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Kashmir: Background, Recent Developments, and U.S. Policy

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SUMMARY

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Kashmir: Background, Recent Developments, and U.S. Policy

In early August 2019, the Indian government announced that it would make major changes to the legal status of its Muslim-majority Jammu and Kashmir (J&K) state, specifically by repealing Article 370 of the Indian Constitution, which provided the state "special" autonomous status, and by bifurcating the state into two successor "Union Territories" with more limited indigenous administrative powers. The former princely region's sovereignty has been unsettled since 1947 and its territory is divided by a military "Line of Control," with Pakistan controlling about one-third and disputing India's claim over most of the remainder as J&K (China also claims some of the region's land). The United Nations considers J&K to be disputed territory, but New Delhi, the status quo party, calls the recent legal changes an internal matter, and it generally opposes third-party involvement in the Kashmir issue. U.S. policy seeks to prevent conflict between India and Pakistan from escalating, and the U.S. Congress supports a U.S.-India strategic partnership that has been underway since 2005, while also maintaining attention on issues of human rights and religious freedom.

India's August actions sparked international controversy as "unilateral" changes of J&K's status that could harm regional stability, eliciting U.S. and international concerns about further escalation between South Asia's two nuclear-armed powers, which nearly came to war after a February 2019 Kashmir crisis. Increased separatist militancy on Kashmir may also undermine ongoing Afghan peace negotiations, which the Pakistani government facilitates. New Delhi's process also raised serious constitutional questions and—given heavy-handed security measures in J&K—elicited more intense criticisms of India on human rights grounds. The United Nations and independent watchdog groups fault New Delhi for excessive use of force and other abuses in J&K. India's secular traditions may suffer as India's Hindu national government—which returned to power in May with a strong mandate—appears to pursue Hindu majoritarian policies at some cost to the country's religious minorities.

The longstanding U.S. position on Kashmir is that the territory's status should be settled through negotiations between India and Pakistan while taking into consideration the wishes of the Kashmiri people. The Trump Administration has called for peace and respect for human rights in the region. With key U.S. diplomatic posts vacant, some observers worry that U.S. capacity is thin, and the U.S. President's July offer to "mediate" on Kashmir may have contributed to the timing of New Delhi's moves. The United States seeks to balance pursuit of a broad U.S.-India partnership while upholding human rights protections, as well as maintaining cooperative relations with Pakistan.

This report provides background on the Kashmir issue, reviews several key developments in 2019, and closes with a summary of U.S. policy and possible questions for Congress.

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Overview

The final status of the former princedom of Kashmir has remained unsettled since 1947. On August 5, 2019, the Indian government announced that it was formally ending the "special status" of its Muslim-majority (J&K) state, the two-thirds of Kashmir under New Delhi's control, specifically by abrogating certain provisions of the Indian Constitution that granted the state autonomy with regard to most internal administrative issues. New Delhi intends also to bifurcate the state into two "union territories," each with lesser indigenous administrative powers than Indian states. Indian officials explain the moves as matters of internal domestic politics, taken for the purpose of properly integrating J&K and facilitating its economic development.

The process by which India's government is undertaking this effort has come under strident criticism for its alleged reliance on repressive force in J&K and for questionable legal and constitutional arguments that are likely to come before India's Supreme Court. Internationally, the move sparked controversy as a "unilateral" Indian effort to alter the status of a territory that is considered disputed by neighboring Pakistan and China, as well as by the United Nations. New Delhi's heavy-handed security crackdown in the remote state also raises human rights concerns.

The longstanding U.S. position on Kashmir is that the territory's status should be settled through negotiations between India and Pakistan while taking into consideration the wishes of the Kashmiri people.[1] Since 1972, India's government has generally shunned third-party involvement on Kashmir, while Pakistan's government has continued efforts to internationalize it, especially through U.N. Security Council (UNSC) actions. China, a close ally of Pakistan, is also a minor party to the dispute. There are international concerns about potential for increased civil unrest and violence in the Kashmir Valley, and the cascade effect this could have on regional stability. To date, the Trump Administration has limited its public statements to calls for maintaining peace and stability, and respecting human rights. The UNSC likewise calls for restraint by all parties; an "informal" August 16 UNSC meeting resulted in no ensuing official U.N. statement.

New Delhi's August moves have enraged Pakistan's leaders and elicited concerns about further escalation between South Asia's two nuclear-armed powers, which nearly came to war after a February 2019 suicide bombing in the Kashmir Valley and retaliatory Indian airstrikes. The actions may also have implications for democracy and human rights in India; many analysts argue these have been undermined both in recent years and through Article 370's repeal. Moreover, Indian Prime Minister Narendra Modi and his Hindu nationalist Bharatiya Janata Party (BJP)—empowered by a strong electoral mandate in May and increasingly pursuing Hindu majoritarian policies—may be undermining the country's secular, pluralist traditions. The United States seeks to balance pursuit of broader U.S.-India partnership while upholding human rights protections.[2]

Background

Setting

India's J&K state is about the size of Utah and is divided into three culturally distinct districts: Kashmir, Jammu, and Ladakh (see **Figure 1**). More than half of the mostly mountainous state's

[1] See a July 22, 2019, State Department tweet at https://twitter.com/state_sca/status/1153444051368239104?lang=en.

[2] See also CRS Report R45807, *India's 2019 National Election and Implications for U.S. Interests*, by K. Alan Kronstadt, and CRS In Focus IF10298, *India's Domestic Political Setting*, by K. Alan Kronstadt.

nearly 13 million residents live in the fertile Kashmir Valley, a region slightly larger than Connecticut (7% of the state's land area is home to 55% of its population). Srinagar, in the Valley, is the state's summer capital and by far its largest city with some 1.3 million residents. Jammu city, the winter capital, has roughly half that population, and the Jammu district is home to more than 40% of the state's residents. About a quarter-million people live in remote Ladakh, abutting China. Just under 1% of India's total population lives in J&K.

Figure 1. Map of the Kashmir Region

Source: Adapted by CRS.

Roughly 80% of Indians are Hindu and about 14% Muslim. J&K's population is about 68% Muslim, 28% Hindu, 2% Sikh, and 1% Buddhist. At least 97% of the Kashmir Valley's residents are Muslim; the vast majority of the district's Hindus fled the region after 1989 (see "Democracy and Other Human Rights Concerns" below). The Jammu district is about two-thirds Hindu, with the remainder mostly Muslim. Ladakh's population is about evenly split between Buddhists and Muslims.[3] Upon the 1947 partition of British India based on religion, J&K's population had unique status: a Muslim-majority ruled by a Hindu king. Many historians find pluralist values in pre-1947 Kashmir.[4] The state's economy is agriculture-based; horticulture and floriculture account for the bulk of income. Historically, the region's natural beauty made tourism a major aspect of commerce—this sector was devastated by decades of conflict, but had seemed to be making a comeback. Its remoteness has been a major impediment to transportation and

[3] See Indian census data at https://www.census2011.co.in/data/religion/state/1-jammu-and-kashmir.html and the J&K state portal at https://jk.gov.in/jammukashmir/?q=demographics.

[4] Aarti Tikoo Singh, "View: 'I Am No More an Outsider in Kashmir'" (op-ed), *Economic Times* (Mumbai), August 11, 2019; Toru Tak, "The Term 'Kashmiriyat': Kashmiri Nationalism of the 1970s," *Economic & Political Weekly* (New Delhi), April 20, 2013).

communication networks, and thus to overall development. India's Ambassador in Washington states that the central government has provided about $40 billion to J&K since 2004.[5]

J&K's Status, Article 370, and India-Pakistan Conflict

Accession to India

Since Britain's 1947 withdrawal and the independence of India and Pakistan, the final status of the princely state of Jammu and Kashmir has remained unsettled, especially because Pakistan rejected the process through which J&K's then-ruler had acceded to India. A dyadic war over Kashmiri sovereignty ended in 1949 with a U.N.-brokered cease-fire that left the two countries separated by a 460-mile-long military "Line of Control" (LOC). The Indian-administered side became the state of Jammu and Kashmir (the Pakistani-administered side became Azad ["Free"] Jammu and Kashmir (AJK) and the "Northern Areas," later called Gilgit-Baltistan).[6]

Article 370 of the Indian Constitution and J&K Integration

In 1949, J&K's interim state government and India's Constituent Assembly negotiated "special status" for J&K, leading to Article 370 of the Indian Constitution in 1950, the same year the document went into effect. The Article formalized the terms of Kashmir's accession to the Indian Union, generally requiring the concurrence of the state government before the central government could make administrative changes beyond the areas of defense, foreign affairs, and communications.[7] Yet within a decade of India's independence, most constitutional provisions were extended to J&K via Presidential Order with the concurrence of the J&K state assembly (and with the Indian Supreme Court's assent). The state assembly arguably has over decades become "pliant" to New Delhi's influence, and critical observers contend that J&K's special status has long been hollowed out: while Article 370 provided "special status" *constitutionally*, the state suffered from inferior status *politically* through what amounted to "constitutional abuse."[8] Repeal of Article 370 became among the leading policy goals of the BJP and its Hindu nationalist antecedents on the principle of national unity.[9]

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[5] See the J&K state portal at https://jk.gov.in/jammukashmir/?q=economy; "Bret Baier Talks Brewing Kashmir Conflict with Indian, Pakistani Ambassadors to US," Fox News, August 13, 2019.

[6] The Hindu leader of the Muslim-majority region, Maharaja Hari Singh, initially opted to remain independent. Within months, however, armed militants from Pakistan were threatening his capital city of Srinagar, and Singh sought military assistance from India. Such assistance was offered only with the signing of an "Instrument of Accession"—a legal document that made J&K part of the Indian Union. This was accomplished in October 1947, and airlifted Indian troops quickly came to the Maharaja's aid, eventually securing Srinagar in the fertile Kashmir Valley, along with about two-thirds of the territory that was his former domain. Under the Instrument, J&K's integration into India was not meant to be total; as a sovereign signatory, the Maharaja ensured provisions that would allow for his continued and partially autonomous rule (see http://jklaw.nic.in/instrument_of_accession_of_jammu_and_kashmir_state.pdf).

[7] Article 370 exempted J&K from most of the Indian Constitution and permitted the state to draft its own constitution and fly its own flag in lieu of the Indian "tri-color." A 1954 Presidential Order empowered the state government to regulate the rights of permanent residents, and these became defined in Article 35A of the Constitution's Appendix, which prohibited nonresidents from working, attending college, or owning property in the state, among other provisions. These two constitutional sections formed the basis of J&K's special, semi-autonomous status within India (A.G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir* (Oxford University Press, 2011)).

[8] A.G. Noorani, "Article 370: Law and Politics," *Frontline* (Chennai) September 16, 2000. See also Faizan Mustafa, "Understanding Articles 370, 35A," *Indian Express* (Noida), March 5, 2019; Srinath Raghavan, "With Special Status Hollowed Out, J&K Consider Article 35A Last Vestige of Real Autonomy," *Print* (Delhi), July 30, 2019.

[9] The BJP's 2014 election manifesto reiterated the party's longstanding commitment to abrogation of Article 370 and

Further India-Pakistan Wars

J&K's legal integration progressed and prospects for a plebiscite correspondingly faded in the 1950s and 1960s. Three more India-Pakistan wars—in 1965, 1971, and 1999; two fought over Kashmir itself—left territorial control largely unchanged, although a brief 1962 India-China war ended with the high-altitude and sparsely populated desert region of Ladakh's Aksai Chin under Chinese control, making China a third, if lesser, party to the "Kashmir dispute."[10]

In 1965, Pakistan infiltrated troops into Indian-held Kashmir in an apparent effort to incite a local separatist uprising; India responded with a full-scale military operation against Pakistan. A furious, 17-day war caused more than 6,000 battle deaths and ended with Pakistan failing to alter the regional status quo. The 1971 war saw Pakistan lose more than half of its population and much territory when East Pakistan became independent Bangladesh, the mere existence of which undermined Pakistan's professed status as a homeland for the Muslims of Asia's Subcontinent. In summer 1999, one year after India and Pakistan tested nuclear weapons, Pakistani troops again infiltrated J&K, this time to seize strategic high ground near Kargil. Indian ground and air forces ejected the Pakistanis after three months of combat and 1,000 or more battle deaths.

Third-Party Involvement

In 1947, Pakistan had immediately and formally disputed the accession process by which J&K had joined India at the United Nations. New Delhi also initially welcomed U.N. mediation. Over ensuing decades, the U.N. Security Council issued a total of 18 Resolutions (UNSCRs) relevant to the Kashmir dispute. The third and central one, UNSCR 47 of April 1948, recommended a three-step process for restoring peace and order, and "to create proper conditions for a free and impartial plebiscite" in the state, but the conditions were never met and no referendum was held.[11]

Sporadic attempts by the United States to intercede in Kashmir have been unsuccessful. A short-lived mediation effort by the United States and Britain included six rounds of talks in 1961 and 1962, but ended with India's indications that it would not relinquish control of the Kashmir Valley.[12] Although President Bill Clinton's personal diplomatic engagement was credited with averting a wider war and potential nuclear exchange in 1999, Kashmir's status went unchanged.[13] After 2001, some analysts argued that U.S. success in Afghanistan was linked to resolution of the

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annulment of Article 35A, along with an intention to "discuss this with all stakeholders." The 2019 version of the manifesto omitted this latter clause. The Congress Party's 2019 manifesto included a vow to allow no changes to J&K's constitutional status and promised to reduce the presence of security forces in the Kashmir Valley (see https://www.bjp.org/en/manifesto2019 and https://manifesto.inc.in/en/jammu_and_kashmir.html).

[10] Aksai Chin is a key aspect of the "Western Sector" of much larger India-China border disputes. The region is larger than the state of Maryland but has about 10,000 residents.

[11] UNSCR 47 recommended (1) Pakistan should withdraw all of its nationals and tribesmen who entered the state for the purpose of fighting; (2) India, after satisfactory indication that the Pakistani tribesmen were withdrawing and establishment of an effective ceasefire, should reduce its forces from the region to the minimum required to maintain law and order there; and (3) India should allow a U.N.-appointed Administrator to oversee a plebiscite "to decide whether the state of Jammu and Kashmir is to accede to India or Pakistan." UNSCR 80 of 1950 called for simultaneous force withdrawals, but this was rejected by India. Five UNSCRs during the 1965 India-Pakistan war went largely unheeded by the warring parties. A U.N. Military Observer Group in India and Pakistan (UNMOGIP) was established in 1949 to oversee a ceasefire, but subsequent UNSCRs had little impact on the dispute (see http://unscr.com/en/resolutions).

[12] Sumit Ganguly, "The United States Can't Solve the Kashmir Dispute," *Foreign Affairs* (online), July 30, 2019; Suhasini Haider, "Why Does India Say No to Kashmir Mediation?," *Hindu* (Chennai), July 28, 2019.

[13] See Strobe Talbott, "The Day a Nuclear War Was Averted," *Yale Global*, September 13, 2004.

Kashmir issue—a perspective championed by the Pakistani government—yet U.S. Presidents ultimately were dissuaded from making this argument an overt aspect of U.S. policy.[14]

In more recent decades, India generally has demurred from mediation in Kashmir out of (1) a combination of suspicion about the motives of foreign powers and the international organizations they influence; (2) India's self-image as a regional leader in no need of assistance; and (3) an underlying assumption that mediation tends to empower the weaker and revisionist party (in this case, Pakistan). According to New Delhi, prospects for third-party mediation were fully precluded by the 1972 Shimla Agreement, in which India and Pakistan "resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them." The 1999 Lahore Declaration reaffirmed the bilateral nature of the issue.[15]

Separatist Conflict and President's Rule From 2018

Three Decades of Separatist Conflict

A widespread perception that J&K's 1987 state elections were manipulated to favor the central government led to pervasive disaffection in the Kashmir Valley and the outbreak of an Islamist-based separatist insurgency in 1989. The 30-year conflict has pitted the Indian government against Kashmiri militants who seek independence or Kashmir's merger with neighboring Pakistan, a country widely believed to have provided arms, training, and safe haven to militants over the decades. Violence peaked in the late 1990s and early 2000s (see **Figure 2**).

India has blamed conventionally weaker Pakistan for perpetuating the conflict as part of an effort to "bleed India with a thousand cuts." Pakistan denies materially supporting Kashmiri militants and sought to highlight Indian human rights abuses in the state. Lethal exchanges of small arms and mortar fire at the LOC remain common, despite a formal ceasefire agreement in place since 2003. The Indian government says the conflict has killed at least 42,000 civilians, militants, and security personnel since 1989; independent analyses count 70,000 or more. India maintains a security presence of at least 500,000 army and paramilitary soldiers in J&K.[16]

A bilateral India-Pakistan peace plan for Kashmir was nearly finalized in 2007, when Indian and Pakistani negotiators had agreed to make the LOC a "soft border" with free movement and trade across it; prospects faded due largely to unrelated Pakistani domestic issues.[17] For many observers, Kashmir's turmoil is, at its roots, a clash between the Indian government and the Kashmiri people, leading some to decry New Delhi's claims that Pakistan perpetuates the conflict. Pro-independence political parties on both sides of the LOC are given little room to operate, and many Kashmiris have become deeply alienated. Critics of the Modi government's Hindu nationalist agenda argue that its policy agenda entails bringing the patriotism of Indian

[14] "Obama Unlikely to Wade Into Kashmir 'Tar Pit' on His Trip," McClatchy Newspapers, November 4, 2010.

[15] See the Shimla Agreement at https://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972, and the Lahore Declaration at https://mea.gov.in/in-focus-article.htm?18997/Lahore+Declaration+February+1999.

[16] "Kashmir: The World's Most Dangerous Conflict," *Deutsche Welt* (Berlin), August 7, 2019.

[17] Indian and Pakistani negotiators had also agreed to provide greater autonomy to Kashmir's subregions, to draw down security forces over time, and to establish a "joint mechanism" for overseeing the rights of Kashmiris on both sides of the LOC. Yet the process was derailed by then-Pakistani President Pervez Musharraf's increasingly severe domestic political travails, which culminated in his ouster from office in August 2008. Three months later, the Pakistan-based Lashkar-e-Taiba's major terrorist attack on Mumbai, India, ended hopes of renewed talks (see "A Peace Plan for India and Pakistan Already Exists," *New York Times*, March 7, 2019).

Muslims into question and portraying Pakistan as a relentless threat that manipulates willing Kashmiri separatists, and so is responsible for violence in Kashmir.[18]

Arguments locating the conflict's cause in the interplay between Kashmir and New Delhi are firmly rejected by many Indian analysts who contend that there is no "freedom struggle" in Kashmir, rather a war "foisted" on India by a neighbor (Pakistan) that will maintain perpetual animosity toward India. In this view, talking to Pakistan cannot resolve the situation, nor can negotiations with Kashmiri separatist groups and parties, which are seen to represent Pakistan's interests rather than those of the Kashmiri people.[19]

Figure 2. Deaths from Separatist Conflict in J&K After 1989

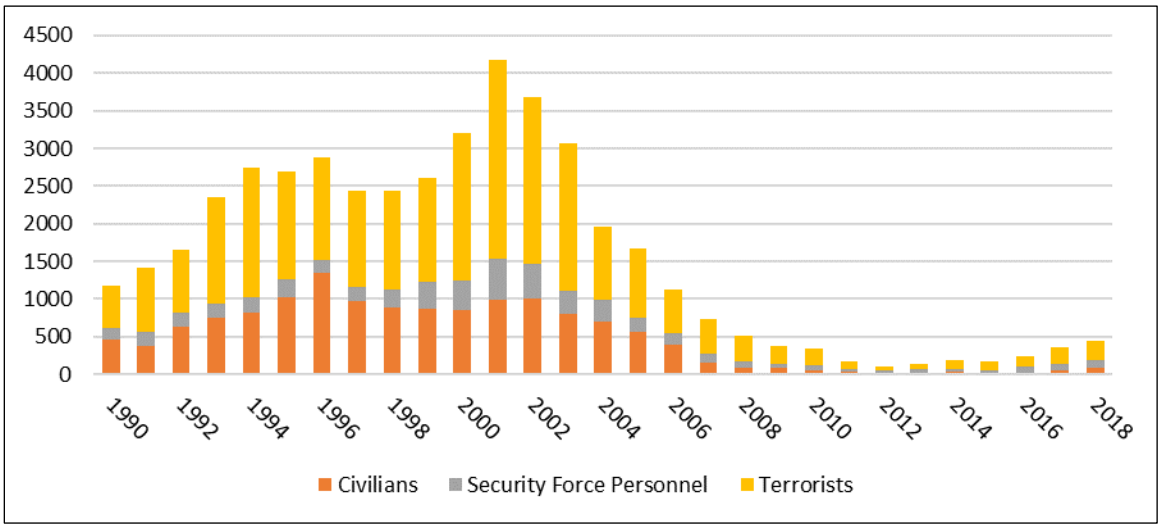
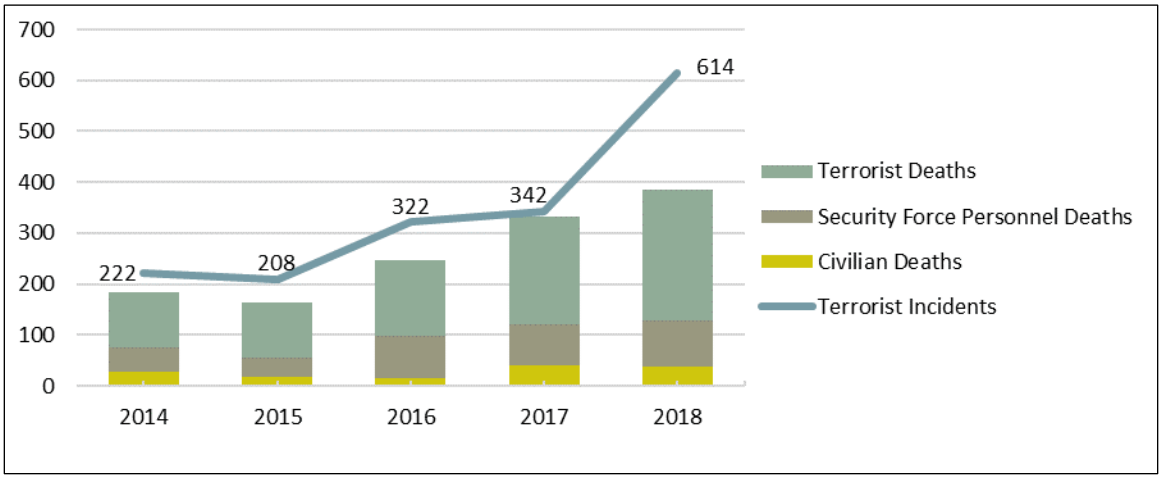


Figure 3. Terrorist Incidents and Deaths from Separatist Conflict in J&K After 2013



Sources: Indian Home Ministry and South Asia Terrorism Portal (New Delhi) data.

[18] See, for example, Ajai Shukla, "Kashmir is in a Perilous State Because of India's Pivot to Nationalism" (op-ed), *Guardian* (London), March 3, 2019.

[19] Representative is Vikram Sood, "Kashmir, Stop Being Delusional," Observer Research Foundation (New Delhi), May 6, 2017.

Well before 2019, evidence was mounting that Kashmiri militancy was on the rise for the first time in nearly two decades. **Figure 3** shows that, in the five years since the Modi and the BJP took power, the number of "terrorist incidents" and conflict-related deaths has been on the rise. Mass street protests in the Valley were sparked by the 2016 killing of a young militant commander in a shootout with security forces.[20] Some analysts contend that since 2014 Modi's government has failed to recognize legitimate Kashmiri grievances and instead pursued a "harsh counterinsurgency strategy" that has only further alienated a new generation in the Valley.[21]

2018 J&K Assembly Dissolution and President's Rule

J&K's current lack of a state assembly appears to have facilitated New Delhi's constitutional changes. In June 2018, the J&K state coalition government formed in 2015 collapsed after the BJP withdrew its support for its Kashmir-based coalition partner, triggering direct federal control through the center-appointed governor. BJP officials called the coalition untenable due to differences over the use of force to address a deteriorating security situation (the BJP sought greater use of force).[22] In December 2018, J&K came under "President's Rule" for the first time since 1996, with the state legislature's power under Parliament's authority.[23]

Developments in 2019

The February Pulwama Crisis

On February 14, 2019, an explosives-laden SUV rammed into a convoy carrying paramilitary police in the Kashmir Valley city of Pulwama. At least 40 personnel were killed in the explosion. The suicide attacker was a local youth said to be a member of Jaish-e-Mohammad (JeM), a Pakistan-based, U.S.-designated terrorist group that claimed responsibility for the bombing. On February 26, Indian jets reportedly bombed a JeM facility in Balakot, Pakistan, the first such Indian attack on Pakistan proper since 1971 (see inset **Figure 1**). Pakistan launched its own air strike in response, and aerial combat led to the downing of an Indian jet. When Pakistan repatriated the captured pilot on March 1, the crisis subsided, but tensions remain high. The crisis thus renewed fears of war between South Asia's two nuclear-armed powers and put a damper on prospects for renewed of dialogue between New Delhi and Islamabad, or between New Delhi and the J&K government.

A White House statement on the day of the Pulwama bombing called on Pakistan to "end immediately the support and safe haven provided to all terrorist groups operating on its soil" and indicated that the incident "only strengthens our resolve" to bolster U.S.-India counterterrorism cooperation. Numerous Members of Congress expressed condemnation and condolences on

[20] The death appeared to mark an inflection point in the insurgency, with militant recruitment numbers and the Indian government's reliance on coercive measures both rising since ("What Happened to Kashmir in the Last Five Years?," Scroll.in (online), January 26, 2019; "In Indian-Controlled Kashmir, Unprecedented Attack Puts Focus on 'Homegrown' Militants," *Washington Post*, February 17, 2019).

[21] Pankaj Mishra, "Armchair Generals Are Marching India into Trouble" (op-ed), *Bloomberg News* (online), March 6, 2019. See also "Nadir in the Valley: India's Government Is Intensifying a Failed Strategy in Kashmir," *Economist* (London), March 9, 2019.

[22] "Mehbooba Mufti Resigns After BJP Withdraws Support," *Al Jazeera* (Doha), June 18, 2018.

[23] This status was extended for another six months in July 2019 in what was expected to be the final extension (J&K state elections were set to be announced in August).

social media.[24] However, during the crisis, the Trump Administration was seen by some as unhelpfully absent diplomatically, described by one former senior U.S. official as "mostly a bystander" to the most serious South Asia crisis in decades, demonstrating "a lack of focus" and diminished capacity due to vacancies in key State Department positions.[25]

President Trump's July "Mediation" Offer

On July 22, 2019, while taking questions from the press alongside Pakistani Prime Minister Imran Khan in the White House, President Trump claimed that Indian Prime Minister Modi had earlier in the month asked the U.S. leader to play a mediator role in the Kashmir dispute. As noted above, such a request would represent a dramatic policy reversal for India. The U.S. President's statement provoked an uproar in India's Parliament, with opposition members staging a walkout and demanding explanation. Quickly following Trump's claim, External Affairs Minister Subramanyam. Jaishankar assured parliamentarians that no such request had been made, and he reiterated India's position that "all outstanding issues with Pakistan are discussed only bilaterally" and that future engagement with Islamabad "would require an end to cross border terrorism."[26]

In an apparent effort to reduce confusion, a same-day social media post from the State Department clarified the U.S. position that "Kashmir is a bilateral issue for both parties to discuss" and the Trump Administration "stands ready to assist."[27] A release from Chairman of the House Foreign Affairs Committee Representative Eliot Engel reiterated support for "the longstanding U.S. position" on Kashmir, affirmed that the pace and scope of India-Pakistan dialogue is a bilateral determination, and called on Pakistan to facilitate such dialogue by taking "concrete and irreversible steps to dismantle the terrorist infrastructure on Pakistan's soil."[28] An August 2 meeting of Secretary Mike Pompeo and Jaishankar in Thailand saw the Indian official directly convey to his American counterpart that any discussion on Kashmir, "if at all warranted," would be strictly between India and Pakistan.[29]

President Trump's seemingly warm reception of Pakistan's leader, his desire that Pakistan help the United States "extricate itself" from Afghanistan, combined with recent U.S. support for an International Monetary Fund bailout of Pakistan elicited disquiet among Indian analysts. They saw Washington again conceptually linking India and Pakistan, "wooing" the latter in ways that harm the former's interests. Trump's Kashmir mediation claims were especially jarring for Indian observers, some of whom began questioning the wisdom of Modi's confidence in the United States as a partner. The episode may have contributed to India's August moves.[30]

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[24] See https://go.usa.gov/xVCU8; "US Lawmakers Condemn Terror Attack in J-K's Pulwama," *Economic Times* (Mumbai), February 14, 2019.

[25] Former Special Representative for Afghanistan and Pakistan Daniel Feldman quoted in "With Trump Silent, No 'Sheriff' in Town on Pakistan-India Crisis, Diplomats Say," NBC News (online), March 6, 2019.

[26] "Trump Offers to Mediate Kashmir Conflict, But India Demurs," *Wall Street Journal*, July 22, 2019; External Affairs Ministry, "External Affairs Minister's Statement in the Parliament on the Remarks of the President of the United States of America on Mediating in the Kashmir Issue," July 23, 2019.

[27] See the July 22, 2019, tweet at https://twitter.com/state_sca/status/1153444051368239104?lang=en.

[28] See the July 22, 2019, release at https://foreignaffairs.house.gov/press-releases?ID=CCC02957-3A4A-4509-BAAD-74010CFF57E1.

[29] See Jaishankar's August 1, 2019, tweet at https://twitter.com/DrSJaishankar/status/1157141385411092481.

[30] Brahma Chellaney, "Make No Mistake: America Has Ample Leverage to Reform Pakistan But is Loath to Exercise It" (op-ed), *Hindustan Times* (Delhi), July 23, 2019; Siddharth Varadarajan, "True or False, Trump Kashmir Bombshell Raises Questions About Modi's Political Judgment" (op-ed), *Wire* (Delhi), July 23, 2019; Sushant Sareen, "After Trump's Kashmir Remarks, India Must Tell the US Where It Gets Off," Observer Research Foundation, July 23, 2019;

August Abrogation of Article 370 and J&K Reorganization

In late July and during the first days of August, India moved an additional 45,000 troops into the Kashmir region in apparent preparation for announcing Article 370's repeal. On August 2, the J&K government issued an unprecedented order cancelling a major annual religious pilgrimage in the state and requiring tourists to leave the region, purportedly due to "intelligence inputs of terror threats." The developments reportedly elicited panic among those Kashmiris fearful that their state's constitutional protections would soon be removed. Two days later, the state's senior political leaders—including former chief ministers Omar Abdullah (2009-2015) and Mehbooba Mufti (2016-2018)—were placed under house arrest, schools were closed, and all telecommunications, including internet and landline telephone service, were curtailed. Internet shutdowns are common in Kashmir—one press report said there had been 52 earlier in 2019 alone—but this appears to have been the first-ever shutdown of landline phone networks there.[31] Pakistan's government denounced these actions as "destabilizing."[32]

On August 5, with J&K in "lockdown," Indian Home Minister Amit Shah introduced in Parliament legislation to abrogate Article 370 and reorganize the J&K state by bifurcating it into two Union Territories, Jammu & Kashmir and Ladakh, with only the former having a legislative assembly. In a brief floor speech, Shah called Article 370 "discriminatory on the basis of gender, class, caste, and place or origin," and contended that its repeal would spark investment and job creation in J&K.[33] On August 6, after the key legislation had passed both of Parliament's chambers by large majorities and with limited debate, Prime Minister Modi lauded the legislation's passage, declaring, "J&K is now free from their shackles," and predicting that the changes "will ensure integration and empowerment."[34] All of his party's National Democratic Alliance coalition partners supported the legislation, as did many opposition parties (the main opposition Congress Party was opposed).[35] The move also appears to be popular among the Indian public, possibly in part due to a post-Pulwama, post-election wave of nationalism that has been amplified by the country's mainstream media.[36] Proponents view the move as a long-overdue, "master stroke" righting of a historic wrong that left J&K underdeveloped and contributed to conflict there.[37]

Recent months have seen a flurry of bad economic news for India and increasing related criticism of the government, leading some analysts to suspect that Modi and his lieutenants were eager to

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"In Kashmir, Critics Say, Modi is Trying to Make India a Hindu Nation," *New York Times*, August 6, 2019.

[31] "'I'm Just Helpless': Concern About Kashmir Mounts as Communication Lockdown Continues," *Washington Post*, August 6, 2019.

[32] See Islamabad's August 4, 2019, release at http://pid.gov.pk/pid_beta/site/press_detail/11454).

[33] See the August 5, 2019, Home Affairs Ministry release at http://pib.gov.in/newsite/PrintRelease.aspx?relid=192487.

[34] The Reorganization bill passed the lower house by a vote of 370-70. The Article 370 repeal resolution passed 351-72 ("Parliament Gives Nod for Removing Jammu and Kashmir's Special Status, Splitting J&K to 2 UTs," *Economic Times* (Mumbai), August 6, 2019; see the Prime Minister's Office's August 6, 2019, release at http://pib.gov.in/PressReleaseIframePage.aspx?PRID=1581398).

[35] Key BJP rivals such as BSP and AAP, along with the unaffiliated BJD and YSRCP were strongly supportive. Opposing the bills were the Congress Party, TMC, DMK, and Kashmir's PDP ("Article 370 Modified: 10 Things You Need to Know," *Indian Express* (Noida), August 5, 2019).

[36] "Modi Clamps Down on Kashmir and Indians Love Him for It," Associated Press, August 15, 2019; "Why Modi's Kashmir Move Is Widely Supported in India," BBC News, August 15, 2019.

[37] Satish Misra, "Modi's Kashmir Solution: An Unchallenged Master Stroke," Observer Research Foundation (New Delhi), August 12, 2019). See also Harsh Pant, "Will Revoking Special Status Be Good for Kashmir, India?," *Economic Times* (Mumbai), August 6, 2019.

play to the BJP's Hindu nationalist base and shift the national conversation.[38] In addition, President Trump's relevant July comments may have convinced Indian officials that a window of opportunity in Kashmir could soon close, and that they could deprive Pakistan of the "negotiating ploy" of seeking U.S. pressure on India as a price for Pakistan's cooperation with Afghanistan.[39]

Responses and Concerns

International Reactions

The United States. Indian press reports claimed that External Affairs Minister Jaishankar had "sensitized" Secretary of State Pompeo to the coming Kashmir moves at an in-person meeting on August 2 so that Washington would not be taken by surprise. However, a social media post from the State Department's relevant bureau asserted that New Delhi "did not consult or inform the U.S. government" before moving to revoke J&K's special status.[40]

On August 5, a State Department spokeswoman said about developments in Kashmir, "We are concerned about reports of detentions and urge respect for individual rights and discussion with those in affected communities. We call on all parties to maintain peace and stability along the Line of Control."[41] Three days later, she addressed the issue more substantively, saying,

> We want to maintain peace and stability, and we, of course, support direct dialogue between India and Pakistan on Kashmir and other issues of concern.… [W]henever it comes to any region in the world where there are tensions, we ask for people to observe the rule of law, respect for human rights, respect for international norms. We ask people to maintain peace and security and direct dialogue.

The spokeswoman also flatly denied any change in U.S. policy.[42] Two senior Democrats in Congress also responded in a joint August 7 statement expressing hope that New Delhi will abide by democratic and human rights principles and calling on Islamabad to refrain from retaliating while taking action against terrorism.[43]

Pakistan. Although Pakistan's reaction to India's moves has been bitter, most analysts see Islamabad as having little credibility on Kashmir, given its long history of covertly supporting militant groups there. Pakistan's leadership has limited options, and renewed Pakistani support for Kashmiri militancy would be costly internationally.[44] Islamabad issued a "strong demarche" in response to New Delhi's moves, deeming them "illegal actions … in breach of international law and several UN Security Council resolutions." Islamabad downgraded diplomatic ties, halted trade with India, and suspended cross-border transport services. Pakistan's prime minister warned

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[38] "India Revokes Kashmir's Special Status, Raising Fears of Unrest," *New York Times*, August 5, 2019.

[39] "Revoking of Article 370: Always in the Cards, but Donald Trump Supplied a Quick Trigger," *Hindu* (Chennai), August 6, 2019; "India Briefs Key Nations, Foreign Minister Had Sensitized US Secretary of State Last Week," *Times of India* (Delhi), August 6, 2019.

[40] "India Briefs Key Nations, Foreign Minister Had Sensitized US Secretary of State Last Week," *Times of India* (Delhi), August 6, 2019; SCA tweet at https://twitter.com/State_SCA/status/1159114095909580800.

[41] "US Closely Following Events in Kashmir," Reuters, August 5, 2019.

[42] See https://www.state.gov/briefings/department-press-briefing-august-8-2019.

[43] See the statement by the Chairman of the House Foreign Affairs Committee and the Ranking Member of the Senate Foreign Relations Committee at https://go.usa.gov/xVxwy.

[44] "In Kashmir, Critics Say, Modi Is Trying to Make India a Hindu Nation," *New York Times*, August 6, 2019; "Pakistan's Imran Khan Has Limited Options on Kashmir." *Financial Times* (London), August 14, 2019.

that, "With an approach of this nature, incidents like Pulwama are bound to happen again."[45] Ever ready to internationalize or otherwise bring global attention to the dispute, Pakistan called for a UNSC session and, with Chinese support, the Council met on August 16 to discuss Kashmir for the first time in more than five decades, albeit in a closed-door session. Pakistani officials suggest the ongoing Afghanistan peace process may be negatively affected.[46]

China. Pakistan and China have enjoyed an "all-weather" friendship for decades. On August 6, China's foreign ministry expressed "serious concern" about India's actions in Kashmir, focusing especially on the "unacceptable" changed status for Ladakh, parts of which Beijing claims as Chinese territory (Aksai Chin). A spokesman called on India to "stop unilaterally changing the status quo" and urged India and Pakistan to exercise restraint. China's foreign minister reportedly has vowed to "uphold justice for Pakistan on the international arena," and Beijing supports Pakistan's efforts to bring the Kashmir issue before the U.N. Security Council. One analyst wrote in China's state-run media that India "will incur risks" for its "reckless and arrogant" actions.[47]

The United Nations. On August 8, the U.N. Secretary-General called for "maximum restraint" and expressed concern that restrictions in place on the Indian side of Kashmir "could exacerbate the human rights situation in the region." He reaffirmed that, "The position of the United Nations on this region is governed by the Charter ... and applicable Security Council resolutions."[48] Beijing's support of Pakistan's request for U.N. involvement led to "informal and closed-door consultations" on August 16, a session the Russian government agreed to join.[49] No ensuing statement was issued, but Pakistan's U.N. Ambassador declared that the fact of the meeting itself demonstrated Kashmir's disputed status, while India's Ambassador held to New Delhi's view that Article 370's abrogation was a strictly internal matter. No UNSC member other than China spoke publicly about the August meeting, leading some to conclude the issue was not gaining traction.[50]

Democracy and Other Human Rights Concerns[51]

New Delhi's August 5 actions appear to have been broadly popular with the Indian public and, as noted above, were supported by most major Indian political parties. Yet the government's process came under severe criticism from many quarters for a lack of pre-consultation and/or debate, and many legal scholars opined that the government had overstepped its constitutional authority, predicting that the Indian Supreme Court will become involved.[52] New Delhi's perceived

[45] Pakistan Ministry of Foreign Affairs, "Pakistan's Strong Demarche to India on Its Illegal Actions with Regard to Indian-Occupied Jammu and Kashmir (IOJ&K)," August 5, 2019; "Pakistan Hits Back at India Over Kashmir Move, Targeting Bilateral Trade," *New York Times*, August 7, 2019; Khan quoted in "Pakistan's PM Warns of Suicide Attacks, War After India Ends Disputed Kashmir's Special Status," Fox News (online), August 6, 2019.

[46] "Pakistan's Envoy Suggests Kashmir Crisis Could Affect Afghan Peace Talks," *New York Times*, August 12, 2019. See also CRS Report R45122, *Afghanistan: Background and U.S. Policy In Brief*, by Clayton Thomas.

[47] See the Chinese Foreign Ministry's transcripts for August 6 and 9, 2019, at https://www.fmprc.gov.cn/mfa_eng; "Unilateral Move Will Incur Risks for India" (op-ed), *Global Times* (Beijing), August 12, 2019.

[48] See https://www.un.org/press/en/2019/sgsm19696.doc.htm.

[49] "No Formal UNSC Meeting on J&K But Closed-Door Consultations After China Intervenes," *Times of India* (Delhi), August 16, 2019.

[50] See the UNSC's August 16, 2019, readout at https://news.un.org/en/story/2019/08/1044401; "Did India Take Down Pakistan 14-1 at the United Nations Security Council?" *Times of India* (Delhi), August 17, 2019.

[51] See also CRS Report R45303, *India: Religious Freedom Issues*, by K. Alan Kronstadt.

[52] As required by Article 370 itself, the Presidential Order calling for modification said it came "with the concurrence of the government of the state of Jammu and Kashmir." This presumably refers to the state governor, himself the presidential appointee who dissolved the J&K legislative assembly in 2018 ("Indian Constitution to Apply in Jammu

circumvention of the J&K administration (by taking action with only the assent of the centrally-appointed governor) is at the heart of questions about the constitutionality of the government's moves which, in the words of one former government interlocutor to the state, represent "the total undermining of our democracy" that was "done by stealth."[53] The Modi government's argument appears to be that, since the J&K assembly was dissolved and the state has been under Central rule since 2018, the national parliament could exercise the prerogative of the assembly, a position rejected as specious by observers who see the government's actions as a "constitutional coup."[54]

Many Indian (and international) critics of the government's moves see them not only as undemocratic in process, but also as direct attacks on India's secular identity. From this perspective, the BJP's motive is about advancing the party's "deeply rooted ideals of Hindu majoritarianism" and Modi's assumed project "to reinvent India as an India that is Hindu."[55] One month before the government's August 5 bill submission, a senior BJP official said his party is committed to bringing back the estimated 200,000-300,000 Hindus who fled the Kashmir Valley after 1989 (known as "Pandits"). This reportedly could include reviving a plan for construction of "segregated enclaves" with their own schools, shopping malls, and hospitals, an approach with little or no support from local figures or groups representing the Pandits. Beyond the Pandit-return issue, worries that non-Kashmiris will soon be "flooding" the Kashmir Valley lead some analysts to see "colonialist" parallels with Israel's activities in the West Bank.[56]

Perceived human rights abuses on both sides of the Kashmir LOC, some of them serious, have long been of concern to international governments and organizations. A major and unprecedented June 2018 *Report on the Situation on Human Rights in Kashmir* from the U.N. Human Rights Commission harshly criticized the New Delhi government for alleged excessive use of force and other human rights abuses in the J&K state.[57] With New Delhi's sweeping August security crackdown in Kashmir continuing to date, the Modi government faces renewed criticisms for widely alleged abuses.[58] Indian officials also come under fire for the use of torture in Kashmir and for acting under broad and vaguely-worded laws that facilitate abuses.[59] The Indian government reportedly is in contravention of several of its U.N. commitments, including a 2011 agreement to allow all special rapporteurs to visit India. In spring 2019, after a U.N. Human Right

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and Kashmir: President Order," *India Today* (Delhi), August 5, 2019).

[53] Radha Kumar quoted in "Making Kashmir a Union Territory Is Bogus and Pointless: Former Interlocutor Radha Kumar" (interview), *Caravan* (New Delhi), August 6, 2019.

[54] Manoj Joshi, "Kashmir and Article 370: Constitutional Coup Whose Aftereffects Will Linger a Long Time" (op-ed), *Wire* (Delhi, online), August 5, 2019. See also Shivam Vij, "No Debate, No Discussion, No Dissent, and the Constitution is Changed" (op-ed), *Print* (Delhi, online), August 5, 2019.

[55] Quotes from Siddharth Varadarajan, "Constitution Torn to Shreds as RSS Indulges Article 370 Fantasy Kashmir," *Wire* (online, Delhi), August 6, 2019 and Irfan Nooruddin in "Inside Kashmir's Crisis—And What Happens Next" (interview), *Foreign Policy*, August 5, 2019.

[56] "India's BJP to Revive Hindu Settlement Plan in Kashmir: Report," *Al Jazeera* (Doha), July 12, 2019; Hafsa Kanjwal, "India's Settler-Colonial Project in Kashmir Takes a Disturbing Turn" (op-ed), *Washington Post*, August 5, 2019; Indrajit Hazra, "At Last, the Once-Colonized Becomes Colonizer" (op-ed), *Economic Times* (Mumbai), August 5, 2019; Nitasha Kaul, "Kashmir Is Under the Heels of India's Colonialism," *Foreign Policy*, August 13, 2019.

[57] A July 2019 "update" report from the Commission observed that accountability for violations "remains virtually non-existent." New Delhi angrily rejects these reports as "false and motivated narrative" that violates Indian sovereignty and "ignores the core issue of cross-border terrorism" (External Affairs Ministry, "Transcript of Media Briefing by Official Spokesperson," July 12, 2019; see the June 14, 2018, and July 8, 2019 UN reports at https://www.ohchr.org).

[58] "India Shut Down Kashmir's Internet Access—Now 'We Cannot Do Anything,'" *New York Times*, August 14, 2019; "Paradise Shackled, Promises Broken," *Outlook India* (Delhi), August 14, 2019.

[59] See *Torture: Indian State's Instrument of Control in Indian-Administered Jammu & Kashmir*, February 2019, at http://jkccs.net; "India Abusing 'Lawless' Detention Act in Kashmir, Rights Group," Reuters, June 12, 2019.

Council's letter to New Delhi asking about steps taken to address abuses alleged in the 2018 report, Indian officials announced they would no longer engage U.N. "mandate holders."[60]

U.S. Policy and Issues for Congress

A longstanding goal of U.S. policy in South Asia has been to prevent India-Pakistan conflict from escalating to interstate war. This meant the United States has sought to avoid actions that overtly favored either party. Over the past decade, however, Washington has grown closer to India while relations with Pakistan continue to be viewed as clouded by mistrust. The Trump Administration "suspended" security assistance to Pakistan in 2018 and has significantly reduced nonmilitary aid while simultaneously deepening ties with New Delhi. Washington views India as a key "anchor" of its "free and open Indo-Pacific" strategy, which some argue is aimed at China.[61] Yet any U.S. impulse to "tilt" toward India is to some extent offset by Islamabad's current, and by most accounts vital, role in facilitating Afghan reconciliation negotiations. President Trump's apparent bonhomie with Pakistani's prime minister and offer to mediate on Kashmir in July was taken by some as a new and potentially unwise strategic shift.[62]

The U.S. government has maintained a focus on the potential for conflict over Kashmir to destabilize South Asia.[63] At present, the United States has no Assistant Secretary of State leading the Bureau of South and Central Asia, no Ambassador in Pakistan, and an Acting Ambassador at the United Nations, leading some experts to worry that the Trump Administration's preparedness for India-Pakistan crises remains thin.[64] Developments in August 2019 also have renewed concerns among analysts that the Trump Administration's "hands-off" posture toward this and other international crises erodes American power and increases the risk of regional turbulence.[65]

Developments in Kashmir in 2019 raise possible questions for Congress:

- Do India's actions changing the status of its J&K state negatively affect regional stability? If so, what leverage does the United States have and what U.S. policies might best address potential instability?
- Is there any diplomatic or other role for the U.S. government to play in managing India-Pakistan conflict or facilitating a renewal of their bilateral dialogue?
- To what extent does increased instability in Kashmir influence dynamics in Afghanistan? Will Islamabad's cooperation with Washington on Afghan reconciliation be reduced?
- To what extent, if any, are India's democratic/constitutional norms and pluralist traditions at risk in the country's current political climate? Are human rights abuses and threats to religious freedom increasing there? Should the U.S. government take any further actions to address such concerns?

[60] "India Cuts Off UN Panel After Jammu & Kashmir Report," *Hindu* (Chennai), May 21, 2019.

[61] See the Pentagon's June 1, 2019, *Indo-Pacific Strategy Report* [PDF] at https://go.usa.gov/xyAWJ.

[62] Richard Haass, "Tilting at More Than Windmills in South Asia," Council on Foreign Relations, August 14, 2019; Michael Hirsh and Laura Seligman, "How Pakistan is Playing Washington—Again," *Foreign Policy*, July 24, 2019.

[63] In January 2019, the U.S. Director of National Intelligence predicted for a Senate panel that, despite limited confidence-building measures, hostilities in Kashmir "have hardened each country's position and reduced their political will to seek rapprochement" (see the January 29, 2019, statement at https://go.usa.gov/xVrFm).

[64] Lara Seligman and Robbie Gramer, "Amid Re-Election Campaign, Modi Takes the Fight to Pakistan," *Foreign Policy* (online), February 27, 2019.

[65] "Waning of American Power? Trump Struggles With an Asia in Crisis," *New York Times*, August 13, 2019.

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