

Third Party Mediation over Kashmir: A Modest Proposal

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An enduring rivalry coupled with an internal insurgency define the current state of the conflict between India and Pakistan over Kashmir. The circumstances are now in place to give a third party the opportunity to act as mediator in the long-standing conflict, as well as in the dispute between India and the Kashmiri insurgency. International mediation theory is not sufficient to apply to this conflict. Emerging and established theories of mediation regarding both international and internal aspects of the conflict are considered. The progress and status of the dispute, as well as the dynamics of the triadic relationship between India and Pakistan and the US are examined and reveal that the interests inherent in the US-India and the US-Pakistan relationships are converging. Strategic and economic interests which facilitate third party intervention are each considered in turn. The role of the US as mediating party is then brought into focus against a background of geo-political change and bilateral stalemate. The issue of whether mediator bias will affect the outcome of mediation is considered in a theoretical analysis. The author concludes that perceptions of bias will *not* affect the outcome negatively, *and* that the US can encourage *constructive perceptions of bias* by both India and Pakistan in order to maximize its leverage over the parties and encourage a political settlement. The possibility of resolution of the Kashmir conflict between India and Pakistan is now being greatly enhanced by the existence of one remaining, engaged superpower and should be taken advantage of.

The ongoing conflict between India and Pakistan over Kashmir should be analysed as an 'enduring' rivalry, characterized by more than three major armed confrontations, low intensity military conflict, a conflict duration of half a century, and diverse efforts to manage the various phases of their overarching conflict. Indeed, the Indo-Pakistan relationship is one of the longest conflicts of this type.¹ The possibility of war at any given time in the life of the enduring rivalry is influenced by the outcome of previous crises and conflicts as well as the prospect of future ones.² Other characteristics of such rivalries may include the perception that they are central to the existence of those involved; that they are 'total' – being fought on several levels, including social, political, military and religious levels; that they are unresolvable.³ The finality of such perceptions indicates the danger such

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conflicts pose to the international order, and they have, accordingly, attracted an inordinate share of conflict management efforts via third party mediation.

There have been numerous mediation attempts in the life of the Kashmir conflict, resulting in ceasefires (the UN's early work through the United Nations Commission for India and Pakistan – UNCIP), and temporary de-escalation of tensions (through mediation by the USSR in 1965 and by the US in 1990).⁴

With such adversaries, a powerful mediator is useful to gradually shift the state rivals away from their competitive national security perceptions towards a cooperative and interdependent security arrangement. International mediation in enduring rivalries has been one of the principal methods of international conflict and crisis management. Although it has not sufficed to deter India and Pakistan from war, mediation is nonetheless highly compatible with the structure of the international system, and principles of state sovereignty and non-interference dictate that mediation (especially when perceived as beneficial and non-coercive) is the most acceptable method of third-party intervention.⁵ Some empirical research which examines intense conflicts which have been mediated supports the conclusion that the most intense examples of international conflict (according to narrow criteria such as numbers of fatalities) is 'not particularly conducive to mediation or any other form of third party intervention'.⁶ This is a conclusion which can and has been disputed.⁷ Enduring rivalries such as the Indo–Pakistani relationship demonstrate not only high fatalities but also high levels of threat perception over time, repeated failures to reach conclusive agreement, religious and political rivalry, and zero sum perceptions of disputes.

Other research supports the conclusions that conflicts fought over security and territory are issues that will yield to mediation, while ideology and self-determination are less amenable. The Indo–Pakistani conflict covers all four of these issues: it is security-based and territorial regarding frontiers and Kashmir, but it is ideological insofar as the secular–Hindu–Muslim divide is concerned and also involves the related issue of Muslim Kashmiri self-determination.

International mediation would indeed have to consider the ongoing 'internal' Kashmir self-determination dispute, which is a principal motive for the Indo–Pakistan conflict. What mediators and adverse parties find so difficult to grapple with is the simultaneous internal and interstate dimensions. Relationships between hostile sovereign states are complex enough, but when a related 'internal' struggle is added to the mix, resolution requires special, carefully designed conflict management efforts.

We need only recall that the US mediation between Egypt and Israel

excluded the Palestinians, whose disenfranchisement was the original motive for the conflict. The Camp David Accords provided a framework for Palestinian self-government,⁸ but this principal part of the Accords was never implemented. This opened the door to 20 more years of Israeli occupation and eventually to serious Palestinian resistance. In contrast with unsophisticated press reports, no sober analysis of the Oslo peace process can conclude that the fate of the Palestinians is any closer to just resolution.⁹

The Dayton Accords which terminated the hostilities in the former Yugoslavia were also brokered by the United States. In this case, the group excluded from the mediation was the Bosnian Serbs, whose compliance with the accords is held to be essential to the success of reconstruction, return of exiles and land, and peaceful coexistence.

Neglecting the undefeated internal parties in an interstate and internal conflict (without regard to their status as aggressors or victims) may be a dangerous practice that jeopardizes peace processes and marginalizes groups that should be invested in such conflict management processes. The Indo-Pakistan conflict over Kashmir by no means easily fits into the frameworks of mediation theories that exclusively address either international conflict or internal conflict. Therein lies the challenge addressed in this article. Proposing a US-brokered mediation process is a precarious task because it must confront the dual realities of linked international and internal conflict, each of which responds to different conflict management efforts.

Given overlapping criteria for mediation acceptability and success (in the international and the internal contexts) and the differing characteristics of the two dimensions of the conflict, it would seem that a high threshold must be reached in order to demonstrate why the Kashmir dispute between Pakistan and India is now susceptible to mediation.¹⁰ This purpose of this article is to attempt to cross that threshold and propose why a US-brokered mediation could now proceed.

The Conflict over Kashmir

The conflict between India and Pakistan over the former princely state of *Jammu and Kashmir* has been one of the main pretexts for war between two of the successor states of British India.¹¹ Resolution of this rivalry and enduring conflict is critical to the emergence of peaceful, cooperative relations between Pakistan and India. Regional nuclear and conventional arms races and the economic struggle for South Asia's emergence from the developing world are further dimensions of this conflict.

The long political and military stalemate between India and Pakistan can be affected by changing global circumstances and relationships, ultimately

leading to the facilitation of a peace process, much as the various geopolitical causes of the post Gulf War era were one significant positive factor in the Palestinian–Israeli peace process. Areas of convergence among Indian, Pakistani and US interests will be explored here as will the bilateral relationships the US has with each. The existence of a Kashmiri Muslim insurgency, it is argued, must be considered and addressed by the third party intermediary, and the distinct dynamics of internal conflict must be factored into the mediator's analysis.

Historical Origins of the Kashmir Dispute

The present history of Kashmir begins with the Treaty of Lahore of 8 March 1846, which settled the British conquest of the Sikh Empire.¹² The Sikhs had preceded the British in a line of conquerors of the region, and a Dogra chieftain,¹³ Ghulab Singh, had been made ruler of Jammu in reward for his services to the Sikh Maharaja Ranjit Singh. By 1839, Ghulab Singh had wrested the territories of Baltistan and Ladakh from Tibet, thus extending Dogra rule northward and eastward from Jammu.

British rule did not extend to the regions north of the Sikh Empire and elsewhere adjacent to British India, therefore requiring the encouragement of loyal but independent local rulers. Whether in reward for his services or with a view towards British imperial strategy against Russia in the so-called Great Game, under the terms of the Treaty of Lahore Ghulab Singh was made the independent sovereign of territories to be spelled out by separate agreement. This separate agreement, the Treaty of Amritsar of 15 March 1846, was essentially a deed of sale by which Ghulab Singh paid for the transfer to his rule of 'all the hilly or mountainous country with its dependencies' between the Indus and Ravi rivers. In combination with his own conquests, this 'transfer' of territory gave Singh licence to attempt to consolidate Dogra rule over what then became the 'Princely' State of Kashmir (the Hindu Singh and his descendants being the princes and the state being an area which had been, for over 500 years, majority Muslim). British imperialism did not so much imply colonization of territory by settlers as it did imposition of alien domination, with the Prince acting as a proxy for the Crown.

At the time of partition of British India, Maharajah Hari Singh, descendant of Ghulab Singh, as well as more than 500 other rulers of the Princely States found himself with a critical decision to make. His choices were: accession to India or Pakistan, based on geographical contiguity and/or religious affiliation of the population, or in defiance of the Viceroy, independence. Indian Prime Minister Pandit Nehru, of Kashmiri ancestry himself, envisaged India as a secular union that united and democratized the

autocratic principalities in unison with British India. Pakistan, founded on the principle of separate nationhood for Muslims, saw the fate of contiguous, majority Muslim Kashmir as a matter of vital importance to its existence. Maharajah Hari Singh did not at first accede to either state, and remained nominally independent for three months. As a condition for receiving Indian military reinforcements to repel an invasion of Pathun tribal raiders, Hari Singh signed letters of accession to India on 26 October 1947. The following day, on 27 October 1947, Lord Louis Mountbatten, as Governor General of (independent) India, on behalf of the Crown, did so accept, adding '[i]n consistence with [my Government's] Policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people'.¹⁴ The twin questions of the validity and permanence of the accession have been the subject of unresolved polemic ever since.

That plebiscite has never been held. India argues that legislative measures subsequently legitimized the accession. The representativeness of such measures has been questioned due to the fact that Indian-held Kashmir has only twice in its post-partition history chosen its own government by ballot.

India saw in the tribal invasion the expansionist designs of Pakistan on Kashmir, while Pakistan regarded the Accession as a coerced attempt to force the hand of the Maharaja. India responded that the Accession Instrument was legal under the arrangements that had been concretized under the 1935 Government of India Act, which stated in Article 6 (1) that: 'A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof'.¹⁵ The Instrument of Accession, in Article 2, permits India to exercise in the State the functions set forth in the Government of India Act, but states in Article 8 that '[n]othing in this Instrument affects the continuance of [the Maharajah's] sovereignty in and over this State'.¹⁶

Hostilities between India and Pakistan over Kashmir

Pakistan and India have fought three wars since partition in 1947, two of them explicitly over the Kashmir dispute; in 1947–48 and again in 1965. In the 1971 war by which Bangladesh was sundered from Pakistan, Pakistani and Indian troops again fought on Kashmiri soil. Since the mid-1980s, they have faced each other in Kashmir high atop the Siachen Glacier in the Himalayas, engaged in lethal 10–22,000 foot altitude combat in a poorly defined portion of the so-called Line of Control ('LOC') or ceasefire line first negotiated by the UN in 1948. In 1988, the Kashmiris, particularly the Muslim residents of the Vale of Kashmir, erupted into open and violent rebellion against their occupiers, even while the Indians and Pakistanis

engaged in a resource-draining nuclear and conventional arms race that holds open the possibility of nuclear confrontation on the subcontinent. The historic UN peacekeeping role (interposing the UN Military Observer Group (UNMOGIP) forces between Indian and Pakistani troops) had been reduced to near-bystander status in the wake of the Kashmiri uprising and the accompanying breaches of the ceasefire by Indian and Pakistani forces. In 1990, partly as a result of the popular uprising, Pakistan and India are said by some to have come close to renewing open warfare and deploying nuclear weapons.¹⁷ The Kashmir issue continues to divide India and Pakistan, just as the Indian military presence and direct rule of the state divided and alienated Kashmiri Muslims. In late 1996 came the return of civilian, Kashmiri rule of the Indian state, but this has by no means resolved either the Kashmiri insurgency or the bilateral conflict.

The Need for Mediation

Mediators between sovereign states can have several of numerous roles, including acting as facilitator of communication between the principals, formulator of strategy and options for the principals, and active manipulator of one or more of the principals. The more unwilling the parties are to have their dispute mediated by a third party, the more forceful interventions may be in order to change perceptions of the issues in dispute.

The military balance between India and Pakistan has always been unequal: Pakistan cannot match the defence-spending power of India, despite spending (by some estimates) 40 per cent of the national budget on defence, and the outcome of their wars has confirmed the military asymmetry. Both India and Pakistan have sought outside intervention during various stages of their conflict, although India's tolerance for third party intervention has diminished in accordance with its rise to regional power status and the accompanying belief that mediation will not provide India with optimal outcomes.

Relations between India and Pakistan had declined steadily over the past three decades and in 1995 reached their lowest point since the 1971 war. Tensions in 1994 culminated with a mutual expulsion of diplomats by the end of the year. Until mid-1996, no high level bilateral talks had been held since January 1994. Pakistan refused to extend Most Favoured Nation status to India, in accordance with the terms of the World Trade Organization regime, until India threatened to take legal action. The ongoing development of nuclear weapons and acquisition of ballistic missile technology added urgency to the resolution of the Kashmir conflict. No party appeared to be able to break the stalemate over Kashmir via unilaterally aggressive moves.

In March and April 1997, with new administrations in both countries,

foreign minister-level meetings were held, heralding a new warming of relations and signalling an important opportunity for peacemaking. India's Foreign Minister, Inder Kumar Gujral, a Punjabi speaker like Pakistan's Nawaz Sharif, in late April became Prime Minister, retaining the Foreign Ministry portfolio as well. During the first half of May 1997, the South Asian Association for Regional Cooperation (SAARC) held its ninth summit in the Maldives, and India's Gujral and Pakistan's Sharif met for their first face-to-face prime ministerial talks while there. Further cautious foreign minister level meetings are scheduled for 1997 to continue their bilateral rapprochement. 'There will be no quick fix [in Indo-Pakistani relations],' Pakistan's Foreign Minister Ayub Khan warned at the summit. 'The core issue is Kashmir.'¹⁸

Intolerability of the Status Quo

Seven years ago the Vale of Kashmir began to come under military operations by India, in response to Kashmiri protest, unrest and insurgency. Military operations have been described as 'brutal' as a result of human rights violations alleged to have taken place, such as torture, gang rape, the destruction of property, homes and even entire villages, abduction, and extrajudicial killings. It is widely reported that up to 20,000 people, mostly civilians, have been killed as a result of these activities.¹⁹ The Indian government, however, disputes these descriptions of the conditions of the military operations and their effect on the Kashmiris.

The Indian government has been planning to return the state to civilian rule for some time. Such plans had been seriously compromised by the ever more violent reaction to the ongoing military presence which, for example, resulted in the destruction of Kashmir's most ancient and revered mosque and the surrounding town, Charar Sharif, on 11 May 1995.²⁰ The civilian population has also been victimized by violent acts, including rape and assassination, by the various Kashmiri militant groups according to human rights groups such as the International Commission of Jurists, Asia Watch, Physicians for Human Rights, Amnesty International, and Kashmiri and even Indian human rights organizations.²¹ The situation has clearly been intolerable for the Kashmiris. Elections to restore the state government and end direct federal rule took place throughout September 1996 following former Indian Prime Minister Deve Gowda's dialogue with moderate Kashmiris and his visit to the state. The process took place despite threats of militant boycotts, reprisals as well as allegations of forced voting against the Indian armed forces.

Another measure of the parties' tolerance for the *status quo* is found in their degree of willingness to forego the benefits of peaceful coexistence. Pakistani diplomats openly concede that the opportunity cost of the ongoing

state of hostility between Pakistan and India is both high and difficult to measure: opportunities for regional cooperation in commerce, technology transfer, security, natural disaster control and development remain at a standstill due to the inability of India and Pakistan to extricate themselves from the Kashmir issue. All the SAARC countries are affected by Pakistan and India's inability to come to terms with each other, and the SAARC structure did not permit political dialogue and consultations on contentious issues until the recent ninth summit.

Neither country can afford the present conflict, (a 'criminal waste of resources', in the words of one Indian diplomat),²² nor can they afford a full-scale conventional war which could escalate into a nuclear exchange. Pakistan's former US Ambassador Lodhi has remarked that 'The peace dividend in South Asia will free 1 billion people from the burden of their Cold War'.²³ Both countries cry out for the economic benefits that peace would bring. The SAARC summit called for a South Asian Free Trade Area to be established by the year 2001 (rather than the previous 2005 deadline) and called for the eventual creation of a more ambitious South Asian Economic Community (SAEC) modelled on the European Union.²⁴ Neither India nor Pakistan can afford to ignore the current trend towards economic globalization. Clearly much political conflict between the principal SAARC rivals India and Pakistan will have to be managed or settled in order for these lofty goals to be reached. Mediation can assist them in getting there. Clearly there are powerful motivations for movement towards resolution of the Kashmir conflict.

The Nuclear Dimension

Weapons of mass destruction in the South Asia region are very much tied to the issues involved in the Kashmir dispute. Pakistan has consistently stated its unwillingness to renounce nuclear weapons capability unless India will do so. India's strategic need for nuclear weapons arises from its goal of deterring China, against which it lost the 1962 Sino-Indian Border War over the area of Kashmir controlled by China. Of course, India and Pakistan seek the capability of responding to each others' potential attacks. It is unlikely that any negotiations on the nuclear issue could exclude entirely the Kashmir issue and vice versa. 'The Kashmir revolt underlines the fact that the region is a nuclear tinderbox,' warned Pakistan's former ambassador to the US, Dr Lodhi.²⁵

A third party which has consistent and stable relations with all the parties simultaneously can 'expand the pie' by accessing resources used to 'sweeten' a mediation process (such as access to trade, technology, development assistance, diplomatic resources, military hardware and technical expertise) and address concerns over non-proliferation, security,

non-interference and disengagement. Furthermore, it is important that the third party interests (if it is a sovereign state and not an international organization) must coincide with those concerns.

The most appropriate third party is the United States. Rather than indicating the absence of leverage, the failure of the parties to be persuaded by the United States to sign the Comprehensive Test Ban Treaty in 1996 seems to indicate a lack of political will on behalf of the US to use the leverage it has available to it in its relations with both countries. The Clinton Administration's preoccupation with domestic concerns and other international affairs, as well as its perceived reluctance to push allies or adversaries in matters where its own interests would actually permit such leverage, indicates that its South Asia policies follow the precedent of its China policies. The failure to act does not, however, negate the possibility of such action.

In 1996, India continued to conduct tests of its *Prithvi* short-range missile, designed to carry nuclear warheads into Pakistan,²⁶ while Pakistan was reported to have obtained M-11 short-range missiles from China as well as 'ring magnets', which are used to produce nuclear warheads.²⁷ Pakistan is also reported to have increased its efforts to enrich uranium, despite earlier pledges.²⁸ Nonetheless, India has recently opted not to deploy its *Agni* missile, designed to deploy nuclear weapons to Chinese cities.²⁹

Context of the Mediation Process

Intervention by a third party in the Kashmir dispute requires acute awareness of the distinct dynamics involved in the overlapping interstate and internal conflicts. I will now consider the mediation dynamics of both of these aspects of the dispute, each of which is affected by a distinct power asymmetry.

Dynamics of Mediation with the Insurgency

Internal conflicts, in contrast with international ones, are characterized by a grave power asymmetry that does not lead to the 'hurting stalemate' identified by I.W. Zartman³⁰ and from which no party can escalate at an acceptable cost. Instead of seeking mediation as a way forward, belligerents in internal conflicts pursue a *modus vivendi* that is predicated upon the validity of continued conflict.³¹ Zartman's view is that it is up to the insurgency to not pursue the conflict for its own sake, but rather to balance commitment to war with desire for redress of grievances, and that negotiations are possible only when the insurgency achieves that balance.

In the internal Kashmir conflict between the Indian Army, its paramilitary forces and the insurgent groups, there has been little progress

towards escaping the conflict-based *modus vivendi*. Several factors complicate this. First is a proliferation of armed insurgency groups that do not operate under any unified command and only occasionally seem to coordinate their operations. Secondly, the insurgents in the Vale of Kashmir have contradictory political goals which vary between union with Pakistan, advocacy for the plebiscite or total independence. The acceptance of valid spokespersons for each side is always a key prerequisite for the management of internal conflicts.³² The lack of a single or even reduced number of spokespersons who can speak authoritatively for the insurgents' interests seriously complicates any effort at de-escalation.

Little, if any, empirical work exists to analyse the complexities of linking inter-state and internal conflict management efforts. Yet some attempt must be made to conceive of what such a conflict management effort would look like. One option would be to pursue parallel but separate mediation processes. The first triad would be composed of India-US-Pakistan while the second would be India-US-Indian Kashmiri groups (though possibly Pakistan as well).

The complexities of asymmetrical internal conflicts can be best addressed by a third party mediator, since the mediator can help increase the weaker party's standing with the stronger by addressing disparities of resources and power with the employment of its own resources, credibility and power. This helps the parties save face and diminishes the burden of blame if negotiations fail (they can deflect blame on the mediator). Yet, if mediation leads to some sort of de-escalation such as ceasefire, demobilization, disarmament, peacebuilding and reconstruction, the mediator deflects the parties' mutual alienation, helping them align their priorities with each other, identify mutual interests and obtain resources otherwise unobtainable. Despite the obvious benefits available by using third party mediation, such a party is rarely welcome to intervene in an internal war because the third party is often seen as overly partial to one side, and because internal affairs are traditionally perceived as the exclusive prerogative of state actors. At the same time, the power asymmetry also leads the insurgents to devote themselves totally to their struggle, substituting commitment to their cause for the lack of power.³³

The power asymmetry, insurgent disunity, and level of insurgent commitment are the factors the mediator must be able to address and possibly influence in order to intervene effectively in the internal dimension of a conflict such as the one in Kashmir.³⁴ Contrary to most realist advice, this implies dealing with and even *encouraging* coalitions among insurgents, and supporting their efforts for the redress of grievances (while opposing their tendency towards commitment to war).

Civilian rule in the Indian state of Jammu and Kashmir has finally been

restored. The elections that brought Chief Minister Farooq Abdullah back to power in September 1996 were nonetheless boycotted by the main Kashmiri opposition umbrella group, the All-Party Hurriyat Conference, and several press accounts noted some instances of forced voting.³⁵ It remains to be seen whether the move towards normalization of politics within Indian Kashmir (which included previous elections for the Indian national legislature, the Lok Sabha) will be sufficient to demilitarize the internal dimension of the conflict and discourage the insurgency. In the context of Kashmiri alienation with India and its efforts to restore civilian power, the absence of functioning political opposition to Abdullah's administration tends towards its delegitimization, and he will have to move adroitly in order to overcome this alienation and build a social consensus towards accommodation with India. An attempt on Farooq's life in December 1996, while visiting the site of the grave of his father, Sheikh Abdullah, the famed post-independence ruler of Kashmir – did not bode well for this task. India, of course, sees the restoration of civilian government as the first step towards integrating Jammu and Kashmir state into federal Indian politics. Farooq, nonetheless, is stuck with the duty of disarming 5,000 paramilitary troops left in place by the Indian Army.³⁶

The Principal Adversaries

India and Pakistan, contrary to widely held views, have addressed and resolved numerous conflicts between them by negotiation and mediation. At different moments in their relations, they have moved towards and away from such efforts, but ultimately returned. After partition, they determined refugee compensation, transferred official assets and in the late 1950s and 1960s, they settled numerous border disputes.³⁷ With the 1952–60 mediation of the World Bank, they settled their dispute over the Indus Waters, which pass through Pakistan, Kashmir and India, providing the basis for irrigation farming.³⁸ In the late 1960s, India consented to arbitration by the International Court of Justice in order to resolve the Rann of Kutch border dispute, which had previously served as a pretext for war, and which also was the subject of British mediation in 1965.³⁹ After the 1965 Kashmir war UN Secretary General U Thant visited both belligerents, and the UN Security Council demanded a ceasefire, which was accepted. In 1966, the Soviet Union brought India and Pakistan together in Uzbekistan's capital, Tashkent, in order to formalize a ceasefire, declare a force redeployment and return to normal relations.

The Simla Agreement of July 1972, negotiated in the wake of the 17 December 1971 ceasefire in the war that created Bangladesh, left the resolution of the Kashmir conflict deeper within the folds of the historically asymmetrical Indo-Pakistani relationship, where it languished until the

Kashmiri uprising. According to theories of international conflict de-escalation, the principal adversaries may accept mediation when power asymmetries are diminished or when one side is on the point of being compelled to capitulate by force.⁴⁰ The current state of Indo-Pakistani relations is ripe for third party mediation because power asymmetries have been reduced and/or become less relevant between Pakistan and India. Military power disparity is partially diminishing with the acquisition of nuclear weapons and delivery systems by both. This has given rise to a debate about whether India and Pakistan should completely immerse themselves in nuclear deterrence and become 'transparent' nuclear powers, with open information on each others' arsenals.⁴¹ Regardless of the outcome of this debate, there are significant, rising costs to both parties. With the cost of escalation higher for each side, the ground for de-escalation is being laid.⁴² A mutually damaging deadlock between the two principals has emerged over time: a longstanding 'hurting' stalemate exists between them over Kashmir. Their past recourse to mediation and their current bilateral rapprochement should be taken as fertile soil for US mediation today.

Mediator efforts initiated now can have a significant impact, assisted by several other aspects of the adversarial relationship. There is also the hope for benefits that can be supplied by third party leverage. The parties that are ready for mediation must also see that their available alternatives via unilateral action, or joint inaction, are unlikely to achieve underlying interests or strategic objectives.⁴³ Since neither principal can impose a 'preferred' solution on the other, there is some evidence of re-assessment of policy on each side.⁴⁴ As new governments emerge in both countries, stronger mandates for peacemaking are unfolding. There are also indications of ripeness in the new directions in India's foreign relations: there has been palpable movement towards improving relations with neighbours such as Bangladesh, and India has accepted that SAARC will now be an organ of multilateral diplomacy concerning political difficulties among its members.

Conditions in the adversarial relationship that do not favour the likelihood of de-escalation moves include the supposition that the conflict has institutionalized itself between parties, a conflict which provides the impetus and justification for military modernization and proliferation (a vested interest in the continuation of conflict), both of which impede de-escalation.⁴⁵ Several Indian and Pakistani diplomats affirm the entrenchment of an institutionalized interest in the maintenance of hostile relations with their neighbour, justifying extraordinary defence expenditure, as well as intrusive military involvement in policymaking, governance and decisions on weapons development.

The Domestic Context

The past 50 years of Indo–Pakistani politics have done little to change the basic conflict dynamic. Past negotiations, both direct and mediated, have proven almost completely unsuccessful in creating lasting joint understandings between India and Pakistan over Kashmir. Their past negotiations and mediations over Kashmir have always excluded one essential party: the Muslim Kashmiris from the Vale of Kashmir. Like other people who have long sought self-determination, such as the Kurds and Palestinians, they suffer internal division regarding their military and civil goals and find themselves on different sides of *de facto* international borders.

Aggravating the difficult negotiating situation is the reality that the ruling parties of both Pakistan and India (currently the Pakistan Muslim League and the United Front coalition, respectively) face complex domestic situations that affect foreign relations with the other country. The long, slow demise of India's nearly indomitable Congress Party partially coincided with the rise of Pakistan's fragile transition to democracy under the Pakistan People's Party of Benazir Bhutto. Weak civilian governments, when preoccupied with domestic crises, devote fewer resources to crucial foreign affairs, and their negotiating flexibility is diminished because of internal constituencies and interests that threaten a weak power base.⁴⁶ This is a root cause of the cumulative failure of past negotiations to resolve the Kashmir conflict: vocal constituencies in both countries are the audience before which the drama of international diplomacy must be played, and any sign of weakness in negotiating positions can arouse manipulable public outcry and vigorous political opposition. Domestic pressure encourages 'government leaders to assert demands against adversaries that handicap de-escalation',⁴⁷ whether the adversaries are internal or external.

In the last 15 years or so, India's secular democracy has been confronted by various secessionist movements spread throughout India, including Sikhs in Punjab, Assamese in Assam and neighbouring states, Tamils in Tamil Nadu, as well as the various Kashmiri separatists. India's resistance to Kashmiri separatism seems to stem from a fear that its success would set precedents for other linguistic, cultural, religious and territorial-based separatists, leading to 'a Hindu–Muslim bloodbath in India that would be hard to control'.⁴⁸ Indian democracy also faces a militant Hindu nationalist movement (the Bharatiya Janata Party – BJP) and a population whose participation in politics is ever more vocal.⁴⁹ The BJP's short-lived electoral triumph in May 1996 did little to test the theory that its political rise would lead to widespread communal violence.

The BJP's replacement with the United Front coalition government of

Prime Minister H.D. Deve Gowda in June 1996 led to renewed hopes for political stability both within India and between India and her neighbours. Former Pakistani Prime Minister Benazir Bhutto wrote to Deve Gowda in the first few weeks of his administration, inviting India to renew high level talks which had been suspended since January 1994.⁵⁰ The current UF government, under the prime ministership of Kumar Gujral, faces a restive coalition but moved quickly to establish its new directions in foreign affairs.

Pakistani democracy was formerly subject to an often hostile relationship between Prime Minister and President, as exemplified in the November 1996 dismissal of Prime Minister Bhutto and the dissolution of the Assembly. (This was the fourth time an elected Prime Minister was deposed since 1988.) This power has recently been modified by the new Amendment 13 to the Pakistani Constitution, which curtails the potentially destabilizing presidential power to dismiss prime ministers and strengthens considerably the hand of any incumbent.

The Pakistani military establishment has traditionally been at the centre of political decisionmaking through the influence of the Chief of the Army Staff, always a member of the 'troika' that includes the Prime Minister and the President.⁵¹ Pakistan's intelligence community, led by the Inter-Services Intelligence (ISI), has been able to exert pressure on key foreign policy issues, at times in opposition to civilian initiatives. Since Pakistan has endured long periods of military rule and continued military influence in governance, and has returned to civilian rule only since 1988, the ability to successfully manage the military establishment is an essential step towards de-escalation. Indications of this are beginning to emerge. In May 1997 it was reported that Prime Minister Sharif fired Admiral Mansurul Haq, Pakistan's naval chief, on charges of accepting bribes in connection with the purchase of three French submarines. This was only the second time in the nation's history that a civilian leader sacked a high ranking military officer. The chief of the Air Force, Marshal Abbas Khattak, is also in danger of losing his position due to alleged Air Force links to drug smuggling.⁵²

The influx of more than three million Afghani refugees into Pakistan has had dramatic effects on Pakistan's society and economy, causing significant internal migration which directly contributed to the rise of ethnic separatism in Sindh and the Northwest Frontier Province. This, in turn, was cited as a cause of the dismissal of Prime Minister Bhutto by President Ishaq Khan in 1990. Pakistan also faces challenges from religious political parties and serious social unrest arising from ethnic-religious tensions, economic hardship and voter alienation due to corruption in politics.

The internal opposition political groups, ethnic and religious constituencies, and institutional agents such as the military contribute to a domestic situation directly affecting the realm of foreign policy that kept

both governments weak in terms of their negotiating positions. Each side can perceive that it has a lot to lose (not only loss of face, but loss of power) from the resolution of the conflict, as long as resolution means that core concessions will have to be made. This is, in essence, a key opportunity for a third party to intervene by partially circumscribing the power deficit of the weak parties and deflecting from them the full scrutiny of the internal opposition, an international relations lightning rod.

The current state of Indo-Pakistani relations is precarious but hopeful. The replacement of the Pakistan People's Party and the Indian Congress Party opened the way for more creative political options to present themselves in both countries. At the very least, the new governments have more of a mandate to strengthen relations with each other than their predecessors did and have presently re-opened the possibility of at least talking to each other, a condition that will not alone solve their problems, but tends to greatly facilitate the work of a third party mediator.

The Global Context and Current Calls for Mediation

Since the onset of the Kashmiri uprising, Pakistan has increasingly attempted to focus international attention on the plight of the Kashmiris and on the broader conflict, in an effort to break the stalemate. The principal forum for this has been the UN, and bodies such as the Organization of the Islamic Conference, a caucus of Muslim-state members of the UN, has also issued declarations urging resolution of the dispute. India is opposed to the use of the UN as a forum for the Kashmir dispute.

South Asia may be the only geo-political region that has had no regional forum for discussing security-related issues during the past 50 years. The South Asian Association for Regional Cooperation's Charter language precluded the airing of security concerns.⁵³ This weakness has only been addressed during the latest SAARC summit. While an important first step, the recognition that political dialogue is necessary in the context of SAARC, is not just a matter of overhauling charter language. Political will and an exercise in problem-solving diplomacy is required if regional cooperation is to address the security issues that plague the two most important countries in SAARC, India and Pakistan. This is a process that can greatly benefit from an intermediary, which could base its efforts on the UN Charter's mandate to rely upon regional cooperation efforts as one foundation for global peace.

Efforts at informal diplomacy have also been ongoing. Secret discussions on nuclear non-proliferation are reported to have taken place in 1994 and 1995 among informal representatives of India, China, Pakistan and the United States.⁵⁴ This may have taken place despite India's rejection of Pakistan's proposals for an open Five Power Conference. At public and

private conferences, contact continues to be made between South Asian scholars and professionals interested in bilateral reconciliation. India recently moved to liberalize visa restrictions for Pakistanis.

Another international factor facilitating the formation of a bargaining triad is the exclusion of one superpower patron from a conflict in which each of the adversaries was formerly supported by a large power. The demise of the USSR led to the replacement of the Indo-Soviet Treaty of Friendship with a new accord that does not commit Russian military or economic support to India in case of war. President Yeltsin has curtailed the provision of space and missile technology to India, at US insistence. Russia's distancing itself from the region has the effect of excluding its interests from the strategic calculus; this 'superpower' cannot exercise bargaining leverage. A historical precedent for this pattern occurred during Henry Kissinger's 1974-75 shuttle diplomacy between Israel and Egypt, which may not have been accomplished without the exclusion of Egypt's Soviet patron, for 'as long as the bargaining structure remained symmetrical, with each superpower representing the interest of its smaller partner, neither would be willing to coerce its ally'.⁵⁵ As both principals seek to get closer to the US, the leverage available to the US increases.

China is India's principal nuclear rival in the region and therefore India's chief justification for a nuclear deterrent. Yet during 1996 India and China signed two major confidence building measures, including non-attack pledges, demilitarization of parts of the Himalayan border, and avoidance of large scale military exercises⁵⁶ (Indian military exercises have previously been causes of crisis with Pakistan). China has historically sought a nuclear deterrent against the USSR and the US. India sought to deter China. Pakistan and India seek to deter each other. The increase in confidence among all parties can set in motion a process of strategic reassessment that leads to regional disarmament efforts.

US mediation of the Kashmir dispute would arise in the context of global geo-political transformations which have significant domestic implications. The decline of Soviet hegemony and the push for market reforms in China have changed the status of two of the interested superpowers. The countries of the developing world have largely abandoned state-centred development policies and opted instead for economic and political reforms with potential to change their societies. In pursuit of foreign investment, these countries open themselves to political influence and conditionality that can accompany investment.

The strong US-Pakistan alliance that was a hallmark of the Cold War has eroded since 1990 as US strategy shifted from conceiving of Pakistan as a 'front-line state' against the USSR in Afghanistan, to deterring proliferation of nuclear weapons.⁵⁷ This shift in strategy is reflected in the

controversial Pressler Amendment, which sanctions Pakistan as long as the US President cannot certify that Pakistan is not developing nuclear weapons. During the heyday of US–Pakistan relations, US economic and military aid surpassed US\$7 billion. Meanwhile, the US and India have been discovering each other as potential partners, motivated by India's programme of economic liberalization and the disappearance of Soviet patronage. This new relationship has been characterized by joint military naval manoeuvres, increased trade and investment and a doubling of US aid to India.

The context of shifts in regional dynamics, economic globalization, supremacy of economic relations and the transformation of grand military strategies have together created new opportunities for the assertion of US interests in South Asia. During 1995, in speeches at the School of Advanced International Studies and the Fletcher School of Law and Diplomacy, Pakistan's former Prime Minister Benazir Bhutto and former Ambassador to the US, Dr Maleeha Lodhi, explicitly called for US mediation to resolve the Kashmir dispute.

The current resumption of diplomatic contact between India and Pakistan indicates that perhaps the necessity of resolving the Kashmir dispute need not be an obstacle to improving relations, but rather that the improving relations can be the driver for constructive, facilitated dialogue on the difficult issues that divide the two countries and which they have always been unable to resolve by their own efforts, whether military or diplomatic.

The United States Looks to South Asia

The United States now manoeuvres in a geo-political atmosphere unfettered by the baggage of Cold War alignments and seeks to solidify a new role in international politics and conflict management.⁵⁸ The concept of 'national security' is construed to include new and old non-military strategic interests. Such a definition encompasses the need to remain commercially competitive, secure mutually beneficial economic relationships, manage the transfer of technology and information, and understand the changing nature of global politics, including intrastate and international ethnic conflicts and their resolution.

In the past, the geo-political distance between the US and India stemmed in part from India's historic courting of the USSR. Pakistan has felt US indifference since October 1990 when the US Congress passed the Pressler Amendment to the Foreign Assistance Act. The amendment cut off all economic and military aid to Pakistan and withheld US\$1.5 billion worth of US-made military equipment already paid for, and the amendment will

remain in place until the US President is able to certify to Congress that 'Pakistan does not possess a nuclear explosive device'. Pakistan considers this a 'blatantly discriminatory law' given the US aid relationship with Israel, which is widely believed to possess nuclear warheads.⁵⁹

The US has increasingly turned its attention to South Asia, focusing on three primary concerns: (i) security, including military/non-proliferation issues; (ii) economic/commercial relations; and (iii) a group of concerns that deals with the rise of militant religious movements, the weakening of secular, democratic government, and international terrorism.

The strategic importance of South Asia is also in part due to the proximity of India and Pakistan to the Indian Ocean, into which Persian Gulf oil flows. Another strategic consideration arises from the US's need to build and maintain coalitions that support its own foreign policy goals as well as those which are expressed in the forum of the UN Security Council. 'The willingness of [Pakistan and India] to commit their forces to causes we support makes them particularly significant in our strategic calculations.'⁶⁰

Linking the Kashmir conflict to US non-proliferation goals and economic relations would allow the US to engage India and Pakistan more equally and help foster its acceptance as a third party. This would dramatically increase its leverage to push Indian and Pakistani perceptions towards a shared vision of conflict resolution.⁶¹

Security: De-escalation and Non-proliferation

In official statements to the US Congress, the Clinton Administration, referring to the Kashmir dispute, made clear that 'South Asia is the one area of the world where a regional conflict has the potential to escalate to a nuclear exchange, with devastating consequences in the region and beyond', hence the superpower motivation for its resolution.⁶²

During its first term, the Clinton Administration stated that its long term goal is to 'cap...reduce, and...eliminate weapons of mass destruction and ballistic missile delivery systems in South Asia', which it fears can be passed from democratic, secular governments to autocratic, religious ones with antipathy towards US interests.⁶³ However, it is not necessary for extremist regimes to take power in South Asia in order for nuclear weapons to be deployed, as almost took place in 1990, and both current regimes have reiterated their commitment to maintaining a nuclear option.

As it has demonstrated, the US will go to great lengths to forestall the acquisition of nuclear weapons by certain states, most recently Iraq, North Korea and Iran. Its tactics have ranged from full scale war to diplomacy to technology embargo, respectively.⁶⁴ The possibility that US technology (or indifference) may have facilitated the nuclear development of Iraq and Pakistan may underlie Washington's urgency regarding non-proliferation.⁶⁵

It may also partially explain Pakistan's eagerness to mend fences with the US, its cooperation with US/UN peacekeeping initiatives, and explicit calls for US mediation of the Kashmir conflict. As noted by Saadia Touval, 'it appears safer to have a superpower play the mediator than risk that superpower aligning itself with one's enemy'.⁶⁶ We might add the corollary that *it is safer to have the superpower play the mediator than risk that superpower going to war with you over a regional dispute you are embroiled in*, a bitter lesson taught to Iraq in the recent past.

The US has taken three steps towards pursuing common security interests in the region. It has increased cautious military exchanges with China with an eye towards 'transparency of China's intentions and strategies' and in order to 'encourage China to discuss with India mutual threat perceptions'.⁶⁷ To further assist India, former US Secretary of Defense William Perry in January 1995 signed an agreement outlining eventual Indo-US security arrangements. Under the US Pacific Fleet Command's 'Cooperative Engagement Strategy', all branches of the US armed forces participate with India in officer exchange programmes, port calls, and instructor pilot exchanges, all of which are jointly coordinated by high ranking officers from both countries.⁶⁸ Such arrangements have the potential of providing India with the confidence to enable it to move towards de-escalation in the Kashmir conflict and on the nuclear issue, by reducing the perception of strategic threat from China especially if US cooperation carries with it some conditionality.

Pakistan has been marginalized since the enforcement of the Pressler Amendment, but Secretary Perry also promised Bhutto that the defunct US-Pakistan Consultative Group on security issues was being 'revitalized', which signalled that Pakistan's security concerns once again matter in Washington. This military liaison group began meeting in May 1995 and exchanged threat perceptions, discussed foreign policy perspectives, joint exercises, and such topics of mutual interest as peacekeeping, counter-narcotics and counter-terrorism.⁶⁹

The US is increasing its military presence with both Pakistan and India, a factor which, by establishing international links, reduces the sense of isolation and threat each perceive from its adversaries. This provides the US with enhanced leverage. The US must be vigilant about maintaining and enhancing the leverage required for mediation and accomplishing its non-proliferation goals. Further sources of leverage are to be found in the US economic and commercial interests in the region, given Indian and Pakistani reticence on this matter and their undeclared nuclear competition.

Economic Relations

According to official US government statements, it was in the wake of a potentially averted confrontation between India and Pakistan in 1990, with

the end of the Cold War imminent, that 'India and the US began to rediscover each other as friends and potential partners'.⁷⁰ That rediscovery has an essential economic component. India's economic liberalization programme, commenced in 1991, is calculated to attract the foreign investment and trade needed to modernize the country and substitute for Soviet patronage. In response to this opening, the US Department of Commerce identified India as one of ten 'big emerging markets' that hold the greatest promise for gains in US exports, mainly due to its large middle class (200 million people) and its position as the largest single South Asian market (1 billion people by the year 2000). Bilateral trade turnover has increased from \$5.2 billion in 1991 to \$9.35 billion in 1996, according to Indian External Relations Ministry figures. The composition of US exports has been transformed: now the market is for aeronautical equipment, aircraft, high technology items, chemical, industrial machinery, and minerals. During the late Secretary of Commerce Ron Brown's trip to India in January 1995, the US – already India's largest trading partner and foreign investor – established the US-India Commercial Alliance (USICA) as an institutionalized mechanism for the various groups within the private sector to interact and transact deals, which netted an estimated \$7 billion in business deals for American companies. Secretary Brown's visit was preceded by that of Secretary of Energy Hazel O'Leary, who emphasized cooperation on energy. O'Leary's visit was followed by a visit to the US from former Prime Minister Rao. According to one official at the State Department, the US wants to capitalize on 'first-mover advantage', since Japanese investors have yet to discover the Indian market.⁷¹ The Indian and US governments revived their Joint Economic Sub-Commission in 1995, after five years of inactivity, and is active supporting joint Indian and US business endeavours. Trade missions and sector alliances complement these activities.

This commercial renewal between India and the US comes at an opportune time in the Kashmir conflict. Increased leverage for the US as mediator can result from it, should it decide to link ongoing economic relations to peaceful resolution of the Kashmir dispute, progress on human rights violations, and nuclear non-proliferation.

It must be consistently noted that India is militarily confident of itself with respect to Pakistan, and maintains publicly that the Kashmiri uprising is an internal affair aggravated by Pakistani interference. India does not contemplate the possibility of an independent Kashmir. In order to emphasize the untenability of the *status quo*, and to facilitate the change of expectations and acceptance of outcomes that further the interests of all concerned parties, the mediator would have to proactively manipulate its leverage, and not passively manage it. In the bilateral relationships that are

redeveloping between India and the US, leverage can also be developed and wielded by India.

Strategic interests have defined Pakistan's relationship with the US since 1947. The transformation of strategic concerns converged with the return to democracy in Pakistan and an attempt to build a 'multi-dimensional' relationship with the US, more in accord with Pakistan's domestic concerns. In step with most of the developing world, Pakistan has embarked on an aggressive economic liberalization programme meant to attract foreign (principally US) investment that would bolster its developing economy as well as bilateral trade.⁷²

Pakistan comprises part of the potentially enormous South Asian market for US exports, and the US is currently Pakistan's second largest trading partner, behind Japan, comprising 11 per cent of Pakistan's total trade.⁷³ The US has articulated its interest in securing 'free-trade' access to emerging markets for US exporters and investors. This interest is only increasing in importance as economic relationships replace strategic ones in the post-Cold War world. Pakistan, sensing this component of US policy, is touting itself as an English-speaking, moderately Islamic, capitalist democracy that can provide gatekeeper services, such as legal, financial and commercial consulting services, to US investors looking towards Central, South and Southwest Asia.

One impediment to intensified US investment comes from increasing domestic instability and social violence within Pakistan (some of it aroused by resentment against the US for leaving Pakistan with an enormous influx of refugees, drugs and arms as a legacy of the war in Afghanistan). But the main impediment has been, until recently, US law itself: the Congressional Pressler Amendment prevented the US federal government, via the Overseas Private Investment Corporation and other agencies, from guaranteeing US exports to and investment in Pakistan. The Clinton Administration engineered a one-time Congressional exception to the provisions of the Pressler Amendment in order to ameliorate what was considered an unfair situation: Pakistan had paid for, but never received, significant arms deliveries. Under this revision, the 'Brown Amendment', the United States will 'release about \$370 million worth of military equipment that has been embargoed under Pressler sanctions', and will have 'greater cooperation with Pakistani military forces in counter-narcotics, counter-terrorism and peacekeeping activities'. The Clinton Administration asserts that the 'unfairness' of the Pressler sanctions was undercutting its abilities to push its non-proliferation agenda with Pakistan.⁷⁴

Thus, while the unfolding US-Pakistan economic relationship is affected by the great leverage wielded by the US, it is also affected by Pakistan's leverage deriving from US interests in non-proliferation. Indeed,

the Clinton Administration's declared intent to pursue its interests in South Asia has led to a modification of the Pressler Amendment, which in any case has not prevented Pakistan from developing nuclear weapons. This may facilitate a more positive, re-energized US–Pakistan relationship that permits effective third party mediation.

Development and Stability

According to some international relations scholars, there is a 'close relationship between chronic underdevelopment at the subnational level, instability at the subnational and national levels, and instability among nations'.⁷⁵ Some link the regional conflicts in South Asia to problematic human development there, providing us with a paradigm through which to see the roots of conflicts such as the one in Kashmir while also giving us a key to effective conflict management and, therefore, mediation.

This perspective illustrates a pathway for the international community, and therefore the third party mediator, to follow in playing a greater role in regional stability by pointing directly to deficiencies of human development which intensify international disorder, especially when experienced on the large scale of South Asia's political landscape. There is a demonstrated need for the resolution of water, environmental, and land distribution issues, and the improvement of literacy, education and health care, as well as other, typically ignored indices of the national quality of life.⁷⁶ India and Pakistan, according to the United Nations Development Programme, rank 134 and 128 out of 174 countries analysed for progress made towards improving the quality of life and expanding opportunities for human improvement. The criteria for measurement of the 'human development index' are life expectancy, educational attainment and standard of living. Clearly human development issues present an opportunity to make a difference for a vast population.

Development assistance to Pakistan and India can be creatively tied to projects that require their mutual cooperation, and even tied to progress on the issues that divide them, such as Kashmir. Such assistance could effectively be used to enlarge the pie and create incentive for de-escalation moves. The World Bank demonstrated this by facilitating generous credit to both countries as part of the resolution of the Indus Waters dispute. A significant portion (up to 40 per cent by some estimates) of Pakistan's national budget is dedicated to defence expenditures, obviously siphoning off resources from other human and social needs. Reduction of regional tensions through mediation could justify a dramatic Pakistani 'peace dividend'.

The Emergence of a Bargaining Triad

Once the US, Pakistan and India and/or the US, India and the Kashmiri insurgents have decided to engage in a mediated negotiation process (which can emerge from fora as diverse as an open regional peace conference for the former grouping, or a back-channel type format for the latter), each party can then engage in direct bargaining with the mediator,⁷⁷ since the groundwork for such bargaining has been laid with the US's articulation of its new foreign policy goals for South Asia.

The intervention of a third party disrupts a dyadic relationship since 'there is a powerful tendency for a coalition of two [parties] to form at the exclusion of the third – with the excluded third constantly attempting to form a dyadic relationship with one of the other two'.⁷⁸

The continuing failure of the Indian and Pakistani governments to negotiate the Kashmir conflict effectively via bilateral high-level channels, coupled with the new emerging US presence with the parties, set the stage for acceptance of a triadic approach to conflict resolution in which India and Pakistan each attempt to consolidate competing dyadic relationships with the US while the third party creates links between the two adversaries.

The Biased Mediator

Several commentators have recognized that it is unlikely that a third nation will act as mediator in the absence of its own interest in the parties, the conflict, and its outcome. This reality gives rise to the possibility that the mediator will be biased. Jeffrey Z. Rubin observed that 'the inclusion of a third party...thus invites the formulation of a coalition between one disputant and the third party, as when the third party favours (or is believed to favour) the position of one [party] over the other.'⁷⁹ Such bias is recognized by some scholars as a factor that can potentially *facilitate* the conduct of mediation.⁸⁰

This is because each party perceives that heightened US interest in a relationship with it gives it 'leverage over the mediator' and because each will believe that the mediator, by virtue of good relations with the adversary, can extract concessions from that adversary, precisely because said adversary allows the mediator to exercise leverage over it.⁸¹

Mediator declarations of interest – even biased interest – can indicate to each party that combinations of mediator–adversary coalitions are possible, which, in turn, might demarcate acceptable limits of behaviour and reasonable expectations of the mediation. These outcomes may help prevent further escalation and actions that deepen the stalemate. Saadia Touval explains this idea as follows: 'The additional perception of bias strengthens the mediator's leverage, since the party that considers itself favoured by the

mediator will seek to preserve its good relations and prevent a rapprochement between the third party and the adversary. The party that views the mediator as favouring its antagonist will seek to reverse the relationship and win the mediator's sympathy,⁸² and one may assume that sympathy-seeking can preclude escalatory behaviours and possibly encompass de-escalatory ones.

In active, open and honest pursuit of its interests, the US can take advantage of the fact that its interest in the region has been noted by the disputants, and *encourage constructive perceptions of bias* by both Pakistan and India, and so maximize mediator leverage with each disputant respectively.

Process of the Mediation

Issue Structure

One of the first tasks of the mediator will be to determine the scope of the issues to be resolved and formulate a process appropriate to those issues – in short, to modify the issue structure.

The issues of most pressing urgency, without assigning them priorities, are: (i) avoidance of international nuclear (or conventional) war over Kashmir by facilitating confidence-building measures and non-proliferation; (ii) resolution of conflicting Pakistani and Indian claims to the former Princely State of Kashmir; (iii) ending the stand-off between the Kashmiris and the Indian government; and (iv) resolving Kashmiri self-determination claims. Issues (i) and (ii) comprise a bilateral set of issues which chiefly concern India and Pakistan, while (iii) and (iv) comprise a set of internal conflict issues which chiefly concern India and the residents of the Vale of Kashmir. Of course, there are strong links between both sets of issues.

India is the party common to both aspects of the conflict; it is in a dispute with both Pakistan and the Kashmiris, giving the impression that perhaps they are two separate conflicts which can be separately mediated. The bilateral issues [(i) and (ii) above] would be most likely to control a US mediation agenda. The skilful mediator will attempt to prioritize the bilateral issues while keeping sight of and determining the best method for addressing the Kashmiri self-determination issues, possibly in a parallel facilitated negotiation process which is conceptually linked to the mediation between India and Pakistan. Given the volatility of the issues, mediating the internal dispute could usefully start out as back-channel diplomacy, benefiting from an open bilateral peace process between Pakistan and India, excluding 'spoiler' parties and removing the issues from the mass scrutiny which facilitates positional bargaining.

Communication/Physical Structure

‘An effectively functioning third party must know when to encourage communication between the principals, and when such communication should be curtailed.’⁸³ Facilitating effective communication will be one of the more essential roles the mediator will play, as both parties complain bitterly of ineffective communication with the adversary. The record of bilateral talks on Kashmir testifies to the difficulties of communication experienced by both India and Pakistan, a situation that cries out for a third party which can reframe issues, remind parties of points of agreement and disagreement, clarify and translate concerns and positions, elicit proposals and concessions.

Related to communication is modification of physical structure, or site of the mediation. Strict control of the site would likely be conducive to a positive negotiating atmosphere, as the parties would be freed from scrutiny and the inflexibility of their own ‘dominant responses’ which, Jeffrey Z. Rubin noted, can be exacerbated by the presence of an interested audience.⁸⁴ The greater the concealment, the more likely de-escalatory movement will occur. Dr Lodhi, Pakistan’s former Ambassador to the US, openly suggests that the US conduct the mediation in ‘back-channel’ format, much as the Norwegian-brokered Palestinian–Israeli talks were conducted. This would have the obvious advantage of saving face for the principals and deflecting negative attention from them, as well as permitting considerable mediator freedom.

A caveat is in order, however. The removal of the process from the public eye can backfire on the parties, if carried too far and characterized as a sell-out, especially as the governing political parties are weak and face sectors with a vested interest in the continuation of the conflict.

Changing Perceptions

‘India and Pakistan still tend to view international affairs, including relations with the United States, as a zero-sum game.’⁸⁵ This perception underlies problematic relations between India and Pakistan. However, since it is the US which is actively engaging the adversaries in new relationships, the US can work towards changing this perception that advances for one side come only at the expense of the other. According to the Assistant Secretary of State for South Asian Affairs, the US is continuously trying to ‘nurture...strong and friendly relations’ with the adversaries, while simultaneously urging them to implement confidence-building measures (CBMs) such as reducing Pakistani support for the insurgency and encouraging Indian initiative on dialogue with Kashmiris.⁸⁶

Indeed, by ‘helping to prevent unintended or accidental conflict and

strengthening deterrence by ensuring that a party about to be attacked receives enough warning to be able to defend or attack preemptively', confidence building measures 'help create a climate of expectations more conducive to the conduct of negotiations of underlying issues and to normal interstate relations'.⁸⁷ It was due to US intervention, with the mission of Deputy National Security Adviser Robert Gates to Islamabad and New Delhi in the Spring of 1990 that India and Pakistan are reported to have signed on to a number of CBMs such as establishing a hotline between their directors of military operations, giving prior notice of their military exercises, pledging not to attack each others' nuclear facilities and jointly banning use and acquisition of chemical weapons.⁸⁸ The US can do much to provide technical expertise and joint advice on optimal CBM implementation and thus continue to set the tone for its mediation of the underlying conflict issues.

It has been noted above that China and India continue to establish CBMs. Once further CBMs between India and Pakistan provide the security context for each country to move away from perceptions of insecurity and threat, the mediator can help to design processes that facilitate political solutions.

Conclusions

All attempts at resolution of the conflicting claims to the former Princely State have thus far failed. Analysis of the interests of the US in South Asia reveals that there is an emerging and strong convergence among US–Pakistani and US–India interests. This convergence has created an opening for effective third party intervention which the US can take advantage of, should it decide to exercise the leverage it is acquiring over the parties in the conflict. What remains to be done is an exercise in political will on the part of the adversaries and the potential mediator to set in motion a dynamic by which negotiated outcomes could be perceived as preferable to the *status quo*.

The continuing failure of the Indian and Pakistani governments to definitively resolve their conflict over Kashmir via bilateral high-level channels, in combination with a re-energized US presence with the parties, sets the stage for acceptance of a triadic approach to conflict resolution: India and Pakistan may each attempt to consolidate competing dyadic relationships with the US while the third party creates links between the two adversaries and simultaneously satisfies its own geo-political interests.

The asymmetry of the past and current relationships each party has with the US will not necessarily impede but can actually facilitate a mediation process due to management of bias perceptions. The US is in possession of

sufficient resources to create incentives for de-escalation and possesses sufficient force and leverage to coerce the lowering of unilateral aspirations, avoidance of hostilities and halting of nuclear proliferation.

A comprehensive solution comprising a final settlement of the secessionist claims as well as the Indo-Pakistani rivalry is not likely to be attained in mediation between India and Pakistan due to the sheer complexity of the issues to be resolved, the profound depth of the secessionist aspirations of the Kashmiri militants, and the dynamics of conflict resolution which are manifest in 'internal' conflicts in contrast to international ones. Separate but complementary efforts must be made between the Kashmiri insurgents and India. Nonetheless, resolution of the Kashmir conflict as it affects the relationship between India and Pakistan is more likely than ever before to be attained given the new, heightened interests and prevalence one superpower has in the region, and the linkage the superpower has begun to make between all of its regional interests and resolution of the Kashmir conflict. Such a process would have the potential to ultimately facilitate the attainment of a just, peaceful and mutually beneficial resolution of differences between India and the Kashmiris opposed to continued Indian governance.

NOTES

- 1 'Enduring rivalries' refers to the concept advanced and surveyed by G. Goertz and P. Diehl, in their article 'Enduring Rivalries: Theoretical Constructs and Empirical Patterns', *International Studies Quarterly*, 37, 1993, pp.147-71.
- 2 Ibid., Vol.148, 156.
3. Jacob Bercovitch, 'Third Party Mediation and the Oslo Process: Assessing the Success of Israeli-Pakistani Peacemaking', paper delivered at the Jeffrey Z. Rubin Memorial Conference, Harvard University, Cambridge, MA, 16-18 Oct. 1996.
4. For a concise description of the principal attempts at conflict resolution, see Robert G. Wirsing, *India, Pakistan and the Kashmir Dispute*, New York: St. Martin's Press, 1994, Appendix I.
5. Bercovitch (n.3 above).
6. Jacob Bercovitch, 'International Mediation and Dispute Settlement: Evaluating the Conditions for Successful Mediation', *Negotiation Journal*, Vol.7, No.1, 1991, pp.22-24. Of the conflicts analysed, where there were more than 10,000 deaths, 57.5% of the mediations were deemed 'unsuccessful', 6.2% resulted in ceasefires, 8.7% resulted in partial settlements and only 1.2% resulted in a full settlement.
7. I. William Zartman (ed.), in *Evasive Peace: Negotiating an End to Civil Wars*, Washington, DC: The Brookings Institution, 1995, notes that scholars such as H. Assefa argued the contrary (prior to Bercovitch's work) in *Mediation of Civil Wars: Approaches and Strategies - the Sudan Conflict*, Boulder, CO: Westview, 1987.
8. See Institute for Palestine Studies, *The Palestinian-Israeli Peace Agreement: A Documentary Record*, Washington DC: IPS, 1994, pp.235-47.
9. See for example, Marc Ellis, 'The Future of Israel/Palestine', *Journal of Palestine Studies*, Vol.26, No.3 Spring 1997; Burhan Dajani, 'The September 1993 Israeli-PLO Documents: A Textual Analysis', *Journal of Palestine Studies*, Vol.23, No.3, Spring 1994.
10. Jacob Bercovitch, 'International Dispute Mediation: A Comparative Empirical Analysis', in

- Kenneth Kressel and Dean G. Pruitt (eds), *Mediation Research: The Process and Effectiveness of Third-Party Intervention*, San Francisco: Jossey-Bass Publishers, 1989, pp.292, 297.
11. Ceylon and Burma also composed the British Indian Empire. Burma obtained independence prior to the Second World War.
 12. For some of this crucial early history, I have relied on the research and analysis of writers such as P.N. Baz, *The History of Struggle for Freedom in Kashmir: Cultural and Political, From the Earliest Times to the Present Day*, Karachi: National Book Foundation, 1954; S. Gupta, *Kashmir: A Study in India-Pakistan Relations*, Bombay: Asia Publishing House, 1967; J. Korbelt, *Danger in Kashmir*, Princeton: Princeton University Press, 1954.
 13. People of Jammu area.
 14. Lord Mountbatten's Reply to Maharaja Accession Offer to India, 27 Oct. 1947.
 15. Government of India Act, 2 Aug. 1935, reprinted in C.H. Philips, H.L. Singh and B.N. Pandey, *The Evolution of India and Pakistan, 1858-1947: Select Documents*, London: Oxford University Press, 1962, p.321.
 16. Instrument of Accession of Jammu and Kashmir State, 26 Oct. 1947, reprinted in P.L. Lakhnupal, *Essential Documents and Notes on Kashmir Dispute*, New Delhi: International Publications, 1958, pp.57-8.
 17. Seymour M. Hersh, 'On the Nuclear Edge', *The New Yorker*, 29 Mar. 1993.
 18. Tahir Akram, 'Pakistan Says No Quick Fix in Talks with India', *Haveeru Daily Online* (Maldives), 10 May 1997, World Wide Web address: <http://www.haveeru.com/saarc97>.
 19. John F. Burns, 'Rebels in Kashmir and Indian Army Ready for Long Fight', *The New York Times*, 16 May 1994, p.A6.
 20. Burns, 'Indian Prime Minister Hints at Concessions to Kashmir Muslims', *The New York Times*, 18 May 1995, p.A15.
 21. Key factual material concerning human rights violations by government troops and militant groups was obtained especially from two investigative documents: International Commission of Jurists, *Human Rights in Kashmir: Report of a Mission*, Geneva: International Commission of Jurists, 1995, pp.18-25, and Asia Watch and Physicians for Human Rights, *The Human Rights Crisis in Kashmir: A Pattern of Impunity*, New York: Human Rights Watch, Mar. 1993, pp.26-35.
 22. M.K. Lokesh, Counselor for Political Affairs, Embassy of India to the United States, 'Debate on the Status of Kashmir', Northeastern University, 10 May 1995.
 23. Maleeha Lodhi, Ambassador of Pakistan to the United States, Speech at The Fletcher School of Law and Diplomacy, Tufts University, 17 Feb. 1995.
 24. Reuters, 'South Asian Bloc Sets Free Trade Goal, Political Talks', *Haveeru Daily Online* (Maldives), 10 May 1997, <http://www.haveeru.com/saarc97>.
 25. Lodhi, Speech at The Fletcher School of Law and Diplomacy.
 26. Robert LaPorte, Jr., 'Pakistan in 1996: Starting Over Again', *Asian Survey*, Vol.37, No.2, Feb. 1997, pp.118-25.
 27. Sumit Ganguly, 'India in 1996: A Year of Upheaval', *Asian Survey*, Vol.37, No.2, Feb. 1997, pp.126-35.
 28. LaPorte, Jr. (n.26 above), p.125.
 29. Jonathan Pollock, 'The United States and Asia in 1996', *Asian Survey*, Vol.37, No.1, Jan. 1997, pp.95-109.
 30. See for example, Saadia Touval and I. William Zartman, *International Mediation in Theory and Practice*, Boulder, CO: Westview Press, 1985.
 31. Zartman, 'Introduction', *Elusive Peace* (n.7 above).
 32. *Ibid.*, p.10.
 33. *Ibid.*, pp.8-11.
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