



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by The Next Century Foundation, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2019]

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\* Issued as received, in the language(s) of submission only.



## **The need for a special representative on unilateral coercive measures to address the issue of the future of Indian-Administered Kashmir and Pakistan-Administered Kashmir**

The Next Century Foundation notes that the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, asks, in his report before the 42<sup>nd</sup> session of the Human Rights Council, that the Secretary-General appoint a special representative on unilateral coercive measures with a remit that would be broader than that of the Special Rapporteur and that would include facilitating a dialogue to solve the underlying causes of such measures.

The Next Century Foundation supports this request. We think this would be of particular importance in regard to the Kashmir issue. We especially note the concerns expressed in the report by the Office of the UN High Commissioner for Human Rights (OHCHR), released on July 8, 2019, raising serious concerns about abuses by state security forces and armed groups in the parts of Kashmir administered respectively by the Islamic Republic of Pakistan and the Republic of India. We would add our own concern about the persistent failure of local politicians in Indian administered Kashmir to engage adequately in the forums already open to them at local level.

We would further state that now is the very best time to start taking measures to facilitate an amelioration of the longstanding misery of the people of Kashmir and would suggest that the very best first step to be taken at this point in time would be to appeal to both India and Pakistan to make the line of control the international border.

Once the international border is in place perhaps India might be in a better position to withdraw India's Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) of 1990 which effectively stops all permission to prosecute any security force personnel in civilian courts.

Also, as highlighted by the OHCHR, we would hope that India would amend its Public Safety Act of 1978, the administrative detention law that allows detention without charge or trial for up to two years.

However, the Next Century Foundation also shares the concern of the OHCHR that Pakistan address its strategic deficiencies in so much as Pakistan has a history of providing arms and training to militant groups.

The Next Century Foundation is also deeply concerned at human rights violations in Pakistan-held Kashmir most particularly the threats against journalists for doing their work. We also share the UN human rights office's concern over the enforced disappearances of people from Pakistan-held Kashmir.

We also note with considerable concern Indian Prime Minister Narendra Modi's actions on August 5 of this year over Jammu and Kashmir. Some argue that he was prompted to take the action he did in response to the offer by the President of the United States of America to intercede on the Kashmir issue. If so that is doubly saddening. We understand how frustrating outside interference can seem if it is unasked for. But we would point to the experience of the United Kingdom of Great Britain and Northern Ireland which was, in the end, grateful for U.S. intervention in the pursuit of peace in Northern Ireland, a contributing factor in regard to the Good Friday agreement which is so sadly under pressure at present because of the unforeseen factor known as Brexit. However, the point is that outside actors can be helpful, especially in longstanding issues like those of the disputes in regard to the future of Northern Ireland or Kashmir.

Article 370 of the Indian Constitution had of course effectively given semi-autonomous status to Jammu and Kashmir in the aftermath of India's partition in 1947. Premier Modi's abrogation of this essential constitutional principle is distressing.

Premier Modi's actions may be partly due to frustrations over a lack of leadership in Kashmir, and that frustration we understand. The people of Kashmir must engage better in

the forums available to them. Policies involving the boycott of political forums are almost always, in the view of the Next Century Foundation, self-defeating.

That said, these measures, notably the removal of article 370 of India's constitution, have been greeted by an absence of concern from people other than Kashmiris themselves.

Where is the strong concern that should be expressed on the part of the British government, the former colonial power? Britain has the largest number of expatriate Kashmiris (as British citizens of Kashmiri origin) in the world and yet has utterly failed to take a strong stand in regard to recent events. Perhaps that is in part a shortcoming on the part of Britain's citizens of Kashmiri origin who are good at crying crocodile tears but seem unwilling or unable to garner action from their own political representatives.

The United States of America has been equally unforthcoming despite the fact that it is a nation perceived by some as having acted as a catalyst in fomenting recent events.

Similarly, the People's Republic of China, though arguably a nation with a considerable interest in the region, has remained silent.

So too Europe and indeed the entire international community, much of which seems uninterested in the issue despite, or perhaps because of, the fact that both India and Pakistan are nuclear powers.

Article 51 of India's constitution commits the Government of India to foster respect for international law and treaty obligations and, encourage settlement of international disputes by arbitration. Hopefully India will revise its current position in due course.

Pakistan for its part has actually called for UN intervention. If Pakistan is genuine about finding a resolution through the UN, it should show meaningful progress toward effectively dealing with the problem of that part of the militancy in Kashmir that is generated within its own borders.

United Nations Resolution 39 (1948) gives the UN authority to investigate any dispute or any situation which might, by its continuance, endanger the maintenance of international peace and security.

UN Resolution 38 (1948) calls on both India and Pakistan to refrain from doing or permitting any acts which might aggravate the situation.

The UN can and should play a role as mediator. Furthermore, the Next Century Foundation would also like to see the facilitation by the UN of dialogue between Kashmiris from both sides of the Line of Control, supported by both India and Pakistan.

And we should all, all of us concerned about the future of Kashmir, help identify an effective leadership among Kashmiris, both within the region and among the diaspora. An empowered Kashmiri leadership that is taken seriously by the international community would encourage all parties to this dispute to behave differently.

We therefore endorse the Special Rapporteur's request that the Secretary-General should indeed appoint a special representative on unilateral coercive measures with a remit that would be broader than that of the Special Rapporteur and that would include facilitating a dialogue to solve the underlying causes of such measures. And the Next Century Foundation further ask that one of the first issues to be addressed by the new special representative, if indeed such a representative is appointed, be that of Kashmir.

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