

**Security Council**

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Letter dated 24 November 2015 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the Security Council

Upon instructions from my Government, I have the honour to enclose copies of letters, written by the Adviser to the Prime Minister of Pakistan on National Security and Foreign Affairs (annex I) and the Foreign Secretary (annex II) to their Indian counterparts on 8 September 2015, regarding the following:

(a) The letter from the Adviser proposes a mechanism for preserving the ceasefire arrangement of 2003 and ending ceasefire violations on the Line of Control and the Working Boundary; release of fishermen; and religious tourism;

(b) The letter from the Foreign Secretary provides details of lack of cooperation by the Indian authorities in the Government of Pakistan's efforts to effectively prosecute the accused in the Mumbai trial and lack of prosecution by the Indian authorities of the accused in the Samjhauta Express attack, in which 42 innocent Pakistanis lost their lives.

I should be grateful if you could kindly circulate these letters as a document of the Security Council.

(Signed) Maleeha Lodhi



Annex I to the letter dated 24 November 2015 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the Security Council

Letter dated 8 September 2015 from the Minister for Foreign Affairs and Adviser to the Prime Minister on National Security and Foreign Affairs of Pakistan addressed to the Minister for External Affairs of India

Even though the planned meeting between the two National Security Advisers could not take place, you would agree that sustainable peace and progress of South Asia and its people are inextricably linked to friendly relations between Pakistan and India. It is in this perspective that Prime Minister Nawaz Sharif has stressed that the main dynamic in South Asia should be cooperation and not confrontation.

With a view to promoting cooperation and avoiding confrontation, I would like to draw your attention to the following issues:

1. **Ceasefire violations on the Line of Control and the Working Boundary.** Incidents of ceasefire violations have increased recently with accusations and counter-accusations from both sides. Civilian casualties on our side are a tragic consequence of these ceasefire violations. Both sides must investigate these ceasefire violations, which would be done under the ambit of UNMOGIP. We appreciate that the Directors General of Military Operations are maintaining contact, and the planned meeting of the Directors General of the Pakistan Rangers and the Indian Border Security Force is on course. The heavy fire by Indian forces intentionally targeting innocent civilians in three villages in the Sialkot sector on 28 August is most disturbing. To further cement our understanding on preserving the ceasefire arrangement of 2003, I am enclosing a proposed mechanism of action for your consideration please (attachment 1).
2. **Release of fishermen.** Pakistan released 163 Indian fishermen on 3 August 2015 as a goodwill humanitarian gesture. We hope that India will also release all Pakistani fishermen. We need to find a mechanism to ensure that these fishermen do not venture into the territory of the other country. The matter needs to be looked at from a humanitarian perspective. In this context, I am sending a proposed mechanism for handling the issue of fishermen and ensuring their early release (attachment 2).
3. **Religious tourism.** We attach considerable importance to religious tourism as it strengthens historic and traditional bonds between the people of the two countries. Religious tourism is also a positive source of people to people contacts. Prospects of religious tourism can be improved by easing the visa process and improving facilities of boarding/lodging for the *zaireen* from the two countries. Pakistan proposes the attached mechanism to improve religious tourism (attachment 3).

Pakistan wants swift and just disposal of the Mumbai trial to uphold the cause of justice and bring relief to the bereaved families. India should not doubt Pakistan's commitment towards this end. We cannot let the shadow of the Mumbai incident fall eternally on India-Pakistan relations. We also expect India to take effective steps to bring to justice all those involved in the terrorist attack on the Samjhauta Express. Our Foreign Secretary is writing separately to his Indian counterpart on this issue.

I wish to draw your attention to our shared commitment to hold dialogue for resolving all outstanding issues. Pakistan is firmly of the view that the resolution of the Kashmir dispute holds the key to enduring peace and prosperity in South Asia. On Jammu and Kashmir, as well as on some other issues, namely, Siachin, Sir Creek, water and trade, you would recall that some progress was achieved in the Composite Dialogue. We need to continue working on the limited progress of the past. Improving relations and building an atmosphere conducive for cooperation needs dialogue. Absence of dialogue not only creates misunderstandings but also provides space to detractors of Pakistan-India relations. It also increases the possibility of miscalculations, which may lead to undesirable consequences.

(Signed) Sartaj **Aziz**

Attachment 1

Mechanism for preventing ceasefire violations on the Line of Control and the Working Boundary

Issues

- Upholding the ceasefire understanding of 2003, in letter and spirit.
- Ceasefire violations have increased in this year and peaked from May to August 2015.

Existing mechanism

- Weekly phone call of Directors General of Military Operations.
- Local Commanders Flag Meeting.
- Pakistan Rangers — Indian Border Security Force meeting biannually (meeting planned in September).

Proposed mechanism for preventing ceasefire violations

- A specific date and time may be decided for imposition of ceasefire.
- The procedure of immediate Hotline Messaging (HLM) be reinvigorated. (Since the current series of ceasefire violations started in June 2015, 19 HLMs were sent, however, no response was given from the India side.)
- Brigade Commanders of areas where ceasefire violations are taking place may hold Flag Meetings at pre-selected places to address irritants/issues. It is an effective tool to defuse the situation and must be followed in letter and spirit.
- An immediate moratorium be placed on use/firing of all heavy calibre weapons (mortars and above).
- All mortars, 82-mm calibre and above heavy weapons be retracted to make their ranges ineffective. UNMOGIP to ensure enforcement on both sides.
- 82-mm calibre and above heavy weapons to be used only on the orders of General Officers Commanding on either side despite mortars being a battalion weapon.
- Joint procedure be devised on use of helicopters/remotely piloted vehicles (RPVs). Both sides will ensure prior intimation for use of helicopters to avoid an undesired action. RPV intrusions are on an increase showing offensive intentions.
- Deliberate targeting of civilian population must be avoided under all circumstances.
- Undue and unsubstantiated media hype shaping peculiar public sentiment results in negative political tone. It leads to tension and mistrust. Therefore, restraint on creating unwanted media hype is suggested to create a more positive environment for restoring trust.

Attachment 2

Mechanism for early release of fishermen and prisoners

I. Fishermen

Issues

- Late production of apprehended fisherman before the magistrate.
- Delayed consular access.
- Exchange of lists of detained fishermen only biannually (1 January and 1 July).
- Imprisonment beyond sentence (fishermen who complete their terms are sometimes not released due to the notion of reciprocity. In Pakistan, the Federal Review Board, headed by a Justice of the Supreme Court, has ordered not to hold the fishermen beyond their sentenced term).
- Registration of cases/first information reports against Pakistani fishermen for other crimes in different Indian States.
- Repatriating boats/fishing trawlers.

Implementation of Ufa decision

Release of fishermen, along with their boats, within 15 days.

Existing position

- Indian fishermen in Pakistani custody: Before Ufa, total number 355. After release of 164 fishermen on 3 August, there are 191 Indian fishermen in Pakistani custody.
- Pakistani fishermen in Indian custody: Before Ufa, total number 46. After release of 9 fishermen on 8 August, there are 37 Pakistani fishermen in Indian custody. Consular access is provided to 18 whose nationality is being verified. 17 Pakistani fishermen not yet provided consular access.

Proposal

- Focal points: Ministry of Interior/Home in conjunction with Ministry of Foreign Affairs/Ministry of External Affairs.
- It should be made mandatory for the fishermen to carry verifiable identity documents. Nature of the document to be mutually agreed.
- Latest navigation gadgets may be made mandatory for use by all fishing boats. Nature of equipment to be mutually agreed.
- Devise ways and means to educate and train the fishermen.
- Fishing companies making repeated violations to be fined and penalized.
- Both sides to notify each other within 15 days of apprehension of fishermen.
- Both sides to grant consular access within 15 days of imprisonment.
- Both sides to exchange lists of fishermen on a quarterly basis.

II. Prisoners

Issues

- Late production of apprehended individuals before the magistrate.
- Delayed consular access.
- Exchange of lists of prisoners only biannually (1 January and 1 July).
- Delay in repatriating prisoners who have completed their term.

Proposal

- Focal points: Ministry of Interior/Home in conjunction with the Ministry of External Affairs.
- Both sides to notify each other within 15 days of apprehension of the individual.
- Both sides to grant consular access within 15 days of notification.
- Both sides to exchange lists of prisoners on a quarterly basis.
- Both sides to notify each other one month in advance before completion of prison term, with a view to ensuring early repatriation of the prisoner.

Attachment 3

Mechanism for religious tourism

Issues

- Late issuance of visas (more troublesome for those belonging to far-flung areas of southern Punjab, Sindh interior and Balochistan).
- As per the visa Agreement between the two countries signed on 8 September 2012, pilgrim visas are required to be issued at least 10 days before commencement of the travel. However, this is not being done.
- Long delays at Attari Railway Station (up to 6-8 hours after completion of the immigration formalities).
- Except New Delhi, no accommodation in a hotel is being provided to the *zaireen*. The *zaireen* are accommodated in makeshift camps.
- In Sarhind and Kalyar Sharif, the *zaireen* are not allowed to visit the cities or have free movement between the shrines and places of accommodation. If the visas are issued for a city, then *zaireen* may have the liberty to visit the city.
- Pakistan side proposes that shrine of Ahmed Raza Khan Bareilvi at Bareilly be added to the list of shrines annexed to the 1974 protocol.
- Pakistan also proposes the addition of 50 per cent *zaireen* for the Urs of Ajmir Sharif, Hazrat Nizamuddin Aulia and Hazrat Amir Khusro.

Proposal

A mechanism be established with the following elements:

- A fixed timeframe for issuance of religious tourism visas (40 days from receipt of application).
- At expiry of above time limit, the High Commissioner to be empowered to issue visas on reciprocity basis.
- Rejection of visa to be informed well in time (at least 10 days before travel).
- Proper hotel accommodation to be provided to all *zaireen* at all places.
- Both sides can start work on building guesthouses close to shrines/temples to accommodate the *zaireen* from each side.
- The mechanism and facilities promised to the *zaireen* may regularly be reviewed at the conclusion of each visit by the two countries and issues addressed before the next visit.

**Annex II to the letter dated 24 November 2015 from the
Permanent Representative of Pakistan to the United Nations
addressed to the President of the Security Council**

**Letter dated 8 September 2015 from the Foreign Secretary of
Pakistan to the Foreign Secretary of India**

The meeting between the Prime Ministers of Pakistan and India has provided us a direction to move forward on various issues of importance. The leadership recognizes the need for maintaining peace, resuming dialogue on all issues of mutual interest and concern, and promoting development.

Pakistan regrets the cancellation of the National Security Adviser-level dialogue which was to be held on 23 and 24 August 2015, in New Delhi, due to the preconditions set by India. We believe that a dialogue without conditionalities could have been productive and useful and is the only way forward for the resolution of all outstanding issues and for achieving peace and security.

You would agree, Mr. Foreign Secretary, that in view of the stalled dialogue, the communication gap has given space to misunderstandings on various issues, thus further widening the gulf. Recently issued statements at the high political and official levels in India, and constant negative media reports had further vitiated the atmosphere, warranting concerted effort on both sides to contain the situation.

The meeting between the Prime Ministers has provided us a platform to inter alia discuss issues connected to terrorism. In this regard, the press statement issued at the conclusion of the meeting underscores the need for sharing of evidence and information to expedite the trial of the Mumbai accused in Pakistan.

Mumbai trial

You would appreciate that the Mumbai trial is entering its final stages and we urgently need additional evidence that is in possession of India. In particular, all articles collected by the Indian investigating officers during investigation of this matter and recovered under different recovery memos may be handed over to Pakistan to assist the prosecution. The specific articles which must be provided in this regard are:

- (i) Engine Yamaha No. 1020015;
- (ii) Weapons recovered from places of incident used by the terrorists;
- (iii) Jackets, pants, and blankets;
- (iv) Bottle of soft drink "Dew";
- (v) Diary containing matter in Urdu;
- (vi) GPS (positions on the system showing areas in Karachi and Thatta);
- (vii) Satellite telephone (that remain connected in Karachi);
- (viii) Cell phones (used by terrorists during operation).

In addition to the above-mentioned material evidence, it may be important to establish an appropriate channel of communication between the law enforcement

agencies of the two countries to enable effective exchange of information and evidence in respect of this case. Moreover, all individuals who had provided material evidence in connection with the case will need to be made available to make relevant statements under oath and to be cross-examined in accordance with applicable law.

May I recall different stages through which this case has progressed to allay some of the misperceptions, which lead to inaccurate media reports and politicization of a judicial process.

The Mumbai trial, which is currently under judicial process with the Anti-Terrorism Court, Islamabad, began in 2009, and proceeded with recording of statements of the prosecution witnesses, while exchanges on seeking information and evidence took place between the two countries. In the meantime, the main accused, Zaki ur Rehman Lakhvi, who was in detention since 2009, was granted bail by the Court on 18 December 2014. The Government of Pakistan contested the decision. The timing of the bail coincided with the most barbaric terrorist attack on the Army Public School, Peshawar, in which over 140 innocent people of the school, including 132 children, were martyred. While the whole of Pakistan was in mourning, the news of Lakhvi's bail was used by the Indian media and political figures to raise questions about Pakistan's commitment to fight terrorism.

Given the sensitivities attached to the Mumbai case, the Government of Pakistan has assigned a dedicated high-level team of legal experts to closely monitor the developments in the case. These legal experts have undertaken a review of the case. In their assessment, so far the prosecution evidence remains weak and incomplete due to failure on the part of the Indian authorities to provide the incriminating evidence that they claimed was in their possession in respect of this matter. For this reason, the law enforcement authorities in both the countries were required to collaborate effectively to ensure that the prosecution has all the relevant material in its possession to effectively prosecute the case in Pakistan. In this communication, I wish to share with you some of the challenges the prosecution is confronted with.

It is on record that the first dossier with preliminary information was provided by India on 5 January 2009, i.e. 40 days after the Mumbai incident. Soon after examining the contents, the Government of Pakistan set up a Joint Investigation Team. The terms of reference of the Team were handed to your High Commission in Islamabad and investigations were initiated on 16 January 2009. On 12 February 2009, the Pakistani authorities registered a criminal case against nine accused, including Ajmal Kasab. Pakistan also formally requested further information from India on 12 February 2009. In order to undertake an effective prosecution, 32 questions were handed to the Indian side for response. It was then underscored by the Pakistani authorities that "successful prosecution of the accused will require combined efforts of Pakistan and India". The incident took place in India and all the material evidence was, therefore, in the possession of the Indian authorities.

The Government of Pakistan, in the meantime, approached the INTERPOL Secretary General, Mr. Ronald Noble, for assistance in getting additional investigative leads from the four countries whom Pakistan had requested. The replies to the 32 questions were received, albeit incomplete, on 13 March 2009. Some of the important queries still remained unanswered.

Between 5 January 2009 and 25 April 2010 numerous dossiers were exchanged. Information received in the Hindi language could not be used in the absence of attested translation.

Pakistan's response to the Indian dossiers amply demonstrated our sincerity, earnestness and commitment to combat terrorism and proceed with investigations and prosecution of those allegedly involved in the Mumbai attacks.

No nation should have any doubt about Pakistan's commitment to eliminating terrorism in all its forms and manifestations, for Pakistan itself, being the biggest victim of this menace, has lost more than 60,000 of its citizens' lives and suffered economic losses of over US\$ 100 billion in the fight against terrorism.

It took India several months to provide the English translation of Ajmal Kasab's statement, which was not made available until 9 June 2009. The statement of the Indian Magistrate, who alleged that the terrorists were maintaining communication with their handlers in Pakistan, and pink foam (material evidence) were also not provided to Pakistan. In addition, Pakistan's request for consular access to Zabiullah Ansari, an alleged operative of the Mumbai attackers, was also not acceded to.

In response to Pakistan's requirement of a certified copy of the English translation of the seizure memo of "Garmin radio and GPS", India maintained that the original seizure memo dated 29 November 2008 had to be changed as the packet, which contained the handset, was re-opened on 30 November 2008 for investigation. In the process, it transpired that earlier the handset number was incorrectly noted in the memo.

From October 2010 onwards, Pakistan made repeated requests to Indian authorities to allow the visit of a Judicial Commission to India for recording statements of four prosecution witnesses, namely Mr. Ramesh Padmnabh Mahale (Chief Investigating Officer), Crime Branch, Criminal Investigation Department, Mumbai; Mr. Rama Vijay Sawand Wagule, Additional Chief Metropolitan Magistrate, Mumbai 3rd Court, who had recorded Ajmal Kasab's statement; and two doctors, who had conducted the post-mortem of the victims of the Mumbai attacks of 26 November 2008. This request (visit of a Judicial Commission to India) was not granted until the end of September 2013, i.e. four years after the incident, three years after the request was made and a year after Ajmal Kasab was hanged. It is important to note that almost six and a half years after the Mumbai incident the prosecution does not have the requisite material evidence from the Indian authorities. It is clear that the prosecution could not have proceeded effectively without material evidence. It is neither reasonable nor acceptable to blame Pakistan for the slow pace or lack of progress. It was Indian authorities' responsibility to provide all the material evidence, which has not been done.

It is pertinent to mention that on 3 February 2011 the Ministry of Foreign Affairs of Pakistan in its note referred to its earlier note of 5 December 2010, and emphasized that further delay in facilitating the Commission's visit and provision of the requisite evidence could weaken the prosecution's case against the accused, in particular, against the principal accused Zaki ur Rehman Lakhvi, resulting in bail, lesser sentence, or acquittal.

The record shows that Pakistan has used its best efforts to apprehend and prosecute individuals allegedly involved in the Mumbai attacks. Seven individuals

identified have been booked and are undergoing trial. The statements of 57 prosecution witnesses have already been recorded.

Our courts are independent and will not accept interference from the Government. No individual will be convicted or denied liberty in the absence of cogent and compelling evidence.

In view of Pakistan's commitment and in the spirit of cooperation, I wish to underscore that all material and evidence relating to this matter in the possession of the Indian authorities be provided to Pakistan on urgent basis. Without that material, and evidence, the prosecution cannot be effective.

Samjhauta Express attack

The second issue of equal importance is the Samjhauta Express terrorist attack, in which 42 innocent Pakistanis lost their lives. This terrorist attack took place almost two years before the Mumbai attacks. The mastermind of the terrorist attack, Swami Aseemanand, a hardcore member of the Rashtriya Swayamsevak Sangh (RSS), publicly confessed to carrying out the terrorist attack with the active involvement of some Indian Army officers, including a senior officer, Colonel Prasad Shrikant Purohit, founder of the Hindu extremist organization, Abhinav Bharat, which is known for carrying out several terrorist acts. Swami also named RSS Chief Mohan Bhagwat. In December 2010, the National Investigation Agency of India claimed that it had solid evidence that the RSS affiliate Swami Aseemanand was the mastermind. In January 2011, Swami confessed that Saffron terror outfits were behind the Samjhauta terrorist attack.

The confession of Swami Aseemanand was prompted by his meeting with a Muslim boy in jail in connection with a terrorist attack in Malegaon in 2010. Swami wrote two letters to his brother to be forwarded to the top leaders in India and Pakistan confessing his involvement along with other right-wing Hindu extremist elements in the terrorist attacks on the Samjhauta Express, the Makkah Masjid at Hyderabad, the Dargah Sharif Ajmer and at Malegaon. He recorded this statement with the Indian federal police in January 2011.

The refusal of the National Investigation Agency of India to challenge the bail granted to Swami Aseemanand is a matter of serious concern for Pakistan. It is also disturbing to note that the Indian Government has decided not to challenge the bail granted to the two accused in the Makkah Masjid blast (May 2007) on grounds of parity, citing the earlier orders whereby bail was granted to Bharat Mohan Lal alias Bharat Bhai and Tejaram Parmar, which had also not been challenged by the prosecution. Terrorism has no religion.

It is regretted that in the case of the Samjhauta terrorist attack, despite a lapse of more than eight years, and the presence of solid evidence and confessions, details of investigations have not been shared with Pakistan, in spite of assurances by India at the highest political level. In addition, we are not aware of the status of the trial of these terrorists. The relatives of the victims have been left with an acute sense of injustice that those who killed their loved ones are not being held accountable. The people of Pakistan are demanding an explanation from their Government as to what concrete steps have been taken in this regard and have demanded that this matter be raised with the Government of India. We would urge the Indian authorities and law enforcement agencies to bring the perpetrators of this horrific crime to justice.

Through this detailed communication, I seek your indulgence to address Pakistan's concerns in respect of both the above-mentioned terrorist attacks. I am sure you will agree on the need to effectively collaborate and share material and evidence required to undertake prosecution of alleged terrorists. Channels of communication must be kept open to enable this to be done. It is equally important to create an environment which facilitates dialogue and focuses on creating a better and more secure future of the entire region.

(Signed) Aizaz Ahmad **Chaudhry**
