

**International Court of Justice**  
**Application Instituting Proceedings**

Filed in the registry of the court February 23, 2007

APPLICATION FOR JUDGMENT CONCERNING THE RESOLUTION OF THE  
TERRITORIAL DISPUTE BETWEEN THE REPUBLIC OF INDIA AND THE ISLAMIC  
REPUBLIC OF PAKISTAN

(The Republic of India v. The Islamic Republic of Pakistan)

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*Summary*

The Republic of India seeks the assistance of the International Court of Justice in order to help resolve the territorial dispute with the Islamic Republic of Pakistan over the Kashmir region and make strides to end the related insurgent violence.

1. India requests that the Court confirm Kashmir's inclusion in the Republic of India.
  2. Second, India requests that Pakistan recognize the 1947 Instrument of Accession of Jammu and Kashmir and the 1974 affirmation of status of Jammu and Kashmir.
  3. Third, India requests that Pakistan withdraw entirely from Kashmir, which it continues to occupy.
  4. Fourth, India requests that Pakistan cease all aid and support to Kashmiri insurgents.
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*Background*

The Republic of India and the Islamic Republic of Pakistan have been involved in a bitter and sometimes violent struggle over the disputed Kashmir region for more than fifty years. Geographically, Kashmir lies in the northwestern section of the Indian subcontinent, bordering Pakistan to the west and India to the south. The two nations have fallen into numerous bloody conflicts with one another throughout their histories, and, since Pakistan joined India as a declared nuclear weapons state in 1998, the international community has realized how imperative it is that this conflict be resolved.

In August 1947, the former British colony was divided into two countries: India and Pakistan. The division of the territory was largely observed as a religious separation, as, generally, Muslims flocked to Pakistan while Hindus elected to reside in India. In October 1947, Hari Singh, the Maharaja of Kashmir, agreed to the Instrument of Accession amid an invasion of the region by Pakistani tribal forces. The Instrument gave Indian military aid to the Maharaja in return for powers of defense and foreign affairs. The Indian army entered Kashmir, and fighting

between the Indian army and the Pakistani forces continued until a UN-orchestrated ceasefire. The ceasefire line was drawn where the fighting halted on January 1, 1949.

Sixteen years later, in August 1965, fighting broke out in Kashmir after Pakistani government covert operations forces crossed the ceasefire line and invaded Indian-administered Kashmir. The fighting lasted for only three weeks before another UN-brokered ceasefire took place. The next year, a more formal agreement was signed with Pakistan at Tashkent, and, in 1971, the ceasefire line became the more permanent “Line of Control.”

Kashmir’s citizens, through participation in democracy, have further legitimized Kashmir’s incorporation into India. In 1954, Kashmir’s assembly ratified the Instrument of Accession, and, in 1957, it ratified a constitution. Since then, Kashmir’s citizens have repeatedly participated in democratic elections. In 1974, the Kashmir government reaffirmed its status as a part of India—an avowal that Pakistan refused to recognize.

In 1989, armed resistance arose in Kashmir, and, throughout the 1990s, Pakistan continued to sponsor insurgents in the disputed region. India responded to the infiltration of Kashmir by Pakistan-backed forces with a series of air strikes in 1998. In 2001, in the face of continued Pakistani-supported terrorism, India shelled Pakistani military positions.

This Pakistani-sponsored violence escalated in late 2001, when terrorists attacked both the Kashmiri parliament building in Srinagar and the Indian parliament in Delhi. In all, 52 people were killed by terrorists whom Pakistan continues to back.

Despite the execution of the Instrument of Accession and subsequent democratic elections in portions of Kashmir currently held by India, Pakistan maintains its claim on the Kashmir region. Pakistan cites the religious composition of Kashmir, which is predominantly Muslim, to support its argument, even though other parts of India include both Muslim and Hindu citizens.

Although there has been some recent improvement in Indian-Pakistani relations, Kashmir remains a relic of past and present violence and dispute. To this day, thousands of troops are stationed along the borders of Indian-administered Kashmir, while pro-Pakistani militant groups such as Hizbul Mujahideen and Lashkar-e-Toiba are active in the region. In recent years the violence has been controlled somewhat, yet the argument over Kashmir remains a pressing issue in Middle Eastern and Southeast Asian affairs.

The government of the Republic of India believes that multiple sources of international law require Pakistan to be held accountable for the problem. As a result, the government of India has brought suit against Pakistan in the hopes that the International Court of Justice will resolve this issue justly and equitably. As stated in the beginning of this document, India’s memorial consists of four points and the government respectfully requests that the Court accept jurisdiction and adjudicate on each one.

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## *Admissibility*

*Under Article 40 of the Statute of the International Court of Justice, the Islamic Republic of Pakistan and the Republic of India submit this case to the docket of the International Court of Justice.*

This case has six sources of applicable law.

### **1. Statute of the International Court of Justice**

Chapter II, Article 36 states:

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

## **2. Indian Independence Act of 1947**

Section 2 Subsection 2 Part C states:

(c) if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

## **3. Instrument of Accession**

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omission, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India,

And whereas the Government of India Act, 1935, as so adapted, by the Governor General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

Now, therefore, I Shriman Inder Mahander Rajrajeshwar Maharajadhiraj Shri Hari Singhji Jammu and Kashmir Naresh Tatha Tibbet adi Deshahhipathi, Ruler of Jammu and Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession; and

Section 1 states:

I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th Day of August 1947, (which Act as so in force is hereafter referred to as "the Act").

#### **4. General Assembly Resolution 1514**

Section 2 states:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Section 4 states:

All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to

- D. In its discretion and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order.
- E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favorable to the promotion of further negotiations.

## **6. Resolution 91 in 1951 of the United Nations Security Council**

*Observing* that on 27 October, 1950, the General Council of the "All Jammu and Kashmir National Conference" adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the "future shape and affiliations of the State of Jammu and Kashmir;"

*Observing further* from statements of responsible authorities that action is proposed to convene such a Constituent Assembly and that the area from which such a Constituent Assembly would be elected is only a part of the whole territory of Jammu and Kashmir.

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Respectfully submitted,

Names

Representatives of the Republic of India