of the “Insaniyat” policy put forth by former Indian Prime Minister A.B. Vajpayee was accepted by the local separatist Kashmiri leaders and this concept embraces that. Of course, a condominium on Kashmir will require extensive cooperation between the two nations but it can be the way forward for a peaceful solution taking into account all stakeholders. The Head of State in a Kashmir condominium would not be at the mercy of the two nations as history shows us that powers of international relations were delegated in some cases by the two states in unison with coregency; sometimes leading to an independent state.

Coregency in this case can also mean sharing several Heads of State representing their faction in a Council of Heads of State for Kashmir, similar to Communist policies of the Soviet Union (USSR) as a group of leaders with equal power in regards to trade, land control, licensing, visas, international and economic relations, etc with a rotating Chairman with a Council of Defence consisting of a similar administrative



assimilation. The People's Democratic Party Patron (PDP) Smt. Mufti Mehbooba also put out the same idea in 2008 after former Pakistani President



Gen. Pervez Musharraf offered the details which are described below. Security implications for each state would simply mean establishing a joint armed force or one that is administered by both states such as the Palestinian Authority (P.A.) National Security Forces overseen by Israel and funded by the U.S. or the U.N. Peacekeeping Forces but keeping it on a bi-lateral level. The military forces of each state could also play a role in staying until the unit is formed and gradual withdrawal of troops to an acceptable amount as the Indian state of Jammu & Kashmir is the highest militarised zone in the world. This is in line with the Armed Forces Special Powers Act (AFSPA) of India as it can be altered or removed as security concerns would greatly be reduced with joint administration.

In fact, it was former Pakistani President Gen. Pervez Musharraf which floated a

similar idea in 2006 as he offered same borders but free movement, self-governance but not independence, joint administrative mechanism, and a gradual troop withdrawal. He stated the Indian Prime Minister's position at that time was to remove borders without changing the map. This found great popularity among Kashmiris including the Hurriyat Council of Chairman Mufti. Geelani Syed spoke about this in Washington D.C. at the Centre For Strategic and International Studies (CSIS) in 2009 and political parties in India.³⁷ Even former Indian Prime Minister Manmohan Singh in Jan. 2014 confirmed that he missed an opportunity to resolve the Kashmir dispute through the accepting the shared sovereignty model so it will be upon the next government to do so as this was an idea the government of India accepted.³⁸

This form of administration is once again based on former Indian Prime Minister's Vajpayee's principle ideals of "Insaniyat" which were also embraced by Kashmiri leaders as well as Pakistani leaders. Executive, defence, legislative, executive, and economic powers are explained above while judicial powers would be by elected judges from the state and executive council. The citizenship would be naturally that of "Sab Ka Kashmir" or "shared Kashmir". Condominiums can also serve as a transnational period in political solutions for the establishment of statehood as was the case when the State of Andorra was

once considered to be a French–Spanish condominium although "corengency", otherwise known as sharing the Head of State, was in effect until statehood achieved and defence was still shared by France and Spain. Just some examples of independent nations which started off as "Condominiums" includes independent sovereign states such as Bosnia and Herzegovina, Croatia, and Togo. Similarly, condominiums may have scope in resolving the issue of Kashmir as an alternative to a U.N. plebiscite by putting a proposal for "joint sovereignty". The issue of Kashmir tri-laterally between India, China, and Pakistan internationally at the U.N. or under international law is by no means an easy fix but it must be fixed as the longest standing international dispute in the world, even dating before the Israeli Palestinian conflicts.

Conceptualising the principles of humanity and legal solutions can be the way forward as avenues to the ICJ are available to then implement peaceful political solution.

³⁷"Musharraf Pushes Shared Kashmir Sovereignty Plan." | Reuters. N.p., 05 Dec. 2006. Web. <<http://uk.reuters.com/article/2006/12/05/uk-kashmir-musharraf-idUKDEL28462720061205>>.

³⁸ "Manmohan Confirms Missed Opportunity with Pakistan on Settling Kashmir Dispute | Latest News & Updates at Daily News & Analysis." Daily News Analysis, 4 Jan. 2014. Web. <<http://www.dnaindia.com/india/report-manmohan-confirms-missed-opportunity-with-pakistan-on-settling-kashmir-dispute-1945141>>.

References

1. "Kashmir | Timeline 1947." *Kashmir | Timeline 1947*. Kashmir Library, n.d. Web. <http://www.kashmirlibrary.org/kashmir_timeline/kashmir_chapters/1947.shtml>.
2. "History of Jammu & Kashmir - Know More." *History of Jammu & Kashmir - Know More*. Peace Kashmir, n.d. Web. <<http://www.peacekashmir.org/jammu-kashmir/history.htm>>.
3. "Jesus In Kashmir (India) - Documentary by Indian Govt." *YouTube*. YouTube, n.d. Web. <https://www.youtube.com/watch?v=e_Ecm4gMhiM>.
4. Lawrence, Walter R. *The Valley of Kashmir*. London: H. Frowde, 1895. 194. Print.
5. Safvi, Syed. "Khomeini, the Man Who Changed Course of World History, Was a Kashmiri." *World Kashmir Awareness News*, 4 June 2011. Web. <<http://www.kashmirawareness.org/Article/View/6649>>.
6. Phem, Phenom. "Sir Creek and Siachen Issue: Pak Willing to Resolve Bilateral Disputes with India, Says Khar Read More At: [Http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html](http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html)." *Sir Creek and Siachen Issue: Pak Willing to Resolve Bilateral Disputes with India, Says Khar Read More At: [Http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html](http://indiatoday.intoday.in/story/sir-creek-we-have-siachen-pak-willing-to-resolve-bilateral-disputes-with-india/1/207682.html)*. India Today, 12 July 2012.
7. Prakash, Satya. "Repealing Art 370 Will Put India in Tight Spot: Experts - Hindustan Times." *'Repealing Article 370 Will Put India in Tight Spot'* Hindustan Times, 3 Dec. 2013. Web. <<http://www.hindustantimes.com/india-news/repealing-article-370-will-put-india-in-tight-spot/article1-1158449.aspx>>.
8. "Constitution of India." (n.d.): n. pag. Government of India. Web. <<http://www.cgsird.gov.in/constitution.pdf>>.
9. "The Al Qaeda Is Coming to Kashmir." *Rediff*, n.d. Web. <<http://www.rediff.com/news/report/slide-show-1-the-al-qaeda-is-coming-to-kashmir-vicky-nanjappa/20140616.htm#1>>.
10. "Instrument of Accession of Jammu and Kashmir State." *Docstoc.com*. N.p., n.d. Web. <<http://www.docstoc.com/docs/430666/Instrument-of-Accession-of-Jammu-and-Kashmir-State>>.
11. "Nawaz Sharif's Second Stint in Office - V." Ghazali, n.d. Web. <<http://www.ghazali.net/book1/Chapter10a/update10d.html>>.
12. Cannizzaro, Enzo, Mahnoush H. Arsanjani, and Giorgio Gaja. "Page 325." *The Law of Treaties beyond the Vienna Convention*. Oxford: Oxford UP, 2011. N. pag. Print.
13. "LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS - Advisory Opinion of 8 July 1996." *International Court of Justice*. International Court of Justice, 8 July 1996. Web. <<http://www.icjci.org/docket/index.php?sum=498&code=unan&p1=3&p2=4&case=95&k=e1&p3=5>>.

14. "HC Gives Defence Ministry 2 Weeks to Approach ICJ." *The Indian Express HC Gives Defence Ministry 2 Weeks to Approach ICJ Comments*. The Indian Express, n.d. Web. <<http://indianexpress.com/article/cities/ahmedabad/hc-gives-defence-ministry-2-weeks-to-approach-icj/>>.
15. "INSTRUMENT OF ACCESSION 1947 (TEXT)." *INSTRUMENT OF ACCESSION 1947 (TEXT)*. Association For Communal Harmony In Asia (ACHA), n.d. Web. <<http://asiapeace.org/acha/kashmir104.htm>>.
16. Kapur, Vikas, and Vipin Narang. "SJIR: The Fate of Kashmir : International Law or Lawlessness?" *The Fate of Kashmir : International Law or Lawlessness?* Stanford Journal of International Relations, n.d. Web. <http://www.stanford.edu/group/sjir/3.1.06_kapur-narang.html>.
17. "Legal Documents No 52--Constitution Act, 1934." *Constitution Act, 1934*. Kashmir Information, n.d. Web. <<http://www.kashmir-information.com/LegalDocs/52.html>>.
18. "Constitution of Jammu & Kashmir." *Constitution of Jammu & Kashmir* (n.d.): n. pag. Government of Jammu & Kashmir - Department of Law, Justice, and Parliamentary Affairs. Web. <http://www.jklaw.nic.in/Constitution_of_J&K.pdf>.
19. "The Delhi Agreement, 1952." *The Delhi Agreement, 1952*. Government of India, n.d. Web. <http://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi_agreement_1952.htm>.
20. *India - Summary and Analysis*. Milano: GMA, 1991. Yale University. Web. <<http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/india/frontpage.pdf>>.
21. Shukla, Saurabh. "India 'ready to Let China Keep Aksai Chin' If Neighbour Country Drops Claim to Arunachal Pradesh." *Mail Online*. Associated Newspapers, 28 Nov. 2013. Web.
22. Behera, Navnita Chadha. *Demystifying Kashmir*. Washington D.C.: Brookings Institution, 2006. 42. Print.
23. Samanta, Pranab Dhal. "One China? What about One India Policy: SushmaSwaraj to Wang Yi." *The Indian Express One China What about One India Policy SushmaSwaraj to Wang Yi Comments*. Indian Express, 12 June 2014. Web. <<http://indianexpress.com/article/india/india-others/one-china-what-about-one-india-policy-sushma-to-wang/>>.
24. Gilani, Iftikhar. "Norwegian Expert Suggests Pak-India Condominium in Kashmir." *Norwegian Expert Suggests Pak-India Condominium in Kashmir*. Jammu & Kashmir, 31 Jan. 2007. Web. <<http://www.jammu-kashmir.com/archives/archives2007/kashmir20070131a.html>>.
25. Abrar, Mian. "Kashmir Is at Best with Kashmiris." *Pakistan Today*, 15 July 2014. Web. <<http://www.pakistantoday.com.pk/2014/06/15/national/kashmir-is-at-best-with-kashmiris/>>.
26. Foldvary, Fred E. "Foldvary: Joint Sovereignty for Kashmir." *Foldvary: Joint Sovereignty for Kashmir*. Progress, n.d. Web. <<http://www.progress.org/fold250.htm>>.
27. Raman, B. "Role of R&AW in Liberation of Bangladesh." *Indian Defence Review*, 16 Mar. 2011. Web. <<http://www.indiandefencereview.com/spotlights/role-of-raw-in-liberation-of-bangladesh/>>.

28. TVK. "Ready to Cooperate If New Delhi Follows Vajpayee's Insaniyat Policy: Mirwaiz - The Vox Kashmir." The Vox Kashmir, 6 Nov. 2013. Web. <<http://www.thevozkashmir.com/2013/11/06/ready-to-cooperate-if-new-delhi-follows-vajpayees-insaniyat-policy-mirwaiz/>>.
29. John, Wilson. "Daily Describes Activities of ISI in India." *Daily Describes Activities of ISI in India*. Federation of American Scientists, 30 June 1999. Web. <<http://www.fas.org/irp/world/pakistan/isi/india.html>>.
30. "Discord in Pakistan's Northern Areas." International Crisis Group, 2 Apr. 2007. Web. <<http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/131-discord-in-pakistans-northern-areas.aspx>>.
31. "Constitution of Pakistan." (n.d.): n. pag. Government of Pakistan, 20 Apr. 2010. Web. <<http://www.na.gov.pk/publications/constitution.pdf>>.
32. Mir, Shahbbir. "Gilgit-Baltistan Part of Pakistan, Declares Court." The Express Tribune, 9 July 2010. Web. <<http://tribune.com.pk/story/26648/gilgit-baltistan-part-of-pakistan-declares-court/>>.
33. Singh, Priyanka. "GilgitBaltistan: Neither 'in' Pakistan Nor 'of' It?" Institute ForDefence Studies and Analysis, 6 Mar. 2012. Web. <http://3A%2F%2Fidsa.in%2Fidsacomments%2FGilgitBaltistanNeitherinPakistanNorofit_psingh_060212>.
34. "Lawyers Condemn Constitutional Deprivations of Gilgit-Baltistan." *PAMIR Voices of the Mountain Communities*. Pamir Times, 14 Mar. 2014. Web. <<http://pamirtimes.net/2014/03/17/lawyers-condemn-constitutional-deprivations-gilgit-baltistan/>>.
35. "'Gilgit-Baltistan Only Region of the World without Constitutional Rights", SAC Bar Association." Pamir Times, 1 Oct. 2013. Web. <<http://3A%2F%2Fpamirtimes.net%2F2013%2F10%2F01%2Fgilgit-baltistan-region-world-without-constitutional-rights-sac-bar-association%2F>>.
36. Stephen R. Graubard, (ed.). *Exit from Communism*. Transaction Publishers, 1993. Pp. 153-154.
37. "Musharraf Pushes Shared Kashmir Sovereignty Plan." | Reuters. N.p., 05 Dec. 2006. Web. <<http://uk.reuters.com/article/2006/12/05/uk-kashmir-musharraf-idUKDEL28462720061205>>.
38. "Manmohan Confirms Missed Opportunity with Pakistan on Settling Kashmir Dispute | Latest News & Updates at Daily News & Analysis." Daily News Analysis, 4 Jan. 2014. Web. <<http://www.dnaindia.com/india/report-manmohan-confirms-missed-opportunity-with-pakistan-on-settling-kashmir-dispute-1945141>>.

Photography Credits

1. Simpson, William. 2013. *Muslim Shawl Makers Kashmir 1867*. India: Ancient and Modern. Web. <<http://upload.wikimedia.org/wikipedia/commons/0/06/Muslim-shawl-makers-kashmir1867.jpg>>

2. *Kashmir Disputed.* 2003.Univesity of Texas. Web. <http://www.lib.utexas.edu/maps/middle_east_and_asia/kashmir_disputed_2003.jpg>
3. *Shimla Agreement.* 2012.Kashmir Life. Web. <<http://kashmirlife.net/wp-content/uploads/2012/11/Shimla-agreement.jpg?6d2a1d>>
4. *International Court of Justice Logo.* UNO Stamps. <http://www.unostamps.nl/subject_international_court_of_justice_bestanden/image003.jpg>
5. *United Nations Emblem.* The Forbidden Knowledge. Web. <http://www.theforbiddenknowledge.com/hardtruth/un_emblem.gif>
6. *Constitution of India.* 2013. Niti Central. Web. <<http://img.niticentral.com/2013/12/constitution-dec-5.jpg>>
7. *Lord Mountabatten Meets Jawaharlal Nehru.* Broadland Archives. Web. <http://www.broadlandsarchives.com/uploaded_files/2af.jpg>
8. *GilgitBaltistan.* Blogspot. Web. <<http://2.bp.blogspot.com/-6jmAdgXGMxQ/T-PtL-jGVAI/AAAAAAAAASQ/9wBVWAFPFk/s1600/gilgit2.jpg>>
9. *Vajpayee-Sharif.* 2013. Rediff. Web. <<http://im.rediff.com/news/2013/oct/22sharif-vajpayee.jpg>>
10. *Supreme Court of Pakistan.* 2012. Pakistan Today. Web. <<http://cache.pakistantoday.com.pk/2012/03/Supreme-Court-of-Pakistan-Appeal-against-Reko-Diq-Deal4.jpg>>
11. *Jammu City.* Wikimedia. Web. <http://upload.wikimedia.org/wikipedia/commons/f/fb/Jammu_city.jpg>