

# United Nations Resolutions on Kashmir and their Relevance

*Muhammad Abdul Qadeer*

## Introduction

Almost seven decades after partition, the state of Jammu & Kashmir remains the world's most militarised region. Although Pakistan and India never disclose the number of troops they have deployed in the Jammu and Kashmir region, it is believed that India have deployed hundreds of thousands troops, of its 1.3 million active military force<sup>1</sup> in the region. Since the two countries also possess nuclear weapons there is fear that any strategic miscalculation in Kashmir from either side could trigger a nuclear confrontation.

Following the May 1998 nuclear tests of India and Pakistan, there was enormous international pressure on both countries to normalise their hostile relationship to avoid a nuclear conflict.<sup>2</sup> On June 6 1998, UN Security Council Resolution No. 1172 called on both Pakistan and India to ease tensions and to find “mutually acceptable solutions that address the root causes of those tensions including Kashmir”.<sup>3</sup>

The tensions subsided, albeit for a brief period when the Indian Prime Minister, Atal Behari Vajpayee, travelled to Lahore in February 1999 after inaugurating the “Delhi-Lahore-Delhi bus service”.<sup>4</sup> Pakistan and India signed the ‘Lahore Declaration’, a bilateral agreement, on February 21, 1999 declaring that both the nations had agreed in principle to resolve all issues between them, including the issue of Jammu and Kashmir. Pakistan and India also pledged to take steps to reduce the risk of nuclear conflict.<sup>5</sup>

However, the two countries became embroiled in Kargil war in May 1999, the most serious military confrontation between the two countries since 1971.<sup>6</sup> The development was significant as both countries were nuclear armed and there were renewed concerns that the conflict might escalate into an all-out war.<sup>7</sup> The crisis ended after US President, Bill Clinton and Pakistan's Prime Minister, Nawaz Sharif met in Washington on July 4, 1999 and agreed that "negotiations" between India-Pakistan is the only answer "for resolving all issues, including Kashmir".<sup>8</sup>

The ensuing years saw numerous dialogues between Pakistan and India. In January, 2004 both countries agreed to resume the 'composite dialogue' after India's Prime Minister, Atal Behari Vajpayee and Pakistan's President, Pervez Musharraf met on the sidelines of the 12th Summit of the South Asian Association for Regional Cooperation (SAARC) in Islamabad.<sup>9</sup> The two leaders agreed to hold talks to resolve the Kashmir dispute "to the satisfaction of both sides".<sup>10</sup> The joint statement issued in the aftermath fulfilled the immediate demands of both countries. President Musharraf assured Vajpayee that he would "not permit any territory under Pakistan's control to be used to support terrorism". India agreed that the Kashmir dispute needed to be settled 'to the satisfaction of both sides'. However, the peace process came to a standstill in 2007 after the Samjhuta Express train service connecting New Delhi with Lahore were bombed near the Indian city of Panipat killing 68 Pakistanis.<sup>11</sup> The entire peace process was completely suspended after the Mumbai attacks of 2008 which killed 174 people.<sup>12</sup>

In December, 2015, Pakistan and India once again resumed the "comprehensive dialogue" process. Both countries promised talks on outstanding issues, including on Kashmir and terrorism.<sup>13</sup> However, these efforts also

ended after India accused Pakistan following an attack on an Indian air base in Pathankot in January 2016.<sup>14</sup> Pakistan-India relations deteriorated further after Indian forces killed more than hundred Kashmiris in July 2016, following anti-India rule demonstrations in the region.<sup>15</sup>

Pakistan defines Kashmir as a “core” issue. It maintains that Pakistan and India have both agreed to an international agreement by affirming UN resolutions which stipulates that the final settlement of the Kashmir dispute would be in accordance with the UN Security Council’s relevant resolutions on Kashmir.<sup>16</sup> Pakistan believes that Kashmir is a “root cause” of its tensions with India and insists that whenever there will be any dialogue between the two countries, Kashmir would top the agenda.<sup>17</sup>

Since late 1990s, however, India has adopted a strong narrative linking Kashmir with the issue of terrorism. It accuses Pakistan of supporting militants fighting on the Indian side of Muslim-majority Kashmir. India thus insist that the talks should focus on terrorism.<sup>18</sup> Moreover, New Delhi considers Kashmir as a bilateral problem which it maintains should be resolved bilaterally.<sup>19</sup> At the same time, India also maintains that Kashmir is an integral part of the country and regards any offer of third-party mediation as support for Pakistan’s stance. According to the October 1997, issue of *The Economist*, when Queen Elizabeth and British Foreign Secretary, Robin Cook visited Pakistan and India in 1997, the Pakistani Prime Minister, Nawaz Sharif, asked Mr Cook to play a role in resolving the Kashmir issue.<sup>20</sup> It noted that Secretary Cook accepted to mediate between India and Pakistan in their dispute over Kashmir. The acceptance of British foreign secretary in resolving the issue drew immense anger in India with

Indian Prime Minister, Inder Gujral, reportedly calling Britain a “third-rate power”.<sup>21</sup>

In April 2017, the US also offered to play a role for reducing tensions between India and Pakistan. India rejected the offer maintaining that it would not accept any third-party involvement.<sup>22</sup> Similarly, in May, 2017, when Turkish President, Recep Tayyip Erdogan called for a multilateral approach to settle the Jammu and Kashmir dispute, India also rejected his call.<sup>23</sup> As both sides remain unwilling to compromise on their positions, this study will examine the significance of UN resolutions on Kashmir in the present time.

## **Background**

On June 3, 1947, Lord Mountbatten, the last Viceroy of the British Indian Empire, proposed to Jinnah and Nehru his plan for partition and transfer of power. Consequently, on July 18, 1947, the subcontinent was divided into two independent dominions, India and Pakistan through an act of British parliament.<sup>24</sup> In August 1947, British India was finally partitioned on religious bases with Pakistan and India retaining Muslim and Hindu majority areas respectively.<sup>25</sup>

Within the British Indian Empire, there were two different administrative systems that included the British provinces and the princely states. The provinces were directly governed by the British and more than 560 princely states were administered by a local ruler under a form of indirect rule. These princely states were, however, subject to the suzerainty of the British Crown.<sup>26</sup> The State of Jammu and Kashmir was one of the more than 560 autonomous princely states owing allegiance to Britain at the time of partition. According to the principle of partition, the British paramountcy

ended over these princely states making them independent and relieving them of their obligations towards the Crown.<sup>27</sup> The rulers of these states were given the choice to accede to either of the new dominions or to remain independent.<sup>28</sup>

The Maharaja of Kashmir, however, proposed a Standstill Agreement with both countries instead of declaring accession to either Pakistan or India. Standstill Agreement was an interim agreement to ensure that the services such as communication and trade could be conducted in the same manner as they had during the British rule until that state could join either Pakistan or India<sup>29</sup>.

On August 15, 1947, Pakistan signed the standstill agreement with Maharaja so that existing arrangements should continue until the final agreement and therefore retained control of the railway, postal and telegraph services. India, however, refused to sign the standstill agreement and demanded further negotiations between the Kashmiri government and the Indian dominion.<sup>30</sup>

The situation was aggravated further due to the emerging socio-economic differences and conflicts between Hindus and Muslims due to Maharajah's autocratic rule.<sup>31</sup> Historians note that the Maharaja's regime adopted harsh economic policies, imposed heavy taxes and restricted the economic and political freedom of the Muslims.<sup>32</sup> Following partition in 1947, communal violence stirred against Muslim population in the state especially in Poonch district.<sup>33</sup> The violence triggered an internal revolt against the Maharaja's regime after mutineers announced independence from the Maharaja's rule and established the Azad (Free) Kashmir government.

As the uprising intensified, armed tribesmen<sup>34</sup> from Pakistan's North-West Frontier Province (NWFP) entered the state in October 1947 and joined the Muslim rebellion against the Hindu Maharaja. The Hindu Maharaja now faced with an internal revolt from his mostly Muslims subjects as well as tribesmen incursion, lost control of the western part of his state and requested India for armed assistance.<sup>35</sup> In response, India demanded the Maharaja to accede to the Indian dominion. On October 26, 1947 India claimed it had signed the so-called instrument of accession with Maharaja Hari Singh.<sup>36</sup> It airlifted troops to the Srinagar airport on October 27, 1947.

In order to back its claim, India maintained that Singh fled from Srinagar to Jammu on October 26, 1947, where he met with V P Menon, Constitutional Adviser to Lord Mount Batten, and signed the Instrument of Accession. India further claimed that Hari Singh signed an Instrument of Accession before he left Srinagar but it was not made public until later.<sup>37</sup>

Historians, however, dispute Indian claims and remain sceptical whether the instrument of accession was signed before or after the entry of Indian troops into the state.<sup>38</sup> Some have suggested that V P Menon was unable to reach Jammu until the morning of October 27, 1947, by which time Indian troops already started arriving in Srinagar. However, India maintains that the accession document was signed first, thus legitimising the disposal of the Indian troops into the state.

Pakistan refused to accept the accession and termed it illegal, arguing that the Maharaja could not accede to India while his state was still in a standstill agreement with Pakistan.<sup>39</sup> Pakistan also contended that since the Maharaja fled Srinagar, the capital, after the majority

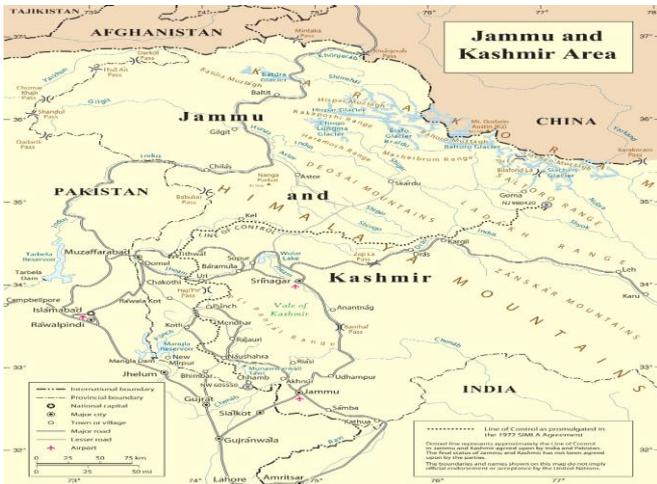
revolted against him, he lost control of his state and could not have signed the accession document before the Indian troops arrived in the state and that the Maharaja had acted under Indian pressure.<sup>40</sup> Pakistan also contested the Maharaja's decision on the basis of state's Muslim majority population since the partition rules stipulated that the Muslim majority areas were to accede to Pakistan whereas Hindu majority areas were to accede to India. India for example insisted upon the accession of Junagadh on the basis of it being a Hindu majority state notwithstanding the fact that its Muslim ruler had opted for Pakistan.

The Governor-General of India, Lord Mountbatten, provisionally accepted Kashmir into the Indian union on the understanding that this arrangement would only be temporary and that "the question of the State's accession should be settled by a reference to the people".<sup>41</sup> Mountbatten October 27, 1947 letter stipulated that after the tribal raiders were expelled from the territory, and after law and order had been restored, the question of the state's accession should be settled through a plebiscite.<sup>42</sup> In an address to his nation on November 2, 1947, this commitment was reiterated by PM Nehru, in which he promised that "the future of the state would be decided in accordance with the wishes of the people ascertained through a referendum held under the auspices of the UN."<sup>43</sup> An Indian representative also reiterated this stance in the Security Council.<sup>44</sup>

In May, 1948, war broke out between Pakistan and India after the Indian Army launched an offensive along the Uri/Muzaffarabad front. General Douglas Gracy, Commander in Chief of the Pakistan Army, called in Pakistani regular forces into the Azad Kashmir to prevent Indian advances towards Muzaffarabad. Fighting continued between the Pakistani and Indian troops until

January 1, 1949 when the UN Security Council (UNSC) passed its first resolution on the dispute declaring “plebiscite” in the entire state as the final solution. The resolution also called for the establishment of a cease-fire line in the state of Jammu & Kashmir. On January 5, 1949, the UN stated the agreed position of the governments of India and Pakistan that, “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”.

The cease-fire resolution was implemented on July 27, 1949 after the military representatives of Pakistan and India met in Karachi.<sup>45</sup> However, the plebiscite was never held despite an agreement between the two governments that the future of the state would be decided through the “plebiscite”.



Map No. 3953 Rev. 4 UNITED NATIONS December 2011

By the end of 1948 the fighting ended leaving the Kashmir valley and parts of Jammu and Ladakh, under

Indian control and the remainder of Jammu bordering Pakistan's Punjab, the North-West Frontier Province (NWFP), and parts of Ladakh (Skardu), and Gilgit and Baltistan (Northern Areas) under Pakistan's control.

However, the dispute became more complicated after the constituent assembly of Jammu & Kashmir formally ratified its accession to India in 1954 and approved its own constitution in 1957 in an effort to legitimise the instrument of accession. After the 1954 ratification and 1957 constitution, India renounced plebiscite and started calling the accession "final and irrevocable" and began referring to Jammu and Kashmir as an integral part of India.<sup>46</sup> On January 24, 1957, the UNSC rejected the ratification through its resolution 1951 and declared that no action by the state's constituent assembly to decide the final disposition of the state would be considered legal thus reaffirming plebiscite as the final solution.<sup>47</sup> Between 1948 and 1957, the UNSC adopted thirteen resolutions directly relating to the final solution of the Kashmir dispute.<sup>48</sup>

### **UN Security Council (UNSC) Resolutions on Kashmir**

On January 1, 1948 under Article 35 of the UN Charter, India approached the UN Security Council accusing Pakistan of aiding the tribesmen. The government of Pakistan in response denied all charges of helping the tribesmen and accused India of securing the accession of the state through force and fraud and blocked agreements that had been concluded under the partition pacts. Pakistan thus pressed charges that the accession was not in accordance with the law.

On January 17, 1948, the Security Council adopted resolution (38) its first ever on Kashmir, and urged Pakistan and India to take prompt actions to improve the

situation in the state. On January 20, 1948, the Security Council adopted resolution (39) calling for an urgent investigation into the matter fearing “the deteriorating situation might threaten international peace”. Resolution (39) also established the United Nations Commission for India and Pakistan (UNCIP) to investigate the dispute and also determined the functions of the commission.<sup>49</sup>

In the same year on April 21, 1948, the Security Council adopted Resolution (47) and noted that both India and Pakistan desire that the accession of the state should be “decided through democratic method of a free and impartial plebiscite”. The resolution also instructed the UNCIP to visit the subcontinent to mediate and facilitate both countries to hold a plebiscite. The first section of the Resolution (47) called upon Pakistan to use its “best endeavours to secure the withdrawal from the state of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein,” who had entered the state for the purpose of fighting. The second part of the resolution resolved that after the commission was satisfied that the tribesmen were withdrawing and that the arrangements for the cessation of the fighting had become effective, the government of India would “put into operation in consultation with the commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of civil power in the maintenance of law and order”. The council also asked the Indian government to “establish a Plebiscite Administration to hold a plebiscite as soon as possible on the question of accession of the State to India or Pakistan”.<sup>50</sup> There were expectations in India that the UN would treat Pakistan as an “aggressor,” and call on Pakistan to withdraw the raiders. The Resolutions 38 and 47, instead called for the conduct of a UN-supervised plebiscite to determine the accession of

Jammu & Kashmir to either India or Pakistan, rather than confirming the accession of the state to India. Moreover, Resolution 47 called for the simultaneous withdrawal of troops of both countries from Jammu & Kashmir which further disappointed India.

### **13 August, 1948 Resolution of United Nations Commission for India and Pakistan (UNCIP)**

Upon its return to New York, UNCIP issued three-part resolution suggesting the ‘material change’ in the situation due to the presence of Pakistani troops in J&K. The first part of the UNCIP resolution of August 13, 1948 urged both India and Pakistan ‘separately and simultaneously’ to issue a ceasefire order to apply to all forces under their control and forces in J&K at the earliest possible moment. The second part called for a truce noting that “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.”

It further stipulated that the Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting. The resolution further instructed that after “the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A2 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 Pakistan forces are being withdrawn from the

State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission”.<sup>51</sup> However, the disagreement between India and the UN commission led to a deadlock in the demilitarisation process. The next section will discuss in detail the grounds which contributed to the non-implementation of this resolution.

### **Dead Lock in Two Stages of Demilitarisation**

India has long built its case on the argument that Pakistan did not fulfil the preconditions for a plebiscite. It has maintained that the implementation of the UN resolutions required Pakistan to fulfil Parts (I) & (II) of the UNCIP resolution of 13 August, 1948, which “inter alia required Pakistan to withdraw its troops and to secure withdrawal of tribesmen and Pakistani nationals and India will withdraw bulk of its forces once the Commission confirms that the tribesmen and Pakistani nationals and Pakistani troops are being withdrawn.”<sup>52</sup>

In October 1967, Dr Frank P Graham, the UN mediator in Kashmir, submitted a 60-pages review of the UN mediatory report on the Kashmir situation.<sup>53</sup> He stated that the United Nations Commission found that they were unable to achieve an agreement by India and Pakistan on the terms for the implementation of the truce agreement, as a precondition for a plebiscite. He stated that the Commission and their several successors were unable to achieve an agreement between India and Pakistan on the provisions of the two UNCIP resolutions for two stages in demilitarisation, namely: (1) on the withdrawal of the bulk of the Indian forces in relation to the withdrawal of all the remainder of the Pakistan forces after Pakistan had begun withdrawals, as provided in the August 13, 1948 resolution and (2) on the final

disposal of the Indian and State armed forces and the final disposal of the “Azad Kashmir” forces as provided in the January 5, 1949 resolution.

He noted that in the provisions of part II of the 13 August 1948 resolution, the requirement for the withdrawal of all the Pakistan forces was related to the required withdrawal of the bulk of the Indian forces in stages to be agreed upon by India and the UN Commission. As noted above, such an agreement was not reached with India by the UN Commission or by the several successor UN mediators. This failure of India and the UN Commission and the UN Representatives to reach such an agreement, provided in part II, became the reason for the Pakistan’s failure to withdraw all of its forces from Kashmir, which, in turn, was held by India to be a reason for not accepting proposals leading to a plebiscite.<sup>54</sup> Graham pointed out in UN mediatory report

“Pakistan, which had, as had India, made some withdrawals of its forces from Kashmir, would not withdraw all the remainder of its forces from Kashmir, which was provided for in A 1 of part II of the 13 August 1948 resolution, as long as India did not reach agreement with the UN Commission, or their successors, on related but not simultaneous withdrawals of “the bulk” of the Indian forces and “the stages” of the withdrawals of “the bulk” which stages of withdrawals by India in agreement with the Commission, were provided for in B 2 of part II of the 13 August 1948 resolution.”<sup>55</sup>

He also notes in the report that Pakistan accepted and India rejected most of the basic proposals of the several UN mediators for ‘resolving this deadlock.

On January 5, 1949, UNCIP adopted a second resolution. The resolution noted that both India and Pakistan had

accepted a 'free and impartial' plebiscite in J&K to decide its accession to either India or Pakistan. The plebiscite would be held once the ceasefire and truce arrangements had been carried out and arrangements for the plebiscite completed, as outlined in the first UNCIP resolution. It also reaffirmed the UN Secretary General's nomination of Fleet Admiral Chester W. Nimitz as the plebiscite administrator.<sup>56</sup>

However, the resolution was not implemented after India maintained that the UN-mandated withdrawal of Pakistani troops and raiders had not taken place therefore it would not reduce its own troops in J&K. Consequently, the UN-supervised plebiscite was not held as both sides continued to accuse each other for the deadlock.<sup>57</sup> After the UNCIP mediation efforts did not achieve success it suggested arbitration on points of differences between Pakistan and India and proposed Fleet Admiral Chester W. Nimitz as arbitrator.<sup>58</sup> Meanwhile, US President Harry Truman wrote to Indian PM Nehru and Pakistan Prime Minister Liaquat Ali Khan to accept the arbitration proposal. India rejected while Pakistan accepted the proposal.<sup>59</sup>

### **Karachi Agreement July 1949**

The UNCIP invited the military representative of the Indian and Pakistani governments on July 2, 1949 to a military conference in Karachi, in order to establish the Cease Fire Line (CFL) in Jammu & Kashmir. The resulting agreement 'between the Military Representative of India and Pakistan regarding the establishment of a ceasefire line in the State of Jammu and Kashmir was signed on July 27, 1949. Following the ceasefire agreement between India and Pakistan, subsequent Security Council resolution focused on the demilitarisation

of J&K as the key step to a plebiscite. However, its efforts did not gain any success.<sup>60</sup>

General AGL McNaughton, President of the Security Council, proposed a 'progressive demilitarisation' programme on 22 December 1949.

As discussed above, there was a disagreement between India and the UN commission for the required withdrawal of the bulk of the Indian forces in stages which became the reason for the Pakistan's failure to withdraw all of its forces from Kashmir. To break this deadlock, General McNaughton proposed to both countries the reduction of armed forces on either side of the CFL by withdrawal, disbandment, and disarmament.<sup>61</sup> The aim was to reduce armed personnel in J&K to a minimum, suitable for the maintenance of law and order. The programme was to include the withdrawal of those regular forces from both countries not required for purpose of security or law and order; and the disbanding and disarming of local forces on the Indian- and Pakistani controlled sides of the CFL, including the Pakistan-supported 'Azad (Free) Kashmir' forces. Following this demilitarisation, the Plebiscite Administrator was to proceed with the conduct of the plebiscite. McNaughton also proposed that Pakistan would assure India that no tribal incursion into Jammu and Kashmir would not take place.<sup>62</sup>

On 14th March, 1950, the Security Council Resolution (80) urged the Indian and Pakistani governments to make immediate arrangements to prepare and execute within five months the stage by stage demilitarisation process on the basis of the McNaughton proposals.<sup>63</sup> It also appointed a UN Representative to supervise the demilitarisation and arrange for the assumption of the Plebiscite Administrator. The UN representative, Sir

Owen Dixon, tried to implement this plan and narrow the differences between the two countries over the 'procedure for and extent of demilitarisation but failed.<sup>64</sup>

On 30<sup>th</sup> March, 1951, the Security Council adopted another resolution (91) and again reaffirmed that "the final disposition of the State of Jammu & Kashmir will be made in accordance with the will of people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations".<sup>65</sup> The Council by its Resolution 91 also called upon the parties, in the event of their discussions with the United Nations Representative failing in his opinion to result in full agreement, to accept arbitration upon all outstanding points of difference reported by the United Nations representative in accordance with paragraph five above. Such arbitration to be carried 'out by an arbitrator, or a panel of arbitrators, to be appointed by the President of the International Court of Justice (ICJ) after consultation with the parties. India again opposed the arbitration and rejected the Security Council Resolution.<sup>66</sup> The resolution also instructed the United Nations Military Observer Group in India and Pakistan (UNMOGIP) to continue monitoring the ceasefire line.<sup>67</sup>

On September 4, 1952, the new UN Representative for Kashmir, Frank P Graham, proposed a twelve-point demilitarisation plan.<sup>68</sup> The Council also urged the governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations Representative for India and Pakistan in order to reach an agreement on the specific number of forces to remain on either side of the cease-fire line at the end of the period of demilitarisation. The Council, however, noted that agreement on a plan of demilitarisation of the state has not been reached because the Governments of

India and Pakistan have not fully agreed on Frank P. Graham's twelve-point proposals.

Frank P. Graham, proposed that India must reduce its troops in Kashmir to a range between 12,000-18,000 and Pakistan to a range between 3000-6,000. The United Nations Security Council in Resolution 98 of December 23, 1952 mandated that India and Pakistan agree within 30 days on the demilitarisation of Kashmir regarding the 'specific number' within the parameters of the troops range specified in the resolution. The actual withdrawal of troops from Kashmir was to start simultaneously to be completed within 90 days.<sup>69</sup>

On December 24, 1952, Resolution 98 (1952) recalled the provisions of the United Nations Commission for India and Pakistan resolutions of August 13, 1948, and January 5, 1949, which provided that the question of the accession of the State of Jammu and Kashmir to India or Pakistan would be decided through an impartial plebiscite.

During this time, India began to backtrack from its position on the UN supervised plebiscite. In 1954, India convened state elections in Jammu and Kashmir and the accession of Jammu and Kashmir to India was ratified by the state's constituent assembly. In 1957 the Jammu and Kashmir constituent assembly approve a constitution. India, from the point of the 1954 ratification and 1957 constitution, began referring to Jammu and Kashmir as an integral part of the Indian union and backtracked from holding a plebiscite in J&K arguing that the elections in the state have ascertained the wishes of the people. Following elections in the state of Jammu and Kashmir, the Security Council adopted another Resolution (122) on January 24, 1957 and rejected elections as to legitimate accession. It declared that the convening of a

Constituent Assembly and any action by the Assembly for deciding the final status of the State would not constitute a disposition of the State in accordance with the UN Security Council principle.<sup>70</sup>

In December 1957, the Security Council adopted Resolution 126 and requested the United Nations Representative for India and Pakistan to make any recommendations to the parties for the implementation of the UNCIP resolutions of August 13, 1948 and January 5, 1949. However, the UNSC failed to pass a resolution in 1962, after the Soviet Union voted against a draft resolution on Kashmir.<sup>71</sup> In August 1965, fighting broke out again between India and Pakistan, but a ceasefire was established that September after the Security Council adopted Resolution 209 (1965). The resolution also asked the two Governments to cooperate fully with UNMOGIP for the observance of the ceasefire.<sup>72</sup>

Pakistan has consistently called for the issue to be resolved by a plebiscite and accuses India of violating the agreement.<sup>73</sup> Pakistan maintains that India cannot change the status of the dispute unilaterally once it was decided in the UN resolutions that the future of the state would be determined only after a UN supervised referendum.<sup>74</sup> This position was also held by Frank P Graham, UN Representative for Kashmir, who had pointed out in his October 25, 1967 report<sup>75</sup> submitted in the UNSC that the two UNCIP resolutions are not only a bilateral agreement, but are also an international agreement. He noted

Any unilateral declaration by India or Pakistan on the permanent status of the State of Jammu and Kashmir cannot nullify the position and responsibility of the primary peace-keeping and

executive body of the United Nations, namely, the Security Council, under the obligations of its own sponsored two UNCIP resolutions for a cease-fire, a truce and a plebiscite as negotiated and accepted by India and Pakistan.<sup>76</sup>

Graham also noted that the two UNCIP resolutions which were accepted by India and Pakistan, did not provide that the status of Kashmir would be decided by the Maharajah or by a Constituent Assembly, but would be decided in accordance with the provisions of the two UNCIP resolutions which calls for a plebiscite.<sup>77</sup>

### **Simla Agreement 1972**

Following the December, 1971 war between Pakistan and India, Pakistan lost its East part which resulted in the formation of the nascent Bangladesh. Consequently, nearly 90,000 of Pakistani troops were held as prisoners of war by India. In July 1972, Pakistani Prime Minister Zulfikar Ali Bhutto and his Indian counterpart Indira Gandhi signed an agreement in the Indian town of Simla, in which both countries agreed to “put an end to the conflict and confrontation that have hitherto marred their relations”. Following the accord, Pakistan and India also resolved to discuss the “final settlement of Jammu and Kashmir” issue and the two government also formalised the ceasefire line as the Line of Control (LoC). The 1972 Simla Peace Accord, signed by leader of the two countries also resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them.” After the Simla Agreement India adopted a position that Simla Agreement had supplanted the UN resolutions as a point of reference for resolving the Kashmir dispute. India also pointed out and still insists that the agreement calls upon both countries “to settle

their differences by peaceful means through bilateral negotiations.”

Since the Simla agreement, India has maintained that the Kashmir issue is bilateral one and must be solved without any third party/international mediation. India also insists that the UN resolutions has become irrelevant post the Simla Agreement. It also argued that the establishment of the LoC has superseded the UN mandated cease fire line and that the UNMOGIP had no role to supervise the LoC. India has also refused to lodge any complaint of a ceasefire violation to UNMOGIP since the two countries concluded Simla agreement. Pakistan, however, disagreed and maintains that the UNMOGIP can only be wound up with reference to the Security Council and not without its consent. Meanwhile, Pakistan still continues to lodge complaints of ceasefire violations to the UNMOGIP.

Pakistan also says that the Simla Agreement does not bind both countries to only bilaterally finding a solution and continues to raise the issue in various international fora including the United Nations. Pakistan points out that the agreement clearly stipulated that “the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries,” and refers to the Article One of the UN Charter which guarantees “Equal rights and self-determination of peoples.” Pakistan also points out that the agreement explicitly states “a final settlement of Jammu and Kashmir” as one of the outstanding questions awaiting a settlement. Pakistan also insists that according to Article 103 of UN Charter, member States obligations under the Charter take precedence over obligations under a bilateral agreement. Pakistan also refers to articles 34 and 35 of the UN Charter which specifically empower the Security Council to investigate any dispute

independently or at the request of a member State.<sup>78</sup> Pakistan says these provisions cannot be made subservient to any bilateral agreement. According to the agreement, pending the final settlement of any of the problems between the two countries, neither side could unilaterally alter the situation.

These developments also failed to contribute any progress for resolving the dispute. However, optimism was again seen after Pakistan's President Musharraf's proposed in 2003 an out of the box plan for the demilitarisation of J&K, for resolving the Kashmir issue. The next section will discuss President Musharraf's proposal in detail.

### **Musharraf's "four-point solution" on Kashmir**

On December 17, 2003, President Musharraf offered an out of the box solution in a bid to resolve the Kashmir dispute.<sup>79</sup> Although, he maintained throughout that the 1948 UN resolutions on Kashmir remained Pakistan's principle position but insisted that both countries must move from their stated positions. President Musharraf proposed four stages that involved (i) softening of borders which meant that the borders will remain the same but people will be allowed to move freely, (ii) identifying zones in Kashmir which will be followed by phased withdrawal of troops, (iii) self-governance or autonomy but not independence (iv) and a mechanism allowing both Pakistan and India to jointly supervise the region.<sup>80</sup>

President Musharraf believed that India should pull out its forces from some of the cities of Jammu selectively. He had further suggested that the LoC should be made irrelevant and the routes should be reopened to encourage

people to people contact & for transit trade so that the Kashmir process should further speed up.<sup>81</sup>

India initially under the Vajpayee government agreed that Kashmir was disputed territory. The India-Pakistan Joint Statement of 6<sup>th</sup> January, 2004 clearly stated that the Kashmir problem was to be settled 'to the satisfaction of both sides'. In return Pakistan, pledged to prevent cross-border infiltration and terrorism by undertaking that it would 'not permit any territory under Pakistan's control to be used to support terrorism in any manner.'<sup>82</sup> However, under the succeeding government of Prime Minister, Manmohan Singh, India announced to reduce the number of soldiers in its only Muslim-majority state in November 2004<sup>83</sup> but maintained that J&K was an integral part of India and that it would not accept any redrawing of borders in the region.<sup>84</sup> Prime Minister Singh, however, suggested that borders can be made "irrelevant" or just "mere lines on the map". The response caused disappointment in Pakistan where its leadership was hoping that both sides could move beyond their stated positions in order to resolve the dispute.<sup>85</sup> However, backchannel diplomacy during President Musharraf's era helped Pakistan and India to reach a framework for a political settlement on Kashmir.<sup>86</sup> The development suggested that Pakistan is prepared for bold moves if Delhi is willing to reciprocate. However, the Indian response to President Musharraf's proposals remained limited with some temporary improvements on the LoC.<sup>87</sup> The efforts again failed to achieve any considerable progress. Scholars believe that an important reason of this stalemate was probably the powerful establishment in India which does not want any change in the status quo.

## **Conclusion**

The most significant issue which became the reason for the non-implementation of the UNSC resolutions was identified in the 1967 UN mediatory report which stipulates that the requirement for the withdrawal of all the Pakistani forces was related to the required withdrawal of the bulk of the Indian forces in stages to be agreed upon by India and the UN Commission. While no such agreement was reached with India by the UN Commission, as provided in part II of the UNSC Resolution of August 13, 1948, Pakistan also denied to withdraw all of its forces from Kashmir.

The Indian leaders will continue to deny any sort of concessions and would like to maintain status quo on this issue. India would rather aim to convert the LoC into the accepted international border. Moreover, India has favours a bilateral approach in dealing this issue. Third party involvement or international mediation remain major irritant to India. However, from the Pakistani perspective, bilateral talks would yield no results as New Delhi would not compromise in any meaningful way with Islamabad. It would talk but not negotiate. Moreover, India's aspirations to play a major role on the international stage has increased which demands a permanent seat at the Security Council. However, the unresolved Kashmir issue would remain an obstacle to the recognition it seeks.

UN has declared that any unilateral declaration by India or Pakistan on the permanent status of the State of Jammu and Kashmir cannot nullify the position of the United Nations, therefore the relevance of UN resolutions will continue to exist until the two parties mutually decides any other solution. It is feared that another conflict between the two countries over Kashmir could

escalate into a nuclear war. In case where the situation might seem to escalate, UN Chapter 7 can also be invoked to take “Action with respect to threats to the peace, breaches of the peace, and acts of aggression.”

## References

- 
1. “India as a great power: Know your own strength,” *The Economist*, March 30, 2013, <http://www.economist.com/news/briefing/21574458-india-poised-become-one-four-largest-military-powers-world-end>
  2. John Burns, “India sets 3 Nuclear Blasts, defying a Worldwide Ban; Tests Bring a Sharp Outcry,” *The New York Times*, May 12, 1998, <http://www.nytimes.com/1998/05/12/world/india-sets-3-nuclear-blasts-defying-a-worldwide-ban-tests-bring-a-sharp-outcry.html> and “India Conducts Underground Nuclear Tests,” *CNN*, May 11, 1998, <http://edition.cnn.com/WORLD/asiapcf/9805/11/india.nuclear/> and John Burn, “Nuclear Anxiety: The Overview; Pakistan, Answering India, Carries Out Nuclear Tests; Clinton’s Appeal Rejected,” *The New York Times*, May 29, 1998, <http://www.nytimes.com/1998/05/29/world/nuclear-anxiety-overview-pakistan-answering-india-carries-nuclear-tests-clinton.html>.
  3. UN Security Council RESOLUTION 1172 (1998) “Security Council Condemns Nuclear Tests by India and Pakistan,” *United Nations*, June 6, 1998, <http://www.un.org/press/en/1998/sc6528.doc.htm>.
  4. “Bus diplomacy aims to ease tension,” *BBC*, February 20, 1999, [http://news.bbc.co.uk/2/hi/south\\_asia/281764.stm](http://news.bbc.co.uk/2/hi/south_asia/281764.stm).
  5. The Lahore Declaration, *United Nation Peacemaker*, [http://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK\\_990221\\_The%20Lahore%20Declaration.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK_990221_The%20Lahore%20Declaration.pdf).
  6. “Kargil conflict timeline,” *BBC*, July 13, 1999, [http://news.bbc.co.uk/2/hi/south\\_asia/387702.stm](http://news.bbc.co.uk/2/hi/south_asia/387702.stm).

7. “India loses two jets,” *BBC*, May 27, 1999, [http://news.bbc.co.uk/2/hi/south\\_asia/354120.stm](http://news.bbc.co.uk/2/hi/south_asia/354120.stm).
8. “Clinton urges India-Pakistan talks,” *BBC*, July 5, 1999, [http://news.bbc.co.uk/2/hi/south\\_asia/385534.stm](http://news.bbc.co.uk/2/hi/south_asia/385534.stm).
9. “Text of India-Pakistan statement,” *BBC*, January 6, 2004, [http://news.bbc.co.uk/2/hi/south\\_asia/3372157.stm](http://news.bbc.co.uk/2/hi/south_asia/3372157.stm).
10. Ibid.
11. “Army officer questioned over Samjhauta Express blast – report,” *Reuters*, November 16, 2008, <http://in.reuters.com/article/idINIndia-36525620081116>.
12. “2008: Mumbai attacks,” *BBC*, <http://www.bbc.com/news/av/world-south-asia-14662732/2008-mumbai-attacks>.
13. “Pakistan, India agree to restart ‘comprehensive’ dialogue process,” *Dawn*, December 10, 2015, <https://www.dawn.com/news/1225246>.
14. “Pakistan, India peace talks ‘suspended’,” *BBC*, April 2016, <http://www.bbc.com/news/world-asia-india-35994599>.
15. “Kashmiris Killed, Blinded by Buckshot Used on Protesters,” *VoA*, December 14, 2016, <https://www.voanews.com/a/kashmiris-killed-blinded-by-buckshot-fired-by-india-troops/3635630.html> and Harsh Pant, “Pakistan Escalates War of Words with India Over Kashmir” *The Diplomat*, August 05, 2016, <http://thediplomat.com/2016/08/pakistan-escalates-war-of-words-with-india-over-kashmir/>.
16. The UN resolutions in 1948-49 stated that: “Future status of the state of J&K shall be determined in accordance with the will of the people ... and through the democratic method of a free and impartial plebiscite.”
17. Mateen Haider, “No talks with India without Kashmir issue on agenda: FO,” *Dawn*, September 10, 2015, <https://www.dawn.com/news/1206098>.
18. Suhasini Haidar and Kallol Bhattacharjee, “India willing to talk to Pakistan on terror, not Kashmir,” *The Hindu*, <http://www.thehindu.com/news/national/India-willing-to-talk-to-Pakistan-on-terror-not-Kashmir/article14574585.ece>.

19. “Pak can’t take Kashmir issue to ICJ, it can only be resolved bilaterally: Sushma,” *Hindustan Times*, June 05, 2017, <http://www.hindustantimes.com/india-news/sushma-swaraj-says-pakistan-can-t-take-kashmir-issue-to-icj-it-can-be-resolved-bilaterally-only-highlights/story-jDYFdW60iihzaOwlQquyUL.html>.
20. A scolding from Mother India, *The Economist*, October 16 1997, <http://www.economist.com/node/102956>.
21. Ibid.
22. “US to be part of efforts to de-escalate India-Pakistan tensions: Nikki Haley,” *Dawn*, April 04, 2017, <https://www.dawn.com/news/1324811>.
23. “Kashmir a bilateral issue with Pakistan, India tells Turkish President Erdogan,” *Hindustan Times*, <http://www.hindustantimes.com/india-news/kashmir-a-bilateral-issue-with-pakistan-india-tells-turkish-president-erdogan/story-cgV9TTPgrbIQwBnOYfFjYJ.html>.
24. Indian Independence Act, 1947, [http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga\\_19470030\\_en.pdf](http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf).
25. Robert Trumbull, “India and Pakistan Become Nations; Clashes Continue,” *New York Times*, <http://www.nytimes.com/learning/general/onthisday/big/0815.html#article>.
26. Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace*, (Cambridge, MA: Harvard University Press, 2003), 30-33.
27. Ibid
28. “Victoria Schofield, *Kashmir in Conflict: India, Pakistan and the Unending War*, (New York: St Martin Press, 2003).
29. Alastair Lamb, *Incomplete Partition: The Genesis of the Kashmir Dispute 1947-1948*, (London: Oxford University Press, 1994)
30. Ibid
31. Matthew Webb, *Kashmir’s Right to Secede: A Critical Examination of Contemporary Theories*, (New York: Routledge, 2012).
32. Ibid
33. Ibid

34. “The 1947- 48 war,” *BBC*,  
[http://news.bbc.co.uk/hi/english/static/in\\_depth/south\\_asia/2002/india\\_pakistan/timeline/1947\\_48.stm](http://news.bbc.co.uk/hi/english/static/in_depth/south_asia/2002/india_pakistan/timeline/1947_48.stm)
35. Alastair Lamb, *Kashmir: A Disputed Legacy 1846-1990*, (Roxford Books, 1991) 150.
36. Ibid
37. Victoria Schofield, *Kashmir in Conflict*.
38. “India Pakistan Troubled relations: The 1947- 48 war,” *BBC*,  
[http://news.bbc.co.uk/hi/english/static/in\\_depth/south\\_asia/2002/india\\_pakistan/timeline/1947\\_48.stm](http://news.bbc.co.uk/hi/english/static/in_depth/south_asia/2002/india_pakistan/timeline/1947_48.stm)
39. Kashmir – The History, *Pakistan Mission to United Nations*, <http://www.pakun.org/kashmir/history.php>
40. “Kashmir territories: Full Profile,” *BBC*, March 1, 2016,  
<http://www.bbc.com/news/world-asia-34810086>
41. Arundhati Roy, Pankaj Mishra, Hilal Bhatt, Angana Chatterji, Tariq Ali, *Kashmir: The Case for Freedom* (London: Verso, 2011).
42. Alastair Lamb, *Kashmir: A Disputed Legacy 1846-1990*
43. Victoria Schofield, *Kashmir in Conflict*.
44. Ibid
45. “Agreement between Military Representatives of India and Pakistan Regarding the Establishment of a Ceasefire Line in the State of Jammu and Kashmir (Karachi Agreement)” *United Nations Peacemakers*, August 27, 1949 <http://peacemaker.un.org/indiapakistan-karachiagreement49>
46. Fact Sheet on Jammu & Kashmir, *Ministry of External Affairs*, May 20, 2002, <http://mea.gov.in/in-focus-article.htm18987/Fact+Sheet+on+Jammu+amp+Kashmir>
47. See Resolutions Adopted and Decisions taken by the Security Council in 1957, The India Pakistan Question, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/122\(1957\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/122(1957))
48. Security Council Resolutions, *United Nations Security Council*, <http://www.un.org/en/sc/documents/resolutions>. Ministry of Foreign Affairs, Government of Pakistan <http://www.mofa.gov.pk/contentun.php>

49. Resolutions and Decisions of the Security Council 1948, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/51\(1948\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/51(1948))
50. Ibid
51. (Document No.1100, Para. 75, dated the 9th November, 1948), Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948, *Ministry of Foreign Affairs (MOFA)*, <http://www.mofa.gov.pk/documents/unsc/Resolution%20adopted%20by%20the%20United%20Nations%20Commission%20for%20India%20and%20Pakistan%20on%2013%20August%201948.pdf>
52. “Kashmir-The True Story,” *Ministry of External Affairs (MEA)*, January 2004, <http://mea.gov.in/in-focus-article.htm?19156/Kashmir++The+True+Story+January+2004>
53. See Graham Report - 25 October 1967 - Kashmir Dispute (Dr. Frank P. Graham, United Nations Representative) - summary review of the Mediator Reports of the United Nations in the Kashmir Situation, <https://search.archives.un.org/graham-report-25-october-1967-kashmir-dispute-dr-frank-p-graham-united-nations-representative-summary-review-of-mediator-reports-of-united-nations-in-kashmir-situation>
54. Ibid
55. Ibid
56. (Document No. 5/1196 para. 15, dated the 10th January, 1949), Resolution adopted at the meeting of the United Nations Commission for India and Pakistan on 5 January, 1949, *Ministry of Foreign Affairs (MOFA)*.
57. Josef Korbel, *Danger in Kashmir*, (Princeton University Press, 1954).
58. Ibid

59. Robert Trumbull, "Nehru Sees Rebuff by U.S. and Britain; Says Two Nations' Stand in U.N. on Dispute Over Kashmir Shows 'Unfriendly' Attitude," *The New York Times*, August 12, 1951, <http://query.nytimes.com/mem/archive-free/pdf?res=9F02E1DD123EE63ABC4A52DFBE66838A649EDE>
60. (Karachi Agreement) "Agreement between Military Representatives of India and Pakistan Regarding the Establishment of a Ceasefire Line in the State of Jammu and Kashmir.
61. See Proposal in respect of Jammu and Kashmir made by General A.G.L. McNaughton, President of the Security Council of the United Nations, pursuant to the decision of the Security Council taken at its 457th meeting, on 22 December, 1949.
62. Ibid
63. S/RES/80 (1950), Resolutions adopted by the Security Council in 1950  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/80\(1950\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/80(1950)).
64. Alan Vaughan Lowe, et al Adam Roberts, Jennifer Welsh, Dominik Zaum, *The United Nations Security Council and War: The Evolution of Thought and Practice*, (New York: Oxford University Press, 2008)
65. S/RES/91 (1951), Resolutions adopted by the Security Council in 1951,  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/91\(1951\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/91(1951))
66. Willem Frederik Eekelen, Willem Frederik van Eekelen, Indian Foreign Policy and the Border Dispute with China
67. S/RES/91 (1951), Resolutions adopted by the Security Council in 1951.
68. See Dr. Graham's Fourth Report on Negotiations with India and Pakistan on Demilitarization Plans.-Continued Failure to reach Agreement.
69. Ibid
70. S/RES/122 (1957), Resolutions adopted by the Security Council in 1957

- [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/122\(1957\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/122(1957))
71. “Soviet veto comes to India’s rescue,” *Dawn*, June 23, 2012, <https://www.dawn.com/news/728920>
  72. S/RES/209 (1965), Resolutions adopted by the Security Council in 1965, <http://www.un.org/en/sc/documents/resolutions/1965.shtml>
  73. “UN resolutions term Kashmir 'disputed': Pakistan tells India,” *Dawn*, November 04, 2015, <https://www.dawn.com/news/1217447>
  74. Second Right of Reply in the United Nations General Assembly to Indian Foreign Minister's Statement, Pakistan Mission to United Nations, September, 26 2016, [http://www.pakun.org/statements/Plenary\\_of\\_General\\_Assembly/2016/09262016-02.php](http://www.pakun.org/statements/Plenary_of_General_Assembly/2016/09262016-02.php) (26 September 2016)
  75. Graham Report - 25 October 1967 - Kashmir Dispute (Dr. Frank P. Graham, UN Representative)
  76. Ibid
  77. Ibid
  78. “Kashmir Issue in a Nutshell,” *National Assembly of Pakistan*, <http://www.na.gov.pk/en/content.php?id=84>.
  79. “Musharraf offers Kashmir pull-out,” *BBC*, December 2, 2003, [http://news.bbc.co.uk/2/hi/south\\_asia/3254020.stm](http://news.bbc.co.uk/2/hi/south_asia/3254020.stm).
  80. Jawed Naqvi, “Musharraf’s four-stage Kashmir peace plan: We can make borders irrelevant: India,” *Dawn*, December 06, 2006, <https://www.dawn.com/news/222111>.
  81. Jawed Naqvi, “Musharraf’s four-stage Kashmir peace plan: We can make borders irrelevant: India” <https://www.dawn.com/news/222111>.
  82. “Text of India-Pakistan statement,” *BBC*, January 6, 2004.
  83. “India begins Kashmir troop pull-out,” *Chinadaily*, November 17, 2004, [http://www.chinadaily.com.cn/english/doc/2004-11/17/content\\_392351.htm](http://www.chinadaily.com.cn/english/doc/2004-11/17/content_392351.htm).
  84. Kashmir response dismays Pakistan, *BBC*, November 19, 2004 [http://news.bbc.co.uk/2/hi/south\\_asia/4024879.stm](http://news.bbc.co.uk/2/hi/south_asia/4024879.stm).
  85. Ibid

86. Nirupama Subramanian, *The Hindu*, “India, Pakistan had a solution for Kashmir in 2007: Kasuri,” <http://www.thehindu.com/news/national/india-pakistan-had-a-solution-for-kashmir-in-2001-kasuri/article6805890.ece>.
87. “Musharraf’s peace plan on Kashmir foiled by India: Ram Jethmalani,” November 9, 2014, *Times of India*, <http://timesofindia.indiatimes.com/india/Musharrafs-peace-plan-on-Kashmir-foiled-by-India-Ram-Jethmalani/articleshow/45084732.cms>.