

Gilgit-Baltistan

The Laws of Occupation

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From the very moment of its birth, Pakistan has made ‘Kashmir’¹ a central pillar of its strategic quest, linked integrally to the fundamentals of its long-emergent and tenuous national identity. Across successive Governments, through ‘democratic’ and military regimes, a relentless ‘Kashmir policy’ – never modified beyond its most superficial and trifling elements – has been pursued through all instruments available: politics, diplomacy, international alliances, war, internal repression, propaganda, demographic engineering and terrorism.

It is not the intention, here, to enter into an analysis of this broad and sustained policy, but to focus on one of its integral elements – Pakistan’s effort to de-link the ‘Northern Areas’ from

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¹ ‘Kashmir’ is variously an idiosyncratically defined, according to transient considerations of expediency, as the ‘Valley’ alone; or as the areas comprehended by what Pakistan calls (Indian) ‘Occupied Kashmir’ and ‘Azad Kashmir’ – including the three Regions of the State of Jammu & Kashmir, viz., Jammu, Kashmir and Ladakh – but specifically excluding the ‘Northern Areas’ of Pakistan Occupied Kashmir; or the entire and undivided pre-Partition princely state of Jammu & Kashmir.

the ‘dispute’ over Kashmir, and to treat the status of the Gilgit-Baltistan region as ‘settled’. It is an unfortunate fact of India’s diplomatic history that this conception has, at best, been formally contested, but never with the vigour, intensity or insistence that have characterized Pakistan’s projections regarding its claims to ‘Kashmir’. The result of this defalcation on India’s part is that international perceptions have substantially accepted the essentially untenable Pakistani position on the Gilgit-Baltistan region; worse, there are significant sections of opinion within India – and including elements within its leadership – who have accepted the *status quo* on Pakistan occupied Kashmir (PoK, including Gilgit-Baltistan), even while they increasingly concede a ‘disputed’ status to the Indian State of Jammu and Kashmir (J&K). In effect, Pakistan has substantially been able to define the terms of both the regional and global discourse on Gilgit-Baltistan, to the exclusion of both the (formal) Indian position and of the uncertain aspirations of the people of the region.

This cavalier acquiescence in a historically untenable and distinctly disadvantageous position reflects India’s characteristic strategic incoherence and myopia. The proclivity to regard Gilgit-Baltistan as an under-populated and near-barren mountain wasteland militates against the region’s strategic centrality – as it does against India’s position on Partition and the principles of accession. It militates, moreover, against the specific interests of the people of the region – particularly its original inhabitants, who are under continuous assault from processes of sectarian tyranny and demographic re-engineering.

It is extraordinarily significant, within this context, that the Indian Prime Minister, Manmohan Singh, has now reiterated a principled Indian position, clearly stating that “Baltistan is under control of foreign troops”.² It is crucial, consequently, to better

² See, Ajay Kaulleh, “India Committed to Aksai Chin, Baltistan issues through talks: PM,” http://www.outlookindia.com/pti_news.asp?id=303817; “Pak

explicate and understand the legal underpinnings of this position – in the light, overwhelmingly, of international and Pakistani documentation and decisions – and to recognize the ground realities of the Gilgit-Baltistan region.

Strategic Centrality

Spanning an area of approximately 72,496 square kilometres, the present-day Northern Areas of PoK – or what is traditionally known as the Gilgit-Baltistan region – is an area that has historically been of pivotal strategic importance, and so remains. This is the ancient ‘axis of Asia’, where South, Central and East Asia converge. Poised at the crossroads of three great civilizations – described, in another age, as the point “where three empires meet”³ – Gilgit-Baltistan was traditionally both India’s and China’s gateway to Central Asia and beyond, into the heart of Europe, along the ancient Silk Route that contributed so much to the wealth and civilization of the many peoples it touched.

The loss of Gilgit-Baltistan has resulted in India’s ‘encirclement’ and its containment within the South Asian region, a factor that will impose increasing geo-strategic costs in the coming age, as the country’s interests become increasingly and inextricably tied to the emerging republics of Central Asia, and to land access to the markets of Europe. As China races across the Central Asian Republics to create a new and modern ‘land bridge’ to Europe, the economic viability of a wide range of Indian exports, and the competitiveness of significant sectors of the Indian economy, will hinge on securing comparable land access; this will, quite certainly, be denied by Pakistan, which has seen fit

media reacts sharply to Indian PM’s remark,”
<http://www.tribuneindia.com/2005/20050615/world.htm#7>.

³ E.F. Knight, *Where Three Empires Meet*, New Delhi-Madras: Asian Educational Services, 1993 (First Published, 1905).

even to block transit of Indian humanitarian aid to Afghanistan at moments of particular crisis.

It is useful to note that, by its unprovoked aggression in and occupation of Gilgit-Baltistan, Pakistan drove a permanent wedge between India and the secular and friendly people of the NWFP – who had, under the leadership of the ‘Frontier Gandhi’, Khan Abdul Ghaffar Khan, put their weight behind accession to India. This population has now been overwhelmingly radicalized by Pakistan’s perverse and sustained programmes of Islamist extremist mobilization, and the region is now a major centre of Islamist terrorism, lost both to India and to the civilized world, even as its people have been pushed inexorably into ignorance, backwardness and poverty.

Gilgit-Baltistan’s strategic centrality for India augmented immensely with China’s occupation of Tibet, creating a commonality of interests between Pakistan and China, with the former seeking to extend its control over Kashmir, and the latter, over Ladakh. This commonality of interests was cemented further when Pakistan ceded 1,868 square miles of the occupied territory to China, creating a strategically crucial land link that has enormously served the military and nuclear cooperation between the two countries, and their shared agenda for India’s ‘containment’.

The full implications of the loss of Gilgit-Baltistan have still to be registered with the strategic community in India. There is a tendency to accept this loss as a given – the *status quo* appears to have been widely accepted within Indian Government circles, the media and the wider public. The overwhelming concern remains the retention of what is thought of as ‘ours’ – the present boundaries of Indian administered Jammu and Kashmir (J&K), and though occasional reference is made in international fora to India’s formal position, little conviction has backed such sporadic diplomatic forays. Worse, India’s eagerness for peace at any cost,

has helped establish and consolidate the psychology of aggression within Pakistan's leadership and its Army. This orientation is dramatically exemplified by the eagerness for a settlement in the face of Pakistani aggression in 1947-48, but continued in the face of more than a decade and a half of Pakistan-backed terrorism in Indian-administered Jammu and Kashmir, and despite Pakistan's occupation of massive territories in J&K. The weakness of the Indian response has, indeed, lured Pakistan into repeated military misadventures, permanently perverting the course of Pakistani domestic politics to undermine the possibilities and prospects of peace in South Asia.

The Region

Bordering China, Afghanistan and India, the present day Northern Areas in the PoK have been divided into five districts: Gilgit, Baltistan (Skardu), Diamir, Ghizar and Ghanche. These, in turn, have been further sub-divided into a total of 13 sub-divisions and 19 *tehsils*. The region's administrative headquarters are located in Gilgit town. According to the 1998 census, the region had 870,347 inhabitants (Male: 453,221; Female: 417,126) from varied ethnic groups including the Baltees, Shinas, Vashkuns, Mughals, Kashmiris, Pathans, Ladhakhis and Turks, speaking a variety of languages such as Balti, Shina, Brushaski, Khawer, Wakhi, Turki, Tibeti, Pushto and Urdu.

Very little is known about the political formations in ancient Gilgit and its neighbouring regions, although historians point towards the presence of Buddhism around the period of 1080 AD, when Sri Badat of the Shah Rais dynasty ruled the area. Sri Badat was the last Buddhist ruler of Gilgit, and the Hunza ruler Shamsheer founded the Tarakhand dynasty in Gilgit thereafter, and ruled till the end of the 12th century, patronising Islam in the region. The reign of the Tarakhand dynasty came to an end with

the invasion of Taj Mughal of Badakhshan in 1335 AD, who later introduced the doctrines of the Ismaili sect of Shia Islam. The region continued to witness invasions by Afghan rulers and, following the end of the Mughal rule in Kashmir during the mid-eighteenth century, the region was annexed by the Sikh King, Maharajah Ranjit Singh in 1819. The Sikhs handed over the administration of Kashmir to one of the local Dogra rulers of the region, Gulab Singh. During the 1820s and 1830s, Gulab Singh gradually expanded his dominion from his base in the southern reaches of the Jammu region, first over the mountainous areas in the Jammu interior and then over the even more remote Himalayan regions of Ladakh and Baltistan.⁴

The Sikh rule in the region came to an end when the British East India Company defeated the army of King Daleep Singh and signed the Treaty of Lahore on March 9, 1846. By virtue of the terms and conditions of the treaty, as envisaged in Article 4, the Company demanded from the Sikh King an indemnification of the expenses of the war, in addition to ceding the territory described in Article 3, and payment of Rupees 15 million. The Sikh ruler, being unable to pay the whole amount, ceded to the Company all his forts, territories, rights and interests in the region. Gulab Singh, on seeing a golden opportunity, offered to pay the amount of indemnity in the sum of Rupees 7.5 million for the transfer of the Kashmir state. The Company recognised Gulab Singh's 'independence' over Kashmir and its territories as per the Treaty of Amritsar on March 16, 1846, but stipulated that, according to Article 4 of the Treaty, "The limits of the territories of Maharaja Gulab Singh shall not be at any time changed without the concurrence of the British Government."⁵

⁴ Sumantra Bose, *Kashmir, Roots of Conflict, Path to Peace*, New Delhi : Vistaar Publications, 2003, p.15.

⁵ Treaty of Amritsar, March 16, 1846, in H.S. Gururaja Rao, *Legal Aspects of the Kashmir Problem*, New Delhi: Minerva Press, 2002, pp. 345-6.

Alarmed by Russian expansion in Central Asia in the 1860s, the British Government set up the Gilgit Agency in 1877, with the appointment of Sir John Biddulph as the first Political Agent. In 1891, Hunza and Nagar were subjugated under the British Agency. In 1901, the two *Wazarats* (districts) of Gilgit and Ladakh were recognised and put under the control of the State Government, while the remaining districts of the Gilgit Agency were controlled by the Political Agent.⁶

On March 26, 1935, Maharaja Hari Singh agreed to lease the Gilgit Agency to the British for a period of sixty years. Article 1 of the Lease Agreement of Gilgit read:

The Viceroy and Governor-General of India may at any time after the ratification of this agreement assume the civil and military administration of so much of the Wazarat or Gilgit province (hereinafter referred to as the ‘said territory’) of the State of Jammu and Kashmir as lies beyond the right bank of the river Indus, but notwithstanding anything in this agreement the said territory shall continue to be included within the dominion of His Highness the Maharaja of Jammu and Kashmir.⁷

According to the Lease Deed, consequently, Gilgit and its adjoining territories, the region “beyond the right bank of the river Indus” was very much part of the State of J&K during the Maharaja’s rule.

Within this context, it is useful to note that when India attained Independence, the 565 ‘Princely states’ – including J&K – technically became ‘sovereign states’. A “Memorandum on States’ Treaties and Paramountcy” provided that the ‘paramountcy’ that the Princely states enjoyed with the British

⁶ P. Stobdan, ‘North-west under the Maharaja’ in *Pakistan Occupied Kashmir Under the Jackboot*, ed., Jasjit Singh, New Delhi: Siddhi Books, 1993, p. 34.

⁷ Ibid, Appendix I, p. 53.

would lapse at the time of Independence, and the void created would have to be filled either by a federal relationship or by 'particular political arrangements' with the 'successor government or governments,' whereby the states would accede to one or other dominion (India or Pakistan). It is crucial to note that, in these various arrangement with the Princely states, there was never any reference to considerations of geographic location or religious orientation, but only of the accession through federal or political arrangements between the Prince and the successor governments – India and Pakistan. Any set of wider 'considerations' – including the religious composition of populations or geographical contiguity – would have opened a veritable Pandora's box in many of the princely states where geography and religious orientation would have militated against each other within any workable scheme of partition

Consequently, following the collapse of British paramountcy in 1947, the entire Gilgit agency was restored to the then Dogra King, Hari Singh, and he deputed Brigadier Ghansara Singh as Governor of these areas. Shortly after the Brigadier assumed charge of the area, a local rebellion erupted on October 31, 1947. The Brigadier was arrested and imprisoned, while the rebels marched on to Baltistan (Skardu) in the east. On November 2, 1947, they announced a Provisional Independent Government for these areas and invited the Pakistan Government to 'help administer' the region. Sardar Mohammad Alam was appointed as the Political Agent and he dissolved the Provisional Independent Government and took over the administration of these areas.

After a cease-fire was announced between India and Pakistan in January 1949, Pakistan not only continued administering these areas, but tightened its grip on them. The Karachi Agreement of April 28, 1949, purportedly signed between the Pakistan Government and the 'President' of 'Azad Kashmir', Sardar M.

Ibrahim Khan, and President of the All Jammu and Kashmir Muslim Conference, Chaudhary Ghulam Abbas, ratified the administrative control of Pakistan over these areas. Pakistan also reportedly received letters of accession from the Mirs (local rulers) of Nagar and Hunza.⁸ These letters, however, do not hold any merit as the Rajas of Nagar and Hunza had no power of accession (since the entire State of Jammu & Kashmir reverted to Maharaja Hari Singh after the departure of the British). Pakistan, moreover, chose to suppress these letters of accession, because it sought to bring the whole State under dispute before the United Nations (UN), and preferred to treat it as a single undisputed unit to which it laid claim. It is significant, in this context, that at a meeting held at the Pakistan Prime Minister's residence on March 4, 1949, "it was decided that no action should be taken to notify UNCIP of the accession of the Mirs of Hunza and Nagar as it was hoped to include them in the Plebiscite area."⁹

UN Mediation

Following the Pakistani 'tribal' invasion – comprising both irregular forces and regulars masquerading as 'irregulars' – into J&K on October 22, 1947, the Indian Government, in a letter to the President of the UN Security Council, dated January 1st 1948, brought before the Security Council, under Article 35, paragraph 1 of the Charter, the situation created by the invaders, comprising Pakistan nationals and tribesman adjacent to Pakistan. The letter requested the Security Council:

- i. to prevent Pakistan Government personnel, military and civil, from participating or assisting in the invasion of the Jammu and Kashmir State;

⁸ M. Ismail Khan, "The Northern Areas' dangerous limbo," <http://www.jang.com.pk/thenews/sep2005-daily/27-09-2005/oped/o2.htm>.

⁹ Addendum to notes of a meeting held in HPM's Residence at 1100 hrs on 4 March 1949 to discuss the Gilgit Situation.

- ii. to call upon other Pakistani nationals to desist from taking any part in the fighting in the Jammu and Kashmir State;
- iii. to deny to the invaders: (a) access to and use of its territory for operations against Kashmir; (b) military and other supplies; (c) all other kinds of aid that might tend to prolong the present struggle.¹⁰

The Security Council through a resolution adopted on 17th January 1948 called upon, “the Government of India and the Government of Pakistan to take all immediate measures within their power (including public appeals to their peoples) calculated to improve the situation and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation.”¹¹ This resolution was not adhered to by Pakistan, as Josef Krobek, Chairman of the United Nations Commission for India and Pakistan (UNCIP)¹², confirms in his book, *Danger in Kashmir*:

Sir Zafrulla Khan (Pakistan Minister of Foreign Affairs and Commonwealth Relations) informed the Commission that three Pakistani Brigades had been on Kashmir territory since May (1948)... The Commission preferred not to express its opinion openly about this new and important element in the picture, but to one another the members admitted that the presence of the Pakistani troops in Kashmir made of the situation something far graver and far more disturbing than what it

¹⁰ Letter from the Representative of India to the President of the Security Council dated 1 January 1948, in Rao, *Legal Aspects of the Kashmir Problem*, p. 381.

¹¹ See, United Nations website at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/047/63/IMG/NR004763.pdf?OpenElement>

¹² The UNCIP was constituted under the Security Council resolution of 21 April 1948 and was charged with the responsibility of investigating facts pursuant to Article 34 of the Charter and to exercise mediatory influence.

had appeared to be to the members of the Security Council at faraway Lake Success.¹³

Even as hostilities continued between the two sides in J&K, the UNCIP formulated the resolution of 13 August 1948. The operative core of the resolution contained in Part II read as follows:

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both the 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 endeavour 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.

¹³ Josef Grobel, *Danger in Kashmir*, New Jersey: Princeton University Press, 1954, p. 121.

B.

1. *When the commission shall have notified the Government of India that the tribesmen and Pakistani nationals referred to in Part 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 powers to make it publicly known that peace, law and order will be safeguarded and that all human political rights will be granted. *(all emphases added)*

The language of the Resolution is unambiguous on the point that the Commission regarded Pakistan as the aggressor, that the presence of Pakistani troops constituted “a material change in the situation”, and that the Government of

Pakistan had agreed “to withdraw its troops from the State” as well as to secure the withdrawal of the “tribesmen and Pakistani nationals not normally resident” in the State, in other words, the ‘irregulars’ and ‘tribal raiders’ who had been mobilized, armed and pushed in by Pakistan. The legitimacy of the Indian position was also endorsed by the role envisaged for its Forces in the maintenance of law and order, and the continued presence of these Forces in the State – though at reduced strength to ensure that the presence was not perceived as belligerent towards Pakistan; as well as by the influence it was expected to exert over the Government of J&K in safeguarding peace, law and order and political rights.

Part III of the resolution stated, further, that the “future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people”. A plebiscite to determine the popular will was to be held “upon acceptance of the truce agreement” and on the basis of consultations to be held thereafter. The envisaged plebiscite was, however, never held, because Pakistan refused consistently to implement the pre-conditions it had accepted: most significantly, the withdrawal of the occupying forces from the territories it had occupied.

Following the resolution of 13 August 1948, a ceasefire in Kashmir, mutually ordered by the Governments of India and Pakistan came into effect at midnight of 31 December 1948-1 January 1949. On 5 January 1949, the UNCIP adopted another resolution, embodying certain principles for the holding of plebiscite in Kashmir, as a supplement to the 13 August 1948 resolution. It is significant, here, that the resolution of January 5, 1949, clearly vested all residual authority in the “Government of Jammu & Kashmir”, with Article 3 (a) and (b) declaring, respectively, that the Plebiscite Administrator would be “formally appointed to office by the Government of Jammu and Kashmir”,

and that he would “derive from the State of Jammu and Kashmir the powers he considers necessary for organising and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.” No other purported authority was accepted for any of the regions of the State, including Gilgit-Baltistan.

The Government of India had accepted the 13 August 1948 resolution, but while accepting, it sought certain clarifications and assurances vide letter dated on 20 August 1948. Replying to this letter, the UNCIP Chairman wrote on 25 August 1948:

The Commission requests me to convey to your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point (1) (c) the local people of the evacuated territory will have freedom of legitimate political activity. In this connection, the term ‘evacuated territory’ refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.¹⁴

While passing the first resolution, the UNCIP had failed to deal with the question of defence and administration of the Northern Areas, partly because it was doubtful whether the area was under the ‘effective control’ of the Pakistan High Command. Paragraph 272 of the UNCIP Third Interim Report stated:

It seems, however, very doubtful whether the northern areas were, in fact, in the autumn of 1948 under the effective ‘control’ of Pakistan high command, in the sense that mission understood the term effective control. The Pakistan Government stated that no Pakistani regular troops were employed in the operation which took place between May and December 1948... It was

¹⁴ Reply from the Chairman of the Commission to the Letter from the Prime Minister of India, dated August 20, 1948, in Rao, *Legal Aspects of Kashmir Problem*, p. 406.

precisely because the Commission understood 'evacuated territory' to mean that territory in western Kashmir where regular forces of the Pakistan army were operating and assisting the Azad Kashmir forces that the Commission in August stated to the Prime Minister of India that the question of the military aspects of territories to the north of the state had not been dealt with in the resolution of 13 August. The Commission was informed that it was for the defence of the western area that the Pakistan regular forces had entered the State of Jammu and Kashmir... However, by January 1949 Pakistan undeniably held military control over the northern areas; the area was administered by local authorities, not those of the Jammu and Kashmir Government, with the assistance of Pakistani officials.¹⁵

Crucially, as Pakistan introduced its troops into the Northern Areas well after the UNCIP resolution of August 13, 1948, it had already violated Part I of the resolution and ceasefire agreement.

Further, in a letter dated August 30, 1948, to the Chairman of the UNCIP, the India Prime Minister, Jawaharlal Nehru, wrote:

You will recall that in our interview with the Commission on 17th August, I dealt at some length with the position of the sparsely populated and mountainous region of the Jammu and Kashmir state in the north. The authority of the Government of Jammu and Kashmir over this region as a whole has not been challenged or disturbed, except by roving bands of hostiles, or in some places like Skardu which have been occupied by irregulars of Pakistan troops. The Commission's resolution, as you agreed in the course of our interview on the 18th, does not deal with the problem of

¹⁵ Security Council Official Records, Fourth Year, Special Supplement no.7, paragraph 274, cited in Rao, p.154.

administration or defence in this larger area. We desire that, after Pakistan troops and irregulars have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and Kashmir and that for defence to us.¹⁶

The Chairman, replying to the Prime Minister's letter wrote on August 25, 1948:

The Commission wishes me to confirm that, due to the peculiar conditions of this area, it did not specifically deal with the military aspect of the problem in its Resolution of 13 August 1948. It believes, however, that the question raised in your letter would be considered in the implementation of the Resolution.¹⁷

The issue of the Northern Areas, therefore, remained inconclusive, even as Pakistan, through the controversial Karachi agreement of 1949 wrested absolute control of the region, in continued violation of the UNCIP resolutions. The Agreement was purportedly signed by the Minister without Portfolio in the Government of Pakistan, Mushtaque Ahmed Gurmani, the 'President of Azad Kashmir' Sardar Mohammed Ibrahim Khan, and the Head of the All Jammu and Kashmir Muslim Conference, Choudhry Ghulam Abbas. No person from Gilgit-Baltistan was party or signatory to it, nor did the 'Azad Kashmir' Government have any representation from Gilgit-Baltistan. Further, 'Azad Kashmir' had no historical administrative control over Gilgit-Baltistan, which it could legitimately 'hand over' to the Government of Pakistan. The All Jammu and Kashmir Muslim Conference, moreover, had no political presence in Gilgit-Baltistan. The text of the Karachi Agreement, moreover, fails to inspire confidence *per se*, is languid, amateurish, devoid of

¹⁶ Rao, Appendix XVI, p. 405.

¹⁷ Ibid, Appendix XVII, p. 407.

evidence of application of mind and of purpose, and has the form of a memorandum rather than an agreement that aims to alter the geography of a vast region under dispute. Indeed, this crucial component of the 'Agreement' is buried away in a succession of cryptic one-liners regarding "Matters within the purview of the Government of Pakistan", stating simply "All affairs of Gilgit – Ladakh under the control of Political Agent". The destiny of this entire region and its people was dismissed in this single and sweeping phrase, and there is no further mention of Gilgit-Baltistan in the document. It is significant that Sardar Mohammed Ibrahim Khan subsequently, repeatedly, and at various fora, denied being a signatory to the Karachi Agreement.¹⁸

Pakistan initially rejected the August 13, 1948, UNCIP resolution, but subsequently accepted the January 5, 1949 resolution. However, since the January 5, 1949, resolution was supplementary to the resolution of the August 13, 1948, acceptance by Pakistan of the former resolution automatically amounted to acceptance of the latter.¹⁹

In its third interim report to the Security Council, the UNCIP stated that, although the ceasefire order had been made effective on January 1, 1949, it was unable to report any substantial progress in the implementation of the succeeding parts of the resolutions of August 13, 1948 and January 5, 1949, which related to de-militarisation and holding of the plebiscite. Following the third interim report, the UN Security Council appointed mediator after mediator (General A.G.L. McNaughton, Sir Owen Dixon, Dr. Frank Graham and Gunnar Jarring) to resolve the issue, but the proposals submitted by the mediators were contrary to the UNCIP proposals, which had stated that

¹⁸ M.A. Niazi, "Backgrounder on NA," *The Nation*, Lahore, March 12, 1993 and March 13, 1993; Mumtaz Khan, "The Quest for Identity," January 10, 2006, <http://www.jammu-kashmir.com/insights/insight20060110.html>.

¹⁹ Rao, p. 102.

Pakistan had no *locus standi* in the State and its actions had created a material change in the situation by invading J&K.

On March 2, 1963, Pakistan further violated the UNCIP resolution as well as the UN Security Council resolutions, when it entered into an agreement with China and altered the position in J&K by transferring close to 1,868 square miles of the northern territory to China. Nevertheless, Pakistan, in the Sino-Pakistan Border Agreement of 1963, accepted once again that the sovereignty of the region did not rest with it, as Article 6 of the document read:

The two parties have agreed that after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority concerned will reopen negotiations with the Government of the People's Republic of China on the boundary as described in Article Two of the present agreement, so as to sign a formal boundary treaty to replace the present agreement, provided that in the event of the sovereign authority being Pakistan, the provisions of the present agreement and of the aforesaid protocol shall be maintained in the formal boundary treaty to be signed between the People's Republic of China and Pakistan.²⁰

The UN resolutions were further violated when Chitral, a part of the state of Jammu and Kashmir was shown to be mentioned in the 1973 Constitution of Pakistan as one of its territory. In 1878, Chitral under its ruler called *Mahtar* had acknowledged the suzerainty of the Maharaja of Jammu and Kashmir and through him to the British Government. But, in Chapter 3 of the Pakistan Constitution, titled Tribal Areas, Article 246 read:

- (a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes

²⁰ Stobdan, Appendix II, p. 55.

- (i) the Tribal areas of Baluchistan and the North-West Frontier Province; and
- (ii) the former states of Amb, *Chitral*, Dir and Swat.²¹
(emphasis added).

Constitutional Status in Pakistan

That Pakistan has consistently been in bad faith on the issue of Gilgit-Baltistan, and so remains, is borne out by the Constitutional and legal history of ambivalence, the consequent administrative and political vacuum in the region, and the persistent denial of political and human rights to its people.

In 1949, Pakistan separated the administration of the Gilgit-Baltistan from occupied Kashmir and introduced the draconian Frontier Crimes Regulation (FCR) in the area.²² While what was referred to as the 'Azad Jammu & Kashmir' (AJK) area of POK was provided a figurehead administration, which included a *Sadr* (President) and a *Wazir-e-Azam* (Prime Minister), the control of Gilgit-Baltistan was placed in the hands of the Ministry of Kashmir Affairs of the Pakistan Government. The FCR did not allow any political activity in Gilgit-Baltistan and also did not permit the newly formed AJK to extend its operations in the area.

Pakistan's Ministry of Kashmir Affairs introduced the post of Political Resident instead of Political Agent in Gilgit-Baltistan and in 1952 a Joint Secretary of the Ministry of Kashmir Affairs was appointed Political Resident for the 'Northern Areas'. The Ministry introduced some marginal reforms in 1967 and a

²¹ http://www.nrb.gov.pk/constitutional_and_legal/constitution/part12.ch3.html

²² The Frontier Crime Regulations comprises a set of laws enforced by British in the Frontier Districts. They were specially devised to counter the fierce opposition of the Frontier Tribes to British rule, and their main objective was to protect the interests of the British. This was the English law for the tribal areas through which a civil servant exercised all judicial and administrative powers. (It is worth noting that prior to this FCR, the Maharaja of Kashmir in his period had provided an independent judicial system for the areas, and the people could appeal before the Kashmir High Court).

Resident was appointed instead of the Political Resident, with his headquarter at Gilgit. The tasks of Administration, and of the High Court and Revenue Commissioner were all pooled in the body of the Resident. Under the Resident, two Political Agents were appointed, one each for the Gilgit and Baltistan agencies, exercising comprehensive powers in their respective jurisdictions. Each of the Political Agents exercised the following powers simultaneously:

- District and Session Judge;
- District Magistrate;
- Revenue Collector;
- Commissioner for FCR;
- Inspector General, Police;
- Chairman District Council
- Controlling Officer of Cooperative Societies²³

Elections in Gilgit-Baltistan were conducted for the first time in 1970. These were for the Northern Areas Advisory Council consisting of 16 members, the first representative body in the region. These elections, however, had little impact in terms of real democratization, devolution of power or representation of the local populations, since the Council only had limited power to sanction local development schemes, but was almost helpless in all other matters. During its early days, the Commissioner Northern Areas (Resident) used to chair the Council. Later, a change was brought about, and the Federal Minister for Kashmir Affairs became the Chairman, squarely establishing the locus of power at Islamabad.²⁴

In 1972, the then Government of Prime Minister Zulfikar Ali Bhutto announced a 'reform package', replacing the FCR and creating a new District, Diamir, with immediate effect.

²³ "Northern Areas of Pakistan – Facts, Problems and Recommendations," Institute of Policy Studies Report, <http://www.ips.org.pk/publications/Perspectives/Vol1/Chapter%209.pdf>.

²⁴ Ibid.

Thereafter, when General Zia-ul-Haq imposed Martial Law in Pakistan on July 5, 1977, the Northern Areas were also declared 'Martial Law Zone-E 33' (A to D being the four Provinces). From the administrative viewpoint, this was the first important decision that gave rise to confusion about the constitutional position of Gilgit-Baltistan. This decision was, in fact, contrary to the Constitutions of 1956, 1962 and 1973, which did not mention the Northern Areas as part of Pakistan. Part I of the 1973 Constitution lists the territories of Pakistan as:

- (a) the provinces of Baluchistan, Northwest Frontier, the Punjab and Sind;
- (b) the Islamabad capital territory;
- (c) the Federally Administered Tribal Areas (FATA); and
- (d) such states and territories as are or may be included in Pakistan whether by accession or otherwise.²⁵

The present structure of Governance in Northern Areas, as per the Government of Pakistan's Northern Areas Strategy for Sustainable Development report of 2003 is:

1. *Executive*: The Chief Executive for the Northern Areas is the Federal Minister for Kashmir Affairs and Northern Areas. The Chief Executive is assisted by a Deputy Chief Executive, who is appointed from the members of the Northern Areas Legislative Council (NALC). The Deputy Chief Executive enjoys the status of a Minister of State, and is assisted by Advisors. These are appointed by the Chief Executive in consultation with the Deputy Chief Executive, from the members of the Council; the Advisors are entitled to the status of a Provincial Minister. The principal civil servant in Gilgit-Baltistan is the Chief Secretary, while the various line departments are headed by Secretaries. "Government" is defined by the Northern Areas Rules of Business, 1994, as

²⁵ http://www.nrb.gov.pk/constitutional_and_legal/constitution/part1.html.

meaning the Chief Executive, the Deputy Chief Executive and the Chief Secretary.

2. *Legislature:* The Northern Areas Legislative Council is an elected body, comprising 29 members (24 directly elected representatives, and five reserved seats for women); the Chief Executive is not a member of the Council. Schedule II to the Northern Areas Council Legal Framework Order, 1994, lists the matters with respect to which the Council may make laws. The council has a limited mandate and can legislate only on 49 subjects, and excluding fundamental rights. The Chief Executive's assent to a Bill is required after its passage in Council; without such assent, the Bill cannot become law. The Government of Pakistan may also, by order, make laws with respect to matters outside the purview of the Council. The annual budget allocated to the Northern Areas is presented before the Council in the form of a statement. While the people of Gilgit-Baltistan are denied representation in the Federal Parliament, the NALC has no powers even comparable to that of a municipal body in a Pakistani city. Significantly, although elections to the NALC were held under the military regime in 2000, as of March 2006, financial and legislative powers are yet to be delegated to the NALC.
3. *Judiciary:* Each District has a Court and a District and Sessions Judge. There are ten Civil Judges who also exercise the powers of judicial magistrates. The Chief Court, comprising of one chairman and two members, acts as the Court of Appeal for the decisions of the District and Sessions Judge.

That the prevailing administrative and political conditions in Gilgit-Baltistan are both deeply iniquitous and constitutionally ambiguous has been widely noted, and is a fact repeatedly endorsed by various Courts in Pakistan. Various judgements have

observed that the residents of Gilgit-Baltistan have been deprived of their fundamental rights and subjected to an arbitrary and capricious administrative system, with no recourse to an independent or representative authority for a redressal of their grievances.

Thus, in the *Malik Muhammed Miskeen vs. Government of Pakistan*, the High Court of 'Azad' Jammu and Kashmir observed,

We, therefore, hold that no legitimate cause has been shown by the respondents No.1 and 2 (Government of Pakistan) to keep the Northern Areas and their residents detached from Azad Jammu and Kashmir, under separate and arbitrary administrative system and deprive them of fundamental rights.²⁶

Although, the above judgement of the High Court was set aside by the Supreme Court of 'Azad' Jammu and Kashmir for want of jurisdiction in 1995, the Supreme Court of Pakistan in *Al Jihad Trust vs. Federation of Pakistan*,²⁷ elaborately dealt with the constitutional status of Gilgit-Baltistan.

The petitioners in this case had prayed that the Constitutional status of the people of Northern Areas be declared and, being citizens of Pakistan, be given full participation in the Federation of Pakistan. The petitioner sought that the litigant public be given the right to appeal, review and revision before the Supreme Court of Pakistan; and further, that the status of the Provincial Government be defined, and any other efficacious remedies which the Court deemed fit and necessary be granted. The five-member bench headed by Ajmal Mian, Chief Justice, noted that "the people of Northern Areas are entitled to participate in the

²⁶ *Malik Muhammed Miskeen vs. Government of Pakistan, through Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad*, Writ Petition No. 61 of 1990 in the High Court of Judicature of Azad Jammu and Kashmir.

²⁷ *Al Jihad Trust through Habibul Wahab Al-Khairi vs. Federation of Pakistan through Secretary, Ministry of Kashmir Affairs, Islamabad*, 1999 Supreme Court Monthly Review (SCMR) 1379, Lahore, August 1999.

governance of their area and to have an independent judiciary to enforce *inter alia* the Fundamental Rights.”²⁸

In its submission to the Court, the Attorney General of Pakistan, Ch. Muhammad Farooq, had stated that the

Government of Pakistan has already taken steps to provide self-government rule and independent judiciary in as much as under Northern Areas Council Legal Framework Order, 1994 a council for Northern Areas has been constituted which is to be elected and a Chief Court has been established under notification dated 17-11-1994.

Taking the Government arguments into consideration, the Court, however, noted:

It may be stated that para. 6 of the Order (i.e. Northern Areas Council Legal Framework Order) envisages election of twenty-four members, including the Vice-Chairman and the Advisers, six each from Gilgit, Diamer and Baltistan Districts and three each from Ghizer and Ghanchi Districts. But the above council cannot be equated with an elected Government of a province, which is evident from the functions of the council defined in para.17 of the order.

Para 17 of the Northern Areas Council Legal Framework Order, 1994 lists the 'Functions of the Council':

Subject to the responsibilities of the Government of Pakistan under the UNCIP Resolutions, and the orders and directions as may be issued by it, and subject to such financial limitations as it may impose from time to time, the following shall be the powers and functions of the Council, namely:

- (a) To make the laws with respect to the municipal functions as may be specified by the Government of Pakistan;

²⁸ Ibid, p. 1396.

- (b) To suggest improvements in matters concerning administration of the Northern Areas;
- (c) To advise the Provincial Government on local bodies;
- (d) To assign priorities for development schemes and to decide the inclusion or exclusion of a scheme in the five-year plan and the Annual Development Programme;
- (e) To review the progress of work of various development programmes schemes and projects;
- (f) To accord approval to development schemes costing not more than one hundred million rupees (non-recurring);
- (g) To perform and exercise all powers and functions which may be exercised and performed by a local council in Pakistan.

The Court, consequently and judiciously, went on to state:

it is evident from the para 17 that the Council is entrusted with the functions of a local government. In this view of the matter, it cannot be concluded that the people of the Northern Areas have been allowed to exercise their right to govern through their chosen representatives inter-alia in terms of Article 2A of the Constitution.²⁹

Further, the Supreme Court, "while construing various provisions of the Constitution, particularly relating to the Judiciary, has held that the right of 'access to justice to all' is a fundamental right, which right cannot be exercised in absence of

²⁹ Article 2A of the Constitution of Pakistan was inserted by P.O.No.14 of 1985, Art.2 and Sch.item 2 (with effect from March 2, 1985). "The principles and provisions set out in the objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly." Under this, the Preamble to the Constitution has been incorporated and it provides that the state shall exercise its powers and authority through the chosen representatives of the people, wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed. It also enjoins that the independence of the judiciary shall be fully secured.

independent judiciary providing impartial, fair and just adjudicatory framework, i.e., judicial hierarchy.”³⁰

The *Al Jihad Trust* decision noted, further, that in 1998, in *Mehram Ali v. Federation of Pakistan*, the Supreme Court, had observed, “The Courts/ Tribunals which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution can hardly meet the mandatory requirement of the Constitution.”³¹ In view of this judgement and the principal of “access to justice to all”, the Court in the *Al Jihad Trust* observed:

As regards the Judiciary (in Gilgit-Baltistan), it appears that under Notification No. E II-I/172-I, dated 15-11-1992 issued by the Ministry of Interior and Frontier Region and Kashmir Affairs, the post of District and Sessions Judge for the Northern Areas was created for the period commencing from the date of above notification expiring on 31-5-1973. It further seems that through notification dated 30-4-1976, a Judicial Commissioner was appointed by the Federal Government for the Northern Areas with the appellate power and other inherent powers of a High Court as defined under Section 266 Cr. P.C. It appears that the above position continued till the constitution of the Chief Court through Notification No.II-2/17/94, dated 17-11-1994 in supercession of previous notification of appointing Judicial Commissioner.³²

Para 2 of the Notification states that “the Chief Court, Northern Areas shall exercise all powers and perform all functions which were being performed by the Court of the

³⁰ *Al Jihad*, p.1396.

³¹ *Mehram Ali and others vs. Federation of Pakistan and others*, PLD 1998 SC 1445.

³² *Al Jihad*, p. 1397.

Judicial Commissioner being the highest court of judicature in the Northern Areas.” The Court added,

...under para 2 of the notification it has been provided that the Chief Court, Northern Areas, shall exercise all powers and perform all functions which were being performed by the Court of the Judicial Commissioner being the highest court of judicature in the Northern Areas, which includes appellate jurisdiction against orders/judgements of subordinate Courts. However, the above chief court does not have Constitutional jurisdiction, nor there is any forum of appeal against the judgement/order of the Chief Court. In this regard, reference may be made to the case of *Shakoor Muhammad and another v. The State* (1983 SCMR 542), in which it has been held by this Court that the Court of Judicial Commissioner for Northern Areas is not a High Court and, therefore, appeal from its judgements, decrees or final orders or sentences passed does not lie to the Supreme Court under Article 185 of the Constitution. *It is, therefore, patent that the people of Northern Areas have been denied their fundamental right to have access to justice through an independent judiciary as envisaged by the Constitution and enunciated by this Court inter alia in the case of Mehram Ali.*³³ (Emphasis added)

The Court elaborated, further,

...as regards the right to access to justice through an independent judiciary, it may be observed that the Northern Areas has a Chief Court, which can be equated with a High Court provided it is manned by persons of the status who are fit to be elevated as Judges to any High Court in Pakistan. Its jurisdiction is to be enlarged as to include jurisdiction to entertain Constitutional

³³ Ibid, pp. 1398-99.

Petitions *inter alia* to enforce the Fundamental Rights enshrined in the Constitution and to provide right to approach a higher forum through a petition for leave to appeal and/or by way of an appeal against orders/judgements of the above Chief Court. The same may require amendments in the aforesaid Notification No. II-2/17/94, dated 17-11-1994...

and/or the Constitution/statute/statutes/order/orders/rules/notification/notifications.³⁴

Finally, concluding its judgement, the Court directed the Federation of Pakistan:

...to initiate appropriate administrative/legislative measures *within a period of six months* from today to make necessary amendments in the Constitution/ relevant statute/statutes/ order/orders/rules/notification/notifications, to ensure that the people of Northern Areas enjoy their above *fundamental rights, namely, to be governed through their chosen representatives and to have access to justice through an independent judiciary* *inter alia* for enforcement of their Fundamental Rights guaranteed under the Constitution.³⁵ (Emphasis added).

To appear to be doing something in pursuance of these historical decisions the Federal Government made some peripheral amendments in Northern Areas Council Legal Frame Work Order, 1994, and issued a Northern Areas Court of Appeals (Establishment) Order, 1999. However, these amendments and orders fail to meet even the minimum requirements of the clear and specific direction of the Supreme Court.

As a result, a Bench of the Northern Areas Chief Court (NACC) is once again hearing a petition filed to determine the

³⁴ Ibid, p. 1401.

³⁵ Ibid.

constitutional status of Gilgit-Baltistan. The Bench has issued notices to the Federation of Pakistan, the Northern Areas Chief Executive, Chief Secretary and Northern Areas Legislative Council on a petition filed by Ehsan Ali, Labour Party Chairman and an advocate in the NACC. Ali filed the petition in June 2001 questioning the legality of the existing institutions in the region in view of the Supreme Court's May 1999 verdict on the status of the Northern Areas in the *Al Jihad Trust* case. The case continues to drag on at present. Meanwhile, the entire judicial and administrative setup continues to be dominated by outsiders appointed by Islamabad.

In the interim, despite the existence of nominal political institutions such as the NALC, there has been no impact on the political rights of the people of the region, which continues to be "directly administrated by fiat from Islamabad... The bureaucracy, primarily drawn from the North West Frontier Province and Punjab, has intensified the sense of alienation and negated any semblance of self-rule in the NAs."³⁶ Balawaristan National Front (BNF) leader, Nawaz Khan Naji, notes, "In every department, the chief is from Pakistan, the other, secondary positions are locals."³⁷

Commentating on the administrative set-up in the region, a Report of the non-governmental Human Rights Commission of Pakistan pointed out that,

...the Government of Pakistan in general and the KANA (Kashmir Affairs and Northern Areas) Division authorities are a target of open criticism in the area for not bringing socio-political and economic stability to the region. Instead they have created a situation that has left

³⁶ Kanchan Lakshman, "Northern Areas: Legal Ambivalence and Rising Unrest," *South Asia Intelligence Review*, Volume 4, No. 6, August 22, 2005, http://www.satp.org/satporgtp/sair/Archives/4_6.htm#assessment2.

³⁷ "The Rediff Interview/Balawaristan leader Nawaz Khan Naji", March 16, 2004, <http://in.rediff.com/news/2004/mar/17inter.htm>.

the constitutional status of the region under dispute, and also brought socio-political and economic instability to the region.³⁸

Pakistan has long and persistently fuelled demands for ‘self-determination’ in Jammu & Kashmir, as well as in other theatres of alleged ‘oppression’ of Muslims across the world. At the same time it has utterly and continuously suppressed the people of Gilgit-Baltistan; denied them the most basic constitutional and human rights; blocked access to development and an equitable use even of local natural resources; and repeatedly and brutally suppressed the local Shia majority, even as it seeks to violently promote Sunni sectarianism in the region. Gilgit-Baltistan consequently remains an area of darkness, of deep neglect and exploitation, and of the denial of political rights and identity – indeed, a violation of every conceivable element of the very ‘self-determination’ that Pakistan prescribes abroad.

Circumstances in Gilgit-Baltistan constitute an international humanitarian crisis. For India, moreover, they go to the very core of its strategic concerns and of its legal titles, flowing from the conditions of Partition. For decades, Pakistan has set a distorted agenda of discourse, treating areas under its occupation – ‘Azad Jammu and Kashmir’ and Gilgit-Baltistan – as settled issues, even as it violently promotes and stridently proclaims a ‘dispute’ over the Indian-administered State of Jammu and Kashmir. Regrettably, the poorly informed international community has accepted this travesty of history, even as India has failed to vigorously contest it. It is now time to administer correctives and to deny to Pakistan the fruits of aggression and criminality that have accrued to for over half a century, in the process creating immense suffering on a hapless sectarian minority in Gilgit-Baltistan.

³⁸ The HRCP Core Group, Northern Areas, “Report on Curfew in Gilgit, http://www.hrcp-web.org/report_curfew_gilgit.cfm.