

Institutionalising confidence building measures on Kashmir

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Summary

- Concrete political and military steps are needed to consolidate the ceasefire along the Line of Control (LoC). A failure to do so threatens the efficacy of the peace process between India and Pakistan and the prospects for enhanced economic and political relations. If the ceasefire is not stabilised, it may come under severe pressure from possible spillover effects of the withdrawal of international forces from Afghanistan.
- There is a danger that cross-LoC trade may falter if confidence building measures (CBMs) relating to trade and travel – banking, communication and the Joint Chamber – are not institutionalised.
- Institutionalisation of these CBMs would increase security along the LoC as well as enhance Kashmiri involvement in peacebuilding processes. This would in turn strengthen the potential for conflict transformation.
- Intra-Kashmir dialogue in Kashmir and across the LoC needs to be consolidated for a long-term resolution of the Kashmir conflict. This would help build consensus among the Kashmiri populations and provide the people of Kashmir with a sense of ownership.

Introduction

The current India-Pakistan peace process was set in motion with a ceasefire along the Line of Control (LoC) in November 2003.¹ Cross-LoC confidence building measures (CBMs) have been introduced for travel (2005) and trade (2008). In order to maintain a ceasefire across the LoC, various communication and conventional military CBMs have been upgraded. Although there has been no specific CBM to promote intra-Kashmir dialogue, both governments have facilitated Kashmiri political leaders to cross the LoC, first directly across the LoC in 2005 and later through the Wagah border crossing.

The people of Kashmir have directly benefited from cross-LoC CBMs, and those living on both sides of the LoC have responded positively to them. The CBMs have contributed to the development of a nascent peace constituency on either side of the line and an environment conducive to an enhanced negotiations process.

Yet the full potential of CBMs is marred by operational difficulties. Persistent stalemate in the peace

process has adversely affected the working of these CBMs. Travel across the LoC remains limited due to clearance difficulties, while trade has remained a barter system. The ceasefire continues to be fragile and intra-Kashmir dialogue has yet to take off meaningfully.

This policy brief explores practical ways that cross-LoC CBMs – the ceasefire across the LoC, travel, trade and intra-Kashmir dialogue – can be consolidated and institutionalised. While the CBMs have created a window of opportunity, they remain precarious. Cross-LoC CBMs can only be sustained and their peacebuilding value realised if they are institutionalised. CBMs are meaningful when they reflect predictable, consistent and accountable behaviour. If this can be accomplished through the establishment of reliable procedures that are understood and acted upon by all sides, then it could be said that there is a degree of institutionalisation. Parties can then be more confident in building trust in each other and a virtuous, as opposed to vicious, cycle of behaviour can start to evolve.

¹ The term 'Kashmir' is used to refer to the former princely state of Jammu and Kashmir. This is without prejudice to the numerous other names by which the entity is known. The 740km LoC divides Kashmir into Indian and Pakistani administered parts.

Ceasefire along the Line of Control (LoC)

A key issue is the LoC ceasefire that has been in place since 2003. A fragile ceasefire and LoC adversely affect potential developments in Indo-Pak political, economic and diplomatic relations. They also affect other CBMs, including trade and travel. A constructive and transparent ceasefire would create the conditions for further CBMs and would open the doors for more structured political dialogue at national and regional levels.

The current ceasefire was put in place after the 2001–02 military standoff between India and Pakistan. It was the first major CBM that restored a sense of security to the communities living along each side of the LoC. A limited number of military and political CBMs are in place to defuse tensions between the Indian and Pakistani armies. Hotlines are in place between the Director Generals of Military Operations (DGMOs)² and between sector commanders. In 2005 both sides agreed to upgrade to a secure and dedicated hotline between DGMOs, hold monthly flag meetings between formation commanders at three points on the LoC – Kargil-Skardu, Uri-Chakothi, Naushera-Sadabad - and at Jammu-Sialkot, and implement the 1991 agreement on airspace violations. They also agreed not to build any new posts or defence works along the LoC and to ensure the speedy return of those people (mostly civilian but occasionally military personnel) who have inadvertently crossed the LoC. Negotiations to reach formal agreements on construction along the LoC and the return of those mistakenly crossing the line have been conducted since 2006, but have become stuck.

Militarisation of the LoC

The LoC continues to be heavily militarised with Indian and Pakistani soldiers equipped with small arms and heavy artillery. In 2004-5 India fenced a 550km stretch of the LoC with electrified barbed wire to deter infiltration, as no agreed mechanism to monitor cross-LoC movement of 'infiltrators' was yet in place. The Indian military uses thermal imagers and sensors to detect 'infiltration', and is considering making the fence permanent.

Although certain de-escalation measures have been agreed, no neutral mechanism for monitoring a ceasefire is currently working effectively. The focus has been either on tactical measures or unilateral

mechanisms, rather than impartial and cooperative mechanisms. A UN mission – the United Nations Military Observer Group in India and Pakistan (UNMOGIP) – was set up to supervise the ceasefire in divided Kashmir in 1949, but has been constrained since the 1971 Indo-Pak war. India claims that the Simla Agreement of 1972, which directs India and Pakistan to resolve their disputes bilaterally, supersedes the UN mission. Pakistan does not however share this position, and still accepts the role and legality of UNMOGIP.

The land and anti-personnel mines planted along the LoC during the three Indo-Pak wars (1947–48, 1965 and 1971) as well as during the Kargil crisis and the 2001–02 standoff have not yet been removed. Both sides assert that all mines planted along the LoC are properly fenced and marked in compliance with Protocol II of the Convention on Certain Conventional Weapons.³ However, these mines can become dislocated due to rain, snow and landslides, and they regularly result in casualties. The mines also prevent agricultural activity as civilians cannot move freely in the fields. An unaccounted number of civilians on both sides, but more so on the Indian side, have been killed. Others have suffered loss of limbs, with long-term physical, psychological and emotional problems.

A fragile ceasefire

Since 2003, the ceasefire has largely held. There were no incidences of firing across the LoC from 2003 to 2005 and only three in 2006. The ceasefire allowed those displaced by recurrent shelling across the LoC since the escalation of hostilities in the 1990s to return home, rebuild their houses and resume their livelihoods.

As the India–Pakistan peace process slowed down, the number of violations on the LoC began to increase. There has been a steady rise in the number of LoC violations since 2008. According to Indian official sources, the number of incidents of fire increased from 28 in 2009 to 44 in 2010, with 51 in 2011 and 93 in 2012. Pakistani official figures are 20, 67, 86 and 230 respectively for the same period.

2013 has been a volatile year along the LoC. In the first 10 months both sides reported nearly 500 violations. A series of skirmishes in January and February led to

² A hotline between the Director Generals of Military Operations (DGMOs) was established in 1971. After the 1990 crisis, a decision was made to use it on a weekly basis.

³ Protocol II to the Convention covers prohibitions or restrictions on the use of mines, booby traps and other devices, which may be deemed to be excessively injurious or to have indiscriminate effects.

the killing of three Pakistani and two Indian soldiers. India accused Pakistan of beheading one of its soldiers. In August five Indian soldiers were killed in an ambush in Poonch sector. Incidents of shelling have amplified in intensity and duration and graduated to the use of heavy weaponry. Since August, in a troubling development, tensions along the international border between India and Pakistan have also increased.

At a meeting on the sidelines of the UN General Assembly in September, the two prime ministers agreed that the DGMOs of the two countries should meet to find ways to de-escalate tensions on the LoC but this meeting has yet to take place. In the

meantime, civilians living close to the LoC have begun to leave their homes and travel and trade CBMs are at risk of unravelling.

The military mechanisms on the LoC are limited to defusing tensions following a breach of the ceasefire and are not preventive in nature. In the absence of mutually agreed, credible and effective monitoring and counter-infiltration mechanisms, each side blames the other. India blames Pakistan for using shelling as a cover to facilitate 'infiltration' into the Indian side. Pakistan maintains it is the 'construction of new posts [and] bunkers' on the Indian side that escalates tension on the LoC.

Consolidating the ceasefire: a common approach to management of the LoC

Consolidating the ceasefire would support more robust bilateral relations between India and Pakistan. It would reduce the risk of unintended escalations in military tensions and advance the overall security of both countries. The lives of those living along the LoC would also improve greatly. The management of the LoC requires cooperation between the two countries to monitor the ceasefire and infiltration. Pakistan supports strengthening UNMOGIP. India proposes joint patrols, which Pakistan finds impractical. A neutral, multilateral monitoring force might provide an opportunity for a mutually acceptable solution. This could address Indian concerns about cross-LoC 'infiltration' and would allow Pakistan to establish that it is not 'sponsoring terrorism' in Kashmir. The UK, EU and US explored the idea of an international helicopter-borne force to monitor infiltration along the LoC during the 2001–02 standoff. This could be revived without prejudice to existing Indian and Pakistani positions on the issue.

Several other steps could be taken at the bilateral level to institutionalise or build on the existing CBMs:

- The early conclusion of agreements on the construction of new posts on the LoC and the speedy return of people who have inadvertently crossed the LoC.
- The demining of areas along the LoC and expansion of the no man's land area, which may act as a Zero Point LoC Market (ZPLM) regulated by designated authorities on both sides.⁴
- Military CBMs could be expanded to consolidate de-escalation measures on the LoC. Options include:
 - Increasing the frequency of meetings at the local commanders' level
 - Establishing a policy of no construction without informing the other side
 - The facility to call a meeting with the other side within 24 hours
 - Delegation of responsibility to brigade commander level
 - A policy of no firing on civilians or civilian transport
 - Creation and maintenance of safe farming zones on both sides of the LoC.
- The relocation of heavy artillery to at least 30km away from the LoC.
- The reduction of troops along the LoC.

⁴ The idea was proposed by World Bank. It offered to develop the Zero Point Border Market (ZPBM) at Wagah by declaring it a no man's land, but the bank has subsequently withdrawn the offer due to security issues between the two countries. The Asian Development Bank has expressed an interest in pursuing the project.

Travel and trade-related CBMs

The cross-LoC bus and trade initiatives initiated in 2005 and 2008 respectively have been important for supporting the development of an environment conducive to conflict transformation. Many people on both sides of the LoC have developed a vested interest in peace as a result. Cross-LoC travel opens opportunities for human contact; it connects families thereby addressing longstanding grievances, and trade creates an opportunity for people across the LoC to undertake joint activities that have a mutual and tangible (that is, economic) benefit. However both initiatives suffer from operational challenges, which limit their socioeconomic and peacebuilding potential.

Cross-LoC travel

The cross-LoC bus service began with two bus services crossing the LoC. Five crossing points were opened, which restored movement of the people across the dividing line. Between April 2005 and October 2013, over 22,000 people have travelled across the line; nearly 15,000 from AJK (Pakistan administered Azad Jammu and Kashmir) to J&K (Indian administered Jammu and Kashmir) and over 7,000 from J&K to AJK.⁵

However, the process of obtaining a permit for travel is long and strenuous, and a limited number of people have been able to secure a permit. Applications have to be cleared by several intelligence agencies, which often results in delays. Each application goes through 21 offices – twelve on the Indian side and nine on Pakistani side – before it is cleared. The number of pending applicants is three times the number of those who have been able to travel to date. As a result, the bus service remains under utilised and does not carry many passengers. In practice, the permit to travel is only open to divided families, despite no such provision being stipulated in the original agreement on the cross LoC-bus service.

Cross-LoC trade

Cross-LoC trade began with 21 items comprising primary commodities. The number of days each week that trade could be carried out increased from two to four in 2011, and the number of trucks allowed from each side was increased from 25 to 200. It is a 'zero tariff' trade, exempt from customs and tax duties. A Joint Working Group on cross-Line of Control CBMs

established the modalities of the trade. However, from the outset, this trade has suffered because of basic problems, including a lack of banking facilities and financial arrangements, communication and access to markets. Without a proper communication system (on the Indian side there is no telephone link to the other side) and without access to market information, it is reduced to 'blind trading'. Traders are unable to cross the LoC to explore markets on the other side to assess the quality of goods being ordered. They are dependent on traders on the other side, whom they are unable to meet and have limited opportunities to communicate with. In the absence of banking, it has become a barter trade, bringing with it the associated problems of delays in recovery of money, vulnerability to the volatility of markets, and uneven trade. Furthermore, officials are able to restrict trade in any of the 21 listed items, often without notice or clear reasons. Eight items have been banned so far.

Without institutionalised processes, trade is based mainly on 'trust'. This is positive in that it builds confidence, however there are two drawbacks: one, that trust can be temporary if it is not consolidated around practices that have durability and transparency, and second, that this trust is restricted to a small number of people (mostly between those with personal and familial relations) and therefore does not have the collateral benefits that are needed if this CBM is to have wider resonance and develop into broader professional business relations.

There is no formal or legal mechanism available for resolving disputes. Since most trade is between families divided by the LoC, the limited mechanisms available include family pressure and informal intervention by trade chambers. Even where a formal complaint is made to designated trade officials, informal mechanisms are used. The most trade facilitation officials can do is to arrange a meeting at trading points between the traders of the two sides. These are also hampered by the lack of telephone communication and only two meetings have taken place so far to settle payment issues.

There have also been several disputes between traders and tax and custom authorities. For example, there was a strike by traders in J&K in June 2011 over the imposition of VAT, and there was a strike by traders in AJK after trucks were confiscated by custom officials.

⁵ Trade and Development Authority (TATA) office, Azad Jammu and Kashmir, November 2013.

Despite these limitations, total trade turnover has amounted to almost PKR 33.2 billion/ INR 20 billion (approximately US\$ 312 million).

Impact of LoC tension on travel and trade CBMs

Hostilities between India and Pakistan have a direct bearing on these CBMs, and tensions have at times led to the abrupt suspension of trade and travel, most recently in January 2013. Several travellers who had gone across the LoC were stuck on the 'wrong' side

when their limit of stay was over. There was also a loss of trade, as perishable goods could not reach their destinations in time. As tensions escalated again in August 2013 the Indian Ministry of Finance issued an order that only goods originating from AJK could be traded across the LoC, leaving very few acceptable items. Another order imposed restrictions on trade between relatives on the two sides of LoC, which effectively undermines the entire process. Some 42 traders have already been blacklisted. The 44-member trade delegation that was due to cross the LoC from Uri on August 26 was indefinitely postponed.

Institutionalising travel and trade CBMs

The personal investment of those few who have benefited from CBMs has sustained the trade and travel processes. For these CBMs to have broader economic and peacebuilding effects they need to be institutionalised. A crucial issue is to ensure the ceasefire is strengthened and maintained. Several other issues need to be tackled as well:

- The processing of travel permits needs to be expedited. In time, the process could be graduated to a biometric smart card for all 'state subjects'.⁶
- Although it may be desirable in the long term to open further routes across the LoC (such as the Kargil-Skardu route), it is important to strengthen the two existing routes. Authorities on both sides should ensure that travel is not limited to 'divided families', and make it possible for all residents of the state to travel. Group exchanges should also be supported, such as for cultural, tourism, education and sporting purposes.
- Cross-LoC trade must be a 'viable self-sustaining economic process' for which 'banking relations, communication networks, transport networks, regulatory networks and a legal network for dispute resolution' should be put in place.⁷ The list of tradable items needs to be revisited; instead of a positive, it should be a negative list based on market realities. The list of items and the modalities could be reviewed every quarter by 'trade facilitation officers'. Traders should be allowed to cross the LoC. A special trade permit or tourist permit should be issued to registered traders. Trade should also be extended to the investment and tourism sectors.
- Better infrastructure is required at the trade facilitation centres, including goods scanners and storage and warehouse facilities. Local markets and trade fairs should be set up near the trading points.
- There should be a clear policy on security rules, custom rules and other rules so that these are not applied at random, and traders and travellers do not feel harassed. This is key to ensuring that CBMs are transparent, predictable and reliable, and that people can experience their actual benefit.
- In order to regularise cross-LoC trade, the Jammu and Kashmir Joint Chamber of Commerce and Industry (JKJCCI) should be accorded official recognition by both Indian and Pakistani governments and dispute resolution mechanisms put in place.

⁶ State subjects refers to all citizens of the former princely state of Jammu and Kashmir.

⁷ Haseeb Drabu, an economist and former chairman of Jammu and Kashmir Bank, has recommended a five-point formula to streamline cross-LoC trade. Iftikhar Gilani, 'Five-point plan recommended to promote trade across LoC', *Daily Times*, 28 October 2008.

Cross-LoC intra-Kashmir dialogue

The people of Kashmir are primary stakeholders in the resolution of the Kashmir conflict. While there are Kashmir-specific CBMs in the area of travel and trade, intra-Kashmir dialogue between political leaders and communities on both sides of the LoC has remained minimal and largely ad hoc in nature. Since 2005, there have been some cross-LoC visits by individual Kashmiri leaders and a small number of intra-Kashmir meetings have been organised by international as well as India- and Pakistan-based organisations working on conflict resolution and peacebuilding, such as the Center for Dialogue and Reconciliation (CDR). However these have often taken place outside the region, given the restrictions that have been imposed and the hurdles that need to be overcome to convene an intra-Kashmir dialogue. This is expensive and restricts initiatives to a smaller number of interlocutors.

Cross-LoC visits of Kashmiri leaders

In 2005, a delegation of the moderate faction of the All Party Hurriyat Conference (APHC) headed by Mirwaiz Umar Farooq and the JKLF leader Yasin Malik

crossed over the LoC into AJK for the first time. Since then these leaders have made further visits, either individually or as a delegation, mainly through the Wagah–Attari crossing point (that is, not across the LoC). These visits allowed them to interact with the Pakistani and AJK political leadership, civil society, the media and the Kashmiri militant leadership. They explored ideas on how to resolve the Kashmir conflict and contributed to a consensus building process within and between political and dissident forces in and across Kashmir. The leaders stressed the need to include Kashmiris in the dialogue. Significantly, the pro-Indian political leadership of J&K, including the PDP (People’s Democratic Party) President Mehbooba Mufti and Omar Abdullah of the National Conference (NC), also travelled to Pakistan and met with Pakistan’s political leadership to exchange views.

Lack of sustained intra-Kashmir dialogue

However, there is no mechanism to consolidate intra-Kashmir dialogue. It is difficult to travel across the LoC, particularly for political leaders or parliamentarians, and the governments and

Institutionalisation of intra-Kashmir dialogue

The current trends indicate that Islamabad and New Delhi could do much more to support a cross-LoC intra-Kashmir dialogue. In their interactions, Kashmiri leaders and civil society actors strongly feel that they do not have ownership of the dialogue initiated by the two countries. Intra-Kashmir dialogue needs to be structured and more concrete, both at the intra-regional and across LoC levels.

- Parliamentarians and political leaders should be allowed to travel across and engage in cross-LoC dialogue. This would help to bridge the trust gap and remove many of the operational difficulties in implementing the cross-LoC CBMs.
- To support the process of dialogue among people on both sides of the LoC a small demilitarised zone of around one kilometre could be created along the Srinagar–Muzaffarabad and Poonch–Rawlakot routes. This could be used as a park dedicated to dialogue between Kashmiri leaders, as well as for meetings between families, traders and students from both sides.⁸ Such dialogue is likely to prove effective in consensus building across LoC.
- Governments as well as Kashmiri political parties should facilitate the inclusion of armed groups into dialogue processes. Engaging armed groups is more likely to encourage moderate elements, while non-engagement can feed perceptions of exclusion within the broader population. A peace process that is more inclusive is also likely to be more credible and in turn sustainable. In this respect, India could build on its past experience of extending a ceasefire to Kashmiri armed groups in 2000.

⁸ Arif Kamal, 'Wither intra-Kashmir dialogue', *Greater Kashmir*, Srinagar, 29 April 2008.

security establishments in India and Pakistan are generally unsupportive of more frequent travel by civil society and political leaders to foster a broader intra-Kashmir dialogue. This, in turn, limits and constrains the inclusion of Kashmiris in any Indo-Pak dialogue process.

Support for an intra-Kashmir dialogue is even more crucial given the trust deficit and the wide range of perceptions within the pro-Azaadi group⁹. Divisions between moderates and hardliners and between pro-Azaadi and pro-India political parties need to be bridged. Kashmiri armed groups like the United Jihad Council (UJC) are not part of any intra-Kashmir

discussions that do take place as New Delhi considers them a threat to peace.

The more Kashmiris are involved in discussing how to address the challenges the region faces, the more they become stakeholders in the resolution of such issues. Enabling Kashmiris to talk in a more frequent and structured way about security challenges, opportunities for economic development (including but not restricted to trade), water security, environmental issues that span the LoC and disaster preparedness (for earthquakes, landslides, etc.) will provide opportunities to explore creative solutions and foster a sense of responsibility for shared concerns.

⁹ This includes the APHC (both APHC-Mirwaiz and APHC Geelani) and the JKLF.

An environment conducive to increased security and peace

Consolidation of the ceasefire is critical to the survival of all cross-LoC CBMs, and efforts to strengthen the ceasefire and CBMs are mutually reinforcing. Strengthening the ceasefire creates an environment conducive to the consolidation of CBMs, and a climate in which CBMs are consistent and predictable can increase confidence and trust on all sides.

CBMs also go beyond simply building confidence. They have real economic and security implications. Events in August 2013 demonstrate the risk that tensions across the LoC may transfer onto the international border. This threat is augmented by the potential for a spillover from Afghanistan when international forces withdraw in 2014. A ceasefire that is not institutionalised and prone to breaking down gives rise to immediate security concerns including escalation of military violence but also affects broader diplomatic relations between the two countries. Breakdowns in the ceasefire shut down diplomatic engagement but also delay developments in economic and political relations, including a pause in the finalisation of the granting of 'most favoured nation' to India by Pakistan.

Tensions on the LoC are currently high, threatening the very foundation of the CBM regime and an atmosphere conducive to improved Indo-Pak relations. This has undermined the goodwill gestures Prime Ministers Nawaz Sharif and Manmohan Singh developed through reviving the back channel and resuming the dialogue process. The commitment made on the fringes of the UN General Assembly in September 2013 to set up a meeting between respective DGMOs should not be delayed. It should be used to expand military and security CBMs in managing the ceasefire on the LoC. It is in the interests of both governments to adopt a cooperative approach to the management of the LoC by adopting an effective bilateral or impartial and neutral monitoring mechanism.

Importantly, there is a real fear that cross-LoC trade will cease if trade-related modalities are not institutionalised. A process of trade and travel CBMs that is unaccountable and unreliable increases a sense of grievance on both sides of the LoC, while the lack of an intra-Kashmir dialogue reduces the potential for Kashmiris to assume ownership of their shared concerns. The Joint Working Group on cross-LoC CBMs should involve the JKJCCI and the cross-LoC traders' bodies from major trading points to regularise cross-LoC trade. Finally, involvement of the local political leadership, armed groups and communities in the dialogue process is crucial for the sustainable resolution of the Kashmir conflict; intra-Kashmir dialogue should be promoted and opportunities for Kashmiris to contribute meaningfully to the broader peace process enhanced.

Map of Jammu and Kashmir region



Courtesy: Kashmir Study Group

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About the Kashmir Initiative Group (KIG)

KIG mission statement:

'An intra-Kashmir peacebuilding platform, building bridges between community perspectives and policymakers.'

Aims of KIG

- To influence policymaking
- To engage in advocacy
- To promote peace and reconciliation
- To empower local narratives through advocacy, research, and capacity building
- To network and provide a platform for peace
- To provide Kashmiris more agency
- To bridge local level civil society with policymakers



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About Conciliation Resources

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Our programme work focuses on seven conflict-affected regions around the world, including Kashmir, and we take a further in-depth look at specific conflict contexts and peacebuilding themes through our Accord publication series: www.c-r.org/accord

Conciliation Resources promotes participation of Kashmiris in the India-Pakistan peace process. We work in all of the regions of the disputed area including Pakistan-administered Jammu and Kashmir and Gilgit-Baltistan, and in India-administered Jammu and Kashmir. We also work with Kashmiri diaspora. Together, we can find peaceful alternatives to violence.

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