

Prospects of Conflict Resolution in the midst of Ceasefire Violations on the Line of Control

Maheen Ahmad

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Overview

India and Pakistan's recent re-commitment to ceasefire along the Line of Control (LoC) is a timely and positive development. However, it is still yet to be seen whether a ceasefire understanding can provide the conducive environment that is needed to attempt conflict resolution between India and Pakistan. This policy brief assesses that in the absence of properly established legal and treaty mechanisms to manage the LoC, there is risk of ceasefire being violated once again. Therefore, ceasefire agreement should be formalized in order to institutionalize the capacity of the ceasefire and minimize the ad-hoc nature of the current arrangements. As such, Pakistan and India will be taking steps towards managing and preventing their conflicts, if not altogether resolving them.

Introduction

On 22 February 2021, with the hopes of ushering 'mutually beneficial and sustainable peace', the Director Generals of Military Operations of India and Pakistan, reaffirmed their commitment to the 2003 ceasefire agreement. Their joint statement called for 'strict observance of all agreements, understandings and cease firing along the LoC and all other sectors.'¹ This is a timely reaffirmation, as the pace of firing and shelling across the LoC was picking up again, with nearly 3,000 ceasefire violations (CFVs) reported in 2020.² Left unaddressed, CFVs have the potential of triggering and escalating crises, with grave implications for peace and security.

The ceasefire agreement itself is not a formal document. It is a verbal agreement that transpired as result of a ceasefire offer made by Prime Minister of Pakistan in 2003. It was acknowledged and reciprocated, in practice, by India. Pakistan's unilateral ceasefire declaration is considered to have ended a stalemate between the two countries in the aftermath of an attack on the Indian parliament because of which India deployed its troops towards the border, alleging the attack involved non-state actors from Pakistan. The verbal agreement eventually made way for the scheduled SAARC Summit in Islamabad with Vajpayee's participation.³

Ceasefire, however, predates 2003. The 1948 and 1965 India-Pakistan wars that were centered on Kashmir both ended in a ceasefire through active UNSC intercession.⁴ Both countries agreed to a ceasefire line under the 1948 UNCIP Resolution⁵ and in terms of formal agreements which govern the LoC, the 1949 Karachi Agreement is the most relevant. It was further decided after the resolution of the Security Council on Sept 20, 1965 was passed, that if firing took

¹ Inter Services Public Relations Pakistan, *The Director Generals of Military Operations of India and Pakistan held discussions over the established mechanism of hotline contact*, (Rawalpindi: Inter Services Public Relations Pakistan, 2021), <https://ispr.gov.pk/press-release-detail.php?id=6068>.

² Ministry of Foreign Affairs, *Transcript of the Press Briefing by Spokesperson on Friday, 18 December, 2020*, (Islamabad: Government of Pakistan, 2020), <http://mofa.gov.pk/transcript-of-the-press-briefing-by-spokesperson-on-friday-18-december-2020/>.

³ Ambassador (R) Riaz M. Khan, Email interview, July 3, 2021.

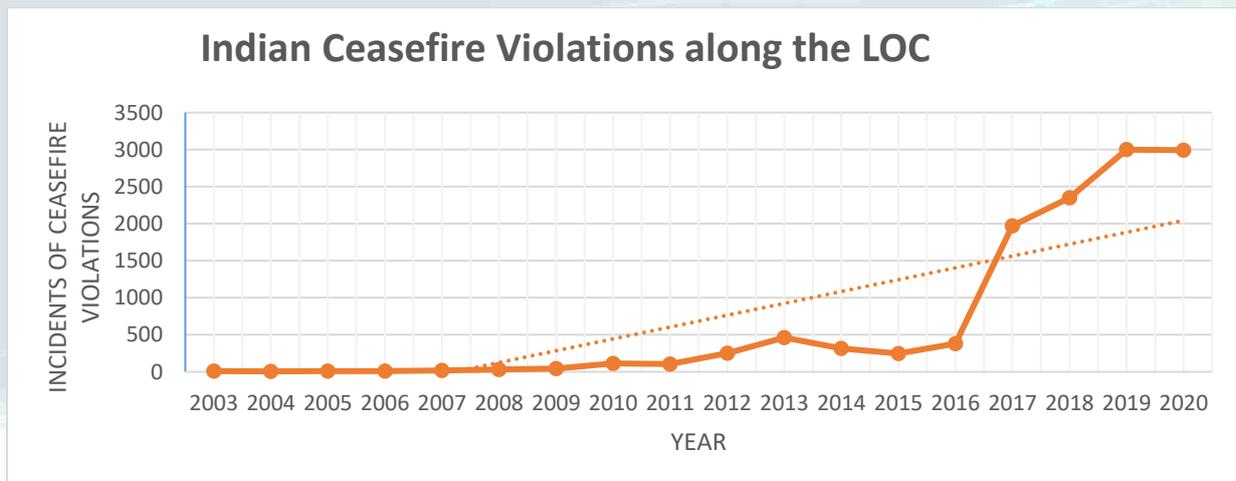
⁴ Riaz M. Khan, *Conflict Resolution and Crisis Management: Challenges in Pakistan-India Relations*, (Washington DC: The Stimson Center, 2017)

⁵ United Nations Security Council, *Agreement between Military Representatives of India and Pakistan Regarding the Establishment of a Ceasefire Line in the State of Jammu and Kashmir (Karachi Agreement)*, (United Nations, 1949).

place on the border, it would be investigated by a joint team within 24 hours of occurrence.⁶ A similar provision is also included in the 1960 Ground Rules between India and Pakistan, which is still pending for final ratification, and so has no legal basis. Despite the lack of ratification, both India and Pakistan tend to abide by the 1960 Ground Rules in certain areas, but only as an ad-hoc arrangement.⁷ Under UNSC Resolution 307, ceasefire was formalized once more in 1971 and although the episode was unrelated to Kashmir, the cessation of hostilities on the western front established the LoC in Kashmir. The Simla Agreement makes reference of respecting the line of control that resulted from the ceasefire of 1971, dictating both sides refrain from the threat or the use of force in violation of the Line. As a complement to the suspension of hostilities in Jammu and Kashmir, India argues that the 1972 Simla Agreement has rendered the Karachi Agreement irrelevant, something that Pakistan disagrees with.⁸

Analysis

After India and Pakistan reached a ceasefire understanding in 2003, the period that followed was one of relative peace and sustained negotiations. It was also the time period in which substantive bilateral efforts were taken to address the Kashmir dispute.⁹ This signifies that ceasefire holds during a result-oriented bilateral dialogue process. However, soon thereafter, the ceasefire understanding fell prey to political factors and changes in domestic politics.



[Figure 1]: Indian Ceasefire Violations along the LOC; [Data Source]: Reports and accounts that quote aggregate numbers of CFVs taken from daily newspapers, statements of ISPR and statements of MOFA.

As can be seen in Figure 1, there have been repeated violations across the LoC despite the agreement, and the number of violations skyrocketed in recent years, especially 2017 onwards. For a closer look, the CFVs along the LoC have been demonstrated in Figure 1A, Figure 1B and Figure 1C. The number of CFVs remained mild in the years leading up to 2008 (*Figure*

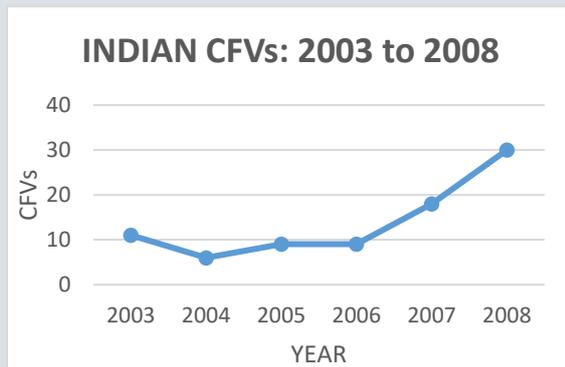
⁶ A.G. Noorani, "Ceasefire Pact," DAWN.COM, last modified November 12, 2016, <https://www.dawn.com/news/1295766>.

⁷ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

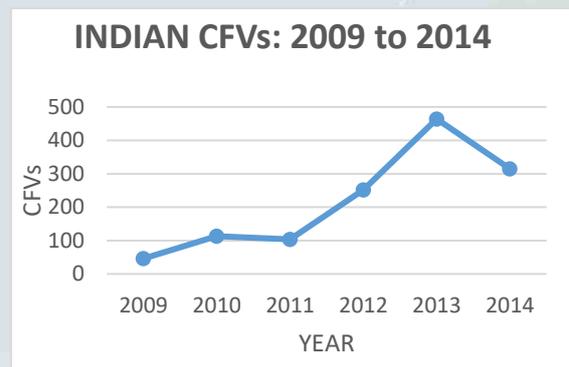
⁸ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

⁹ Riaz M. Khan, *Conflict Resolution and Crisis Management: Challenges in Pakistan-India Relations*, (Washington DC: The Stimson Center, 2017)

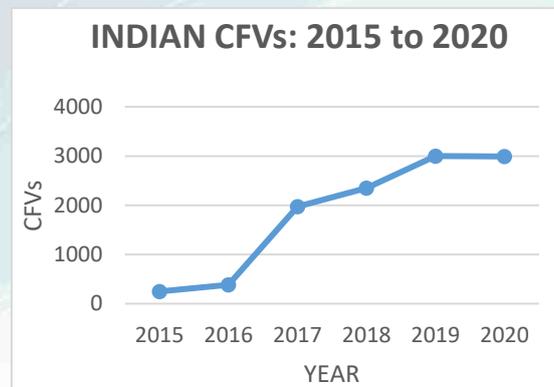
1A) but they peaked in 2008. This suggests that the ceasefire agreement held during Manmohan Singh government although it came under stress when Mumbai attacks took place. Soon thereafter, it can be seen that the number of incidents began increasing and really hit a high in 2013. However, 2013 onwards, tensions along the LoC began deescalating, as witnessed with a slow-down in LoC violations. Under Modi, initially the understanding held tenuously when India accused Pakistani elements for Uri and Pathan Kot incidents.¹⁰ It was not until 2017 that the CFVs dramatically began escalating once more (Figure 1C). Following Pulwama and then Indian moves to absorb IOK as Union territory, the ceasefire violations intensified.



[Figure 1A]: Indian CFVs from 2003-8



[Figure 1B]: Indian CFVs from 2009-14



[Figure 1C]: Indian CFVs from 2015-20

It is relevant to look into the factors that have contributed to steep escalation of CFVs before it was put on hold by the recommitment between the two DG MOs in 2021. Firstly, the sharpest escalation of ceasefire violations had coincided with Modi's time in office. This should come as little surprise, as the Bharatiya Janata Party (BJP) is notorious for its aggressive anti-Pakistan and anti-Muslim politics, where it criticizes any potential compromise with Pakistan. The BJP's second term in power was marked by many heavy-handed actions on Kashmir. This testifies that political will and leadership has a material impact on the timing and intensity of CFVs. After all, the conditions and consequences of the 2003 agreement also speak of the

¹⁰ Ambassador (R) Riaz M. Khan, Email interview, July 3, 2021.

importance of political factors, as ceasefire was withheld up to a point, but eventually fell victim to changes in both parties' domestic politics.

Secondly, experts point to absence of any monitoring mechanism as to who initiates fire first. UNMOGIP can be such neutral entity, who under its mandate, are supposed to investigate and complaints of CFVs and report them to the UN Headquarters.¹¹ However, India does not facilitate the work of UNMOGIP since India considers its mandate expired after the Simla Agreement, something Pakistan disagrees with. Consequently, the blame game goes on. The official stance of Pakistan is that it is due to India's unprovoked firing at civilian populations that the situation escalates. India offers a single explanation that the Pakistani military provides covering fire to terrorists that allegedly infiltrate the Indian occupied side of the region, however, such an explanation has been debunked by many experts because there does not appear to be a systematic correlation between fire and cross-border infiltration. State repression in IIOJK and local operational factors, such as unauthorized crossing of civilians from either side or rampant defense construction have been quoted too.¹²

YEARS	2017	2018	2019	2020
LOC CFVs	1,970	2,350	3,000	2,992

[Figure 2]: Number of CFVs in the years of 2017 – 2020.

As displayed in *Figure 2*, in the years running from 2017 to 2020, LOC violations were at their highest. Under this hostile environment, the 2021 reaffirmation of both nations to the ceasefire understanding was a welcome and positive development. The question is whether this can provide the conducive environment that is needed to attempt conflict resolution?

It would be premature to consider the ceasefire as reflective of a change of mindset in Modi government. It would also be naïve to think that the ceasefire itself would lead to serious engagement and rapprochement between the two nations. The reason it will not is because the BJP government has not fundamentally changed any bit of its overarching objectives of creating a Hindu Rashtra through a Hindutva driven philosophy. Further, it is continuing with its aggressive attempts to change demography in the occupied Kashmir. The Indian leadership has also not publicly made any statement regarding the peace process or rapprochement, indicating that it has not warmed up to the idea of sincere engagement with Pakistan as yet. Even if India was ready, Pakistan may still remain skeptical unless India reverses its actions of 5 August 2019, which were an assault on Kashmir identity.

The 2019 BJP manifesto¹³ highlights 'zero tolerance approach to terrorism' as a fundamental part of its 'Nation first' policy. However, in sharp contrast to this stated policy, the BJP mantra during elections was heavily focused on 'teaching Pakistan a lesson'. The situation on ground is no different. India's defense budget has steadily increased over the past few years. These variables suggest that India might not be willing to compromise on its aggressive posture towards Pakistan. The recently agreed upon ceasefire along the LoC should not lull

¹¹ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

¹² Happymon Jacob, *Ceasefire Violations in Jammu and Kashmir: A Line on Fire*, (United States Institute of Peace, 2017).

¹³ Bhartiya Janta Party, *Sankalp Patra Lok Sabha 2019*, (Bhartiya Janta Party, 2019).

policymakers into thinking that there is going to be fundamental change in India's approach, nor would it be amenable to creating space for conflict resolution.

In fact, India is currently facing an economic crunch¹⁴, with sluggish growth, rising inflation, unemployment on the rise, and a ballooning fiscal deficit. Given these economic woes, it is plausible that Prime Minister Modi would be inclined to divert international attention and distract his domestic audience from India's economic troubles. India has, on several occasions, resorted to false-flag operations to deflect international attention and blame Pakistan for alleged infiltration and support to Kashmiri militants, thus justifying heightened fires by India across the LoC. Another tactic used by is engaging surgical strikes against Pakistan, such as the one carried out in February 2019 in Balakot area of Pakistan on the pretext that Pakistan was harboring anti India militants. Pakistan handled the crisis maturely by first knocking down Indian aircraft and then releasing the captured pilot. But it is intriguing to note that the Balakot operation coincided with India's general elections, and so it is not entirely unreasonable to suggest that there might have been a political strategy to achieve mileage from unilateral military action against Pakistan. This is a pattern that might be repeated by future Indian political/military leadership when it comes to deflecting international/domestic attention. Therefore, Pakistan should be wary.

There is also reason to believe that the ceasefire will again be violated. Many a time, ceasefire affirmations have been made and to some extent, formal talks have initiated. For example, in May 2018, following a number of CFVs, Pakistan and India agreed to fully implement the 2003 ceasefire understanding in letter and spirit, yet still verbal affirmations were not enough to stop CFVs from continuing.¹⁵ Reconciliation efforts have continuously broken down, often following a terrorist incident within India. Even when Modi became the PM, there was a resumption of peace talks and Modi even paid a surprise visit to Pakistan. However, the tendency in India has been to use every terrorist attack to blame Pakistan and then heighten firing at the LoC. For instance, after the Uri incident of September 2016, we witnessed an exponential rise in LoC violations and even claims of a surgical strike. Be it the Mumbai attacks, Pathankot, or Uri, India has used terrorism as a pretense for escalating tensions at the LoC. Another repeat of this pattern is in the recent attack on an IAF base in Jammu.¹⁶ The media and the LEAs were quick to blame LeT for the attack. In the coming weeks, there could be an expectation of increased escalation along the LoC.

Conclusion and Recommendations

The ceasefire agreement, as a verbal agreement, is itself legally binding. It represents a promise between both countries, and under international law, a promise constitutes an unequivocal statement formulated (be in writing or orally) by one state to the other with the intention of making a legally binding commitment. As the promise was made by the Prime Minister of Pakistan and accepted by India's Foreign Ministry, it lends supports to the legal effect as these offices are generally believed under international law to have the capacity to bind their states.¹⁷

¹⁴ Nikhil Inamdar and Aparna Alluri, "India economy: Seven years of Modi in seven charts," *BBC News*, June 22, 2021.

¹⁵ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

¹⁶ News Desk, "Jammu attack: 'LeT hand likely, drones may have come from across border'," *Times of India*, June 29, 2021

¹⁷ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

Failure to comply means the promise has been breached, resulting in state responsibility and invoking the doctrine of estoppel (in which Pakistan would have to prove that it had a legitimate expectation that India would adhere to the 2003 Ceasefire Agreement and that it was prejudiced as a result of its non-compliance with this representation). As a legally binding obligation, its violation would give rise to state responsibility, which as per the ILC Articles on State Responsibility, is engaged when there is wrongful conduct attributable to the State.

As a legally binding promise, both parties are bound to abide by it. They, however, do not. In the absence of properly established legal and treaty mechanisms to manage the LoC, there is increased likelihood that the agreement will be violated. This promise is often breached, because India and Pakistan do not fear legal implications of violating the LoC as neither of them have attempted to hold the other to account.¹⁸ Steps taken to formalize the agreement, which commits both India and Pakistan to ceasefire through a comprehensive written document, may remedy that situation. Through formalization, a comprehensive and written document can be drafted that will institutionalize the ceasefire. A clear and detailed signed agreement is required that dictates rules, guidelines and principles to better manage the border, and define the eligibility of a violation. This binds both India and Pakistan to ceasefire and in legal experts' views, countries would definitely benefit from formalizing the 2003 ceasefire agreement as it reduces the ad hoc nature of the current arrangement.¹⁹ Simultaneously, joint border SOPs can be drafted, intimating the return of inadvertent crossers, movements at night, and managing people living close to the LoC.²⁰ There are many institutional mechanisms already in place, and the vast number of security-related Confidence Building Measures that India and Pakistan have developed, like hotlines at military and diplomatic levels and commander-level flag staff meeting, have served as ready mechanisms in de-escalating tension.²¹ This reemphasizes that the more formal the agreements, the more institutionalized the CBMs, and the more SOPs in place, the less likelihood of tension.

It can be rightly said that Ceasefire Agreement will likely remain subject to violation unless underlying problems between Pakistan and India are not addressed. Although resolving outstanding conflicts is the ideal way of preventing CFVs, until that happens, Pakistan would do well to consider reducing the ad-hoc nature of current arrangements which gives way to India in violating its obligations. Pakistan should also be wary that international law considers even minor skirmishes between armed forces (be they land, air, or naval forces), to spark international armed conflict and lead to the applicability of humanitarian law. Although experts have pointed out LoC violations cannot be amounted to an armed attack as a distinction needs to be established between international armed conflict and other forms of hostile actions based on the level of intensity, this is still a legal obligation that Pakistan must show responsibility towards, especially in the case it opts to hold India into account. For prospect of conflict resolution between India and Pakistan, diplomatic solutions will remain the preferable options. However, for Pakistan, this requires a serious attempt to resolve the Kashmir dispute. The

¹⁸ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

¹⁹ Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

²⁰ Happymon Jacob, *Ceasefire Violations in Jammu and Kashmir: A Line on Fire*, (United States Institute of Peace, 2017).

²¹ Riaz M. Khan, *Conflict Resolution and Crisis Management: Challenges in Pakistan-India Relations*, (Washington DC: The Stimson Center, 2017)

larger question of Kashmir may not be resolved anytime soon, and so Pakistan and India may, at this point, like to focus on conflict management, not conflict resolution.