

INDIA/PAKISTAN RELATIONS AND KASHMIR:

STEPS TOWARD PEACE

24 June 2004



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INDIA/PAKISTAN RELATIONS AND KASHMIR: STEPS TOWARD PEACE

EXECUTIVE SUMMARY

The agreement between Pakistan's president, Pervez Musharraf, and India's new prime minister, Manmohan Singh, to continue talks on all contentious issues including Kashmir has inspired optimism about reduced tensions in South Asia. If decades of conflict are to be settled, however, the two sides must both do much more to address grievances and deal with the legacies of a half century and avoid too ambitious an effort to attempt everything at once. They need to foster all forms of bilateral contact and improve the lives of Kashmiris, who have borne the worst of the conflict. Dialogue will have to be expanded beyond high governmental levels if real constituencies for peace are to be nurtured.

This report builds on previous work published by ICG on Kashmir and India-Pakistan relations and was written after extensive consultations with experts representing various viewpoints. It does not lay out a template for peace or what a comprehensive solution would look like because the circumstances for a diplomatic endgame are not yet ripe. Any such proposal at this stage would surely be rejected by both sides. Instead, it suggests steps forward to widen a peace process and make it more sustainable. Previous attempts to reach agreement have all faltered, often after highly-charged summit meetings. It is vital that the current attempts be structured in a way that makes them more durable and less prone to disruption by extremists or violence. Many suggestions are made throughout the paper on how to do this, and how to improve the lives of Kashmiris. The main themes are outlined below.

Five forms of dialogue will be needed to work toward a lasting peace:

Dialogue on normalisation of relations. This is already going on but will need to deal with ways to reduce the risks of conflict and develop confidence building measures (CBMs). Previously

agreed CBMs have generally failed and will need to be revitalised while new links should be established to reduce risks of conflict. A wider array of economic, social, sporting and un-official "Track II" contacts should be established.

Dialogue with Kashmir. Relations between the federal government in New Delhi and the state authorities in Srinagar have improved but more could be done. There needs to be revival of debate on Article 370 of the constitution that granted Kashmir a high degree of autonomy, commitment to a ceasefire and willingness to follow through with policies aimed at improved security, human rights and economic welfare in the province. Pakistan's relationship with Muzaffarabad and the area of Kashmir under its control will also have to be reassessed: Pakistan should allow free elections there and reduce the role of security forces. It should also discuss constitutional and legal changes that undermine the governance of the area.

Dialogue within each country. Both Pakistan and India need to do more to open up discussion at home about normalisation and Kashmir. Parliamentary debates should be sustained outside times of crisis, and both sides ought to do more to explain the economic and social benefits of peacemaking. India will have to recognise the usefulness of a greater international role in supporting any peace and making progress to improve lives in Kashmir. Pakistan will need to follow through on its repeated pledges to end assistance to extremists who resort to violence in Kashmir and to halt infiltration across the Line of Control.

Dialogue within Kashmir. Kashmir is now a highly divided society. Efforts must intensify to mend the rifts between its three religious

groups -- Muslim, Hindu and Buddhist -- to reduce the gulf between rural and urban areas and to deal with the issue of displaced people.

Dialogue across the Line of Control (LoC). Improved relations between India and Pakistan will eventually have to lead to greater contacts among Kashmiris across the LoC. Both sides should permit a wider array of contacts and desist from anything that would disrupt future dialogue.

All discussion on these issues will be contentious but necessary if the relationship between India and Pakistan is to gain enough ballast that it cannot again be upset as it was in 1999 and 2002 when they nearly went to war.

Kashmir has been changed for ever by more than a decade of conflict. Beyond the political discussions that need to take place, much more must be done to repair the fabric of society in a way that reduces extremism and gives new hope for the future. State Premier Mufti Mohammed Sayeed's call for a "healing hand" needs to be backed up with concerted federal and state action to boost the economy, re-establish tourism, improve human rights and security, reduce abuses by the security forces and help the many victims of the conflict.

Everything from governance to education and healthcare needs funding and inventive policymaking.

Almost all the burden of ending conflict in South Asia lies with the Indian and Pakistani governments but supportive, sustained and sensitive international assistance is also required. Direct mediation or a major UN role have been rejected by New Delhi but the Indian government should recognise that some post-conflict assistance would be useful. The U.S. has played a key role in defusing conflicts but needs to develop a longer-term policy perspective to prevent crises from blowing up. The European Union (EU) should make South Asia a greater priority and be more willing to take an active part there by promoting economic and social integration and doing more to promote democracy in Pakistan.

Any number of missteps could derail the tentative process that is now under way. India and Pakistan must recognise that dialogue will only prosper if it is gradual, sustained, and held mostly outside the glare of the media. They should resist the temptation to push the pace on contentious issues and opt instead to move steadily toward a normalisation of relations. Additional and modest CBMs, including enhanced trade ties, would strengthen existing domestic stakeholders, create additional ones and generate an enabling environment for negotiations on the Kashmir dispute.

Islamabad/New Delhi/Brussels, 24 June 2004

INDIA/PAKISTAN RELATIONS AND KASHMIR: STEPS TOWARD PEACE

I. INTRODUCTION

India's new prime minister, Manmohan Singh, and Pakistan's president, Pervez Musharraf, have agreed to continue a "composite dialogue" set in train in January 2004, which would cover all contentious issues including Kashmir.¹ Abiding by the framework agreed upon the next month by senior bureaucrats, their foreign secretaries are to meet in New Delhi to discuss issues of peace and security and Kashmir on 27-28 June 2004.² In July, India's foreign minister, K. Natwar Singh, will pay his first visit to Pakistan to attend the ministerial meeting of the South Asian Association for Regional Cooperation (SAARC). The new Congress-led government's agreement to continue talks with Pakistan has raised expectations. Many

hope that this dialogue will mark a turning point in relations between the traditional adversaries, leading to progress on the settlement of their 57-year-old dispute over the former princely state of Jammu and Kashmir.

Yet, despite these signs of optimism, any possible resolution of the Kashmir conflict remains distant. The atmosphere of mistrust is so intense, the obstacles to peace on both sides so high, that agreement on a comprehensive peace plan in the near future would be near impossible, let alone workable.

This report builds on previous publications by ICG on the issue of Kashmir and India-Pakistan relations and was derived from widespread consultations with experts of various viewpoints. It does not aim to lay out what an agreement between the two countries would look like because that would be premature, but suggests instead how the newly resumed dialogue might best proceed.

The two sides would do best to avoid setting a timeframe for a summit meeting to follow talks between their bureaucracies and foreign ministers. Since the foundations of peace have not yet been laid, any attempt to build an edifice after one highly charged summit meeting is likely to fail and could result in worsening tensions. Yet, official level talks alone are insufficient. The problems between the two countries, and within them, are so great that they will only be resolved if the current dialogue develops in five areas:

- Dialogue on the normalisation of relations between India and Pakistan. If the proposed composite dialogue is to succeed, it must return relations at least to where they were in 1999 before the Kargil conflict. It would also need to build on this and develop tangible ways to reduce the risks of conflict, lower tensions,

¹ Meeting on the margins of the SAARC summit in Islamabad in January 2004, a year and a half after the two nuclear armed states came to the brink of their fourth full-scale war, Prime Minister Atal Behari Vajpayee and President Pervez Musharraf agreed to resume the stalled diplomatic dialogue and to resolve peacefully all contentious issues, including Kashmir. Following up, India and Pakistan's foreign secretaries agreed on the modalities and timeframe of the "composite dialogue" in Islamabad on 18 February 2004. The foreign secretaries are to meet on 27-28 June 2004 for talks on peace and security, including Confidence Building Measures (CBMs) and Jammu and Kashmir. In July, the two sides are to hold talks on Siachen, Wuller Barrage/Tubul Navigation Project, Sir Creek, terrorism and drug trafficking, economic and cultural cooperation, and promotion of friendly exchanges in various fields. In August 2004, the foreign ministers are to meet to review overall progress. Hasan Akhtar, "Schedule set for Kashmir talks", *Dawn*, 19 February 2004; Shaiq Hussain, "Kashmir talks after Indian elections", *The Nation*, 19 February 2004.

² Expert-level talks on nuclear CBMs were held in Islamabad on 19-20 June 2004. In addition to upgrading the existing hotlines between their director generals of Military Operations, India and Pakistan agreed to establish a hotline between foreign secretaries to reduce nuclear risks and reconfirmed commitments made in Lahore (1999) to refrain from further nuclear tests. Javed Naqvi, "Nuclear hotline to be set up, Pakistan, India to continue test ban", *Dawn*, 21 June 2004.

develop confidence building measures (CBMs) in all areas, and move the countries away from their hostile postures. The decision to implement the February 2004 agreement on the agenda, structure and timeframe of the composite dialogue process is a beginning. But this needs to be expanded beyond meetings of civil servants and politicians to create links between a whole web of institutions from civil society groups to business organisations.

- Dialogue between the governments in New Delhi and Islamabad with the governments and people of Jammu and Kashmir and Azad Jammu and Kashmir respectively. This needs to focus on ways to reduce conflict, increase political representation and improve governance in the Indian and Pakistani-administered regions of the former princely state.
- Dialogue within India and Pakistan on the issue of Kashmir and on normalisation between the countries. There needs to be greater discussion of the political, social and economic costs of decades of conflict and the benefits of peace in order to build constituencies for improved relations.
- Dialogue within Jammu and Kashmir and Azad Jammu and Kashmir on ways to improve the lives of Kashmiris on both sides of the Line of Control (LoC). This needs to build on recent improvements in the security situation along the LoC and in the political atmosphere in Jammu and Kashmir. More than a decade of intensive conflict in Jammu and Kashmir has led to a breakdown in social, economic and political structures and undermined trust.
- Dialogue between Kashmiris across the LoC. Families remain divided, and the economies and politics of the two areas have grown apart. These divisions will need to be dealt with.

Kashmir remains a critical issue between India and Pakistan. Both will need to make several major changes to their policies if they wish to lay the groundwork for peace. Pakistan must give up its support for militancy, work intensively to disband militant groups and recognise that its policy has not only led to intense suffering for the Kashmiri people but has undermined stability at home. India must recognise that its rule over Jammu and Kashmir has been plagued by poorly conceived policies and disastrous mistakes. The Indian government has blamed the problems in Kashmir

on externally driven terrorism but that is only part of the picture. There needs to be recognition that aspects of the insurgency are home-grown and the problems there require unique solutions. Many result from poor governance. Correcting these errors requires that accountability and transparency be at the heart of new policies. India and Pakistan must take the political decision to lower hostile rhetoric and focus on the benefits of peace.

This report suggests action on a number of fronts. Peace in Kashmir and reduction of tensions between India and Pakistan require a sustained, long-term effort by many parties taking many small steps. They require extensive dialogue in several areas to rebuild trust and get all parties to a point where they can tackle the most contentious issues. There is also little likelihood of compromise until much more has been done to improve the lives of Kashmiris that have been so damaged by conflict.

There will need to be greater international engagement, in particular by the U.S., in both establishing forms of dialogue and helping Kashmiris. There are considerable obstacles to this that India and Pakistan must remove if the situation is to improve. India, in particular, needs to recognise that the security risks of confrontation with Pakistan mean that there is now inevitably a legitimate international role. Privately Indian officials acknowledge this -- it is time to do so openly.

II. DIALOGUE

A. NORMALISATION OF RELATIONS

It is hard to overstate the level of mistrust between India and Pakistan. Decades of conflict and hostility have created a situation in which both sides almost always ascribe the worst possible motives to each other. The governments have developed a mindset in which they are willing to suffer immense losses to score minor points.³ Recent attempts to break through this mistrust have often backfired. The summit meeting between Prime Ministers Atal Bihari Vajpayee and Nawaz Sharif at Lahore in February 1999 was undermined by the conflict that Pakistan's military provoked soon afterwards at Kargil, at a time when it was headed by General Pervez Musharraf. Musharraf came to the Agra summit in 2001 but the breakdown of that meeting worsened the situation. The attack on the Indian parliament in December 2001 pushed the countries close to war and cut back their already limited contacts.

On 18 April 2003, Prime Minister Vajpayee offered a hand of friendship to Pakistan. Subsequently, some tangible steps were taken to improve relations. High commissioners (ambassadors) resumed their posts.⁴ In November, India and Pakistan agreed to a ceasefire along the LoC and on the Siachen glacier. By early January 2004 all transportation links, including air, bus and train, had been restored. Vajpayee's participation in the twelfth SAARC summit in Islamabad and the subsequent agreement on a "composite dialogue", to include negotiations on the Kashmir dispute, marked the highest point of relations since 1999.

While some analysts warned that the surprising results of the Indian election in April 2004 and the resultant change of guard in New Delhi could disrupt the momentum of the normalisation process, the new prime minister, Manmohan Singh, and foreign minister, Natwar Singh, have cited improved relations with Pakistan as a major priority⁵ and

assured Islamabad of their intention to engage in a constructive and sustained dialogue on all contentious issues, including Kashmir.⁶ However, the experience of the Lahore and Agra meetings should warn against over optimism. Those earlier summits raised expectations unreasonably but ultimately led to deterioration in relations. There needs to be recognition that the process of normalisation and confidence building must precede attempts to reach a comprehensive peace settlement on Kashmir even as it accompanies bilateral discussions on aspects of the dispute. The first steps should be to lower tensions and establish closer and sustained links in less controversial areas. The process can then progress to more problematic issues later.

The following steps should be considered as a way to move the normalisation process forward:

- ❑ both sides should appoint high-level special envoys to lead the talks -- trusted emissaries of the leaderships. Appointing envoys avoids the pitfalls of moving straight to summit meetings, as in the past, while reducing the influence of bureaucrats who have tended to be reluctant to move on many normalisation issues;
- ❑ the agenda agreed upon in February 2004 is based on previous discussions and includes the widest array of issues.⁷ It represents a welcome first step but it must be sustained, regardless of immediate results. A longer, slower process is more likely to be productive than the stop/go talks of the past. Both sides should stay with the full timetable of talks regardless of any provocations by extremists who might try to derail them. They should, moreover, opt for closed-door meetings, without press conferences, in order to lower expectations and reduce the over-heated media attention that is likely to surround such talks;
- ❑ India should reconsider its public opposition to international facilitation of the talks. There are

³ An example was India's decision to cut off all communication links, including over-flights, during the 2001-2002 near war crisis and Pakistan's subsequent foot-dragging on their restoration. Neither state stood to gain from its actions.

⁴ However, the staffs of both high commissions are still reduced and are issuing very few visas.

⁵ "Indian Foreign Minister to visit Pakistan in July", Reuters, 7 June 2004.

⁶ In the Common Minimum Program, agreed upon by the fourteen-party United Progressive Alliance (UPA) government and its left allies, the government has committed itself to a dialogue with Pakistan "on all issues", which will be "pursued systematically and on a sustained basis." Text of the Common Minimum Program in *The Hindu*, 28 May 2004 at <http://www.hinduonnet.com/2004/05/2004052807371200.htm>.

⁷ Earlier agreements identifying subjects to be included in a composite dialogue were reached at summits (Simla, Lahore and Agra) and between foreign secretaries (Male in 1997 and Lahore in 1998). See K. Shankar Bajpai, "Untangling India and Pakistan", *Foreign Affairs*, 1 May 2003.

several precedents for international involvement. The Indus Water Treaty of 1960 was sponsored by the World Bank, which is the treaty's guarantor. The Soviet Union facilitated the talks that led to the Tashkent Agreement in January 1966.⁸ India has in the past few years relied on U.S. engagement in its disputes with Pakistan, for example, to apply pressure on Islamabad to disengage in Kargil and later to withdraw support for cross border incursions. More recently, the U.S. was pivotal in bringing the governments back to the negotiating table, successfully persuading Prime Minister Vajpayee to resume dialogue with Pakistan.⁹ The reality is that the U.S. is now a regional power with direct military involvement in South Asia and powerful interests not just in acting as a fire-fighter during crises but as an active participant in the development of peace. Including it openly would mostly be recognition of a reality that already exists but would nevertheless be helpful in moving the process forward;

- SAARC's potential to assist dialogue between India and Pakistan must be utilised more effectively. The charter of the regional body excludes bilateral and contentious issues but it can serve as a forum to promote cooperation in areas such as trade, thus assisting the normalisation process by building and strengthening domestic constituencies for peace; and
- there is need for CBMs that actually work. Too many have been little more than formalities. The establishment and implementation of the timetable for talks is itself useful. Restoration of air, bus and train links has been welcome and will help build confidence between the two countries. Similar opportunities in other areas need now to be seized.

Key CBMs initiated between India and Pakistan since their last full-scale war in 1971 have been:

- 1965: hotline between Military Operations Directorates;
- 1988: agreement on the Prohibition of Attack against Nuclear Installations and Facilities, ratified and implemented in 1992;
- 1989: hotline between prime ministers signed between Rajiv Gandhi and Benazir Bhutto;
- 1991: agreement on Advance Notice of Military Exercises, Manoeuvres, and Troop Movements; and
- 1992: measures to Prevent Air Space Violations and to Permit Overflights and Landing by Military Aircraft.¹⁰

While these initiatives were sound in themselves, mistrust between the governments prevented successful implementation. For example, both countries accused each other of spreading misinformation through the hotlines. Similarly, neither can verify the accuracy of the information even as they have continued to exchange lists of nuclear facilities under the 1988 agreement. In August 1999 India shot down a Pakistani aircraft it claimed had entered its airspace, an allegation Pakistan denied.¹¹ The absence of a specific blueprint for addressing such disputes is a conspicuous gap in the CBMs undertaken so far.

The current easing of tensions provides an opportunity to reassess and revitalize the role of CBMs in normalising relations. A new approach does not require a sweeping shift, but detailed definitions of what constitutes a violation are needed, for example, as well as mechanisms to address disputes over CBMs.

The following steps could be considered:

- stipulate "the levels, direction, and frequency of communications" with respect to hotlines between military officials,¹² and ensure the continued use of these channels during times of escalated tension;

⁸ The Tashkent Agreement restored normal relations after the 1965 war and addressed the issue of the release of prisoners of war. Text of Tashkent Agreement at <http://www.acdis.unic.edu/homepage.docs/Link.docs/Treaty.docs/tashkent.html>.

⁹ President Bush and Secretary of State Colin Powell recently disclosed that U.S. intervention had prevented India and Pakistan from going to war in early 2002, and that U.S. involvement had been a key factor in the two governments' decision to return to the negotiating table. See Anwar Iqbal, "Shuttle Diplomacy Prevented Indo-Pakistan War: Bush", *Dawn*, 23 April 2004; J.N., "Powell Claims Peace Role in South Asia", *Dawn*, 28 May 2004.

¹⁰ Swati Pandey and Teresita C. Schaffer, "Building Confidence in India and Pakistan", *South Asia Monitor* No. 49, Centre for Strategic and International Studies, 1 August 2002.

¹¹ Ibid.

¹² Ibid.

- apply similar conditions to the hotlines between the prime ministers, adding a proviso that details procedures and requirements during times of crisis; and
- establish a joint body to review cases of alleged airspace violations, possibly including a third party observer, and a procedure for investigating and reaching a settlement.

Additional CBMs could include:

- regular contacts between Indian and Pakistani parliamentarians;
- joint monitoring of the LoC, possibly with participation of a third-party observer, such as the UN;
- conventional and nuclear risk reduction centres in Islamabad and New Delhi to share information during periods of escalated tension;
- a joint commission on conflict resolution, to make and oversee administrative decisions, monitor and evaluate developments, maintain a regular exchange of information, and settle disputes, with the Permanent Indus Commission perhaps as a model and provision for appeal of unresolved disputes to a neutral expert;
- return to normal levels of diplomatic staff in each other's countries, remove restrictions on the movement of diplomats and agree not to allow individual incidents of violence to impact the size and function of the diplomatic missions;
- maintain frequent contact between the proposed special envoys, preferably away from the media glare that raises expectations and domestic pressures on both sides; and
- institute a liberal visa regime that enables greater interaction between the business community and other civil society stakeholders.

The last recommendation is potentially the most important CBM since there is need to broaden the dialogue beyond governments and allow a wider range of discussions between different interest groups. There is an enormous desire for such meetings, and both countries have well developed civil society organisations that could become significant constituencies for peace.

In December 2003, the two governments approved plans for a Track II dialogue between former senior army generals, diplomats and leading intellectuals to

discuss the reduction of defence budgets, nuclear restraint and stabilisation, and trade ties.¹³ Talks in Islamabad in January 2004 covered topics ranging from alternatives to the officially held positions of both governments through a common currency by 2015.¹⁴ Further discussions have been scheduled in New Delhi for September 2004. The potential of such a dialogue to impact public opinion and policy decisions in both countries is significant.

However, this and most other Track II initiatives have involved mainly retired government and military officials. There is need for much more active engagement of civil society actors in a wide range of areas including medical and legal issues, commerce, technology and the arts, such as:

- institutionalised contacts between chambers of trade and commerce;
- exchange programs for academics and between think-tanks;
- expansion of sporting ties at all levels, in the wake of the Indian cricket team's recent tour of Pakistan and the ninth South Asian Federation Games in Islamabad in March 2004, which had enormous impacts on people-to-people relations;
- exchange programs and collaborations between journalists from both print and electronic media, which could play a crucial role in stemming unfavourable popular perceptions and prejudices, especially during crises, when it is vital for the media to maintain objectivity;
- collaboration in the arts, such as the UN-sponsored trip of Indian actress Urmila Matondkar to Lahore in December 2003 to record a music video with a Pakistani band; and
- similar collaboration in science and technology, medicine, environment, and agriculture, areas where joint ventures would raise the stakes for peace within professional communities.

India and Pakistan also need to focus more on expanding economic links. The most compelling incentive for peace would be if each government

¹³ Ihtashamul Haque, "Track II Meeting to Discuss Cut in Defence Budgets", *Dawn*, 18 December 2003.

¹⁴ See "India Track II Team Arriving in Pak Today", at Yahoo! India News, 19 January 2004; and Javed Rana, "Track II Diplomacy Back on Track", *The Nation*, 20 January 2004.

viewed the security of the other as desirable or even necessary to protect substantial economic investments.

At the January 2004 SAARC summit, member states signed the Framework Agreement on a South Asia Free Trade Agreement (SAFTA), which will come into force on 1 January 2006. It calls for India and Pakistan to reduce tariffs to between 0 and 5 per cent over seven years. Both business communities have welcomed this, and its potential benefits are clear. Illegal trade between the two countries has been estimated at \$1.5-2 billion.¹⁵ Some analysts predict that with the removal of trade barriers, bilateral trade could reach \$5 billion.¹⁶ It is important now for both countries to:

- accept and implement the schedule agreed at the SAARC summit and use SAFTA as a springboard for greater economic investment and cooperation;
- involve their respective business communities in preparing and exchanging lists of sensitive domestic commodities that require protection from external competition, as called for under SAFTA;¹⁷
- explore possible collaboration in a broad range of fields, including the energy sector, which could be of particular mutual benefit given India's rapidly growing market and Pakistan's strategic geographic links to Iran and Central Asia;¹⁸ Foreign Minister Singh has said that India would be interested in a gas pipeline from Iran via Pakistan if Islamabad provided security guarantees, and Pakistan has expressed readiness to provide such guarantees if no "extraneous conditionalities" are attached;¹⁹ and

- expand bilateral road and rail links, extending to other regional countries such as Iran, Afghanistan, Bangladesh and Myanmar.

B. BETWEEN NEW DELHI AND SRINAGAR

After decades of excessive political interference by New Delhi in the state government, Prime Minister Vajpayee allowed relatively free and fair elections to the state assembly in September and October 2002.²⁰ That resulted in the coming to power of the People's Democratic Party-Congress coalition of Mufti Mohammad Sayeed, the first time since British India's partition that a government in Jammu and Kashmir was not dominated by the National Conference.²¹

The UPA government in New Delhi has expressed its intention to continue the dialogue, set in train by the BJP government and held between Prime Minister Vajpayee's special representative, N.N. Vohra, and the Kashmiri political leadership, including the moderate group led by Maulana Abbas Ansari under the separatist umbrella of the All Parties Hurriyat Conference (APHC).

In January 2004, talks were held with Kashmiri separatists for the very first time at the highest levels of the Indian government. These discussions of Vajpayee and Deputy Prime Minister L.K. Advani with the separatists underscored important mutual understandings, including the need to end violence in Kashmir and free political prisoners.

Retaining Vohra as the centre's special representative in Kashmir, the UPA government has announced policy initiatives that will go a long way toward addressing Kashmiri concerns.²² Indeed, a Congress-led government at the centre could mark a decisive new phase in relations with Srinagar. Already part of the government in Jammu and Kashmir, the Congress has more at stake in Mufti Sayeed's success.

¹⁵ All figures denoted in "dollars" in this report, unless otherwise noted, refer to U.S. dollars.

¹⁶ See ICG Asia Report N°68, *Kashmir: The View from Islamabad*, 4 December 2003.

¹⁷ These lists may prevent, to the extent feasible, cheap foreign goods from overwhelming vulnerable domestic markets.

¹⁸ A proposal submitted by Iran in January 2003 to India and Pakistan estimated Pakistani revenue from transit fees at \$600-\$800 million per year. Kavita Sangani and Teresa Schaffer, "India-Pakistan Trade: Creating Constituencies for Peace", *South Asia Monitor* No. 56, Centre for Strategic and International Studies, 3 March 2003.

¹⁹ "Pak ready to talk afresh on pipeline project", *Times of India*, 7 June 2004.

²⁰ The election was plagued by violence and saw a very low turnout in some key areas, particularly Srinagar, but overall was regarded as the most open in Kashmir for some time. See ICG Asia Report N°41, *Kashmir: The View from Srinagar*, 21 November 2002.

²¹ *Ibid.*

²² Vohra's designation has been changed from "Special Representative of the Government of India for initiation of dialogue with various groups in Jammu and Kashmir" to "Special Representative of the Government of India for Jammu and Kashmir dialogue".

In their Common Minimum Program, the UPA government has agreed with its left allies to repeal the controversial Prevention of Terrorism Act (POTA).²³ It has also committed "to respecting the letter and spirit of Article 370 of the Constitution that accords a special status to J&K" and to holding a sustained dialogue "with all groups and with different shades of opinion in Jammu and Kashmir".²⁴ These measures would go a long way toward improving centre-state relations and producing greater confidence among Kashmiris about New Delhi's intentions. To build on this improved atmosphere, further steps should include:

- reviving debate on restoring Article 370 of the constitution, which guarantees Indian-administered Kashmir "special status", to its original form, thus restoring the pre-1953 status that restricted New Delhi's jurisdiction to foreign affairs, defence and communications.²⁵ Parties like the BJP believe this would weaken centre-state relations, but efforts by rightist forces such as the Vishwa Hindu Parishad to abrogate Article 370 and abolish restrictions on sale and purchase of property in Kashmir only deepened alienation and mistrust among Kashmiris. The new government is committed to respect Article 370, in keeping with which it should consider a debate on repealing the 1954 presidential order that diluted its substance;²⁶
- ensuring that the dialogue with the APHC moderates is sustained and extended to include the alliance's hardliners, that political pledges are met, and that individual incidents are not allowed to derail it. Including hardliners in the process would help to make it sustainable and meaningful, while a breakdown of the dialogue would only benefit spoilers. Prime Minister

Singh's emphasis on the need to engage all shades of Kashmiri political opinion is a welcome shift from the BJP strategy of excluding militants;

- government commitment to a ceasefire with Kashmiri separatists and a limitation on security operations (discussed further below); and
- recognition that central government interference in Jammu and Kashmir's political and administrative life, a steady erosion of Article 370, and continued security operations targeting civilians have caused widespread discontent.

C. BETWEEN ISLAMABAD AND MUZAFFARABAD

Any dialogue between Islamabad and Muzaffarabad must also include the Northern Areas of Gilgit and Baltistan, which separated from the former princely state following a successful revolt against the Maharaja's decision to accede to India in 1947. Formally annexed by Pakistan, these territories were granted neither self-rule nor a defined constitutional status.

The Azad Jammu and Kashmir (AJK) constitution bars from elected office any individual who "propagates against, or takes part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan".²⁷ Individuals filing nomination papers for elections are required to sign a declaration that accepts Kashmir's accession to Pakistan as an article of faith. Those who refuse are denied participation. Decades of Pakistani interference in the political and administrative life of AJK have triggered bitterness toward Islamabad.

The AJK parliament is for all practical purposes subordinated to the whims of the Pakistan military, which dictates all policy through the ministry of Kashmir affairs & Northern Areas & States & Frontier Regions (hereafter the ministry of Kashmir affairs) and the Azad Jammu and Kashmir Council.²⁸

²³ The program states: "The UPA has been concerned with the manner in which POTA has been grossly misused in the past two years. There will be no compromise in the fight against terrorism. But given the abuse of POTA that has taken place, the UPA Government will repeal it".

²⁴ See text of the Common Minimum Program, op. cit.

²⁵ Article 370 of the Indian constitution was a temporary provision that limited the Indian parliament's legislative powers over Kashmir to defence, foreign affairs and communications, while residual powers rested with the state.

²⁶ This Presidential Order approved the extension of the centre's jurisdiction in Jammu and Kashmir from the original three subjects to others under the Union list. It paved the way for a steady erosion of Article 370 over the next decade such that Jammu and Kashmir effectively lost its "special status". See "Article 370: Law and Politics", *Frontline*, 16-29 September 2000.

²⁷ The Azad Jammu and Kashmir Interim Constitution Act, 1974 (as modified, May 1994), art. 7(2).

²⁸ The Council consists of the Pakistani prime minister as chairperson, who appoints five members from among federal ministers and members of the Pakistan National Assembly. Other members include the president of Azad Jammu and Kashmir; the AJK prime minister or nominee and six members elected by the AJK parliament. Bills passed by the Council do not require the AJK president or legislature's assent. While the Council acts as

The council's decisions are not subject to judicial review, even by AJK's Supreme Court. The 1974 constitution permits the Pakistan government to dismiss the elected AJK government. The AJK legislative assembly requires Islamabad's approval to enact statutory rules, or act on appointments, the budget, taxes and other administrative matters.

Pro-independence parties such as the United Front of Kashmir (Jammu and Kashmir Muttahida Mahaz), the Jammu and Kashmir Liberation Front (Amanullah Khan), and the Jammu and Kashmir National Awami Front are disqualified from participating in AJK parliamentary elections since they refuse to swear allegiance to Pakistan. Islamabad is repeatedly accused of rigging elections to marginalise pro-independence candidates. The status quo will continue to foster bitterness and hamper negotiations toward an acceptable and peaceful resolution of the Kashmir dispute.

In its dialogue with the AJK government, Pakistan should:

- open debate on amending the 1974 constitution to curtail the Azad Jammu and Kashmir Council and the Pakistan government's authority over the AJK parliament, especially the right to dismiss the government;
- remove the requirement for candidates to affirm commitment to AJK's accession to Pakistan and allow free and fair parliamentary elections open to pro-independence voices and parties;
- restrict governmental interference in AJK politics and governance, including the role of security agencies; and
- allow the AJK legislative assembly to enact statutory rules and budgets and take other administrative decisions without requiring Islamabad's prior approval.

Unlike AJK, which has an interim constitution, the constitutional status of the Northern Areas has never been determined, and its residents are not represented in the national legislature. The ministry

of Kashmir affairs oversees all policy and administration there. Islamabad should:

- follow through on the 1999 Supreme Court decision to grant the Northern Areas a well-defined constitutional status and representation in the national legislature, since efforts so far, including the establishment of the Northern Areas Legislative Council, have not been sufficient;
- include AJK in any dialogue on the status of the Northern Areas, and in addition to Pakistani political parties, allow AJK parties as well as those from the Northern Area to operate freely there;
- curtail the powers of the federal minister for Kashmir affairs and chief executive over the Northern Areas Legislative Council, removing the condition that he must consent for the council to pass a bill, and grant control over civilian law-enforcing agencies to the Legislative Council;
- institute a court of appeals, as required by the Northern Areas Council Legal Framework Order 1994 and the 16 December 2003 order of the Supreme Court;²⁹ and
- establish a public services commission for the Northern Areas, the absence of which "leaves an important discrepancy in the emergence of a professional civil service in the Northern Areas".³⁰

D. ON KASHMIR AND NORMALISATION

1. Within India

Much Indian rhetoric on Kashmir has focused on how any change might lead to two catastrophes -- the break-up of India into a number of smaller states and a wave of anti-Islamic violence across the country. Whether realistic or not, these scenarios play a powerful role in electoral politics, particularly among right wing parties and Hindu nationalists. Given the often-stated importance of Kashmir as a national and security issue, there is surprisingly little discussion on

Islamabad's instrument, it cannot make laws on defence and security or foreign affairs, including trade and foreign assistance. The federal ministry of Kashmir affairs "coordinates" relations with the AJK Council and government and oversees policy and administration and makes laws for the Northern Areas. See <http://www.pakistan.gov.pk/kashmiraffairs-division/about-division/overview>.

²⁹ See "N. Areas Court Yet to be Set Up", *Dawn*, 19 January 2003.

³⁰ Northern Areas Conservation Strategy (NACS) Support Project: "Northern Areas Strategy for Development: Background Paper on Governance", International Union for the Conservation of Nature, Pakistan Program, October 2002.

it and an absence of a national consensus. The subject tends only to arise in parliament during times of crisis when debate generally disintegrates into finger pointing at the government of the day.³¹

Mediation efforts carried out by senior civil servants have tended to be unstructured and unfocused, with the mediators receiving little guidance from the government. Their missions, which have lacked specific objectives and been carried out in an ad hoc manner, have tended to be more of a constraint on progress than a step toward a settlement.³²

Prime Minister Singh has expressed the need for a more structured, inclusive, and sustained dialogue between New Delhi and all shades of Kashmiri political opinion. For this to succeed, New Delhi should:

- lay out short-term, achievable goals and follow through on pledges since Kashmiris need to see some concrete action on such issues as human rights and policing;
- establish a clear negotiating strategy for the special interlocutor and allow him to hold discussions with as wide a range of political opinion as possible;
- establish regular parliamentary and public debates on Kashmir and Pakistan policy outside periods of immediate crisis; and
- lead a wider public dialogue on Kashmir with a view to harnessing the deep current of public hope for a peaceful settlement that has caused peace initiatives to be very popular with most Indians.

Since October 2002, a series of developments have signalled changes in India's political climate vis-à-vis Kashmir. These include: the National Conference's loss in the Jammu and Kashmir elections and the subsequent smooth transition to the PDP-Congress government; Prime Minister Vajpayee's visit to Srinagar in April 2003; the January 2004 India-Pakistan agreement on resuming a composite dialogue, including discussions on Kashmir; the initiation of a dialogue between the BJP government and Kashmiris; the UPA government's commitment

to repeal POTA; and Prime Minister Manmohan Singh's intention to continue dialogue with Kashmiris as well as with Pakistan.

These events may provide a foundation for increased discussion within India about improved ties with both Pakistan and Kashmir. However, to maintain momentum, the Indian government needs to:

- prevent individual incidents of violence from derailing the dialogue with Pakistan and acknowledge that terrorism has local as well as "foreign" roots. Vajpayee's insistence that Pakistan dismantle the terrorism infrastructure before embarking on a dialogue perpetuated the status quo but his subsequent unconditional assent to resume talking was an important step forward that the new government should not endanger by re-imposing any preconditions; and
- recognise, as noted, the international community's role in the Kashmir dispute.³³

2. Within Pakistan

Successive Pakistani governments have maintained a national myth that the country is not complete without inclusion of the whole of Kashmir. However this is relatively recent, cultivated most strongly during the rule of General Zia-ul-Haq (1977-1988). It is also held to more strongly in the Punjab than in other provinces and more among the military than the general population.³⁴

Domestic politics have contributed significantly to shaping Pakistan's Kashmir policy, with successive administrations playing the Kashmir card for political gain. Facing challenges to their domestic legitimacy, and the perceived need to win support from hardliners, military governments have displayed less flexibility on Kashmir than their civilian counterparts. The military also uses the dispute to justify high defence expenditures, including a costly nuclear program, and its interventions in politics. The conflict with India reinforces the army's self-

³¹ For more details, see ICG Asia Report N°69: *Kashmir: The View from New Delhi*, 4 December 2003.

³² Ibid.

³³ There is inconsistency in the Indian positions of insisting that the Kashmir dispute can only be solved bilaterally, without outside involvement, while seeking to internationalise the issue of "cross-border terrorism".

³⁴ Many senior members of the military come from the Punjab, which accounts for some of the institution's attitudes toward both Kashmir and India. Only about 2 per cent of the officer corps is from Sindh.

appointed role as the nation's sole guardian against an aggressive and nuclear-armed neighbour.

The military establishment has repeatedly disrupted, or even reversed, attempts by civilian governments to adopt a more moderate approach toward India. Benazir Bhutto's first government tried to improve cross-border relations, establishing CBMs with Prime Minister Rajiv Gandhi such as the agreements on the Prohibition of Attack against Nuclear Installations and Facilities and establishment of a prime ministerial hotline. Bhutto, who threatened the military's hardline strategy toward its perennial adversary, was eventually dismissed by President Ghulam Ishaq Khan, a leading bureaucrat of the Zia regime. Similarly, Nawaz Sharif's overtures to India during his second government, culminating in the Lahore declaration of February 1999, were quickly thwarted by the army's incursion into Kargil. Sharif's decision to withdraw from Kargil estranged the military establishment, leading eventually to the October 1999 coup.

The post-1989 insurgency in Jammu and Kashmir has added a more radical Islamic dimension to the Kashmir dispute. In the army's perception, Kashmiri and non-Kashmiri militants have raised the dispute's political, military and economic costs for India, bleeding its army at minimal expense to Pakistani conventional forces.³⁵ Policymakers also believe the insurgency has restored international attention to the Kashmir issue. Although it denies giving more than moral and diplomatic backing to Kashmiri dissidents, Pakistan's unofficial support for the extremists has become a fundamental component of its Kashmir policy.

During the January 2004 SAARC summit, President Musharraf pledged that he would not allow Pakistani territory to be used for terrorist activity. While this appeared a welcome shift of policy toward the Kashmir insurgency, his subsequent insistence on a distinction between terrorists and freedom fighters³⁶ suggests that support for militancy in Kashmir could continue. This support has both damaged Pakistan's international standing and resulted in an uncompromising response from India. Pakistan should:

- ❑ demonstrate to India and the international community a genuine determination to curb extremism in Kashmir by stopping all support to militants in Jammu and Kashmir, launching a more intensive effort to crack down on Pakistan-based extremist organisations, preventing use of its territory for training extremists, and halting infiltrations across the LoC;
- ❑ stop exploiting divisions within the APHC, for example by pitting pro-Pakistan hardliners like Syed Ali Geelani against more moderate elements like Maulvi Abbas Ansari and Mir Waiz Umar Farooq who have proved willing to negotiate with India, thereby weakening the organisation and its role in promoting a peaceful solution of the Kashmir dispute;
- ❑ lead a public dialogue on all possible solutions to the Kashmir dispute, including alternatives to a UN-sponsored plebiscite; President Musharraf's recent suggestion that Pakistan may consider such alternatives is the first indication that the military establishment is willing to shift from its 57-year-old demand for a plebiscite;
- ❑ ensure that secular parties are not marginalised in favour of religious parties that support Musharraf and the military (Pakistan's history shows secular parties as more conciliatory on relations with India);
- ❑ abandon its long-held condition that the focus of any dialogue with India must be the Kashmir dispute, a rigid position that has proved to be self-defeating and has prevented an effective dialogue on economic ties and other important areas that could dramatically improve relations; and
- ❑ uphold its side of the bargain in the current ceasefire and maintain a minimal military presence at the LoC;

It will ultimately be important for Pakistan to take several more far reaching steps. It will have to lower its unsustainable level of defence expenditure in favour of public spending on social services, including education, health and public housing. It is unlikely that any cuts will be made in the short-term but the long-term aim of policymakers should be to reduce military spending to a more affordable level. Even before that happens, it should ensure transparency in those expenditures by allowing the

³⁵ See ICG Report, *The View from Islamabad*, op.cit.

³⁶ Musharraf's address to the AJK Legislative Assembly. See "President rules out unilateral flexibility", *The News*, 6 February 2004.

defence budget as well as nuclear decision-making to be debated in parliament.

Even more fundamentally, a sustainable peace in South Asia requires a return of decision-making power to elected civilians and the curtailing of the military's political role in the dispute. Historically, the military's judgements have prevailed over those of civilians on Kashmir but its corporate and political interests have not been consistent with practical and diplomatic solutions. Again, a change might not happen in the short-term but international policymakers should work for a return to democratic rule in Pakistan with the aim of promoting wider peace and prosperity in the region.

E. DIALOGUE WITH KASHMIR

1. Indian-administered Kashmir

The October 2002 elections in Jammu and Kashmir will mark a significant turning point in the state's political history if the Sayeed government can make good its pledges, with New Delhi's support. A non-National Conference government in power for the first time since India's independence has fostered hope that the government in Srinagar may finally shake the puppet-regime label, and address corruption, human rights violations and incremental erosion of Jammu and Kashmir's administrative and political autonomy. However, the low voter turnout in the Valley in the 2004 general elections reflects the intensity of violence as well as the level of Kashmiri alienation, underscoring the challenges that lie ahead for the PDP-Congress coalition.

Chief Minister Mufti Mohammed Sayeed's government has shown some signs of commitment to delivering its promised "healing touch" to the state. A few months into its term, in February 2003, it released APHC leader Syed Ali Shah Geelani from prison. It has also acted against police personnel suspected of human rights violations and disbanded the Special Operations Group (SOG).³⁷

However, overall progress remains slow. With the help of its central government allies, Srinagar should now accelerate this process. Dialogue needs to focus on a number of key issues:

- building trust among the civilian Muslim population, whose sense of security has been severely damaged by human rights violations. Firmer action against former SOG personnel is long overdue, and many SOG officers were assimilated into other security forces when the organisation was disbanded. To end a climate of impunity, those guilty of human rights and other violations must be held accountable;
- creating linkages between the three key areas of the state -- the Srinagar Valley, Jammu, and Ladakh. The Valley is predominantly Sunni Muslim, with less than 5 per cent of the population Hindu, Sikh and Christian. Hindus form a slight majority in Jammu, while Ladakh's population is divided between Buddhists and Shia Muslims. The state and central governments should facilitate dialogue between representatives of these religious and ethnic groups;³⁸
- dealing with the issue of displaced persons, particularly Kashmiri Pandits³⁹ who fled the Valley;
- continuing to address the issue of political prisoners held without trial. While the Sayeed government's release of some prisoners is notable, human rights groups contend scores remain, and it must recognise this is an ongoing concern. Most political prisoners have been held under POTA, which Congress opposed in opposition when it was enacted in March 2002 and has pledged to repeal now that it is in government. However, it should also look at immediately pending cases and release those arbitrarily held; and
- dialogue with the central government; the UPA government's promise to continue talks between high-level officials such as N.N. Vohra and Kashmiris may set the tone for sustained contacts and exchange of viewpoints but will prove fruitful only if all sides demonstrate flexibility.

The APHC will have to put its own house in order. The rift between hardliners and moderates will continue to damage its function as an effective voice for Kashmiris. It must also publicly denounce violence to forward its political goals and engage more meaningfully with New Delhi on social and economic issues. It should, moreover,

³⁷ See ICG Report, *The View from New Delhi*, op.cit.

³⁸ See ICG Report, *The View from Srinagar*, op.cit.

³⁹ Section of a Hindu caste with origins in Kashmir.

adopt a more inclusive agenda, extending membership to non-Muslim Kashmiris and non-secessionist Kashmiri parties.

2. Pakistan-administered Kashmir

In Azad Kashmir, where governments have tended to follow Islamabad's directives, ignoring their political opposition, an internal dialogue is equally essential. The Azad Jammu and Kashmir government will need to:

- ❑ ensure the political rights of all parties, including pro-independence ones;
- ❑ build trust with opposition parties, including the AJK chapter of the APHC and pro-independence voices, and work toward a consensus on any proposed solution to the dispute through dialogue;
- ❑ lead a wider public debate on settling the Kashmir dispute, offsetting perceptions that its positions on the final proposed solution have been dictated by Islamabad; and
- ❑ create linkages with the Northern Areas, pressuring the Pakistani government to allow Kashmiri parties to operate there freely.

For its part the Pakistan chapter of APHC should seriously engage with Islamabad and Muzaffarabad on political, administrative, judicial and constitutional reforms.

F. ACROSS THE LINE OF CONTROL

Dialogue across the LoC is needed as part of an effort to improve the welfare of Kashmiris on both sides of the border, reuniting divided families and developing links that might reduce support for militancy. Steps should be taken by both India and Pakistan to:

- ❑ reduce their military presence along the LoC and stabilise the ceasefire; their heightened military presence at the LoC will obstruct the dialogue, at both official and people-to-people levels; while a minimum military presence should be maintained, neither country should allow individual incidents of violence to escalate tensions and derail the ceasefire agreement;
- ❑ permit cross-LoC contacts; the recent initiative from Pakistani and Indian border guards to

allow divided families to communicate across the LoC⁴⁰ should be followed up with more intensive efforts to facilitate personal contact between divided families;

- ❑ restore communication links; a first step could entail starting a bus service between Srinagar and Muzaffarabad, at the same time addressing the sensitive issue of travel documents for Kashmiris using the route; the two sides should also relax restrictions on Kashmiris visiting the other's territory for family reunions; and
- ❑ facilitate a cross LoC dialogue by permitting and encouraging regular contacts between the governments in Srinagar and Muzaffarabad and between Kashmiri political parties on both sides of the LoC;

The APHC itself should maintain a high level of contact and unity between its branches in Pakistan-administered and India-administered Kashmir.

⁴⁰ Tariq Naqash, "Divided Kashmiris speak to each other along LoC", *Dawn*, 30 November 2003.

III. IMPROVING THE LIVES OF KASHMIRIS

Any solution to the crisis in Kashmir and indeed the wider problem of relations between India and Pakistan needs to start with immediate efforts to improve the lives of Kashmiris. Fifteen years of militancy and violence on the back of decades of corrupt, exploitative and unrepresentative government have taken a terrible toll on economy, politics, society and culture in Jammu and Kashmir and particularly in the Kashmir Valley. Estimates of the death toll vary greatly. India places it at 40,000 but the APHC believes that 100,000 have died since 1990.⁴¹ Many more have been injured. According to the Indian government, some 1,150 government buildings, 540 educational establishments, 337 bridges and nearly 11,000 private buildings have been destroyed.⁴²

One of the first and most important steps in improving the lives of Kashmiris should be for Pakistan to cease all support for militant groups and cross-border incursions. Pakistan's claim that it only provides moral and diplomatic support is not credible. Indeed most Pakistani governments have shown a remarkable indifference to the welfare of Kashmiris. India will not give up the state at the end of a gun, and Pakistan's support for militancy has harmed itself as much, or perhaps more, than its enemy. Support for violence in Kashmir just breeds more violence. The Kashmiris suffer most.

In the past decade, Kashmiris have seen many of the most prized aspects of their lives and cultures severely damaged by conflict. A tradition of hospitality has been replaced by suspicion in a world of informers and mistrust. Education has broken down, and traditional craft production and other customs have been damaged. The economy is now defined by corruption and opaque state control rather than openness and opportunity. The collapse of the legal system has created a culture of impunity.

Mufti Mohammed Sayeed had said the state needs "a healing touch" and "our own version of a

Marshall Plan".⁴³ He pledged an era of much more open government in the state that might restore some faith in democratic institutions. He highlighted severe problems of low literacy, weak prospects for employment generation, a lack of foreign investment and power shortages. He also complained that basic services were often unavailable even though Kashmir exceeds the average of Indian states in per capita tax collection.

As noted, despite some signs of optimism, Sayeed has yet to deliver on most of the promises made during his election.⁴⁴ Partial blame must fall on the previous government in New Delhi, which did not move quickly enough to capitalise on the improved atmosphere and take the necessary steps to improve human rights and the security situation. However, there had been a certain relaxation in restrictions. The BJP finally granted permission in August 2003 for a mobile phone system, not allowed until then due to fears it would be used by militants. This was a small but important step. It remains to be seen whether the new Congress-led government will facilitate the implementation of Sayeed's electoral pledges.

A. HUMAN RIGHTS AND SECURITY

1. Indian-administered Kashmir

Security Operations. Kashmir has cost India a vast toll in human suffering and material losses. The insurgents and those who support them in Pakistan deserve much of the responsibility but India has also made a succession of policy errors in handling security. Violence has bred more violence and repression. Indiscriminate responses have undermined the faith of many in the government or security forces. Efforts have been made in recent years to improve the latter's behaviour and minimise abuses but much more must be done.

Security operations in Kashmir need to be carried out with maximum possible transparency and

⁴¹ More than 3,000 were killed in 2003 alone. "Your Place or Mine?", *The Economist*, 14 February 2003, p.21.

⁴² "Annual Report 2002-2003", Ministry of Home Affairs, Government of India.

⁴³ Mufti Mohammad Sayeed. Speech at 50th National Development Council Meeting, New Delhi, 21 December 2002.

⁴⁴ Kashmiris have been here before. In 1996, the election victory of Farooq Abdullah's National Conference raised hopes of a new era of good governance and improved economic policies. Policies to help Kashmiris were announced but never implemented. The state created 100,000 jobs but gave them out as a form of patronage. Overall levels of corruption rose, and few outside the political elite saw any improvement in their lives. See ICG Report, *The View from New Delhi*, op.cit.

accountability. India's National Human Rights Commission (NHRC), established in 1993, has taken a robust line on terrorism, saying it must be "firmly resisted" by the state and civil society. However it has also maintained that the authority of civil administration must be maintained in insecure environments if rights are to be protected. "Violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected, not least in respect of cordon and search operations, arrest, interrogation and detention".⁴⁵

This situation could be improved in a number of ways:

- ❑ the government should adopt the National Human Rights Commission's recommendation that a magistrate, or other state official, accompany security forces on cordon and search operations to reduce the potential for abuse, which would also lower the risk to security forces of false accusations being made against them;
- ❑ the government should implement the judgement of the Assam High Court on the Army Special Powers Act stating that decreed civilians must be handed over to police within 24 hours -- routinely ignored in Kashmir;
- ❑ security forces must improve record keeping to ensure full documentation of those detained during operations;⁴⁶
- ❑ the army should wear insignia during operations, currently not done in order to protect troops from reprisals, but the need for transparency and accountability outweighs the security risk;
- ❑ information should be made available to families, including reasons for arrest, place of detention and health of any suspect; it is equally important to establish official mechanisms to provide information on missing persons;
- ❑ the security forces should act to end "encounter deaths" in which the military organises

encounters with militants and kills them, or releases them and then kills them for "escaping";

- ❑ the army should reduce numbers of static posts, where they are unlikely to catch militants but which have a severe impact on civilian life, and lower tensions and troop visibility by moving their positions away from civilian areas wherever possible;
- ❑ the length of service of soldiers in Jammu and Kashmir should be reduced, as longer stays raise levels of stress and indiscipline that lead to abuses, and much more should be done to ensure that soldiers serving there are well supported and disciplined;
- ❑ the use of paramilitaries, who tend to have lower standards of recruitment, discipline and accountability, needs to be reduced; and
- ❑ contracts of special police officers should not be renewed, no replacements should be recruited, and a program should be developed to provide resettlement and training for those no longer working in this capacity.

NGOs. Human rights NGOs need to coordinate efforts, avoid turf wars and maintain a more even-handed position on abuses. In particular:

- ❑ NGOs need to develop a code of conduct that covers transparency of financing and administration and standards for human rights reporting, all vital for increasing their credibility;
- ❑ the NHRC should fulfil its mandate to provide training for human rights organisations, and the regional office of the UN High Commissioner for Human Rights in Bangkok should help as allowed under its mandate to assist statutory bodies;
- ❑ the UN High Commissioner for Human Rights should use his good offices to impress on India that it would be useful for the rapporteurs on torture, disappearances, extra-judicial killings and human rights defenders to take greater interest in Kashmir, particularly in the provision of technical advice; and
- ❑ various international groups need to expand human rights training; Amnesty International has done training through its national chapter but organisations should expand availability of specially tailored, internet-based human rights

⁴⁵ "Annual Report 1997-1998", National Human Rights Commission, New Delhi, p. 8.

⁴⁶ According to Human Rights Watch, some 3,000 persons are still missing in Kashmir after they were arrested by security agencies. "India: New PM Faces Human Rights Challenges", Human Rights Watch, 26 May 2004 at http://hrw.org/english/docs/2004/05/26/india8624_txt.htm.

education modules designed for a situation such as Kashmir.

Geneva Conventions and ICRC. India is a signatory to the Geneva Conventions and should apply them. The International Committee of the Red Cross (ICRC) should take up the issue of Common Article 3 with the government, asking it to restrict operations by security forces.⁴⁷ The ICRC must be given access to designated places of detention as well as any places used for interrogations or short-term detention. It currently has no access to military bases or hotels used as military interrogation centres.

Special Laws and Legal Protections. As mentioned above, POTA's repeal would go a long way toward improving the human rights situation in Jammu and Kashmir. The new government should follow all safeguards in the implementation of other special laws, such as the Public Safety Act (PSA), the Armed Forces Special Powers Act and the Disturbed Areas Act. It should also ensure periodic review of their utility, amending them where appropriate.⁴⁸ Any special powers must be balanced by review procedures that work.

Indeed, some provisions of these laws are draconian and need to be reviewed to bring them into line with standards and commitments to which India has international obligations. Implementation of ordinary laws is enough to ensure security. Special laws like POTA have been mostly used against non-terrorists such as political activists, union leaders and others.⁴⁹ Over-reliance on these laws does not improve security but tends to intensify human rights abuses, reduce scrutiny and oversight, and hinder the stabilisation of conflicts.

- the safeguards that exist within special laws need to be more widely understood and more closely

observed by courts. Confessions, for example, may be used in evidence but must be recorded in the presence of a magistrate and read back to a person -- a practice rarely followed;

- the state must insist that institutions function within the law and all safeguards are observed: court orders are not violated, transparency is maintained, the judiciary is respected and access to a lawyer is ensured as a constitutional right;
- there must be proper review of arrests, as bail safeguards are frequently ignored and review boards routinely disbanded;
- under the PSA, the government can keep someone in prison without trial for up to two years, and in 98 per cent of cases reviewed, the routine practice has been to release the person from jail just before the two years are up and return him or her to a different jail under a new PSA warrant;
- the government should end the practice of informing security forces of someone being bailed from prison;
- the government must ensure that families of those held are informed as rapidly as possible. Disappearances have become a source of corruption as families are forced to pay for information on missing relatives;
- the government should return authority and accountability to local officials and local police wherever possible;
- the Armed Forces Special Powers Act creates army authority without accountability, a serious problem in any democracy and a situation that needs review, as judicial rulings have suggested. At present, however, there is a culture of impunity because no member of the forces can be tried by a civilian court without central government permission, which is never granted, and any trials are conducted by closed court martial;
- to provide accountability in the armed forces, it is also necessary to institute chains of command; and
- the regulations under which government approval is needed for any legal action against public servants should also be changed. While they are intended to prevent frivolous lawsuits, they block any possibility of accountability

⁴⁷ Common Article 3 of the Geneva Conventions applies to humanitarian law in localised or non-international armed conflicts. Under this article, an impartial humanitarian body like the ICRC may offer its services to the parties in conflict. For detail about its applicability, see <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/11.html>.

⁴⁸ Welcoming the UPA government's decision to repeal POTA, the head of the moderate faction of the APHC, Maulana Abbas Ansari has asked that other special acts also be withdrawn, including the Armed Forces Special Powers Act and the Disturbed Areas Act. "Hurriyat hails POTA repeal", *Kashmir Times*, 29 May 2004 at <http://kashmirtimes.com/archive/0405/040529/news1.htm>.

⁴⁹ Even the lapsed Terrorist and Disruptive Activities (Prevention) Act (1987) is still used in Jammu and Kashmir for arresting people under cases filed before 1995. Amnesty International, India at <http://web.amnesty.org/web.nsf/print/2004-ind-summary-eng>.

through the courts and provide government employees with unnecessary double protection since the courts themselves are capable of deciding whether a lawsuit has merit.

Human Rights Commissions. The State and National Human Rights Commissions are weak and need to be enhanced so they have better capacity to investigate complaints. This could be done by:

- ❑ strengthening investigative staff and provide it with statutory powers to look into complaints;
- ❑ allowing the National Commission to put recommendations and responses from government in front of parliament if it is not satisfied -- a power enjoyed by the Union Public Services Commission, the body that oversees recruitment to the services and central government and is consulted on disciplinary cases regarding the conduct of persons serving in a civil capacity;⁵⁰
- ❑ encouraging state human rights commissions to publish their reports and giving them the right to place them before state assemblies;
- ❑ expanding the resources and authority of both national and state commissions to develop educational programs on human rights for the security forces and the public at large; and
- ❑ accepting the National Human Rights Commission's 2002 recommendations for amendments to the Protection of Human Rights Act 1993, under which it operates, to give it the right to investigate allegations of human rights violations by security agencies, including the army, paramilitary forces, and the police.

Surrendered militants. The Indian government has made much use of surrendered militants in security operations as informants and as police. This policy has caused serious human rights abuses and undermined accountability of the security forces. The government has to recognise that such persons have become a serious law and order problem in their own right once trained and armed as special police officers. As so often, the creation of semi-official or official militias and proxies has ended up causing more problems than it has solved. Consequently:

- ❑ surrendered militants should not be used in military operations;

- ❑ rehabilitation of surrendered militants should not involve working with the police but rather a full program of resettlement and training in civilian work;
- ❑ the government should request international help in rehabilitating surrendered militants and reintegrating them in communities, and such expertise and funding should be offered; and
- ❑ the Jammu and Kashmir government should take steps to deal with the criminal and social problems stemming from the surrendered militant problem as part of its "healing touch" campaign.

2. Pakistan-administered Kashmir

While human rights abuses in Pakistan-administered Kashmir have not occurred on the scale of Jammu and Kashmir, the situation nevertheless requires urgent action. The lack of political freedoms there and the vague constitutional status of the Northern Areas have produced unstable conditions in the two regions under which human rights abuses occur without much domestic scrutiny. Immediate steps should include:

- ❑ stopping the arbitrary detention, abduction and disappearances of pro-independence supporters and political dissidents⁵¹ and ensuring maximum transparency in all arrests and detentions;
- ❑ extending freedom of expression through, for instance, public meetings and a free media, to all, including pro-independence voices, and restricting the use of laws such as Section 144 of the Criminal Code, which prevents gatherings of more than four people;
- ❑ reducing the army presence in AJK and the Northern Areas and making civilian security agencies responsible instead for internal law and order;
- ❑ ending interference by Pakistani security agencies in the politics and governance of Azad Jammu and Kashmir and the Northern Areas;
- ❑ curtailing the powers of the federal minister for Kashmir affairs in favour of the Northern Areas Legislative Council in local matters there and

⁵⁰ <http://www.upsc.gov.in/>.

⁵¹ See <http://web.amnesty.org/library/Index/engASA040012001?OpenDocument&of=countries%5cpakistan>.

strengthening that council's legislative, administrative and financial powers;

- ❑ clamping down on sectarian violence, and particularly on Sunni extremists who, after the violent attacks against Shias and their places of worship during the 1990s, still pose a considerable threat to religious freedom and expression in the Northern Areas;
- ❑ ending expropriation of land that has made Kashmiris a minority in the Northern Areas to the benefit of Punjabi and Pashtun settlers and appropriately compensating those who have had land taken away from them;
- ❑ instituting an independent judicial system that can challenge the decisions and actions of the chief secretary and Pakistani authorities in the Northern Areas, such as the court of appeal that the Supreme Court on 16 December 2003 ordered the federal government to institute in the Northern Areas within one month.⁵²
- ❑ repealing the Frontier Crime Regulations, framed by the British in 1901, that require residents in the Northern Areas to report to the local police station once a month as well as all movements from one village to another to be reported; and
- ❑ removing travel restrictions on Kashmiris, including the requirement for residents of the Northern Areas to obtain exit visas for travel outside Pakistan.

Like India, Pakistan is a party to the Geneva Conventions, under which non-state actors must also follow humanitarian law. The Pakistani government insists that militants are not terrorists but freedom fighters, but this does not absolve them from responsibilities under common Article 3.⁵³ Pakistan has admitted there are groups within its territory that support militancy. It has a legal obligation to arrest and try them for violating laws such as taking civilians hostage, using civilians for cover and targeting civilians, and the international community should more forcefully raise this issue.

⁵² Ibrahim Shahid, "Northern Areas court of appeal yet to be established", *Daily Times*, 18 January 2004.

⁵³ Common Article Three of the Geneva Conventions requires all parties to an armed conflict to ensure against "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" toward "persons taking no active part in the hostilities". Available at http://www.yale.edu/lawweb/avalon/lawofwar/geneva_03.htm#art3.

B. ECONOMY

1. Indian-administered Kashmir

Conflict has had a number of impacts on the economy in Jammu and Kashmir. A major segment -- tourism -- has been severely damaged although it has recently made a very slight comeback. Security is the key to getting the economy back on its feet but other measures need to be taken as well. Policies dating to long before the insurgency created considerable state dominance, which has expanded in the past decade as increasing numbers of people became reliant on government jobs or money put into the economy by the security forces. There have been improvements, but much remains to be done.

Uncertainty still haunts people and undermines longer-term progress.

While running any economy is complex, and this report has not attempted to describe in detail how the conflict has changed that of Jammu and Kashmir, it is clear that there has been corruption and lack of transparency in economic policymaking, a widening gap between urban and rural areas, an inadequate infrastructure, particularly in power generation, and weak transport links, as well as a brain drain and loss of entrepreneurs.

Reviving the economy and providing greater fairness and access to resources could go a long way to rebuild trust and cohesion in a very fragmented society. Any process will take considerable time and face competition from the many pressing development needs, but a number of steps could be taken in the short-term:

- ❑ the first step for the state government to take to curb corruption is to recognise that it has a serious problem, after which much could be done by identifying areas where corruption is most intensive, changing regulations, reducing licensing and stepping up monitoring of official conduct and wealth;
- ❑ there should be greater transparency in government policymaking. Historically the perception in Jammu and Ladakh was that money was spent only in the Valley, but for the past fourteen years, this perception has moved the other way. Now the government needs to explain more fully what it spends and why;

- there is need to revive many broken economic links within the state by improving transport links, encouraging intra-state commerce and facilitating the movement of goods;
- the disparity between urban and rural areas needs to be tackled through better infrastructure, education and healthcare;
- more local generation of power through micro-hydropower projects is needed to overcome the shortages that have severely hindered development of the private sector and manufacturing, partly as a result of militants targeting the power grid;
- the government should request expanded assistance from the international financial institutions to provide improved power and clean water supplies;
- the capacity of local government should be strengthened since local management of resources would improve service delivery, increase local oversight and reduce suspicions of government favouritism to certain groups;
- micro-credit programs could enhance the control people have over their own economic development and wean them from high levels of reliance on the state, most of whose economic schemes are grossly mismanaged or corrupt;
- there is urgent need for a strategy to revive tourism, which used to provide 30 to 35 per cent of the state product and still supports a large craft sector that offers economic opportunities for women and others in rural areas. Such a revival should also be used to foster greater private sector development, rather than reviving state structures, for example by eventually selling hotels that were taken over by the military and encouraging competition on the air links to Kashmir to reduce inflated prices;
- foreign assistance should be sought and encouraged in the development of small businesses, training programs and tourism; and
- the opening of transport links should be made a key priority in the normalisation process with Pakistan.

2. Pakistan-administered Kashmir

The region relies heavily on agriculture for its economy. With a rapidly increasing population, its natural resource base is being depleted to an unsustainable level.⁵⁴ Better management is crucial, including:

- technical assistance and micro-credit programs to farmers, focusing particularly on the more mountainous and backward regions;
- improved official management of land resources, including land conservation measures. The government should restructure institutions that manage land resources and also provide greater support and encouragement to women in natural resource development;⁵⁵
- official support to development programs such as those of the Aga Khan Rural Support Program and other NGOs and community-based organisations;
- heavy investment to rebuild tourism in the Northern Areas, which has been devastated in the last few years by the conflict in neighbouring Afghanistan and more recently by sectarian strife;
- professional education, which requires public investment in specialised institutions and can yield considerable returns as more and better qualified individuals enter the marketplace;
- government follow-through on its commitments to allocate funds for developmental schemes, which often lapse, especially in the Northern Areas, and removal of bureaucratic hurdles that delay or prevent implementation of such schemes;
- investment in irrigation channels and hydroelectricity, which would pay dividends since AJK and the Northern Areas have vast water resources;
- government spending on roads and the general infrastructure in AJK and the Northern Areas;
- exploration of new areas of investment and development, for example, local media, which Azad Jammu and Kashmir and the Northern

⁵⁴ "Protecting Natural Resources in Northeastern Pakistan", World Bank Group Project Brief, June 2000.

⁵⁵ Ibid.

Areas have little of and the development of which could result in significant jobs if coupled with training and education; and

- greater control for the AJK government over economic decisions, which requires Islamabad to curtail the role of the Azad Jammu and Kashmir Council, the federal minister for Kashmir affairs, and the chief secretary.

C. EDUCATION

1. Indian-administered Kashmir

Jammu and Kashmir's education system has essentially closed down in the past decade. Schools were frequently shut due to strikes or violence. Buildings were damaged or taken over by the security forces, and teachers fled. Corruption and even violence has overwhelmed the examination system, so there is no longer faith in educational credentials. All this has not only had an economic impact, but in a society that once valued education highly, the failure of the system has also contributed considerably to the general malaise.

Kashmir has a strong culture of education. Restoring faith in the educational system is a vital part of restoring normality to the lives of people there. Rebuilding that system requires security, which may be some time in coming, but there are steps that could be taken including:

- increasing transparency in the examination process by using outside examiners and technological approaches such as computer-based testing to reduce corruption and restore faith in credentials;
- providing more resources to reduce disparities with private schools;
- expanding vocational training, including on-the-job training, and making greater efforts to link educational opportunities to employment, particularly in tourism;
- offering more school food programs in rural areas of the sort that have been successful in reversing declines in education, particularly for girls; and
- developing local language primary education and expanding teaching and study of Kashmiri

languages at university level to promote cultural regeneration.

2. Pakistan-administered Kashmir

Government spending on education has been extremely low in Azad Jammu and Kashmir and the Northern Areas. According to a World Bank report, educational indicators, particularly in the Northern Areas, are "among the worst in the country, and are especially low for girls and women".⁵⁶ The Pakistani government and donors could address this through:

- training programs for female teachers, a high number of whom would encourage families to send their girls to school, as well as consideration of an affirmative action program for qualified female teachers;
- using funds currently available, such as through the federal government's Social Action Program, to open village and community schools, thus encouraging community participation in the educational sector;
- transport and communication links between schools and homes, especially in remote areas;
- upgrading school facilities, since poor sanitation and the absence of basic services discourage parents from sending their children, especially girls, to school; and
- launching intensive sector-specific education programs, including specialisations in tourism, which would be especially valuable because the Northern Areas have relied heavily on this sector.

D. HEALTH

There has also been a marked decline in the standards of health care in Jammu and Kashmir. Sales of drugs to treat mental illnesses have soared along with stress-related ailments. Measures that should be taken include:⁵⁷

- greater efforts to deal with the mental health problems that have resulted from conflict, as the one institute that deals with these problems

⁵⁶ "New Approaches to Education: The Northern Areas Community Schools Program in Pakistan", the World Bank Group, January 1999.

⁵⁷ See ICG Report, *The View From Srinagar*, op.cit.

is in disarray, and the government has obstructed other initiatives. Training and support for local mental health counsellors and establishment of trauma centres is essential;

- the state and national governments should work with international organisations to promote mental health initiatives, particularly with vulnerable groups such as widows, children and those who have been direct victims of violence or torture;
- while there is more than sufficient expertise at the Artificial Limbs Centre in Pune, greater provision for care needs to be made in Kashmir, and international support should be made available;
- rebuilding the medical system, including doing more to keep health professionals in Kashmir, where there are staff shortages, such as pay incentives for local doctors; and
- urgently replacing damaged equipment and buildings and reducing risks to hospital and healthcare staff, including by prosecuting anyone on its territory known to have carried out attacks against medical facilities. The international community should forcefully urge Pakistan to prosecute such cases, and India and Pakistan should undertake joint and several efforts to reduce security risks to hospitals and staff as a CBM.

E. WOMEN, WIDOWS AND ORPHANS

There are an estimated 30,000 orphaned children in Kashmir. There are also a large number of widows as well as at least 1,000 "half-widows",⁵⁸ whose husbands have disappeared but not been proven dead. The problems these women face are often compounded by religious leaders who say they cannot remarry for up to fourteen years or by families who want to stop them from inheriting property. Under the Indian Evidence Act, someone must be missing for seven years before he or she can legally be declared dead and their property inherited. Many women whose husbands have disappeared have been left in a financial, legal and social limbo.

Relatively little has been done to help women as victims of violence in Kashmir. Although women's organisations abound in India's well-developed civil society, many have been reluctant to work in Kashmir, put off by violence and hostility to outside groups. Work there has also been hindered by the authorities' suspicions that charities channel money to militants. The following steps would be helpful:

- expand state efforts to provide assistance to orphans without regard to political affiliation;
- remove government barriers on legitimate charitable contributions and conduct oversight of charitable spending in such a way that legitimate charities are able to function and provide essential services;
- assist victims of violence without regard to the source of violence.
- Indian women's organisations should provide capacity building services to strengthen similar groups in Kashmir; and
- use micro-credit and other programs designed to revive the tourism and craft sectors to help women economically and encourage a full role for women in training and other initiatives.

F. KASHMIRI REFUGEES

Fifty-seven years of the Kashmir dispute have produced a massive refugee problem on both sides of the LoC. Intense shelling has displaced thousands of families. The conflict has impacted the lives of Pandits, many of whom fled the Valley during the post-1989 violence. Since the insurgency began in 1989, the flow of refugees across the LoC has also increased, with many Muslims fleeing out of fear of persecution from Indian security forces.

1. Pandits

More must be done to help Kashmiri Pandits return to their homes in the Valley. They are unlikely to go back unless fully convinced they will be safe. A great many did return during a recent festival but did not stay. The problem is mostly one of a perception of insecurity. While any mass return is unlikely at present, steps that the Jammu and Kashmir and Indian governments could take to increase this possibility and better the lives of Pandits include:

⁵⁸ "J&K Coalition of Civil Society Peace Initiative", Srinagar, 2002. Formed by the Public Commission on Human Rights in 2002, the Coalition consists of ten Jammu and Kashmir NGOs.

- improving conditions in camps in Jammu by providing necessary facilities, including sanitation, income-generation and education and requesting international assistance where necessary;
- developing a comprehensive policy to compensate Pandits properly for any properties taken over by the state, including abandoned properties taken over by state employees, registering and preparing properties for return, and setting minimum prices to ensure they are not sold off at fire-sale prices; and
- requesting international assistance to provide humanitarian relief in Jammu camps.

2. Muslim refugees

One source places the number of Kashmiri refugees in Azad Jammu and Kashmir at 17,000.⁵⁹ Others have been displaced as a result of shelling along the LoC. The AJK and Pakistan governments should focus their efforts on:

- resettling and rehabilitating displaced people and refugees;
- providing health facilities and opportunities for education and income generation in refugee camps;
- improving general conditions at refugee camps, many of which are overcrowded and unsanitary, with malnourished refugees;⁶⁰ and
- encouraging the international community, including UN agencies and NGOs, to provide humanitarian assistance in the camps.

G. LOCAL POLITICAL PARTICIPATION

1. Indian-administered Kashmir

Under amendments to the constitution, the Indian government is committed to strengthening local government bodies. This has not happened in Kashmir, where New Delhi says the security problems have been too great. Many economic and political problems stem from a lack of accountability and transparency. Bringing elected government down to a

local level could improve this if done effectively. Village elections are supposed to be held without party political affiliation, but state governments have some leeway on structuring them. Opposition to devolution has mostly come at the state level, where officials oppose any threat to their own authority and patronage. The state government should:

- come up with a plan to hold village elections as soon as possible and put its full support behind increasing local democracy;
- provide training and assistance necessary to meet the requirements under Indian law that a third of seats must go to women and a third of districts be headed by women; and
- prepare for devolution of power and resources to local control by launching efforts to minimise the risks of corruption and lack of transparency.

2. Pakistan-administered Kashmir

The Pakistan People's Party government that came to power in 1996 dissolved local government institutions in Azad Kashmir and instead of holding fresh elections appointed political workers to head these bodies. The Musharraf government replaced the politically appointed officials in 2001 with civil servants.⁶¹ Its devolution plan was extended to Azad Kashmir but not to the Northern Areas, which retained a long-standing system of local governance under which the Local Bodies and Rural Development Department is the principal channel of community participation. Steps to transfer power to the grassroots level in AJK and the Northern Areas should include:

- curtailing the powers of the federal minister for Kashmir affairs (chief executive) and the chief secretary;
- funding local institutions;
- working toward establishing a vibrant local body system through training and support programs, especially for women and residents with limited experience in governance; and
- removing restrictions on political association and participation in the Northern Areas and permitting Kashmiri parties, in addition to Pakistani ones, to operate freely there.

⁵⁹ Zoltan Istvan, "Refugee Crisis Worsening in Western Kashmir", *National Geographic Today*, 13 March 2003.

⁶⁰ *Ibid.*

⁶¹ Tariq Naqash, "Needed: Full-time Officials", *Dawn*, 7 March 2002.

IV. THE INTERNATIONAL ROLE

The role of the international community has been a major source of division between India and Pakistan. The latter has sought intensive UN involvement in Kashmir, maintaining that Security Council resolutions on the holding of a plebiscite must be implemented. It has also tried, without much success, to involve other international bodies, such as the Organisation of the Islamic Conference. India has resisted the issue at the UN and has officially refused to countenance mediation or facilitation of talks, saying its problems with Pakistan are bilateral.

For India, the Kashmir dispute became a bilateral issue with the signing of the Simla Agreement in 1972⁶² but the principle has seriously eroded because it has been increasingly willing to allow U.S. involvement, particularly for encouraging Pakistan to pull back during the 1999 Kargil confrontation and again in 2002 when the two countries were dangerously close to war. The U.S. also played a part in persuading Vajpayee to resume diplomatic ties with Pakistan in May 2003 and subsequently in facilitating the resumption of dialogue at the January 2004 SAARC summit. Since India and Pakistan both have strong economic, political and security incentives for maintaining a good relationship with the U.S., the leverage Washington could bring to bear on the conflict is probably at its highest level ever.

Indian law presents a problem for greater international involvement in the establishment of the various forms of dialogue. Much more could be done by donors to fund civil society contacts and other forums for discussion but activities are blocked by the Foreign Contribution (Regulation) Act (FCRA) of 1976 that was originally passed to stop the infiltration of money from extremist Islamic groups and to reduce the activities of Christian missionaries.⁶³ Any NGO that receives foreign funds must register under the FCRA, a lengthy and costly process. Once registered, all

funds must be in a single bank account that can easily be audited, causing further problems for NGOs with widespread operations. The act covers payments for visits abroad and regulates attendance or funding for conferences in Pakistan, China, Nepal, Bangladesh or Sri Lanka.

The Indian government has often used diplomatic pressure to prevent civil society meetings outside India. The German government withdrew funding from a meeting in Kathmandu of NGOs working on Kashmir after coming under such pressure.⁶⁴ Unless this stops or Western governments decide to resist, there is little possibility of sustaining a Track Two dialogue between Kashmiris.⁶⁵ Consequently:

- India should reform the FCRA to make it more workable for Indian NGOs and to allow easier contributions from donors who wish to support peace building and reconciliation activities;
- India should cease efforts to block dialogue between civil society groups working on Kashmir or a dialogue between representatives of political opinions from Indian and Pakistani-administered Kashmir, since it is inappropriate for a democracy to stifle free speech, and such links would aid efforts to reach a peaceful solution;
- donor governments should fund such dialogues, resisting pressure from either India or Pakistan, and be more aware of the difficulties faced by NGOs and especially Kashmiris in participating in such meetings and so more flexible in the requirements they place on grants -- for example, allowing meetings to take place outside India or Pakistan and even, if necessary, outside the region;
- donors should work collectively through the EU or ad hoc groups to fund dialogue efforts, thus reducing the effectiveness of pressure to block meetings, adding greater international heft to the meetings and signalling wider

⁶² In the Simla Agreement, India and Pakistan agreed "to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them". The Simla Agreement also established the LoC, dividing Indian from Pakistan-administered Kashmir, resulting from the ceasefire between the two on 17 December 1971.

⁶³ See Subhash Mittal, "FCRA The NGO Factor", at <http://www.finindia.com/fcra.html>.

⁶⁴ The conference on "Strengthening Peace Initiatives in Kashmir" was called off in February 2002 after the Nepal government cancelled visas under pressure from the Indian authorities and threatened to cancel the license of the hotel in Kathmandu where the event was planned. The German government withdrew funding under similar pressure. See statement issued by the South Asia Forum for Human Rights.

⁶⁵ Meetings between Kashmiris from both sides of the LoC have been held outside South Asia, such as the Kashmir Round Table in Birmingham in June 2004.

cooperation on peace-building efforts in South Asia;

- donors should fund a high profile initiative by groups such as Nobel Peace Prize winners to establish an on-going dialogue between Pakistani and Indian civil society groups, since a dialogue backed by prominent international figures would be less vulnerable to government pressures; and
- Western governments should monitor and control the funding of Hindu groups linked to violence as well as Islamic extremist groups.

A. THE UNITED STATES

The U.S. has dealt with crises in India-Pakistan relations as they have blown up but made less effort to develop a broader peace plan that might reduce the risks of conflict. For some time the relationship between the two countries was not seen as a vital security interest for Washington. However, the very real risks of nuclear conflict now present the U.S. with a major threat. The human and political costs would be almost unthinkable in any nuclear exchange.

U.S. policies toward military rule in Pakistan remain troubling. Washington has given nearly unqualified support to General Pervez Musharraf despite his failure to return the country to democracy.⁶⁶ Pakistan's history shows that almost every attempt to make peace with India has been sabotaged by the military, which justifies its power by maintaining hostility with its giant neighbour. The government may have abandoned its support for the Taliban but it has not given up aid to militancy in Kashmir. Until it ends that policy, there is little prospect of a sustained peace with India.

The U.S. government needs to adopt a longer-term perspective on Pakistan, recognising that peace with India and the reduction of terrorist threats emanating from Pakistani territory are more likely under a maturing democracy than under military rulers with a long history of using extremist groups for their own ends. A sustained peace would do much to reduce the capacities of international terrorists.

To that end the U.S. government should:

- insist that continued military rule is not acceptable and increase diplomatic pressure on President Musharraf to meet his pledges to return the country to democracy;
- be aware that such programs as International Military Education and Training are unlikely to produce real changes in the views of the Pakistani military. Almost all officers directly responsible for the rise of the Taliban, the training of extremist groups in Kashmir and Pakistan and the 1999 coup received training in the U.S. that did little to adjust their attitudes or improve their respect for human rights or democracy;
- apply considerable pressure on the Pakistani military to wind up extremist groups involved in militancy in Kashmir and monitor this process closely to ensure that those detained are not held only under "revolving door" arrests and that banned groups do not reconstitute themselves under other names;
- do more to support democracy by expanding contacts with democratic groups, particularly mainstream and moderate political parties;
- provide more assistance for political party reform and development programs, in addition to its present assistance for parliamentary development;
- press the Pakistan government to take action against jihadi madrasas, while at the same time offering assistance to improve secular education;⁶⁷
- join with the EU in persuading the Indian and Pakistani governments to allow democratic participation in their respective parts of Kashmir; and
- consider joining with the EU and Japan to establish an enterprise fund for Pakistan-administered Kashmir focusing on promoting investment in areas such as tourism and infrastructure.

⁶⁶ See ICG Asia Report N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003.

⁶⁷ See ICG Asia Report N°36, *Madrasas, Extremism and the Military*, 29 July 2002 and ICG Asia Report N°73, *Unfulfilled Promises: Pakistan's Failure to Tackle Extremism*, 16 January 2004.

U.S. relations with India have improved enormously in the past decade and will likely only deepen further. Economic links have grown considerably, and the Indian community in the U.S. -- the country's richest and best-educated ethnic group -- is starting to wield some influence. Possibilities for high-level but quiet, behind-the-scenes U.S. mediation, as demonstrated by its role in facilitating the resumption of the current India-Pakistan dialogue, are great. More publicly, the U.S. could:

- commission a wide-ranging, high-level study on the economic and social benefits that normalisation and peace could bring to both countries;
- move away from the view that the India-Pakistan relationship is a security issue to be dealt with by the two governments and invest more in resolving the problems faced by people caught in the conflict, since a greater focus on improving lives in Kashmir is necessary if the two countries are to come together;
- establish a dialogue with Pakistan and India on how all three countries can work together to tackle terrorism and militancy, perhaps through a tri-partite commission similar to that operating between the U.S., Pakistan and Afghanistan and that could be a useful CBM increasing the transparency of policies; and
- take more seriously the rise of Hindu fundamentalism, which is not just an Indian domestic problem but represents a wider threat to peace -- Hindu and Islamist extremism feed off each other in South Asia and make it more difficult for both sides to reach the necessary compromises -- starting by investigating reported funding links between Indian communities in the U.S. and Hindu extremist groups.⁶⁸

B. THE EU

Both India and Pakistan are keen to improve their relations with the EU, a major trading partner and investor for both. Indian trade with the Union is as great as it is with the U.S. and is expected to grow significantly. In Pakistan, too, trade ties with and economic assistance from Europe could translate

into leverage for the EU. Yet Brussels is hesitant to exercise its potential influence. The EU has traditionally been reluctant to get closely involved in the Pakistan-India conflict, which is seen as too far away, low on its list of priorities and difficult. There should be greater recognition of the real urgency and dangers of the situation.⁶⁹

More recently, concerns about the potential for yet another devastating war have motivated a more pro-active role. A European Parliament delegation visited Indian-administered Kashmir in June 2004, a follow-up of the team's visit to Pakistan-administered Kashmir in December 2003.

The EU gives considerable development assistance to both countries. A significant amount of that assistance should go to projects that promote peace. The EU should:

- take an active role in funding civil society dialogue, particularly intra-Kashmiri dialogue, and regional initiatives to promote dialogue and peace -- initiatives that are often stymied by pressure on individual governments but would be more likely to go ahead if backed by a common position of the member states;
- press the Pakistan military to restore civilian, democratic rule, consistent with its obligation to monitor and encourage implementation of the principles of Article 1 of its Third Generation Trade and Cooperation Agreement with Pakistan.⁷⁰ The Human Rights Commission of Pakistan has recorded at least 50 attacks against journalists in the last two years, most of which it has attributed to security agency officials, and the Paris-based Reporters Sans Frontiers has ranked Pakistan 128th of 166 countries in terms of safety for journalists.⁷¹ The EU should insist that Pakistan address press freedom and other human rights issues, including the removal of curbs on

⁶⁸ On funding of Hindu extremist groups, see Anganta Chatterji, "For Dissent against Hindu Extremism", *The Asian Age*, 28 July 2002.

⁶⁹ ICG interviews with EU Commission and Council officials, Brussels, 2003.

⁷⁰ Article One states: "Respect for human rights and democratic principles as laid down in the Universal Declaration of Human Rights underpins the domestic and international policies of the [European] Community and the Islamic Republic of Pakistan, and constitutes an essential element of this Agreement".

⁷¹ Syed Shoab Hasan, "Press in chains", *Herald*, February 2004. Also see "Pakistan: Release Detained Journalist", *Human Rights News*, Human Rights Watch, 24 January 2004; "Pakistan: Threats to Journalists Escalate", *Human Rights News*, Human Rights Watch, 3 December 2003.

the functioning of political parties and an end to politically motivated cases against their leaders;⁷²

- expand its links with Pakistani political parties and provide assistance for political party reform and development;
- target, also through bilateral assistance from its member states, civil society NGOs such as legal reform organisations, including bar councils and human rights groups rather than financing controversial political initiatives such as decentralisation that are little more than efforts to consolidate the political power of the Pakistan military;⁷³
- expand aid to social and economic programs in both Indian- and Pakistani-administered Kashmir and focus it on rehabilitation of hospitals and education, rural development, tourism development, business training and private sector development; and
- back a fund to promote economic links between Pakistan and India as these develop and to strengthen SAARC's capacity.

C. RUSSIA, CHINA AND JAPAN

Russia and China have been moving away from their earlier, opposed positions in South Asia. Russia and India still maintain close ties forged during the Cold War while China remains close to Pakistan. However, the broader interests of both countries have changed. Concerned about the risks of nuclear war and Islamic extremism, they support a resolution of India-Pakistan differences. While neither is likely to get closely involved in any peace process in South Asia, they could act on the margins. This would be more possible if Moscow improved its relations with Islamabad. While China is working on resolving its differences with India, its nuclear cooperation with Pakistan remains an issue of contention.

Japan has cordial relations with both India and Pakistan and is perceived as a neutral party. As a major trading partner and aid donor to each, it can

and should put its considerable influence to good use through quiet diplomacy, for example helping to promote more responsible nuclear behaviour.

D. REGIONAL ENDEAVOURS

As the January 2004 summit shows, SAARC provides an important forum for dialogue and cooperation between India and Pakistan. Its member countries can do much to support that dialogue. Relations between the two regional giants impact the other member nations as well. Thus far SAARC has not proved as effective an instrument for improving regional economies and conditions, as its smaller members would have liked. Intra-regional trade remains a low 4-5 per cent. Many blame the bitter relationship between the bloc's two most powerful states. The benefits of peace for the other regional actors are clear, and they should:

- pressure India and Pakistan to follow through on the agreed initiatives of the twelfth SAARC summit, especially SAFTA, and stress the importance of peaceful relations between them for intra-regional trade and economic growth;
- explore possibilities of mediation, arbitration and judicial settlement of regional economic disputes through the creation of a new forum under SAARC, which could be a legal body whose decisions are either binding or advisory;⁷⁴
- ensure more frequent meetings between mid-level government officials from member states and consider increasing the frequency of SAARC foreign minister-level meetings;
- include on SAARC's agenda expansion of existing categories of visa exemptions to include, for instance, regional broadcast and print media, and promote debate on the eventual adoption of a single South Asian currency; and
- enact national laws on refugees, followed by harmonisation of laws and a regional convention on the pattern of the SAARC drug enforcement model.⁷⁵ The right to recognise

⁷² Opposition leader Javid Hashmi was arrested on charges of sedition even as a visiting European Parliament delegation held discussions on the democratic transition with the Musharraf government.

⁷³ See ICG Asia Report N°77, *Devolution in Pakistan: Reform or Regression?*, 22 March 2004.

⁷⁴ This would require modification of the SAARC Charter to include bilateral economic disputes, while maintaining its present barrier to introduction of contentious political and security issues into the organisation.

⁷⁵ States, not the UN High Commissioner for Refugees, are responsible for recognising refugee status as no South Asian state has signed a convention on refugees.

refugees rests with states, not with UNHCR, and no South Asian state has signed conventions relating to refugees.

E. DIASPORAS

The Kashmiri diaspora has helped keep the issue alive internationally and worked hard to promote awareness of human rights abuses and other problems. However, many members have also funded extremist groups and helped maintain the conflict. As with many diasporas, it tends to a conservative and romantic view of the conflict and support of militancy despite the enormous human costs. The problems with the Kashmiri diaspora are not confined to the Muslim community -- some of the most radical Pandits are those now in the U.S.

Members of the Indian and Pakistani diasporas around the world have been implicated in funding Hindu and Islamic extremist groups that pose some of the biggest threats to peace in South Asia.⁷⁶ These diasporas, especially in the U.S., also tend to use American forums, including Congress, to promote narrow notions of national security, often attempting to undermine the interests of their perceived regional adversary.

The Kashmiri Hindu and Muslim diasporas should instead promote social reconciliation and economic development of Kashmir. The Indian and Pakistani diasporas would serve their countries of origin far better if they were to expend their considerable human and financial resources on promoting India-Pakistan rapprochement.

F. THE UN AND INTERNATIONAL FINANCIAL INSTITUTIONS

The United Nations Military Observer Group in India and Pakistan (UNMOGIP), currently 111-strong,⁷⁷ operates out of headquarters in Srinagar and Rawalpindi. It was deployed in 1949 with a mandate to supervise the Ceasefire Line between India and Pakistan in Kashmir -- observing,

reporting and investigating ceasefire violations and submitting findings to each party and to the Security Council. To this day, it keeps tabs on exchanges of fire across the LoC.

Since the 1972 India-Pakistan agreement defining a LoC, the Indian government believes that its mission has lapsed, a position rejected by Pakistan. In the Secretary General's opinion, the mission can only be terminated by a Security Council decision. UNMOGIP, therefore, continues to operate with the same mission and mandate. While Pakistani military authorities still lodge complaints about ceasefire violations, India not done so since 1972 and restricts UNMOGIP activities on its side of the LoC.⁷⁸ This has rendered the group ineffective in terms of monitoring or peace making.

In light of Indian opposition and the legacies of the early days of the conflict, there appears little chance of any political role, but there are areas in which the UN might be more active, including:

- ❑ considerable expansion of humanitarian missions on both sides of the LoC. Although neither Pakistan nor India is signatory to a refugee convention, it would still be possible for the UNHCR to provide more assistance to refugees and internally displaced persons. In the interest of Pandits, India should request international help in providing humanitarian relief in Jammu camps, while the UNHCR could be more pro-active in ensuring the rights of refugees in camps in Pakistan-administered Kashmir; and
- ❑ closer UNDP involvement in private sector training and other development projects in both parts of Kashmir. It would serve India and Pakistan's interests to provide unfettered access for this purpose. For instance, India would benefit from greater use of UNDP expertise in governance, post-conflict development and anti-corruption programs.

Additionally, major international financial institutions (IFIs) should become more closely involved in improving education, healthcare and infrastructure, particularly the provision of power and clean water to Kashmiris living on both sides of the LoC.

⁷⁶ See Sudha Ramachandran, "U.S. Firms Linked to Extremist Indian Cause", *Asia Times*, 10 January 2003.

⁷⁷ As of March 2004, the mission had 44 military observers, supported by 23 international civilian personnel and 44 local civilian staff. <http://www.un.org/Depts/dpko/missions/unmogip/facts.html>.

⁷⁸ India continues to provide accommodation, transport and other facilities to UNMOGIP. <http://www.un.org/Depts/dpko/missions/unmogip/background.html>.

V. CONCLUSION

The February 2004 meeting between senior Indian and Pakistani bureaucrats successfully worked out the agenda, modalities and timeframe for a "composite" dialogue. New Delhi and Islamabad have, thus far, placed no roadblocks before this process. While this is evidence of willingness at least to talk about talks, the prospects of comprehensive peace between the two nuclear-armed adversaries are as yet remote.

The way ahead is treacherous, and if the past is a guide, any number of missteps could once again derail the normalisation process. Overcoming decades of hostility and suspicion requires time. India and Pakistan must recognise that their budding dialogue will only succeed if it is gradual, sustained and pursued outside the glare of the media. Resisting temptations to push the pace on contentious and complex issues such as Kashmir, they should opt instead to move toward a steady normalisation of relations. Additional and modest CBMs, including enhanced trade ties, would strengthen existing and create additional domestic stakeholders and generate an enabling environment for negotiations on Kashmir.

Yet, even an official dialogue on normalisation will improve the climate insufficiently unless it is accompanied by other dialogues -- between India and Srinagar, between Pakistan and Muzaffarabad, between private Indian and Pakistani citizens, and between the Kashmiris themselves. To deprive the latter of a voice in their future could doom any bilateral attempt to failure.

While normalisation of their relations requires time, the two countries can take immediate steps to improve the lives of the primary victims of their mutual hostility, the Kashmiris themselves. India must fulfil its pledges to end the violence there by restraining its security forces even as it works with Srinagar to improve governance and revive the ailing economy of the conflict-torn region. Pakistan, too, must respect the political freedoms of the Kashmiri population living under its control and see to it that development improves their lives. It must also implement its pledge to end all support for cross-border incursions and militancy.

Maintaining the ceasefire along the LoC has already had a salutary effect for Kashmiris, but

both sides need to do much more. A gradual troop withdrawal from the LoC would reduce the risk of war and pay bilateral dividends. As evidence of their earnestness, if not for humanitarian reasons alone, India and Pakistan should also open the land route across the LoC, reuniting Kashmiris and in the process winning their trust and goodwill.

The progress made thus far in even talking about talks could quickly dissipate if the two states revert to old habits. Normalisation must be seen and publicly projected as a win-win situation for both sides. Using the media to score points against each other would quickly dissipate a very finite reservoir of goodwill. The temptation to play to domestic galleries, as in the past, must be resisted lest it derails a fragile process.

A more difficult hurdle is the mismatch of domestic systems, one democratic, the other military-dominated. President Musharraf, his political legitimacy rejected by Pakistan's mainstream political parties and civil society organisations and his international image marred by the disclosures of nuclear leakages, may want a quick diplomatic triumph on Kashmir to shore up his domestic standing and prove his worth to influential external actors, including the U.S. and EU. Foreign Minister Khurshid Mehmood Kasuri has warned that the current dialogue must produce a breakthrough before Musharraf gives up his post of chief of army staff, as he has pledged to do by the end of 2004.⁷⁹ The international community, particularly the U.S. and the EU, should accompany more pro-active support for peace with support for the democratic transition in Pakistan.

Islamabad/New Delhi/Brussels, 24 June 2004

⁷⁹ "The President is wearing two hats for a year and advantage should be taken of that", said Kasuri. Simon Denyer and Sanjeev Miglani, "India, Pakistan hammer out agenda as talks continue", *The Washington Post*, 17 February 2004.

APPENDIX A

MAP OF KASHMIR



Courtesy of the general libraries, the University of Texas at Austin

APPENDIX B

GLOSSARY OF ACRONYMS

AJK Azad Jammu and Kashmir, area of former princely state under Pakistan control.

APHC All Parties Hurriyat Conference.

BJP Bharatiya Janata Party.

CBMs Confidence Building Measures.

J&K Jammu and Kashmir, area of former princely state under Indian control.

LoC Line of Control, recognised in the 1972 Simla Agreement, resulting from the ceasefire between India and Pakistan on 17 December 1971.

PDP People's Democratic Party.

POTA Prevention of Terrorism Act.

PSA Public Safety Act.

SAARC South Asian Association for Regional Cooperation, includes Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

SOG Special Operations Group, Indian security force operating in Jammu and Kashmir, disbanded in 2003.

UPA United Progressive Alliance, Congress-led coalition government in India, headed by Prime Minister Manmohan Singh.

UNMOGIP UN Military Observer Group in India and Pakistan.

APPENDIX C

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

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