

Bold initiative on Kashmir

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Kashmir

THE Pakistan-India dispute over Jammu and Kashmir proves the adage that adversaries striving for zero-sum solutions to bilateral disputes may end up surrendering their freedom to pursue a rational policy. Confrontation becomes a way of life immune from governmental, even military, control. An adversarial relationship may get locked on auto-pilot. Such has been the case with India-Pakistan relations since 1947.

President Musharraf's announcement prior to the 12th SAARC Summit in Islamabad that Pakistan would be willing to consider a solution other than one based on a UN-sponsored plebiscite was a bold attempt to break the 56-year deadlock over Kashmir. His statement of October 25, 2004, went a big step further, because the president suggested specific alternate approaches to the settlement of the dispute. One such option that the president mentioned was that of joint-sovereignty of India and Pakistan over the disputed territory. The president also invited the people of Pakistan to respond to his proposal.

As expected, Pakistan's opposition parties, especially some of the religious ones, have reacted negatively. The reaction in India held Kashmir was generally positive. What was disappointing was the Indian external affairs spokesperson's unimaginative, bureaucratic response that Jammu and Kashmir was not a subject for discussion via the media.

Indian authorities have perhaps failed to appreciate President Musharraf's suggestion for raising this issue in public in order to start a national debate as a means of mustering domestic support for his proposal in favour of a settlement.

For over 50 years successive governments of Pakistan have drummed it into the ears of the people that Jammu and Kashmir was Pakistan's according to the principles of partition, and that the accession of the state to India by the Hindu maharajah was invalid. The people were

the parties to the dispute. India's claim to all of Jammu and Kashmir is rejected by Pakistan and the majority of the Kashmiri Muslims on both sides of the Line of Control. Pakistan's position that the future of the disputed territory has to be decided through a plebiscite is rejected by India as well as the Hindus and Buddhists in Indian held Kashmir.

The option of independence, originally favoured by Sheikh Abdullah, is acceptable neither to India nor to Pakistan. Variations of the above involving a redrawing of the map has been ruled out by India. Similarly, a solution based on making the LoC the international border is rejected by Pakistan as well as the majority of the Kashmiri people.

Joint or co-equal sovereignty of India and Pakistan over Jammu and Kashmir

For the first time a leader of Pakistan has suggested joint sovereignty as one of the options. The offer has immense symbolic importance. Another name for such an arrangement is a condominium. India and Pakistan would have well-defined, co-equal rights in the territory, defined by a treaty. The people of Jammu and Kashmir would freely elect their own representative governments in different areas, similar to Swiss cantons, which would enjoy a large measure of autonomy.

avoids losses to the two state parties to the dispute, while conferring significant rewards on the Kashmiris by keeping their territory intact. The entire disputed territory would be a single entity, with autonomous, democratic self-government under the joint protection of India and Pakistan. Another name for such an arrangement is condominium. India and Pakistan would have well-defined, co-equal rights in the territory, defined by a treaty. The people of Jammu and Kashmir would freely elect their own representative governments in different areas, similar to Swiss cantons for example, which would enjoy a large measure of autonomy. Historical examples of joint sovereignty

and protocols would provide the constitutional framework for Jammu and Kashmir. The Line of Control would stand abolished.

Constitutional issues to be resolved would include, inter alia, the establishment of the highest authority representing India and Pakistan in Jammu and Kashmir (the Supreme Council), the composition and definition of its functions, subjects that would fall within the purview of the Council and those that would come under the autonomous government, rule of unanimity in decision-making at the highest level, drafting of a state constitution, citizenship for the Kashmiri people, the degree of autonomy for the constituent units of the new Jammu and Kashmir, a guarantee of fundamental freedoms and human rights, and procedures for settling disputes arising out of an interpretation of

the treaty on Jammu and Kashmir.

A joint military commission for Jammu and Kashmir would have to be established; Indian and Pakistani troops would be redeployed and reduced to levels consistent with the new situation. Arrangements would have to be made for local law enforcement. Other important issues would be return of refugees/displaced persons, questions of land ownership, business, employment and access of nationals and business organizations from India and Pakistan, determination of the right of local residents to visit

and to seek gainful employment in India and Pakistan, and the right of nationals of India and Pakistan to visit Jammu and Kashmir for innocent pursuits.

Special areas or zones would have to be designated: the Karakoram Highway and adjoining territory would be under the exclusive control of the Pakistan army; likewise the Ladakh Highway and adjoining territory would be under the exclusive control of the Indian army. The Siachen glacier would be a demilitarized zone. As a confidence-building measure the Pakistan army would have the right to send observers to the special Indian zone, while the Indian army would have the right to send military observers to the Pakistan's

...the holding of a UN-sponsored referendum in the disputed territory.

President Musharraf, a hawk by reputation but, more accurately, "a do or die" leader, has brought a fresh approach to this intractable problem. But the going will not be easy. Apart from overcoming Indian suspicion, he has to win over his own people in the face of allegations that he has made unilateral concessions to an unappreciative India.

Just as the president has acknowledged that Pakistan's maximalist position in favour a plebiscite in never going to be acceptable to India, the Indians need to reciprocate by meeting Pakistan half-way. Rather than a manifestation of weakness, Pakistan's historic offer stems from a growing realization that cooperation and friendship with India, not confrontation and conflict, offers the best prospects of peace and prosperity to the people of South Asia.

Pakistan has not retreated officially from its position in favour of self-determination. The right to self-determination can neither be conferred nor denied by India or Pakistan; it is an inalienable right — a natural right if you will. The UN Security Council resolutions merely reinforced this existing right, they did not create it. So long as the people of Jammu and Kashmir remain steadfast, they cannot be cast aside. Any solution to the problem of Jammu and Kashmir has to be acceptable not only to Pakistan and India but also to the people of the disputed territory.

The president's remarks are historic for another reason. For the first time a leader of Pakistan has suggested joint sovereignty as one of the options. The offer has immense symbolic importance.

The proposal is also worth exploring because the other options (academics have identified as many as seven) are certain to be rejected by either one or the other of

over Sudan, the Soviet-Norwegian condominium over Spitsbergen and the Anglo-French protectorate of the New Hebrides (now Vanuatu). Another example is that of Austria in the immediate aftermath of World War II.

Under normal circumstances, it is a requirement that a single state should exercise sovereignty over a territory. But this cannot be considered an absolute requirement. In theory, there is no legal reason why two powers instead of one may not hold joint responsibility for defence and ultimate governance of a territory. In some ways it is analogous to having two signatures rather than one to validate a cheque.

In the past, joint sovereignty has worked reasonably well where the territory is sparsely populated — for example in Spitsbergen and the New Hebrides. As the dispute over Jammu and Kashmir has been so bitter and contentious, the exercise of joint sovereignty could be fraught with complex and potentially divisive issues. While embarking on such a historic partnership, it is vital to build maximum trust and confidence between Pakistan and India.

The proposed solution has to be acceptable to India, Pakistan and the inhabitants of the disputed territory. Being acceptable does not mean ideal though, because a solution considered ideal by all parties simply does not exist. The solution must be clear and straightforward in regard to the political and military agreements, with no tricks up one's sleeve, no hidden agenda, no one-upmanship.

Policy guidelines and a new constitution for Jammu and Kashmir will have to be agreed upon in order to give effect to the agreement on joint sovereignty. A formal treaty would have to be signed. Once ratified, the treaty and its related instruments

In matters of economics and finance, decisions regarding the establishment of the central bank, currency matters, revenue and taxation and customs duties, and subsidies to Kashmir would have to be tackled. While the Indus Waters Treaty governs the distribution of water resources between India and Pakistan, the sharing of natural resources, including hydropower resources between India, Pakistan and the Kashmiris, would also have to be decided.

Transitional arrangements will include provisions for an immediate ceasefire in the disputed territory, grant of amnesty to the mujahideen, release of all political detainees, and surrender of all firearms.

The list of issues may appear to be daunting while the problem of making such a complex system work may seem intractable. But whatever pitfalls may lurk under the new dispensation, they cannot compare with the perils and complexities of the present arrangements.

If someone had proposed in 1947 the regime that prevails today along the LoC and Siachen glacier, for example, it would have been rejected as sheer madness, a travesty not worthy of consideration. If it had been suggested that 57 years after independence the principal countries of South Asia would be neglecting the welfare of their peoples in the stubborn pursuit of mutual hostility, that South Korea and Taiwan province would be many times more affluent than all of South Asia put together, it too would have been dismissed as being unduly alarmist. Awareness of reality brings hope for more rational choices, perhaps to save succeeding generations of South Asians from the painful grip of a history that has shown them little compassion and conferred on them meagre rewards.

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