

International Court of Justice – Research Report the Republic of India vs. the Islamic Republic of Pakistan on the issue of the territorial dispute over the Kashmir region

Dear Advocates, this is the research report for the case “the Republic of India vs. the Islamic Republic of Pakistan on the territorial dispute over the Kashmir region”.

The following document is an outline of this case for this year’s simulation of the ICJ. If you are a Judge, you should stop reading now and find the separate document containing your research report. For Advocates, this will provide a useful starting point along with some helpful tips as to what areas of law to concentrate on, as well as useful sources for the writing of stipulations, memorandums and evidence.

Please note that more extensive research on the topic is required - you should not base all of your work on this document. The Judges will refrain from seeking out knowledge apart from a separate research report, to maintain objectivity. Thank you for choosing the ICJ and good luck!

PRESENTATION OF COUNTRIES AND BACKGROUND

The Kashmir region:

The Kashmir region is a disputed semi-autonomous state in the north of the Indian subcontinent. The region is bordered between the three large nations of Pakistan, India and China, all with their own claims to areas of Kashmir. The conflict in the area stems from the British colonial separation of British India into Muslim Pakistan and Hindu India. In 1947 when the division occurred, Kashmir having a Hindu Maharaja, but a Muslim population decided to stay neutral and become a semi-autonomous state instead of joining one of the two newly divided states.



Since 1987, following an Indo-Pakistani war, the area has been divided between an Indian controlled area and a Pakistani controlled area. As well as, a Chinese controlled area, (decided in the 1960s). The division between India and Pakistan has since sparked significant insurgency, particularly in the Indian controlled region.

The region has a population of nearly 7 million people (2021) that frequently get caught in the fire between the Indian and Pakistani dispute over Kashmir. The population is 90% Muslim, even in the predominantly pro-India regions of Jammu and Kalgar. Since the start of

the insurgency in 1987, in the Indian controlled area of Kashmir, its estimated that more than 100 000 civilians have died due to the conflict.

Several UN attempts at referendums for the Kashmiri populations have been entertained, but none yet have managed to solve the now over 70-year-old conflict.

The Republic of India:



India, officially the Republic of India, is a nation in southern Asia. As the world's second most populous, it has a population of nearly 1.4 billion (2020) and is the 7th largest nation by geographical area. With a national GDP of 2.63 trillion USD (2021), India is one of the world's largest economies, despite being hard-hit by the covid-19 pandemic.

In comparison with other global superpowers, the standard of living in India is relatively low, with nearly 2000 USD per capita (2021 expectation) and a life expectancy nearly three years below the global average. Despite this, India has in recent years experienced significant economic growth, particularly amongst the upper and middle classes.

India has a history of British colonisation dating back to the early 17th century. Important to understanding India's current political and economic status, is the division of British India into Pakistan, India, Bangladesh and Kashmir. The nation was originally divided based on religion in 1947 when British rule divided British India into Muslim Pakistan and Hindu India. Creating the current religious division with Pakistan being 96% Muslim and India being 80% Hindu. The division in 1947 created what at the time was the largest mass migration in history, with over a million Muslim Indians emigrating from India into the newly created Pakistan. Many of India's current economic and political issues stem back to British colonial rule, including the territorial dispute over the Kashmir region.

The Kashmir region is rich in economic and military gains for India, and this, as well as the historical background, are key to India's claim to the region. Water is one of Asia's scarcest resources, and Kashmir having three significant rivers that flow into India, would be highly beneficial to the Indian economy. Moreover, Kashmir's geography gives it a hilly, undulating terrain which is believed to be militarily beneficial to India. Lastly, Kashmir has in the past voted to be part of India and even over 70 years ago in 1947, joined India following the Hindu Maharaja's decision, so there is also a historical claim to the region for India.

The Islamic Republic of Pakistan:



Pakistan, officially the Islamic Republic of Pakistan is a nation in Southern Asia, bordering India, Afghanistan, Iran and China. As one of Asia's most populous nations, the country has a population of 227 million (2021). With a GDP of 263 billion dollars, Pakistan houses a large economy, though not hugely significant on the world stage, ranking 46th in the global GDP rank.

The standard of living in Pakistan is low, and significantly lower than its neighbour India. Pakistan holds a GDP per capita of only 1200 USD, an average of 800 USD lower than India per person. Despite this, Pakistan holds an economic growth rate of 0.5%, higher than that of India, and hasn't been as hard hit by the covid-19 pandemic, indicating economic improvement for

the nation.

Pakistan's history dates back to the departure of British colonial rule in 1947, when the British divided the princely states British India into Muslim Pakistan and Hindu India. This renders Pakistan still a very new country, with a history of political instability. Following 1947's mass emigration, Pakistan's population is now 96% Muslim, and the country has been following Shariah law since 1991.

The Kashmir region is important to Pakistan because it is to many considered a reclamation of Pakistan's 'own people'. This boils down to the Kashmiri people also being majority Muslim and many within Kashmir believing that previous referendums have been rigged by the Indian government. Moreover, like with India, Pakistan would make significant economic and military gains from the Kashmir region. This is all the more important to Pakistan, that is significantly economically and militarily weaker than what is often considered its rival state, India.

Previous treaties and agreements:

1946 The second treaty of Amritsar – the state of Kashmir is created by the British

- 1948** UN Security Council, resolution 47 – Kashmir to be governed by “local authorities” (rejected by India and Pakistan)
- 1965** Ceasefire agreement between India and Pakistan following the second Indo-Pakistani war
- 1971** The Simla agreement – stipulates the division of Kashmir into an Indian controlled and Pakistani controlled area

TIMELINE OF EVENTS

- 1947** End of British rule in British India and state partition into Hindu majority India and Muslim majority Pakistan – The Maharaja of Kashmir decides to remain a neutral state.
- 1947** Pakistani tribal army attacks in Kashmir region – Kashmir joins India and the conflict starts.
- 1948** The territorial dispute is brought up in the UN security council – it is decided that the population of the Kashmir region should hold a referendum. The area is voted a part of India.
- 1965** A brief war between India and Pakistan over the region ends in ceasefire and return to previous positions.
- 1971** A second Indo-Pakistani war breaks out and Pakistan is defeated once more. The Simla agreement is made which stipulates a division of Kashmir into an Indian controlled side and a Pakistani controlled side. Future conflicts are agreed to be solved through negotiations and relations briefly improve.
- 1987** Insurgency begins in Indian controlled Kashmir after a disputed election – many die in protests to come and Pakistani militant groups begin fighting Indian troops in Kashmir. Violence against civilians on both sides is widespread.
- 1999** A third Indo-Pakistani war breaks out and relations between the two countries break off.
- 2010** The death of a protestor to the Indian army spikes massive protests in the Indian controlled area of Kashmir.
- 2014** Planned negotiations over the region between India and Pakistan are cancelled after India accuses Pakistan of accusing in India’s internal affairs.
- 2015** India re-instates a colonial era ban on eating beef in the Kashmir region.
- 2016** A curfew is introduced in Indian controlled Kashmir, but violence and unrest continue.
- 2017** Several violent attacks take place in Indian controlled Kashmir and thousands defy the curfew to attend a top rebel commander’s funeral.

2019 Indian government strips the Kashmir region of the previous special autonomy laws it had.

PRESENTATION OF THE CASE

The case of the Kashmir region is initiated by India, India believes they have a claim over the region due to the Maharaja's decision in 1947, the referendum held in 1948, as well as the three former victories the nation has had over Pakistan when disputing the territory.

Moreover, because Kashmir in 2019 lost its semi-autonomous privileges, India believes it to now be a more natural extension of their nation and would like to keep the Indian occupied territory they have in Kashmir. India is proposing that the entirety of the Kashmir region be "returned" to India, with exception of the Chinese territory in the East.

Should India succeed with their case over Kashmir, Pakistan will have to uncompromisingly withdraw all influence from the region, whether it be economic, political or militarily. The success of this will depend heavily on the Kashmiri population's own willingness to be a part of India.

In contrast, Pakistan believes they have a claim to the Kashmir region, because of the important religious and cultural background they share. The Kashmiri are considered Pakistan's 'own people', far more than they are considered India's 'own people'. It is worth noting that it could have potentially devastating social and political effects, if the Kashmiri population aren't given the opportunity to join Pakistan.

A referendum has been proposed, however, this has been rejected by India due to the insurgency following former, failed referendums.

AREAS OF LAW TO READ UP ON

Advocates should acquaint themselves with the following legislation:

- The 1947 Instrument of Accession
- The 1948 UN Security Council Resolution 47
- The 1965 Indo-Pakistani ceasefire
- The 1972 Simla Agreement
- The 2015 Indian ban on eating beef in Indian controlled Kashmir
- The 2016 Indian curfew imposed in Kashmir

Referring to those and further legislations will be essential for any actions the Court might be taking.

Therefore, advocates should be able to refer to specific articles that are relevant for the case.

Advocates should also familiarize themselves with any previous rulings and cases dealing with similar issues to their best abilities, as these can be referred to as precedents for actions the Court may take.

BIBLIOGRAPHY

For Advocates:

The UN security council's resolution from 1948:

<https://digitallibrary.un.org/record/111955/?ln=en>

The 1965 ceasefire:

https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK_650630_Agreement%20to%20CeaseFire%20and%20Restoration%20of%20the%20Status%20Quo.pdf

The 1947 Instrument of Accession:

[https://en.wikipedia.org/wiki/Instrument_of_Accession_\(Jammu_and_Kashmir\)](https://en.wikipedia.org/wiki/Instrument_of_Accession_(Jammu_and_Kashmir))

The 1972 Simla Agreement:

https://en.wikipedia.org/wiki/Simla_Agreement

The 2015 Indian beef ban:

<https://www.nytimes.com/2015/03/04/world/asia/indian-state-passes-ban-on-beef-championed-by-right-wing-hindus.html>

The 2016 Indian curfew in Kashmir:

<https://www.theguardian.com/world/2016/jul/09/india-imposes-kashmir-curfew-after-death-of-rebel-leader>

References:

<https://ourworldindata.org/life-expectancy#:~:text=The%20United%20Nations%20estimate%20a.life%20expectancy%20of%2072.3%20years.>

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<https://politics.stackexchange.com/questions/23955/why-does-india-want-kashmir-so-much>

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FINAL NOTES

Dear Advocates, If you are unfamiliar with the International Court of Justice, it is important that you read the following:

It is important to note that the ICJ is a different forum from the rest of the United Nations, thus we would advise you to look at the 'Rules of Procedure' so that you get an understanding of the court style of debate. Subjective opinion reigns supreme and lying (while discouraged) is rampant. You should gain more in-depth knowledge of your country as you are defending it in the debate, and you are trying to prove the other team of advocates wrong. You are also supposed to behave as your country would. You will have your statements evaluated and your evidence scrutinised by the Judges, all while under attack from the other advocate team. In addition, you have to be aware of not only your country weaknesses, but of the opposing team's as well, in order to be always prepared whenever something against your country is brought up.

However, other key features have to be present in order to ensure that your team seals its victory, such as, but not limited to: strong, convincing and relevant evidence, persuasive speeches, and well-prepared witnesses.

All of this combined may guarantee a victory for your country. Furthermore, this being a hypothetical case regarding an ongoing situation, you need to note that the date the proceeding will start is the day the conference starts, and you will only be able to present evidence or arguments referring to events that occurred before the 14th of February 2022 (10 days before the start of the conference).

Should you have any questions regarding the process, please do not hesitate to contact us, by e-mail or via social media.

We look forward to meeting you.

Best wishes and yours truly,

Isabel Fangel-Lloyd and Kevin Nguyen