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KASHMIR: NEGOTIATING FOR PEACE

Briefing Packet for the United States Delegation

Negotiation Simulation

Prepared by:

Karen Heymann
Neha Dewan
Jey Jeyalingam
Sharif Kabir
Laura Flyer

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Introduction

The purpose of this negotiation simulation is to surface key issues and potential solutions to the points of impasse which will likely arise during future negotiations on Kashmir.

The negotiation simulation has been developed using the methodology employed by the US Department of State's National Foreign Affairs Training Institute which runs similar negotiations to train US diplomats prior to negotiations.

This simulation exercise is not intended to be a comprehensive review of all the issues involved, nor is it intended to endorse one view over the other. The participants in the simulation naturally will have varying levels of substantive or area expertise, as well as professional commitment to the issue. Participants are therefore encouraged to draw upon their individual experiences as they deem appropriate.

To provide the necessary information to conduct this simulation, this briefing packet contains a brief chronology of the history of the conflict, the principal interests of the parties and other relevant actors, a discussion of the primary issues which are likely to be discussed during the next round of negotiations, and negotiating instructions for the delegations. Each delegation is provided only their instructions. Four annexes containing supplementary information are located at the end of the instructions. Particularly, the BBC recently provided an overview of seven possible scenarios for a solution to the problem of final status of the Kashmir territory. These scenarios may provide a starting point for final status discussions between the parties. These seven scenarios and corresponding maps are provided at Annex D.

The negotiation simulation has been prepared by the Public International Law & Policy Group in cooperation with American University and is made possible by a grant from the Carnegie Corporation of New York. The Public International Law & Policy Group (PILPG) is a 501(c)3 non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict

resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

Brief Chronology of the Crisis in Kashmir

The purpose of this chronology is to provide only a brief overview of the situation in Kashmir for those individuals that may not be familiar with the chronological history. It is not designed to be a comprehensive history of Kashmir.

In the wake of the Second World War, the British relinquished colonial rule of the territory known as India and oversaw the creation of two separate independent states, India and Pakistan. India, under the leadership of Mahatma Gandhi and Prime Minister Jawaharlal Nehru, was to be a secular, federated state, offering political representation to the numerous religious and ethnic communities of India through local councils. The maharajahs of the princely states that were not specifically allocated to either Pakistan or India were given the choice of independence or accession to Pakistan or India.

The First Indo-Pakistani War, which began in late 1947, was the beginning of the conflict as it persists today. The Hindu Maharaja of Jammu and Kashmir did not immediately make a choice between independence and accession. By October of 1947, armed Pashtun tribesmen moved across the borders into Kashmir. In need of aid, the Maharaja turned to India for military support. India agreed to provide troops on the condition that Kashmir would accede to India.

The Maharaja of Kashmir turned over administrative powers to India in an accession document. It was agreed to by both India and Kashmir, however, that the accession would be temporary, and that at the close of hostilities, a referendum would decide the issue of accession. Pakistani military regulars joined the war in May 1948 to protect Pakistan's border. By January of 1949 hostilities came to a close under a UN fostered ceasefire.

The ceasefire agreement of January 1, 1949 provided that the current territorial positions of military control were to form the status quo until the referendum was held. The Pakistan-controlled territory to the west of the ceasefire line consists of a small semi-autonomous region, referred to as Azad Kashmir (meaning "free Kashmir") and a larger area comprised of the former kingdoms of Hunza and Nagar, referred to as the northern areas.

The ceasefire reaffirmed the notion that a referendum should ultimately determine the status of Kashmir and approved the existing ceasefire line until such referendum should occur. Five years passed without a

referendum, and in 1954 the Constituent Assembly of Jammu and Kashmir ratified the accession to India. The legal authority of the Constituent Assembly and the ratification of the accession remained questionable.

In August of 1965 conflict resumed in Kashmir. The second Indo-Pak war was fought in three weeks and again ended in a UN-facilitated ceasefire. In signing the Tashkent Agreement, both parties agreed to return to the status quo ceasefire line negotiated previously, and pledged to refrain from the use of force to resolve the dispute.

The resolution of the 1971 war, which was not directly related to the Kashmir question, produced an accord that nevertheless addressed the issue. The Simla Accord re-emphasized the need for peaceful means of dispute resolution, and it stressed the use of bilateral dialogue and working groups for all future conflicts between the two states. Furthermore, the two countries agreed that the current Kashmir ceasefire line, which was renamed the Line of Control, would be respected by both sides "without prejudice to the recognised positions of either side."

In 1974 the Kashmir state government reached an accord with the Indian Government, which affirmed its status as "a constituent unit of the union of India." Pakistan rejected the accord.

After a decade of relative quiet, the militant movement in the Kashmir Valley began in 1987 as many questioned the validity of the recent assembly elections. With the end of the war with the Soviets in Afghanistan in 1989 many of the *Mujahideen* came to Pakistan, bringing Islamist extremism to what had begun as a secular/nationalist militant movement.

India detonated its first nuclear device in 1974 in Rajasthan, near the Pakistani border, thus establishing India as a nuclear power and adding a new, dangerous dimension to Indo-Pak relations. Pakistan also began testing its first surface to surface missiles, and by 1992 Pakistan claimed to have nuclear capabilities. Since then, India-Pakistan relations have included the possibility of nuclear escalation. In 1998, India detonated five more nuclear devices in Rajasthan. Pakistan responded by itself detonating six devices in Baluchistan. Pakistan also test launched its first medium-range ballistic missile (900-mile range). Pakistan has made clear that it will employ a necessary first-use approach to the use of nuclear weapons. The United Nations expressed concern with the parties' strategies on nuclear warfare, and the G-8 threatened numerous economic sanctions.

The year of 1997 marked fifty years of independence for the two states. It also marked fifty years of conflict over Kashmir's status. With that in mind, India and Pakistan redoubled diplomatic efforts in search of a solution to the dispute over Kashmir. Though the talks began with a positive outlook, they quickly halted, with the parties agreeing to continue the dialogue at a later time.

Dialogue between India and Pakistan resumed in 1999. Indian Prime Minister Atal Vajpayee and Pakistani Prime Minister Nawaz Sharif signed the Lahore Accord in February. The Accord again reaffirmed the parties' desires to settle the dispute over Jammu and Kashmir.

However, the Accord held only until May of the same year. An Indian patrol spotted intruders across the Line of Control. The Indian military began air raids in the region, and in response Pakistan began shelling the Kargil region. International pressure brought an end to the struggle but not before displacing some 30,000 people on both sides of the Line of Control.

Shortly after Kargil, a coup led by General Pervez Musharraf toppled the Sharif government. Although the Pakistani Supreme Court granted legitimacy to Musharraf's rule for three years, the international community expressed their disapproval of Musharraf's ascension until 2001.

The year 2001 proved tumultuous in the world and in India-Pakistan relations. In May, India ended a ceasefire against Kashmiri militants, while also asking for dialogue. Musharraf and Vajpayee met at Agra in July for a three-day summit, but failed to produce any agreement on Kashmir. The events of September 11, 2001 improved the bargaining power of Pakistan as it became a key ally of the United States in the subsequent War on Terror. In October and December, tensions increased as twin bombings of the Kashmiri Assembly and the Indian Parliament killed fifty people. Troops were amassed by both sides along the Line of Control, leading to minor skirmishes.

In January 2002, Musharraf called for talks between the states. Dialogue was not, however, forthcoming. Rather, 2002 was marked by tensions on both sides of the Line of Control. Nuclear tensions continued between New Delhi and Islamabad and then increased in the early months of the year, which was reinforced by an active exchange of accusations in the media. The October election in Indian-held Kashmir further strained relations. It is argued that over 500 deaths resulted from clashes between Kashmiri protestors to the elections and Indian security forces.

A heightened level of tension between India and Pakistan continued through the early months of 2003. The year began with each nation expelling the other's diplomats. In Srinagar on April 18, 2003, however, Prime Minister Vajpayee made his own overture to Musharraf. By May, India agreed to reestablish diplomatic ties with Islamabad, and by October, some bus and rail ties were resumed between the two states. India also made an important concession, by agreeing to open a line of dialogue with the All Parties Hurriyat Conference. Talks with Kashmiri groups have previously been denied outright. On November 26 a ceasefire offered by Pakistan to India went into effect in Kashmiri territory.

The year 2004 began with renewed dialogue between Musharraf and Vajpayee at a summit meeting of South Asian nations. Recent strikes at Musharraf by militant groups may be the catalyst for an aggressive approach by Pakistanis to curb the activities of militants, generating momentum to the long-delayed status talks with India. The optimism has in part been fueled by the fact that the January 5 Islamabad declaration identified the willingness of the parties to negotiate a peaceful settlement of all bilateral issues.

As the brief historical overview indicates, the Kashmir negotiations will involve discussions of final status, demilitarization and decommissioning, and humanitarian issues. The parties will unlikely be able to discuss final status without simultaneous talks regarding demilitarization. For example, the UN Security Council resolution supported a plebiscite but only after a total troop withdrawal. Negotiations of humanitarian issues are necessary because all sides of the dispute cite humanitarian concerns as a basis for their positions on final status and decommissioning and demilitarization. Thus, it is likely that negotiations of all three issues will be ongoing throughout the negotiation simulation.

Overview of the Central Negotiating Issues

The discussion of final status, demilitarization, and humanitarian issues are not likely to be initially discussed during the negotiations. As witnessed in prior negotiations, the parties will first discuss issues such as re-opening bus routes and other confidence-building measures. For the purpose of this simulation, discussions will revolve around the three selected issues because these have been the long-standing points of dissention between the parties. The participants should not view the selection of these issues for discussion as ignoring other important negotiating issues. As such, the participants can introduce additional points of contention as they deem appropriate.

Final Status:

From the beginning of the Kashmir conflict, the central underlying issue has been Kashmir's final status. Although the original issue existed only between Pakistan and India, the conflict has unfolded in such a way that many Kashmiris now seek independence for Kashmir instead of accession to either Pakistan or India. Each party relies on historical, social and legal foundations to support their arguments. India bases its belief that all of Kashmir is rightfully a part of India on Maharajah Singh's initial accession agreement. Pakistan argues, on the other hand, that the accession was subject to later popular approval by the people of Kashmir. The separatist Kashmiris argue that the state would have remained independent without the interference of Pakistan and India.

Kashmir is now divided, which makes the conflict more difficult to resolve. Azad Kashmir has been a part of Pakistan for over fifty years, but India maintains that all of Kashmir must be united within the India. Conversely, Pakistan insists that Azad Kashmir is now part of Pakistan. It has been suggested that the current line of control, which separates Azad Kashmir from the rest of Kashmir, should serve as the permanent boundary between the two countries. This does not consider, however, the separatist Kashmir groups' struggle for Kashmiri independence from both Pakistan and India.

Additionally, both Pakistan and the Kashmiri separatists insist that the future of Kashmir must be decided by a free and fair plebiscite as provided by the U.N. Security Council resolution. India claims first that there is no need for a plebiscite because the continued participation of Kashmiris in Indian

elections has confirmed that the Kashmiris wish to remain a part of India. India additionally cites the requirement, contained in Security Council Resolution 726, of a total withdrawal of troops from Kashmir prior to any plebiscite.

Withdrawal and Demilitarization of Indian, Pakistani, and Paramilitary Groups Acting in Kashmir

India and Pakistan seem to be at a standstill regarding a withdrawal of troops from Kashmir. Although Pakistan previously denied any involvement in the pro-Pakistan accession groups acting within Kashmir, President Musharraf has recently taken responsibility for such activities occurring within the Azad region of Kashmir. Pakistan does not yet recognize any involvement or support for those groups acting within Indian-held Kashmir. Conversely, India insists that there will continue to be a need for the presence of Indian Security Forces within Kashmir so long as there continues to be paramilitary activity, which they assert is supported and funded by the Pakistan government. Moreover, the paramilitary groups acting within Kashmir cite alleged human rights abuses by the Indian Security Forces as part of the need for their continued paramilitary activities.

Humanitarian Issues:

The human rights abuses suffered by those living in Kashmir are widespread and well documented. Between 1997 and 1999, militant forces from Pakistan killed more than 300 civilians in Kashmir. In response, Indian security forces retaliated against those they believed to be guilty for such crimes. Many sources report the use of rape, torture, extrajudicial executions, and disappearances as examples of such abuses. Although much of the extreme violence has diminished, detentions for extortion and attacks on the press by Indian countermilitant militias are reported to still exist. Each side, however, claims that it is not at fault. For instance, commentators claim that Indian forces justify the torture of Pakistani militant forces by saying it was the only way to get information from them.

Prosecutions rarely occur for these human rights abuses; the Indian government exacted some disciplinary measures, but as of yet there have been no criminal prosecutions. Parties will need to discuss the mechanisms for stopping the current violations as well as the possible need for a truth commission or tribunal to address the past wrongs against Kashmir.

Introduction to the Participants and their Positions

This section introduces the participants and their positions. Each participant's position on various matters involving Kashmir are presented in order to provide insight into their negotiating interests. The parties involved in this negotiation simulation are India, Pakistan, the Jammu & Kashmir Liberation Front, and the All Parties Hurriyat Conference.

India:

India is a twenty-nine state constitutional federated republic led by President Abdul Kalam and Prime Minister Atal Behari Vajpayee. India's long-standing position on the Kashmir dispute is that the state of Jammu and Kashmir is a part of the Indian Union. Thus, India asserts that the only issue between India and Pakistan regarding Kashmir is Pakistan's necessity to desist in its occupation of Azad Kashmir and the Northern Areas. India sees all other issues with regard to Kashmir are purely domestic.

Pakistan:

Nominally Pakistan exists as a federated parliamentary democracy. The role of the military since the coup of 1999, however, cannot be underestimated. Prime Minister Zafarullah Jamali is the head of state and chief executive, and Pervez Musharraf is President and Chief of Army Staff. Pakistan asserts that since 1947 Jammu and Kashmir has remained disputed territory because Kashmir's accession to India was provisional. Pakistan bases this position on the Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948. Pakistan holds that all future talks should be based on the Kashmiri people's right to self-determination as established by an internationally supervised plebiscite offering accession to either India or Pakistan. Pakistan does not support independence as an option for Kashmir. Though Pakistan also feels that future talks should be dictated by the Simla Agreement and any UN resolutions, Pakistan does not rule out third party mediation or good offices.

Jammu Kashmir Liberation Front (JKLF):

Founded in 1977, this secular movement has the primary objective of independence for Kashmir. They will not accept any solution that involves a constitutional status for Kashmir within India or Pakistan. Additionally,

they do not accept the present status of the borders of Kashmir. The group has, however, diminished in importance over the years as the independent movement increasingly took on a religious character. The group has now splintered into two groups that both share the original name. One group has renounced the use of violence while the other has not. The violent faction was not invited to the negotiation simulation.

All Parties Hurriyat Conference:

Founded in 1993 the group is a coalition of 24 political, religious and social organizations. It seeks non-violent means to end the conflict and its goal is to gain independence for Kashmir. The main role of the group has been to sway public opinion against security forces and to further a negative image of counter-insurgency in Kashmir. Offering to participate in negotiations in 2000, the group agreed to separate bilateral talks with India and Pakistan, rather than requiring multilateral talks with all groups.

NEGOTIATION INSTRUCTIONS: UNITED STATES

The United States does not play a formal role in any ongoing negotiations between the parties. The U.S. Department of State continues its support for the negotiations and is willing to facilitate the talks in any way it can when necessary and/or called upon by the parties.

Annex A: Agenda for Negotiations

- 9:00 am** Coffee and doughnuts available for participants
- 9:30 – 9:45 am** Introduction and review of simulation schedule and procedures
- 9:45 – 10:15 am** Individual delegation meetings to review positions and determine representation for delegation sub-groups.
- JK Liberation Front and APH Conference hold brief separate meeting prior to joining as a joint delegation
- 10:15 – 10:45 am** Session 1: Small bilateral meetings between the following groups to discuss Demilitarization and Humanitarian Issues:
- Pakistan Team 1 and India Team 1
 - Pakistan Team 2 and JKLF/APHC joint Team 1
 - India Team 2 and JKLF/APHC joint Team 2
 - US where necessary
- 10:45 – 11:00 am** Coffee Break and Shuttle Diplomacy
- 11:00 – 11:30 am** Individual delegation meetings to review Session 1 negotiations
- 11:30 – 12:00 pm** Session 2: Small bilateral meetings between the following groups to discuss Final Status issues:
- India Team 1 and Pakistan Team 1
 - India Team 2 and JKLF/APHC joint Team 1
 - Pakistan Team and JKLF/APHC joint Team 2
 - US where necessary
- 12:00 – 12:30 pm** Individual delegation meetings to focus on substantive negotiating issues
(Lunch will be provided during this meeting)
- 12:30 – 1:00 pm** Plenary Session
- 1:00 – 1:20 pm** Resume Small Group Meetings as determined by parties and mediators
- 1:20 – 1:45 pm** Final Plenary Session
- 1:45 – 2:20 pm** Review and Lessons Learned

Annex B: Necessary Texts:

India-Pakistan Peace Agreements:

Tashkent Declaration:

www.kashmir-information.com/LegalDocs/tashkent.html

Simla Agreement:

www.indianembassy.org/policy/Kashmir/shimla.htm

Lahore Declaration:

www.usip.org/library/pa/ip/ip_lahore19990221.htm

United Nations Security Council Resolutions

[Resolution 47 \(1948\) on the India-Pakistan question adopted by the Security Council on 21 April, 1948. \(Document No. S/726 dated 21 April 1948.\)](#)

[Resolution 51 \(1948\) on the India-Pakistan Question adopted by the Security Council on 3 June 1948 \(Document No. S/819 dated 3 June, 1948.\)](#)

[Resolution 80 \(1950\) concerning the India-Pakistan Question adopted by the Security Council on 14 March, 1950. \(Document no. S/1469, dated 14 March, 1950\)](#)

[Resolution 91 \(1951\) concerning the India-Pakistan Question adopted by the Security Council on 30 March, 1951 \(Document No. S/2017/Rev.I, dated 30 March, 1951\)](#)

Article 370 of the Indian Constitution

<http://www.kashmir-information.com/legaldocs/article370.html>

Annex C: Maps



Map No. 3953 Rev. 1 UNITED NATIONS
July 1999

Department of Public Information
Cartographic Section

<http://www.un.org/Depts/Cartographic/map/profile/kashmir.pdf>



Annex D: Proposed Scenarios for Resolution of Kashmir A BBC Special Report

Scenario one: The status quo

Kashmir has been a flashpoint between India and Pakistan for more than 50 years. Currently a boundary - the Line of Control - divides the region in two, with one part administered by India and one by Pakistan. India would like to formalise this status quo and make it the accepted international boundary. But Pakistan and Kashmiri activists reject this plan because they both want greater control over the region.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/default.stm

Scenario two: Kashmir joins Pakistan

Pakistan has consistently favoured this as the best solution to the dispute. In view of the state's majority Muslim population, it believes that it would vote to become part of Pakistan. However a single plebiscite held in a region which comprises peoples that are culturally, religiously and ethnically diverse, would create disaffected minorities. The Hindus of Jammu, and the Buddhists of Ladakh have never shown any desire to join Pakistan and would protest at the outcome.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/2.stm

Scenario three: Kashmir joins India

Such a solution would be unlikely to bring stability to the region as the Muslim inhabitants of Pakistani-administered Jammu and Kashmir, including the Northern Areas, have never shown any desire to become part of India.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/3.stm

Scenario four: Independent Kashmir

The difficulty of adopting this as a potential solution is that it requires India and Pakistan to give up territory, which they are not willing to do. Any plebiscite or referendum likely to result in a majority vote for independence would therefore probably be opposed by both India and Pakistan. It would also be rejected by the inhabitants of the state who are content with their status as part of the countries to which they already owe allegiance.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/4.stm

Scenario five: A smaller independent Kashmir

An independent Kashmir could be created from the Kashmir Valley - currently under Indian administration - and the narrow strip of land which Pakistan calls Azad Jammu and Kashmir. This would leave the strategically important regions of the Northern Areas and Ladakh, bordering China, under the control of Pakistan and India respectively. However both India and Pakistan would be unlikely to enter into discussions which would have this scenario as a possible outcome.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/5.stm

Scenario six: Independent Kashmir Valley

An independent Kashmir Valley has been considered by some as the best solution because it would address the grievances of those who have been fighting against the Indian Government since the insurgency began in 1989. But critics say that, without external assistance, the region would not be economically viable.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/6.stm

Scenario seven: The Chenab formula

This plan, first suggested in the 1960s, would see Kashmir divided along the line of the River Chenab. This would give the vast majority of land to Pakistan and, as such, a clear victory in its longstanding dispute with India. The entire valley with its Muslim majority population would be brought within Pakistan's borders, as well as the majority Muslim areas of Jammu.



http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/kashmir_future/html/7.stm