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Easing the Indo-Pakistani Dialogue on Kashmir:
Confidence-Building Measures for the
Siachen Glacier, Sir Creek
and the Wular Barrage Disputes

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Pragmatic steps toward ideal objectives



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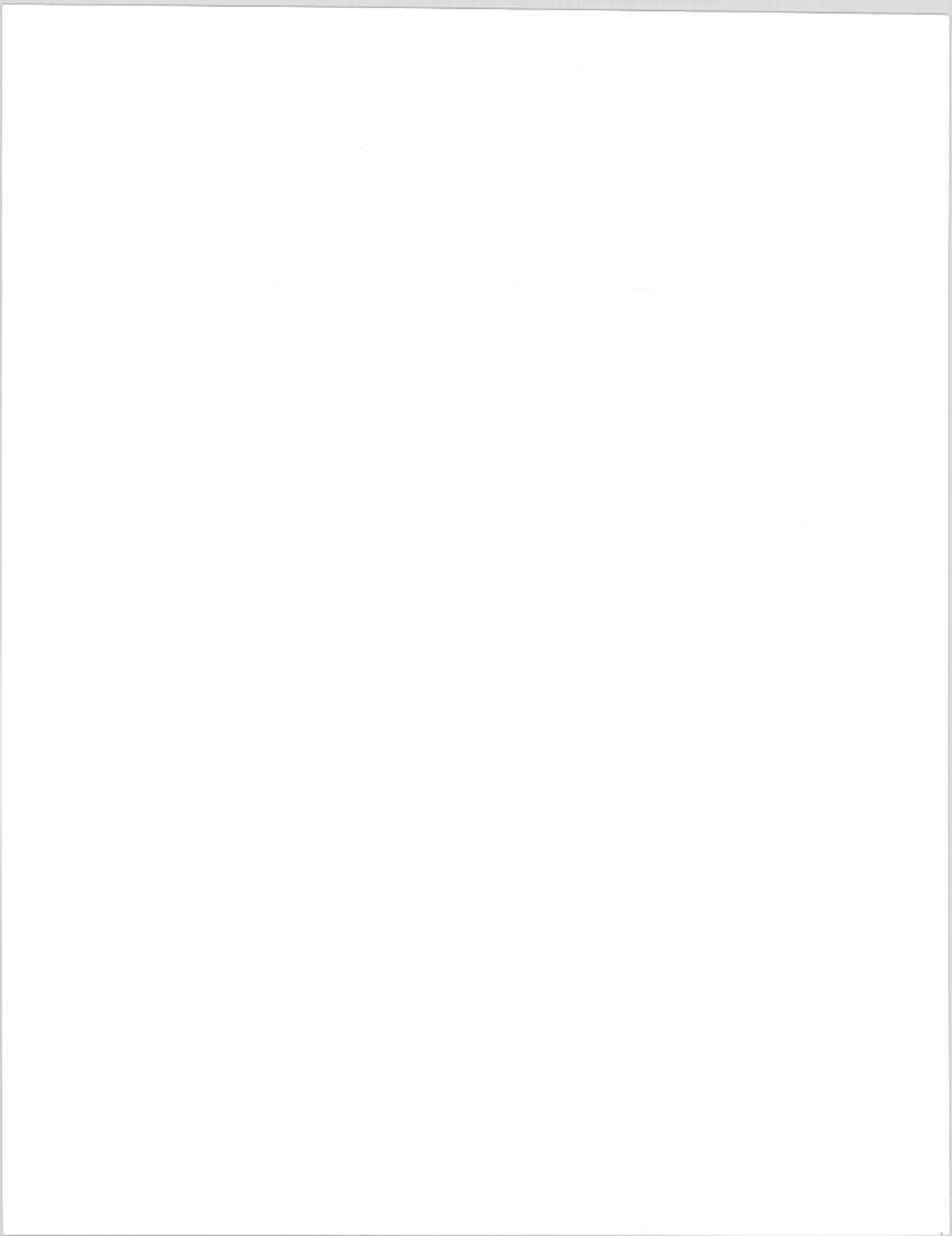
Project on Confidence-building Measures for Regional Security

Over the last three years of foundation-funded efforts to promote confidence-building measures (CBMs) within various regions of tension, the Stimson Center has found considerable interest among governments, militaries, and non-government organizations (NGOs) in the value of negotiating and implementing CBMs. The center stresses that some security problems—such as border tension, terrorism, and fear of surprise attack or unwanted escalation—are generic in nature, although the particulars vary in each case. If suitably adapted, CBMs designed to address problems in one region may have some utility in others. The project has focused primarily on South Asia, the Middle East, and the Southern Cone of Latin America.

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Easing the Indo-Pakistani Dialogue on Kashmir: Confidence-Building Measures for the Siachen Glacier, Sir Creek and the Wular Barrage Disputes

Background

Anyone who follows the course of events on the India-Pakistan subcontinent will be struck by its utter immunity to the winds of change that have recently blown over the globe. The former Soviet Union withdrew its troops from Afghanistan, and the regime it had installed collapsed. The two Germanies reunited; the Soviet empire in Eastern Europe collapsed, and the Soviet Union itself fell apart. The Israeli-Palestinian accord and the adoption of a constitution for a multiracial democracy in South Africa followed the trend.

Estrangement between India and Pakistan is a disturbing exception to that trend, particularly so because both states possess nuclear weapons capabilities, official denials notwithstanding. Since the end of British rule in 1947, nothing like a sustained period of détente has ever come about on the subcontinent. Rather, adversarial relations have been the abiding norm. In these countries where very large sections of people live in dire poverty, the enormous expenditure on arms and the tragedy of three wars is a testimony to the failure of leadership.

It was against this backdrop that, having gone to war for the third time the previous year, India and Pakistan negotiated the 1972 Simla Agreement. A major issue on the negotiation agenda was Kashmir; specifically, agreement on a redefining of the cease-fire line (CFL) that had been delineated in Kashmir in 1949 under the auspices of the United Nations Commission for India and Pakistan and agreed to by both countries.¹

The agreement signed on July 3, 1972 by Prime Minister Indira Gandhi of India and President Zulfikar Ali Bhutto of Pakistan was intended to serve as a compass for better relations in the future. It pledged both sides "to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed

1. An interesting episode that took place in the interim between 1949 and 1971 and that demonstrated continuing tensions over the boundaries of Kashmir occurred in 1963, when on March 2 Pakistan and China signed an agreement defining the boundary between China's Xinjiang province "and the contiguous areas" in northern Kashmir, "the defense of which," the agreement states, "is under the actual control of Pakistan." As illustrated in Figure I, the boundary's broad alignment (Article 2) commenced in the northwest at the trijunction of China, Afghanistan, and Pakistan-Occupied Kashmir (POK) and continued eastward, ending "at the Karakoram Pass." Article 6 provided that "after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority will re-open negotiations" with China on the boundary to sign a formal treaty replacing the agreement. (For text of this agreement, see Dorothy Woodman, *Himalayan Frontiers: A Political Review of British, Chinese, Indian, and Russian Rivalries* [New York: Praeger, 1969].)

India protested the agreement on the grounds that legally the whole of Kashmir was Indian territory and that Pakistan had unlawfully ceded 4,500 sq. km. to China. In fact, Pakistani concessions to China were only on maps; actually, China had ceded 1,250 sq. km. of Chinese-administered land on which there is no known permanent habitation.

upon between them." Further, "Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation."²

With respect to Kashmir, the Simla Agreement resulted in a redefining of the CFL, from that time forth known as the line of control (LOC). The CFL that had been agreed to by India and Pakistan at Karachi in 1949 had identified the CFL as beginning in South Kashmir, from the border with Pakistan, and from there proceeding north, turning east in an arc, and then proceeding north again. (See Figure I.)³ However, according to the Simla Agreement:

In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat or the use of force in violation of this Line.

Shortly after the 1972 Simla Agreement was signed, India's Minister for External Affairs, Swaran Singh, speaking before the Indian parliament, linked the issues of troop withdrawals and the LOC: "Action regarding the withdrawals [of troops] and delineation of the line of control in Jammu and Kashmir will have to be taken simultaneously." A new LOC was drawn up. The change of terminology—from "cease-fire line" to "line of control" still signified a degree of tentativeness.

On December 12, 1972 Swaran Singh revealed details of the LOC agreement in a formal statement to parliament. "The broad description," commencing south and "ending in Turtok—Partapur sector in the north," was laid on the table. Paragraph C of that document ended thus: "Up to Chorbat La [La is the Tibetan word for a mountain pass] in Turtok sector." Paragraph D added: "From there the Line of Control runs north-eastward to Thang (inclusive to India) thence eastward joining the glaciers" (*italics added*).⁴

2. The Simla Agreement, 1972, Paragraph 1 (ii).

3. According to Paragraph B2 of the Karachi Agreement, "The cease-fire line runs from Manawar in the south, north to Keran and from Keran east to the glacier area." Paragraph B2 (d) defined the extremity thus:

"From Dalunang eastward the CFL will follow the gen [sic] line Pt 15495, Ishman Manus, Gangan, Gunderman, Pt. 13620, Junkar (Pt. 17628), Marmak, Natsara, Shangruthi (Pt. 17531), Chorbat La (Pt. 15700), Chalunka, Khor, *thence north to the glaciers*. This portion of the CFL shall be demarcated in detail on the basis of the factual position as of 27 July 1949 by the local Commanders, assisted by United Nations Military Observers" (*italics added*).

4. Air Commodore Jasjit Singh, director of the Institute for Defense Studies and Analyses, has been misleading in his assertion that Swaran Singh's statement described the LOC as "going *westward* joining the glaciers," and not *eastward* (*italics added*). (See Jasjit Singh, *The Times of India*, May 19, 1988. *The Hindu*, July 10, 1987, also uses the word *eastward*, as do Syed Rifaat Hussain, *The Muslim*, June 15, 1986, Lahore edition, and Ahmed Dani, *The Muslim*, September 16, 1988.) This author has verified that the official text, as distributed by agencies of the government of India, indeed reads *eastward*.

Jasjit Singh, however, made an important but often neglected point: in this mountainous region a

Nineteen mosaic maps and an appended written description of the LOC were signed by Major General M.R. Rajwade of India and Brigadier S.M. Abbasi of Pakistan. These documents, however, actually repeated the discrepancies of the Karachi agreement, its maps, and their detailed description, defining the northern extremity as "thence along the boundary line to NJ9842," exactly as the description of the 1949 maps had done. The LOC stopped at NJ9842 and did not extend north to the glaciers.

Since the signing of the Simla Agreement, little progress has been made toward a final settlement on Kashmir and its boundaries. This is true, despite a commitment by the heads of government, recorded in that agreement, to "meet again at a mutually convenient time in the future" to discuss further "the modalities and arrangements for the establishment of durable peace and normalization of relations, including the question of repatriation of prisoners of war and civilian internees, *a final settlement of Jammu and Kashmir and the resumption of diplomatic relations*" (italics added).⁵ The text clearly implied early negotiations on Kashmir as part of the process of normalization of relations and resumption of diplomatic relations. Not until May 1976 were diplomatic relations resumed. It would be January 1, 1994, before the foreign secretaries of India and Pakistan met in Islamabad "in accordance with the Simla Agreement" for "a comprehensive discussion on bilateral issues" to include all aspects of the Kashmir issue.⁶

On the Kashmir issue, however, the position of both sides remained far apart. Furthermore, by 1994, the self-assertion of the people of the Kashmir had emerged as key factor. This development can be traced back more than twenty years, to the time of the Simla Agreement, when the popular leader of Kashmir, Sheikh Mohammed Abdullah upon his release from internment, remarked that the leaders of India and Pakistan were going to decide the future of Kashmir "behind our back as if we are a forgotten factor. That is wrong. We register our strong protest against it."⁷ Later, in February 1975, Abdullah entered into an accord with Prime Minister Indira Gandhi endorsing the state's membership in the Indian Union under special terms stipulated by Article 370 of the Indian Constitution.

The current situation in Kashmir can best be summarized thus: First, among the population living in the most significant part of the Indian state of Jammu and Kashmir,

straight line of the kind drawn from the Karakoram Pass is notable. While there are precedents for straight boundary lines in mountainous terrain, they are usually associated with agreements delineating them as such. Singh remarked that the straight line started appearing on maps in the United States and Europe some time around 1963 "when US Air Force Aeronautical maps started indicating this as the limit of the Indian ADIZ (Air Information Defense Zone)," which does not necessarily represent a national frontier. "Even within a country a number of ADIZs may exist."

By contrast, a map published in 1963 by the Information Department of the Embassy of Pakistan in Washington, D.C., showed the CFL as ending at NJ9842—constituting an authoritative admission of the terminus of the line, providing no conclusive information about Pakistani possession of the territory north and east of the terminus point. (See Figure II).

5. The Simla Agreement, 1972, Paragraph 6.

6. *The Hindustan Times*, November 25, 1993.

7. *Indian Express*, June 21, 1972.

that is the Kashmir Valley, there is a deep sense of alienation from the Indian Union. Second, since 1988 Pakistan has mounted a covert military operation to exploit this alienation and instigated and aided acts of terrorism.⁸ Third, Indian security forces have systematically, and with impunity, perpetrated outrageous violations of human rights in the valley.⁹

It is reasonable to conclude that relations between India and Pakistan will never be normal until the Kashmir dispute is settled. It is no less obvious that the two sides will be unable to tackle this old and vexing issue unless a basic level of normalization has already been achieved. In other words, a measure of confidence needs to be developed through accords on other issues. Such agreements would serve to convince each side of the other's bona fides without in any way compromising its stand on Kashmir. Three pending issues on the Indo-Pakistani agenda are preeminently susceptible to a solution in the near future: demilitarization of the Siachen Glacier in northern Kashmir, the barrage to be constructed by the state government of Jammu and Kashmir on the Jhelum River below Wular Lake, and a demarcation of the Indo-Pakistani territorial and maritime boundaries in the Sir Creek area between Gujarat (India) and Sind (Pakistan).

Each issue lends itself to an approach that blends legal and political considerations. Although each issue is of limited proportions, the impact of a solution to all three points would be significant for Indo-Pakistani relations, imparting momentum to discussions on other confidence-building measures and on the dispute over Kashmir. The only obstacle to such an accord is a lack of political will.

8. For evidence, see A.G. Noorani, "Pakistan's Complicity in Terrorism in J & K: The Evidence and the Law," *Indian Defense Review* (January 1992).

9. See the author's article, "The tortured and the damned: Human rights in Kashmir," based on reports of Indian and international human rights organizations, in *Frontline*, January 28, 1994.

Siachen Glacier

On September 17, 1993, U.S. Assistant Secretary of State Robin Raphel stated: "Kashmir remains a major source of Indo-Pakistani tensions which could lead to war. There has been little follow-up to the 1972 Simla Agreement, when India and Pakistan committed to deal seriously with this issue. They should work on near-term steps such as demilitarization of the Siachen Glacier and more support for ongoing monitoring efforts along the line of control." Briefing news media on Raphel's visit to Pakistan, a senior U.S. official in Islamabad said, on November 9, 1993, "India and Pakistan are crossing the T's and dotting the I's of their agreement on demilitarizing Siachen which was almost complete in 1989."

The next day, however, Foreign Secretary Shaharyar Khan of Pakistan told the media that the Kashmir and Siachen disputes were linked and could not be discussed and negotiated separately. He also stated that both sides had come very close to an agreement on Siachen. His remarks probably represented nothing more than a bargaining ploy. It was, in fact, around that time that Prime Minister Benazir Bhutto of Pakistan, in an interview with an Indian correspondent appeared to show strong interest in a Siachen accord. She claimed that in 1989 defense secretaries of both countries had "reached an agreement with exact locations on the map on where everybody was supposed to go but Prime Minister Rajiv Gandhi delayed it because he had decided to go in for an early election. Thus India publicly withdrew from that agreement saying that it had not been concluded." She went on to say that, "after 1989 the Indian position changed on Siachen and further demands were made on Pakistan." As stated in this interview, it is her belief that a return to the 1989 agreement, and its implementation, would give Pakistan greater confidence that bilateral agreements can take off.¹⁰ Bhutto's version of why the 1989 agreement collapsed is arguable, but her emphasis on its implementation and on the confidence it could engender is sound.

Hostilities Commence

The genesis of the Siachen dispute has been described honestly and objectively by Indian Lieutenant General M.L. Chibber (ret.). As army commander (Northern Command), Chibber was responsible for directing the April 1984 Indian military initiative in the vicinity of the Siachen Glacier, described further below. The operation, code-named *Meghdoot*, triggered armed clashes between Indian and Pakistani forces in the area and eventually led to the current phase of this dispute.¹¹ The details Chibber cites, however, reveal the earlier origins of the conflict.¹²

10. *The Hindu*, November 12, 1993.

11. *Meghdoot* is the name of a divine cloud messenger from classic Sanskrit texts. The operation's title may have been inspired by its lofty venue.

12. M.L. Chibber, "Siachen—The Untold Story (A Personal Account)," *Indian Defense Review* (January 1990): 89-95.

The Geography of the Siachen Area

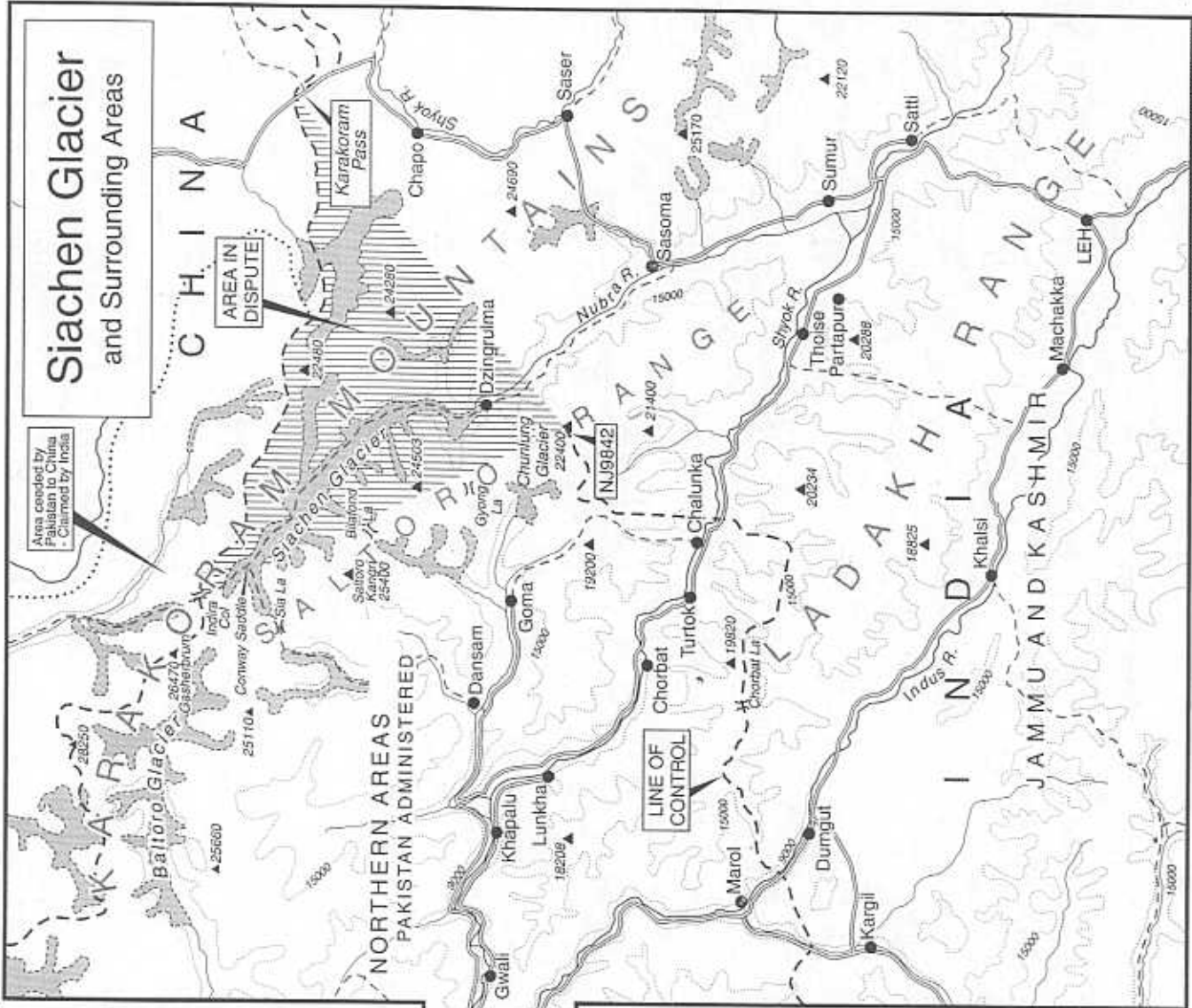
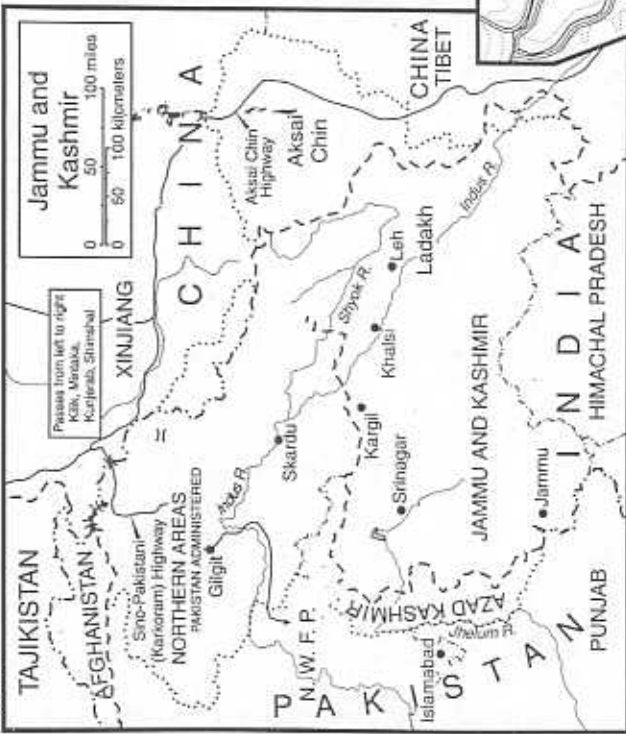
The Siachen Glacier is 76 km. long and varies in width from 2 km. to 8 km. One of the largest glaciers in the world, Siachen is popularly referred to as the "Third Pole." The glacier originates from the pass called Indira Col in the west and runs in a southeasterly direction until its snout turns into the Nubra River near Dzingrulma. The Nubra River flows south to meet the Shyok River.

The Siachen Glacier is flanked by the Karakoram Range to the east and by the Saltoro Range to the west the latter originating from Sia Kangri. The major passes along the Saltoro ridge are Sia La, Bilafond La, also known as Saltoro Pass, Gyong La, and Yarma La.

A number of towns quite close to the Saltoro Range are located in Pakistan—Occupied Kashmir (POK—these areas are also referred to as Azad Kashmir or the Northern Areas). On the east side of the range, passage to the nearest Indian town usually requires traversing parts of the glacier, a hazardous enterprise that can take as long as ten days.* Sia La is 60 km. from Dansam in POK. Gyong La is 31 km. from Goma, also in POK.

* "The Stakes in Siachen," *The Hindu*, June 11, 1985.

Figure 1



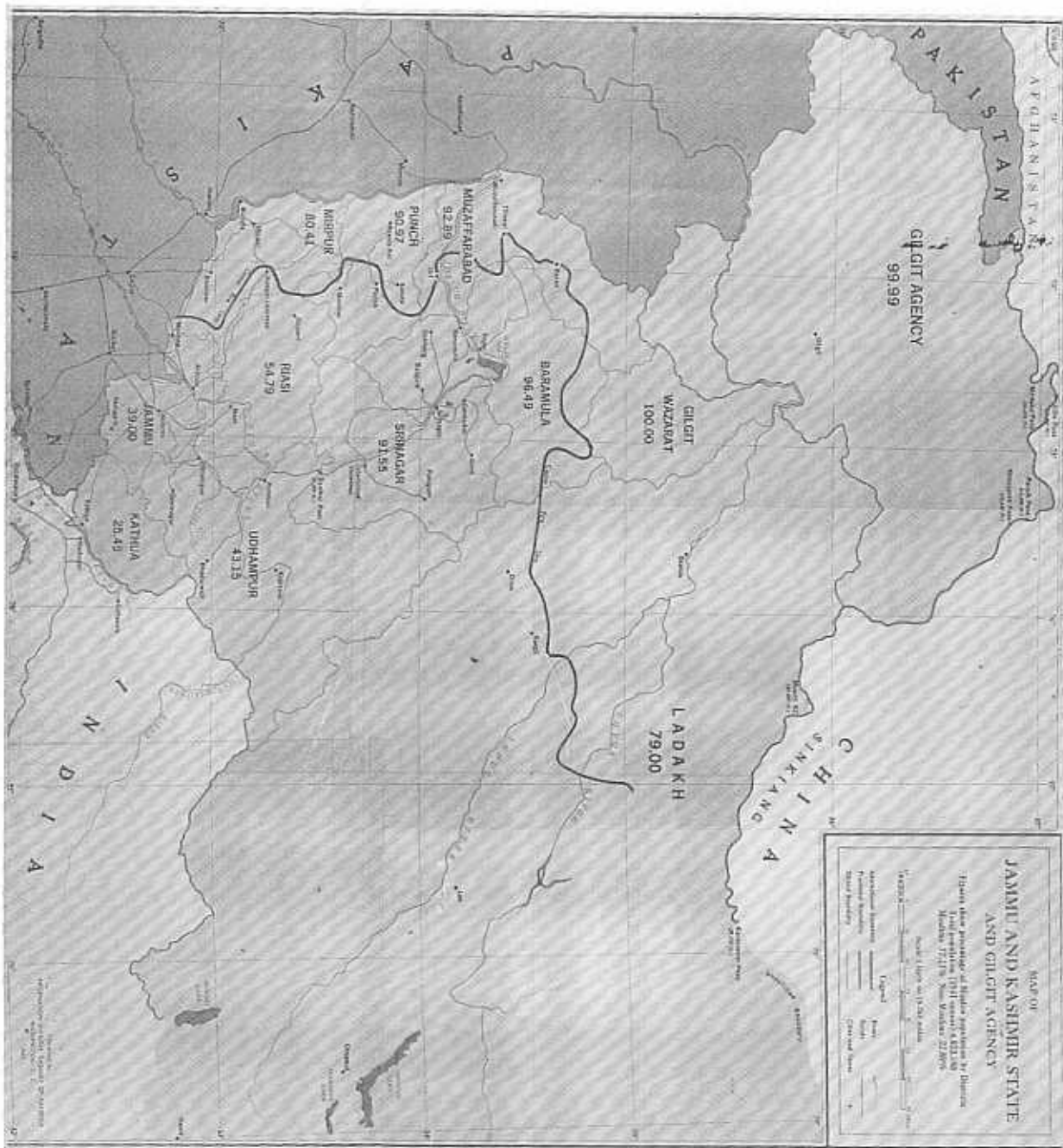


Figure II: Published by Information Division, Embassy of Pakistan, Washington, D.C., 1963.

As noted earlier, the LOC that was drawn up following the Simla Agreement defined the line's northern extremity exactly as the 1949 CFL maps had. The 1949 description reading: "Thence northwards along the boundary line going through point 18402 up to NJ9842." The line stopped at NJ9842 and did not extend further to the glaciers. Therein lay a discrepancy. The 1949 agreement had left the delimitation of the northern extremity vague, in the vain hope that the glaciers would keep the peace. The descriptions to the 1972 maps similarly referred to the glaciers in establishing the LOC. Clearly, however, there was no LOC in the area of the Siachen Glacier that lay *beyond* NJ9842. Further, the commitment of both sides under Paragraph 1 (ii) of the Simla Agreement, which stipulates that "neither side shall unilaterally alter the situation" in regard to "any of the problems between the two countries," unquestionably applied in this case.

Nevertheless, the lack of clarity over territorial rights in the glacier area was a sufficient catalyst for a new round of armed rivalry between India and Pakistan. Regarding the outbreak of hostilities, Robert G. Wirsing, a longtime student of the Siachen case, writes:

What is publicly known about events leading up to the outbreak of hostilities in the vicinity of the Siachen Glacier in the winter of 1983–84 does not supply unambiguous evidence that either India or Pakistan was the aggressor. Precisely who shot first is probably impossible to determine. Which of the two armed forces had the "right" to be on the glacier—since the question of the legitimacy of the two sides' territorial claims has never been submitted to impartial adjudication—is a matter obviously open to disagreement. There is ample evidence, however, that Indian armed forces were the first to establish permanent posts on the glacier and that they had prepared themselves long and well for the task. Published Indian accounts of Operation *Meghdoot* leave little room for doubt, in fact, that the Pakistanis were caught napping and that their principal strategy for fortifying Pakistan's claim to the glacier—sponsoring foreign mountaineering expeditions to the area—had failed.¹³

Chibber, in explaining why he mounted *Meghdoot* in 1984, refers first to his 1978 decision to sanction Kumar's "operational patrol" to Teram Kangri in the Siachen area. This discussion was influenced, he recalls, by an episode in the mid-1950s, when the government of India had turned down the army's plans for reconnaissance and hunting trips to the Aksai Chin area northeast of Kashmir—only to discover one day that the Chinese had built the Xinjiang-Tibet highway through it. After Kumar's trip in 1978 it was decided that the Siachen area "should be regularly patrolled during the summer months" but that "it would be impractical to establish a post in such a hostile

13. Robert G. Wirsing, *Strategic Studies* (Islamabad, Pakistan, The Institute of Strategic Studies) Autumn 1988: 41. See also Robert G. Wirsing, "The Siachen Glacier Territorial Dispute with India," chap. 4 in *Pakistan's Security Under Zia 1977–1988* (New York: St. Martin's Press, 1991), 143–94.

environment."¹⁴ Although Pakistan claims that twenty mountaineering expeditions were undertaken between 1974 and 1980 (mainly by Europeans and Japanese)—such expeditions, according to Pakistan, having begun in the 1950s—Chibber makes the arguable claim that none came thereafter.

By 1982, when Chibber took over as general officer commanding-in-chief of the Northern Command, India had acquired a Siachen-consciousness. This was the result of a number of well-publicized mountaineering expeditions from Pakistan—Occupied Kashmir (POK)¹⁵ into the Siachen area and was reinforced by the examination of various maps published abroad—among them the National Geographic Society's *Atlas of the World* (1981), Joseph E. Schwartzberg's *A Historical Atlas of South Asia*,¹⁶ and the Times Atlas of the World (1959)—which showed the LOC running straight from NJ9842 to the Karakoram Pass.

Indian activity in the region following Kumar's trip in 1978, however, had not gone unnoticed in Pakistan, and the fact these expeditions were led by army personnel only served to fuel anxiety. According to the noted Pakistani archeologist and historian Ahmed Hasan Dani: "Indian troops intruded into Saltoro Valley, Goma and Chunlung Glaciers in May-June 1981."¹⁷ On March 29, 1982, Pakistan registered its protest with India.

Another protest was made by Pakistan's Northern Sector commander on August 21, 1983, and was particularly disturbing, Chibber writes, because the Pakistanis "for the first time...formally projected in black and white their claim to all the area northwest of the line joining the terminal point of the Line of Control at NJ9842 with the Karakoram Pass." Language in a subsequent protest on August 29, 1983, referred to the "LC [Line of Control] NORTH OF POINT NJ. 980420—KARAKORAM PASS," with the Pakistanis asserting that the Siachen Glacier was "INSIDE OUR TERRITORY" (capital letters from the official cable cited by Chibber; italics added).

In September-October 1983, Indian intelligence detected a column of Pakistani troops moving toward the Saltoro ridge, presumably with the intention of occupying the passes. The Saltoro range—an off-shoot of the Karakoram range—is topped by a high ridge punctuated by several passes which offer the only viable route to the Siachen Glacier from POK. Inclement weather, however, prevented the Pakistani troops from reaching their destination that season.

Pakistani writer Zulfikar Ali Khan, describes what happened next: "Pakistan decided to establish a permanent picket at Siachen. To *preempt* this move, the Indians airlifted a Kumaon battalion by helicopters" (italics added).¹⁸ On April 13, 1984, at least

14. Chibber, "Siachen," 91-92.

15. These areas are referred to in Pakistan as Azad (Free) Kashmir and the Northern Areas.

16. Schwartzberg distinguished two sectors of the line, 'AB' of which he wrote, "Cease-fire line as of January 1, 1949; delimited on July 27, and demarcated by October 1949," and 'BC' of which he wrote, "Undelimited extension of cease-fire line as shown on many maps." Map (h), plate IX.C.2, Joseph E. Schwartzberg, ed. *A Historical Atlas of South Asia* (Chicago, University of Chicago Press, 1978).

17. Ahmed Hasan Dani, *The Muslim*, September 16, 1988.

two months before the beginning of the regular mountaineering season in the area, a platoon each was placed at the Sia La and Bilafond La (two key passes along the Saltoro ridge, see Figure I).

As a result, an extremely costly, futile, and wholly avoidable conflict had begun in the world's principal mid-latitude mountain glaciation. It could have been averted had Indian and Pakistani leaders acted in 1983 to freeze the status quo as it then existed. The establishment of a permanent picket in the area—contemplated by Pakistan, on the one hand, and accomplished by India, on the other hand, constitutes a breach of the Simla Agreement. No LOC was violated, to be sure, but both sides had sought to “unilaterally alter the situation” in respect to one of “the problems between the two countries.” In the tense atmosphere of late 1983, a political decision at the highest level of leadership in both countries was needed in order to divert the course of events from the use of force and toward a diplomatic solution.

Any number of confidence-building measures could have been considered to stave off an imminent military confrontation. Confidence-building measures, however, imply the existence of a willingness, if not to compromise, at least to forswear the use of force in a given context. But confidence has always been in short supply in Indo-Pakistani relations.

Few now attempt to justify the 1983–84 decision on the grounds that the region is of strategic value. The logic of the decision was preemptive; its military, diplomatic, and human consequences have been considerable.

A minority view, however, does argue for the area's strategic significance. To Major General P.M. Pasricha, former deputy director of the Institute for Defense Studies and Analyses in New Delhi, “Geo-militarily, the most significant feature of the Siachen Glacier is that it adjoins the 4,500 square kilometers of Kashmir ceded by Pakistan to China unauthorizably in 1963.” Was the objective of the Indian military effort to nullify the Sino-Pakistani boundary pact by forcibly edging Pakistan out of territory contiguous with Xinjiang? Pasricha also raises another concern: the possibility for a military threat to Ladakh. “The northern approach from the Siachen Glacier to its snout and thence along the Nubra Valley towards Leh is one aspect of it.”¹⁹ Lieutenant General P.N. Hoon (ret.) led the 1984 Indian operation as corps commander and, as director general of military operations in 1986, attended the first two rounds of talks on Siachen. Hoon argues that without control of Siachen and the Saltoro ridge, “Pakistan would have soon been able to threaten the Nubra Valley and even Leh.”²⁰

Notwithstanding these arguments, most observers, including some prominent Indian security specialists, disagree, and discount the glacier's military value. Wirsing opines: “The glacier itself...has no obvious military value.”²¹ Captain S.S. Ahlawat

18. Zulfikar Ali Khan, “Geopolitics of the Siachen Glacier,” *Asian Defense Journal* (November 1985).

19. P.M. Pasricha, *Strategic Analysis* (December 1985): 855 and 858.

20. P.N. Hoon, *Indian Express*, November 14, 1992.

21. Wirsing, *Strategic Studies* (Autumn 1988): 38.

poured cold water on India's fears of threat to Ladakh and Pakistan's fears of threat to the Sino-Pakistani Karakoram Highway west of the glacier. "These widely believed perceptions are far from the truth.... Siachen represents a glaring example of political expediency in sacrifice of human lives." The region "has no significance for the security of either country." He counseled "a political solution for immediate de-escalation."²²

An equally strong reaction came from Lieutenant General P.N. Kathpalia, former Director General, Military Intelligence, whose explanation of the troop presence in Siachen dismissed strategic considerations. "When you start putting troops [in the area], the other side also does the same and now even if you want to you can't pull out.... a soldier always overassesses.... If you know this character of the army, it is for the civilian government to make a correct judgment and put the actions right."²³

Indian correspondent Arun Chacko wrote in 1989 that, strategically, Siachen was of "little importance." He noted: "Contrary to initial Indian wisdom, the Pakistanis cannot get into Ladakh along the Siachen Glacier route, and neither can the Chinese. Nowhere has a road been built on a glacier." Moreover, Chacko pointed out that, "according to several senior Indian army officials in key positions during the period, the Indians were to blame for upping the ante; the Pakistanis only reacted when Indian troops were put there. In reality, the Indians created an emergency when there wasn't any."²⁴

Arguing from another Indian viewpoint, Pravin Sawhney, the defense correspondent for a leading Indian daily, commented in 1992 that the 1984 deployment was "a panic reaction" to Pakistan's moves. He questioned why the Pakistanis would have bothered crossing the Saltoro ridge and the Siachen Glacier to approach Leh when they could easily have used the Shyok and Indus River approaches. It is interesting to note the disclosure made in Sawhney's article. The Indian and Pakistani representatives asked to draw the LOC in 1972 "had never visited NJ9842 and had defined it only from the map." Rather, "It was in 1985 that an Indian survey team identified NJ9842 with an approach from Urdolep Glacier."²⁵

Ahmed Hasan Dani has outlined certain Pakistani concerns. According to Dani, India's plan, was "to advance gradually from Nubra into Khapalu and Skardu and thus cut away Baltistan from Northern Areas of Pakistan"; another objective was "to cut off Pakistan from direct link with China."²⁶ The same issue was raised by a respected Pakistani journalist Ghanie Eirabie: "India has sought to block three Pakistan-China passes; one northeast of the glacier, the Karakoram Pass, and the other two to the northwest, the Indira Col and Turkestan La. That leaves only the Khunjerab Pass to Pakistan."²⁷ This statement, however, is not quite accurate insofar as there are (as Dani

22. S.S. Ahlawat, *Indian Defense Review* (July 1988).

23. *Sunday Observer*, November 13, 1988.

24. Arun Chacko, *Indian Express*, July 2, 1989.

25. Pravin Sawhney, *Indian Express*, August 25, 1992.

26. Dani, *The Muslim*, September 16, 1988.

27. Ghanie Eirabie, *The Muslim*, September 6, 1988.

pointed out) other common passes from Kilik and Mintaka to Saltoro, including the Khunjerab and Shimshal Passes. (See Figure I.)

The record shows that the fears of both Eirabie and Dani were exaggerated. India's venture into the area was inspired by distrust of Pakistan's intentions, not by any malevolent or deliberate desire to achieve the objectives alluded to by these individuals. That the success of India's operation took the Indian military presence as far as it eventually did is another matter.

Predictably, Pakistan reacted to *Meghdoot* by launching its own Operation *Ababeel* (the swallow) with one platoon each dispatched to the key passes atop the Saltoro ridge, Sia La and Bilafond La. In the spring of 1984 Pakistani forces launched two unsuccessful attacks on the Indian picket at Bilafond La.

In June 1987 Indian troops attacked and captured the Qaid post, which Pakistan had established in the winter of 1986-87, and which dominated the Bilafond La. Pakistan countered the attack with 150 soldiers, preceded by heavy artillery fire, and self-propelled munitions. Benazir Bhutto seized upon the debacle to criticize the Zia regime in Pakistan, and a full report on the incident was published in *The Muslim* under the editor's by-line.²⁸

As of the end of 1993, Indian troops held Indira Col and controlled both Sia La and Bilafond La. Pakistani forces controlled Gyong La overlooking the Nubra River valley, the Indian access route to the Siachen Glacier from Leh. Pakistan also held Conway Saddle (see Figure I) at the junction of the Karakoram and the Saltoro ranges, thus controlling ingress to the Siachen Glacier. The three southern passes under Pakistan's control are barely 20 km. from the road head at Dzingrulma and consequently pose a threat to the Indian supply route. An unstable status quo has persisted.

Estimates of troop strength vary. According to one correspondent, Pakistan deployed two brigades—the 323d Infantry Brigade and much of the 86th Infantry Brigade, whereas India deployed a brigade on what it calls the Actual Ground Position Line (the frontline of Indian forces along the Saltoro ridge).²⁹ Another correspondent reported that Pakistan had brigade-strength garrisons at Dansam, Khapalu, Siari, Skardu, with the corps head quarters (Force Command Northern Area) at Gilgit.³⁰

Defense Secretary and Foreign Secretary Talks

When Prime Minister Rajiv Gandhi of India and President Zia ul-Haq of Pakistan met in New Delhi in December 1985, they agreed to hold talks on the Siachen dispute at the level of defense secretaries. By early 1993 six such rounds of talks had taken place.³¹ At the fifth round in June 1989, a breakthrough was achieved. The joint

28. Maleeha Lodhi, *The Muslim*, October 22, 1987.

29. *The Hindustan Times*, August 23, 1992.

30. *Indian Express*, August 26, 1992.

31. January 10-12, 1986; June 11-13, 1986; May 18-20, 1988; September 22-24, 1988; June 15-17, 1989; and November 2-6, 1992.

statement issued at Islamabad on June 17, 1989 recorded some kind of "agreement." According to the statement, "There was *agreement* by both sides to work towards comprehensive settlement, *based on redeployment of forces* to reduce the chances of conflict, avoidance of the use of force and the determination of future positions on the ground so as to conform with the Simla Agreement and to ensure durable peace in the Siachen area. The Army authorities of both sides will determine these positions" (italics added). The existence of the agreement was denied by India the very next day.³²

In order to appreciate the controversy that ensued—which is crucial to the settlement of the dispute—it is necessary to analyze the terms of settlement proposed by each side since the dispute arose. Broadly, India tried to freeze the situation brought about by Operation *Meghdoot*. As early as March 5, 1985, General A.S. Vaidya, chief of army staff, said that India was ready for proper demarcation of the Siachen Glacier zone, which had escaped "strict" demarcation, and that it was awaiting Pakistan's response to the offer.³³ Chibber, however, revealed on June 3, 1985, that during a flag meeting at Kargil in February 1985 between sector commanders of both sides, Pakistan had asked India to leave. "Since the Indian army has been occupying the glacier for the last so many years it could not agree to what the Pak authorities are demanding."³⁴

Pakistan, for its part, sought withdrawal of troops by both sides. Three rounds of talks (at the level of field commanders) had failed to yield result, the Parliamentary Secretary of Defense, Lt. Col. W. Herbert, told the National Assembly on August 17, 1985. According to Herbert, India insisted that the present positions be regarded as the LOC, whereas Pakistan sought India's withdrawal from the territory—which, he added, was neither theirs nor Pakistan's.³⁵ President Zia ul-Haq explained his stand in detail in an interview to an Indian journal: "Let us go back to the de facto [sic] position. What was before you occupied, you go back and we will go back. Let us sit at a table and we will talk." He claimed, "We have earmarked every inch right up to the Karakoram Pass."³⁶

The record belies claims to control by both sides. To begin with, Chibber was manifestly wrong in asserting Indian occupation of the glacier "for the last so many years." The first Indian expedition to Siachen, as noted earlier, was led by Colonel Kumar, when he ascended Teram Kangri on October 13, 1978, the second was by Brigadier Thadani to Apsaras, approximately two years later, on September 18, 1980. Kumar's expedition as far west as Indira Col and Turkestan La in 1981 and his ascent of Sia Kangri refute Zia's prior claim to the territory. Further, Zia made a good point when he said: "If there was a dispute, then as a good neighbor India should have come

32. Richard M. Weintraub, "Pakistan and India Take Steps to Defuse Long Confrontation Over Siachen Glacier," *Washington Post*, June 20, 1989.

33. *Indian Express*, March 6, 1985.

34. *The Hindustan Times*, June 4, 1985.

35. *The Muslim*, August 18, 1985.

36. *The Week*, October 20, 1985.

to us and said 'Look, something is wrong here, just demarcate this boundary.'" Yet, Zia undertook no such initiative himself.

Clearly, confidence between the two countries and their leaders was sparse. But the absence of a *permanent military* presence by *either* before April 13, 1984, is an incontestable fact. India might have asked for demarcation of the line and demanded maintenance of the status quo as of 1983, with a clear hint that any effort by Pakistan to acquire such a presence in the interim would invite military response. Instead, it chose a different course.

The first round of defense secretaries' talks in January 1986 was spent in sparring. Each side accused the other of violating the Simla pact. Furthermore, Pakistan cited the statements of Indian Prime Minister Jawaharlal Nehru of India and India's protests in 1962–63 over Sino-Pakistani negotiations, which resulted in the boundary agreement of 1963 (described further in note 1 of this paper)—and from these attempted to infer the Indian recognition of Pakistan's possession of areas to the west of the Karakoram Pass. Specifically, Pakistan cited India's protest note of May 10, 1962, which referred to "that portion of the boundary between India and China west of the Karakoram Pass *which is presently under Pakistan's unlawful occupation*" (italics added), and Nehru's statement in parliament on March 5, 1963 which said that "Pakistan's line of actual control...reached the Karakoram Pass."³⁷ India rejoined that these statements were made on the basis of Pakistan's claims and did not express India's acceptance of those claims.

The second round of talks in June 1986 saw a repeat of familiar assertions. India hinted at a cease-fire in all but name and proposed accord on non-escalation of the situation. Pakistan rejected anything approximating a cease-fire.³⁸

In September 1988, India pressed for a cease-fire and for demarcation of LOC in places where the troops of both sides confronted each other; the rest of the demarcation could be postponed. Pakistan's rejection of the proposal prompted another Indian offer: a cease-fire and partial withdrawal of troops, with a token military presence left by each side in existing positions. Pakistan rejected the offer. In its view this put a seal of approval on the Indian presence in Siachen. Nor would Pakistan accept an accord on mutual restraint, lest it be misconstrued as a cease-fire. The Pakistanis were prepared, though, to make concession to Indian concerns about its domestic constraints by introducing the concept of "redeployment" under an agreed schedule and with a view to the eventual total withdrawal of forces.

On February 8, 1989, Prime Minister Benazir Bhutto declared: "We expect India to withdraw its forces to pre-Simla positions." Her assumption of power in late 1988 as the first democratically elected head of government since 1971 had vastly improved the climate on the subcontinent.

37. India, Ministry of External Affairs, *Sino-Pakistani Agreement*, 1963, pamphlet, 33.

38. Accounts in this paper of the talks from 1986–1992 are based on interviews with diplomats and journalists—Indian, Pakistani, and others.

The two sides' "initial positions" in the fifth round in June 1989 was revealed to Robert G. Wirsing later, on June 12, 1990, by the Indian army headquarters in New Delhi and subsequently by members of the Pakistani delegation.

The Indian terms were:

1. Cessation of "cartographic aggression" by Pakistan (that is, of its unilateral attempts in recent years to extend the LOC from its agreed terminus at map reference point NJ9842 to the Karakoram Pass of the border with China);
2. Establishment of a demilitarized zone (DMZ) at the Siachen Glacier;
3. Exchange between India and Pakistan of authenticated maps showing present military dispositions on the ground;
4. Delimitation by India and Pakistan of a line from map reference point NJ9842 northward to the border with China "based on ground realities;"
5. Formulation of ground rules to govern future military operations in the area, and, definitely "the last step" to be taken;
6. Redeployment of Indian and Pakistani forces to mutually agreed positions.

Pakistan's formal terms by the opening of the fifth round of talks, in contrast, were fewer in number. As identified for the author by members of the Pakistani delegation to the fifth round, they contained only two essential points:

1. Deployment of Indian and Pakistani forces to mutually agreed positions held at the time the cease-fire was declared in 1971 (i.e. pre-Simla positions); and only then—
2. Delimitation of an extension of the LOC beyond map reference point NJ9842.³⁹

Against this background, the use of the word "agreement" in the joint statement at the end of the fifth round, on June 17, 1989, was highly significant. This was in striking contrast with all previous joint statements. The next day separate talks between the

39. Robert G. Wirsing, "The Siachen Glacier Dispute: Can Diplomacy Untangle It?" *Indian Defense Review* (July 1991): 99.

foreign secretaries of the two countries concluded. At a joint press conference Foreign Secretary Humayun Khan of Pakistan, referring to the defense secretaries' meeting, called it "a significant advance" and spoke of a joint commitment to relocate "forces to positions occupied at the time of the Simla Agreement." He went on to say: "The exact location of these positions will be worked out in detail by military authorities of the two countries." Foreign Secretary, S.K. Singh of India said: "I would like to thank the Foreign Secretary, Dr. Humayun Khan, and endorse everything he has said."⁴⁰

The next morning the press was summoned by Aftab Seth, the joint secretary and official spokesman of the Ministry of External Affairs in New Delhi, to be told that *no* agreement had been reached on troop withdrawals. "There was no indication of any such agreement in the joint press statement issued at the end of the talks."⁴¹

Bhutto's view of the reasons for India's veto was confirmed three years later by a journalist who was close to Rajiv Gandhi and who was also a member of his Congress Party: "S.K. Singh had his knuckles rapped sharply on his return to Delhi because it was felt that photographs of Indian troops withdrawing from Siachen would not look too good for the government in an election year."⁴² At the time, on July 2, 1989, Pakistan's minister of state for defense, Ghulam Sarwar Cheema, urged the press not to speculate, saying that a Siachen agreement would be signed when Rajiv Gandhi visited Pakistan. However, the Indian prime minister's visit to Islamabad on July 16-17, 1989—the first bilateral visit by an Indian prime minister since 1960—yielded no result on this issue.

Nor was there any progress at the two meetings of military representatives on July 11-13 and on August 17-18, 1989. According to a member of the Pakistani team, India both insisted on Pakistan's withdrawal from all military positions in the vicinity of the glacier that it had taken since 1972, including those at Conway Saddle, and suggested that Indian forces redeploy only so far as Dzingrulma near the glacier's snout, in addition to there being a "civilian" camp at this center.⁴³ The report was confirmed in 1992 by a prominent Indian defense correspondent.⁴⁴

The sixth round was held three years later, in New Delhi, on November 2-6, 1992. In Islamabad's view the task was simply one of implementing the agreement of June 1989. It should not take "more than a day" for the two teams to work out the details, Foreign Secretary Shaharyar Khan said at New Delhi when the sixth round was announced in August 1992. As he put it: "Some elements in the disengagement require detailed wrapping up. Some loose ends need to be tied." For instance, how far the troops would be pulled back and where the observation posts would be located to monitor the demilitarized zone to ensure that neither side rushed back in. "We are talking of civilian

40. *The Statesman*, June 22, 1989; *The Muslim*, June 1989. (Humayun Khan was quoted on *The Voice of America*, and the BBC and *Deutsche Welle* reported the same thing.)

41. *The Telegraph*, June 20, 1993. See also Wirsing, "The Siachen Glacier Dispute," 99.

42. M.J. Akbar, *The Telegraph*, August 20, 1992.

43. Wirsing, "The Siachen Glacier Dispute," 102.

44. Pravin Sawhney, *Indian Express*, August 25, 1992.

observation posts, not military observation posts." The defense secretaries were to be assisted by military officers, he added.⁴⁵

In response, India promptly denied the existence of any agreement to withdraw troops from the glacier. Evidently, the new Indian policy was not to implement the "agreement" of 1989. Instead, the Indians hoped to have the foreign secretaries meet in order "to carry forward the process of discussions on the Siachen Glacier which had remained suspended since June 1989."⁴⁶ On the day the talks were due to begin, the Indian press reported, based on an official briefing, that India was unlikely to pull back its troops from the Siachen Glacier area "in view of Pakistan's 'proxy war' in the Kashmir Valley and Punjab," and that "any breakthrough is unlikely."⁴⁷

India's proposal at this round of talks suggested the following: (1) the demarcation of the LOC in the area as a matter of priority; (2) redeployment of troops on both sides to agreed positions, but only after the recording of existing positions; (3) definition of a Zone of Disengagement (ZOD) that would come into being in consequence of the redeployment; and (4) undertakings by both sides not to reoccupy vacated positions, occupy new positions "across the alignment determined by the vacated positions," or undertake any military or mountaineering activity in the zone.

The ZOD and the alignment of existing positions suggested a hardening of India's position since the 1989 agreement. Monitoring would have been along the existing positions. The ZOD itself was defined to accord with the existing Actual Ground Position Line.

Pakistan's riposte was to propose a triangle whose points were Indira Col in the west and the Karakoram Pass in the east, with both joined to NJ9842. Troops of both countries would be withdrawn from the area within this triangle. The status quo would be maintained pending demarcation of the LOC by a joint commission.

Both proposals were ostensibly nonstarters. Vexed by the Indian proposal, Pakistan made one that India could not possibly have accepted. Confronted with deadlock, Pakistan sought to revive the 1989 agreement by formally making a simple proposal, including a major—and unpublicized—concession to India: Existing positions would be recorded, albeit in an annex and on the understanding that it would not constitute a basis for a claim to the area legally, morally, or politically. The annex would also mention the points to which the troops were to "redeploy" (read: retreat). Demarcation of the LOC would follow thereafter. India did not respond to the proposal, and the talks ended.

Nevertheless, interestingly, the blanks in the 1989 agreement had been filled in. After that accord the parties were to discuss two major topics: the positions to which the troops were to withdraw and the mode of surveillance (whether by posts, joint patrolling, or other means). During the technical talks in November 1992, it was agreed that:

45. *Pioneer*, August 22, 1992.

46. *The Hindustan Times*, August 25, 1992.

47. *The Hindustan Times*, November 2, 1992.

(1) India would withdraw to Dzingrulma and Pakistan would withdraw to Goma, at the base of the Bilafond Glacier, and (2) surveillance was to be accomplished by helicopter.

Each side gave its version to the public after the talks ended. On November 6, a spokesman of the Indian Ministry of External Affairs acknowledged that "there was a certain progress made in terms of technical details of the disengagement." He claimed that the 1989 talks had floundered on this point but that this was not the case this time.⁴⁸ Soon thereafter reports appeared in the press that India's concessions would not go beyond "minor adjustments" on the Saltoro ridge.⁴⁹ On November 11, Pakistan confirmed progress on the positions to which the forces would withdraw.⁵⁰ It also alleged that India had imposed "certain preconditions."

Solving the Siachen Dispute

The solution to the tangle of the Siachen dispute lies in a return to the 1989 agreement. There is no longer any disagreement on the mode of monitoring or on the positions to which forces would withdraw. Indian fears arising from the closer proximity to POK of the salient points in the Saltoro ridge as well as the Siachen Glacier itself suggest simply the need to firm up the monitoring arrangements.⁵¹

With respect to such arrangements, there is no role for the United Nations Military Observer Group in India and Pakistan (UNMOGIP)⁵² emplaced to monitor observance of the 1949 agreement, defining the cease-fire line.⁵³ There are now approximately forty observers, mostly in POK.⁵⁴ Those in India are not allowed to monitor the LOC, although they are permitted to cross it to reach POK. Siachen, UN observer sources said on June 15, 1985, was outside their operational area. A team of three UN observers was barred by India from going to the glaciers, according to an Agence France Press report on October 6, 1987.

48. *The Hindustan Times*, November 7, 1992.

49. *Indian Express*, November 8, 1992; *Sunday Mail*, November 15, 1992.

50. *The Times of India*, November 12, 1992.

51. Opinion seemed to be shifting in this direction in late 1993 and early 1994. For example, in November, 1993, Vinod Sharma wrote in *The Hindustan Times* that, "India and Pakistan were very close to an agreement in 1989. It seems perfectly sensible that they now take that off the shelf, dust it off, and look at it again." *The Hindustan Times*, "Pakistan Almost Off the Hook Again," November 10, 1993.

52. Rosalyn Higgins, *United Nations Peacekeeping 1946-1967* vol. 2 (Asia) (London: Oxford University Press, 1970). See also, Karl Th. Birgisson, "UNMOGIP," in *The Evolution of UN Peacekeeping*, ed. William J. Durch (New York: St. Martin's Press, 1993), Chp. 16.

53. A nucleus of the UNMOGIP existed before the July 27, 1949, cease-fire agreement, having arrived in Kashmir on January 24, 1949. Approximately two years after the UNMOGIP was emplaced, the United Nations (UN) Security Council passed Resolution S/2017 on March 30, 1951, which authorized the Military Observer Group to continue supervising the cease-fire in the state. On May 17, 1972, however, Foreign Minister Swaran Singh of India said that a new cease-fire had come into force as of December 17, 1971 and there was "no subsisting agreement" for the UNMOGIP. (Government of India, Press Information Bureau, May 17, 1972.)

54. Unofficial United Nations documents estimated 1993 UNMOGIP troop strength to be 38 or 39 observers. See, Barry M. Blechman, and J. Matthew Vaccaro, *Training for Peacekeeping: The United Nations' Role* (Washington, D.C.: The Henry L. Stimson Center, forthcoming), Appendix C.

Apart from operational impediments, India's stress on bilateralism rules out any role for the UNMOGIP, and without Indian consent, the UNMOGIP cannot function. It should be noted, however, that in extreme situations India has sought or accepted foreign diplomatic assistance, as demonstrated in early 1990, when "India invited US observers to monitor troop and equipment deployments (related to Indian exercises) as an assurance of non-hostile intent."⁵⁵ Thus it is conceivable that India might find acceptable an alternative type of monitoring arrangement, such as that contained in the Open Skies Treaty.

The 1992 Open Skies Treaty, signed by more than 25 countries, provides for cooperative aerial overflight procedures that can be useful in confidence-building and crisis management. Such procedures, for example, might be emulated to advantage in a defined zone, such as the Siachen area. It was reported that Indian delegates to the 1992 talks argued that "given the weather in the Siachen area, it would be easy to predict when a helicopter patrol would take place, and any troops on the ground could then conceal themselves."⁵⁶

A leading Indian defense analyst, K. Subrahmanyam, referred to the fact that the advocacy by former US Ambassador John Hawes regarding cooperative aerial overflights between India and Pakistan had won few advocates, yet Subrahmanyam nevertheless urged India to propose such a treaty to Pakistan and China. That would be a sound diplomatic initiative to take. The advantages of having "open skies" over a precisely defined area on the glacier region are obvious.⁵⁷

To conclude, the only issue that divides India and Pakistan in the main, with respect to the Siachen dispute, relates to the implementation of the agreement of June 1989. India and Pakistan should undertake a full withdrawal of troops of both sides to the agreed points, in the spirit of the Simla Agreement of 1972, *without* any attempt to legitimize post-1972 military advances by either side, whether by recording the existing Actual Ground Position Line as the sole area of inspection or otherwise. Agreement on "open skies" in the Siachen Glacier region would help enormously generating the mutual trust needed to put this issue to rest.

55. Michael Krepon et al., eds., *A Handbook of Confidence-Building Measures for Regional Security* (Washington, D.C.: The Henry L. Stimson Center, 1993), 47.

56. Joydeep Gupta, *Sunday Mail*, November 15, 1992.

57. K. Subrahmanyam, review of *Open Skies, Arms Control, and Cooperative Security*, ed. by Michael Krepon and Amy E. Smithson, *Book Review* (July 1993).

The Wular Barrage

India and Pakistan disagree even on the name of the dispute generally referred to here as the Wular barrage dispute. To India, it is the Tulbul Navigation Project; Pakistan calls it the Wular barrage. At issue is a barrage that is to be constructed by the government of the Indian state of Jammu and Kashmir on the Jhelum River just below Wular Lake. The rationale behind the project is as follows: From late October to mid-February the flow in the Jhelum is about 2,000 cusecs, perhaps less; the water is 2.5 ft. deep. A depth of four ft. with a flow of 4,000 cusecs is necessary for navigability. During these lean months, the obvious remedy is to control and regulate the depletion from Wular Lake so as to provide the requisite flow in the Jhelum.

The barrage is located just below Wular Lake, at its mouth, in the town of Ningli near Sopore. (See Figure III). This is 40 km. north of Srinagar. The object of the barrage is to solve the problem of navigation over a distance of approximately 20 km. between Wular Lake and Baramula allowing easier movement between Sopore and Baramula.

The lake, at its highest level has a natural water storage capacity of about 300,000 acre ft. The Tulbul Navigation Project is not intended to add storage capacity as such but to regulate water depletion in order to ensure year-round navigability on the Jhelum. The project would attempt to accomplish this by constructing a barrage about 440 ft. long, with a navigation lock, on the Jhelum at the mouth of Wular Lake.

Pakistan objects, arguing that this is a work not of navigation control but of storage, in breach of the 1960 Indus Waters Treaty, which assigns the Jhelum River waters to Pakistan. The Indus Waters Treaty divided between the two countries the six great rivers of Punjab: the eastern rivers including the Beas, the Ravi, and the Sutlej; and the western rivers including the Chenab, the Indus, and the Jhelum. All the waters of the three eastern rivers are for the unrestricted use of India. Pakistan received for unrestricted use all the waters of the three western rivers, and India is under treaty obligation to let them flow into Pakistan without any "interference."⁵⁸

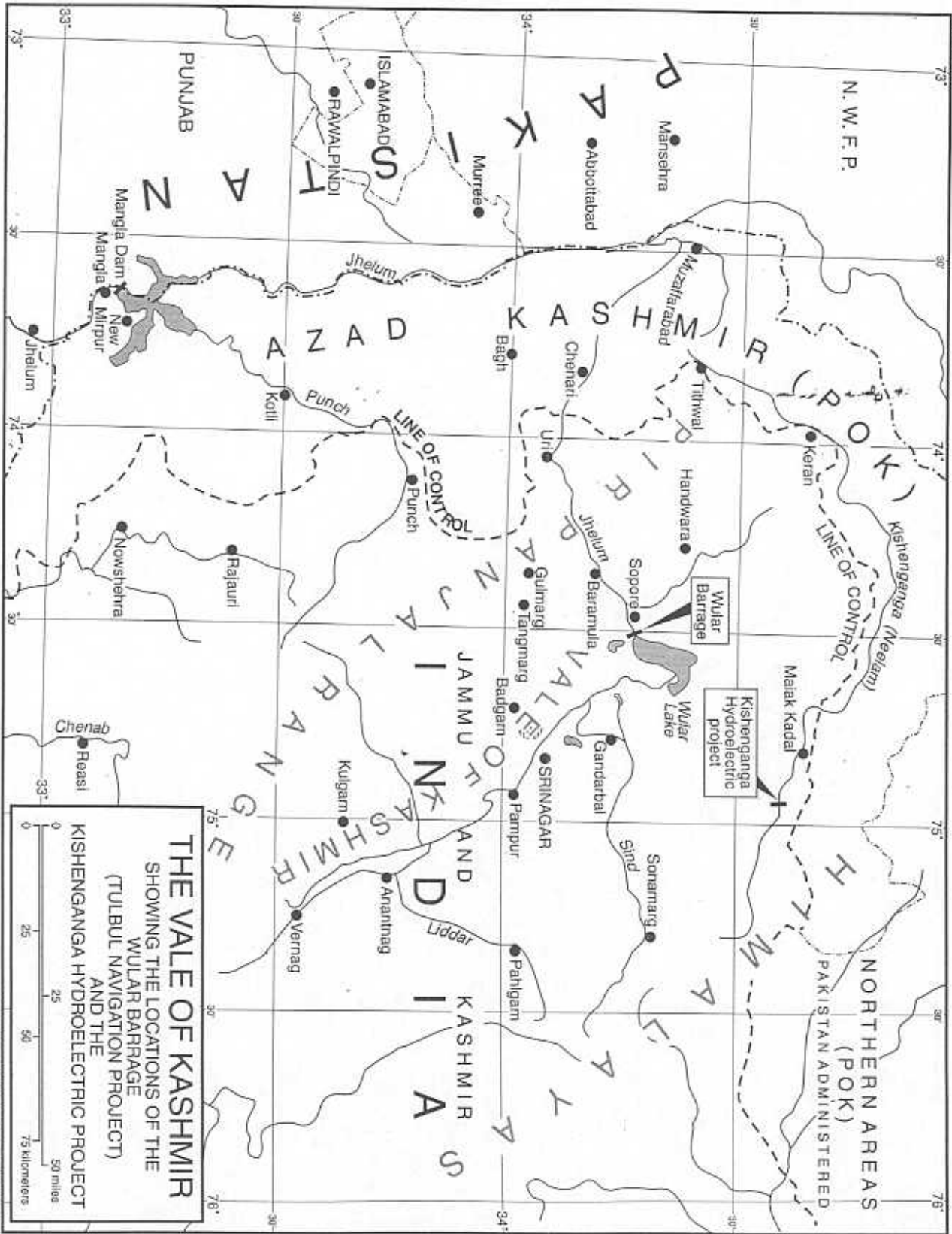
This basic division is qualified with precise exceptions. India is allowed four distinct kinds of uses of the western rivers: domestic use (drinking, washing, and so on), agricultural use for irrigation; a restricted use for generation of hydroelectric power through a "run-of-river" plant; and what is called "nonconsumptive use." The nonconsumptive use is key to the present dispute.⁵⁹

The treaty defines nonconsumptive use to mean "any control or use of water for navigation" and other specified purposes; provided, however, that "the water (undiminished in volume within the practical range of measurement) remains in, or is returned to, the same river."⁶⁰ This is the dominant concern written all over the treaty. The

58. Aloys Arthur Michel, *The Indus River: A Study of the Effect of Partition* (New Haven, Conn.: Yale University Press, 1967); Niranjan D. Gulhati, *Indus Waters Treaty* (New Delhi: Allied Publishers, 1973).

59. The Indus Waters Treaty, 1960, Article III (1).

Figure III



THE VALE OF KASHMIR
 SHOWING THE LOCATIONS OF THE
 WULAR BARRAGE
 (TULBUL NAVIGATION PROJECT)
 AND THE
 KISHENGANGA HYDROELECTRIC PROJECT

expression "interference with the waters" is also defined to mean any act of withdrawal therefrom or "any man-made obstruction to their flow which causes a change in the volume...of the daily flow of waters" unless it is of an insignificant degree.⁶¹

According to Article IV (2):

Each party agrees that any Non-consumptive Use made by it shall be so made as not to materially change, on account of such use, the flow in any channel to the prejudice of the uses on that channel by the other party under the provisions of this Treaty. In executing any scheme of flood protection or flood control each party shall avoid, as far as practicable, any material damage to the other party, and any such scheme carried out by India on the Western Rivers shall not involve any use of water or any storage in addition to that provided under Article III.

India's permitted nonconsumptive use of the western rivers includes the Jhelum and its "connecting lake," Wular. The central issue of the present dispute arises from the treaty's forbidding India, except within certain defined limits, to "store any water of, or construct any storage works on, the Western Rivers."⁶² Thus, the controversy: Is the Wular barrage essentially a project for the "control or use of water for navigation," or is it a "storage work"?

There are two exceptions to the ban on India's storing waters of the western rivers. One concerns certain hydroelectric projects. The other, which is pertinent to the dispute, is a limited permission for India to store waters of the western rivers as spelled out in Annex E of the treaty. India is allowed "any natural storage in a connecting Lake," such as Wular, but this must be "storage not resulting from any man-made works." India may construct on the Jhelum works for flood control of the river. Storage incidental to a barrage on the Jhelum must not exceed 10,000 acre ft. Storage work is defined as a work constructed "for the purpose of impounding the waters of a stream."

This narrows the issue still further. Is it the "purpose" of the Wular barrage to "impound," that is, collect or confine, the waters of the Jhelum or to "control" them for navigation? Since the waters will, indeed, be confined for some time in order to raise the level of the lake, there is some storage, albeit temporary. But how far does the treaty permit control of the waters for navigation? Can such control be exercised without some element of storage as defined in the treaty?

The treaty lays down three procedures for resolving disputes. First, it establishes a Permanent Indus Commission consisting of two commissioners for the Indus waters appointed from each country. Questions of "interpretation or application" of the treaty are to be submitted to the commission, which serves as a regular channel of communi-

60. *Ibid.*, Article I (11).

61. *Ibid.*, Article I (15).

62. *Ibid.*, Article III (4).

cation on all matters relating to the treaty's implementation. If the commissioners do not reach agreement, the dispute is then to be referred to a neutral expert for resolution, at the request of either side, if it concerns any of the twenty-odd questions that fall within the expert's jurisdiction; otherwise, either side may request that the matter be referred to a seven-member court of arbitration.

The dispute between India and Pakistan falls neatly within the scope of the neutral expert's competence: "Whether or not any use of water or storage in addition to that provided in Article III is involved in any of the schemes referred to in Article IV (2) or in Article IV (3)(b) and carried on by India on the Western Rivers" (Question 3). The treaty, however, enables either government to take up any particular issue directly with the other government, leaving the commission high and dry. In its zeal to settle the matter directly, India did precisely that in 1987 thereby disabling its commissioner from referring the problem to the neutral expert and leaving open only two alternatives for resolving the dispute—an accord or an expensive, time-consuming reference to a court of arbitration.

With respect to an accord on this matter, there is indeed a basis for compromise. India has provided two assurances, *both of which are substantially capable of objective verification*. The volume of water that flows into the Jhelum as it enters Pakistan would not be diminished, and there would no material change in the flow in any channel, to the prejudice of the uses by Pakistan of any such channel. These precautions observed, the project would be in the interests of Pakistan as well. Pakistan's argument on storage proper may be conceded. But if fully assured that there will be no diminution in the flow of the Jhelum, and if full appropriate safeguards are established, Pakistan must concede "control" over the Jhelum waters to India for navigation. There is ample room for compromise between "storage" and "control" in light of technical studies and on the basis of trust—to the benefit of both countries.

Progress toward such an accord was reported by the Pakistani newspaper *Dawn* on September 22, 1989: "India has agreed to surrender 0.30 million acre [ft.]...of the total general storage capacity at the Jhelum tributaries, allowed to it under the Indus Waters Treaty, if Pakistan gives it the go-ahead for the construction of the Wular dam. The total storage capacity of the dam is equivalent to the storage capacity India is prepared to forgo." It revealed that India had sent a draft agreement comprising twelve articles and that Pakistan had prepared its own six-article draft.

On November 12, 1989, a furor ensued when the *Pakistan Observer* published the full text of Pakistan's draft according consent to India's project on certain terms. The draft was later revised. The basic disagreement was now gone. It was only a matter of stipulations.

On October 16, 1991, India's minister for water resources, V.C. Shukla, claimed that agreement on this dispute was expected shortly. However, *The Nation*, a Lahore daily, reported on March 25, 1992, that Pakistan had rejected the Indian draft given in November 1991. Earlier on February 9, 1992, another daily *The News* published the following report:

The Pakistan Government has decided to arrive at a negotiated settlement on the Wular Project with India, allowing it to build the disputed barrage if India agrees to keep 6.2 m. of the structure as ungated with crest level at EL 1,574.90 m., forgo general storage capacity of 0.30 million acre [ft.]...out of the provision of 75 maf. permitted to it on the Jhelum, and does not construct the Kishenganga (390 mw) hydro-power generating unit, highly placed sources disclosed.

India has agreed to surrender on the first two points but consensus on the Kishenganga project is still to be reached, the sources said, adding: "This is the only disputed issue left for the amicable settlement of the Wular barrage melodrama. Pakistan is of the view that if India constructed Kishenganga Project, it would affect the construction of Pakistan's Neelum-Jhelum power generating project. If we compromise on other points, then India would compromise here, and construction on Neelum-Jhelum, held up due to this dispute, could begin, as it was in Pakistan's interest."

Prime Minister Nawaz Sharif has given the green signal to the Ministry for Water and Power to go ahead for the negotiated settlement of the issue and a high-powered delegation of the ministry would soon be visiting Delhi to reach an agreement acceptable to both the countries, the sources said [italics added].

The Indian Ministry of External Affairs 1992-1993 annual report claims that a meeting of representatives of both countries was held on August 6-9, 1992, and that "all legal and technical aspects were discussed." It indicates that "Pakistan's clearance on the joint draft [worked out in October 1991] is awaited."⁶³

As on Siachen, so on Wular Lake the dispute centers now on the implementation of the basic accord, which, it seems, has already been arrived at. The state government of Jammu and Kashmir will be able to build the barrage on the Jhelum River just below the lake on certain conditions that are designed to assure free flow of the waters into Pakistan. The legal and technical points have been sorted out. The sticking point now is India's Kishenganga hydroelectric power generating project which bears on the Neelum-Jhelum power project that Pakistan has planned with great enthusiasm. The problem here is part technical and part political. Adjustment or trade-off is possible, but the issue arouses strong emotions in Pakistan's Punjab province.

63. India, Ministry of External Affairs, *Annual Report 1992-1993*.

Sir Creek

Sir Creek is a 60-mile-long estuary in the marshes of the Rann of Kutch, which lies on the border between the Indian state of Gujarat and the Pakistani province of Sind (See Figure IV).⁶⁴ In 1965 armed clashes followed Pakistan's claiming that half of the Rann along the 24th parallel was Pakistani territory and India's claiming that the boundary ran roughly along the northern edge of Rann. The matter was referred to arbitration, and the Indo-Pakistan Western Boundary Case Tribunal's Award on February 19, 1968, upheld 90 percent of India's claim to the entire Rann, conceding small sectors to Pakistan.

The dispute today arises from the parties' agreement before the tribunal to limit their dispute only to the boundary in the north. Well to the south lay an agreed boundary that began at the head of Sir Creek and ran a short distance eastward roughly along the 24th parallel. India, however, contended that this line moved up sharply at a right angle to meet the northern boundary of the Rann. Pakistan sought to extend the line further eastward and claim half of the Rann along the 24th parallel. (See Figure IV.)

The sole issue, therefore, was whether the short agreed boundary from the head of Sir Creek went all the way east or rose at a right angle at its western end to reach the northern limit of the Rann. The tribunal accepted India's case that it did turn north and that the entire Rann was Indian. (See Figure IV.)

That the short agreed border from the head of Sir Creek eastward was excluded from the tribunal's consideration was understandable. *Unfortunately, the parties agreed also to exclude the boundary from the head of Sir Creek downward to the west, right up to the mouth of the creek on the Arabian Sea; in short the Indo-Pakistani boundary along Sir Creek.* The Tribunal noted, "In view of the aforesaid agreement, the question concerning the Sir Creek part of the boundary is left out of consideration."

It has now become a bone of contention. According to the 1992-93 Ministry of External Affairs annual report, even the sixth round of talks, on November 2-6, 1992 made no progress on this issue. India asserts that the boundary lies in the middle of the creek. Pakistan claims that the line lies on the creek's eastern bank, the Indian side, and, therefore, that the entire creek is Pakistani. The delineation of the Indo-Pakistani maritime boundary is linked to this determination. Pakistan insists that the boundary in the creek first be delimited in order to establish the point on the land from which a sea boundary may be defined. India's concerns center on the maritime boundary.

Pakistan, in its arguments, refers to the map on which India had relied before the tribunal and which does show the boundary on the eastern bank, on the Kutch side. (See Figure IV).⁶⁵ It is authoritative, and India's earlier reliance on it constitutes an admis-

64. Sir Creek is actually a fluctuating tidal channel, not a true flowing "creek".

65. This map (see Figure IV) which had been annexed to the Resolution of the Government of Bombay dated February 24, 1914, recording a compromise of the dispute between the princely State of Kutch and

sion in law. However, Pakistan itself had contended in a May 19, 1958, note that "this map was intended to be no more than an annexure to the Bombay Government Resolution" of February 24, 1914. Pakistan was right. It is the resolution, not the attached map, that is decisive.⁶⁶

This resolution refers to the Indian government's "sanction" on November 11, 1913 of the Kutch-Sind compromise over Kori Creek, which the government of Bombay had spelled out in its letter of September 20, 1913. This letter refers to the line on the accompanying map "from the mouth of the Sir Creek to the top of the Sir Creek," which ran on the Kutch side. However, it also contained a proviso by the commissioner in Sind, the predecessor in interest of Pakistan, that supports India's stand. It reads thus: "He observed, however, that the Sir Creek changes its course from time to time and the western boundary of the area, which it is proposed to surrender to the Rao [of Kutch], should therefore be described as 'the center of the navigable channel of the Sir Creek.'" On this, the secretary to the Bombay government commented in that very letter: "I am to explain that the term 'navigable' is really inappropriate in the larger sense. The creek is, of course, tidal, and it is only at certain conditions of the tide that the channel is navigable and then only to the country craft as far as the point from which the proposed boundary turns due east from the creek." This is not a rejection of the Sind commissioner's condition but essentially an acceptance of it.

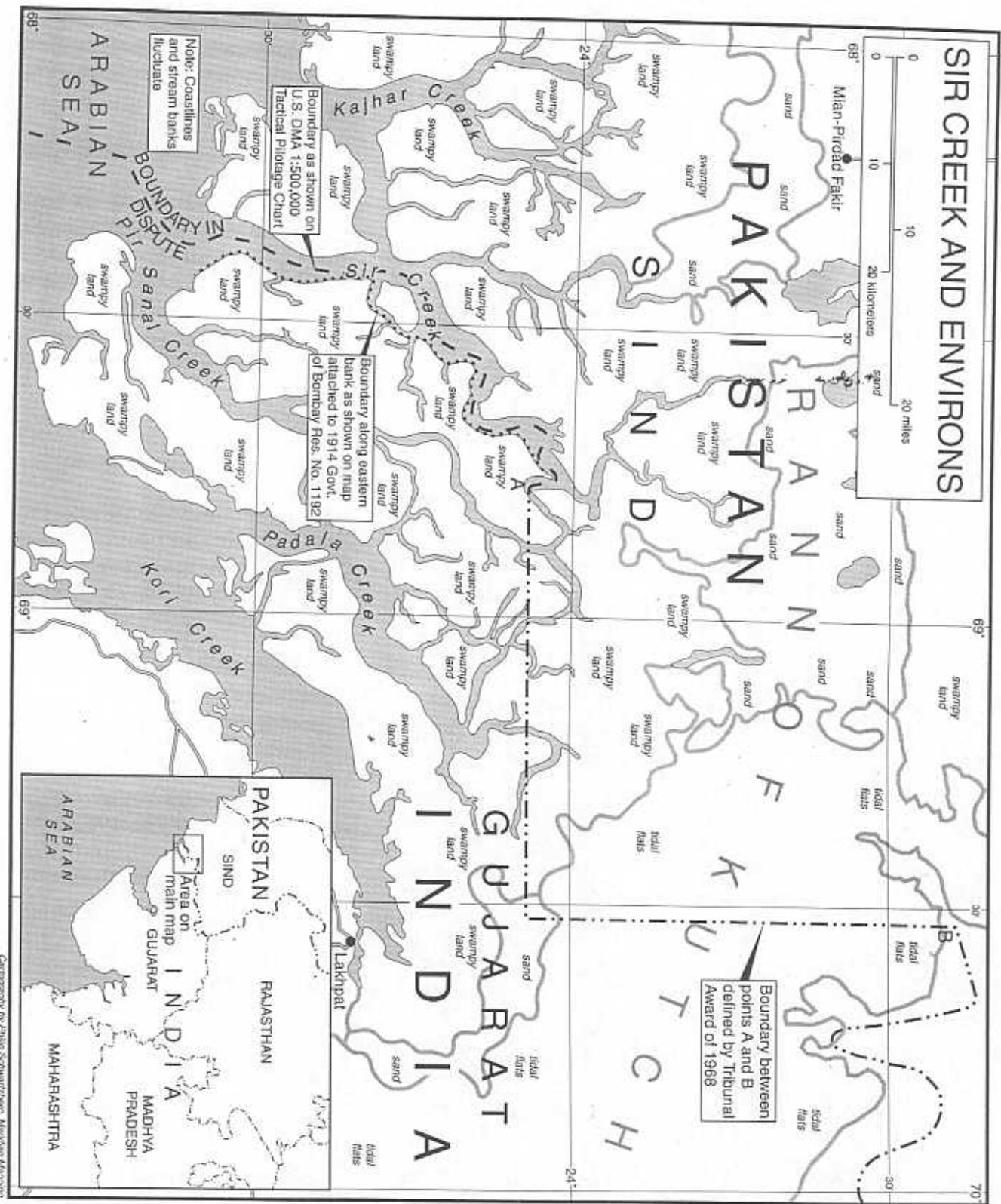
It is not difficult to see that a compromise could be worked out in light of the conditions of navigation today. Such a compromise might be reached by itself or, better still, as part of a wider accord on the maritime boundary. As a confidence-building measure, a resolution to the Sir Creek dispute, would thus have both a technical and a political basis.

International arbitration will be an expensive and lengthy process. A boundary along "the center of the navigable channel" would be in accord with the internationally recognized principle of *thalweg*—the middle of the river channel. The ideal course of action would be to consider this issue while simultaneously negotiating the Indo-Pakistani maritime boundary. Both should be undertaken soon and in a spirit of give-and-take.

Sind, which was then part of the Bombay Presidency. Sind had claimed in 1905 that its boundary lay on Kori Creek, which is well to the south of the Sir Creek. A compromise was arrived at in 1913, approved by the government of India, and recorded in the Resolution of the government of Bombay, to which the map was attached.

66. Indian Society of International Law, *The Kutch-Sind Border* (New Delhi, 1965).

Figure IV



Conclusion

The Siachen, Wular, and Sir Creek issues are all ripe for a settlement. The mechanics are all but agreed. Only a political decision to execute the plans remains to be taken. Decisive leadership now to end these disputes is of the greatest importance. Not only would agreement on these issues have a considerable impact on relations between India and Pakistan, but it would also impart momentum to consideration of other confidence-building measures; most notably, mutual balanced force reductions and reduction of defense budgets in both countries. Finally, resolution of these smaller disputes holds the promise that talks on the larger question of Kashmir could be held in a more relaxed, and more cooperative, atmosphere.

Postscript

Following the talks between the foreign secretaries of India and Pakistan in Islamabad on January 1 and 3, 1994, India sent, as promised, six "non-papers" on confidence-building measures to Pakistan. Three of these dealt with Siachen, Wular, and Sir Creek. On January 26th *The Hindu* reported: "As regards Siachen, India has veered to the view taken by Pakistan towards the end of 1992. There is an element of frankness in New Delhi's explanation that the domestic political environment of that period came in the way of acceptance. In doing so, India may have exposed itself to criticism that decisions on crucial issues were allowed to be influenced by narrow domestic considerations. But could Pakistan now refuse to agree to what it wanted India to accept not very long ago?" This was an allusion to recent Pakistani statements linking Siachen with the Kashmir problem.⁶⁷ The report confirms the view expressed earlier in this paper that a settlement was very much possible in 1992, if not in 1989.

67. K.K. Katyal, "Pak May Not Take Proposal Seriously," *The Hindu*, January 26, 1994.