



Kashmir & International Law

AN ACTIVIST'S GUIDE

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For inquiries or further information:
kashmirlaw@protonmail.com.

Kashmir Law and Justice Project is an advocacy organization led by Kashmiri diaspora lawyers that seeks to bring attention to, and to redress, historic and ongoing rights violations in Indian-Administered Jammu and Kashmir

CONTENTS

Preface	1
1. Is “Indian Kashmir” occupied territory?	2
<i>What is “occupied territory”?</i>	2
<i>How do we know IAJK is occupied territory?</i>	2
<i>What is India’s argument that IAJK is not occupied?</i>	3
<i>How could India obtain sovereign title over IAJK?</i>	5
2. Has India annexed “Indian Kashmir”?	6
<i>What is “annexation”?</i>	6
<i>How do we know India annexed IAJK?</i>	6
3. Does international humanitarian law apply to “Indian Kashmir”?	7
<i>What is international humanitarian law?</i>	7
<i>When does international humanitarian law apply?</i>	7
<i>How do we know international humanitarian law applies to IAJK?</i>	8
<i>What are the key implications of the application of international humanitarian law to IAJK?</i>	9
4. Is “Indian Kashmir” an Indian colony?	11
<i>What is “colonialism”?</i>	11
<i>What is “settler colonialism”?</i>	11
<i>How do we know IAJK is an Indian colony?</i>	12
<i>What are the key implications of recognizing India as a colonizer in IAJK?</i>	13
5. Do Kashmiris have a right to self-determination?	15
<i>What is the “right to self-determination”?</i>	15

<i>How do we know that the indigenous people of IAJK have a right to self-determination?.....</i>	<i>16</i>
6. Is India responsible for war crimes, crimes against humanity and / or genocide in “Indian Kashmir”?	18
<i>What are war crimes, crimes against humanity and genocide?.....</i>	<i>18</i>
<i>How do we know that Indian military and police personnel are responsible for war crimes in IAJK?.....</i>	<i>19</i>
<i>How do we know that Indian military and police units are responsible for crimes against humanity in IAJK?</i>	<i>19</i>
<i>Why would Indian responsibility for genocide in IAJK be difficult to establish?</i>	<i>19</i>
7. Are international humanitarian law and international human rights law the same?	21
<i>What is the difference between international humanitarian law and human rights law?.....</i>	<i>21</i>
<i>Does international human rights law apply to IAJK?.....</i>	<i>21</i>
8. How can India be forced to comply with its international legal obligations relating to “Indian Kashmir”?	25
<i>Can India or Indians be held accountable for violations of international law?.....</i>	<i>26</i>
<i>What good is international law to the indigenous people of IAJK?</i>	<i>27</i>
Endnotes	34

PREFACE

International law is regularly referenced in discussions about the disputes over the territory of the Princely State of Jammu and Kashmir¹ and the crises in the portion of that territory controlled by India (Indian-Administered Jammu and Kashmir² or IAJK). However, key concepts and context are often misunderstood or misconstrued. This document seeks to briefly explain some of those concepts and the relevant context to facilitate more accurate framing and constructive discussion of the relevant issues and the development of more effective solutions to those issues and the related crises in IAJK.³

The “frequently asked question” format of this document is intended to facilitate succinct responses to discrete questions that the authors have repeatedly encountered and believe may be of particular value to a wide audience. For readability and the reader’s ease of reference, the main text of this document consists of streamlined responses to those questions in plain language. Note that (in addition to citations and references for further reading), the endnotes include significant substantive information which expands, contextualizes, and amplifies important points made in the main text. The reader is strongly encouraged to consult the endnotes in addition to the main text.

1. IS "INDIAN KASHMIR" OCCUPIED TERRITORY?

Yes, IAJK is occupied territory.

What is "occupied territory"?

Occupied territory is territory that is effectively controlled by a state that does not have sovereign title over the territory.⁴ Note that:

- a territory can be occupied territory if the political status of the territory is contested or unclear;⁵
- an occupying power cannot acquire sovereign title over the occupied territory through occupation;⁶
- occupation is presumed to be temporary; a prolonged occupation is still an occupation (the duration of an occupation does not alter the applicable international law);⁷
- the entire territory over which the occupying power exercises effective control is occupied by it;⁸
- a lack of armed resistance or the fact that some of the local population welcomes the occupier does not constitute consent or obviate occupation;⁹ and
- occupation is not necessarily illegal in and of itself.¹⁰ For example, a military occupation approved by the UN Security Council may be considered legal but is still an occupation.

How do we know IAJK is occupied territory?

IAJK is occupied territory because it is effectively controlled by India, a state that has not had and does not have sovereign title over the territory. India did not have sovereign title over IAJK at the time the Indian military landed in IAJK in October 1947. This fact was widely recognized, including by the UN Security Council and India itself.¹¹ India did not subsequently obtain sovereign title over IAJK. India does not have sovereign title over IAJK today.¹²

What is India's argument that IAJK is not occupied?

India denies that IAJK is occupied and instead claims sovereign title over all of the territory of the Princely State of Jammu and Kashmir (including, but not limited to, IAJK).¹³ India's position is premised on the legality, validity and finality of a legal instrument called the Instrument of Accession.¹⁴ India argues that:

- (1) a man who claimed to be the ruler of the Princely State of Jammu and Kashmir on October 26, 1947, Hari Singh,¹⁵ had legal authority to cause all of the territory of the Princely State of Jammu and Kashmir to become part of India;
- (2) Hari Singh caused the Princely State of Jammu and Kashmir to become part of India through the Instrument of Accession; and
- (3) the Instrument of Accession is permanent and final (not temporary and conditional).¹⁶

Indian authorities did not claim sovereign title over IAJK (at least not publicly on the international stage) until almost a decade after the Instrument of Accession was purportedly signed.¹⁷ Instead, Indian authorities repeatedly confirmed their concurrence with the well-established view that India did not have sovereign title over the territory of the Princely State of Jammu and Kashmir (including, but not limited to, IAJK).¹⁸ Regardless, India's claim to sovereign title has never been recognized and has been rejected by the United Nations (including the Security Council) since 1947, when India first brought its dispute with Pakistan over the territory of the Princely State of Jammu and Kashmir to the United Nations.¹⁹

Note that the Instrument of Accession itself does not purport to transfer sovereign title over the Princely State of Jammu and Kashmir to India. Instead, it is a document pursuant to which a presumptive sovereign (Hari Singh, as the Maharaja of the Princely State of Jammu and Kashmir)²⁰

retains his sovereignty and conditionally and temporarily delegates limited authority over a few discrete matters to another sovereign (India) for purposes of obtaining military assistance.²¹

Despite basing its claim to sovereignty over IAJK on the Instrument of Accession, the Indian Government has materially breached and repudiated its terms. The Indian Government materially and explicitly breached the Instrument of Accession in 1954 (if not before).²² Since then, it has consistently and repeatedly acted in material breach of that purportedly fundamental instrument.²³ On August 5, 2019, the Indian Government went beyond its historic breaches by repudiating the Instrument of Accession.²⁴ India's repeated, material violation of its purported obligations under the Instrument of Accession and its repudiation demonstrate that India itself views the instrument that is foundational to its claim to sovereignty as invalid and/or non-binding.

There are other reasons why the Indian Government's position regarding the legality, validity and finality of the Instrument of Accession has not been, and should not be, recognized. These include the reasons provided by Sir Gerald Fitzmaurice, an eminent barrister, international legal scholar and judge, as legal advisor to the UK Foreign and Commonwealth Office (whose opinion UK Attorney General, Sir Hartley Shawcross concurred with), in his 1949 legal opinion.²⁵ Fitzmaurice's opinion was considered authoritative, represented the view of the state responsible for the legal framework of Partition (the United Kingdom) and was relied upon by international actors.²⁶ Fitzmaurice determined that the Instrument of Accession, and the Princely State of Jammu and Kashmir's accession to India, was invalid (actually, null and void) for the following essential reasons:

- (1) Hari Singh did not have the legal authority and capacity to execute the Instrument of Accession because he had already delegated authority over the same subject matter to the Government of Pakistan pursuant to a standstill agreement;²⁷

(2) The Instrument of Accession was conditioned on ratification through a popular referendum,²⁸ a condition to its effectiveness which was never satisfied.²⁹

There are several other reasons, each potentially dispositive in itself, as to why the Instrument of Accession is void and has no legal effect.³⁰ The work of historians since Fitzmaurice rendered his legal opinion has only buttressed the authoritative view that the Instrument of Accession is null and void.³¹

How could India obtain sovereign title over IAJK?

India, as an occupying power, cannot acquire sovereignty over IAJK by its occupation, no matter how prolonged. India cannot modify its status as an occupying power or acquire sovereignty over IAJK through its domestic law (under its constitution or otherwise). India can only obtain sovereign title over IAJK through the exercise by the indigenous people of IAJK³² of their right to self-determination (see the response to [Question 5](#)).

2. HAS INDIA ANNEXED “INDIAN KASHMIR”?

Yes, India annexed IAJK.

What is “annexation”?

Annexation occurs when a state unilaterally proclaims its sovereignty over a territory over which it does not have sovereign title. Annexation is usually preceded by occupation. Annexation is different than occupation. While occupation is not illegal *per se*, annexation is a serious violation of international law.³³ Even in the absence of formal proclamations of sovereignty, practical steps that could make occupation permanent constitute annexation.³⁴ Essentially, annexation occurs when an occupation formally or practically ceases to be temporary.

How do we know India annexed IAJK?

If not before, India formally annexed IAJK on May 14, 1954. On that date, India’s President issued The Constitution (Application to Jammu and Kashmir) Order (known as the Basic Order). Among other things, the Basic Order extended Indian citizenship to the permanent residents of IAJK.³⁵ Note that India openly and formally proclaimed its sovereignty over the territory of the Princely State of Jammu and Kashmir on the international stage (before the UN Security Council) on January 23 and 24, 1957.³⁶

Even prior to India’s formal annexation of IAJK, India had *de facto* annexed IAJK. This was achieved in 1951 when a constitutional assembly was convened in IAJK under Indian auspices. That constitutional assembly was mandated to, among other things, validate IAJK’s accession to India and establish a new constitution for IAJK that defined India’s powers over IAJK.³⁷

More recent events, like the Constitutional Orders of August 2019 and the J&K Reorganisation Act (2019), affirm that historical annexation.³⁸

3. DOES INTERNATIONAL HUMANITARIAN LAW APPLY TO “INDIAN KASHMIR”?

Yes, international humanitarian law applies to IAJK.

What is international humanitarian law?

International humanitarian law is a body of international law comprised of customary and treaty-based law, including the four Geneva Conventions of 1949.³⁹ International humanitarian law seeks to limit the effects of armed conflict for humanitarian reasons. It protects non-combatants and those no longer participating in armed conflict and restrict the means and methods of warfare.⁴⁰ Key protections under international humanitarian law include a duty to provide food and medical supplies, a duty to ensure and maintain medical services, a duty to facilitate the proper working of educational institutions, a duty to uphold public safety and order, a duty to facilitate the rapid and unimpeded passage of humanitarian relief, a duty of humane treatment, a duty of non-discrimination, and a duty to respect fundamental rights.⁴¹

When does international humanitarian law apply?

International humanitarian law only applies to “armed conflicts.”⁴² International humanitarian law distinguishes between “international” armed conflicts (generally, conflicts between two or more states) and “non-international” armed conflicts (generally, conflicts between state forces and non-state armed groups or between two or more non-state armed groups). Historically, many states viewed international humanitarian law as offering substantially broader protections to civilian populations in international armed conflicts relative to non-international armed conflicts. However, the contemporary view is that, as customary international law, most of the substantive rules of international humanitarian law apply in both contexts.⁴³

Under international humanitarian law, the existence of an armed conflict depends on the actual factual circumstances and does not depend on the subjective views of the parties to the conflict. Armed conflict exists “even if the state of war is not recognized” by a party to the conflict⁴⁴ and may exist independent of the reasons for the conflict (and whether or not the conflict is justified under international law), irrespective of the intensity of the violence (so long as there is armed force) and irrespective of the duration of the conflict.⁴⁵ There is a very low threshold for determining whether an armed conflict exists.⁴⁶ This is consistent with the essential purpose of international humanitarian law, which is to protect non-combatants.

Occupation constitutes an international armed conflict.⁴⁷ Under international humanitarian law, an occupying power is subject to even more onerous duties than a party to a simple international armed conflict.⁴⁸ Armed conflicts in which people are fighting against colonial domination, alien occupation or a racist regime in the exercise of their right to self-determination also constitute international armed conflicts.⁴⁹

How do we know international humanitarian law applies to IAJK?

As described in the response to [Question 1](#), India occupies IAJK. India’s occupation of IAJK constitutes an international armed conflict under international humanitarian law.

In addition, the ongoing popular movement for self-determination in IAJK has involved and continues to involve armed resistance. This includes organized armed resistance against Hari Singh’s colonial occupation and later Indian occupation in 1947, intermittent armed resistance against Indian occupation between 1948 and 1988, and continuous armed resistance against Indian occupation since 1989. That armed resistance struggle, as an armed conflict against alien occupation (*see the response to [Question 1](#)*) and colonial domination (*see the response to [Question 4](#)*) and for the right to self-determination (*see the response to [Question 5](#)*), also

constitutes an international armed conflict under international humanitarian law.

The Rule of Law in Armed Conflicts project (RULAC) of the Geneva Academy of International Humanitarian Law and Human Rights classifies the dispute over the Princely State of Jammu and Kashmir⁵⁰ as an international armed conflict.⁵¹ In its analysis in support of its classification, RULAC discusses the conflict between the Indian and Pakistani militaries as well as the conflict between “armed groups contesting Indian authority” in IAJK and the Indian military.

What are the key implications of the application of international humanitarian law to IAJK?

While international humanitarian law offers fairly broad protections, India, as an occupying power in IAJK, is subject to even more onerous duties.⁵² Among the key applicable rules are:⁵³

- Agreements between the occupying power and local authorities cannot deprive the population the protections of international humanitarian law;
- People cannot renounce their rights under international humanitarian law;
- The occupying power cannot acquire sovereignty over the occupied territory;
- The occupying power cannot destroy or confiscate private property unless absolutely required by military necessity during hostilities;
- The occupying power cannot acquire ownership of immovable public property;
- The occupying power must (subject to narrow exceptions) respect the laws in force in the occupied territory;
- The occupying power must ensure sufficient hygiene, public health standards and access to food and medical care;

- Forced population transfer from an occupied territory is prohibited;
- Forced or voluntary transfers of populations of the occupying power into the occupied territory are prohibited, as are any measures taken to organize or encourage population transfer;⁵⁴
- Collective punishment is prohibited;
- Reprisals against persons or their property are prohibited;
- Cultural property must be respected; and
- People accused of criminal offences must be provided with proceedings respecting internationally recognized judicial guarantees.

Annexation (see the response to [Question 2](#)) does not diminish the duties of the occupying power or the protections afforded the population of an occupied territory under international humanitarian law.⁵⁵

At this writing, India's long history of gross violations of international humanitarian law in IAJK is evolving. Certain violations, although not new, are occurring on an unprecedented scale, including India's acquisition of immovable public property,⁵⁶ disregard of the laws in force in the occupied territory,⁵⁷ failure to ensure access to medical care,⁵⁸ implementation of policies that encourage the transfer of Indians into IAJK,⁵⁹ and disrespect for cultural property.⁶⁰

4. IS “INDIAN KASHMIR” AN INDIAN COLONY?

Yes, IAJK is an Indian colony.

What is “colonialism”?

Colonialism is the “subjection of peoples to alien subjugation, domination and exploitation” and occurs when a state actually or effectively denies an indigenous population its right to self-determination, including by actually or effectively annexing, or claiming or exercising sovereignty over, that population’s territory.⁶¹ Colonialism is “a denial of fundamental human rights.”⁶²

Colonization is different than occupation. Colonization is a serious violation of international law. It is closely related to annexation and the denial of the right to self-determination. It involves a state’s wrongful claim of sovereignty over territory or its possession of effective authority that undermines the meaningful exercise by the indigenous population of its right to self-determination.

What is “settler colonialism”?

Settler colonialism refers to colonial settlement by civilians, sometimes without support or encouragement by the colonizing state. While settler colonialism is illegal under international law (all forms of colonialism are illegal), it may not itself be a *per se* violation of the prohibition against forced or voluntary transfers of populations of the occupying power into the occupied territory under the Geneva Conventions.⁶³ Settler colonialism is widely recognized as a particularly pernicious practice. It involves a non-indigenous colonial settler population manufacturing indigeneity by displacing and replacing indigenous people and seeking to permanently establish themselves as “rightful” inhabitants of a territory. Settler colonialism is an assault on self-determination, a fundamental principle of the prevailing international order and fundamental right under international law (see the response to [Question 5](#)).

How do we know IAJK is an Indian colony?

As described in the response to [Question 2](#), India annexed IAJK. India both claims sovereignty over IAJK, a territory which it occupies, and has denied the indigenous population of IAJK its right to self-determination. Accordingly, India has colonized IAJK.

As described in the response to [Question 3](#), India's recent violations in IAJK include violations of the prohibition against forced or voluntary transfers of populations of the occupying power into an occupied territory under international humanitarian law, transfers which are now occurring on an unprecedented scale. These violations are a component of a long-standing and now accelerating campaign of settler-colonialism in IAJK.

It is important to understand that IAJK is, and has been for a prolonged period of time, the most militarized place in the world.⁶⁴ India's colonization has involved and involves a militarized occupation that is omnipresent and overwhelming.⁶⁵ Even prior to India's recent escalation of its violations of international human rights law and international humanitarian law in IAJK, including the implementation of policies encouraging the transfer of Indians into IAJK, India had long established large-scale colonial settlements in IAJK.⁶⁶ Indian officials have also publicly announced plans promoting colonial settlement in IAJK.⁶⁷

Interestingly (although not legally necessary), India's colonization of IAJK exhibits all of the hallmarks of classic European colonialism, including domination of indigenous people through the deployment of racist, supremacist ideology,⁶⁸ demonization of indigenous people,⁶⁹ large-scale violations of fundamental rights,⁷⁰ economic exploitation and a pillaging of natural resources⁷¹ and the colonizer's claim to legitimate sovereignty over the colonized territory through dubious legal instruments.⁷² India still freely invokes (and abuses) British colonial-era laws (the opposition to which was a primary basis of the anti-British, anti-colonial movement in India and South Asia) to suppress, repress and violate the rights of the indigenous people of IAJK.⁷³

India's colonization of IAJK should be understood as more problematic and repugnant than Britain's colonization of British India. Consider, for example, that India's colonization of IAJK:

- (1) followed India's own anti-colonial struggle;
- (2) relies on more extremely asymmetric power;⁷⁴
- (3) is built on an overwhelming, disproportionate militarized occupation;
- (4) has resulted in widespread, gross violations of international human rights law and international humanitarian law for decades;⁷⁵ and
- (5) has continued with total impunity⁷⁶ within an international system that is predicated on ending colonialism, respect for the right to self-determination and accountability for the types of violations that have occurred in IAJK.

India's colonization of IAJK has not been widely acknowledged or condemned. Instead of facing international accountability, India is widely celebrated (including as "The World's Largest Democracy") while it continues to violate fundamental international legal obligations.⁷⁷

What are the key implications of recognizing India as a colonizer in IAJK?

The key implications of recognizing India as a colonizer include the following:

- IAJK has a status separate and distinct from India until the indigenous people of IAJK have exercised their right to self-determination;⁷⁸
- India's colonization of IAJK constitutes a denial of the fundamental human rights of the indigenous people of IAJK;⁷⁹
- India is required to:
 - cease all armed action or repressive measures of all kinds against the indigenous people of IAJK;⁸⁰

- take immediate steps to transfer all powers to the indigenous people of IAJK without conditions or reservations and in accordance with their freely expressed will in order to enable them to enjoy complete independence and freedom;⁸¹
- promote the realization of the principle of equal rights and self-determination of the indigenous people of IAJK and to render assistance to the United Nations to bring a speedy end to colonialism, having due regard to the freely expressed will of the indigenous people of IAJK;⁸²
- refrain from force which deprives the indigenous people of IAJK their right to self-determination, freedom and independence;⁸³
- fully and faithfully implement the right to self-determination of the indigenous people of IAJK;⁸⁴ and
- promote respect for the human rights and fundamental freedoms of the indigenous people of IAJK;⁸⁵
- The indigenous people of IAJK have a right to resist colonization and occupation in pursuit of self-determination,⁸⁶ which is legitimate by all available means, including armed struggle;⁸⁷
- In their resistance to colonial domination and in pursuit of the exercise of their right to self-determination, the indigenous people of IAJK are entitled to seek and to receive support;⁸⁸ and
- Every state (not just India) has the duty to promote, through joint and separate action, the realization of the equal rights and self-determination of the indigenous people of IAJK and to render assistance to the United Nations to bring a speedy end to India's colonization of IAJK, having due regard to the freely expressed will of the indigenous people of IAJK.⁸⁹

5. DO KASHMIRIS HAVE A RIGHT TO SELF-DETERMINATION?

Yes, the indigenous people of IAJK have a right to self-determination.⁹⁰

What is the “right to self-determination”?

The right to self-determination is the right of a people to “freely determine their political status and freely pursue their economic, social and cultural development.”⁹¹

The right to self-determination requires that people enjoy free association and the freedom to choose their own destiny, without coercion or interference, through a democratic process that ensures an informed and genuine expression of that people’s will.⁹² It is independent of, and not conditioned by, any particular actual or potential outcome of such a process. Self-determination is a right of people and not of states.

As a principle, self-determination is fundamental to the prevailing international order.⁹³ The right of all people to self-determination is well-established.⁹⁴ The substantive realization of all other human rights and fundamental freedoms is predicated on the realization of the right to self-determination.⁹⁵

In the prevailing international order, the principle of self-determination is subject to certain countervailing principles—namely state sovereignty and territorial integrity. Accordingly, so long as a people are not oppressed and a government legitimately represents such people’s interests, the prevailing disposition in international law is toward a right to only “internal” self-determination, or the greater realization of a people’s political, economic, social and cultural aspirations and rights within the framework of an existing state. However, if a people are oppressed and/or a government does not legitimately represent a people’s interests, those people are recognized to have a right to “external” self-determination, or the right to realize their political, economic, social and cultural aspirations outside of the framework of the existing state. A circumstance of

colonization, which involves both oppression and non-representation, is a clear circumstance where a right to external self-determination is recognized.⁹⁶

The contemplated potential outcomes of the exercise of the right to external self-determination include:

- Emergence as a sovereign, independent state;
- Free association with an independent state; or
- Integration with an independent state.⁹⁷

How do we know that the indigenous people of IAJK have a right to self-determination?

As described in the response to [Question 4](#), India's colonization of IAJK entitles the indigenous people of IAJK to a right to external self-determination.⁹⁸

There are several other bases, each potentially sufficient in itself, which entitle the indigenous people of IAJK to a right to external self-determination,⁹⁹ including:

- India's occupation of IAJK (*see* the response to [Question 1](#));
- India's undemocratic, unrepresentative governance in IAJK;¹⁰⁰
- Indian instrumentalities' systematic violation of the human rights of the indigenous people of IAJK;¹⁰¹ and
- Indian instrumentalities' systematic discrimination against, and denial of fundamental freedoms to, the indigenous people of IAJK.¹⁰²

Note that the foregoing bases for the right to external self-determination of the indigenous people of IAJK are over and above the following:

- the applicable British policy regarding decolonization (which mandated plebiscites or popular referenda in circumstances where the future political status of a territory was contested);¹⁰³

- the applicable Indian policy (explicitly referenced in the terms of India's acceptance of the Instrument of Accession);¹⁰⁴
- India's otherwise applicable course of conduct, including in the case of the State of Junagadh;¹⁰⁵ and
- the applicable UN Security Council and UN Commission for India and Pakistan resolutions in connection with the India-Pakistan territorial dispute over the territory of the Princely State of Jammu and Kashmir.¹⁰⁶

The right of the indigenous people of IAJK to external self-determination is acknowledged by numerous authoritative bodies, public commitments of the Indian government and legal instruments. These include the Instrument of Accession (which explicitly references a commitment to settlement by popular referendum twice), India's commitments at the UN Security Council pursuant to the dispute with Pakistan it itself brought to the Security Council, public commitments made by India's Prime Minister (including in a well-known November 2, 1947 public address)¹⁰⁷ and public commitments made by other key representatives, including India's Ministry of External Affairs in connection with the adoption of the Indian Constitution in November 1949,¹⁰⁸ various UN Security Council and the UN Commission for India and Pakistan resolutions¹⁰⁹ and the Office of the United Nations High Commissioner for Human Rights.¹¹⁰

6. IS INDIA RESPONSIBLE FOR WAR CRIMES, CRIMES AGAINST HUMANITY AND / OR GENOCIDE IN "INDIAN KASHMIR"?

Yes, Indian military and police personnel are responsible for war crimes in IAJK.

Yes, Indian military and police units are responsible for crimes against humanity in IAJK.

While conditions conducive to genocide exist in IAJK, India's responsibility for genocide in IAJK would be difficult to establish at this time.

What are war crimes, crimes against humanity and genocide?

War crimes are, essentially, serious violations of international humanitarian law committed in connection with an armed conflict. Individuals (not organizations or states) commit war crimes. War crimes include the following acts committed in an armed conflict: willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury, extensive destruction and taking of property, the willful denial of the right to a fair and regular trial, unlawful confinement, rape or sexual violence and utilizing civilian as "human shields."¹¹¹

Crimes against humanity are certain acts which are intentionally committed as part of a widespread or systematic attack (*i.e.*, not simply random, accidental or isolated acts) against civilians. Those acts include: murder, enslavement, deportation or forcible transfer of populations, imprisonment, torture, grave sexual violence, persecution and enforced disappearance.¹¹²

Genocide is one or more acts which are committed with the intent to destroy, in whole or in part, a particular group. Those acts include: killing members of the group, causing serious bodily or mental harm to members of the group and deliberately inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part. In order to

establish genocide, one must prove that the perpetrators deliberately targeted members of a group with the intent to physically destroy (in whole or part) that group.¹¹³

How do we know that Indian military and police personnel are responsible for war crimes in IAJK?

IAJK is a theater of international armed conflict (see the response to [Question 3](#)). In connection with that armed conflict and in furtherance of India's occupation (see the response to [Question 1](#)) and denial of the right to self-determination (see the responses to [Question 4](#) and [Question 5](#)), Indian military and police personnel have knowingly committed various acts constituting war crimes. Those acts have been documented over the course of decades and include: willful killing,¹¹⁴ torture or inhuman treatment,¹¹⁵ willfully causing great suffering or serious injury,¹¹⁶ extensive destruction and appropriation of property,¹¹⁷ the willful denial of the right to a fair and regular trial,¹¹⁸ unlawful confinement,¹¹⁹ rape or sexual violence¹²⁰ and utilizing civilian as "human shields."¹²¹

How do we know that Indian military and police units are responsible for crimes against humanity in IAJK?

Indian military and police units have, in an organized and systematic fashion,¹²² committed widespread¹²³ acts constituting crimes against humanity in IAJK, including: murder,¹²⁴ imprisonment,¹²⁵ torture,¹²⁶ grave sexual violence¹²⁷ and enforced disappearance.¹²⁸

Why would Indian responsibility for genocide in IAJK be difficult to establish?

Conditions conducive to genocide exist in IAJK.¹²⁹ There is also a history of genocide in IAJK.¹³⁰ In fact, the same perpetrating groups¹³¹ motivated by the same militant, supremacist, ideology¹³² have demonized and are actively targeting the same group of people (Muslims in IAJK).¹³³ The Indian Government, rather than serving as a potential check on potential

genocide, is motivated by the same ideology,¹³⁴ actively creating the conditions conducive to genocide¹³⁵ and led by individuals who are themselves responsible for acts that may constitute genocide.¹³⁶ Additionally, the Indian Government has implemented policies, and its representatives have made statements, that demonstrate an intent to destroy the Muslims of IAJK.¹³⁷

Still, the prevailing definition of genocide in international law is extremely narrow and difficult to establish.¹³⁸ The intent element of the crime, the intentional physical destruction of a particular group, is extremely difficult to meet as a general matter and would likely be difficult to establish in IAJK based on the facts available at this writing.

7. ARE INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW THE SAME?

No, international humanitarian law and international human rights law are two separate (but complementary) bodies of international law.

What is the difference between international humanitarian law and human rights law?

While there is some overlap in the goals, obligations and protections of international humanitarian law and international human rights law, there are several differences.

A key difference between the two bodies of international law is the scope of their application. As described in the response to [Question 3](#), international humanitarian law only applies in a situation of armed conflict and protects civilians and those no longer taking part in hostilities. International human rights law applies at all times (except, in the case of certain rights, in exceptional, limited and strict circumstances) and protects all people within a state's territory or who are subject to the power or effective control of that state.¹³⁹

In a situation where both international humanitarian law and international human rights law both apply and conflict, the dominant view in international law is that the provisions of international humanitarian law control.

Does international human rights law apply to IAJK?

Yes, India is subject to international human rights law in IAJK since the indigenous people of IAJK are subject to the power and effective control of India.

As noted above, as a general matter, international human rights law applies at all times. However, states may “derogate from” (or suspend) certain non-

fundamental international human rights obligations but only in the event of a public emergency that threatens the life of the nation and then only temporarily. This is an extremely high standard. In addition, in order to derogate, states must: (1) proclaim a state of emergency, (2) formally notify the UN Secretary General of their derogation (including the obligations derogated from, the reasons for such derogation and the period of derogation), (3) ensure that their derogation measures meet strict tests of necessity and proportionality, (4) ensure that international law is otherwise complied with, (5) guarantee that derogation measures apply in a non-discriminatory manner, (6) uphold all non-derogable rights and (7) inform the affected population the scope and application of the derogation.¹⁴⁰ India has not met, and does not meet, the requirements of derogation.

Fundamental human rights obligations can never be derogated from and must apply and be respected at all times. These “core” rights include the following¹⁴¹:

- the right to life;
- freedom of thought, conscience, opinion and religion;
- the prohibition of torture, cruel, inhuman and degrading treatment;
- the prohibition of arbitrary deprivation of liberty;
- the prohibition of collective punishment;
- the prohibition of abductions or unacknowledged detentions;
- the prohibition of incommunicado detentions;
- the prohibition against deportation or forcible transfer of population not otherwise permitted under international law;
- the right of minorities to their culture, religion and language;
- the requirement that criminal liability and punishment is limited to clear and precise law in place at the time of the offense;
- the requirement of fair trials, including the presumption of innocence;

- the right to be tried by a competent, independent and impartial tribunal;
- the right to court process without delay to decide the lawfulness of detention;
- the right to an effective remedy for violations of civil and political rights; and
- the prohibition of propaganda for war or advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility, or violence.

Subject to any specific conflict with a an applicable, controlling provision of international humanitarian law, all international human rights obligations apply in IAJK. The Indian Government is responsible for the widespread, longstanding, mass violation of its international human rights obligations in IJAK, including all of the foregoing “core” human rights.¹⁴²

Treaties are a major source of international human rights law. Many treaties include individual complaint or “communications” procedures that are intended to provide mechanisms of accountability for compliance with treaty-based international human rights obligations. India’s ratification status of major international human rights treaties is summarized below as well as its acceptance of the related accountability mechanism.¹⁴³ As illustrated by the below tables, the Indian Government’s approach to international human rights law is characterized by nominal acceptance and actual avoidance. This is consistent with India’s approach to international law more generally. For further discussion of this approach, see the response to [Question 8](#).

Reporting status for India

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
☒ CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	14 Oct 1997	
☒ CAT-OP - Optional Protocol of the Convention against Torture		
☒ CCPR - International Covenant on Civil and Political Rights		10 Apr 1979 (a)
☒ CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
☒ CED - Convention for the Protection of All Persons from Enforced Disappearance	06 Feb 2007	
☒ CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	30 Jul 1980	09 Jul 1993
☒ CERD - International Convention on the Elimination of All Forms of Racial Discrimination	02 Mar 1967	03 Dec 1968
☒ CESCR - International Covenant on Economic, Social and Cultural Rights		10 Apr 1979 (a)
☒ CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		
☒ CRC - Convention on the Rights of the Child		11 Dec 1992 (a)
☒ CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	15 Nov 2004	30 Nov 2005
☒ CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	15 Nov 2004	16 Aug 2005
☒ CRPD - Convention on the Rights of Persons with Disabilities	30 Mar 2007	01 Oct 2007

Acceptance of individual complaints procedures for India

Treaty	Acceptance of individual complaints procedures	Date of acceptance/non acceptance
CAT, Art.22 - Individual complaints procedure under the Convention against Torture	-	
CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights	NO	
CED, Art.31 - Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance	-	
CEDAW-OP - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	NO	
CERD, Art.14 - Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination	N/A	
CESCR-OP - Optional protocol to the International Covenant on Economic, Social and Cultural Rights	NO	
CMW, Art.77 - Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	-	
CRC-OP-IC - Optional Protocol to the Convention on the Rights of the Child	NO	
CRPD-OP - Optional protocol to the Convention on the Rights of Persons with Disabilities	NO	

8. HOW CAN INDIA BE FORCED TO COMPLY WITH ITS INTERNATIONAL LEGAL OBLIGATIONS RELATING TO “INDIAN KASHMIR”?

India cannot be forced to comply with its international legal obligations relating to IAJK.

As a general matter, no state can be forced to comply with any legal obligations. The prevailing system of international law is established by states for states. That system is state-centric, privileges the sovereignty of states over even fundamental (“peremptory”) obligations and is not primarily adjudicatory.

For much of the history of the prevailing international system, there were few courts or fora in which a challenge against a state could even be brought. Where a court or other forum does exist in order to adjudicate violations of international law, that court or forum generally only has legal authority or jurisdiction over a state if and to the extent that the state itself grants the court or forum such authority. Even where such authority is granted to a court or forum, that court or forum has no actual enforcement powers over the state. There is no international law enforcement agency. States must choose to comply with their international legal obligations. If a state chooses not to comply, no authority exists to compel it to comply.

The Indian Government’s broad approach to compliance with international law is characterized by nominal acceptance and actual avoidance.¹⁴⁴ Consider India’s submission to the jurisdiction of the International Court of Justice. The International Court of Justice was established after World War II in order to adjudicate disputes between states. It derives its authority from the United Nations Charter. States make a unilateral declaration, called an Article 36(2) declaration, to recognize the compulsory jurisdiction of the International Court of Justice.¹⁴⁵

India has made an Article 36(2) declaration. Like certain other states, India’s declaration includes reservations which modify or limit the jurisdiction of the International Court of Justice. However, as one expert

commentary has noted: “nowhere has the quantity and density of reservations reached the same level as in the case of India, which has succeeded in shaping an instrument that will certainly prevent any attempt ever to bring an application against it, thus converting the act of acceptance into a barely veiled act of non-acceptance.”¹⁴⁶ In addition, just in case its declaration somehow failed to entirely avoid the compulsory jurisdiction of the International Court of Justice, India reserved the right in its declaration to at any time instantaneously amend or terminate its declaration.¹⁴⁷

Can India or Indians be held accountable for violations of international law?

Generally, no, neither India nor Indians can be held accountable for violations of international law.¹⁴⁸ Indian accountability for “atrocities crimes” (those crimes that are considered to be the most serious under international law: genocide, crimes against humanity and war crimes), provides a useful illustration of why and how this is true.¹⁴⁹

Under international law, it is the duty of every state to exercise jurisdiction over international crimes.¹⁵⁰ Contrary to its international legal obligations, India has not criminalized the “atrocities crimes.” Instead, India has effectively sanctioned the commission of “atrocities crimes” by its armed forces in IAJK. Through laws including the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, India has deployed law to deny domestic accountability even for “atrocities crimes.”¹⁵¹

Since July 2002, the International Criminal Court has sought to end impunity for the most serious international crimes—primarily the “atrocities crimes.” The International Criminal Court only intervenes where a state is unable or unwilling to genuinely investigate and prosecute such crimes. However, the International Criminal Court may only exercise jurisdiction in two circumstances: (1) where a state has accepted the jurisdiction of the International Criminal Court¹⁵² or (2) where the UN Security Council refers a case to the International Criminal Court.¹⁵³

In addition to domestic impunity, India's armed forces enjoy international impunity and a lack of accountability for "atrocities crimes" in IAJK because the International Criminal Court will not assert jurisdiction over Indian military personnel. This is primarily a result of India's non-acceptance of the jurisdiction of the International Criminal Court. In addition, there is no foreseeable scenario in which the UN Security Council would refer a case involving the Indian military to the International Criminal Court. Consider the UN Security Council's historic, consistent failure to hold India accountable for its defiance of dozens of the Security Council's own resolutions regarding the territory of the Princely State of Jammu and Kashmir. Consider also that India has had and continues to have allies who are Permanent Members of the UN Security Council who possess veto rights and a demonstrated willingness to act in India's interest. As a consequence, contrary to the purported purpose of the International Criminal Court, the prevailing international legal system replicates and furthers India's domestic legalization of impunity and lack of accountability for "atrocities crimes" committed by its armed forces in IAJK. Accordingly, Indian instrumentalities enjoy total impunity and a total lack of accountability even for "atrocities crimes," which is, as a practical matter, accepted by the international community.¹⁵⁴

What good is international law to the indigenous people of IAJK?

International law operates as cover for states by endowing states and the prevailing international system with legitimacy through its purportedly universal rules and norms while permitting rampant violations, little scrutiny, minimal accountability and the opportunistic invocation of rules and norms by states (when such invocations promote their perceived "self-interest"). In the case of India, the prevailing international system serves primarily to legitimate, sanction and obscure violations against the indigenous people of IAJK rather than to limit, proscribe, prevent or remedy such violations. It does this by, among other things:

- Privileging sovereignty over even purportedly fundamental and universal obligations;

- Sanctioning as legitimate India’s nominal acceptance and actual avoidance of its international legal obligations (*see* the discussion earlier in the response to this [Question 8](#));
- Sanctioning as legitimate and furthering India’s domestic legalization of impunity and lack of accountability (even for the “atrocities crimes”—the most serious crimes under international law (*see* discussion earlier in the response to this [Question 8](#))); and
- Providing, and allowing India to maintain, a position of privilege, legitimacy and even perceived normative excellence (*e.g.*, “The World’s Largest Democracy”¹⁵⁵)—with wide ability and capacity to suppress information, manipulate information, produce false information,¹⁵⁶ dominate conversations and avoid answering for or addressing actual violations¹⁵⁷—despite its longstanding, well-established and ongoing violation of fundamental rules and norms of that system itself.¹⁵⁸

At the same time, the international system, which is based on fundamental rules and norms that purport to have universal applicability, presents the indigenous people of IAJK and their allies certain opportunities. In considering these opportunities, it is important to recall:

- India has enjoyed and continues to enjoy a privileged position as a nation-state. India has ample resources and standing in any international venue in which it chooses to participate. India is recognized as having sovereign rights and has been and is extremely adept at deploying sovereignty to avoid scrutiny, responsibility and accountability.¹⁵⁹ India cannot be forced to do anything and has not been effectively pressured to address or remedy its violations against the indigenous people of IAJK.
- India is privileged among states—as a large country, as a major market, as a post-colonial state, as a major Asian power, as a geopolitical and economic counterweight to China and as a nominal democracy.¹⁶⁰ India has deployed and continues to deploy its

disproportionate privilege to avoid pressure to meaningfully address its violations against the indigenous people of IAJK.

- India is a rampant violator of international law,¹⁶¹ a belligerent power,¹⁶² a bully to its neighbors,¹⁶³ a terrorist state,¹⁶⁴ a state sponsor of terrorism¹⁶⁵ and a state that has no regard for its international obligations relating to IAJK or the mechanisms of the existing international order that are intended to promote compliance with important international obligations.¹⁶⁶
- India is not a functioning constitutional democracy.¹⁶⁷ India does hold periodic elections to transfer governmental authority; however, India is thoroughly corrupt (including its electoral processes),¹⁶⁸ lacks the rule of law and due process,¹⁶⁹ has engaged in widespread suppression and repression of dissident voices,¹⁷⁰ has effectively abandoned its own purported constitutional norms and limitations on power,¹⁷¹ sanctions the persecution of minorities rather than protect minority rights¹⁷² and generally operates like a mafia state.¹⁷³ India's conduct in IAJK, where even the formalistic trappings of democratic processes and a commitment to constitutionalism and the rule of law have been a farce, itself provides significant evidence to this effect.¹⁷⁴ Note that all of the foregoing is longstanding. In recent years, India has become an ethnonationalist, authoritarian state¹⁷⁵ dominated by fascists¹⁷⁶ and ruled by criminals directly implicated in major crimes,¹⁷⁷ with no functioning political opposition,¹⁷⁸ no meaningfully independent media¹⁷⁹ and industry captive to fascist politicians.¹⁸⁰
- The indigenous people of IAJK are systematically marginalized and suppressed in India. They have never enjoyed democratic, representative governance or respect for their fundamental rights.¹⁸¹
- The indigenous people of IAJK are systematically marginalized and silenced internationally. As a stateless people, even if they are able to overcome domestic suppression in India, they are denied even the opportunity to be represented in practically every forum.¹⁸²

- The indigenous people of IAJK are a violated, suppressed and marginalized people with extremely limited resources who are systematically denied opportunities to even participate in those international fora that nominally exist to scrutinize and evaluate the violations of states, including the International Court of Justice.
- Every state has the duty to promote, through joint and separate action, realization of the equal rights and self-determination of the indigenous people of IAJK and to render assistance to the United Nations to bring a speedy end to India’s colonization of IAJK, having due regard for the freely expressed will of the indigenous people of IAJK.¹⁸³
- Every state has the duty to cooperate to bring an end to serious breaches of peremptory legal norms—like the ongoing colonization of and commission of “atrocities crimes” in IAJK.¹⁸⁴
- Every state has a duty to not to recognize as lawful serious breaches of peremptory norms—like the ongoing colonization of and commission of “atrocities crimes” in IAJK—and the duty to not aid or assist in those breaches.¹⁸⁵
- If a state knows of serious breaches of peremptory norms (including serious human rights violations) and provides positive aid or support to the violator—for example, by supplying arms to the India’s armed forces operating in IAJK—that state is complicit in the violations as though it itself had committed the violations.¹⁸⁶
- However, rather than cooperate to end India’s colonization of IAJK and abstain from assisting India in committing its breaches of peremptory norms, the vast majority of states continue to support India’s breaches by failing to call India to account, continuing to invest in and supply India (including with arms)¹⁸⁷ and empowering India internationally, including at the UN Security Council.¹⁸⁸
- A primary interest of every existing state is to maintain the prevailing order (which structurally and normatively favors the sovereignty and territorial integrity of existing states) and its

perceived legitimacy, strengthen sovereignty and minimize or deny the exercise of the right to external self-determination (*see* response to [Question 5](#)).

- Many states are themselves violators of peremptory norms and fundamental international legal obligations. For this and other reasons, such states have a primary interest in ineffective international accountability (and ongoing impunity) for states.
- The international community is broadly aware of the history of the ongoing disputes in and over IAJK and the fact of violations in IAJK.¹⁸⁹ The indigenous people of IAJK have, for decades, sought the realization of their legal rights and looked to the commitments of the international community, and particularly the United Nations, to seek the realization of their rights, including the right to self-determination.¹⁹⁰
- International law is principled, rules-based and widely considered to be legitimate and of universal applicability.

In light of the foregoing, international law presents at least the following opportunities to the indigenous people of IAJK and their allies:

- Opportunities to demonstrate the realities of the experience of the people of IAJK (despite Indian misinformation, disinformation and suppression of information and expression);
- Opportunities to demonstrate the violations of India and Indians in IAJK (despite Indian misinformation, disinformation and suppression of information and expression);
- Opportunities to demonstrate the threat that India presents to the prevailing international order. While some states are broadly recognized as violators of international law, India is exceptional for the scale and significance of its violations,¹⁹¹ the degree to which it has evaded scrutiny for its violations and the degree to which it relies on that evasion for legitimacy and standing in the world. Consider India relative to two countries it is frequently compared with:

- The United States is recognized as a violator of international law (at least internationally) who claims moral legitimacy based on respect for the rules and norms of the prevailing order. However, its privileged international standing (and impunity) is unrelated to that claim to moral legitimacy. The United States is unaccountable due to its disproportionate political and economic power.
- China is recognized as a major violator of international law but does not claim moral legitimacy for its standing. China is recognized as an amoral or immoral actor. Its international standing (and impunity) is due to its disproportionate economic (and increasingly political) power.

India's positionality and influence in the world is substantially derived from its moral legitimacy (e.g., as "The World's Largest Democracy"). India enjoys privileged international standing (and impunity) in significant part as a result of its nominal commitment to the rules and norms of the prevailing international order. At the same time, India is a rampant, egregious and largely unrecognized violator of those rules and norms (and not just in IAJK). India nominally champions, and disproportionately benefits from, an order that it actively undermines. Contradictions of this sort and on this scale demonstrate the significant weakness of, and a major threat to, a system based on respect for rules and norms;

- Opportunities to pressure states to comply with their international obligations to end India's colonization of IAJK and to abstain from assisting India in violating peremptory norms; and
- Opportunities to pressure India to comply with its international legal obligations in IAJK.

Despite its biases and limitations, international law has significant value in providing a language for identifying, describing and explaining issues of concern for the indigenous people of IAJK. It is also a potentially powerful

frame for identifying allies and resources for those people and for unmasking India's violations and crimes against them. International law is a primary modality through which the legitimacy and morality of the anti-occupation, anti-colonial, pro-self-determination, pro-human rights perspectives among the indigenous people of IAJK, and the illegitimacy and immorality of India's position in IAJK, can be made more manifest.

* * *

ENDNOTES

¹ The Princely State of Jammu and Kashmir was created pursuant to the 1846 Treaty of Amritsar between the British Crown and a Dogra Rajput chieftain from the Jammu region named Gulab Singh. The Treaty of Amritsar was likely void or invalid as a matter of law. It is unclear what legal authority the parties had to enter into the instrument, which purported to convey territory nominally “acquired” by colonial conquest and not under the control of the conveying party and to which neither party appeared to have had a legally recognizable claim. Further, this instrument was extraordinary in its vileness and contravention of legal norms. Effectively, many historians and scholars concur that the Princely State of Jammu and Kashmir was a “sale deed” pursuant to which vast territory, massive resources and various indigenous peoples were purportedly “conveyed” for minimal consideration, which was intended by the British Crown as indemnification for its colonial military expenditures. The result of this “sale deed” was a two-year war of consolidation in which the Dogra forces committed gross violation and atrocities (pursuant to “authority” granted to them by the British Crown)—resulting in a tyrannical regime widely recognized (including by the British Crown) for its brutality, state violence, political repression, anti-Muslim bigotry and discrimination and severe economic exploitation. Note that the economic violations, at least, were committed in part to pay the British Crown consideration and tribute “owed” pursuant to the Treaty of Amritsar. *See also* Endnote 20.

² “Indian-Administered Kashmir” is the nomenclature typically used to refer to these territories by politically “neutral” bodies, including the United Nations. The authors employ the term “Indian-Administered Jammu and Kashmir” (a convention also used by political “neutrals,” including the United Nations High Commission for Human rights, *see, e.g.*, “UN rights chief appeals to India and Pakistan for ‘full and unhindered’ access to Kashmir,” August 17, 2016, <https://news.un.org/en/story/2016/08/536812-un-rights-chief-appeals-india-and-pakistan-full-and-unhindered-access-kashmir>) because it is more historically accurate given the recognized conventional name of the Princely State of Jammu and Kashmir. To refer to a territory as “administered” does not suggest that it is not occupied; rather, since international law presumes that an occupation will be temporary, the occupying power is considered a “temporary administrator” of the territory it occupies. *See* International Committee of the Red Cross, “Occupation and international humanitarian law: questions and answers: 1. What is occupation?,” ICRC, August 4, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

³ The authors view the prevailing system of international law as one of several potential frames for analyzing or evaluating issues related to the disputes and crises in and over the territories of the Princely State of Jammu and Kashmir. International law is not necessarily the best frame for understanding some or all such issues, in some circumstances is a poor and/or insufficient frame and is, in fact, a tool of oppression. *See, e.g.*, Erakat, Noura, “International Law and the Question of Palestine: Imperial Exceptionalism, Third World Resistance & the Entanglement of Law and Politics,” THIRD

WORLD APPROACHES TO INTERNATIONAL LAW REVIEW, August 30, 2019, <https://twailr.com/international-law-and-the-question-of-palestine-imperial-exceptionalism-third-world-resistance-the-entanglement-of-law-and-politics/>).

International law has its own significant biases and limitations, as does the institutional apparatus of international legal “enforcement” (some of these limitations are described in the response to [Question 8](#)); these institutions are themselves an exercise of power by discrete interests whose interests generally lie in the disenfranchisement and denial of marginalized people, like the indigenous people of the territories of the Princely State of Jammu and Kashmir. At the same time, international law is a broadly-recognized, well-established, global (“universal”) frame built on recognizable principles and a potentially powerful language and tool of advocacy for marginalized people, like the indigenous people of the territories of the Princely State of Jammu and Kashmir.

⁴ See International Committee of the Red Cross, “Contemporary challenges to IHL – Occupation: overview,” ICRC, June 11, 2012, <https://www.icrc.org/en/doc/war-and-law/contemporary-challenges-for-ihl/occupation/overview-occupation.htm> and Geneva Academy of International Humanitarian Law and Human Rights, “Military occupation: Elements of occupation,” RULAC, September 4, 2017, <http://www.rulac.org/classification/military-occupations#collapse1accord>.

⁵ See Eritrea-Ethiopia Claims Commission – Partial Award: Central Front - Ethiopia’s Claim 2, Reports of International Arbitral Awards, V.XXVI, April 28, 2004, pp. 155-194, para. 29, https://legal.un.org/riaa/cases/vol_XXVI/155-194.pdf and Geneva Academy of International Humanitarian Law and Human Rights, “Military occupation: Elements of occupation,” RULAC, September 4, 2017, <http://www.rulac.org/classification/military-occupations#collapse1accord>.

⁶ See International Committee of the Red Cross, “Occupation and international humanitarian law: questions and answers: 3. What are the most important principles governing occupation?,” ICRC, August 4, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>. See also the response to [Question 3](#).

⁷ See Opinion of J. Elaraby, Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 9, 2004, <https://www.un.org/unispal/document/auto-insert-178825/>. Among other things, an occupying power cannot achieve rightful sovereignty through occupation.

⁸ Pursuant to Article 42 of the 1907 Hague Regulations, see International Committee of the Red Cross, “Occupation and international humanitarian law: questions and answers: 1. What is occupation?,” ICRC, August 4, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

⁹ See Geneva Academy of International Humanitarian Law and Human Rights, “Military occupation: Relevance of armed resistance,” RULAC, September 4, 2017,

<http://www.rulac.org/classification/international-armed-conflict#collapse1accord>. There is no occupation if the state whose territory would otherwise be occupied consents to the presence of foreign troops; however, in order to be effective, such consent has to be genuine, valid, explicit, given by a person with proper authority to speak for the state, given without coercion and should otherwise be interpreted in light of public international law. There is a presumption against consent in the circumstance of a failed state. See Geneva Academy of International Humanitarian Law and Human Rights, “International armed conflict: Who represents the state?,” RULAC, August 30, 2017 <http://www.rulac.org/classification/military-occupations#collapse3accord> and International Committee of the Red Cross, “Occupation and Other Forms of Administration of Foreign Territory,” ICRC, March 2012, p.10, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>.

¹⁰ See International Committee of the Red Cross, “Occupation and international humanitarian law: questions and answers: 1. What is occupation?,” ICRC, August 4, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

¹¹ There is ample evidence of this fact, including the applicable resolutions of the UN Security Council and the UN Commission for India and Pakistan (including [Resolution 47 \(21 April 1948\)](#), [Resolution 51 \(3 June 1948\)](#), [Resolution 91 \(30 March 1951\)](#), [Resolution 96 \(10 November 1951\)](#), [Resolution 98 \(23 December 1952\)](#), [Resolution 122 \(24 January 1957\)](#) and [Resolution 126 \(2 December 1957\)](#)). India’s commitment to a settlement of the political future of the Princely State of Jammu and Kashmir by means of a popular referendum was consistent with all parties’ understanding of the applicable rules governing “Partition” (the creation of the modern nation-states of India and Pakistan in August 1947) and India’s own conduct (including with respect to the Princely State of Junagadh) and evidenced in many places, including India’s written acceptance of the Instrument of Accession (which explicitly references a commitment to settlement by popular referendum twice) (on the Instrument of Accession, see Endnotes 14, 16, 21 and 30), India’s commitments at the UN Security Council pursuant to the dispute it itself brought to the Security Council, public commitments made by India’s Prime Minister (including in a well-known November 2, 1947 public address) and public commitments made by other key representatives, including its Ministry of External Affairs in connection with the adoption of the Indian Constitution in November 1949. For listings of commitments made by Jawaharlal Nehru, as Prime Minister of India, between October 1947 and May 1948 to the conditionality of the Instrument of Accession and a commitment to a plebiscite in IAJK, see “India’s Commitment of Plebiscite for the People of Kashmir,” National Assembly of Pakistan, <http://www.na.gov.pk/en/content.php?id=85> and Maik, Hasnaat, “India pledged to hold plebiscite in Kashmir: SC,” The Express Tribune, August 6, 2019, <https://tribune.com.pk/story/2029691/1-india-pledged-to-plebiscite-kashmir-sc>. See also Endnote 16.

¹² See, e.g., “In Pakistan, Guterres urges world to step up climate action, praises support to Afghan refugees,” UN News, February 16, 2020,

<https://news.un.org/en/story/2020/02/1057491>. See also “Kashmir should be resolved according to UN resolutions: UNSG in Pakistan,” *The Kashmir Walla*, February 16, 2020, <https://thekashmirwalla.com/2020/02/kashmir-should-be-resolved-according-to-un-resolutions-unsg-in-pakistan/>, Lone, Fozia Nazir, “The BJP has marched into a legal bind over Kashmir’s accession to India,” August 23, 2019, TRT World, <https://www.trtworld.com/opinion/the-bjp-has-marched-into-a-legal-bind-over-kashmir-s-accession-to-india-29197> and “UN Security Council discusses Kashmir, China urges India and Pakistan to ease tensions,” UN News, August 16, 2019, <https://news.un.org/en/story/2019/08/1044401> (The statement of UN Secretary General Guterres regarding the territory of the Princely State of Jammu and Kashmir included: “The position of the United Nations on this region is governed by the Charter of the United Nations and applicable Security Council resolutions.”).

¹³ See, e.g., “Jammu and Kashmir includes PoK and Aksai Chin too, will lay down life for it: Home Minister Amit Shah roars in Parliament,” *OpIndia*, August 6, 2019, <https://www.opindia.com/2019/08/jammu-and-kashmir-includes-pok-and-aksai-chin-too-will-lay-down-life-for-it-home-minister-amit-shah-roars-in-parliament/> (Indian Home Minister Amit Shah stated that Jammu and Kashmir was an “integral part of India” and that “Pakistan occupied Kashmir and Aksai Chin” were part of Jammu and Kashmir). Note that the Indian Government’s position to the effect that “Jammu and Kashmir” is an “integral part of India” and an “internal matter” for India go to this same point. See also Endnote 17.

¹⁴ The Instrument of Accession is the legal instrument that Hari Singh, the scion of a Dogra dynasty from the Jammu region, purportedly signed on October 26 or 27, 1947 agreeing (on a limited and conditional basis) to join the Princely State of Jammu and Kashmir to India. The existence of this instrument at all is disputed by some authorities, including Alistair Lamb. See, e.g., his *Kashmir: A Disputed Legacy 1846-1990* (Hertingfordbury: Roxford Books, 1991). For a quick synopsis of certain related points, see Schofield, Victoria, “Kashmir: The origins of the dispute,” BBC, January 16, 2002, http://news.bbc.co.uk/2/hi/south_asia/1762146.stm. See also Endnotes 21, 27, 28 and 30.

¹⁵ See Endnote 14.

¹⁶ Pursuant to the text of the instrument itself, the purported “accession” was limited, temporary and conditional, entered as a stopgap measure in exigent circumstances and subject to the outcome of a referendum on the future political disposition of the territory. Both parties to the purported instrument (including the Indian Government) understood this. While the inclusion of Article 370 (which purported to address the prospective and possible future constitutional relationship between IAJK and India) in the Indian Constitution in 1949 was itself considered problematic internationally, India’s international representatives made clear that the inclusion of IAJK in India’s Constitution was only a matter of fairness under the circumstance (i.e., it was unfair to deny the Jammu and Kashmir Government and the people of IAJK the opportunity to participate in a process—the framing of a potential constitutional relationship with

India—that could impact their future) and explicitly stated that their initiative “was not intended and does not, in fact, alter the Government of India’s determination to abide, in the matter of accession, by the freely declared will of the people of the Jammu & Kashmir.” The Indian Government was clear that if that freely declared will of the people was not in India’s favor, IAJK’s relationship with India (including its constitutional relationship) would “automatically cease.” (See, e.g., Noorani, A.G., “Kashmir question,” Dawn, June 14, 2014, <https://www.dawn.com/news/1112545>). This is why Article 370 of India’s Constitution was listed as a “Temporary, Transitional and Special Provision.”

Note that the Indian Government’s position has not been that Hari Singh had proper authority to speak for the Princely State of Jammu and Kashmir and properly consented to the presence of foreign, Indian troops in the separate Princely State of Jammu and Kashmir. As noted above, India claims that the accession of the Princely State of Jammu and Kashmir is valid and final and that, therefore, its territory is India’s. In any event, an argument against occupation based on the consent of the state whose territory would otherwise be occupied would fail for many reasons, including due to substantive, well-established concerns regarding the equities involved and whether Hari Singh had on the relevant date the authority to speak for the Princely State of Jammu and Kashmir, which, if it was a sovereign state, was likely a failed state. For a discussion of “failed states” under international law, see Thürer, Daniel, “The “failed State” and international law,” ICRC, December 31, 1999, <https://www.icrc.org/en/doc/resources/documents/article/other/57jq6u.htm>. See also Endnote 9.

¹⁷ A famous articulation of this position occurred on January 23 and 24, 1957. V.K. Krishna Menon, the Indian representative, gave the longest speech ever made at the United Nations, in which he argued (to the Security Council) that India had a legal claim to complete sovereignty over the Princely State of Jammu and Kashmir and threatened to invade Pakistan. Some highlights of that speech are the following statements (NB: Menon’s references to “aggression” are intended to describe the conduct of Pakistan and not of India—see Endnotes 29 and 30): “What is before us, as I shall point out later, is this question of aggression, because the whole United Nations is founded upon the basic principles of international law and behaviour. That is based upon equity, and he who asks for equity must come with clean hands.” And, “I say that the fundamental question is whether the Security Council is prepared to say to itself, and whether each member State of the Council is prepared to say to it-self, that from an aggression, whatever may be the rights of the other side, other consequences beneficial to the aggressor can follow.”

Regarding India’s claim to the Princely State of Jammu and Kashmir, Menon said the following: “[T]he Security Council is in no position under the Charter to go into the legality of the accession; and so far as we are concerned it is complete.” And, “Have we the right for the security of our territory? Have we the right to be free from threat? Have we the right to feel assured that the machinery of the Security Council and its resolutions are not going to be used as a smoke-screen for the preparation of aggression

against us? Have we the right so far as the Council is concerned—and I say that it cannot impose it—to live side by side with our neighbour, free from the threats of a holy war?” See S/PV.762, S/PV.763 and S/PV.764 at “What is the longest speech given at the United Nations?,” Dag Hammarskjöld Library, <https://ask.un.org/friendly.php?slug=faq/37127>.

¹⁸ See Endnotes 11 and 16.

¹⁹ See Endnotes 11 and 12.

²⁰ Regarding whether Hari Singh was an independent sovereign at Partition, there appear to be two essential views which depend on how history is read. In a reading of history that privileges the views of the colonial power responsible for the decolonization of former colonial territories, the policies of the United Kingdom (including the Cabinet Mission Memorandum (May 12, 1946), pursuant to which “paramountcy,” or British suzerainty, lapsed at Partition and all rights “surrendered” by Princely States would be “returned” to those states) and the text of the Indian Independence Act, 1947, the Princely State of Jammu and Kashmir became a sovereign at Partition with Hari Singh as its ruler (see, e.g., Lone, Fozia Nazir, “The Legal Validity of Illegal Seizure of Kashmir: An Archival and Legal Review,” in *HISTORICAL TITLE, SELF-DETERMINATION AND THE KASHMIR QUESTION* (Leiden: Brill Nijhoff, 2018)).

If history is read to critically assess the views of the colonial power or privilege the views of the victims of colonization, the Princely State of Jammu and Kashmir remained a British colony under colonial occupation by the forces of Hari Singh (as an agent of the United Kingdom) at Partition. This second view can be established by demonstrating that (1) the Treaty of Amritsar itself being null and void or invalid (see also Endnote 1) or (2) the Treaty of Amritsar being valid and the following: (a) although Kashmir has historically been an independent and sovereign state that exercised authority over much of the territory of what would become the “Princely State of Jammu and Kashmir,” there was no Princely State of Jammu and Kashmir at the time of the Treaty of Amritsar (Kashmir and nearby territories had been colonized by the Sikh Empire), (b) the United Kingdom created the Princely State of Jammu and Kashmir through the Treaty of Amritsar, (c) the United Kingdom empowered Gulab Singh through the Treaty of Amritsar; Gulab Singh had no legitimate (or independent) claim to rulership over the territory of the Princely State of Jammu and Kashmir, (d) the Treaty of Amritsar is a concession or agency arrangement pursuant to which the United Kingdom (as a sovereign, colonial power) delegated (for an upfront payment and ongoing consideration) to Gulab Singh authority to administer a certain territory (as a colonial administrator) for the United Kingdom, subject to the ultimate authority of the United Kingdom (including regarding affairs external), certain limitations (including which territories are included in that concession and who could be employed in the colonial administration) and certain ongoing obligations (including an ongoing tribute or concession payment and the obligation to supply troops to fight with the British).

This second view is consistent with historical facts, both in terms of the conduct of the United Kingdom (and the well-established economic and geo-political interests motivating such conduct) and the nature of the exploitative, tyrannical, brutal, constantly unconsented and resisted colonial rule of the Dogras in the territory of the Princely State of Jammu and Kashmir (Gulab Singh's claim to rule faced popular opposition from the beginning – it took Gulab Singh's military two years of war on the indigenous inhabitants to initially achieve effective control over the territory).

In this second view, (1) India in 1947 displaced one occupying army in IAJK with its own; (2) the territory of the Princely State of Jammu and Kashmir remains under the protection of the United Kingdom; (3) the United Kingdom (in addition to India) is responsible for the gross violations committed against the people of the territory of the Princely State of Jammu and Kashmir (since 1846 in the case of the United Kingdom and since 1947 in the case of India; note that the United Kingdom's role in propping up the Dogra rulers of the Princely State of Jammu and Kashmir while aware of the violations and atrocities for which they were responsible is well documented; also, Article IX of the Treaty of Amritsar includes an explicit obligation of the United Kingdom to protect the territories of the Princely State from external enemies) and (4) the United Kingdom has failed to decolonize the territory of the Princely State of Jammu and Kashmir (a territory that remains colonized and under foreign occupation). Note that in this case, where the responsibility and conduct of the United Kingdom is itself in question, the views of the United Kingdom (which should be presumed to be self-serving and, in any event, are those of a major violator whose hands are extremely unclean) should not be accorded deference. The authors believe that this second view has received insufficient attention to-date.

²¹ The Instrument of Accession is conditional on Hari Singh (or his heirs or successors) retaining executive and administrative authority over the Princely State of Jammu and Kashmir and granted the Indian legislature limited authority to make laws applicable to the Princely State only in respect of the following discrete, scheduled matters: defense, external affairs and communications (at that time, pursuant to its standstill agreement with Hari Singh, Pakistan already operated the communications of the Princely State and already had delegated authority over the external affairs of the Princely State). *See also* Endnotes 27 and 28. The Instrument of Accession explicitly does not commit Hari Singh (or his heirs or successors) to accept any future constitution of India and reserves an unfettered right to negotiate the terms of a potential arrangement with India in respect of a future Indian Constitution. The Instrument of Accession explicitly proscribes India's legislature from having power to make laws for the Princely State authorizing the compulsory acquisition of land for any purpose. *See* Endnotes 56 and 57.

²² The “erosion” of IAJK's “autonomy,” in breach of the letter and spirit of the purported Instrument of Accession, was underway by at least May 14, 1954 when India's President issued The Constitution (Application to Jammu and Kashmir) Order (known as the Basic Order) which served as the basis (from the Indian Government's own point of view) of its

relationship to IAJK until August 5, 2019 (see Endnote 24). The substance of that order included:

1. The extension of Indian citizenship to the “permanent residents” of IAJK;
2. The extension of the fundamental rights of the Indian Constitution to IAJK;
3. The extension of the jurisdiction of the Indian Supreme Court to IAJK;
4. The granting to the Indian Government of emergency powers in the event of external aggression;
5. The abolition of IAJK’s customs regime; and
6. The granting to the Indian Government of the right to make decisions affecting the disposition of IAJK but only with the consent of the Indian State of Jammu and Kashmir Government.

²³ See, e.g., Noorani, A.G., *Article 370 A Constitutional History of Jammu and Kashmir* (New Delhi: Oxford, 2011) and Noorani, A.G., “Article 370 Cannot Be Abrogated,” *Deccan Chronicle*, June 15, 2014, <https://www.deccanchronicle.com/140615/commentary-columnists/article/article-370-cannot-be-abrogated>.

²⁴ On August 5, 2019, India’s President issued an order (C.O. 272) which, among other things, superseded the Basic Order (which was the fundamental implementation of the Indian Government’s constitutional relationship with IAJK in the Indian Government’s own view) and a second order (C.O. 273) which, among other things, (1) unilaterally eliminated the entire substance of the Indian constitutional provision governing the Indian Government’s constitutional relationship with IAJK in the Indian Government’s own view and (2) unilaterally repudiated the Instrument of Accession. In addition, pursuant to the J&K Reorganisation Act (2019), India has, in material breach of the violation of the Instrument of Accession, mandated the dissolution of IAJK and authorized itself to exercise all executive and administrative authority. For the text of these orders, see, e.g., <http://egazette.nic.in/WriteReadData/2019/210049.pdf> and <http://egazette.nic.in/WriteReadData/2019/210243.pdf>.

²⁵ For a discussion of the Fitzmaurice opinion, see Lone, Fozia Nazir, “The BJP Has Marched into a Legal Bind over Kashmir’s Accession to India,” *TRT World*, August 23, 2019, <https://www.trtworld.com/opinion/the-bjp-has-marched-into-a-legal-bind-over-kashmir-s-accession-to-india-29197> and Lone, Fozia Nazir, “The Legal Validity of Illegal Seizure of Kashmir: An Archival and Legal Review,” in *Historical Title, Self-Determination and the Kashmir Question* (Leiden: Brill Nijhoff, 2018)). The specific question considered in the opinion was whether Kashmir’s (meaning the Princely State of Jammu and Kashmir’s) accession to India was valid. Fitzmaurice was the Principal Legal Advisor to the UK’s Ministry of Economic Warfare (1939 – 1943), Deputy Legal

Advisor to the UK's Foreign and Commonwealth Office (1943 – 1945), Second Legal Advisor to the UK's Foreign and Commonwealth Office (1945 – 1953), a member of the UK's delegation to the UN Assembly (1946), the UK's Counsel to the International Court of Justice (1948 – 1954), Senior Legal Advisor to the Foreign and Commonwealth Office (1953 – 1960), Member of the UN's International Law Commission (1955 – 1960) (and Chair of the Eleventh Session of the International Law Commission in 1959), Judge of the International Court of Justice (1960 – 1967), Member of the Permanent Court of Arbitration (1964 – 1973), Senior Judge of the International Court of Justice (1967 – 1973) and Judge of the European Court of Human Rights (1974 – 1980).

²⁶ The creation of the modern nation-states of India and Pakistan in August 1947 is known as Partition. The Fitzmaurice opinion was a response to the US Secretary of State's and the UK's UN Security Council's representative's request for advice in connection with the India-Pakistan dispute at the UN Security Council.

²⁷ The standstill agreement with the Government of Pakistan was prior in time and did not automatically terminate and the Government of Pakistan did not consent to the Instrument of Accession. In addition, Hari Singh did not actually control the territory of the Princely State (an armed uprising associated with the longstanding indigenous struggle to depose him was defeating the Dogra army and had taken substantial territory, declaring an *azad* (or free) state on the former territory of the Princely State) and he could not (contrary to his undertaking in Instrument of Accession) actually deliver the accession of the Princely State.

²⁸ Plebiscites or popular referenda were standard British policy in decolonization processes and was the policy in British India in a contested case. This was India's policy as well, as explicitly references in the terms of India's acceptance of the Instrument of Accession itself ("*Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question if accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people.*" (emphasis added)). Alternately, there was no statutory basis for a conditional instrument of accession, in which case the instrument was null and void.

²⁹ In addition to its commitments to a referendum in IAJK (see Endnotes 11 and 16), India's own course of conduct, including its insistence on a plebiscite to validate its invasion and seizure of the State of Junagadh in contravention of its ruler's accession to Pakistan, was viewed by Fitzmaurice to essentially estop (or prevent) India from maintaining a diametrically opposite position in the case of the Princely State of Jammu and Kashmir.

³⁰ For further details on some of these reasons, see, e.g., Lone, Fozia Nazir, "The Legal Validity of Illegal Seizure of Kashmir: An Archival and Legal Review," in HISTORICAL TITLE, SELF-DETERMINATION AND THE KASHMIR QUESTION (Leiden: Brill Nijhoff, 2018) and

NOORANI, A.G., ARTICLE 370 A CONSTITUTIONAL HISTORY OF JAMMU AND KASHMIR (New Delhi: Oxford, 2011). These reasons include the following regarding Hari Singh's capacity:

Hari Singh was a tyrant who was responsible for gross violations and grave, systematic and large-scale crimes against the people he ruled, including forced demographic change and genocidal killings in Jammu in the late summer and fall of 1947 (*see* Endnote 130); any claim to authority to decide the political future of the people of the Princely State should be dismissed.

Hari Singh's subjects never consented to his rule and had resisted his (and his predecessors') rule continually since that rule began. Hari Singh was not considered a legitimate ruler by a significant portion of the people of the Princely State. There were longstanding, widespread, open calls for his ouster and demands for democratic self-governance.

In the face of a successful, indigenous, anti-colonial, pro-democracy armed uprising against Hari Singh's tyranny, Hari Singh had fled his throne and lost any claim to rule.

The indigenous, anti-colonial, pro-democracy uprising against Hari Singh's army had successfully driven back Hari Singh's troops, taken a substantial portion of the territory of the Princely State, achieved effective control over that territory and declared a new, independent state. Hari Singh did not possess or control the territory he claimed have authority over in the Instrument of Accession.

The Treaty of Amritsar was the basis of the Hari Singh's claim to authority and was either itself null or invalid or, if it was valid, did not grant Hari Singh legal capacity to enter into international treaties. *See also* Endnotes 1 and 20.

These reasons include the following regarding the Instrument of Accession's validity:

Hari Singh sought to remain independent. He only signed the Instrument of Accession due to Indian coercion—India refused to provide military support to save Hari Singh's failed regime unless he first signed the Instrument of Accession. India, a superior and larger power, had engaged in a well-documented campaign of intimidation prior to the execution of the Instrument of Accession. In addition, Hari Singh was directly pressured by Indian representatives even at the time of the apparent execution of the Instrument. The Instrument of Accession is, or is akin to, an "unequal treaty" (a treaty imposed wholly or partly by a powerful state on a weaker state, enabling the powerful state to dictate terms to the weaker state). Unequal treaties are considered null and void.

Hari Singh had no valid claim to "self-defense" and therefore some justification that would tend to validate the Instrument of Accession. Contrary to Hari Singh's self-serving assertions in the Instrument of Accession, there was an indigenous, anti-colonial, pro-democracy armed uprising against his rule (the armed rebels were part of a longstanding indigenous, anti-colonial, pro-democracy struggle against his rule and not foreign "infiltrators") that had defeated his troops and controlled major portions of the territory.

The claimed “infiltrators” were in fact informal groups from the borderlands of the Princely State who were allies of the indigenous forces already fighting (and defeating) Hari Singh’s troops, who were responsible for ongoing fundamental violations and atrocity crimes against the people of the Princely State. Note in this regard that prevailing international law recognizes that people resisting colonial domination in pursuit of the exercise of their right to self-determination are entitled to seek and to receive support (see Endnote 88). Pakistan, itself newly created and still trying to organize a military (India was favored in this regard and other regards by the Partition process), was led by British military officers. Even if one accepts Hari Singh’s position regarding “infiltration,” there was no “armed attack” from another state (the Pakistani military did not attack the Princely State; in this view, Pakistan simply failed to prevent armed tribesmen from entering the Princely State). India’s military intervention in the Princely State was pre-meditated and the “infiltration” pre-textual. The purported justification for the Instrument of Accession provided by that Instrument is false.

³¹ See, e.g., the works of Alistair Lamb, including his *KASHMIR: A DISPUTED LEGACY 1846-1990* (Hertingfordbury: Roxford Books, 1991) and Christopher Snedden, including his *KASHMIR THE UNWRITTEN HISTORY* (New Delhi: HarperCollins Publishers, 2013), regarding the Partition-era history of the territories of the Princely State of Jammu and Kashmir. See also Lone, Fozia Nazir, “The Legal Validity of Illegal Seizure of Kashmir: An Archival and Legal Review,” in *HISTORICAL TITLE, SELF-DETERMINATION AND THE KASHMIR QUESTION* (Leiden: Brill Nijhoff, 2018)).

³² Indigeneity, like practically everything related to IAJK, is politicized and contested. By “indigenous people of IAJK” (and similar language), the authors mean those peoples historically associated with the territories of IAJK (and their descendants) prior to Dogra and Indian occupation and associated population transfer (both state-facilitated and voluntary). Practically, this likely means those “State Subjects” (a status defined by law in the Princely State of Jammu and Kashmir in 1927) and their descendants whose status legitimately derived from hereditary association with the relevant territories of the Princely State of Jammu and Kashmir (rather than from any other basis).

³³ See International Committee of the Red Cross, “Annexation (prohibition of),” ICRC, <https://casebook.icrc.org/glossary/annexation-prohibition>.

³⁴ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 9, 2004, para. 121, <https://www.un.org/unispal/document/auto-insert-178825/>.

³⁵ Extension of citizenship rights by an occupying power is incompatible with the temporary nature of occupation. For further details on the Basic Order, see Endnotes 22 and 24.

³⁶ See Endnote 17 for further information on this proclamation. Other similar proclamations include the Indian Parliament’s February 22, 1994 unanimous resolution on Jammu and Kashmir which declared: “The State of Jammu & Kashmir has been, is and shall be an integral part of India and any attempts to separate it from the rest of the country will be resisted by all necessary means.” See https://www.satp.org/satporgtp/countries/india/document/papers/parliament_resolution_on_Jammu_and_Kashmir.htm. See also Endnote 13.

³⁷ This constitutional or constituent assembly was convened pursuant to elections organized by an unelected, undemocratic, appointed (by Hari Singh) government of the National Conference party (closely allied with, and collaborating with, the Indian National Congress government in India) while much of the political leadership of IAJK was in exile, the remaining opposition in IAJK was severely repressed and all opposition candidates (who were not permitted nomination) boycotted the election. Through Resolution 91 of 1951, the UN Security Council affirmed that convening a constituent assembly and “any action that such assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State” in accordance with the established principle that such disposition would be made through a democratic, free, impartial plebiscite conducted under United Nations auspices. Pursuant to Resolution 122 of 1957, the UN Security Council reaffirmed Resolution 91 of 1951.

³⁸ See Endnote 24.

³⁹ Nearly every state in the world has agreed to be bound by the Geneva Conventions. As customary international law, the substantive obligations of the Geneva Conventions apply to all states (whether or not a state has agreed to be bound by them) as well as non-state actors.

⁴⁰ See International Committee of the Red Cross, “What is international humanitarian law?,” ICRC, December 31, 2014, <https://www.icrc.org/en/document/what-international-humanitarian-law>.

⁴¹ See International Committee of the Red Cross, “The Geneva Conventions of 1949 and their Additional Protocols,” ICRC, January 1, 2014, <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>.

⁴² See, e.g., International Committee of the Red Cross, “What is the difference between IHL and human rights law?,” ICRC, January 22, 2015, <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law>.

⁴³ See International Committee of the Red Cross, “Non-international armed conflict,” ICRC, <https://casebook.icrc.org/law/non-international-armed-conflict>. Note that this guide does not address the possibility of non-international armed conflict in IAJK.

However, in the case of a non-international armed conflict, the substantive rules of Article 49 of the Fourth Geneva Convention would nonetheless apply (see, in particular, Rules 129 and 131 - 133 in International Committee of the Red Cross, “Annex. List of Customary Rules of International Humanitarian Law,” ICRC, <https://casebook.icrc.org/case-study/icrc-customary-international-humanitarian-law>). Note that several armed conflicts, including one or more international armed conflicts and one or more non-international armed conflicts, may simultaneously exist (see Vilanova, Ricardo Garcia, “When does IHL apply?” ICRC Blog, August 13, 2017, <https://blogs.icrc.org/ilot/2017/08/13/when-does-ihl-apply/>).

⁴⁴ See Article 2 (Application of the Convention), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>.

⁴⁵ See Article 2 (Application of the Convention), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>.

⁴⁶ See Geneva Academy of International Humanitarian Law and Human Rights, “International armed conflict,” RULAC, August 30, 2017, <http://www.rulac.org/classification/international-armed-conflict#collapse1accord>.

⁴⁷ See International Committee of the Red Cross, “Occupation and international humanitarian law: questions and answers,” RULAC, August 4, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

⁴⁸ See Prosecutor v Naletilic and Martinovic, Case No.IT-98-34-T, March 31, 2003, pp. 72-73, para. 214, https://www.icty.org/x/cases/naletilic_martinovic/tjug/en/nal-tj030331-e.pdf.

⁴⁹ This is pursuant to Additional Protocol I to the Geneva Conventions. See International Committee of the Red Cross, “How is the Term “Armed Conflict” Defined in International Humanitarian Law: Opinion Paper,” ICRC, March 2008, <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>. While India is not a state party to Additional Protocol I, Additional Protocol I is generally acknowledged to be customary international law applicable to all states (although this has been objected to by some states and, therefore, its status as customary international law is debated). Note that this guide does not address the existence of international armed conflict as a result of resistance to a racist regime, although the authors believe that can readily be established in IAJK.

⁵⁰ Note that RULAC utilizes the nomenclature “Kashmir” for “The Princely State of Jammu and Kashmir” and “Indian-administered Kashmir” for “Indian-Administered Jammu and Kashmir.” While both sets of terms convey the same substantive sense in

context, the authors view the terminology employed in this memorandum as more precise. See Endnote 2.

⁵¹ See Geneva Academy of International Humanitarian Law and Human Rights, “International armed conflict between India and Pakistan,” RULAC, January 16, 2020, <http://www.rulac.org/browse/conflicts/international-armed-conflict-between-pakistan-and-india#collapse5accord>.

⁵² See Prosecutor v Naletilic and Martinovic, Case No.IT-98-34-T, March 31, 2003, pp. 72-73, para. 214, https://www.icty.org/x/cases/naletilic_martinovic/tjug/en/nal-tj030331-e.pdf. The main duties of occupying powers are enumerated in the 1907 Hague Regulations (Arts. 42-56), the Fourth Geneva Convention (Arts. 27-34 and 47-78) and Additional Protocol I to the Geneva Conventions.

⁵³ International Committee of the Red Cross, “Occupation and International Humanitarian Law: Questions and Answers,” ICRC, April 8, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

⁵⁴ See “Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” July 9, 2004, para. 120, <https://www.un.org/unispal/document/auto-insert-178825/>.

⁵⁵ See International Committee of the Red Cross, “Annexation (prohibition of),” ICRC, <https://casebook.icrc.org/glossary/annexation-prohibition>.

⁵⁶ See, e.g., Javid, Azaan, “J&K govt changes laws to aid construction of armed forces facilities outside cantonments,” The Print, July 17, 2020, <https://theprint.in/india/jk-govt-changes-laws-to-aid-construction-of-armed-forces-facilities-outside-cantonments/463195/?amp>, “Armed Forces in Kashmir no longer require clearance certificate for land acquisition” Free Press Kashmir, July 28, 2020, <https://freepresskashmir.news/2020/07/28/armed-forces-in-kashmir-no-longer-require-clearance-certificate-for-land-acquisition/>, Ahmad, Mudasar, “Under Fire, J&K Govt Plays Down Decision to Give Armed Forces More Building Rights,” The Wire, July 20, 2020, <https://thewire.in/government/jammu-and-kashmir-armed-forces-land-construction>, Parvaiz, Athar, “Under President’s rule, J&K has given up 243 hectares of forest land for army and paramilitary use,” Scroll.in, December 16, 2019, <https://scroll.in/article/946888/under-presidents-rule-jammu-kashmir-is-axing-1471-trees-in-designated-forests>, “Lt Governor directs for handing over land for transit accommodation of Kashmiri migrant employees by Dec 15,” Kashmir Life, December 6, 2019, <https://kashmirlife.net/lt-governor-directs-for-handing-over-land-for-transit-accommodation-of-kashmiri-migrant-employees-by-dec-15-220139/>, Javid, Azaan, “J&K hunts for 7,500 acres of land for investors ahead of April global summit,” January 29, 2020, The Print, <https://theprint.in/india/jk-hunts-for-7500-acres-of-land-for-investors-ahead-of-april-global-summit/356047/> and “J&K administration to allocate 100-acre land for TTD temple: Report,” Kashmir Life, February 11, 2020,

<https://kashmirlife.net/jk-administration-to-allocate-100-acre-land-for-ttd-temple-report-223487/>.

⁵⁷ See, e.g., Varma, Subodh, “Land Grab, Political Disempowerment Are Twin Pillars of J&K Changes,” News Click, August 11, 2019, <https://www.newsclick.in/Jammu-Kashmir-Article-370-Revoked-Land-Grab-Political-Disempowerment-Modi-Government>, Awasthi, Prashasti, “Centre orders ‘Adaptation of Central Laws’ in J&K; Here’s a complete list of 37 central laws to be implemented,” The Hindu Business Line, March 20, 2020, <https://www.thehindubusinessline.com/news/national/centre-orders-adaptation-of-central-laws-in-jk-heres-a-complete-list-of-37-central-laws-to-be-implemented/article31116159.ece>, and Kashmir Scholars Consultative and Action Network, Open letter to the UN Secretary General, the UN Office on Genocide Prevention and the Responsibility to Protect and the UN Security Council: Requesting an immediate intervention to prevent forced demographic change in Jammu and Kashmir, KSCAN, May 23, 2020, <https://kashmirscholars.files.wordpress.com/2020/05/open-letter-on-the-new-domicile-regulations-in-jk-1.pdf>.

⁵⁸ See, e.g., Masoodi, Nazir, “With Covid Beds Running Out In Srinagar, An Admission From Officials,” NDTV, July 21, 2020, <https://www.ndtv.com/srinagar-news/srinagar-coronavirus-cases-with-hospital-beds-running-out-in-srinagar-admission-from-administration-2266276>, Yasir, Sameer and Jeffrey Gettleman, “In Kashmir, a Race Against Death, With No Way to Call a Doctor,” N.Y. Times, Oct 17, 2019, <https://www.nytimes.com/2019/10/07/world/asia/kashmir-doctors-phone.html>, Changoiwala, Puja, “The doctors navigating covid-19 with no internet,” British Medical Journal, April 7, 2020, <https://www.bmj.com/content/369/bmj.m1417>, Wallen, Joe and Ben Farmer, “Conflict and coronavirus: health experts fear Jammu and Kashmir could become a Covid-19 hotspot,” The Telegraph, April 22, 2020, <https://www.telegraph.co.uk/global-health/science-and-disease/conflict-coronavirus-health-experts-fear-jammu-kashmir-could/>, Khan, Ahmer and Billy Perrigo, “What Life Is Like Inside the World’s Longest Lockdown,” Time, May 5, 2020, <https://time.com/5832256/kashmir-lockdown-coronavirus/>, “Kashmir – Situation Update and Analysis,” Amnesty International, October 18, 2019, <https://amnesty.org.in/wp-content/uploads/2019/10/Amnesty-International-India-Kashmir-Situation-Update-Final.pdf>.

⁵⁹ See, e.g., Kashmir Scholars Consultative and Action Network, Open letter to the UN Secretary General, the UN Office on Genocide Prevention and the Responsibility to Protect and the UN Security Council: Requesting an immediate intervention to prevent forced demographic change in Jammu and Kashmir, KSCAN, May 23, 2020, <https://kashmirscholars.files.wordpress.com/2020/05/open-letter-on-the-new-domicile-regulations-in-jk-1.pdf>, Zainab, “Panic, fear of demographic change engulfs Kashmir over ‘mysterious’ influx of non-locals,” Free Press Kashmir, July 20, 2020, <https://freepresskashmir.news/2020/07/20/panic-fear-of-demographic-change-engulfs-kashmir-over-mysterious-influx-of-non-locals/>, Dua, Rohan, “Many retired Gorkha soldiers in 6.6k to get J&K domicile,” The Times of India, July 5, 2020,

<https://timesofindia.indiatimes.com/india/many-retired-gorkha-soldiers-in-6-6k-to-get-jk-domicile/articleshow/76792089.cms>, “Kashmir Muslims fear demographic shift as thousands get residency,” Al Jazeera, June 28, 2020, <https://www.aljazeera.com/news/2020/06/kashmir-muslims-fear-demographic-shift-thousands-residency-200627103940283.html>, Zargar, Haris, “Modi advances settler colonial project in Kashmir,” June 15, 2020, <https://www.newframe.com/modi-advances-settler-colonial-project-in-kashmir/>, Jaleel, Muzamil, “Jammu and Kashmir domicile law: Meaning and ramifications,” The Kashmir Walla, May 31, 2020, <https://thekashmirwalla.com/2020/05/jammu-and-kashmir-domicile-law-meaning-and-ramifications/>, Bhasin, Anuradha, “Bringing the Israeli model to Kashmir,” Al Jazeera, June 20, 2020, <https://www.aljazeera.com/amp/indepth/opinion/bringing-israeli-model-kashmir-200614173626456.html> and Wani, Riyaz, “Why Kashmir Faces the Greatest Existential Battle in Past 500 Years,” Stories Asia, May 25, 2020, <https://www.storiesasia.org/2020/05/25/why-kashmir-faces-the-greatest-existential-battle-in-past-500-years/>.

Contrast India’s promotion of an influx of Indian Government-aligned Indian Hindus with the repeal of the JK Resettlement Act which gave (mainly Muslim) refugees, displaced people and exiles indigenous to IAJK (primarily from Jammu) a right of return, See Ahmad, Mudasir, “Centre Shuts the Door for Return of Jammu Residents Who Fled to Pakistan in 1947,” The Wire, December 15, 2019, <https://thewire.in/rights/centre-jk-residents-emigrate-pakistan-return>. On the related Jammu Massacre, see Endnote 130.

⁶⁰ See, e.g., “First time since 1948, no official function on Martyrs’ Day in Kashmir,” Free Press Kashmir, July 12, 2020, <https://freepresskashmir.news/2020/07/12/first-time-since-1948-no-official-function-on-martyrs-day-in-kashmir/>, “India bans Kashmir Muslim religious gatherings due to coronavirus but Hindu pilgrimages continue,” The New Arab, July 6, 2020, <https://english.alaraby.co.uk/english/news/2020/7/6/kashmir-bans-muslim-gatherings-allows-hindu-pilgrimage>, Shah, Shafaq, “J&K Waqf Board Says The Modi Govt Is Singling It Out,” HuffPost, October 1, 2020, https://www.huffingtonpost.in/entry/j-k-waqf-board-kashmir-370_in_5e1647f8c5b6b32c72bc840e, Majid, Zulfikar, “Names of important institutions in J&K UT to be changed,” The Deccan Herald, November 10, 2019 <https://www.deccanherald.com/national/north-and-central/names-of-important-institutions-in-jk-ut-to-be-changed-775063.html>.

⁶¹ See Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx>. The Declaration on the Granting of Independence to Colonial Countries and Peoples is a formal and authoritative statement of longstanding norms and principles in international law and is accepted as customary international law (binding on all states).

⁶² This statement is in both the Declaration on the Granting of Independence to Colonial Countries and Peoples (see Endnote 61) and in the Declaration on Principles of

International Law Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations (see Endnote 78).

⁶³ See Article 49 of the Fourth Geneva Convention, International Committee of the Red Cross, “Treaties, States Parties and Commentaries: Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949,” Article 49, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=77068F12B8857C4DC12563CD0051BDB0>.

⁶⁴ See, e.g., US Central Intelligence Agency, “Transnational Issues:: India,” South Asia::India--The World Factbook - Central Intelligence Agency, August 20, 2020, https://www.cia.gov/library/publications/the-world-factbook/geos/print_in.html.

⁶⁵ India does not provide and has not provided verifiable information regarding the number of military personnel stationed in IAJK. Credible estimates in recent decades have estimated that, for decades, India has stationed 500,000–700,000 personnel in IAJK. With additional troop buildups (NB: additional troop counts are not verifiable) in the summer of 2019 (see, e.g., Dutta, Prabhash, “Kashmir: Why Centre is sending additional 38000 troops to J&K,” India Today, August 2, 2019, <https://www.indiatoday.in/news-analysis/story/-if-situation-has-improved-then-why-send-38-000-troops-to-j-k-1576436-2019-08-02>), and July 2020 (see, e.g., “India To Add 35,000 Troops Along China Border,” Bloomberg / Kashmir Observer, July 29, 2020, <https://kashmirobsvr.net/2020/07/29/india-to-add-35000-troops-along-china-border/>), current credible estimates put the number of Indian military personnel in IAJK at 800,000–900,000. The population of all of IAJK is estimated to be between 12 and 14 million people. Accordingly, a credible estimate of the soldier to civilian ratio in IAJK is 1:13. Note also that India’s military is concentrated in areas where active opposition to Indian occupation has been more visible and areas near negotiated or de facto cease-fire lines attendant to military conflicts between India and Pakistan and India and China. The civilian population in those areas is estimated to be between 7 million and 8 million people, making the effective soldier to civilian ratio even higher. The physical reality of this is that there have been and are troops literally everywhere (in every neighborhood, street, etc.) in these areas of IAJK. Since August 2019, the Indian military imposed a further “crackdown,” physically cutting off neighborhoods, blocking off streets, reorienting and further restricting physical spaces and stationing soldiers at checkpoints approximately every 300 feet in residential areas (see, e.g., “Armed soldiers patrol silent streets after Kashmir curfew,” AFP, August 6, 2019, <https://news.yahoo.com/armed-soldiers-patrol-silent-streets-kashmir-curfew-051034696.html>). The Indian military cites “terrorism” by “militants” to justify its military occupation. The Indian military currently estimates that there is a total of 180 “militants” in Kashmir (see, e.g., Ghoshal, Devjyot and Fayaz Bukhari, “Exclusive: India considers resettling Kashmiri youth who give up arms,” Reuters, August 12, 2020, <https://www.reuters.com/article/us-india->

[kashmir-exclusive-idUSKCN2581DU](#)) and has claimed a similar level of “active militants” for many years.

⁶⁶ According to Indian officials themselves, in early 2018 the Indian military “illegally” possessed 21,400 hectares (see, e.g., “21,400 hectares under illegal possession of Army in J-K, says CM Mehbooba Mufti,” *The Indian Express*, January 10, 2018, <https://indianexpress.com/article/india/21400-hectares-under-illegal-possession-of-army-in-j-k-says-cm-mehbooba-mufti-5019019/>). The Indian military’s extensive militarized settlements in IAJK are located on this and other land. Note that the quoted figure is exclusive of land that the Indian military claims to “legally” possess (the Indian state’s view of “illegal” was, at the time, in reference to violation of its own laws rather than international law; under international law, possession of any land by the Indian military in IAJK is illegal—see the response to Question 3) and any land which the Indian military “unofficially” possesses. Note that this figure also excludes subsequent takings of land, including takings that have occurred since August 2019 (see Endnotes 56 and 57). Independent civil society investigators in IAJK estimate that at least 40,000 hectares of IAJK is under Indian military possession.

⁶⁷ See Endnotes 56, 57 and 59. See also, for example, Mathur, Rashi, “BJP will revive plan for Hindu settlements in Kashmir: Ram Madhav,” *Zee News*, July 14, 2019, <https://zeenews.india.com/jammu-and-kashmir/bjp-will-revive-plan-for-hindu-settlements-in-kashmir-ram-madhav-2219012.html> and Athvale, Sanika, “Migrant Colony Coming Up in Kashmir: Nothing New About It, Says Div Com” *Kashmir Observer*, July 31, 2020, <https://kashmirobservers.net/2020/07/31/migrant-colony-coming-up-in-kashmir-nothing-new-about-it-says-div-com/>.

⁶⁸ That racist, supremacist ideology is known as *Hindutva*. *Hindutva* (“Hinduness” or “Hindu nationalism”) is a term introduced by Vinayak Damodar Savarkar in 1923 in his *ESSENTIALS OF HINDUTVA*. On the basis of an imaginary history (of past Hindu glory and Muslim persecution), it casts Hindus as a nation and a *jati* (race) and *Bharat* (or India, which, in this imaginary, includes the territory of Princely State of Jammu and Kashmir) as the “Hindu *Rashtra*”—the Hindu holy land and homeland, on whose territory Hindus have a unique and superior claim. Proponents of *Hindutva*, or Hindu nationalists, view Muslims as “invaders” whose existence in *Bharat* is a historical mistake that requires correction. They view the granting of rights to Muslims, and their social inclusion, as “appeasement”—a betrayal. *Hindutva* is a violent, ultra-nationalist, militant, Hindu supremacist ideology that seeks to “restore” Hindu pride through the “restoration” of a “pure” Hindu homeland in all of South Asia.

Savarkar’s writings remain foundational and influential for contemporary Hindu nationalists, many of who are organized under the banner of the *Sangh Parivar* (an umbrella of Hindu nationalist organizations), the parent organization of which is the *Rashtriya Swayamsevak Sangh* (or RSS). The RSS was founded in 1925 and is a paramilitary organization (inspired by, and built on ideas and tactics borrowed from, Italian Fascists and the Nazis) dedicated to advancing Savarkar’s Hindu nationalism. The

RSS is also the parent organization of the *Bharatiya Janata Party* (or BJP), the political wing of the *Sangh Parivar*. The BJP's agenda is a *Hindutva* agenda. Amit Shah, president of the BJP and India's current Home Minister, has been quoted as saying "Savarkar has become more relevant today." Narendra Modi, India's current Prime Minister is a life-long RSS member and activist. His involvement in the BJP is through the RSS. He continues to coordinate policy with the RSS.

The formative political view of Hindu nationalists on IAJK was articulated by the *Bharatiya Jana Sangh* (or BJS), the predecessor to the current-day BJP. In the early 1950s, the BJS Central Working Committee stated that "Jammu and Kashmir is an integral part of India and that economic and social advance of the state requires its integration with India." Further, it viewed the autonomy of IAJK as a "clear violation of India's sovereignty" and called for the "complete integration" of IAJK with India and an end to "two Constitutions, two flags and two prime ministers." At the time, when the Government of India acknowledged its various commitments and obligations, both treaty-based and under international law, regarding IAJK (which included the commitment to a resolution of political future of the Princely State of Jammu and Kashmir through transparent and democratic means), Hindu nationalists viewed the Indian Government's position as a betrayal. For Hindu nationalists, IAJK presented the following fundamental problems:

The population was predominantly Muslim, creating a Muslim-majority state within *Bharat*;

As a minority in a Muslim-majority state, Hindus were subject to the political power of Muslims;

India's secular nationalists promoted the Indian State of Jammu and Kashmir as a Muslim-majority state to "demonstrate" India's "secular credentials" (as opposed to a "Hindu *Rashtra*");

A significant portion of the population demanded the right to external self-determination, with the unacceptable prospect of "separating" IAJK from *Bharat*;

At least a segment of the population of IAJK was pro-Pakistan, an unacceptable affront and betrayal;

The autonomy of IAJK (nominally, pursuant to the Instrument of Accession, the legal instrument on which India's claim to the territory of the Princely State of Jammu and Kashmir is based) (*see* Endnotes 14, 16, 21 and 30) was an affront to India's sovereignty and an extreme form of "appeasement" of the Muslims of IAJK.

For Hindu nationalists, IAJK had and has outsized importance and the "problem" of the Muslims of IAJK is different than that of Muslims in India generally. IAJK Muslims were not only Muslim, an affront in itself. They were also potentially dominant on a territory of *Bharat*, "granted" political rights that violated Indian sovereignty and "anti-national,"

Pakistan-sympathizing “secessionists” to boot. The subjugation of IAJK’s Muslims, the disintegration of the Indian State of Jammu and Kashmir and the “full integration” of IAJK into India were key, longstanding goals of Hindu nationalists. In time, the non-mainstream views of Hindu nationalists on IAJK became widely accepted dogma in India and part of the intellectual underpinnings of Indian Government policy in IAJK. The dogmatically orthodox perspective in India that IAJK is an “integral” part of India is a *Hindutva* view. *Hindutva* ideology is the intellectual foundation for India’s illegal annexation and colonization of IAJK.

The BJP gained widespread popular support in India in the 1980s through its campaign calling for the destruction of the Babri Masjid (a 16th-century mosque in Ayodhya) and the construction of a temple to Lord Ram on Babri Masjid site. Built on the success of the *Sangh Parivar*-organized demolition of the Babri Masjid in 1992 and related anti-Muslim religious violence across India, the BJP won a parliamentary majority in 1996. Since then, the BJP has been highly influential in Indian politics, as the leading opposition party and increasingly as the ruling party. Concurrently, the *Sangh Parivar* has grown in influence over, and come to dominate, all levels of Indian society. See Endnote 175.

In December 1989, after a new generation of activists mobilized to seek political change through electoral politics, rigged elections and renewed political repression led to a resurgent mass mobilization demanding the exercise of the right to external self-determination in IAJK. In the face of the most highly militarized occupation in the world, masses of people participated in public demonstrations and the general observance of civil strikes called by pro-self-determination groups. The Indian Government responded with mass violence, a ban on foreign journalists and collective punishment, including curfews, cordon and search operations, mass arrests, widespread torture and mass killings (including through the indiscriminate shooting of unarmed, peaceful demonstrators). The Indian Government also installed direct, central rule in January 1990 through a Hindu nationalist governor, Jagmohan Malhotra (later, a cabinet minister with several portfolios in BJP governments and a BJP minister of parliament). After being appointed, Jagmohan said, “Every Muslim in Kashmir is a militant today...The bullet is the only solution for Kashmir. Unless the militants are fully wiped out, normalcy can’t return to the valley.” Even under “secular nationalist” governments (like the Congress government, which was in power in New Delhi in 1990), the Indian Government’s policy in IAJK was and has been a Hindu nationalist policy.

On *Hindutva*, the RSS and the BJP, see, e.g., Bardi, Ariel, “How ‘Hindutva’ recast multi-faith India as the Hindu homeland,” *Aeon*, October 24, 2017, <https://aeon.co/ideas/how-hindutva-recast-multi-faith-india-as-the-hindu-homeland>, Casolari, Marzia, “Hindutva’s Foreign Tie-up in the 1930s,” *Economic and Political Weekly*, January 22, 2000, <http://www.sacw.net/DC/CommunalismCollection/ArticlesArchive/casolari.pdf>, Ghosh, Palash, “Hindu Nationalist’s Historical Links to Nazism and Fascism,” *International Business Times*, March 6, 2012, <https://www.ibtimes.com/hindu-nationalists-historical-links-nazism-fascism-214222>, Marshall, Paul, “Hinduism and Terror,” *Hudson Institute*, June 1, 2004, <https://www.hudson.org/research/4575-hinduism-and-terror>, and Gusai, Yojna, “Modi, Amit Shah to consult RSS chief on

Cabinet formation,” Deccan Chronicle, August 25, 2020, <https://www.deccanchronicle.com/nation/current-affairs/290519/modi-amit-shah-to-consult-rss-chief-on-cabinet-formation.html>.

On the Bharatiya Jana Sangh, RSS and IAJK, see “Mookerjee to Modi: How the RSS dream of ‘integrating’ Kashmir was fulfilled,” Business Standard, August 5, 2019, https://www.business-standard.com/article/current-affairs/how-modi-fulfilled-rss-dream-of-kashmir-s-integration-119080501139_1.html, Tripathi, Purnima, “RSS’ Agenda on Kashmir in Action,” Frontline, August 30, 2019, <https://frontline.thehindu.com/cover-story/article29059214.ece>, Anand, Dibyesh “Kashmir Is a Dress Rehearsal for Hindu Nationalist Fantasies,” Foreign Policy, August 8, 2019, <https://foreignpolicy.com/2019/08/08/kashmir-is-a-dress-rehearsal-for-hindu-nationalist-fantasies/>, and Gettleman, Jeffrey, et. al., “In Kashmir Move, Critics Say, Modi Is Trying to Make India a Hindu Nation,” N.Y. Times, August 6, 2019, <https://www.nytimes.com/2019/08/06/world/asia/jammu-kashmir-india.html>.

On the politics in Kashmir in 1989-1990, see, e.g., Ganguly, Sumit, CONFLICT UNENDING (New York: Columbia University Press, 2001), particularly pp. 96-100 and Schofield, Victoria, KASHMIR IN CONFLICT (London: I.B. Taurus, 2000), particularly pp. 143-160. On Jagmohan Malhotra, see, e.g., Bashir, Khalid, Kashmir: Exposing the Myth Behind the Narrative (Sage Publications, Inc., 2017), <https://www.thehindu.com/news/national/political-developments-live-updates-september-3-2019/article29322140.ece> and “Politics live | Amit Shah, J.P. Nadda meet former J&K Governor Jagmohan,” The Hindu, September 3, 2019, <https://www.ndtv.com/india-news/ex-jammu-and-kashmir-governor-jagmohan-malhotra-joins-bjps-outreach-campaign-on-scrapping-article-37-2095184>.

⁶⁹ See, e.g., “BJP will now target Kashmiris as “anti-national” to win elections, says CPI(M),” IANS, June 28, 2018, <https://www.nationalheraldindia.com/india/bjp-will-now-target-kashmiris-as-anti-national-to-win-elections-says-cpi-m>, Kaul, Nitasha, “Kashmir is Under the Heel of India’s Colonialism,” Foreign Policy, August 13, 2019, <https://foreignpolicy.com/2019/08/13/kashmir-is-under-the-heel-of-indias-colonialism/> and “Jammu and Kashmir in Context: Written Submission of John Sifton to the United States Congress Tom Lantos Human Rights Commission,” Human Rights Watch, November 14, 2019, <https://www.hrw.org/news/2019/11/14/jammu-and-kashmir-context>.

For a few of the recent cases that received news attention of the widespread phenomenon of the targeting and demonization of Kashmiris in India, see, e.g., “Jaipur Lockdown: 3 Kashmiri Boys ‘Beaten Up’ by Police While Out on Delivery Duty,” The Wire, April 30, 2020, <https://thewire.in/rights/kashmiri-delivery-beaten-up-police-jaipur>, “IOK police slap sedition case against three Kashmiri students,” The News, February 16, 2020, <https://www.thenews.com.pk/print/614727-iok-police-slap-sedition-case-against-three-kashmiri-students>, “Under political pressure, Dehradun college suspends Kashmiri girl for “anti-national” posts,” The Kashmir Walla, May 17, 2020, <https://thekashmirwalla.com/2020/05/under-political-pressure-dehradun-college->

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⁷⁰ See, e.g., the non-existence of the right to habeas corpus for the indigenous people of IAJK. The right to habeas corpus – the right of an accused to be produced before a tribunal and have the benefit of basic legal process is foundational to the rule of law and a primary check on illegal imprisonment. On the treatment of habeas corpus in IAJK, see, e.g., Duschinski, Haley and Ghosh, S. N., “Constituting the occupation: preventive detention and permanent emergency in Kashmir,” *The Journal of Legal Pluralism and Unofficial Law*, 49(3), 2017, pp. 314-337, https://www.academia.edu/34100292/Constituting_the_Occupation_Preventive_Detention_and_Permanent_Emergency_in_Kashmir, Aggarwal, Ashok, “In search of vanished blood: the writ of habeas corpus in Jammu and Kashmir, 1990-2004,” *South Asia Forum for Human Rights*, Paper Series 17, 2008 https://www.academia.edu/26287721/In_Search_of_Vanished_Blood, Noorani, A.G., “Habeas corpus law: A sorry decline,” *Frontline*, October 25, 2019, <https://frontline.thehindu.com/cover-story/article29604480.ece>, Zargar, Safwat, “A year when courts failed to hear petitions and left jailed Kashmiris at the mercy of the government,” *Scroll.in*, August 2, 2020, <https://scroll.in/article/968714/a-year-when-courts-failed-to-hear-petitions-and-left-jailed-kashmiris-at-the-mercy-of-the-government>, Sheriff, Kaunain, et. al., “J&K: Most habeas corpus cases dragged on as court slammed govt on due process,” *The Indian Express*, August 4, 2020, <https://indianexpress.com/article/india/jammu-kashmir-article-370-habeas-corpus-detention-psa-6538085/>, “Situation Update and Analysis: Jammu And Kashmir After One Year Of Abrogation Of Article 370 And Change Of Status Of The Region,” *Amnesty International*, August 5 2020, https://amnesty.org.in/wp-content/uploads/2020/08/Kashmir-report-updated_06_for-WEB.pdf and Narla, Shreyas and Shruti Rajagopalan, “The Judicial Abrogation of Rights & Liberties In Kashmir,” *article 14*, September 25, 2020, <https://www.article-14.com/post/the-judicial-abrogation-of-rights-liberties-in-kashmir>. On the illustrative case of political activist Masrat Alam Bhat, who has been arbitrarily detained at least 37 times and held without charge for over two decades, see Mir, Hilal, “Why Kashmir Politician Masrat Alam Bhat Can’t Walk Free After More Than 23 Years In Jail,” *HuffPost*, January 1, 2019, https://www.huffingtonpost.in/amp/entry/jailed-kashmiri-politician-masarat-alam-bhat_in_5c29ea47e4b08aaf7a92287e/.

⁷¹ Primary among these resources are water, timber and minerals. The uncompensated or undercompensated exploitation of these resources in IAJK for the benefit of India and Indians has occurred on a mass scale over decades. See, e.g., Dar, Zubair Ahmad, “Power Projects in Jammu & Kashmir: Controversy, Law and Justice,” *Harvard Law & International Development Society Working Papers* 2011-2012,

<https://orgs.law.harvard.edu/lids/files/2011/11/LIDS-WP-1112-Dar.pdf>, Wani, Maknoon, “Kashmir and the rise of settler colonialism,” *Himal South Asian*, September 1, 2020, <https://www.himalmag.com/kashmir-and-the-rise-of-settler-colonialism-2020/>, Kaur, Harjot, “Weaponizing Water in Kashmir,” *Legal Planet*, September 10, 2019, <https://legal-planet.org/2019/09/10/weaponizing-water-in-kashmir/>, Javee, Auqib, “Timber smugglers loot Kashmir’s forests during pandemic lockdown,” *The Third Pole*, June 9, 2020, <https://www.eco-business.com/news/timber-smugglers-loot-kashmirs-forests-during-pandemic-lockdown/>, Wani, Fayaz, “Mining bids not going to Kashmir: Kashmir Chamber of Commerce and Industry,” *The New Indian Express*, June 29, 2020, <https://www.newindianexpress.com/nation/2020/jun/29/mining-bids-not-going-to-kashmiris-2162778.html>, “Restricted Internet In Kashmir Gives Almost All Business Contracts To Non-Locals,” *The EurAsian Times*, July 27, 2020, <https://eurasiatimes.com/kashmirs-mineral-contracts-largely-handed-to-non-locals/> and Zargar, Safwat, “How political change is pushing up the price of sand in Jammu and Kashmir,” *Scroll.in*, September 7, 2020, <https://scroll.in/article/972385/how-political-change-is-pushing-up-the-price-of-sand-in-jammu-and-kashmir>.

⁷² See Endnotes 14, 16, 21 and 30.

⁷³ The Indian Government frequently and freely invokes British colonial-era, anti-democratic laws, including Section 144 of Code of Criminal Procedure, to, among other things, prohibit public gatherings and impose a de facto curfew in IAJK. See, for example, “Kashmir: Curfew-like restrictions imposed on movement of people,” IANS, August 5, 2019, <https://www.indiatoday.in/india/story/jammu-and-kashmir-curfew-section-144-imposed-1577218-2019-08-05>, Krishnan, Murali, “‘Repetitive Section 144 orders abuse of power’: What Supreme Court said on Kashmir curbs,” *Hindustan Times*, August 22, 2020, <https://www.hindustantimes.com/india-news/repetitive-section-144-is-abuse-of-power-what-supreme-court-said-on-kashmir-curbs/story-yCDPbbsd2Ov7N7xk7sLdkM.html> and “Explained: What is Section 144 of CrPC?,” *The Indian Express*, August 5, 2019, <https://indianexpress.com/article/explained/what-is-section-144-crpc-jammu-and-kashmir-5878543/>.

⁷⁴ Simple population statistics convey the scale of the asymmetry. India’s population is approximately 1.3 billion. IAJK’s population is between 12 and 14 million. See also Endnote 65.

⁷⁵ The mental health consequences on the indigenous population of the complex of India’s colonization of IAJK—including militarized occupation, a denial of rights, rampant violations of human rights and humanitarian law and impunity—reflect the scale of the violations themselves. See, e.g., Housen, Tambri, et. al. “Trauma in the Kashmir Valley and the mediating effect of stressors of daily life on symptoms of posttraumatic stress disorder, depression and anxiety,” *Conflict and Health*, v.13, December 12, 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6909643/#CR32> which describes studies that establish high level of anxiety (46% of the surveyed population), depression (32% of the population), witnessed the violent death of someone

they knew (47% of the population) and contemplating suicide within four weeks of being questioned (12% of the population). See also Jammu Kashmir Coalition of Civil Society, “Terrorised: Impact of Violence on the Children of Jammu and Kashmir,” JKCCS, March 2018, <https://jkccs.net/wp-content/uploads/2018/03/2018-Impact-of-Violence-on-Children-of-JK-JKCCS.pdf>. In connection with India’s program of collective punishment since August 2019, see Afrin, Rakshanda, “Shades and Shadows of Strife: Growing Up Trauma in Kashmir,” Kashmir Observer, July 6, 2020, <https://kashmirobservers.net/2020/07/06/shades-and-shadows-of-strife-growing-up-trauma-in-kashmir/>, Maqbool, Majid, “A year with no school: Mental health fears rise for Kashmir’s children,” The New Humanitarian, July 21, 2020, <https://www.thenewhumanitarian.org/news/2020/07/21/Kashmir-lockdown-schools-children-mental-health>, Dubey, Kavya, “Successive lockdowns in Kashmir is taking a heavy toll on its mental health,” The Kashmir Walla, May 18 2020, <https://thekashmirwalla.com/2020/05/successive-lockdowns-in-kashmir-is-taking-a-heavy-toll-on-its-mental-health/> and Tamim, Baba, “Kashmir’s mental health crisis,” Al Jazeera, September 3, 2016, <https://www.aljazeera.com/indepth/features/2016/06/kashmir-mental-health-crisis-160620085520339.html>.

⁷⁶ See, e.g., “Everyone lives in fear’: Patterns of impunity in Jammu and Kashmir,” Human Rights Watch, vol. 18, no. 11(C), September 2006, <https://www.hrw.org/sites/default/files/reports/india0906web.pdf>, “The Myth of Normalcy: Impunity and the Judiciary in Kashmir,” Allard K. Lowenstein International Human Rights Clinic at Yale Law School, April 2009, https://law.yale.edu/sites/default/files/documents/pdf/Intellectual_Life/Kashmir_Mythof_Normalcy.pdf, “India: “An Unnatural Fate”: Disappearances and Impunity in the Indian States of Jammu and Kashmir and Punjab,” Amnesty International, December 15, 1993, Index number: ASA 20/042/1993 <https://www.amnesty.org/en/documents/asa20/042/1993/en/>, “Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir,” International Peoples’ Tribunal for Human Rights and Justice in Indian-Administered Kashmir and Association of Parents of Disappeared Persons, December 2012 <https://jkccs.files.wordpress.com/2017/05/alleged-perpetrators.pdf>, “120 Days: 5th August to 5th December,” Association of Parents of Disappeared Persons, December 9, 2019, particularly pp. 76–78, <https://apdpkashmir.com/120-days-5th-august-to-5th-december-a-report-by-apdp/>, “India’s judges are ignoring the government’s abuses in Kashmir,” The Economist, October 5, 2019, <https://www.economist.com/asia/2019/10/05/indias-judges-are-ignoring-the-governments-abuses-in-kashmir>, “The courts’ refusal to curb repression in Kashmir,” The Economist, October 5, 2019, <https://www.economist.com/leaders/2019/10/05/the-courts-refusal-to-curb-repression-in-kashmir>, “Jammu and Kashmir in Context: Written Submission of John Sifton to the United States Congress Tom Lantos Human Rights Commission,” Human Rights Watch, November 14, 2019, <https://www.hrw.org/news/2019/11/14/jammu-and-kashmir-context>, and “India: “Denied”: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir,” Amnesty International, July 1, 2015,

Index number: ASA 20/1874/2015,
<https://www.amnesty.org/en/documents/asa20/1874/2015/en/>.

⁷⁷ See the response to Question 8.

⁷⁸ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁷⁹ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁸⁰ See Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960, declaration 4, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx>.

⁸¹ See Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960, declaration 5, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx>.

⁸² See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>. See also the International Covenant on Civil and Political Right, effective as of March 23, 1976, paragraph 3, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>: “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.” India is a state party to the International Covenant on Civil and Political Rights.

⁸³ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁸⁴ See United Nations General Assembly Resolution 37/43 of December 3, 1982, paragraph 1, <https://undocs.org/pdf?symbol=en/A/RES/37/43>.

⁸⁵ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁸⁶ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁸⁷ See United Nations General Assembly Resolution 37/43 of December 3, 1982, paragraph 2, <https://undocs.org/pdf?symbol=en/A/RES/37/43> and World Conference on Human Rights, Vienna Declaration and Programme of Action, June 25, 1993, Article 2, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

⁸⁸ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁸⁹ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁹⁰ The indigenous people of Pakistan-Administered Jammu and Kashmir (including any indigenous populations living in those the portions of the territory of the Princely State of Jammu and Kashmir now effectively controlled by China) also have a right to external self-determination. Note that while all of the bases for the right to external self-determination set forth below may not apply to the indigenous people of Pakistan-Administered Jammu and Kashmir, several of them do. In any event, Pakistan has, and continues to, formally recognize the right to external self-determination of the indigenous people of the territory of the Princely State of Jammu and Kashmir.

⁹¹ While the same or similar description of the right to self-determination is utilized in various declarations and instruments, this formulation is extracted from the Declaration on the Granting of Independence to Colonial Countries and Peoples. See Endnote 61.

⁹² See, e.g., International Court of Justice, Western Sahara, Advisory Opinion of October 16, 1975, para. 56, <https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf> and UN General Assembly, Resolution 1541 (XV), December 15, 1960, principles VII and IV, [https://undocs.org/en/A/RES/1541\(XV\)](https://undocs.org/en/A/RES/1541(XV)).

⁹³ Theoretically, self-determination is the moral and intellectual foundation for the prevailing system of nation-states and the organization (the United Nations) created by those states to maintain peace and security between states and achieve welfare-enhancing co-operation among states. The essential idea is that “peoples” or “nations” have volitionally (and not coercively) organized into representative (and not non-representative) states. Accordingly, Article 1 (Purposes) of the UN Charter cites the “principle of equal rights and self-determination of peoples.” See Charter of the United Nations, Chapter 1: Purposes and Principles, Article 1, <https://www.un.org/en/sections/un-charter/chapter-i/index.html>.

⁹⁴ This right is recognized and affirmed in myriad international declarations, instruments and judgements. For example, the International Covenant on Civil and Political Right, effective as of March 23, 1976, paragraph 1, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Note that India is a state party to the International Covenant on Civil and Political Rights. Another example is the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>: “All peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right.” A third example is the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx>: “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.”

⁹⁵ See, e.g., “Self-determination,” Unrepresented Nations & Peoples Organization, September 21, 2017, <https://unpo.org/article/4957> and “CCPR General Comment No. 12: Article 1 (The right to self-determination), The Right to Self-determination of Peoples,” Office of the High Commissioner for Human Rights, March 13, 1984, para. 1, <https://www.refworld.org/docid/453883f822.html>: “The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.”

⁹⁶ See, e.g., “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa), notwithstanding Security Council Resolution 276 (1970),” International Court of Justice, Advisory Opinion, June 21, 1971, para. 52, <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf>: “[T]he subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed

and expanded to all "territories whose peoples have not yet attained a full measure of self-government" (Art. 73). Thus it clearly embraced territories under a colonial régime." See also Sterio, Milena, "Self-Determination and Secession Under International Law: The Cases of Kurdistan and Catalonia," *American Society of International Law*, Vol. 22, Issue 1, January 5, 2018, https://www.asil.org/insights/volume/22/issue/1/self-determination-and-secession-under-international-law-cases-kurdistan#_ednref4.

⁹⁷ See United Nations General Assembly, Resolution 1541 (XV), December 15, 1960, principle VI, [https://undocs.org/en/A/RES/1541\(XV\)](https://undocs.org/en/A/RES/1541(XV)) and the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>.

⁹⁸ See Endnotes 78–89. Note that, as a general matter, under the prevailing view of international law, borders are generally viewed as stabilizing at the moment of decolonization. As a consequence, sub-national parties are generally not considered to enjoy a right to external self-determination. Note that at the time of India's decolonization (in August 1947), it is incontrovertible that the territory of the Princely State of Jammu and Kashmir was not a part of India (and that India had no reasonable basis for even claiming that the territory of the Princely State of Jammu and Kashmir was India's).

⁹⁹ See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm> and World Conference on Human Rights, Vienna Declaration and Programme of Action, June 25, 1993, Article 2, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>. State claims to "sovereignty" and "territorial integrity" can only succeed to defeat a people's right to external self-determination where the following conditions are met, namely: (1) the absence of colonization, (2) the absence of alien domination, (3) the absence of foreign occupation, (4) the realization of equal rights and fundamental freedoms by the indigenous people of the territory, (5) the existence of a representative government and (6) the absence of systematic discrimination against the indigenous people of the territory.

¹⁰⁰ See, e.g., Endnotes 37, 65, 70, 73 and 102.

¹⁰¹ See, e.g., "Structures of Violence: The Indian State in Jammu and Kashmir," *International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir and The Association of Parents of Disappeared Persons*, 2015, <https://jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>, "Imprisoned Resistance: Aug 5th and its Aftermath," *People's Union of Civil Liberties*, et. al., 2019, <http://www.pucl.org/reports/imprisoned-resistance-5th-august-and-its-aftermath>, "Report on the Situation of Human Rights in Kashmir: Developments in the

Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan,” Office of the United Nations High Commissioner for Human Rights, June 14, 2018, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf> and “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf and International Federation for Human Rights, et. al., “Key Human Rights Issues of Concern in Indian-Administered Jammu & Kashmir,” FIDH, March 2019, https://www.fidh.org/IMG/pdf/20190315_kashmir_briefing_note_-_final.pdf.

¹⁰² Illustrative examples include the systematic denial of the right habeas corpus (see Endnote 70), the systematic denial of access to communications (see, e.g., “Kashmir’s Internet Siege: An Ongoing Assault on Digital Rights,” Jammu Kashmir Coalition of Civil Society, August 2020, <https://jkccs.net/report-kashmirs-internet-siege/>) and the systematic suppression of journalism (see, e.g., Amnesty International, Situation Update and Analysis: Jammu And Kashmir After One Year Of Abrogation Of Article 370 And Change Of Status Of The Region,” August 5, 2020, https://amnesty.org.in/wp-content/uploads/2020/08/Kashmir-report-updated_06_for-WEB.pdf, Iftikhar, Aliya, “Kashmiri journalists describe new government tactics to control the narrative,” Committee to Protect Journalists, August 4, 2020, <https://cpj.org/2020/08/kashmiri-journalists-describe-new-government-tactics-to-control-the-narrative/>, Seshu, Geeta, “Kashmir Media Policy: Accentuating the Curbs on the Freedom of Press,” Free Speech Collective, August 19, 2020, <https://www.epw.in/engage/article/kashmir-media-policy-accentuating-curbs-freedom-press>, “RSF appalled by Orwellian press policy in Indian-held Kashmir,” Reporters Without Borders, June 19, 2020, <https://rsf.org/en/news/rsf-appalled-orwellian-press-policy-indian-held-kashmir>, “Government Of India Must Immediately Stop Intimidation Of Journalists In J&K,” Amnesty International, April 21, 2020, <https://amnesty.org.in/news-update/stop-intimidation-of-journalists-in-jk/>, Zargar, Safwat, “Jammu and Kashmir’s new media policy is aimed at demolishing the local press, editors say,” Scroll.in, June 23, 2020 <https://scroll.in/article/964900/jammu-and-kashmirs-new-media-policy-is-aimed-at-demolishing-the-local-press-editors-say> and Asher-Schapiro, Avi and Ahmed Zidan, “India uses opaque legal process to suppress Kashmiri journalism, commentary on Twitter,” Committee to Protect Journalists, October 24, 2019, <https://cpj.org/blog/2019/10/india-opaque-legal-process-suppress-kashmir-twitter.php>).

¹⁰³ See Endnote 28.

¹⁰⁴ The relevant excerpts of the text include: “Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question if accession should be decided in accordance with the wishes of the people of the State, it is my Government’s wish that as soon as law and order have been restored in

Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people.” (emphasis added). See Endnotes 11 and 16.

¹⁰⁵ India insisted on a plebiscite to validate its invasion and seizure of the State of Jnanagadh in 1947 in contravention of its ruler's accession to Pakistan.

¹⁰⁶ See Endnote 11.

¹⁰⁷ See Endnote 11.

¹⁰⁸ See Endnote 16.

¹⁰⁹ See Endnote 11.

¹¹⁰ See “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan,” Office of the United Nations High Commissioner for Human Rights, June 14, 2018, p.49, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf> and “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, p.42 https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf.

¹¹¹ See “War Crimes,” United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

¹¹² See “Crimes Against Humanity,” United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>.

¹¹³ See “Genocide,” United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml>.

¹¹⁴ See, e.g., “The Human Rights Crisis in Kashmir: A pattern of impunity,” Physicians for Human Rights and Asia Watch, 1993, <https://www.hrw.org/sites/default/files/reports/INDIA937.PDF>, “‘Everyone lives in fear’: Patterns of impunity in Jammu and Kashmir,” Human Rights Watch, 2006, <https://www.hrw.org/sites/default/files/reports/india0906web.pdf>, “India: Prosecute Police for Killings in Jammu and Kashmir,” Human Rights Watch, January 31, 2007, <https://www.hrw.org/news?tags=1009&page=2>, “Structures of Violence: The Indian State in Jammu and Kashmir,” International Peoples’ Tribunal on Human Rights and Justice in Indian-Administered Kashmir and The Association of Parents of Disappeared Persons, 2015, particularly pp. 82, 93, 97, 104, 261, <https://jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>, Heyns, Christof, “Report of the

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Illustrative recent cases of intentional killings of Kashmiri civilians by the Indian military include, for example, the killing of 25-year-old Mehrajuddin Peer Shah on May 13, 2020 (see “Clashes in Kashmir after Indian soldiers kill civilian,” AFP/AP, May 13, 2020, <https://www.dw.com/en/clashes-in-kashmir-after-indian-soldiers-kill-civilian/a-53429836> and Sharma, Yashraj, “Budgam civilian’s killing points to a familiar pattern,” The Kashmir Walla, May 13, 2020, <https://thekashmirwalla.com/2020/05/budgam-civilians-killing-points-to-a-familiar-pattern/> (which includes details of a number of similar killings in recent years)), the killing of 65-year old Bashir Ahmed Khan on July 1, 2020 (see Mugloo, Saqib, ““CRPF killed him, child kept on his body,” says family of civilian, shot dead in Sopore,” The Kashmir Walla, July 1, 2020, <https://thekashmirwalla.com/2020/07/crpf-killed-him-child-kept-on-his-body-says-family-of-civilian-shot-dead-in-sopore/>) and the “fake encounter” killing (or abduction and extrajudicial execution) of Abrar Khatana (age 18), Imtiyaz Ahmed (age 21) and Abrar Ahmad (age 25) in late July 2020 (see “Kashmir family alleges Indian forces killed three civilians,” Al Jazeera, August 11, 2020, <https://www.aljazeera.com/news/2020/08/kashmir-family-alleges-indian-forces-killed-civilians-200811050834354.html> and Maqbool, Umer, “DNA Tests Confirm 3 Killed by Army in Shopian ‘Encounter’ Were From Rajouri,” The Wire, September 25, 2020 <https://thewire.in/rights/shopian-encounter-rajouri-army-afspa-dna-test>). For a summary of recent killings, see “Six Monthly Review of Human Rights Situation in

Indian administered Jammu and Kashmir (January to June 2020),” Association of Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society, July 1, 2020, pp.6-10, <https://jkccs.net/wp-content/uploads/2020/07/Bi-Annual-HR-Report-2020-JKCCSAPDP.pdf>.

¹¹⁵ See, e.g., “Torture, rape and deaths in custody,” Amnesty International, 1992, AI INDEX: ASA 20/06/92, <https://www.amnesty.org/download/Documents/192000/asa200061992en.pdf>, “The Crackdown in Kashmir,” Physicians for Human Rights and Asia Watch, 1993, <https://www.hrw.org/sites/default/files/reports/INDIA932.PDF>, “Torture continues in Jammu and Kashmir,” Amnesty International, November 1995, ASA 20/33/95, <https://www.amnesty.org/download/Documents/176000/asa200331995en.pdf>, “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, particularly, pp. 27-28, para. 126, https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf, “Torture: Indian State’s instrument of control in Indian administered Jammu and Kashmir,” Jammu Kashmir Coalition of Civil Society, 2019, <http://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>, “120 Days: 5th August to 5th December,” Association of Parents of Disappeared Persons, December 9, 2019, particularly. pp. 13 – 20, <https://apdpkashmir.com/120-days-5th-august-to-5th-december-a-report-by-apdp/>, and “Imprisoned Resistance: Aug 5th and its Aftermath,” People’s Union of Civil Liberties et. al., 2019, esp. p.41, <http://www.pucl.org/reports/imprisoned-resistance-5th-august-and-its-aftermath>.

¹¹⁶ See, e.g., “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan,” Office of the United Nations High Commissioner for Human Rights, June 14, 2018, particularly pp. 22-23, paras. 79-81, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>, “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, particularly, p. 16, para. 78, https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf, “Imprisoned Resistance: 5th August and its aftermath,” People’s Union of Civil Liberties, et. al., November 12, 2019, particularly p. 40, <http://www.pucl.org/reports/imprisoned-resistance-5th-august-and-its-aftermath>, “Blind to justice: Excessive use of force and attacks on health care in Jammu and Kashmir, India,” Physicians for Human Rights, December 2016, https://s3.amazonaws.com/PHR_Reports/Kashmir-Report-Dec-2016.pdf, and “My World is Dark”: State Violence and Pellet-firing Shotgun Victims from the 2016 Uprising in Kashmir,” Association of Parents of Disappeared Persons,

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¹¹⁷ See, e.g., “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, particularly, p. 17, paras. 80-83,

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¹³¹ The Jammu Massacre was led by *Hindutva* activists from the *Rashtriya Swayamsevak Sangh* (or RSS) working with the officials of the Hari Singh’s government. On the RSS, see Endnote 68.

¹³² That ideology is known as *Hindutva*. See Endnote 68.

¹³³ See Endnote 69.

¹³⁴ See Endnote 68.

¹³⁵ See Endnotes 69 and 129. See also the statements made by various Indian Government officials and BJP leaders regarding Kashmiris and Muslims in India. For example, Bisht, Akash, “Fear in Kashmir as top general talks of ‘deradicalisation’ camps,” Al Jazeera, January 24, 2020, <https://www.aljazeera.com/news/2020/01/fear-kashmir-top-general-talks-deradicalisation-camps-200124081502319.html>, Karnad, Raghu, “Can use Drone Strikes against Kashmiris if public opinion allows,” The Wire, November 27, 2018, <https://thewire.in/security/we-can-use-strike-drones-in-jk-if-people-will-accept-collateral-damage-army-chief>, “You can now marry ‘gori’ Kashmiri girl: BJP MLA Vikram Saini tells party workers | Watch video,” IANS, August 7, 2019, <https://www.indiatvnews.com/news/india-bjp-mla-vikram-saini-fair-skinned-kashmiri-girl-540875>, Srinivasan, Chandrashekar, “‘If Israeli People Can Do It...’: Row Over Indian

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¹³⁶ The Gujarat pogrom of 2002 was a well-planned campaign to kill, rape, maim and dispossess thousands of Muslims. The government of Narendra Modi, then Gujarat’s Chief Minister, actively supported and participated in that campaign and then successfully resisted Supreme Court orders to prosecute those responsible. For Modi and the BJP, the Gujarat violence, like Kashmir, was an “internal matter” in which no one had the right to “interfere.” Modi’s national reputation in India is built on the Gujarat pogrom of 2002. See, e.g., Narula, Smita, “‘WE HAVE NO ORDERS TO SAVE YOU’: State Participation and Complicity in Communal Violence in Gujarat,” Human Rights Watch, April 2002, vol. 14, no. 3(C), <https://www.hrw.org/reports/2002/india/gujarat.pdf>, “‘Maaro! Kaapo! Baalo!’ State, Society, and Communalism in Gujarat,” People’s Union for Democratic Rights, May 2002, https://www.onlinevolunteers.org/gujarat/reports/pudr/pdf/full_report.pdf, “India: A Decade On, Gujarat Justice Incomplete,” Human Rights Watch, February 24, 2012, <https://www.hrw.org/news/2012/02/24/india-decade-gujarat-justice-incomplete> and Nambath, Suresh, “2002 Riots an ‘Internal Gujarati Matter’: Modi Told American Diplomat,” The Hindu, October 1, 2016, <https://www.thehindu.com/news/the-india-cables/2002-riots-an-internal-Gujarati-matters-Modi-told-American-diplomat/article14957493.ece>.

¹³⁷ See Endnotes 59, 69 and 135.

¹³⁸ See, e.g., Sands, Philippe, “Genocide or not, the Uighurs need urgent international support,” Financial Times, July 27, 2020, <https://www.ft.com/content/8b712431-8c39-40a3-9390-c4d53624139f>.

¹³⁹ See, e.g., International Committee of the Red Cross, “What is the difference between IHL and human rights law?,” ICRC, January 22, 2015, <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law>.

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¹⁴¹ See, e.g., “Core Human Rights in the Two Covenants,” UN Office of the High Commissioner for Human Rights, September 2013, <https://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf>.

¹⁴² See Endnotes 101 and 114-121.

¹⁴³ Tables courtesy of the UN Office of the High Commissioner of Human Rights, see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IND&Lang=EN (accessed on September 20, 2020). On India’s approach to accountability for human rights violations, see also Endnote 148.

¹⁴⁴ Another useful illustration is India’s approach to compliance regarding the obligation not to disappear and its actual practice. See, for example, the following excerpts from “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan,” Office of the United Nations High Commissioner for Human Rights, June 14, 2018, pp.27-29, para. 97-101, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>: “Impunity for enforced or involuntary disappearances in Kashmir continues as there has been little movement towards credibly investigating complaints, including into alleged sites of mass graves in the Kashmir Valley and Jammu region....India signed the Convention for the Protection of all Persons from Enforced Disappearance on 6 February 2007 but has yet to ratify it. While the Government of India has reiterated to the Human Rights Council several times that it is committed to ratifying the Convention, the National Human Rights Commission of India observed in 2012 that there was no evidence to show that the government was seriously planning to do so. The Commission added, “enforced disappearance was not codified as a criminal offence in domestic law, nor were extant provisions of law used to deter the practice.” The Government of India has stated it is cooperating with the Working Group on Enforced or Involuntary Disappearances, but it has never allowed a visit by this

mechanism despite having issued a standing invitation to all thematic special procedures in 2011.”

¹⁴⁵ See “Declarations recognizing the jurisdiction of the Court as compulsory,” International Court of Justice, <https://www.icj-cij.org/en/declarations>.

¹⁴⁶ Tomuschat, Christian, et. al., *THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY*, 3rd Edition (Oxford Commentaries on International Law: 2019), pp. 760-761.

¹⁴⁷ See “Declarations recognizing the jurisdiction of the Court as compulsory: India,” International Court of Justice, September 27, 2019, <https://www.icj-cij.org/en/declarations/in>.

¹⁴⁸ India cannot be held accountable. Indians can only be held accountable in exceptional, rare and limited circumstances. For example, a circumstance where (a) a domestic court in a non-India jurisdiction is willing to exercise “universal jurisdiction” with respect to human rights violations and then withstand likely political pressure to not pursue such a case, (b) a known, established perpetrator of human rights violations somehow falls under the personal jurisdiction of that domestic, non-India court and (c) human rights defenders are able to overcome the non-transparency and suppression of information by the Indian Government and establish and sustain an evidentiary case that is able to succeed on the merits.

¹⁴⁹ For a more fulsome discussion of “atrocious crimes” themselves, *see* the response to [Question 6](#).

¹⁵⁰ See, e.g., “Understanding the International Criminal Court,” International Criminal Court, p.1, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>.

¹⁵¹ “AFSPA 1990 was passed by the Parliament of India on September 10, 1990 but was “deemed to have come into force” retrospectively from July 5, 1990. This act grants broad powers to the security forces operating in Jammu and Kashmir and effectively bestows immunity from prosecution in civilian courts for their conduct by requiring the central government to sanction all prospective prosecutions against such personnel prior to being launched....In the nearly 28 years that the law has been in force in Jammu and Kashmir, there has not been a single prosecution of armed forces personnel granted by the central government.” See “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan,” Office of the United Nations High Commissioner for Human Rights, June 14, 2018, pp.11-12, para. 43-44, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

¹⁵² In this case, the International Criminal Court may exercise jurisdiction if an “atrocious crime” is committed by a citizen of a nation state that has accepted the Court’s jurisdiction or if such a crime is committed in the territory of such a nation.

¹⁵³ See “How the Court works,” International Criminal Court, <https://www.icc-cpi.int/about/how-the-court-works>.

¹⁵⁴ For a description of the Indian Government’s stonewalling (in this case, since 2011) of human rights authorities, see “UN experts call for urgent action to remedy “alarming” human rights situation in Jammu and Kashmir,” Office of the United Nations High Commissioner for Human Rights, August 4, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26148&LangID=E>. For a description of the Indian Government’s tactics of “deflection” of efforts at accountability on human rights violations (and international facilitation thereof) see Vijayan, Suchitra, “Internal Matters How the Modi government deflects international censure,” The Caravan, June 1, 2020, <https://caravanmagazine.in/commentary/modi-government-deflects-international-censure>.

¹⁵⁵ See, e.g., “Note verbale dated 29 August 2018 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly,” UN General Assembly, A/73/394, October 4, 2018, <https://undocs.org/en/A/73/394>.

¹⁵⁶ See, e.g., “Uncovered: 265 coordinated fake local media outlets serving Indian interests,” EU Disinfo Lab, November 26, 2019, <https://www.disinfo.eu/publications/uncovered-265-coordinated-fake-local-media-outlets-serving-indian-interests>, “Hiding your Indian interests behind American and Russian content,” EU Disinfo Lab, October 22, 2019, <https://www.disinfo.eu/publications/hiding-your-indian-interests-behind-american-and-russian-content>, “Disinformation on Whatsapp in India and the fact-checking initiative Boom,” EU Disinfo Lab, November 8, 2018, <https://www.disinfo.eu/outreach/our-webinars/disinformation-on-whatsapp-in-india-and-the-fact-checking-initiative-boom>, Carmichael, Flora and Abid Hussain, “Pro-Indian ‘fake websites targeted decision makers in Europe,” BBC World Service, December 16, 2019, <https://www.bbc.com/news/world-asia-india-50749764>, Bell, Stewart, “Canadian politicians were targets of Indian intelligence covert influence operation: document,” Global News, April 17, 2020, <https://globalnews.ca/news/6823170/canadian-politicians-targeted-indian-intelligence/>, Kasturirangan, Rajesh, “Authoritarian regimes are using algorithms to control minds and power,” Quartz India, October 2, 2019, <https://qz.com/india/1720516/kashmir-to-lgbt-modi-and-bjp-use-algorithms-to-manipulate-minds/>, Ali, Mohammad, “The Rise of a Hindu Vigilante in the Age of WhatsApp and Modi,” Wired, April 14, 2020, <https://www.wired.com/story/indias-frightening-descent-social-media-terror/> and Filkins, Dexter, “Blood and Soil in Narendra Modi’s India,” The New Yorker, December 2,

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¹⁵⁷ See Endnotes 144, 148, 151, 154 and 166.

¹⁵⁸ See responses to [Question 2](#) and [Question 4](#). See also Endnotes 97, 110 to 117 and 124.

¹⁵⁹ See, e.g., Endnotes 144, 154 and 166.

¹⁶⁰ See, e.g., Parkin, Benjamin and Amy Kazmin, “Trump presses Modi to bolster US ties amid trade frictions,” Financial Times, February 24, 2020, <https://www.ft.com/content/4bd6039e-56ef-11ea-a528-dd0f971febbc>.

¹⁶¹ See, e.g., responses to [Question 2](#) and [Question 4](#) and Endnotes 101, 114-121 and 128. For a broad description of the recent suppression and detention of human rights defenders in India, for example, see Sharma, Gouri, “International pressure grows on India over arbitrary detentions,” TRT World, July 27, 2020, <https://www.trtworld.com/magazine/international-pressure-grows-on-india-over-arbitrary-detentions-38444>. For a description of international legal intervention in the context of recent legislation, see Kuchay, Bilal, “India defends CAA after UN rights chief approaches Supreme Court,” Al Jazeera, March 4, 2020, <https://www.aljazeera.com/news/2020/03/india-defends-caa-rights-chief-approaches-supreme-court-200303114701274.html> and Pillai, Priya, “Intervention of the UN High Commissioner for Human Rights at the Indian Supreme Court: International Law and the Citizenship Amendment Act,” *Opinio Juris*, May 3, 2020, <https://opiniojuris.org/2020/03/05/intervention-of-the-un-high-commissioner-for-human-rights-at-the-indian-supreme-court-international-law-and-the-citizenship-amendment-act/>.

¹⁶² See, e.g., Endnotes 13 and 163 and Marshall, Paul, “Hinduism and Terror,” Hudson Institute, June 1, 2004, <https://www.hudson.org/research/4575-hinduism-and-terror>.

¹⁶³ India has poor relations with China, with whom India fought (and lost) one outright war, and Pakistan, with whom India has fought at least three outright wars. India is widely understood in Nepal, Bhutan, the Maldives and Sri Lanka to be a meddlesome bully (India is also responsible for training and arming the Sri Lankan Tamil Tigers, who are considered to be terrorists by the Sri Lankan establishment). Bangladesh has been India’s only regional ally (due to their political establishment’s positive view of India’s involvement in Bangladesh’s national liberation struggle which, from Pakistan’s point of view, was meddling in the “internal affairs” of Pakistan and secessionism) and even Bangladesh has soured on India in recent years. See, e.g., Tekwani, Shyam, “India’s bullying of its neighbours boosted China. Now it needs to build a strong backyard,” South China Morning Post, June 29, 2020, <https://www.scmp.com/week-asia/opinion/article/3091070/indias-bullying-its-neighbours-boosted-china-now-it-needs-build> and Rafiq, Arif, “A Crisis Is Brewing Between India and China. But This Time

There Is a Big Difference,” *The National Interest*, June 16, 2020, <https://nationalinterest.org/feature/crisis-brewing-between-india-and-china-time-there-big-difference-162860>.

¹⁶⁴ In the context of IAJK, see, e.g., Endnotes 69, 75, 122 and 135. See also Endnotes 136, 161 and 163.

¹⁶⁵ India’s state-sponsored terror groups include, for example, the “Ikhwan” militias in Kashmir (see, e.g., “India’s secret army in Kashmir: New patterns of abuse emerge in the conflict,” Human Rights Watch, 1996, <https://www.hrw.org/reports/1996/India2.htm> and “Voting At The Point Of A Gun – Counter-insurgency and the farce of elections in Kashmir,” Andhra Pradesh Civil Liberties Committee, et. al., July 1996, <http://www.unipune.ac.in/snc/cssh/HumanRights/02%20STATE%20AND%20ARMY%20-%20POLICE%20REPRESSION/E%20Jammu%20and%20Kashmir/05.pdf>), “Village Defence Committees” in Jammu (see, e.g., “Outsourcing Criminality: A JKCCS brief on Village Defence Committees,” Jammu Kashmir Coalition of Civil Society, August 2013, <https://jkccs.net/Reports/2013%20-%20JKCCS%20brief%20on%20VDCs.pdf>) and the Sri Lankan Tamil Tigers (see, e.g., “FACTBOX-India’s role in Sri Lanka’s civil war,” Reuters, October 17, 2008, <https://uk.reuters.com/article/idUKCOL223047>).

¹⁶⁶ See, e.g., responses to [Question 2](#) and [Question 4](#) and Endnotes 101, 114-121 and 128. On international legal compliance, see, e.g., Endnotes 141, 144, 151 and 154 and the following response to the Office of the High Commission of Human Rights in respect of its draft 2019 report: “India did not make any request for or suggest any specific factual corrections to the content of the report nor did it address any of the allegations contained in it. However, it rejected the report on the basis it was “fallacious, tendentious and [politically] motivated” –similar to its rejection of the first report on Kashmir issued in June 2018. India stated that the report should focus on “cross-border terrorism” which it claimed was at the “heart of the issue” claiming that OHCHR had overlooked this issue in the report. It added that the report had ignored its “sustained and comprehensive socio-economic development efforts”. India requested OHCHR not to publish the report.” See “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, p. 43, para. 185, https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf. See also the letter from the Permanent Mission of India to the United Nations to the Secretariat of the Human Rights Council of the United Nations, dated April 23, 2019, responding to a March 19, 2019 communication from certain special rapporteurs from the United Nation’s Office of High Commissioner for Human Rights at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34631>.

¹⁶⁷ See also Endnotes 168-172. See, e.g., Roy, Nilanjana, “Democracy in India is on the brink,” *Financial Times*, December 20, 2019, <https://www.ft.com/content/50de5e78-225a-11ea-b8a1-584213ee7b2b>, Imam, Sharjeel, “The Hindu Republic: Seven decades of

Muslim exclusion in India,” TRT World, February 3, 2019, <https://www.trtworld.com/opinion/the-hindu-republic-seven-decades-of-muslim-exclusion-in-india-23794>, Roy, Arundhati, “Intimations of an Ending: The rise and rise of the Hindu Nation,” The Caravan, November 21, 2019, <https://caravanmagazine.in/politics/rise-and-rise-of-hindu-nation>, Kuchay, Bilal, “India defends CAA after UN rights chief approaches Supreme Court,” Al Jazeera, March 4, 2020, <https://www.aljazeera.com/news/2020/03/india-defends-cao-rights-chief-approaches-supreme-court-200303114701274.html> and Pillai, Priya, “Intervention of the UN High Commissioner for Human Rights at the Indian Supreme Court: International Law and the Citizenship Amendment Act,” *Opinio Juris*, May 3, 2020, <https://opiniojuris.org/2020/03/05/intervention-of-the-un-high-commissioner-for-human-rights-at-the-indian-supreme-court-international-law-and-the-citizenship-amendment-act/>. As related specifically to IAJK, note the following expert comparison to China (India has been commonly viewed (popularly, in government and in academia) as substantively different than China (e.g., messier, slower to “develop,” suffering poorer planning, benefitting from less infrastructure but “freer” and more resilient) because it is a “democracy”): “While it was fashionable to contrast democratic India with authoritarian China, the reality is that when it comes to occupying and governing territories and peoples that have contested relations with the mainland, both the countries have adopted measures including promise of autonomy, reality of assimilation, suppression of rights, denial of self-determination, and absence of consensual rule.” See “The World Is Reaping the Chaos the British Empire Sowed,” *Foreign Policy*, August 13, 2019, <https://foreignpolicy.com/2019/08/13/the-world-is-reaping-the-chaos-the-british-empire-sowed/>.

¹⁶⁸ The history of Indian electoral processes in IAJK is telling—there has never been a free and fair democratic election in IAJK. See, for example, Endnotes 37, 65 and 102. See Donovan, Ned, “India is holding one of the world’s largest—and most corrupt—elections,” *New Statesman*, May 10, 2019, <https://www.newstatesman.com/world/asia/2019/05/india-holding-one-world-s-largest-and-most-corrupt-elections>. See also Xu, Beina, “Governance in India: Corruption,” Council on Foreign Relations, September 4, 2014, <https://www.cfr.org/background/governance-india-corruption>, Yueng, Jessie, “1 in 2 Indians paid a bribe at least once in the past year, survey finds,” CNN, November 27, 2019, <https://www.cnn.com/2019/11/27/asia/india-corruption-bribe-intl-hnk-scli/index.html>, Kazmin, Amy, “Gangster’s tale sheds light on India’s gritty grassroots politics,” *Financial Times*, July 15, 2020, <https://www.ft.com/content/4601d4ea-fcd8-4d73-9b1a-9e1b5851c1d5> and Biswas, Soutik, “Maharashtra’s political theatre is ‘damaging’ Indian politics,” *BBC News*, November 26, 2019, <https://www.bbc.com/news/world-asia-india-50555076>.

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¹⁷⁰ On particular techniques of suppression, see, e.g., Gettleman, Jeffrey, et. al., “India Adopts the Tactic of Authoritarians: Shutting Down the Internet,” N.Y. Times, December 17, 2019, <https://www.nytimes.com/2019/12/17/world/asia/india-internet-modi-protests.html>, Krishnani, Ravi, “India: The World Leader in Internet Shutdowns,” CNN, December 14, 2019, <https://www.cnn.com/2019/12/14/opinions/india-world-leader-in-internet-shutdowns/index.html> and “Kashmir’s Internet Siege: An Ongoing Assault on Digital Rights,” Jammu Kashmir Coalition of Civil Society, August 2020, <https://jkccs.net/report-kashmirs-internet-siege/>.

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¹⁷³ See Endnotes 161-163, 165, 168, 170.

¹⁷⁴ See, e.g., Endnotes 22-23, 102, 167-168 and 171. See also Rai, Mridu, “History of Betrayals in Kashmir,” *Frontline*, August 30, 2019, <https://frontline.thehindu.com/cover-story/article29053014.ece>.

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¹⁷⁷ On the criminality of Narendra Modi and Amit Shah, see, e.g., Katakam, Anupama, “Getting away with murder,” Frontline, November 25, 2016, <https://frontline.thehindu.com/cover-story/getting-away-with-murder/article9319159.ece>, Filkins, Dexter, “Blood and Soil in Narendra Modi’s India,” The New Yorker, December 2, 2019, <https://www.newyorker.com/magazine/2019/12/09/blood-and-soil-in-narendra-modis-india> and Jose, Vinod K., “The Emperor Uncrowned: The rise of Narendra Modi,” The Caravan, February 29, 2012, <https://caravanmagazine.in/reportage/emperor-uncrowned-narendra-modi-profile>.

¹⁷⁸ See, e.g., Kapila, Shruti, “The annihilation of India’s political opposition is almost complete.” Financial Times, August 16, 2020, <https://www.ft.com/content/bf8b2503->

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¹⁷⁹ See Endnote 102. See also Goel, Vindu and Jeffrey Gettleman, “Under Modi, India’s Press is not so Free Anymore,” N.Y. Times, April 2, 2020, <https://www.nytimes.com/2020/04/02/world/asia/modi-india-press-media.html> and Ayyub, Rana, “Journalism is under attack in India. So is the truth.” Wash. Post, February 21, 2020, <https://www.washingtonpost.com/opinions/2020/02/21/journalism-is-under-attack-india-so-is-truth/>.

¹⁸⁰ See, e.g., Jose, Vinod K., “The Emperor Uncrowned: The rise of Narendra Modi,” The Caravan, February 29, 2012, <https://caravanmagazine.in/reportage/emperor-uncrowned-narendra-modi-profile>, Kazmin, Amy, “Indian business breaks ranks as economic strain takes its toll,” Financial Times, December 9, 2019, <https://www.ft.com/content/3e529e1e-1a7a-11ea-97df-cc63de1d73f4> and “As Top Ministers Turn on Bajaj, It’s Clear the Modi Government Doesn’t Like Criticism,” The Wire, December 2, 2019, <https://thewire.in/politics/rahul-bajaj-amit-shah-question-criticism>.

¹⁸¹ See, e.g., Endnotes 70, 102, 167-168 and 174.

¹⁸² The people of IAJK are denied any such representation or opportunity in any forum for states. This is true even in non-governmental forums, consequential to the Indian Government’s repression, denial of the right to travel and violent repression. See, e.g., “INDIA: Jammu and Kashmir: Remembering Jalil Andrabi,” Amnesty International, March 1997, AI Index: ASA 20/10/97, <https://www.amnesty.org/download/Documents/160000/asa200101997en.pdf> and “State Versus Khurram Parvez: A Peoples’ Dossier,” Jammu Kashmir Coalition of Civil Society, 2016, <http://www.afad-online.org/images/2016/PeoplesDossierOnKhurram.pdf>.

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¹⁸⁵ See text of and commentary on Article 41 of the International Law Commission’s Articles on State Responsibility (2001) at “International Law Commission, Articles on State Responsibility: A. International Law Commission Report, A/56/10 August 2001,”

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¹⁸⁶ See text of and commentary on Article 16 of the International Law Commission's Articles on State Responsibility (2001) at "International Law Commission, Articles on State Responsibility: A. International Law Commission Report, A/56/10 August 2001," <https://casebook.icrc.org/case-study/international-law-commission-articles-state-responsibility>.

¹⁸⁷ See, e.g., "Indian army to buy additional 72,000 Sig Sauer rifles from US: Report," Free Press Kashmir, July 16, 2020, <https://freepresskashmir.news/2020/07/16/indian-army-to-buy-additional-72000-sig-sauer-rifles-from-us-report/>, Khawaja, Mehdi, "Modi's Government Is Exploiting the Pandemic to Ramp up Repression in Kashmir," Jacobin, May 3, 2020, <https://www.jacobinmag.com/2020/05/india-modi-coronavirus-police-repression-kashmir> and Kazmin, Amy, "India to halt arms imports worth billions in local procurement push," Financial Times, August 9, 2020, <https://www.ft.com/content/f619bf69-ebf6-48c3-af36-3673f83fe735>.

¹⁸⁸ This is illustrated by India's June 2020 election to a non-permanent seat at the UN Security Council. The United Nations Organization (and the international community generally) are well-aware of India's major violations of international law, impunity and defiance of UN Security Council resolutions (See Endnotes 11, 101, 114-121, 128, 141, 144, 151, 166 and 189). Nonetheless, 184 of 192 United Nations member states affirmatively voted to elect India to a UN Security Council seat. The Indian Government described it as one of its "best performances" ever. See, for example, Haidar, Suhasini and Sriram Lakshman, "India coasts to win in U.N. Security Council polls," The Hindu, June 18, 2020, <https://www.thehindu.com/news/national/india-elected-non-permanent-member-of-united-nations-security-council/article31856470.ece>. India has announced its intent to remove the "India-Pakistan question" and the issue of the future political status of the territories of the Princely State of Jammu and Kashmir from the UN Security Council's agenda. See, e.g., "'Outdated Agenda Item': India Calls For Removing J&K Issue From UN," NDTV / PTI, September 2, 2020, <https://www.ndtv.com/india-news/india-calls-for-removing-j-k-issue-from-un-security-council-outdated-agenda-item-2288953>.

India receives active support from both the international "far right" and the international political "left". See, e.g., Leidig, Eviane, "The Far-Right Is Going Global," Foreign Policy, January 21, 2020, <https://foreignpolicy.com/2020/01/21/india-kashmir-modi-eu-hindu-nationalists-rss-the-far-right-is-going-global/>, "Why Europe's far right supports India on the Kashmir issue," Al Jazeera, November 2, 2019, <https://www.aljazeera.com/indepth/features/europe-supports-india-kashmir-issue-191102184856242.html> and Chaudhury, Aadita, "Why white supremacists and Hindu nationalists are so alike," Al Jazeera, December 13, 2018,

<https://www.aljazeera.com/indepth/opinion/white-supremacists-hindu-nationalists-alike-181212144618283.html>.

¹⁸⁹ The India-Pakistan territorial dispute has been active at the UN Security Council since 1947. There is a United Nations peacekeeping mission in Islamabad and Srinagar since January 1948 (see “UNMOGIP Fact Sheet,” United Nations Peacekeeping, <https://peacekeeping.un.org/en/mission/unmogip>). Human rights violations in IAJK have been actively discussed in United Nations human rights bodies and by the United Nations’ various special rapporteurs for years. The Office of the High Commission of Human Rights is well-acquainted with the violations that have occurred in IAJK and published two separate reports on those violations (See “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan,” Office of the United Nations High Commissioner for Human Rights, June 14, 2018, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf> and “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf.) Members of the UN Security Council, including the United Kingdom (who is responsible for the disputes over the territory of the Princely State of Jammu and Kashmir and the related violations that have occurred – see Endnote 20) and the United States, have been actively and especially involved over the years in attempting to mediate a peaceful political settlement of the conflict(s) over the territory of the Princely State of Jammu and Kashmir. India no longer recognizes the United Nations’ peacekeeping mission, does not admit human rights observers, including the United Nations’ special rapporteurs, and no longer even responds to related correspondence except to condemn the United Nations bodies (see Endnotes 144, 154 and 166).

¹⁹⁰ At the same time, the people of IAJK have continued to believe in the commitments made regarding their right to self-determination, in, among other places, the relevant UN Security Council resolutions, and continued to look to the United Nations Organization to deliver on those commitments. See, e.g., Zia, Ather and Haley Duschinski, “Kashmir Quagmire: The Legend of ‘UNO Sahab,’” Outlook India, July 16, 2018, <https://www.outlookindia.com/magazine/story/kashmir-quagmire-the-legend-of-uno-sahab/300353>.

¹⁹¹ See the responses to [Question 4](#) and [Question 6](#).