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Friday, December 04, 2015

SUBJECT: **HISTORICAL PERSPECTIVE OF GILGIT-BALTISTAN**

Government of Gilgit-Baltistan Secretariat office of the Chief Secretary notification, dated 21<sup>st</sup> November, 2015 on the topic – delivered on 24<sup>th</sup> November - refers.

1. As the convener of the committee I have the pleasure to submit a consensus report prepared by the members.
2. I am also enclosing another document as an adjunct to the main document reflecting the views of the convener.
3. You will also find a useful research paper related to the topic which in my view will be of immense help to the policy/decision makers.
4. I will use this occasion to refer to the “Freedom of Information” provisions of the law on this topic.

**X**

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Hisamullah Beg

SI [M]



**REPORT ON  
HISTORICAL PERSPECTIVE OF GILGIT-BALTISTAN**

**BY  
COMMITTEE CONSTITUTED VIDE  
CHIEF SECRETARY GILGIT BALTISTAN'S OFFICE MEMORANDUM  
21 NOVEMBER 2015**

**THE TERMS OF REFERENCE**

**CONSOLIDATE THE RELEVANT HISTORICAL RECORD  
ANALYZE AND INTERPRET RELEVANT TREATIES  
DELIBERATE ON BOUNDRIES TILL NOVEMBER 1, 1947**

**COMPOSTION OF THE COMMITTEE**

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Mr. Usman Ali Professor (Retired), Historian and writer	Member
Col. Imtiaz Ul Haq SI[M], Author of a Thesis on related topic	Member
AIG. Muhammad Dil Pazeer (Retired), expert on GB Affairs	Member
Mr. Sher Baz Ali Bercha, Historian, writer and researcher	Member
Mr. Qasim Naseem, Journalist and writer	Member
Mr. Israruddin Israr, columnist and Human Rights Activist	Member

## **EXECUTIVE SUMMARY**

Determination of political and constitutional status of Gilgit Baltistan is an important and sensitive national issue, having far reaching effects. The same has been kept in a hang on position since independence in 1947. As a national policy in principle, the future of Gilgit Baltistan has been linked with Kashmir Issue, considering it a part and parcel of former State of Jammu and Kashmir. However, since November 1, 1947 Gilgit Baltistan is being governed by Government of Pakistan and since then the region enjoys a special status under Federation of Pakistan. **This prolonged indecisiveness regarding determination of political status has resulted into sense of political deprivation and identity crisis to the people, living here.**

The determination of political and constitutional status of Gilgit Baltistan is a complex and multi-dimensional issue. It involves and demands a thorough study of historical perspective, relevant treaties and agreements relevant to the subject, the proceedings and decisions of the apex Courts of Azad Jammu and Kashmir and Pakistan and **the public opinion.** An objective and analytical study of all these factors reveals that the issue so far has not been given due importance and considered in the desired perspective. With reference to post 1846 history of Gilgit Baltistan a narrow angle has been considered while deciding its political status. **The public opinion** which is the most important aspect in determining the future of nations has been ignored and the area has been administered through the instrument of bureaucracy. The case has been tried in the apex courts of Azad Jammu and Kashmir and Supreme Court of Pakistan as well but **with limited impact on the parliamentary responsibility enshrined in the Constitution.**

Supreme Court of Pakistan has left the decision regarding the determination of its political and constitutional status at the disposal of the Parliament and Executive bodies. This document is aimed at considering and evaluating all the relevant factors to the subject, to draw realistic conclusions and recommend viable options with a view to eliminate the prevailing sense of political deprivation of the people and ensure better **future integration of Gilgit Baltistan with Pakistan.**

It is in this context and manifestation that the people of Gilgit- Baltistan have the strong desire of being part of Pakistan. The study finds that, though it may not be possible for Government of Pakistan, to take a U turn on its principle stance on the subject and integrate Gilgit Baltistan in its constitutionally defined territories, due to its commitments with people of Jammu and Kashmir, United Nations, India and international community. However, provision of **interim provincial status**, right of vote and due representation in the Constituent Assemblies of Pakistan, could be the best viable option to address the issue of identity of crisis and sense of political deprivation, thereby ensuring better future integration of Gilgit Baltistan with Pakistan.

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## **Committee Report**

### **Historical Perspective of Gilgit-Baltistan**

#### **Introduction**

1. The accession of Gilgit-Baltistan to Pakistan in 1947 is a unique case of its kind in the history of Indo-Pak Sub-continent. Whereas, there was a popular political movement in the entire Sub-Continent, for the freedom from British imperialism in general and for creation of Pakistan in particular, no visible mass political mobilization was witnessed in Gilgit-Baltistan, probably due to remoteness and harshness of the terrain. However, on the eve of independence, the Muslim troops of Gilgit Scouts, with the assistance of local chieftains and volunteers, liberated 28000 square miles of an area, forcing Maharaja of Kashmir's Forces to flee; followed by unconditional accession to the Islamic Republic of Pakistan.

2. Despite of above all, the political and constitutional status of Gilgit-Baltistan remains in a doldrums for last six and half decades. As a policy stance, GBs future has been linked with resolution of Kashmir Issue, in the light of United Nations resolutions on the subject. Sequel to Karachi Agreement of 1949, Gilgit-Baltistan enjoys a special status under federation of Pakistan. So far the region has been governed through bureaucratic tool and on ad-hoc arrangements, through administrative packages and Presidential Orders issued by Government of Pakistan, from time to time. The political concessions through these packages have been in bits and pieces, yet never wholesome and complete. Apparently, Gilgit-Baltistan has been given an administrative provincial status in 2009, yet in the absence of right of vote and representation in the Parliament of Pakistan, it leaves a big question mark regarding citizenry recognition, political rights and the fate / future of 1.3 million inhabitants (3) of Gilgit-Baltistan

3. These heartfelt feelings have given birth to identity crisis and sense of political deprivation. Aforesaid in view, it is evident that the policy of delay and status quo has not succeeded and is unlikely to bear fruits in foreseeable future. Hence we need to revisit the issue and evaluate the options, so as to choose as to how we can ensure better integration of Gilgit-Baltistan into the main stream political arena of Pakistan, by determining its political status, without compromising on Kashmir stance, before the resentment of the people here assumes crisis proportion.

## **Aim**

4. To analyze the issue of constitutional and political status of Gilgit- Baltistan, keeping in view its historical background, relevant treaties and agreements and decisions of honorable courts of justice, with a view to offer viable recommendation for better integration of GB with Pakistan.

## **Sequence**

5. The paper is designed to unfold in the sequence as under:-

- a. Part - 1. Recapitulation of history and relevant treaties and agreements.
- b. Part - 2. Decisions of apex courts.
- c. Part - 3. GB Boundaries
- d. Part - 4. Political status of GB – future perspectives.
- e. Part - 5. Conclusions from history, treaties, agreements and Courts' decisions.
- f. Part - 6. Recommendations

## RECAPITULATION OF HISTORY AND RELEVANT TREATIES AND AGREEMENTS

### Historical perspective

6. **Geographical History.** Geographically Gilgit-Baltistan and Chitral are part of Central Asia rather than South Asia<sup>4</sup>, as Karakoram and Hindokush lay as hedge in between as Central Asian mountain ranges, including Hindukush, Karakoram and Kunlun, converge at Pamir plateau. Professor Dani (1991) writes that the Gilgit-Baltistan remained sandwiched between high peaks of Hindukush and Karakoram on North and Western Himalaya on the South. Humanity lived here in isolation and cut off from the rest of the world. In the opinion of geologists, it is the meeting point of continents in collision. Geographically, climatically and biologically, Northern Areas present primarily a land of Trans - Himalayan features i.e. monsoon rain and seasons of the plain are almost totally absent. Northern Areas also differ from other parts of Himalayan states, as it lies within easy approach of China, India, and Central Asia.

7. **Early History.** Archeological evidence is not sufficient to give a complete account of the pre historic culture of man in this region<sup>6</sup>. Whatever little has been found, relates to the late period and shows a stage of heritage and food collection in a manner that smacks of primitive life. The entire material evidence for the time being is to limited rock art. However, it is established that the people of primitive age of this area were known as Dardiac People. The area was ruled by Scythe Parthian, the Kashan's, Huns and Potoal Shahis, all belonging to Central Asia and Chinese regions. From era before Christ to 7th Century AD, Buddhism was the religion, till Islam reached here in 8th Century AD.

8. **Medieval History.** The medieval history of Northern Areas began with the Arab advance into Central Asia in 8th Century A.D, which pushed the Turkish population of Badakhshan, Wakhan and Xing-Jiang into this part<sup>7</sup>. Consequently, China moved its forces to counter advance of Tibetans who had by now built a State and swept across Baltistan and Gilgit right up to Wakhan. Kashmir played a secondary role at that stage<sup>8</sup>. The States in Northern Areas maintained their independence and established varying relations with the contemporary neighboring powers. Gilgit-Baltistan was ruled on monarchic pattern by Mirs and Rajas who were autonomous. The ruling families of Gilgit-Baltistan from medieval era up to 1972 were<sup>9</sup>:-

- (i) Tara Khan dynasty in Gilgit
- (ii) Maghlot family in Nagar
- (iii) Ayashoo family in Hunza
- (iv) Kator family in Chitral
- (v) Khushwaqt family in Yasin and Mastuj
- (iv) Brushai family in Puniyal
- (v) Maqpon family in Skardu
- (vi) Amacha's in Shigar

(vii) Yabgu's in Khaplu

9. Kohistan was called as Yaghistan in British times, where their authority was hardly felt. Baltistan, also known as Tibet Khurd, consisted of seven mini States, each having its own semi-independent Ruler. Baltistan was identified as Blorian Tibet. The Maqpoons of Skardu unified Gilgit Baltistan with Chitral , Ladakh specially in the era of Ali Sher Khan Anchan. Historically and culturally greater part of Kohistan District remained part of Northern Areas. It was Ruler of Swat who with the consent of British Masters, raided and brought this area under its administrative control, as confirmed by British letter of 24 Feb 1913. Chitral was separated from Northern Areas by Colonel Durand in 1895 for administrative convenience. Professor Dani in preface to his book under reference writes that it is usually believed that the region has been an appendix to Kashmir throughout the history. The account presented here would clarify the point amply and show in clear terms, how the region had its own independent identity, as confirmed in a letter No. Y 103/27 dated 12 January 1924, from Resident Kashmir to Col G.P. Gunter, Director Frontier Circles, Survey of India, wherein he writes “ the territory composed within Gilgit Agency was divided into three categories:-

- (i). Kashmir State Territory i.e. Gilgit tehsil, including Bunji and Astor.
- (ii). Political Districts i.e. Hunza, Nagar, Puniyal, Koh-e- Ghizer, Ishkoman and Chilas.
- (iii). Un-administered Areas, Darel, Tangir, Kandia, Jalkot, Sazin, Shatial and Herbun.

10. **Modern History.** Modern history of Gilgit-Baltistan (Dani 1991) is marked by invasion of Gilgit-Baltistan by Sikhs Dynasty of Lahore, followed by Treaty of Lahore and Amritsar, sale of Jammu and Kashmir to Maharaja of Kashmir by British, British growing interest in Gilgit-Baltistan to check initially Czarist and later Soviet Communist influence into this area, leading to establishment of Gilgit Agency in 1889, lease of Northern Areas in 1935 for 60 years by British from Maharaja of Kashmir, war of independence of Gilgit-Baltistan and events till to date. Between 1836 and 1842, the Sikhs taking advantage of feud amongst local rulers, invaded Gilgit and Skardu. They brought the area under their control but ruled through locally appointed rulers. In Baltistan, Muhammad Shah who was the ousted ruler of Skardu, sought help of Maharaja of Kashmir against rulers of Skardu. Skardu was brought under control by Wazir Zorawar Singh (a General of Ranjit Singh) around late 1840. While in case of Gilgit, Raja Karim Khan, and the ruler of Gilgit, who was ousted by Raja Gohar Aman of Yasin, sought help from Sikh Governor of Kashmir

11. In 1842 Colonel Nathu Shah with a force of 1000 troops pushed out Raja Gohar Aman from Gilgit. This episode did not lose long and Raja Gohar Aman recaptured Gilgit in 1852 and Raja Muhammad Khan II, the then ruler of Gilgit, again took refuge in Kashmir. By this time Kashmir had already gone into the hands of Gulab Singh. In 1860 Maharaja of Kashmir invaded

Gilgit again and installed Raja Karim Khan, son of Muhammad Khan II as ruler of Gilgit. This could happen only after death of Raja Gohar Aman. However on Hunza and Nagar side Maharaja Forces suffered heavy losses and had to retreat. Colonel Nathu Shah was killed in the battle against Hunza. Professor Dani mentions that there was no permanent claim of Kashmir on whole of Northern Areas, from the medieval age. The only region which came in direct relationship with Kashmir was Baltistan. It was only Wazir Zorawar Singh, who in 1840 managed to meddle in local war of succession and entered Skardu. He established a military force there to support his nominee. In 1841 successful uprising against Dogras in Baltistan led by Haider Khan Amacha of Shigar, captured the Dogra commander Baghwan Singh in Skardu, The second conquest of Dogra Commander Wazir Lakhpat Singh occurred in 1842.

12. **Treaty of Lahore.** Refer Annex A. Sequel to defeat of Sikh Rulers of Lahore, Treaty of Lahore was signed on March 9, 1846 between Sikh Rulers and the Government of British India which reads, "The Maharaja cedes to Honorable company in person sovereignty as equivalent for one crore rupees, all his forts, territories, rights and interest in the hilly countries which are situated between the river Bias and Indus, including the provinces of Kashmir and Hazara"

13. **Treaty of Amritsar:** Consequent to above transfer, a separate transaction was made between British and Maharaja Gulab Singh, the Ruler of Kashmir on March 16, 1846. Article 1 of the treaty provides, "The British government transferred to Maharaja Gulab Singh and heirs, all the hilly and mountainous country, with its dependencies situated to the East of the river Indus and Westward of river Ravi, ceded to British government in the light of Treaty of Lahore". This record clears the fact that Chilas, Hunza, Nagar and other areas to north of these were not given to the Maharaja by terms of Treaty of Amritsar. If we strictly interpret the language of Gulab Nama, even Astor was the only territory under protection but not an actual territorial part of Kashmir. It may be noted that the whole Kohistan laid to the East of River Indus and

never formed part of Kashmir; it was Yaghistan (the un-ruled area). Even Laddakh and Baltistan were not mentioned in the treaty, although the river flows through them. This is understandable, because these two areas never formed part of Sikh territory. Thus if treaty is correctly understood in the historical perspective of the time, its meaning has to be limited to holding of the Sikhs in Jammu and Kashmir. Any territory acquired after 1846 was not governed by this treaty. The history clearly shows that the treaty of Amritsar by which Kashmir was sold to Gulab Singh has nothing to do with Northern Areas. Its relationship with Kashmir is totally based on different historical base. Gilgit was finally conquered in 1860; Chilas in 1852, Darel in 1856 and annual tributes, (as token of allegiance / subordination) were imposed on these people, until British Agency was established in 1891-92

14. According to Professor Dani, (1991) tribute is never a proof of ownership, rather it is reverse. Hunza had dual vassalage to both China and Kashmir. Chinese claimed that Hunza paid

tribute to their emperor since 1736 while vassalage to Kashmir is first proved by a treaty signed by Shah Ghazanfar, Mir of Hunza, sometimes about 1864. However vassalage was purely nominal. The annual tribute sent to China by Hunza in 1898 was 15 miskals of gold dust, equal to Rupees 120. State of Kashmir was powerless to control or coerce their so called vassal. It was only after war of 1891 that Hunza's subordinate relations to the Kashmir was effectively established by force of arms and recorded Sanad (appointment letter) was given in the name of Maharaja to Mir Nazeem Khan of Hunza on eve of his installation in September 1892. The tribute paid to Maharaja of Kashmir was, 16 Tola and 5 Masha of gold by Hunza, 17 Tola and 1 Masha of gold by Nagar, 17 Tola and 2 Masha of gold by Darel,  $\frac{3}{4}$  Tola and 14 Masha of gold by Gore. This all happened between 1880s and 1890s.

15. **Lease of Gilgit Wizarat-1935.** Refer Annex C. Owing to growing British interests and Great Game factor (fear of Russian aggression), British established Gilgit Agency in 1889, to deal the external affairs with the States. The Agency remained in the control of the British; however, the civil administration of Gilgit Wazarat was run by State of Kashmir. This peculiar arrangement created a dual control which was worrying the British Political Agent here. It was to meet this difficulty that British affected the lease deal with Maharaja of Kashmir. Maharaja was given only suzerain status over local rulers but the territory was never recognized as Maharaja's territory. After the lease the British Political Agent became the local head of civil, military and judicial powers and Kashmir State's interference was restricted to obtaining consensus in case of succession of local rulers or hoisting of State's flags at the official Headquarters of army and exploration of minerals rights were reserved with Maharaja of Kashmir. The lease was enforced for a period of 60 years. It was a fulfillment of their aims that Corps of Gilgit Scouts was raised as a local force of levies in 1889 by Col Durand.

16. **The End of British Rule.** At the end of World War II, the victorious imperial powers were not in a position to continue their rule over colonies as the people had been yearning to free themselves from the reigns of imperial rules<sup>19</sup>. Gilgit-Baltistan was a small area not much known, when seen in the overall context of partition plan. Should the territory be formally handed over to chieftains or to Maharaja was a question, as formally the area was under the suzerainty of State of Jammu and Kashmir, although the territory fell outside the boundaries of the State, except the leased area of 1935 Agreement. The officials forgot that the agreement was only for Gilgit Wazarat and not for the other parts of the Agency. Mountbatten never seems to have consulted Mr. Jinnah or Liaqat Ali Khan on the question, and wanted to end the lease and handover entire area to Maharaja of Kashmir. Finally on first August 1947, Gilgit Agency was handed over to Maharaja of Kashmir, in a ceremony and Brigadier Ghansara Singh formally assumed the responsibilities as Governor of Gilgit Wazarat.

17. **War of Gilgit-Baltistan Liberation.** Gilgit-Baltistan freedom struggle was an independent affair, though influenced by the currents in South Asia but fought separately by its own people

and military men posted there. The Muslim officers of Kashmir State Forces played a leading role, yet the struggle was not a part of Kashmir campaign. The State Army Officers were certainly motivated by an overall Muslim demand in the State of Jammu and Kashmir, yet because of local geographic factor, their activity was limited to Northern Areas. Gilgit was a frontier district, just handed over by the British and Maharaja had to re-establish the authority both civil and military, in this part. The turning of old age suzerainty into real permanent power over the local Rulers and people after the lapse of British sovereignty was a big issue. The Maharaja believed that loyalty of local Rulers to him would guarantee his authority there. Hence he invited Mirs of Hunza, Nagar and Puniyal to Srinagar and they apparently gave their diplomatic loyalty. However, according to Major Brown, Mir of Hunza and Nagar had shown their inability to prove their loyalty to Maharaja, against the wishes of the public. Although there was no political party and political movement in Gilgit-Baltistan in 1947, little doubt existed about public sentiments in favour of Pakistan. Gilgit Scouts, mostly comprising the local tribes was the main force in Gilgit under command of Major Brown, while the 6th Battalion of Jammu and Kashmir Rifles (mix of Muslims and Sikhs), and was at Bunji. Prior to independence, the Scouts were paid by the British Raj, however on the eve of the return of the Agency, rumor spread that because of the loyalty issues the Scouts may be disband. Moreover, there was a difference between pay and allowances and concession between troops of Maharaja Forces and Gigit Scouts. Brigadier Ghansara Singh on assumption of the appointment wished to obtain the oath of loyalty from Gilgit Scouts, who refused to do so before the fulfillment of their demands of bringing the forces at par with the State Forces.

18. Meanwhile underground planning for coup d'état against Maharaja Forces was under way, in case Maharaja decided to join India. The plan in rough shape was to arrest the Governor (Brigadier Ghansara Singh) and his administrators in Gilgit by Gilgit Scouts and wipe out Sikh troops of 6 Jammu and Kashmir Rifles stationed at Bunji, confiscate weapons and ammunition from the State Forces and seek help from leaders in Pakistan. According to plan, a squad of Gilgit Scouts besieged Brigadier Ghansara Singh at his residence on the night of 31 October / 1 November 1947 and arrested him. The reinforcement for Gilgit from Bunji and reinforcement for Bunji from Srinagar through Astor was effectively checked by establishing blocking positions on the bridge on River Indus and Astor River. The Dogra and Sikh troops of 6 Jammu and Kashmir Rifles deserted Bunji camp on 3rd November 1947 and the garrison with heavy arms and ammunition fell without firing a single shot. This was followed by pursuit and consolidation phase. The liberation force was organized in three groups launched a three pronged advance as under.

- (i) Tiger Force under Colonel Mirza Hassan advanced along axis Bunji - Astor - Zojila Pass.
- (ii) Eskimo Force under Captain Muhammad Shah Khan moved along axis Bunji – Deosai - Burzil-Dras-Kargil

(iii) (iii) Ibx Force under Colonel Ehsan Ali advanced along up Stream of Indus River in Skardu Valley.

19. These forces fought courageously despite all the odds of terrain, weather and organizational deficiencies and were able to liberate the area up to line Zojila - Dras-Kargil - Leh, by the end of first quarter of 1948. However, Zojila, Dras, Kargil and Leh, but were recaptured by Indian forces through counter offensive by overwhelming forces. It is worth mentioning here that according to Subedar Major Babar Khan, he sent telegrams to Muslim leaders of Pakistan soon after 14th August but no reply was received.

20. **Establishment of Provisional Government.** Between 1st and 3rd November 1947, a Provisional Government was formed with Raja Shah Rais Khan as President of the Provisional Government, Colonel Mirza Hasan Khan as the Head of Military Affairs and Leader of Revolutionary Movement, Captain Durrani Deputy Leader, Lieutenant Ghulam Haider Political Agent, Subedar Major Babar Khan Quarter Master, Raja Sultan Hameed as Police Chief and Major Brown as advisor. A wireless message was sent to the government of Pakistan to send a civil administrator and take over the administrative control.

21. **Governance in Post-Independence Era.** On the invitation of Provisional Government, Sardar Alam Khan, the designated representative of Government of Pakistan landed in Gilgit on 16th November 1947 and assumed the appointment of Political Agent. Later, in pursuance to an order of Governor General, dated 6th April 1948, the Political Resident in North West Frontier Province, based in Peshawar, was directed to act as Agent to Governor General for Gilgit Agency, including Princely States. Northern Areas were thus placed under the administrative control of then North West Frontier Province. United Nations Resolution. On 1st January 1948, India formally referred the case of Pakistan's aggression in Kashmir to United Nations Security Council (UNSC) under article 35 of United Nations Charter. Consequently, on 20th January 1948, a three member delegation visited scene of fighting.

22. On 21 January 1948, United Nations Commission for India and Pakistan (UNCIP), composed of five members was established, with following mandate :-

- a. Holding of immediate cease fire by both India and Pakistan.
- b. Withdrawal of all tribesmen and Pakistanis.
- c. Reduction of forces level by India on restoration of normalcy.
- d. The administration of plebiscite by India.

23. **Karachi Agreement.** Refer Annex D. In March 1949, an agreement was signed by Mr. Mushtaque Ahmad Gormani, Minister without Portfolio Governments of Pakistan, Sardar

Muhammad Ibrahim Khan the President of Azad Jammu and Kashmir and Choudhry Ghulam Abbas head of All Jammu and Kashmir Muslim Conference, in which, matters relating to Kashmir affairs were broadly distributed as under:-

i. **Matters in Purview of Government of Pakistan.** Matters included, defense, foreign affairs, dealing with United Nations Commission for India and Pakistan, relief and rehabilitation of refugees and governance affairs / administrative control of Gilgit-Baltistan. This agreement further enhanced the legitimacy of control of Gilgit-Baltistan by Government of Pakistan.

ii. **Matters in Purview of Government of Azad Jammu and Kashmir.** Responsible for internal management and administration of Azad Jammu and Kashmir and rendering advice to Government of Pakistan about United Nations Commission for India and Pakistan.

24. **Transfer to Ministry of Kashmir Affairs.** In 1950, the control of Northern Areas was transferred from North West Frontiers Province, to Ministry of Kashmir Affairs through appointment of a Political Resident. This arrangement continued till 1952 when the Joint Secretary Kashmir Affairs was entrusted with the additional charge of the post of Resident of Northern Areas.

25. **Sino-Pak Border Agreement 1963.** Annex E. While demarcating the boarder, both the parties agreed that after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority concerned will reopen negotiations with the Government of the People's Republic of China on the boundary issue as described in Article 2 of the agreement, so as to sign a formal boundary treaty, to replace the present agreement. In the event of the sovereign authority being Pakistan, the provisions of the present agreement and of the aforesaid protocol shall be maintained in the formal boundary treaty.

26. **Baltistan Agency.** Assistant political agent was appointed in Baltistan under Pakistan's administrative control in February 1948. It was upgraded as sub agency and additional political agent was appointed here in September 1949. In 1964, Baltistan was upgraded to the level of a full-fledge Agency and a Political Agent was appointed there. Both the Political Agencies in the Gilgit-Baltistan were supervised by the Resident from Islamabad. In 1967 another change was made and a separate post of Resident for Northern Areas was created with its Headquarters in Gilgit. The Resident combined all the powers as head of the local administration, High Court and Commissioner Revenue under Frontiers Crimes Regulations. While in case of States, the Mirs enjoyed autonomous status, exercising executive, judicial and legislative powers imposed through Jirga System. In 1969, a Northern Areas Advisory Council (NAAC) was created but the same was devoid of decision-making powers and was subordinate to the Resident.

27. **Northern Area Council**. In 1970 Northern Areas Council consisting of 16 members with powers to sanction development schemes was formed. In August 1972 President Z.A. Bhutto ordered various fundamental and far reaching reforms which included abolition of Jagirdari System, i.e. the institution of Mir and Agency system, converting Gilgit-Baltistan into Political districts, instead of Agency. In December 1972 Diamer District and in September 1974 Ghanche and Ghizer districts were created. A definite step was taken in 1973 when promise was made that within 10 years' time the region will be constituted into a province with its own Legislative Assembly. However the promise remained unfulfilled .During General Zia's Martial law of 1977, Gilgit- Baltistan was declared as Martial Law Zone E .In 1985 appointment of Advisor to Minister of Kashmir Affairs was created and later in 1988 the appointment was upgraded as Advisor to Prime Minister for Northern Areas. General Zia is also reported to have ordered concerned Ministries to take necessary steps so as to ensure the representation of Gilgit-Baltistan in the Parliament in next coming elections in 1985. However, probably due to strong bureaucratic opposition, the same was shelved. General Zia is also reported to have said in his statements and interviews that Northern Areas have nothing to do with Kashmir Issue.

28. **Legal Framework Order (LFO) 1994**. According to this package the powers of elected representatives were enhanced and slots of initially Chairman and Vice Chairman of the Council created and later re-designated as Chief Executive and Deputy Chief Executive. The Council comprised of 24 directly elected members .The Federal Minister of Kashmir Affairs and Northern Areas, was to act as Chief Executive of the Council while Deputy Chief Executive was to be locally elected member. The fundamental rights as given in 1973 Constitution of Pakistan were made part of LFO. The Council was empowered to enact laws on 49 subjects. Four seats for women and six seats for technocrats, besides slots of Speaker and Deputy Speaker and five advisors, was also added through amendments.

29. **Legal Frame Work Order 2007**. Introduced on 15 December 2007, the Northern Areas Legislative Council was re-designated as Northern Areas Legislative Assembly; vested with few more powers. The appellate Court was re-designated as Supreme Appellate Court. The Chief Court and Supreme Appellate Court were brought at par with Supreme Court and High Courts in Pakistan in terms of perks and privileges. The salient features of the package were, Deputy Chief Executive would henceforth be called the Chief Executive, with full administrative and financial authority and the existing Chief Executive (a federal minister) would be the Chairman of the Northern Areas Government. The Chief Executive would be elected by the new assembly. Administrative and financial powers of the Ministry of Kashmir Affairs and Northern Areas would be transferred to the Northern Areas Government.

30. **Gilgit-Baltistan Empowerment and Self Governance Order, 2009**. The Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, aimed at introducing far-reaching

administrative, political, financial and judicial reforms, has been enacted. The salient features of the order are:-

- The name of the Northern Areas of Pakistan would be Gilgit-Baltistan.
- Gilgit-Baltistan will have an elected legislative assembly, which would elect the Chief Minister while a Governor, to be appointed by the President, on the advice of the Prime Minister.
- The Chief Minister, assisted by six ministers and two advisers will form Cabinet and function as executive body.
- The Legislative Assembly would have 24 members, who would be elected directly, besides six women and three technocrats' seats. It would have powers to make laws on 61 subjects.
- Establishment of 16 members Gilgit-Baltistan Council, (as upper house) with Prime Minister as its Chairman, Governor as vice chairman, Chief Minister GB and minister of ministry of Kashmir affairs and GB as ex-officio members, 6 members are elected by Gilgit-Baltistan Legislative Assembly and 6 nominees by Prime Minister of Pakistan, from parliament of Pakistan and cabinet of federal Govt.
- Gilgit-Baltistan will have Consolidated Fund and the annual budget would be presented to the assembly and voted upon as per practice in vogue in other provinces in the country.
- Gilgit-Baltistan will have own its Public Service Commission, the Chief Election Commissioner and the Auditor General.
- Judicial Reforms. A Chief Judge of the Supreme Appellate Court would be appointed by the Chairman of the Council on the advice of the Governor. Chief Judge and other judges of Chief Court shall be appointed by the Chairman on the advice of the Governor, after seeking views of the Chief Judge. The number of judges would be increased from three to five.

## DECISIONS OF APEX COURTS

31. **Azad Jammu and Kashmir High Court Ruling.** In a case filed in 1990 in Azad Jammu and Kashmir High Court by petitioners, Malik Muhammad Miskeen and Haji Amir Jan, residents of District Diamer, Gilgit-Baltistan, the Court headed by Chief Justice Abdul Majeed Mallick, ruled “Azad Kashmir Government to immediately assume the administrative control of the Northern Areas and to annex it within its administration, creating administrative and judicial machinery and provide due representation to people of Gilgit-Baltistan in the legislative assembly and council of Azad Kashmir”. The decision was based on the historical evidence, i.e. pacts and treaties between British and Sikhs Rulers of Lahore 1846, Treaty of Amritsar 1846 and Lease of Gilgit 1935, Karachi Agreement 1949, Sino-Pak Border Agreement 1963 and resolutions of United Nations Commission for India and Pakistan.

32. **Arguments in Support of the Decision.** Following arguments and evidences were considered in support of the decision:-

i. Northern Areas formed part of the State of Jammu and Kashmir prior to 15 August 1947, as State was administratively divided into Jammu, Kashmir, Laddakh and Gilgit provinces.

ii. Gilgit province was leased out for 60 years by Maharaja of Kashmir to Government of British India through a lease deed executed on 26 March 1935. However, on 1st August 1947, these areas were restored to State of Jammu and Kashmir, and Brigadier Ghansara Singh was appointed as Administrator for Gilgit-Baltistan by the Maharaja of Kashmir.

iii. After liberation of Northern Areas, an agreement was entered between Government of Pakistan, Azad Kashmir government and All Jammu and Kashmir Muslim Conference on April 28, 1949 (Karachi Agreement), wherein certain functions were distributed and administrative control of Northern Areas was entrusted to Government of Pakistan.

iv. The said agreement lapsed on enforcement of Azad Jammu and Kashmir Government Act 170, subsequently substituted by Azad Jammu And Kashmir Interim Constitution Act, 1974. Hence the administrative control of Northern Areas should have been restored to Azad Jammu and Kashmir Government by putting an end to Karachi Agreement of 1949.

v. The geographical status of Northern Areas, being an integral part of Jammu and Kashmir State, as existed on 15th August 1947, has been acknowledged in United

Nations Resolutions, Sino-Pak Border Agreement of 1963, and Simla Agreement 1972, between India and Pakistan.

vi. As per 1956, 1962 and 1973 Constitutions of Pakistan, Gilgit-Baltistan did not form part of territories included in Pakistan,

vii. In view of the strategic importance of the area, an agreement was affected between State of Jammu and Kashmir and British India in 1877, accordingly a British Political Agent was appointed there and the princely States of Gilgit, Hunza, Nagar, Puniyal, Yasin, Koh-e-Ghizer, Ishkoman and Chilas were part of the agreement.

viii. As per census report of British India held in 1911, 1921, 1931, and 1941, Northern Areas were shown part of Jammu and Kashmir.

ix. The record of settlement carried out in 1925, also shows Northern Areas as part of Jammu and Kashmir State.

x. Even during the leased period, the flag of Jammu and Kashmir remained hoisted in Gilgit; the right of exploration of minerals was vested with Maharaja of Kashmir. The Mirs of the princely state were awarded appointment letter by Maharaja of Kashmir and the ruler of princely States paid annual tribute to Maharaja of Kashmir.

xi. As per maps issued by survey of Pakistan in 1954 and thereafter, Northern Areas have been shown as a part of Jammu and Kashmir.

xii. In response to protest launched by India against Sino-Pak Border Treaty in 1963, Mr. Zulfiqar Ali Bhutto, the then Foreign Minister of Pakistan, clearly stated that the territory of Jammu and Kashmir belonged to its people, future of which must be decided in accordance with United Nations Resolutions of 13 August 1948 and 5 January 1949, i.e., through impartial plebiscite under the auspices of the United Nations. The Boundary Agreement between China and Pakistan does not affect the status of the territory of Jammu and Kashmir.

xiii. The President of Azad Jammu and Kashmir, vide their letter number, PS-400/9 of March 17, 1989, addressed to the President of Pakistan had amply clarified the historical position of Northern Areas.

xiv. In accordance with Treaty of Lahore 1946 between Government of British India and Sikh Rulers and Treaty of Amritsar March 16, 1846, signed between British India and Maharaja Gulab Singh, Northern Areas formed part of state of Jammu and Kashmir.

xv. Sir Muhammad Zafar ullah Khan, the then Foreign Minister of Pakistan, in his speech made in Security Council on January 16, 1948, described the position of the state, including Gilgit as, "Gilgit which is the high mountain region in the North West, a part of which border USSR, is entirely Muslim, amply prove that Northern Areas formed part of State of Jammu and Kashmir.

xvi. Section 7(i) (b) of the Independence Act 1947, being relevant to point under consideration is reproduced as follow, " As from the appointed day, the suzerainty of His Majesty (British ) over the Indian States shall lapse and with it all treaties and agreements in force at the date of the passing of this Act between his Majesty and the rulers of Indian States, all function exercisable by his Majesty at that date with respect to Indian States, all obligations of his Majesty at that date towards Indian States or the rulers there of and all powers, rights, authority or jurisdiction, exercised by his Majesty at that date, in or, in relation to Indian states by treaty grant, usage or otherwise".

xvii. Vide Jammu and Kashmir State, Chief Secretariat Political Order No B. 480/47P. B dated 17th July 1947; the administration of entire Gilgit Wazarat was taken over by Maharaja"s appointed Governor on 1st August 1947.

xviii. The Mirs (rulers) were granted "Sanad" (Nomination / appointment letter) by to Maharaja of Kashmir.

33. **Arguments against the Decision.** The proceedings and the decision of the High Court, however completely ignored following aspects:-

i. The history of Gilgit-Baltistan prior to year1840 has been completely ignored.

ii. Many historical events after the year 1846 have not been mentioned and those mentioned have not been correctly evaluated in correct perspective.

iii. The diversities emanating from customs, traditions, culture and caste have not been recognized.

iv. The geographical realities and hardships imposed by the terrain are ignored, i.e. the traditional passes between Gilgit-Baltistan remained blocked for better half of the year due to heavy snow.

v. As the native population of GB is the ultimate custodian of the territory they belong to, the choice and will of the people of Gilgit-Baltistan has been completely ignored. The proceeding does not quote even a single evidence, wherein the people or ruler of Gilgit-Baltistan had opted for State of Jammu and Kashmir or Azad Jammu and Kashmir after 1947, Rather incidents have been quoted through Brigadier Ghansara Singh and Major W.A. Brown the then Commandant of Gilgit Scouts in 1947, that Mir of Hunza and Nagar had clearly sounded to Maharaja, that they will opt for Pakistan.

vi. Karachi Agreement of 1949 was signed between Government of Pakistan, Government of Azad Jammu and Kashmir and All Jammu and Kashmir Muslim Conference, with no representation from Gilgit-Baltistan.

vii. After liberating Gilgit-Baltistan in 1947, the Revolutionary Command Council of Gilgit had opted for Pakistan and not for Azad Jammu and Kashmir, asking Government of Pakistan to take the area in its administrative control. Even during Sino-Pak Border Agreement of 1963, no consensus of Gilgit-Baltistan was obtained.

34. **Azad Jammu and Kashmir Supreme Court's Ruling.** The decision of AJK high court was challenged by Federation of Pakistan in the Supreme Court of Azad Jammu And Kashmir. The decision of the Supreme Court was that, although Gilgit-Baltistan was part of Jammu and Kashmir State, but is not a part of Azad Kashmir. Thus High Court of Azad Kashmir government did not have jurisdiction to attend the plea or pass on judgment. The judgment of the High Court was thus not upheld; in other words turned down.

35. **Supreme Court of Pakistan Ruling.** In 1999, the Supreme Court of Pakistan, in a landmark case No 17, filed in 1994, titled, Al-Jehad Trust versus Federation of Pakistan, held that the location of Northern Areas is sensitive due to its proximity to India, China, Tibet and Russia. In past the area has been treated differently; hence the Court cannot dictate type of Government, nor can suggest representation in the Parliament. It may not be in larger interest of the Country because of option of plebiscite under United Nations. The above question has to be decided by the Parliament and Executive. Hence the court clearly said in its decision "since most of the Pakistan statutes have been made applicable to northern area including citizenship act as stated above, we are of the view, that the people northern areas are citizens of Pakistan, for all intents and purposes". The Court at best can direct that proper administrative and legislative steps be taken with reference to basic rights. Government of Pakistan to initiate appropriate administrative and legislative measures within a period of six months, to make necessary amendments in the constitution, relevant, statutes, orders, rules and notifications to ensure that the people of Northern Areas enjoy their fundamental rights and are governed through their chosen representatives and to have access to justice through an independent judiciary, for enforcement of their fundamental rights guaranteed under the Constitution.

## GB BOUNDARIES

### 36. Diamer - KPK Boundary

Historically and culturally greater part of the Kohistan district is a part of Gilgit Baltistan. It was considered so until late in the beginning of the present century, when the ruler of Sogat, probably with the connivance of the British master, raided right up to the western bank of the Indus and advanced even to Kandia valley in order to establish his administrative control over the region. Even then the part, east of the Indus remained YAGISTAN (Un-administered area). This is confirmed by the following letter No 381 of 1913 from S.M. Fraser, Resident in Kashmir to Lt Col. Sir George Roose-keppel, chief commissioner of Peshawar, dated 24<sup>th</sup> February, 1913.

“... The Jalkoties, as you are aware, are a Kohistan tribe occupying a valley on the Indus of the south west of Chilas and west of Kaghan in the Hazara district. Their country is independent territory but their political relations, so far as such relations exists, have been mainly with Gilgit agency... further I think it will be agreed that since Jalkot falls naturally within the sphere of the Gilgit agency, by reasons of geographical position, race, language and inter communications, it is politically expedient for the initiative to lie with Chilas authorities”.

37. This position is further confirmed in letter no Y 103/27, dated 12<sup>th</sup> January, 1928 from resident in Kashmir to col. C.P. Gunter, director of frontier circle survey of India, where in he writes:- “The territory comprised within the Gilgit agency falls into three categories-viz.

1. Kashmir state territory, i.e. Gilgit Wazarat, comprising Gilgit tehsil (Including Bunji) with its niabat of Astore.
2. The political districts, i.e. Hunza, Nagar, Punial, Yaseen, Koh e Ghizer, Ishkoman and republic of Chilas.
3. Un-administered area, i.e. Darel , Tangir, Kandia (Killi), Jalkot, Sazeen, Shatial and Hurban”.

38. This position remained until 1947 and even latter in 1950, when with the constitution of Kohistan district the area was separated from Gilgit agency. Even today Thakot Bridge on the Indus, build by the Chinese, Marks a gate way to Karakorum High Way. (Danni, 1991).

39. **Ghizer Chitral Boundary.** As a result of the British frontier policy and their motivation to demarcate the boundary line made the British to intervene in the local politics of Chitral. This intention is clearly stated in letter of the foreign department, Govt. of India dated 19<sup>th</sup> October 1892 to secretary of state for India. In another letter no 161 it is recommended “The charge of Chitral up to the Shandur and Darkut passes may now be conveniently separated from the Gilgit agency” this recommendation was fulfilled with the establishment of Malakand Agency, when the affairs of Chitral were finally transferred

to this agency. Since that time Chitral has been linked to frontier and Koh e Ghizer up to Shandur pass became the boundary of Gilgit agency on this side. (Danni 1991).

40. **Pak- China Boundary.** Professor Dani states that the adjustment of Northern boundary (boundary of State of Hunza with China and Russia) was result of Anglo-Russian rivalry in 19th Century for defining the boundaries to influence Hindokush region South of Pamir. Resultantly Anglo-Russian Commission granted Wakhan corridor and Pamir, part of domain of Mir of Hunza, to Afghanistan in order to create a neutral ground and buffer zone between Russian Empire and British India. In return Mir of Hunza was offered two villages near Gilgit, namely Matumdas and Oshkhandas. The same gets authentication from Memoires of Sir Muhammad Nazim Khan 13, the ruler of Hunza state from 1892 – 1938, who mentions that British and Maharaja, both feared from Hunza till they ousted Mir Safdar Khan by aggression in 1891 and forced him to have an exiled life in China. The present boundary is consequent to Pak-China Border Agreement 1963.

#### **PART – 4**

#### **POLITICAL STATUS OF GB – FUTURE PERSPECTIVES**

## **Future Perspectives for Integration of Gilgit-Baltistan with Pakistan.**

40. The Gilgit-Baltistan (Empowerment and Self Governance) Order 2009, in the light of the decision of Supreme Court of Pakistan, is a fairly comprehensive package. An objective analysis of Supreme Court's judgment reveals that the decision had two main parts, i.e. the decision regarding the future of the Gilgit-Baltistan, to be decided by the Parliament/Executive and restoration of fundamental rights of the people of Gilgit-Baltistan, including rule through chosen representatives and access to independent judiciary. Whereas the second portion of Supreme Court's decision i.e. self-governance and independent judiciary has been fulfilled through enforcement of above mentioned Presidential Order, the first portion of the decision, i.e. "the matter of representation to Gilgit-Baltistan, in the Parliament of Pakistan to be decided by the Parliament/Executive", is yet to be decided. As the integration of Gilgit-Baltistan with Pakistan has been a desire and demand of the people since 1947, following options emerge with respect to deciding its future.

41. **Option 1. Present Status with Addition of Interim Representation in the Parliament of Pakistan.** Under the provisions of the Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, a special status, akin to that of provincial administrative/organizational structure in other provinces, is already in place. The office of the Governor, Chief Minister, Ministers, the Legislative Assembly, the Chief Court, office of Auditor General, Election Commissioner and Public Service Commission etc, all are in line with the infra-structure existing in other four provinces of Pakistan. The Gilgit-Baltistan Council, an amalgamation of the members from Gilgit-Baltistan and Parliament of Pakistan and Prime Minister of Pakistan, as its Chairman, to some extent symbolizes interaction of representative of Gilgit-Baltistan with those of Pakistan, but on subjects dealing with Gilgit-Baltistan only. At the moment there is no worthwhile forum where the elected representatives from Gilgit-Baltistan can air out their thoughts and views and participate in affairs of national interest. Hence, the existing setup can be augmented with interim or provisional provincial status and representation in the parliament of Pakistan. This will require amendment in 1973 Constitution, providing Gilgit-Baltistan interim provincial status. Though this option may draw criticism and hue and cry from India, Kashmiri leadership, but the action can be justified and legalized adding only one word "interim" or "provisional", which is covered under Karachi Agreement 1949. In this option the ratio of representation in National Assembly and Senate could be as under:-

a. **Advantages**

i) The sense of political deprivation of the people of Gilgit-Baltistan, with regards to identity and representation, will be addressed and the future of Gilgit-Baltistan will be determined as per their wishes.

ii) The option ensures better integration of Gilgit-Baltistan with the mainstream political system of Pakistan.

iii) Kashmiri leadership, India and United Nations can be satisfied, as it will be “interim/provisional” status, i.e. retaining the disputed status of Gilgit-Baltistan as part of Jammu and Kashmir.

iv) India and United Nations can be reminded that as per Indian Constitution, the State of Jammu and Kashmir including Laddakh has been included in their territory without resorting to plebiscite and they have been given representation in the Parliament of India. Why Pakistan can do so in case of Gilgit-Baltistan. Another, logic is that India has given Laddakh region a special autonomous status although it is a part of disputed Jammu and Kashmir.

v) As the settlement of Kashmir issue, as per UN resolutions appear to be a difficult proposition in near future, relief could be provided to people of Gilgit-Baltistan, yet retaining the flexibility of use of vote of Gilgit-Baltistan in favor of Pakistan in case of a plebiscite.

vi) If Pakistan at some stage feels that the „status quo“ is the future of Kashmir issue, this option would serve better the interest of Pakistan.

vii) In case the plebiscite in which third option (independent state of Jammu and Kashmir) is proposed, the people of Gilgit-Baltistan will still vote for Pakistan.

viii) The options require minimum organizational and structural changes.

ix) The uprising nationalist movement and centrifugal tendencies will be defeated.

x) The option has over whelming support of the people of Gilgit-Baltistan as evident from the feedback obtained through the questionnaire.

b. **Disadvantages**

i) The pro Pakistani Kashmiri political leadership on the both sides of the line of control may not like it. They term it a step amounting to weakening Pakistan’s original stance with respect to Kashmir issue.

ii) It can be termed a step towards recognition of status quo, which is more of an Indian desire.iii) The political status of Gilgit-Baltistan yet remains in flux and hang on and the original desire/demand of the people for accession to Pakistan is not addressed.

iv) As the public opinion keeps on changing, this move may become counterproductive and may ignite support for independent Gilgit-Baltistan.

42. **Option 2. Ending Karachi Agreement and Merging Gilgit-Baltistan With Azad Jammu and Kashmir.**

a. **Advantages**

i) Supplements Pakistan's principal stance regarding resolution of Kashmir issue through plebiscite, as per UN resolutions.

ii) Political leadership on both sides of Line of Control will welcome this step.

iii) The people of Gilgit-Baltistan, belonging to Kashmiri caste and possibly some percentage of people from Diamer and Astor district may welcome this step.

b. **Disadvantages**

i. The sense of political deprivation of people of Gilgit-Baltistan will increase.

ii. Will have shocking effect for the majority of the people of Gilgit-Baltistan, whose forefathers opted for Pakistan in 1947.

iii. The non-Sunni sects i.e. Shia, Ismaili and Noorbaksh, who form 75% of the population of Gilgit-Baltistan, will definitely resist it.

iv. Nationalist and pro-independence trends will be encouraged.

v. India's stance about Gilgit-Baltistan will be understood and justified.

vi. The political leadership of Azad Jammu and Kashmir will dominate and Gilgit-Baltistan will become a minority in Azad Jammu and Kashmir Assembly

vii. The distances and communication problems with Azad Jammu and Kashmir will create more governance and administrative bottle necks.

43. **Option 3. \_ Providing Status Akin To Azad Jammu and Kashmir**

a. **Advantages**

i. The issues relating to self-governance and internal autonomy will be better addressed as Gilgit-Baltistan will attain status of state akin to that of Azad Jammu and Kashmir having own interim Constitution, flag, President, Prime Minister, the Assembly and judicial infrastructure.

ii. Minimum organizational and structural changes will be required, as existing infra-structure is almost on the similar lines except the change of names /appointments, i.e. President and prime Minister instead of Governor and Chief Minister.

b. **Disadvantages**

i. The basic demand of the people, i.e. integration with Pakistan would remain un-addressed.

ii. No integration with the main national political system of Pakistan.

iii. A State for 1.2 million people of Gilgit-Baltistan may not be a viable administrative and financial option.

iv. Autonomous State status has never been a demand of people of Gilgit-Baltistan.

v. The pro Pakistani Kashmiri leadership on both sides of line of control will bitterly oppose it.

vi. India will make a lot of hue and cry.

vii. It will be difficult for Pakistan to justify its principle stance in UN.

viii. Nationalist parties striving for autonomous State will be encouraged.

ix. The option has received halfhearted response as per the feedback received through questionnaire.

## **CONCLUSIONS FROM HISTORY, TREATIES, AGREEMENTS AND COURTS' DECISIONS**

### **44. Conclusions from Historical Perspective**

- i. The ancient history of Gilgit-Baltistan is not much in recorded form. In era BC, the region was ruled by imperial powers from Central Asia and China. However medieval age is signified by rule of selected local dynasties in respective valleys, which continued till independence in 1947 and even thereafter.
- ii. The British interest in this region grew in the latter half of 19th Century, in view of the threat posed to British India by Czarist Russia.
- iii. Sequel to the treaty of Amritsar in 1846, the Maharaja of Kashmir enjoyed a suzerain status over Rulers of Gilgit-Baltistan. The Maharaja's de-facto rule in no way justifies the claim of Maharaja of Kashmir over Gilgit-Baltistan.
- iv. On the eve of independence in 1947, the British handed over Gilgit Baltistan to Maharaja of Kashmir in the light of the 1935 Lease Agreement, disregarding popular sentiments of local inhabitants, which was not acceptable to the masses. This led to the war of liberation of Gilgit-Baltistan in November 1947 and its accession to Pakistan.
- v. The governance arrangements and administrative reforms in post-independence period have remained far below the expectations of the people. From Frontiers Crimes Regulations to Presidential Order 2009, the concessions and relief has been gradual and in bits and pieces, yet not complete.
- vi. Gilgit-Baltistan Empowerment and Self Governance Order 2009, is a comprehensive package from administrative and governance point of view, yet the package does not ensure constitutional integration of Gilgit-Baltistan with Pakistan.
- vii. The unresolved political status of Gilgit-Baltistan for last six and half decades and linking it with Kashmir Issue has resulted into sense of political deprivation in the masses.
- viii. The public opinion of people of Gilgit-Baltistan has neither been obtained nor a consensus has been developed to resolve the issues regarding determination of its political status and citizenry rights, rather the area so far has been governed through bureaucratic tool.
- ix. Besides undetermined political status, sectarian divide, poor communication infrastructure, economic inactivity and non-exploitation of its natural resources remain major governance issues faced by Gilgit-Baltistan.

#### 45. Conclusions from Treaties and Agreements

i. **Treaty of Lahore and Amritsar 1846.** Surrendering to the Government of British India, the territories situated between the Rivers Beas and Indus, by Sikh rulers of Lahore, in no way include Gilgit-Baltistan, as the monarchial dynasties of here enjoyed autonomous status. Moreover, 80 percent of Gilgit-Baltistan lied towards North and West of Indus River; hence, technically also Gilgit-Baltistan did not form part of this Treaty.

ii. **Lease of Gilgit-26 March 1935.** This treaty was under peculiar geo political environment, i.e. to exercise check on the Russian communist expansion, entering in to British India. At the time of the deal, the Maharaja of Kashmir enjoyed a de-facto suzerain status and not de-jure status over princely States of Gilgit-Baltistan. Hence, this agreement does not make Gilgit-Baltistan a constituency of Kashmir.

iii. **Karachi Agreement 1949.** While assigning the responsibilities with reference to matters relating to Kashmir, within the purview of the Government of Pakistan, Gilgit-Baltistan was administratively placed under the control of Federal Government of Pakistan. This agreement can be viewed as the first formal document between Pakistani Govt. and the leadership of Jammu and Kashmir. Neither participation nor consensus of people of Gilgit- Baltistan was sought in this regards.

iv. **United Nations Resolutions.** Whereas United Nations Commission for India and Pakistan (UNCIP) in all its resolutions stressed on holding of immediate cease-fire by India and Pakistan, reduction of forces level in Kashmir and holding of plebiscite. There is no specific mention of Gilgit-Baltistan in any of the resolution.

v. **Sino-Pak Border Agreement 1963.** This agreement can be seen as the second official declaration by Pakistan, as the two parties (Pakistan and China) agreed that after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority concerned will reopen negotiations with the Government of the People's Republic of China on the boundary as described in this agreement.

#### 46. Conclusions From Court's Decisions

i. **Azad Jammu and Kashmir High Court Ruling 18 March 1993.** The decision has based on the historical evidences regarding pattern of rule of Gilgit-Baltistan after 1846. The Court however, did not take into account, the history of Gilgit-Baltistan prior to that, as the area was ruled on monarchial pattern, for about one thousand years by local rulers. Moreover, the demographic realities and the public opinion have been totally disregarded.

ii. **Azad Jammu Kashmir Supreme Court Ruling, 14 March 1994.** The Court viewed that the High Court of Azad Kashmir did not have jurisdiction of hearing the case. Thus the High Court's decision was not upheld by the Supreme Court.

iii. **Ruling of Supreme Court Pakistan 29 May 1999.** The Court's directive to Government of Pakistan to, initiates administrative and legislative steps by making necessary amendments in the Constitution and statutes, to ensure that the people of Gilgit-Baltistan enjoy fundamental rights, can be considered as landmark decision relating to determination of political and constitutional status of 1.3 million inhabitants of Gilgit-Baltistan. Gilgit-Baltistan Empowerment and Self Governance Order 2009 is the outcome of the Court's mile stone decision.

47. **Conclusion from Boundaries of GB.** Cis and trans border frontiers of GB have been changed from time to time. The cis frontier border of Diamer with Kohistan and Ghizar with Chitral are disputed. Trans border frontiers with China are consequent to Pak-China Agreement of 1963 while same with IOK is demarcated by LOC and Line of Actual Contact in Siachen area.

## **PART - 6**

### **RECOMMENDATIONS**

48. **Core Recommendation - Integration of Gilgit-Baltistan with Pakistan.**

The Supreme Court of Pakistan in its landmark decision on the subject has, underlined a course of action to solve the issue. With the enforcement of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, a portion of the Supreme Court's judgment order has been fulfilled. However, issue relating to representation of Gilgit-Baltistan in the Parliament of Pakistan, ensuring better integration of Gilgit-Baltistan with the main stream politics of Pakistan, is yet to be decided by the Parliament and Executive. The establishment of the Gilgit-Baltistan Council is a step in this direction, but more of symbolic in nature. Ideally, the merger of Gilgit-Baltistan with Pakistan as its fifth province would bring an end to the identity crisis once for all. However, in view of the Government's policy adopted so far, a complete policy shift may not be a viable option. The committee thus recommends **"interim or provisional status to Gilgit-Baltistan with right of vote and representation in Parliament of Pakistan"** as best possible option. For this purpose, necessary legislation and amendment in 1973 Constitution can be made, as permissible vide para 1 (2) (d) of the Constitution of Pakistan 1973. Since representation in the National Assembly is based on population ratio, conveniently three elected representatives, one each for three divisions, i.e. Gilgit, Baltistan and Diamer respectively. While one women seat can be kept for Gilgit Baltistan. For representation in the Senate of Pakistan, Gilgit-Baltistan may be considered as an interim federating unit with due recognition and representation as in case of other federating units. Pakistan can justify its stance, as India has already extended its constitutional jurisdiction to the part of Jammu and Kashmir under its administrative control, including Laddakh region. Moreover, Kashmir issue also remains unhurt due to interim nature of the provision.

## 2. Subsidiary Recommendations

- 1) Extension of bench of Supreme Court of Pakistan, bringing GB under wider judicial umbrella.
- 2) Establishment of institutions like office of Provincial Public Service Commission, Provincial Ombudsman, office of Provincial Consolidated Fund, etc, as permissible under the Constitution of Pakistan 1973.
- 3) Due representation of GB in NFC award and other national level forums, having representation of federating units.
- 4) Determination of due share / royalty of projects of national magnitude, like Diamer Basha Dam, Bunji hydel project and mineral, tourism and water resources.
- 5) Safeguarding economic interests of GB in Pak-China Economic Corridor project.

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**ANNEX A**

**TREATY OF LAHORE -1846**

Article 1. There shall be perpetual peace and friendship between the British Government and Maharajah Dhuleep Sing, his heirs and successors.

Article 2. The Maharajah of Lahore renounces for himself, his heirs and successors, all claim to, or connection with the territories lying to the south of the River Sutlej, and engages never to have any concern with those territories or the inhabitants thereof.

Article 3. The Maharajah cedes to the Honorable Company, in perpetual sovereignty, all his forts, territories and rights in the Doab or country, hill and plain, situated between the Rivers Beas and Sutlej.

Article 4. The British Government having demanded from the Lahore State, as indemnification for the expenses of the war, in addition to the cession of territory described in Article 3, payment of one and half crore of Rupees, and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment, the Maharajah cedes to the Honorable Company, in perpetual sovereignty, as equivalent for one crore of Rupees, all his forts, territories, rights and interests in the hill countries, which are situated between the Rivers Beas and Indus, including the Provinces of Kashmir and Hazara.

Article 5. The Maharajah will pay to the British Government the sum of 60 lakhs of Rupees on or before the ratification of this Treaty.

Article 6. The Maharajah engages to disband the mutinous troops of the Lahore Army, taking from them their arms-and His Highness agrees to reorganize the Regular Regiments of Infantry, upon the system, and according to the Regulations as to pay and allowances, observed in the time of the late Maharajah Runjeet Sing. The Maharajah further engages to pay up all arrears to the soldiers that are discharged, under the provisions of this Article.

Article 7. The Regular Army of the Lahore State shall henceforth be limited to 25 Battalions of Infantry, consisting of 800 bayonets each with twelve thousand Cavalry - this number at no time to be exceeded without the concurrence of the British Government. Should it be necessary at any time - for any special cause - that this force should be increased, the cause shall be fully explained to the British Government, and when the special necessity shall have passed, the regular troops shall be again reduced to the standard specified in the former Clause of this Article.

Article 8. The Maharajah will surrender to the British Government all the guns-thirty-six in number-which have been pointed against the British troops-and which, having been placed on the right Bank of the River Sutlej, were not captured at the battle of Subraon.

Article 9. The control of the Rivers Beas and Sutlej, with the continuations of the latter river, commonly called the Gharrah and the Punjnu, to the confluence of the Indus at Mithunkote-and the control of the Indus from Mithunkote to the borders of Beloochistan, shall, in respect to tolls and ferries, rest with the British Government. The provisions of this Article shall not interfere with the passage of boats belonging to the Lahore Government on the said rivers, for the purpose of traffic or the conveyance of passengers up and down their course. Regarding the ferries between the two countries respectively, at the several ghats of the said rivers, it is agreed that the British Government, after defraying all the expenses of management and establishments, shall account to the Lahore Government for one-half the net profits of the ferry collections. The provisions of this Article have no reference to the ferries on that part of the River Sutlej which forms the boundary of Bahawalpur and Lahore respectively.

Article 10. If the British Government should, at any time, desire to pass troops through the territories of His Highness the Maharajah, for the protection of the British territories, or those of their Allies, the British troops shall, on such special occasion, due notice being given, be allowed to pass through the Lahore territories. In such case the officers of the Lahore State will afford facilities in providing supplies and boats for the passage of rivers, and the British Government will pay the full price of all such provisions and boats, and will make fair compensation for all private property that may be damaged. The British Government will, moreover, observe all due consideration to the religious feelings of the inhabitants of those tracts through which the army may pass.

Article 11. The Maharajah engages never to take or to retain in his service any British subject-nor the subject of any European or American State-without the consent of the British Government.

Article 12. In consideration of the services rendered by Rajah Golab Sing of Jummo, to the Lahore State, towards procuring the restoration of the relations of amity between the Lahore and British Governments, the Maharajah hereby agrees to recognize the Independent sovereignty of Rajah Golab Sing in such territories and districts in the hills as may be made over to the said Rajah Golab Sing, by separate Agreement between himself and the British Government, with the dependencies thereof, which may have been in the Rajah's possession since the time of the late Maharajah Khurruck Sing, and the British Government, in consideration of the good conduct of Rajah Golab Sing, also agrees to recognize his independence in such territories, and to admit him to the privileges of a separate Treaty with the British Government.

Article 13. In the event of any dispute or difference arising between the Lahore State and Rajah Golab Sing, the same shall be referred to the arbitration of the British Government, and by its decision the Maharajah engages to abide.

Article 14. The limits of the Lahore territories shall not be, at any time, changed without the concurrence of the British Government.

Article 15. The British Government will not exercise any interference in the internal administration of the Lahore State-but in all cases or questions which may be referred to the British Government, the Governor-General will give the aid of his advice and good offices for the furtherance of the interests of the Lahore Government.

Article 16. The subjects of either State shall, on visiting the territories of the other, be on the footing of the subjects of the most favoured nation. Source: Encyclopaedia of Sikhism by Harbans Singh

## **ANNEX B**

### **TREATY OF AMRITSAR-1846**

Article 1. The British Government transfers and makes over forever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi, including Chamba and excluding Lahul, being part of the territories, ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, 9th March, 1846.

Article 2. The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

Article 3. In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current year, A.D., 1846.

Article 4. The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government. Article

5. Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighboring State, and will abide by the decision of the British Government.

Article 6. Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

Article 7. Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

Article 8. Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

Article 9. The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

Article 10. Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve

shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.  
Source. [kashmirinformation.com/LegalDocs/TreatyofAmritsar.ht](http://kashmirinformation.com/LegalDocs/TreatyofAmritsar.ht)

**ANNEX C**

**LEASE OF GILGIT-26 MARCH 1935**

Article I - The Viceroy and Governor-General of India may at any time after the ratification of this agreement assume the civil and military administration of so much of the Wazarat of Gilgit province (herein after referred to as the "said territory") of the State of Jammu and Kashmir as lies beyond the right bank of the river Indus, but notwithstanding anything in this agreement the said territory shall continue to be included within the dominions of His Highness the Maharaja of Jammu and Kashmir.

Article II – In recognition of the fact that the said territory continues to be included within the dominion of His Highness the Maharaja of Jammu and Kashmir salutes and customary honours shall be paid in the said territory of the administration on the occasion of the birthday of His Highness, Baisakhi, Dussehra, Basant-Panchmi and on such other occasions as may be agreed upon by His Excellency the Viceroy and Governor-General of India. The flag of His Highness will be flown at the official headquarters of the agency throughout the year.

Article III – In normal circumstances no British Indian troops shall be dispatched through that portion of the Wazarat of Gilgit Province which lies beyond the left bank of the river Indus.

Article IV – All rights pertaining to mining are reserved to His Highness the Maharaja of Jammu and Kashmir. The grant of prospecting licenses and mining leases will be made during the period of the agreement mentioned below.

Article V – This agreement shall remain in force for sixty years from the date of its ratification and the leases will terminate at the end of that period. Source: [www.K4Kashmir.com](http://www.K4Kashmir.com), July 19, 2010, Article by Prof Dr. Shabbir Chaudry

#### **ANNEX D**

#### **KARACHI AGREEMENT-1949**

Text of the agreement signed between Pakistan and Azad Kashmir Governments in March 1949.  
The Agreement was signed by the following:

1. Honourable Mushtaque Ahmed Gurmani, Minister without Portfolio, Government of Pakistan. 2. Sardar Mohammed Ibrahim Khan, the president of Azad Kashmir . 3. Choudhry Ghulam Abbas, Head of All Jammu and Kashmir Muslim Conference.

**Matters within the purview of the Government of Pakistan**

1. Defence (as modified under....).
2. Foreign policy of Azad Kashmir.
3. Negotiations with the United Nations Commission for India and Pakistan.
4. Publicity in foreign countries and in Pakistan.
5. Coordination and arrangement of relief and rehabilitation of refugees.
6. Coordination of publicity in connection with plebiscite.
7. All activities within Pakistan regarding Kashmir such as procurement of food, civil supplies running of refugee camps and medical aid.
8. All affairs of Gilgit - Ladakh under the control of Political Agent.

**Matters within the purview of Azad Kashmir Government**

1. Policy with regard to administration of AK territory.
2. General supervision of administration in AK territory.
3. Publicity with regard to the activities of the Azad Kashmir Government and administration.
4. Advice to the honourable Minister without Portfolio with regard to negotiations with United Nations Commission for India and Pakistan.
5. Development of economic resources of AK territory.

**Matters within the purview of the Muslim Conference**

1. Publicity with regard to plebiscite in the AK territory.

2. Field work and publicity in the Indian occupied area of the State.
3. Organization of political activities in the AK territory and the Indian occupied area of the State.
4. Preliminary arrangements in connection with the plebiscite.
5. Organization for contesting the plebiscite. 6. Political work and publicity among the Kashmiri refugees in Pakistan.
7. Advise the honorable minister without Portfolio with regard to the negotiations with the United Nations Commission for India and Pakistan.

**ANNEX E**

**SINO-PAK BORDER AGREEMENT 1963**

Article 1. In view of the fact that the boundary between China's Sinkiang and the contiguous areas the defence of which is under the actual control of Pakistan has never been formally delimited, two parties agree to delimit it on the basis of the traditional customary boundary line including features and in a spirit of equality, mutual benefit and friendly cooperation.

Article 2. In accordance with the principle expounded in Article 1 of the present agreement, the two parties have fixed as follows the alignment of the entire boundary line between China's Sinkiang and the contiguous areas the defence of which is under the actual control of Pakistan.

1) Commencing from its north western extremity at height 5,630 metres (a peak the reference coordinates of which are approximately longitude 74 degrees 34 minutes east and latitude 37 degrees 3 minutes north), the boundary line runs generally eastward and then South-eastward strictly along the main watershed between the tributaries of the Tashkurgan river of the Tarim river system on the one hand on the tributaries of the Hunza river of the Indus river system on the other hand, passing through the Kilik Daban (Dawan), the Mintake Daban (pass), the Kharchanai Daban (named on the Chinese map only), the Mutsgila Daban (named on the Chinese map only) and the Parpik Pass (named on the Pakistan map only) and reaches the Khunjerab (Yutr Daban (Pass)).

2) After passing through the Kunjerab (Yutr) Daban (pass) the boundary line runs generally southward along the above-mentioned main watershed upto a mountain-top south of the Daban (pass), where it leaves the main watershed to follow the crest of a spur lying generally in a south-easterly direction, which is the watershed between the Akjilga river ( a nameless corresponding river on the Pakistan map) on the one hand, and the Taghumbash (Oprang) river and the Koliman Su (Orang Jilga) on the other hand. According to the map of the Chinese side, the boundary line, after leaving the south-eastern extremity of the spur, runs along a small section of the middle line of the bed of the Koliman Su to reach its confluence with the Elechin river. According to the map of the Pakistan side, the boundary line, after leaving the south-eastern extremity of this spur, reaches the sharp bend of the Shaksgam of Muztagh River.

3) From the aforesaid point, the boundary lines runs up the Kelechin river (Shaksgam or Muztagh river) along the middle line of its bed its confluence (reference coordinates approximately longitude 76 degrees 2 minutes east and latitude 36 degrees 26 minutes north) with the Shorbulak Daria (Shimshal river or Braldu river).

4) From the confluence of the aforesaid two rivers, the boundary line, according to the map of the Chinese side, ascends the crest of a spur and runs along it to join the Karakoram range main watershed at a mountain-top (reference coordinates approximately longitude 75 degrees 54 minutes east and latitude 36 degrees 15 minutes

north) which on this map is shown as belonging to the Shorgulak mountain. According to the map of the Pakistan side, the boundary line from the confluence of the above mentioned two river ascends the crest of a corresponding spur and runs along it, passing through height 6.520 meters (21,390 feet) till it joins the Karakoram range main watershed at a peak (reference coordinates approximately longitude 75 degrees 57 minutes east and latitude 36 degrees 3 minutes north).

5) Thence, the boundary line, running generally south-ward and then eastward strictly follows the Karakoram range main watershed which separates the Tarim river drainage system from the Indus river drainage system, passing through the east Mustagh pass (Muztagh pass), the top of the Chogri peak (K-2) the top of the broad peak, the top of the Gasherbrum mountain (8,068), the Indirakoli pass (names of the Chinese maps only) and the top of the Teramn Kankri peak, and reaches its south-eastern extremity at the Karakoram pass. Then alignment of the entire boundary line as described in section one of this article, has been drawn on the one million scale map of the Pakistan side in English which are signed and attached to the present agreement. In view of the fact that the maps of the two sides are not fully identical in their representation of topographical features the two parties have agreed that the actual features on the ground shall prevail, so far as the location and alignment of the boundary described in section one is concerned, and that they will be determined as far as possible by bgint survey on the ground.

Article 3. The two parties have agreed that: i) Wherever the boundary follows a river, the middle line of the river bed shall be the boundary line; and that ii) Wherever the boundary passes through a deban (pass) the water-parting line thereof shall be the boundary line.

Article 4. One the two parties have agreed to set up, as soon as possible, a joint boundary demarcation commission. Each side will appoint a chairman, one or more members and a certain number of advisers and technical staff. The joint boundary demarcation commission is charged with the responsibility in accordance with the provisions of the present agreement, to hold concrete discussions on and carry out the following tasks jointly. 1) To conduct necessary surveys of the boundary area on the ground, as stated in Article 2 of the present agreement so as to set up boundary markers at places considered to be appropriate by the two parties and to delineate the boundary line of the jointly prepared accurate maps. To draft a protocol setting forth in detail the alignment of the entire boundary line and the location of all the boundary markers and prepare and get printed detailed maps, to be attached to the protocol, with the boundary line and the location of the boundary markers shown on them. 2) The aforesaid protocol, upon being signed by representatives of the governments of the two countries, shall become an annex to the present agreement, and the detailed maps shall replace the maps

attached to the present agreement. 3) Upon the conclusion of the above-mentioned protocol, the tasks of the joint boundary demarcation commission shall be terminated.

Article 5. The two parties have agreed that any dispute concerning the boundary which may arise after the delimitation of boundary line actually existing between the two countries shall be settled peacefully by the two parties through friendly consultations.

Article 6. The two parties have agreed that after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority concerned will reopen negotiations with the Government of the People's Republic of China on the boundary as described in Article 2 of the present agreement, so as to sign a formal boundary treaty to replace the present agreement, provided that in the event of the sovereign authority being Pakistan, the provisions of the present agreement and of the aforesaid protocol shall be maintained in the formal boundary treaty to be signed between the People's Republic of China and Pakistan.

Article 7. The present agreement shall come into force on the date of its signature. Done in duplicate in Peking on the second day of March 1963, in the Chinese and English languages, both sides being equally authentic.

## **ANNEX F**

### **APPOINTMENT OF GOVERNOR OF GILGIT WAZARAT**

The Jammu and Kashmir Government Gazette, 16th Sawan 2004 No.16 His Highness the Maharaja Bahadur has been pleased to command that:-

1. The Administration of the entire Gilgit territory i.e. Former Gilgit Wazarat North of the Indus and all Political District be taken over on 1st August.
2. The above together with Bunji will form the Gilgit Frontier Province.
3. A post of Governor in the grade of 700-40-900 with the usual Frontier Allowance and sumptuary allowance of Rs.200 p.m is sanctioned.
4. Brigadier Ghansara Singh is appointed Governor. He will draw his personal pay Rs.1, 000 together with Frontier and Sumptuary allowances.
5. For Revenue and General administration work, 3 officers, one Revenue Assistant and two Naib-Tehsildars, are sanctioned.
6. Services of two British officers, one as Assistant Governor Chilas and one as Commandant Gilgit Scouts be taken over in for a period of one year each. The emoluments of these officers will be sanctioned later when we know the class of officers we are getting.
7. The company stationed at Bunji may be reinforced by one more company.
8. The budget for the Gilgit Frontier province will be sanctioned when full details are known and have been scrutinized. Prime Minister

#### **ANNEX H**

#### **ACCESSION LETTER BY MIR OF HUNZA**

I, Mubeshir Ahmad Khan  
Ruler of Muzja State in the exercise  
of my sovereignty in and over my said State do hereby  
execute this Instrument of Accession and I do hereby  
declare that I accede to the Dominion of Pakistan but  
promise full loyalty to Pakistan.

I accept that in respect of External Affairs, Defence  
and Communications as specified in the schedule attached  
hereto the Government of Pakistan has full control and  
authority, both legislative and executive.

Nothing in this Instrument affects the continuance  
of my sovereignty in and over this State or save as  
provided by, or under this Instrument, the exercise of  
my powers, authority and rights now enjoyed by me in  
regard to the internal administration of my State.

I hereby declare that I execute this Instrument on  
behalf of this State and my heirs and successors.

*Mubeshir Ahmad Khan*  
Ruler of Muzja State  
19. 11. 1947.

I do hereby accept this Instrument of Accession  
dated this 7th day of November  
one thousand four hundred and forty-seven.

*M. A. Jinnah*  
GOVERNOR GENERAL OF PAKISTAN

ریاست ہنزہہ کا پاکستان کے ساتھ کی دستاویز ضمیمہ (ii)

ACCESSION LETTER BY MIR OF NAGAR

125

~~ANNEXURE K~~ INSTRUMENT OF ACCESSION

I, Mir Shouhat Ali  
Ruler of Nagar State In the exercise  
of my sovereignty in and over my said State do hereby  
execute this my Instrument of Accession and I do hereby  
declare that I accede to the Dominion of Pakistan and  
promise full loyalty to Pakistan.

I accept that in respect of External Affairs, Defence  
and Communications as specified in the schedule attached  
hereto the Government of Pakistan has full control and  
authority, both legislative and executive.

Nothing in this Instrument affects the continuance  
of my sovereignty in and over this State or save as  
provided by, or under this Instrument, the exercise of  
any powers, authority and rights now enjoyed by me in  
regard to the internal administration of my State.

I hereby declare that I execute this Instrument on  
behalf of this State and my heirs and successors.

Shouhat Ali

Mir of Nagar State

19-11-47

I do hereby accept this Instrument of Accession  
dated this 7/11 day of November nineteen  
hundred and forty-seven.

Mir Shouhat Ali

ACCESSION LETTER BY MIR OF NAGAR

قائد اعظم محمد علی جناح کراچی  
میں تمام اپنے پبلک م طرف سے میلان  
کرتا ہوں کہ میرا ریاست حکومت پاکستان  
میں شامل ہوا۔ مفضل حالات سے بد میں  
آ جا۔ کیا جائیگا۔

Shoukat Ali

wahie - Nagah  
Pakistan.

ACCESSION LETTER BY MIR OF PUNIYAL

پاکستان زندہ باد

۱۹۴۷

مکرمی و حوٹھی صاحب

میرخانہ ان اور مراد علیا میزبان خونی پاکستان میں

تعمیر و ترقی میں آپ اور تمام مسلمانوں کی توجہ و توجہ

آپ کی خدمت میں

راجہ و خان

گورنر پونیال

**CONSTITUTION OF**  
**THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**  
**As Amended by The Constitution Twenty First Amendment Act, 2015**

PART I  
Introductory

1. The Republic and its territories:-

(1) Pakistan shall be Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.

(2) The territories of Pakistan shall comprise:-

(a) the Provinces of 1Balochistan, the 2Khyber Pakhtunkhwa, 3the Punjab and 4Sindh;

(b) the Islamabad Capital Territory, hereinafter referred to as the Federal Capital;

(c) the Federally Administered Tribal Areas; and

(d) such States and territories as are or may be included in Pakistan, whether by accession or otherwise.

(3) Majlis-e-Shoora (Parliament) may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit.

2. Islam to be State religion.– Islam shall be the State religion of Pakistan.

**GILGIT-BALTISTAN**

**EXTRA ORDINARY GAZETTE OF PAKISTAN PART-II**

**GOVERNMENT OF PAKISTAN**  
**MINISTRY OF KASHMIR AFFAIRS AND**  
**NORTHERN AREAS**

\*\*\*\*

Islamabad, the 9<sup>th</sup> September, 2009

AN

ORDER

*to provide greater political empowerment and better governance to the people of Gilgit-Baltistan;*

WHEREAS it is expedient to undertake necessary legislative, executive and judicial reforms for granting self-governance to the people of Gilgit-Baltistan and for matters connected therewith or incidental thereto;

NOW, THEREFORE, the Government of Pakistan is pleased to make the following Order:-

1. **Short title, extent and commencement.**- (1) This Order may be called the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009.
  - (2) It extends to the whole of areas Gilgit-Baltistan.
  - (3) It shall come into force on at once.

### HISTORICAL CONTEXT

The administrative status existing in the area at the time of the events in 1947 were as under:

**A. Gilgit:**

**Gilgit Wizarat** - Gilgit proper with its immediate surrounding district is known as the Gilgit Sub-division, and up till 1935 the Sub-division was administered by Kashmir. The Gilgit Sub-division should not be confused with the **Gilgit Agency**. The former is about one tenth the areas of the latter. In 1935 the British Government appreciated the necessity for the Sub-division being included in the Agency and coming under the direct control of the Political Agent **owing to the increasing infiltration into Chinese Sinkiang of Russians**. The Sub-division was therefore leased from the Maharaja of Kashmir for a period of sixty years and the entire area was taken under the absolute control of the Political Agent.

Chilas & Republics of Darel and Tangir - Administered by the Assistant Political Agent in Chilas with a native "Raja Ardal".

Political Districts of Punial, Gupis/Koh-e-Ghezir, Yasin and Ishkoman - Each headed by an appointed native Governor with restricted autonomy and under considerable control of the Political Agent.

Mirs of Hunza and Nager - Hereditary and almost independent with only limitation of conducting foreign affairs in which consultation with the Political Agent in Gilgit was a requirement.

## B. Baltistan:

For centuries, Baltistan consisted of small independent valley states that were connected to each other through blood relationships of the rulers (*rajas*), trade, common beliefs and strong cultural and language bonds.<sup>[8]</sup> These states were subjugated by force by the Dogra rulers of Kashmir in the nineteenth century.<sup>[9]</sup>

<u>Valley State</u>	District
<u>Khaplu</u>	<u>Ghanche</u>
<u>Skardu</u>	<u>Skardu</u>
<u>Shigar</u>	<u>Shigar District</u>
<u>Kharmang</u>	<u>Kharmang</u>
<u>Roundu</u>	<u>Skardu</u>
<u>Gultari</u>	<u>Skardu</u>

After the successful rebellion of Gilgit scouts on 31<sup>st</sup> October- 01<sup>st</sup> November 1947, some elements of Kashmir infantry and above all strong feelings of the populations the governor sent from Kashmir in August 1947 was overthrown. Subsequent military campaigns in 1948 under express approval of the newly established government in Pakistan resulted in the total freedom of the territory initially designated as NORTHERN AREAS.

The Mirs and the Governors of the Political Districts exercised their option to accede to Pakistan [obviously in consonance with the wishes of the populations] their territories and communicated the same either in writing or verbally to Major William Brown, Commandant GILGIT SCOUTS - obvious authority in Gilgit at that time - who in turn communicated it through wireless messages to Khan Abdul Qayyum Khan, the Prime Minister [CM] NWFP Peshawar as well as Col Bacon PA Khyber [the last British Political Agent in Gilgit] with an additional request to post a Pakistan Government Political Agent expeditiously. Further parleys with the

delegations from the region in 1950 resulted in continuation of the administrative structure of an Agency which continued till 1974. Ever since different options have been instituted by GOP.

On 29 August 2009 the Government of the Islamic Republic of Pakistan announced the creation of Gilgit–Baltistan, a new province-like autonomous region with Gilgit city as its capital and Skardu as the largest city. A sizable number of young generation activists are however not satisfied and raise their voices for a vigorous constitutional status – some even demanding cessation and independence.

### VIEWS OF GOP

European Union constituted a committee under the chairpersonship of Baroness Nicholson of Winterbourne. This committee compiled its report titled "**Kashmir Present Situation and Future Prospects**" on 21 March 2007. The report also deals with the status of Northern Areas (Now Gilgit and Baltistan). Embassy of Pakistan in Brussels through its letter dated 8<sup>th</sup> May 2007 expressed the government's views.

“In this context, I would like to bring to your notice the following salient points regarding the Northern Areas of Pakistan:

- The Northern Areas of Pakistan consist of six districts, viz. Gilgit, Skardu, Diamir, Ghizer, Ghanche and Astore, Its population is around 1,5 million and it spreads over a vast area of 72,495 sq. Km.
- Historically, the Treaties of Lahore and Amritsar of 1846, which constitute the basic documents regarding the establishment of the State of Jammu and Kashmir, do not recognize its territorial limits on the areas westwards of the River Indus. The whole of Northern Areas, which include Gilgit Agency and Baltistan Agency, was not a part of Jammu and Kashmir State in August 1947.
- The States of Hunza and Nagar were never treated as part of Jammu and

Kashmir. They were autonomous states but nominally under the suzerainty of the Dogra ruler. Hunza and Nagar acceded to Pakistan and the instrument of accession signed by the Mirs (rulers) of these states was accepted by the Quaid-e-Azam in 1947.

- The UNCIP resolutions are also relative to the State of Jammu and Kashmir and do not, in any manner, apply to any part of the Northern Areas which were not included in the State of Jammu and Kashmir before 1947 From this perspective, integration of the Northern Areas with Pakistan is also not prohibited.”

## CONTEXTS FOR CONSTITUTIONAL STATUS/GOVERNANCE STRUCTURES IN THE MODERN WORLD

1. Federalism, Human Rights and Peace within the State
2. The main constitutional Principles:
  - a. History
  - b. Rule of Law
  - c. Protection of Minorities
  - d. Democracy
3. *Built and driven by the society and the sub-national societies.*
4. Democracy and freedom are results from the French Revolution. Other people in Europe tried also to free themselves from feudal powers. The 1848 “Peoples Spring” were economically and politically - “we want to be our own masters of our life” - reasonable.
5. The way it was achieved and its societal diversity marked the political design of the new Federations.
6. Strong Decentralization and Sharing of Powers:
  - Bicameral Parliament as the U.S.A.
  - Collegial Federal Government (No strong President)
  - Double majorities for Constitutional Powers
7. Power sharing - vertical and horizontal - helps you to integrate a diverse society and produces stability by high legitimacy. Real participatory rights transform a primarily representative, indirect democracy into a direct democracy.
8. Nobody has so much power that he has the ambivalent privilege, not to have to learn. When the democratic power is really shared with the people, political progress and social change have to be understood as collective learning processes. Every citizen has the right to propose where he or she thinks progress and change are necessary!
9. Inside the infrastructure of a democracy has to be modernized in order to remake its direct democracy serve the people best.
10. Self-Determination Secession and International Law, Historic cases of secession:
  - a. 1776 USA Declaration of Independence And later Secession of the South?
  - b. 1903 Panama
  - c. 1901 Venezuela and Ecuador from Columbia

- d. 1905 Norway from Sweden
  - e. 1947 India Pakistan
  - f. 1971 Bangladesh
  - g. 1974 Jura
  - h. 2006 Montenegro
  - i. 2008 Kosovo
  - j. 2011 South Sudan?
11. Threatening secession:
- a. North of Iraq
  - b. Kashmir
  - c. Congo
  - d. Belgium
  - e. Italy
  - f. Spain
  - g. Quebec?
  - h. Sri Lanka?
12. Problems:
- a. Right of self-determination of whom Majority, qualified majority of Federal unit?
  - b. Peoples? Citizens with residence?
13. Procedure:
- c. Who decides?
  - d. Democracy: Question, Citizens, qualified Majority?
- 14. Transitory Law**
- e. Property
  - f. Recognition
  - g. Contemporary examples:
    - a. Montenegro **Article 60 Withdrawal from the State union of Serbia and Montenegro**  
 Upon the expiry of a three-year period the member state shall have the right to initiate the procedure for a change of the state status, i.e. for withdrawal from the State union of Serbia and Montenegro.  
**A decision to withdraw from the State union of Serbia and Montenegro shall be made after a referendum has been held.**  
 The Law on Referendum shall be passed by a member state, taking into account recognized democratic standards. The member state that exercises the right of withdrawal shall not

inherit the right to international legal personality and all outstanding issues shall be regulated separately between the successor state and the state that has become independent.

If both member states declare in a referendum that they are in favor of changing the state status, i.e. in favor of independence, all outstanding issues shall be resolved in the succession procedure, as was the case with the former Socialist Federal Republic of Yugoslavia

b. Badinter Arbitration Case:

- i. that in the case of a federal-type state, which embraces communities that possess a degree of autonomy and, moreover, participate in the exercise of political power within the framework of institutions common to the Federation, the existence of the state implies that the federal organs represent the components of the Federation and wield effective power;
  - ii. The composition and workings of the essential organs of the Federation, be they the Federal Presidency, the Federal Council, the Council of the Republics and the Provinces, the Federal Executive Council, the Constitutional Court or the Federal Army, no longer meet the criteria of participation and representatives inherent in a federal state; Consequently, the Arbitration Committee is of the opinion:
    - that the Socialist Federal Republic of Yugoslavia is in the process of dissolution;
    - that it is incumbent upon the Republics to settle such problems of state succession as may arise from this process in keeping with the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities; that it is up to those Republics that so wish, to work together to form a new association endowed with the democratic institutions of their choice.
- c. Ethiopian Constitution Article 39 the Right of Nations, Nationalities and Peoples: Every nation, nationality or people in Ethiopia shall have the unrestricted right to self determination up to secession.

- h. Secession Procedure: The right to self determination up to secession of nation, nationality and peoples may be exercised:-
- a. Where the demand for secession is approved by a two thirds (2/3rds) majority of the legislature of the nation, nationality or people concerned.
  - b. Where the Federal Government within three years upon receipt of the decision of the legislature of the nation, nationality or people demanding secession, organizes a referendum for the nation, nationality or people demanding secession.
  - c. where the demand for secession is supported by a simple majority vote in the referendum.
  - d. where the Federal Government transfers power to the parliament of the nation, nationality or people which has opted for secession.
  - e. where property is partitioned in accordance with the law.
- i. Effects of a clear Vote: No direct legal effect despite a clear referendum result purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation. The democratic vote, by however strong a majority, would have no legal effect on its own and could not push aside the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy in the other provinces or in the country as a whole. Democratic rights under the Constitution cannot be divorced from constitutional obligations nor, however, can the reverse proposition be accepted: the continued existence and operation of constitutional order could not be indifferent to a clear expression of a clear majority of secessionists that they no longer wish to remain in the country. The other provinces and the federal government would have no basis to deny the right of a provincial government to pursue secession should a clear majority of the people of choose that goal, so long as in doing so the rights of others are respected. The negotiations that follow such a vote would address the potential act of secession as well as its possible terms should in fact secession proceed. There would be no conclusions predetermined by law on any issue. Negotiations would need to address the interests of the other provinces, the federal government and indeed the rights of

all citizens both within and outside the province, and specifically the rights of minorities.

- j. Why Negotiations? The negotiation process would require the reconciliation of various rights and obligations by negotiation between two legitimate majorities, namely, the majority of the population of the province, and that of the country as a whole.
15. Protection of Minorities : We emphasize that the protection of minority rights is itself an independent principle underlying of constitutional order. Consistent with this long tradition of respect for minorities which is at least as old as Canada itself, the framers of the *Constitution Act, 1982* included in s. 35 explicit protection for existing aboriginal and treaty rights, and in s. 25, a non-derogation clause in favour of the rights of aboriginal peoples.
16. Right of Self-determination: where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. Term "People"? While much of the population certainly shares many of the characteristics (such as a common history, language, religion and culture) that would be considered in determining whether a specific group is a "people".
17. Self-determination:
  - a. Internal: The recognized sources of international law establish that the right to self-determination of a people is normally full-filled through internal self-determination – a people's pursuit of its political, economic, social and cultural development within the framework of an existing state.
  - b. External: A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.
18. There is no necessary incompatibility between the maintenance of the territorial integrity of existing states and the right of a "people" to achieve a full measure of self-determination. A state whose government represents the whole of the people or people's resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.



## CONCLUSIONS

1. GILGIT and BALTISTAN can be accepted as the 5<sup>th</sup> province in 1[2] d of the constitution of Pakistan through section 1[3] of PART-1 as an interim entity provided the present government in GB conducts a referendum in all the districts. The question asked from each citizen should be :
  - a. Do you want to be the 5<sup>th</sup> province?
  - b. Maintain Status Quo or
  - c. Secede from Pakistan either to join AJK or form an independent BOLORISTAN?
2. Based on majority vote for option 1c from one or more districts, the legislative assembly will hold negotiation with the representatives of the network of LSOs [people] in the light of principles covered above.
3. Since majority of budget [mostly dependant on Federal Grants] is presently utilized on salaries of a disproportionate central institutional set up for the government, **it needs to be revamped** towards the noble goals enshrined in the 2009 empowerment order. Excellent examples of village/tehsil/district governments do successfully exist in the world and recently in the KPK Province in Pakistan. In GB we have 72 LSOs established by AKRSP while the republics have an effective JIRGA system as equivalents to these entities. These can be integrated in the governance as CIVIL SOCIETY institutions in fulfilling the expectations of development and improvement in quality of life of citizens of GB **through the same legalized mechanism as implemented in the Province of KPK.** Golden rule of democracy: “we want to be our own masters of our life” and *Built and driven by the society and the sub-national societies-* will have a real presence in our lives.
4. A steering committee be immediately established which is responsible for planning and implementing **e-Government in GB.**

**NOTE:** Research paper “**Kashmir and the northern areas of Pakistan: Boundary-Making along contested frontiers**” by Hermann Kreutzmann, contains maps with delineations and historical documents.

<https://drive.google.com/drive/folders/0BxkGkCUURXB1cUhPRFN1ekQtc0k>

