



Peace Over Kashmir

*The  
Simla  
Agreement*

Help or Hindrance?



## Kashmir Perspectives #2

The people of Kashmir who number more than 90 other existing independent nations individually and have a defined historical identity, are at present engaged in a mass struggle to win freedom and release from the foreign occupation of their land. This struggle is motivated by no bigotry or ethnic prejudice; its aim is nothing but the exercise of the right of self-determination explicitly recognized in resolutions of the United Nations relating to their case.

To the horrors of the repression from which they suffer (see *Kashmir Perspectives # 1*) are added two other circumstances, each cruelly adverse. One is the apathy of the world outside, including governments and organizations that otherwise are justly proud of their championship of democracy and human rights. The second is the fog of myths and evasive arguments surrounding India's wrongful occupation of Kashmir.

*Kashmir Perspectives* is a modest attempt to help mitigate these two circumstances. It directs its appeal not to its readers' religious or ideological sympathies nor to their learnings towards either India or Pakistan but solely to their conscience and human concern.

**Ghulam Nabi Fai, Ph.D.**

Executive Director

Kashmiri American Council

The mass uprising of the people of Kashmir against Indian military occupation has evoked two reactions from the Government of India. One is extreme repression, some details of which are set out in *Kashmir Perspective # 1*. The second is the threat of war. On 10 April 1990, the Prime Minister of India made a formal statement with full authority asking his nation "to be psychologically prepared for war". His cabinet colleagues asserted in the Indian Parliament (not in impromptu but prepared statements) that India would be fully justified in going to war against Pakistan and/or launching a pre-emptive strike against all sources of aid to the insurgents in Kashmir.

The U.S. Government has exerted its influence in restraining this belligerent rhetoric. This, however, is but a minor reprieve. Despite the visit to Islamabad and Delhi last week of a high-level U. S. official mission, there is not the slightest sign yet of even a beginning being made towards a meaningful peace process, eliminating the danger of war. The present situation has made it abundantly clear that the status quo in Kashmir is both unjust and untenable. It has thus thrown into sharp relief the urgent need for India and Pakistan to settle the 43-year old Kashmir dispute on a just and lasting basis.

### *Basis for a Peace Process*

The question arises: what should be the point of departure for determining a just and lasting basis? The evident answer obviously is (a) the Charter of the United Nations which, in its very first article, speaks of "respect for the principles of equal rights and self-determination of peoples" and (b) the international agreements between the parties to the dispute.

India and Pakistan have concluded two agreements which fall in this context. The first is embodied in the resolutions adopted by the United Nations Commission for India and Pakistan ( UNCIP) on 13 August 1948 and 5 January 1949. These resolutions constitute an agreement because,

unlike most resolutions of the Security Council or the General Assembly of the United Nations, their provisions were first negotiated with the parties and, in written statements, explicitly accepted by them. The text of these resolutions is given in Appendix I.

The second agreement is the one concluded at Simla on 2 July 1972. Its text is given in Appendix II.

The first agreement is written out in detail and is self-explanatory. Since it binds both India and Pakistan to respect the verdict of the people of Kashmir to be obtained through a free vote under the impartial supervision of the United Nations, India seeks to propagate the impression that it has been superseded by the Simla Agreement. This implies that the Simla Agreement addressed itself to the same issues as were covered by the UNCIP resolutions. That the implication is false can be readily seen from a comparison of the two texts. But if it were supposed to be true, it would run counter to a standing principle of international relations which is set out in Article 103 of the Charter of the United Nations (accepted by every Member of the United Nations, including India). The Article says:

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

### *Relevance of Simla Agreement*

What, then, is the relevance of the Simla Agreement as far as instituting a peace process between India and Pakistan, fully recognizing Kashmir's inherent right of self-determination, is concerned?

The pertinent facts about the Agreement are:

- It was concluded in the aftermath of the India-Pakistan war of 1971 over what is now Bangladesh. Pakistan had suffered a decisive military defeat and 93,000 Pakistani prisoners-of-war were in Indian captivity. The factor of duress is thus obvious.

--Despite this circumstance, the Agreement nowhere precludes a settlement of the Kashmir dispute along the lines laid down by the United Nations with the consent of both India and Pakistan. Nor does it require that the United Nations be by-passed in the effort towards a settlement. On the contrary, it expressly says that the relations between the two countries shall be governed by the principles and purposes of the Charter of the United Nations. One of the basic principles of the Charter ( Article 33) is to seek a solution of any dispute by negotiation, enquiry, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means. The linked principle (Article 34) is that the Security Council may investigate any dispute and (Article 36) at *any stage* recommended appropriate procedures or methods of adjustment. The Agreement thus reinforces the obligations of both parties to achieve a settlement in accordance with the resolutions endorsed by the Security Council i.e. UNCIP resolutions and, if their bilateral efforts fail, to turn to the United Nations for assistance. Nothing would be more contrary to the Charter -- and, therefore, to the Simla Agreement itself -- than to bar recourse to the United Nations.

--The Agreement makes mention of "a final settlement of Jammu and Kashmir" as one of the objectives of the two parties. (The obvious meaning that there is an issue to be finally settled is being resisted by India)

--It provides that, pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation. This is not a license for leaving problems unresolved. If anything, it implies a commitment to making efforts towards a final settlement.

-- It says that "in Jammu and Kashmir, the line of control resulting from the cease-fire of 17 December 1971 shall be respected by both sides without prejudice to the recognized position of either side". To "respect" the line means not to cross it militarily; in other words, to maintain the cease-fire. It does not convert the line to a legally accepted international frontier. This is clear from the words that the "respect" will be "without prejudice to the recognized position of either side".

The position consistently maintained by Pakistan that the status of Kashmir shall be decided by an impartial plebiscite has been recognized by the United Nations and, as it is identical with the position which India itself originally assumed at the world body, it is reflected in twelve substantive resolutions of the Security Council. A position safeguarded by the phrase "without prejudice to" can hardly be deemed to have been abandoned.

-- In its preamble, the agreement states the resolve of the two governments to establish durable peace in the subcontinent. Durable peace results from setting the outstanding dispute, not from denying its existence.

### *Plebiscite Agreement Not Superseded*

It is thus a misconception that the Simla Agreement has in any way superseded the resolutions of the United Nations Commission for India and Pakistan accepted by both parties. Nor can it be perceived to have narrowed the gulf between them and, to that extent, simplified the task of evolving a settlement. Even if it had done so, its impact on the Kashmir situation would have been open to question. Nothing in international law confers on two parties the authority to make decisions or conclude agreements which adversely affect the rights of a third. The third party here is the people of Kashmir.

### *Stress on Simla Agreement : Why?*

In ignorance or disregard of all these facts and their logical corollaries, the recommendation is being currently made by some governments friendly to both India and Pakistan ( including- the U.S.) that the two countries must resolve the Kashmir problem in accordance with the Simla Agreement of 1972. Why is that Agreement put in the forefront rather than the UNCIP resolutions?

There can be several explanations. One is deference to India because of its superior might. If this motivates the current U.S. diplomatic stance, it is, to say the least, undignified and contrary to the enduring principles

of U.S. policy towards all situations which involve inalienable human rights. Another reason can be the impression that the Simla Agreement, being of more recent origin than the UNCIP resolutions, might be more effective in activating the peace process. This is wrong in view of the fact that, for 18 years, the Agreement has signally failed to shake India out of its obdurate refusal to negotiate a settlement of the Kashmir problem. The current Indian position is that India is prepared to talk but there is nothing to talk about except how to crush the insurgency in Kashmir and perpetuate the status quo.

If non-implementation were to render an agreement defunct, then the Simla Agreement is in no better state than the earlier, far more concrete and comprehensive agreement painstakingly worked out by the United Nations and concluded under its auspices and with direct U.S. participation in 1948-49. If passage of time were allowed to extinguish solemn international agreements, then the Simla Agreement has already suffered the same fate as the UNCIP resolutions. If, however, agreements are to be revived, then why one and not also the other?

It seems that the Simla Agreement is being invoked because of lack of knowledge about its actual terms and the circumstances in which it was signed. India is taking full advantage of this factor to spread the misinformation that the Simla Agreement sanctions the perpetuation of the status quo in Kashmir and absolves her from the responsibility of striving for a settlement of the dispute. By citing the Simla Agreement at this stage, or encouraging others to do so, India obviously seeks to prevent those basic issues of the dispute being addressed that were fully taken into account by the United Nations. The agreement is pressed into service as a formula for evasion.

### *The Real Issue*

A sincere and serious effort towards a just settlement of the Kashmir dispute must squarely deal with the realities of the situation and fully respond to the people's rights involved in it. The Simla Agreement does neither. Indeed, it was not intended to do so; at best, it is reticent on the issues that need to be grappled with. A peace process mounted on its fragile platform is bound to collapse. Indeed, any process that ignores the

wishes of the people of Kashmir and is designed to sidetrack the United Nations will not only prove to be an exercise in futility but can also cause incalculable human and political damage.

May 1990

\*\*\*\*\*



# Appendix I

*Resolution adopted by the United Nations Commission for India and Pakistan on August 13, 1948*

The United Nations Commission for India and Pakistan,

*Having given* careful consideration to the points of view expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and

*Being of the opinion* that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavors to assist the Governments of India and Pakistan in effecting a final settlement of the situation,

*Resolves* to submit simultaneously to the Governments of India and Pakistan the following proposal:

## PART I

### Cease-fire Order

A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

B. The High Commands of the Indian and Pakistani forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.

(For the purpose of these proposals forces under their control shall be considered to include all forces, organized and unorganized, fighting or participating in hostilities on their respective sides.)

C. The Commanders-in Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

D. In its discretion and as the Commission may find practicable, the Commission will appoint military observers who, under the authority of the Commission and with the co-operation of both Commands, will supervise the observance of the cease-fire order.

E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favorable to the promotion of further negotiations.

## **PART II**

### **Truce agreement**

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their representatives and the Commission.

#### **A.**

1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

2. The Government of Pakistan will use its best endeavors to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and

**Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting.**

**3. Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission.**

## **B.**

**1. When the Commission shall have notified the Government of India that the tribesmen and Pakistani nationals referred to in parts II. A. 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistani forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission.**

**2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.**

**3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.**

## **C.**

**1. Upon signature, the full text of the truce agreement or communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.**

### PART III

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

*Resolution Adopted by the United Nations Commission for India and Pakistan on January 5, 1949*

"The United Nations Commission for India and Pakistan,

*Having received* from the Governments of India and Pakistan, in communications dated 23 December and 25 December, 1948 respectively, their acceptance of the following principles which are supplementary to the Commission's resolution of 13 August, 1948:

1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;

2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and the truce arrangements set forth in parts I and II of the Commission's resolution of 13 August, 1948 have been carried out and arrangements for the plebiscite have been completed;

3. (a) The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir;

(b) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite;

**(c) The Plebiscite Administrator shall have authority to appoint such staff of assistants and observers as he may require;**

**4. (a) After implementation of parts I and II of the Commission's resolution of 13 August, 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite;**

**(b) As regards the territory referred to in A.2 of Part II of the resolution of 13 August, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities;**

**5. All civil and military authorities within the State and the principal political elements of the State will be required to cooperate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite;**

**6. (a) All citizens of the State who have left it on account of the disturbances will be invited and be free to re turn and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan. The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision into effect;**

**(b) All persons (other than citizens of the State) who on or since 15 August, 1947 have entered it for other than lawful purposes, shall be required to leave the State;**

**7. All authorities within the State of Jammu and Kashmir will undertake to ensure, in collaboration with the Plebiscite Administrator, that;**

(a) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite.

(b) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(c) All political prisoners are released;

(d) Minorities in all parts of the State are accorded adequate protection; and

(e) There is no victimization.

8. The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems on which he may require assistance, and the Commission may in its discretion call upon the Plebiscite Administrator to carry out on its behalf any of the responsibilities with which it has been entrusted;

9. At the conclusion of the plebiscite, the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the plebiscite has or has not been free and impartial;

10. Upon the signature of the truce agreement, the details of the foregoing proposals will be elaborated in the consultations envisaged in part III of the Commission's resolution of 13 August, 1948. The Plebiscite Administrator will be fully associated in these consultations;

*Commends* the Government of India and Pakistan for their prompt action in ordering a cease-fire to take effect from one minute before mid-night of 1 January 1949, pursuant to the agreement arrived at as provided for by the Commission's resolution of 13 August 1948; and

***Resolves to return in the immediate future to the subcontinent to discharge the responsibilities imposed upon it by the resolution of 13 August 1948 and by the foregoing principles."***

## **Appendix II**

### **THE SIMLA AGREEMENT (1972)**

The Government of Pakistan and the Government of India are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the subcontinent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

In order to achieve this objective, the Government of Pakistan and the Government of India have agreed as follows:

- (i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries;
- (ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations;
- (iii) That the pre-requisite for reconciliation, good neighborliness and durable peace between them is a commitment by both the countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;
- (iv) That the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means;



- (v) That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;
- (vi) That in accordance with the Charter of the United Nations they will refrain from the threat or use of force against the territorial integrity or political independence of each other.

Both Governments will take all steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them.

In order progressively to restore and normalize relations between the two countries step by step, it was agreed that:

- (i) Steps shall be taken to resume communications, postal, telegraphic, sea land including border posts, and air links including overflights.
- (ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country.
- (iii) Trade and co-operation in economic and other agreed fields will be resumed as far as possible.
- (iv) Trade and co-operation in economic and other agreed fields will be resumed as far as possible.
- (v) Exchange in the fields of science and culture will be promoted.

In this connection delegations from the two countries will meet from time to time to work out the necessary details."

In order to initiate the process of the establishment of durable peace, both the Governments agree that:

- (i) Pakistani and Indian forces shall be withdrawn to their side of the international border.

(ii) In Jammu and Kashmir, the Line of Control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from threat or the use of force in violation of this line.

(iii) The withdrawals shall commence upon entry into force of this Agreement and shall be completed within a period of 30 days thereof.

This Agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the Instruments of Ratification are exchanged.

Both Governments agree that their respective heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization of relations, including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

ZULFIKAR ALI BHUTTO

INDIRA GANDHI

President

Prime minister

ISLAMIC REPUBLIC OF PAKISTAN

REPUBLIC OF INDIA

Simla, the 2nd July, 1972".

# Kashmir: A Summary

## *Location:*

Heart of Asia, with historical links to both South and Central Asia. Surrounded by Pakistan, Afghanistan, China and India.

## *Area:*

86,000 square miles, more than three times the size of Belgium, the Netherlands and Luxemburg combined.

## *Population:*

12 million (estimate) including 1.5 million refugees in Pakistan and 0.4 million expatriates.

## *Status:*

Historically independent, except in the anarchical conditions of late 18th and the first half of 19th century and when incorporated in the vast empires set up by the Mauryas (3rd century BC), the Mughals (16th to 18th centuries) and the British (mid-19th to mid-20th centuries). All these empires included not only present-day India and Pakistan but other countries as well. Under the British, Kashmir had internal autonomy.

## *Present Status:*

In dispute since 1947. 63% of the area occupied by India.

## *Cause of Dispute:*

India's claim that Kashmir is Indian territory. The claim is rejected by the people of Kashmir, challenged by Pakistan. It has never been accepted by the United Nations, never legally validated.

## *Solution:*

Demilitarization of Kashmir (through withdrawal of all outside forces) followed immediately by a plebiscite under impartial control to determine the future status of Kashmir.

## *Great Power Policies:*

When the dispute was first brought to the United Nations, the Security Council, with the firm backing of the United States, urged the solution described above. At that time, the Soviet Union did not dissent from it. Later, because of the cold war, the Soviet Union blocked every resolution of the Council calling for implementation of the settlement plan.

## *Likely Possibilities:*

Only two. *Either* ascertaining the wishes of the people about their future and acting accordingly *or* the continuance of the status quo with violent repression and the spectre of carnage in the Indian-occupied part and chronic conflict and the danger of war in the subcontinent of South Asia.



**Kashmiri American Council**

733 15th Street, N.W.

Suite 1100

Washington, D.C. 20005

Tel: (202) 628-6789/(703) 938-0702

Fax: (202) 393-0062/(703) 938-0733