In search of an inventive approach to untangle the Kashmir knot, the "merit of the case" was not a good starting point. Firstly, we might not agree on the merit: we did not in the last fifty years. Secondly, and more importantly: complex issues were not resolved by proving one or the other side wrong, but by finding common ground that lead to a solution. This paper, therefore, attempts to highlight some of the stumbling blocks that made Kashmir one of the most intractable issues of recent times. A possible way out, too, has been suggested. Let me begin, however, by recognising some good work done in Geneva on this dispute.

Having heard India and Pakistan parrot their positions on Kashmir for half a century, it was time that we also listened to some other, neutral and qualified, opinion. A few years ago, the International Commission of Jurists (ICJ), based in our host city, undertook to study the Kashmir problem and give their verdict. Their findings, by a committee of four, none of them from India or Pakistan, were published in 1995 under the title "Human Rights in Kashmir". The comments of both the governments, very critical most of them, were also included. Some of the conclusions that I find relevant to any discussion on Kashmir are mentioned in the ensuing two paragraphs.

According to the ICJ (page 67 of the Report): "the peoples of the State of Jammu and Kashmir acquired a right of self-determination at the time of the partition of India", and, "that right has neither been exercised nor abandoned and therefore remains capable of exercise". Continuing on the same page it says: "the right (of self-determination) belongs to the peoples of the State and not to Pakistan, and is therefore not affected by acts of the Government of Pakistan". At another place (page 16) the report affirms that even the Simla Accord, since the peoples of the State were not a party to it, did not override any rights that they may have in international law.

Indeed there are a number of other points in the report that made it not exactly a popular reading in India. Its judgment on page 23- "there is little doubt that it is now the wish of the overwhelming majority of the people of the Valley of Kashmir to sever their links with India"- may be less embarrassing (to the Indians) than its assertion on the same page: "it seems wholly unrealistic to assume that hostility to India is the result of enforcement by terrorist guns". Of course the ultimate "sin" that the ICJ committed, in the Indian eyes, was its audacity to suggest that "the insurgency was legitimate".

That this report, too, has been of little help to bring the issue any closer to a solution, is one more proof that arguments alone would not resolve such matters.
On Kashmir, stakes for both the countries have been high, becoming higher all the time. In Pakistan, which asks for a plebiscite under the UN auspicious, it has been regarded as a matter of principle, unfinished agenda of the Partition, an obligation towards their co-religionists in Kashmir, and some more. That the Indian presence in this area can threaten Pakistan's vital water resources, must also have weighed heavily on people's mind. India, on the other hand, having declared Kashmir as its integral part, finds it difficult to concede that it was still a disputed territory. Moreover, being the only Muslim majority area under the Indian rule, loss of Kashmir, in their perceptions, undermined India's state philosophy: secularism.

If that be the price of giving up their claims on Kashmir, it is understandable that neither country has done so. In the process they also learnt that they did not have to. India, the much larger of the two, is big enough to withstand any pressure, from Pakistan or from other countries, to change its stand. Pakistan, too, though more vulnerable to military and other strains, has concluded that it could afford all forms of stand-off. Of course, there has been a debate in both the countries if a change of policy was possible. Even if some non-governmental quarters suggested, that it was both possible and desirable, the official apparatus, inherently cautious, found status-quo less risky.

Acquisition of nuclear capability, if anything, has reinforced, rightly, the belief in both countries, that they cannot be forced to change their respective positions. Pakistan, for example, more confident that it can ward off military threats, asserts its position more aggressively. Kargil is a case in point.

Arguments in favour of flexibility and resolution of the problem have indeed been sound: the ensuing peace would help both countries, and the region, to overcome many of their economic, social and strategic deficits. Neither India nor Pakistan, is however convinced, that these made up for the perceived political and ideological losses. The resultant impasse is undoubtedly more harmful to Pakistan; not only because the tension extracts a bigger price, both in terms of defence liability and economic activity, from the smaller country, but also because it has "less" of Kashmir. Pakistan, therefore, tries desperately to break the logjam. To keep the issue alive, it helps out the freedom movement in Kashmir in whatever form it can. And, it insists on resumption of talks with India.

A dialogue process, unless backed by political will on both sides, will not achieve much. It can, therefore, be argued that in case India was not interested in a forward movement, it could still agree to talk and then let the process idle. Of course, it could; but if India were more interested in keeping a tense relationship with Pakistan, that was more harmful to the latter, refusing resumption of a structured dialogue made sense. Assuming, however, that at some point both countries wished to seriously talk, a dilemma still needed to be resolved.

India does not want a process that was seen focussed on Kashmir. Pakistan on the other hand would not embark on one, unless it was at least seen to be seriously addressing Kashmir. An ingenious solution was found in August 1997 when the two foreign secretaries met in Islamabad. Coaxed by Prime Ministers Gujral and Sharif,
they invented the concept of "composite dialogue". A number of issues, Kashmir one of them, were to be discussed by different teams under a package. The doubters on both sides could now be placated. We could claim, quietly, that India had finally agreed to discuss Kashmir. And the Indians were to whisper to their hawks that not much more than infiltration across the Line of Control would be talked about. But the concept was much more than a gimmick.

It was clear that movement on some issues would be faster than on the others, like for example on Kashmir. But then any progress was expected to improve the environment, and thus facilitate some movement on the "core issue". It was in fact a multi-track and multi-speed formula, with developments on faster tracks creating synergetic effects on the others. It did not work. Because the hype on one side provoked corresponding response by the other, and because the political will that evolved this concept, was not strong enough to manage the fallout.

The "political will" may well be the sine qua non if such obdurate issues were ever to move. Considering, however, that in our case it runs out rather soon, I suggest we subject it to the minimum essential strains. "Start the process, of dialogue, without any pre-conditions"; was all the courage that I believe we could reasonably ask from our political leadership. The Pakistani demand of "Kashmir or nothing" was as unreasonable as "no talks till the terror continued" of India. Kashmir may well be the "core issue" for Pakistan, but no one ever reached the core without negotiating at least part of the crust. And indeed, even if Pakistan had the means to stop all "cross border infiltration", that, or the opposite, could not be proven beyond doubt.

The common ground, to kick-start the process, is paradoxically provided by the seemingly irreconcilable claims of the two countries. Both India and Pakistan want the whole of Kashmir for themselves. Logically, therefore, they cannot have any objection to the Kashmiris on both sides, their leadership in this case, to come together and talk about it. On second thought, there is another caveat that the Indian and Pakistani leaders will be well served with. The temptation to choose "their men" for the talks may be irresistible, but they must not insist on quick results, or for that matter, any result.

The problem with a negotiation process with a preconceived end is, that the other side, in the belief that it must be against its interests, gets primed to scuttle it. In any case, knowing the Kashmiris, as we no doubt do- once in the arena, they were unlikely to take any dictation. And that may all be for the good. The intelligent people that they are, they are very likely to take their time, perhaps not doing much more in the meanwhile than facilitating family re-unions and a bit of trade. That would provide both our countries enough breathing space to resolve some of their other less intractable and more urgent problems.

It is by creating such synergetic effects, that the strategy works.

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