



## IN BRIEF

Kashmir is one of the conflicts implicated in the current “war” of the U.S. and its allies against certain forms of radical Islam. A long-term solution to the conflict in Kashmir cannot be found without consideration of the wishes of the Kashmiri people. The three-option plebiscite, giving Kashmiris a choice among accession to India, accession to Pakistan, or full sovereignty, is an avenue that must be explored. The United Nations should serve as the organizer of such a plebiscite and should be the ultimate guarantor of its results. Convincing Pakistan and India of the ultimate wisdom of such a course can be part of current negotiations around the events in Afghanistan that now demand our attention.



# POLICY BRIEF

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## KASHMIR AND THE “WAR ON TERRORISM”

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On October 15, Indian artillery pounded Pakistani armed positions along the line that divides Kashmir. The next day Indian and Pakistani troops fired on each other across that same dividing line. All of this occurred as US Secretary of State Colin Powell was visiting each country to shore up support for the US-led war on terrorism. The message of his mission quickly expanded to urge each nation to find a peaceful remedy to their conflicting claims on Kashmir. Kashmir represents one of the longest-standing disputes on the United Nations agenda. Today, both India and Pakistan are offering some level of commitment to the U.S. “war on terrorism,” but each of these two countries seeks to implicate Kashmir in its own way. Indian spokespersons assert that separatist fighters in Kashmir may be part of the bin Laden or Afghan terror network that the U.S. hopes to defeat. Pakistani officials argue for a more sympathetic U.S. perspective on Kashmir in tacit exchange for assistance in the American campaign against Islamic extremism. Kashmir has long been assessed as a potential flashpoint for a major regional war, and in the current heightened circumstances it becomes even more critical that this dispute be resolved. Like the Israel/Palestine question, this issue continues to inflame sentiments across the Muslim world. The bomb set off in October in front of the Legislative Assembly, killing thirty-eight people, brought this point home dramatically. India and Pakistan both have sizeable Muslim populations, ranking near the top of the demographic list of countries where Islam flourishes. They are also both nuclear powers. The journey of Secretary of State Colin Powell to the region in mid-October signifies U.S. awareness of the importance of stability in the two nations, and the danger that a flare-up of the Kashmir conflict could catastrophically impact the Afghan situation. As the United States reconsiders its policy toward Kashmir, it will be tempting to build a policy on the short-term perspective of the “war on terrorism.” However, a policy which takes account of the cultural and political factors generating the conflict, and the rights of the Kashmiri people, will likely do more to reduce terrorism in the long term.

Background Since the partition of the South Asian subcontinent into the two states of India and Pakistan in 1947, Kashmir has existed as an unhappily bifurcated region. On the Indian side is the well-known Vale or Valley of Kashmir, the territory of Jammu, and the remote high plateau area of Ladakh. On

the Pakistan side is the border region of Azad (“free”) Kashmir, and, depending on who is doing the identifying, the isolated tribal region called “the Northern Areas” (Gilgit-Baltistan). So telling has Kashmir become as a signal of one’s political orientation toward South Asia, that a glance at how the borders are drawn on any given map can inform the educated reader of the perspective taken. In India the Pakistan side of Kashmir is called “Pakistan Occupied Kashmir”; in Pakistan the Indian side is called “Indian Occupied Kashmir.” Religion is heavily enmeshed in the Kashmir dispute. In the regions mentioned above, the religious diversity is striking: the Vale is majority Muslim (Sunni with heavy Sufi influence), Jammu majority Hindu with Muslim and Sikh minorities, Ladakh majority Buddhist (Tibetan variety), Azad Kashmir majority Muslim (Sunni), and Gilgit-Baltistan Muslim (Sunni and Ismaili) with significant tribal pockets. A variety of languages are spoken: Kashmiri, Ladakhi, Punjabi, Hindi, Urdu, and tribal dialects. There are two major scripts in common usage (Arabic and Devnagari). The ethnic variation from one end of Kashmir to the other is as extreme as that found in Europe. Despite this diversity, Kashmir has had a long term, continuous identity, extending back through the British colonial period and the period of Mughal and Sikh domination, to the Hindu “Golden Age” of classical India. Its roots track



back into the ancient Buddhist past and beyond. Kashmir lies at the Central Asian crossroads of the Chinese, Indian, and Persian civilizations, having been enriched by all three in a syncretic fashion. It was viewed historically as an abode of snow and mountains but also as a fantastic garden, where water flowed and fruit hung from trees and almonds were available for the asking. “If there is a heaven on earth,” one Mughal couplet goes, “it is this, it is this, it is this.” But in the past fifty years, this heavenly abode, scented with cardamom and spice and the smoke of wood fires, has become a nightmare of spilt blood, indignity, and terror. The environment of beauty and peace has been devastated by modern politics and the use of force. Decolonization and the Roots of

Conflict It is often said that the Kashmir conflict is part of the unfinished business of decolonization. Insofar as the legal status of Kashmir is concerned, it is true that the events surrounding the 1947 Partition gave rise to an issue that underlies all the contemporary mobilizations around religion, ethnicity, and national security (Pakistani or Indian). Furthermore, it is a historical point that continues to inhibit further action toward peace in Kashmir today. In 1947, there were some areas of the subcontinent that had never fallen under the control of the British Empire. The so-called “Princely States” had the option of choosing accession to either Pakistan or India. In most cases, these autonomous areas were either

predominately Hindu or predominately Muslim, and the choice was simple. But there were a few regions where there were problems, either because they were not contiguous to the likely country of accession or because the ruler was of one faith while the majority of the people were of another. The latter was the case for Kashmir. It was contiguous to both Pakistan and India and therefore could have opted for either on geographical grounds. But the maharaja of Kashmir, Hari Singh, was a Hindu who ruled over a majority Muslim population. He was pushed in one direction by his constituents and in another by the individuals emerging as the new governing clique in India. Jawaharlal Nehru, the first prime minister of independent India, was a Kashmiri Hindu Pundit (Brahmin) by birth, and carried a fervent torch for the cause of keeping Kashmir in India. The decision had implications for Punjab, center of the Sikh religion, as well, since Punjab would provide the critical land bridge to Kashmir from India's capital of Delhi. The maharaja of Kashmir tried to find a path to full independence for months, then decided for India at the last moment, making Kashmir the only non-Hindu majority state in the union. (Punjab would later be reorganized to make it a Sikh-majority state, where similar issues of sovereignty versus Indian loyalism would later surface.) There was a spirit of Kashmir boosterism in the new India, since its Muslim population was "the jewel in the

crowns" of India's commitment to secularism and federalism. The Indian Constitution, in Article 370, gave Kashmir a "special autonomy" within India - a provision which became heavily controversial and was honored more in the breach than in the practice. The historical claim that Kashmir legally acceded to the new state of India is a major part of the Indian government's current policy on Kashmir. However, the recent release of many documents surrounding Indian and Pakistani independence have revealed some critical flaws in the accepted history of Kashmiri accession. Traditionally, it was the common view that the Instrument of Accession was signed before India sent troops and arms to Kashmir, to defend it against incursions by Pathan "liberationists" streaming into Kashmir from the Pakistani side. But the newly-public documents now seem to indicate a critically different scenario. In accounts by recent scholars, the chronology of events appears to be that first, Indian troops and arms were sent to Kashmir, and subsequently, seeing which way the wind was blowing, Maharaja Hari Singh signed the Instrument of Accession to India. It further appears that documents had been specifically created to appear as if the opposite chronology was the valid one. Since it is the free accession to India that is critical to the legal history of this region, the question of whether Kashmir's raja chose India without constraint or chose it under the compulsion of massive troop strength in his territory makes a significant

difference. A review of the academic literature on this decision shows that it is highly controversial. Key Western scholars such as Alistair Lamb, long a leading figure in Kashmir studies, changed their views on Kashmir subsequent to consideration of the new documents and now suggest that the accession to India was not legitimate in terms of international law. Others continue to support either the Indian or the Pakistani view of the accession, or state outright that the historical record is not clear enough on this point to make a judgment either way. But there is a second area of contention as well. It centers on the historical claim that the newly-born Pakistan government had sent fighters into Kashmir, necessitating India's influx of military aid to Kashmir. The fighters who streamed into Kashmir were not Pakistani troops but were Pakhtun (Pathan) tribals who believed they were liberating their Muslim brethren in Kashmir from Indian rule. Allegations persist regarding a secret plan on the part of Pakistan to take Kashmir by force, although recently available documents give credence to the opposing view as well. At present, then, there is no consensus on the Partition events in Kashmir. It appears that both India and Pakistan may have connived at acquiring Kashmir. Ultimately, we can say fairly that the entire narrative of Kashmir's colonial and postcolonial past is contested, and versions of it have

been made to serve both Indian and Pakistani ideologies. It is not clear at all what the actual population of Kashmir may have wanted at that time. Policy makers in the United States and the global community, recognizing that there is dissension among scholars as to the ultimate legal status of Kashmir, should push Pakistan and India to refrain from using the rhetoric of legitimacy or illegitimacy in bolstering their current claims to Kashmir. Rather, they should be encouraged to consider the problem as it exists now, with due attention to the Kashmiri people themselves. They have been and are likely to continue to be a neglected part of the Kashmir dispute, though they are key to its long-term resolution. What About the Kashmiris? The relationship between India and Pakistan forms the critical geopolitical context in which the voice of the Kashmiris themselves must be heard. The two countries have fought major wars over Kashmir in 1948 and 1965. In the 1972 Simla Agreement following the war over Bangladesh, India and Pakistan agreed to respect “without prejudice” the most recent cease-fire line as a Line of Control, not seeking to alter it regardless of differences in legal interpretation. They also agreed to refrain from the threat or use of force in violation of the Line. In 1998, both powers evidenced a nuclear capability, elevating any future armed conflict between the two powers to a more dangerous level. Nationalism among

Pakistani and Indian populations has been on the rise as well, raising the intensity of any dialogue on the Kashmir dispute. Pakistan’s recent incursions across the Line of Control at Kargil, in violation of the Simla Agreement, further raised the temperature among Indians on the Kashmir issue. A nationalist spirit has concurrently risen among the Kashmiri people, particularly Muslims in the Vale of Kashmir itself. Since 1989 this has been expressed as a vigorous insurgency directed against India, in support of self-determination for Kashmir. Concomitantly the Indian government has launched a massive security presence in its part of Kashmir. In its counterinsurgency, India has lost moral ground internationally because of rampant abuses of human rights. Amnesty International, Human Rights Watch and other such organizations have all issued highly critical reports on India’s conduct in Kashmir. They note that torture, custodial rape, extrajudicial executions, “disappearances,” and desecration of holy sites are ubiquitous in Indian Kashmir. These adverse criticisms are also voiced by the U.S. Department of State, and similar agencies in Canada, the United Kingdom, and other Western countries. Supporting the contention of massive rights violations on the part of the Indian government in Kashmir is the fact of numerous refugee camps on the Pakistani (not the Indian) side of the Line of Control. This presence

attests physically to the judgments of human rights organizations that Indian Kashmir is not a place where the dignity and basic rights of persons are protected. A few points regarding insurgency and counterinsurgency in Kashmir must be recognized. The first of these is the domestic nature of the early insurgency. Although India frequently accuses Pakistan of waging proxy war through the Kashmiri insurgency, the insurgency in its origin can be traced to Kashmiris, not outsiders. Continuing to deny the grievances of the Indian Kashmiris that led them to take up arms in 1989 has led to a serious neglect of domestic factors in the Indian appraisal of this threatening movement. The fact that the guerilla movement in Kashmir flourished despite the massive security apparatus quickly set up in Kashmir in itself indicates some measure of popular support. Surveys conducted by Outlook magazine in 1997 showed the majority of the Vale’s population (77%) believed that the Kashmir problem could not be resolved within the framework of the Indian constitution. It also showed that the majority viewed the increasing Islamization of the Kashmiri independence movement with trepidation. It is not clear whether such figures are reliable indicators, being derived from surveys taken at the height of what had become a civil war in Indian Kashmir. Today surveys show that the Kashmiris want peace and are tired of armed conflict, but the

recent surveys do not indicate in which direction that peace should be achieved. At the same time, as the insurgency progressed there was increasing aid to the Kashmiri militants from Pakistan. In recent years this aid, in the form of money, weapons, fighters, and training, has come from even further afield in the Islamic world. As a result, the original core insurgent organization, the Jammu and Kashmir Liberation Front (JKLF), which sought the "Third Option" of a fully independent Kashmir, was later eclipsed by organizations such as Hizbul Mujahideen and then Harkat-ul-Ansar, which sought total accession to Pakistan. Today, to fight in Kashmir is considered a form of Islamic jihad for youngsters from Afghanistan, Sudan, Algeria, Saudi Arabia, and other countries not primarily implicated in the Kashmir problem. This Islamization of the movement has deepened its inflammatory impact on the general population of India, which is starting to view Kashmir as the place India will have to draw the line against a global wave of Islamic radicalism. This perspective is of course brought radically into focus by recent events. Hindus burning pictures of Osama bin Laden are slaughtered by Muslim protesters in the streets. In this form of the dispute, India does have the general sympathy of the democratic West, which has traditionally tended to look unfavorably on transnational and militant developments in the world of Islam, and now explicitly

views them as a threat. Indian lobbyists pitch the Kashmir problem as one in which a democratic and secular India, working with the democratic and secular West, is up against a tide of fundamentalism and obscurantism. Pakistan has in rhetoric and action heightened these fears, giving clear support and encouragement to the jihadis despite proclamations to the contrary. Its Islamic parties and its secret service have without doubt been heavily involved in Indian Kashmir. Kashmiri separatists' probable links to Afghanistan's varied militant organizations - perhaps via Pakistan or perhaps independently - are now a highly critical factor. Pakistan, as well, has been accused of rights-violating behavior in its portion of Kashmir, directed primarily against members of the Jammu and Kashmir Liberation Front which continues to speak for "the Third Option" of total sovereignty. Sober observers fear that even if the Kashmiri people choose this third option, neither India nor Pakistan would actually release their portions of Kashmir. (China, which claims a small bit of Kashmir for itself, is also an unpredictable factor here.) Although "the Third Option" is talked about in Kashmiri circles, it is largely neglected among Indians and Pakistanis. Kashmiri sovereigntists have only the larger world community to appeal to in their quest for an independent Kashmir.

#### **Would a Plebiscite Work?**

As early as 1948, the United Nations

Security Council proposed a "free and impartial plebiscite" in the whole of Kashmir as a solution to the impasse, repeating the notion of a plebiscite as the best solution several times in succeeding years. At the time of the accession to India, Mountbatten himself, as the last British Viceroy, promised Kashmir a plebiscite as soon as order could be restored. At present, Pakistan and the Kashmiri militant organizations have agreed to the idea of a plebiscite, but India has not, arguing that the Kashmir question remains an issue of India's internal affairs. Rather, India has recently proposed an enlarged autonomy for Kashmir within a federated India (i.e., putting into effect Article 370, mentioned above). Greater autonomy for Kashmir would certainly have helped to deflate the original grievances that sparked the ongoing insurgency. Such autonomy would also have helped quell Sikh discontent in Punjab and tribal mistrust in the northeast. The question is whether at this point greater autonomy within India is enough to satisfy the enlarged ambitions of the Kashmiris, and whether it will be acceptable as a solution to the increasingly Islamic and transnational alliance now backing the insurgency. Though several discontented minority groups in India are pushing either politically or militarily for greater decentralization, a move toward federalism is probably not enough to resolve the Kashmir tangle at this point. Years of abuses at the hands of

Indian security forces have left many in Kashmir bitter about their political situation in India. A full and fair human rights accounting of what has happened over the past dozen years would be the first step toward winning back Kashmiri “hearts and minds” for India. Although India has shown some indications that it is willing to put human rights in public profile, it has not yet been willing to come to terms with its accountability for massive violations in other parts of India. It is not likely that Kashmiris will rest content with any solution that does not include such accountability for human rights abuses. Although accurate studies of popular sentiment in Kashmir have been impossible to conduct in the current conditions, it is likely that in the case of a full plebiscite held in the whole of Kashmir, the critical areas would be Azad Kashmir (Pakistan) and the Vale of Kashmir (India). Jammu is a predominately Hindu area whose population is likely to want to go with India. Ladakh is a Buddhist area that has evinced practically no interest in the entire Kashmir dialogue, and the same could be said for the Northern Areas of Gilgit-Baltistan in Pakistan. Presumably these would prefer to simply stay with the country they are in now. The high eastern region known as the Aksai Chin, claimed by China, is largely uninhabited and even less reported, so it is not possible to state with any confidence what is on the mind of the few residents who live there. China may

well be less committed to prevailing in Aksai Chin if it did not fear that India would use that remote area for military bases that might one day be used against China. It is the Vale of Kashmir and Azad Kashmir, principally, that are the loci of the dispute today. Although Indian analysts take the evidence of a general preference for peace over war in the Valley to mean that its population agrees to stay with India, other readings of the situation are possible. The question is whether these people perceive that there is any real chance of Kashmiri sovereignty. If such an opportunity were perceived as real, even the other regions might opt to join an independent Kashmir. But such a “third option” would only be possible with firm guarantees from the United Nations and the international community. Neither India nor Pakistan favor it despite lip-service to principles of self-determination. A plebiscite under United Nations supervision may remain the best way to ascertain the wishes of the Kashmiri people, as has been stated by the U.N. and its various bodies from 1948 to the present. All the Kashmiri insurgent groups and political parties have consistently stated that they were in favor of, and would abide by, a free and fair plebiscite on Kashmir’s future conducted under auspices of the United Nations. Pakistan has also consistently supported the notion of a plebiscite, but with only two (Pakistan or India) not three (Pakistan, India, or Independence)

options. India opposes a plebiscite in principle, since it views the future of Kashmir as an internal not regional or international issue. There would therefore have to be substantial preparation involving all levels of diplomacy to lay the groundwork for such a proposal. The weightiness of this task is balanced, however, by the exigency of the current world situation. Since the attacks on the World Trade Center and the Pentagon September 11, the United States and the world community have become more fully attentive to the fact that the issues involved are fully transnational, indeed global, and cannot be addressed in one country without consideration of many others. The Kashmir dispute has ramifications that extend throughout the South Asia region, and particularly into Afghanistan. It therefore must not be neglected in any attempt to ensure more stability and peace in the world of Islam. The international community should make this issue one of the top agenda items as events unfold. Because the Kashmir dilemma is of such long standing, we have become accustomed to thinking of it as one of those situations that may have to be simply “managed” rather than one capable of resolution. But the newly minted nuclear capabilities of the belligerents, and the sudden escalation of tensions around Islamic radicalism, change everything. Band-aid agreements of the past have merely covered a wound that has the potential to inflame the region and indeed the world. We have to think

and plan for the long term here, as well as attending to short-term issues relating to the (currently) Afghan-centered “war on terrorism.”

### What Can We Do Now?

- I. First, the United States and other members of the international community should put pressure on Pakistan and India to agree to eventual talks with the 3-option plebiscite firmly on the table. The commitment to a definitive plan for peace in Kashmir can be made while attention is focused on the region, even though the timing of an actual plebiscite may be dependant on how the “war” of the United States and its allies is prosecuted and the responses it provokes. The United States and its allies can effectively call upon the leaders of India and Pakistan to be patient on Kashmir if it guarantees to place a fair resolution of the Kashmir dispute on its list of top priorities subsequent to the current emergency.
2. Second, resources must be available for the United Nations as it addresses both immediate questions of the ongoing “war” and longer term attempts to resolve the conflicts that underlie it. This means that the United States must assume its full financial responsibilities in United Nations activities. The recent U.S. agreement to pay \$582 million in back dues was a significant step in this direction.
3. Third, the U.S. should also recognize the severely negative

impact of its antagonism toward the proposed International Criminal Court, which would have been a body appropriately positioned to deal effectively with the crime against humanity perpetrated against innocent Americans on September 11. The remoteness of global events from most Americans up until now has helped encourage an isolationist attitude, but now is the time that everyone is recognizing U.S. entanglement with even geographically distant issues. Many Americans who never knew quite where Afghanistan was, now roll Kabul, Kandahar and Jalalabad off their tongues with ease.

### Conclusion

Kashmir is but one of an array of conflicts that can best be addressed now, as part of a wider attempt of the United States and other Western countries to rise to the challenge of making a safer world. Military solutions alone will not achieve this goal. Conflict resolution in Israel/Palestine, Sudan, Chechnya, Kashmir and other places where radical Islamists are involved can and must be pursued in tandem. We have to ensure that Kashmir is not yet another site where violent options appear to the desperate as the only choice. Attention to such longstanding disputes is not “negotiating with terrorists” but is the only rational strategy through

which the United States can contribute to justice, and hence assure a future of peace rather than war.

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Cynthia Mahmood



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