

G E C M U N I V

ICJ

**BACKGROUND GUIDE:
TERRITORIAL SOVEREIGNTY
OVER THE INDO-PAKISTAN
BORDER**

**SEUNGHOOON LEE
YOOBIN PARK**

LETTER FROM THE CHAIRS

Dear delegates,

Welcome to GECMUN IV! My name is Seunghoon Lee, your chair in the International Court of Justice. It is, indeed, my distinct honour to be serving as your chair, and also chairing the first ever International Court of Justice (ICJ) committee in the history of GECMUN. I desperately hope that this committee will provide you a patent, also a salutary experience which you can either stand for one side of the dispute as an advocate, support a certain side by being a witness, or fairly evaluate the border conflict between two nations as a judge. I would also be extremely delighted for you to gain a deep understanding of the procedure and the works of the ICJ, the case itself and further possible solutions. But before moving onto the issues, let me have a brief introduction about myself. I am attending my sophomore year in North London Collegiate School Jeju, and also the leader of the school's MUN club. I started my MUN career when I was in 8th Grade, therefore this is my third year. Since then I have attended to seven different MUN conferences, awarded one honorable mention and three best delegate awards including the ICJ best judge award. This is my first chairing experience on an official conference, therefore I will make every effort to serve you as a remarkable chair.

Prior to the conference I would like to give you some tips that would really help you - as a person who have gone through several MUN conferences, I believe the most important thing is your active participation throughout the conference. At my first conference as a delegate, although I was not fully aware of the procedure or the agenda I tried to participate as much as possible, and that led to my successful MUN career. It does not matter whether this is your first conference or not, your designated nation is an LEDC or MEDC nation and whether you are in Grade 8 or 12. All I ask you is to actively participate and enjoy the conference so that this becomes an unforgettable experience for you. I totally look forward to seeing you all this upcoming March! Please feel free to contact myself via email shoonlee20@pupils.nlcsjeju.kr if you are stuck at any point.

Warmly,
Seunghoon Lee

Greetings delegates,

Welcome to Global Education City Model United Nations (GECMUN), Year Four! This is Yoobin Park, your chair in the International Court of Justice (ICJ). It is my great honour and pleasure to be participating in the conference as the chair of the first International Court of Justice in GECMUN.

To introduce myself, I am currently a sophomore in Branksome Hall Asia, and also the member of BHA MUN Club. This is my second year participating in MUN conference, therefore I still remember how I felt when first attended to MUN. My first experience as a delegate in MUN conference remains

as unbearable anxiety. It was confusing and burdensome. Conversely, I truly hope this conference to be a 'comfort zone' for each one of you so that all participants can be involved in whole process, and I will make my whole effort to make you feel enjoyable and delightful during the conference as a chair.

Prior to the conference, I have a expectation of all of the delegates. Please be fully prepared in advance and have a sufficient understanding on the agenda, 'Case concerning the territorial sovereignty over the Indo-Pakistani Border (Kashmir Dispute)'. Hopefully, it would be a lot beneficial if you read the Background Guide written by the chairs carefully.

I am totally looking forward to meeting all of you! Please feel free to contact me via email (parkyoobin01938@brasome.asia) if you have any questions regarding to GECMUN IV.

Sincerely,
Yoobin Park

INTRODUCTION TO THE COMMITTEE

Following the successful works of the Permanent Court of International Justice (PCIJ), The International Court of Justice (ICJ) - founded in 1945 - have been continuously dealing with numerous border disputes between two nations. For more than 70 years since established, the ICJ has dealt with numerous legal disputes between two states. The very first case brought to the court was the Corfu Channel case (United Kingdom v. Albania), submitted on 22 May 1947. After two years of judgement, the case successfully ended on 9 April 1949. Up to October 2017, the ICJ has dealt with 166 different cases.

As a primary judicial branch and one of the six main bodies of the United Nations (UN), the ICJ provides fair judgements to numerous contentious cases and advises to the legal questions submitted by different authorized agencies and organizations - including the UN Security Council and the General Assembly. The ICJ is consisted of fifteen judges: thirteen members, a president and a vice-president. It is possible that two additional ad hoc judges are added if the party does not have its nationals sitting on the court. An advocate from each applicant and respondent party is also invited - he/she may bring witnesses to prove the party's claim.

The ICJ mainly deals with two types of cases: the first being with the contentious cases which refers to "legal disputes submitted between States submitted to it by them¹", and the second being the advisory proceedings: "Requests for advisory opinions on legal questions referred to it by the UN organs and specialized agencies". In GECMUN we will be dealing with the contentious case: when dealing with those contentious cases, the official title of the case separates each parties by using the abbreviation v. standing for 'versus' (e.g. Pakistan v. India). The applicant party; the party which brought the case to the court is always at the left side, and the respondent party is at the right side of the official title.

The ICJ, nowadays, aims for fair, effective, peaceful solutions to about 20 different contentious cases including Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Democratic Republic of the Congo v. Uganda) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua). It is still fully functioning as a main body of the UN, and is definitely regarded as a huge success.

GLOSSARY OF KEY TERMS

Jammu and Kashmir

Jammu and Kashmir, mainly located in the Himalayas, is a state in northern India. It shares its border with China in the North and the East, and is in touch with the Line of Control that separates the region from Pakistan-administered territories.

Gilgit-Baltistan

Gilgit-Baltistan is a Pakistani-administered territory of the Kashmir region - Azad Kashmir is located at the South of the region, and it also touches the line with Jammu and Kashmir of India and the Xinjiang region of China.

Princely states

Princely States refer to the states directly ruled by a native Indian prince rather than the British during the former British Indian Empire. Since they were controlled separately by the princes they could choose whether to join Pakistan or India after the independence.

United Nations Commission for India and Pakistan (UNCIP)

The UN Security Council, in resolution 39(1948), urged the establishment of the UNCIP under the purpose to mediate the Kashmir dispute. Then in resolution 47, it widened the purpose of UNCIP to various measures, such as using observer states to stop the armed conflict between two nations.

Tashkent Declaration

The Tashkent Declaration was signed on 10 January 1966, as a resolution of the 1965 Indo-Pakistani War. It was viewed as a great success: forces were encouraged to be pulled back, two nations would not interfere each other in each country's internal affairs, and the leaders were urged to work on peaceful bilateral negotiations.

Simla Agreement

The Simla Agreement, signed in 1972, was an agreement which resolved the 1971 Indo-Pakistan War. This agreement mainly reiterated the agreements made in the Tashkent Declaration; both countries once again agreed to solve the case through peaceful bilateral agreement.

Two-Nation theory

Two-Nation theory refers to different ideologies between Hindus and Muslims in social, political, economic, cultural and religious aspects. Pakistan uses this theory as an evidence: it claims that Pakistan takes the sovereignty because the majority of the population are Muslim.

Hari Singh

Hari Singh is the last Maharaja who ruled over the princely state of Jammu and Kashmir. On 26th October 1947, he agreed to the accession of Jammu and Kashmir to an Indian territory.

Kashmir Insurgency

Kashmir Insurgency was a riot started in 1987, escalated and continued until the 1990s. It was a conflict between Kashmiri separatists and the Government of India.

1999 Kargil War

The Kargil War was a military clash between India and Pakistan in the Kargil district of Kashmir and along the Line of Control. It also had a possibility to develop as a nuclear warfare between India and Pakistan.

Jammu & Kashmir National Conference (JKNC)

Jammu & Kashmir National Conference (JKNC) is regional political party in the state of Jammu and Kashmir. JKNC has claimed that the State of Jammu and Kashmir is an essential part of India, upholding autonomy for the state.

2016-17 Kashmir unrest

2016-17 Kashmir unrest, also called Burhan aftermath, refers to the protests and demonstrations happened after the death of a Kashmiri militant commander Burhan Muzaffar Wani, which caused lots of innocent casualties.

AGENDA

INFORMATION

Historical Background

It all started from the partition of the Indian subcontinent in 1947. After its independence, India was divided into two different countries: Pakistan and India. The difference between Indians and Pakistanis was their religion: Indians were mostly Hindus while Pakistanis were Muslims. So the religious line was drawn in the Indian subcontinent, however about 650 princely states still remained within the two countries. Kashmir was one of them: it could choose to join either country. The problem was that the stances of the ruling government and the citizens were different: Maharaja Hari Singh, the ruler of Kashmir was Hindu while over 70 per cent of the population were Muslim.

At first, Hari Singh decided to remain neutral. However his hope was dashed when Muslim tribesmen from Pakistan attacked Srinagar (the capital of Kashmir) in October 1947. Highly threatened, Hari Singh signed a treaty of accession which cedes Kashmir to India. This was the starting of the Indo-Pakistani War of 1947-48. India brought the issue to the UN, the UN Commission for India and Pakistan (UNCIP) was set up and the UNSC passed Resolution 47 which aimed for an immediate ceasefire of the armed conflict and called the removal of the Pakistani forces. However Pakistan refused to remove its troops until the ceasefire was agreed in January 1, 1949. India took control of 65 per cent of Jammu and Kashmir region and the remainder went to Pakistan. In 1953 the pro-Indian authorities arrest Prime Minister Sheikh Abdullah after he delays accession of Kashmir to India, and Kashmir was formally incorporated to India in 1957.

Tension raised again in the 1960s - China had been gradually occupying eastern Kashmir, which is also called as Aksai Chin. Sino-Indian War broke out in 1962: People's Republic of China and India both claimed the sovereignty of Eastern Kashmir, and clashed. China won a victory, therefore annexed Aksai Chin. In 1965 another Indo-Pakistani War broke out - Pakistan, after studying guerilla warfare from the United States, applied it to the revenge against India under the codename of "Operation Gibraltar". However it failed since the Kashmiris did not revolt. Indian and Pakistani troops attacked each other, and the war ended in a stalemate. A ceasefire was established that September, and the leaders of each country signed on a Tashkent agreement following January.

Only six years after the second war, another Indo-Pakistani War broke out in 1971. Pakistan lost the war, and Pakistani military surrendered in East Pakistan. With Indian support, Bangladesh was created and India rose to a big power in South Asia. The founding of Bangladesh contributed a significant amount on worsening the relationship between India and Pakistan. Simla Agreement was then signed in 1972 - this was just repeating the promises made in Tashkent after the 1965 India-Pakistani War. Both countries agreed on peaceful resolutions regarding to the issue, and the issue remained peaceful until late 1980s.

The insurgency then started in 1987. There happened state elections in Indian-administered Jammu and Kashmir, and some of them got disputed. A pro-independence insurgency occurred around the Jammu and Kashmir Liberation Front (JKLF), and Pakistan got accused of supporting the insurgency by placing fighters across the Line of Control. It escalated as time goes by, and violence against civilians by both sides got widespread. Following the insurgency and regardless to the agreements made between

two countries, India and Pakistan go to war once again: this is called the 1999 Conflict in Kargil, also known as the Kargil War. The cause of this was because the militants crossed from Pakistani-administered Kashmir into the Indian-administered Kargil district. The relation between two countries once again got broken, and this further threatens to a possibility of a nuclear warfare because both India and Pakistan had their own nuclear weapons.

Terrorist groups such as Al-Qaeda also got involved to the conflict as it moved to the 21st Century. In 2002, Osama bin Laden stated that one of the reasons he was fighting America was because he stands to India's side on the Kashmir conflict. Fully aware of the terrorist threat, the US officials believed that Al-Qaeda was helping organising a terror in Kashmir to worsen the conflict between India and Pakistan.

Status Quo

The conflict between India and Pakistan on Kashmir still remains contentious until these days. At this moment, one state called Jammu and Kashmir, about 45% of Kashmir is under the control of India. Three areas called Azad Kashmir, Gilgit and Baltistan, about 35% of Kashmir is controlled by Pakistan, and one area called Aksai Chin, equaling approximately 20% of Kashmir is in charge of China. Although Kashmir issue is originally from a territorial dispute, it has developed into a multi-faceted issue over the years such as; death, violence, and religious conflict.

In October 2014, Indian and Pakistani troops have exchanged gunfire and mortar shells across the border in the region of Kashmir, claiming their troops were to retaliating to incitement. Consequently, according to an Indian army spokesperson, at least five civilians died and 29 of them were injured without any provocation by Pakistani troops. On the other hand, Pakistan asserted that Indian troops killed more than four civilians, unfortunately having two of them children, and five people were injured by unilateral attack done by Indian troops.

On 8 July 2016, a Kashmiri militant commander Burhan Muzaffar Wani was blocked off by the security forces and killed. Hence, following protests have taken Kashmir into the middle of an "augmented instability". In all 10 regions of Kashmir, curfews have been imposed and clashing with the police, more than 40 civilians died and over 2000 were injured. Among 2000 people who got injured, about 600 of them may have lost their eyesight through pellet wounds. Moreover, in majority parts of the state, to prevent inflammatory rumours spread out, cellphone and internet services have been blocked, and newspapers have also been limited. This is called 2016–17 Kashmir unrest, also known as the Burhan aftermath.

STANCES OF UN MEMBER STATES

India

According to the Embassy of India, the Republic of India officially states that there can never be any dispute on the unalterable facts of history that Indian Union is accessible to Jammu and Kashmir, supported by:

- On 25 October 1947, Maharaja Hari Singh, the Prime Minister of India signed the Instrument of Accession, the legal document consenting to the Dominion of India.
- All representatives in the Constituent assembly of Jammu and Kashmir had confirmed the Maharaja's Instrument of Accession to India and espoused a constitution for a permanent merger of Jammu and Kashmir with the Union of India.
- With regard to article 370, the participation of the people of Jammu and Kashmir in elections while the Constitution of India, provides the clue that guarantees the status of Jammu and Kashmir within the Indian Union.
- As elections are a substitute for plebiscite, constant participation of the people of the State of Jammu and Kashmir in elections proves their will to be with India.
- The Indian Independence Act provides the legal basis of the accession of the Republic of India on Jammu and Kashmir.
- While Kashmir is not a religious issue and the two nation theory is irrelevant, a significant Muslim community decided to live in India, rather than in Pakistan. Also, led by a Muslim leader, the most eminent Kashmiri political party, the National Conference sought and supported the accession of Jammu and Kashmir to India.
- Currently, sponsored by Pakistan, terrorism is the serious problem in Kashmir. The targets are Muslims in Kashmir, and contradicting Pakistan's argument involves the security of Muslims in Kashmir. The international community must emphasize to Pakistan to abstain from terrorism and avert the political leaders, the majority of whom are Muslims being target of the terror.
- India is commissioned to protect the human rights of all citizens in Jammu and Kashmir, and with the purpose, militancy must be eliminated.
- Kashmir is an integral part of Republic of India, so what happens in Kashmir is internal affair and international community shouldn't be involved.

Pakistan

Pakistan values Kashmir as "Jugular vein of Pakistan", and still believes that the people of Kashmir have a right to make a final decision. Most of the claims Pakistan make are rejection of Indian claims to Kashmir, such as:

- Maharaja Hari Singh was not a powerful leader, nor a hereditary ruler but a British appointee. Furthermore he did not get any support from most of the Kashmiris. Maharaja used violent force to suppress the people.
 - The two-nation theory clearly suggests Kashmir should have been with Pakistan since the majority of the population is Muslim.
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- The insurgency happened in the late 1980s and 1990s tells that the Kashmiri people are exhausted to remain with India.
 - Krishnan Menon, the Defense Minister of India said: “Kashmir would vote to join Pakistan and no Indian Government responsible for agreeing to plebiscite would survive.”
 - India has shown disrespect for the resolutions of the UNSC and the UNCIP by not holding a plebiscite, which determines the fortune of the state.
 - India claims that the Simla Agreement, signed in 1972, suggests that the resolutions of the UN have lost their validity. However, unless the UNSC amends to the effect, UN resolutions cannot be superseded. Furthermore, the Simla Agreement explored a peaceful bilateral negotiation, without excluding the role of the UN. This supports Article 1(i) - which says “The principles and purposes of the Charter of the United Nations shall govern the relations between the two countries”.
 - Extrajudicial killings are widely spread in Indian-administered Kashmir - the encounters go uninvestigated by the powers, and the perpetrators are exempted from criminal prosecution.
 - The Line of Control (LOC) is not an international boundary but only recognized by India.
 - Through the Joint Statement of 6 January 2004, it is evident that Pakistan and India agreed to seeking a final settlement of the Jammu & Kashmir dispute.
 - There is a complete estrangement in the Indian-administered Kashmir.

China

Sharing the borderlines with India and Pakistan, China also claims some territorial sovereignty over the Aksai Chin, also known as the Eastern Kashmir. With regards to this issue, China and India had an armed conflict in the past, which is the 1962 Sino-Indian War. China now claims that: China did not accept the British proposal on the boundaries of the princely state of Kashmir and Jammu, north of Aksai Chin and the Karakoram. Through the 1963 Trans Karakoram Tract, China had settled its dispute with Pakistan.

United Kingdom of Great Britain and Northern Ireland

It can be said that the United Kingdom (UK) has some responsibilities for the conflict, because the UK have contributed to a great amount to the 1947 partition of the Indian subcontinent and also created the princely states which Kashmir is one of them. Nowadays, the UK hugely supports India for the dispute since every rules about partition was made in the UK therefore is highly responsible.

United States of America

The United States of America (USA) needs the support of Pakistan to set up global anti-terrorism policy, and at the same time needs to maintain cordial relations with India to counterbalance China’s increasing impact on the region. So, USA is willing to play a role that both India and Pakistan think is suitable in reducing the tensions with regards to the Kashmir dispute.

QUESTIONS TO CONSIDER

- What impact did the partition of the Indian subcontinent in 1947 have on the relation between India and Pakistan?
 - How were the Indo-Pakistani Wars resolved each time, and why could the solutions not prevent another war from happening?
 - To what extent did the establishment of Bangladesh escalate the contraposition between India and Pakistan?
 - Which factors made the Kashmir dispute to last controversial for more than 70 years?
 - If the state of Jammu and Kashmir is an essential part of India, should Kashmiris be considered as Indians?
 - How did the 2016-17 Kashmir unrest influence the current situation?
 - How should India and Pakistan deal with the issue of terrorism among Kashmir, which came up to a serious issue in the 21st century?
 - Who must make the final decision on the sovereignty of the Kashmir region? Is it the Kashmiris? Or is it either Pakistan or India?
 - What impact did the Kashmir insurgency and the Kargil war in the 1990s have on the relation between Pakistan and India, and further to the International community?
 - How does the Kashmir dispute relate to the social, political and religious issues, over territorial dispute?
 - What characteristics of Kashmir made it as a region which both India and Pakistan can claim the sovereignty?
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