

How to Avoid Nuclear War Between India and Pakistan

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“Great armaments lead inevitably to war. The increase of armaments produce a consciousness of the strength of other nations and a sense of fear.” Sir Edward Grey on the Anglo-German naval arms race prior to World War 1.

Background

The after-effects of nuclear tests by India and Pakistan in May 1998 have confirmed the validity of the above statement by Sir Edward Grey, the then British Foreign Secretary. India tested its nuclear bombs on 11 May 1998. A week later LK Advani, India's home affairs Minister said :

“Testing the bomb has brought about a qualitatively new stage in Indo-Pakistan relations it signifies India's resolve to deal firmly and strongly with Pakistan's hostile designs and activities in Kashmir.”

Mumtaz Rathur, former Prime Minister of Azad Kashmir (Pakistani sector of Kashmir) offered his prognosis to the Independent “I think if war starts, it will not be an ordinary war but an atomic war, and will spoil the peace of the whole region”.

In view of the outstanding dispute over Kashmir, dangers of nuclear war between India and Pakistan are very real. The deterrent theory that is believed to have preserved the peace between the East and the West is unlikely to work there. Pakistan may well feel that in the event of a conflict if it does not resort to the ‘first strike’, it may not have a chance for the ‘second strike’ as its entire defense structure, including its nuclear capability, is liable to be destroyed by India's ‘first strike’. Consequently, the chances of miscalculation by the parties are real.

The grim reality of miscalculation by nuclear powers was brought home by the revelation made known in the late 1980s by joint US and Soviet enquiries into the Cuban missile crisis of October 1962, when 30 Soviet ships, some carrying missiles and nuclear warheads approached America's quarantine line off the coast of Cuba. Even President Kennedy did not know how close the world came to nuclear war. **Each side had seriously misjudged the likely response of the other.**

Krushchev believed that the United States would tolerate the presence in Cuba of nuclear missiles able to hit American cities. Similarly Kennedy who was under pressure from Congressional leaders and the majority of his advisers, including the service chiefs, to launch an air strike as a prelude to an invasion by 180,000 American troops, mistakenly believed that no nuclear warheads had reached the island.

Had Krushchev not retreated, Kennedy might have made the most costly miscalculation in human history : in addition to some 70 warheads for the ground-

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to-ground missiles Krushchev had provided his 43,000 man force in Cuba with at least 90 tactical nuclear weapons. It has since been calculated that 10 of them would have been sufficient to obliterate all five allied beachheads in Normandy in 1944. Robert McNamara, former US Defense Secretary who took part in Russian-American discussion in 1992, has said that if the weapons had been used against American troops a full-scale nuclear exchange between the USA and USSR would have followed. Today there are approximately 40,000 nuclear warheads in the world with a destructive power more than one million times greater than the bomb that flattened Hiroshima.

This shows the risks of miscalculations by India and Pakistan, given the outstanding dispute over Kashmir.

India and Pakistan

Flashpoints have already occurred between India and Pakistan. It was reported on 3rd December 1998, that about 60,000 Indian troops conducted India's largest military exercise this decade close to Pakistan's border following the failure of talks between the two countries on the disputed issues. It involved training in nuclear and chemical weapons warfare. Prithvi missiles, which were developed essentially for targeting at Pakistan, were deployed for the exercise with a view to arming them with nuclear warheads. Indian officials made it clear that the exercise was designed as a review of India's military doctrine in a situation of nuclear balance vis-a-vis Pakistan's nuclear capability. India seems to be acting on the deterrent theory to deter Pakistan from launching a strike by the display of its massive military/nuclear strength. However, this strategy could have the opposite effect. India and Pakistan came very close to conflict during military exercise in India known as 'Operation Brass Tacks' several years ago. Nuclear postures by India and Pakistan constitute a very dangerous game, but it is not a clever one. It could backfire with disastrous consequences. Past incidents provide illustrations of this. When Ziaul Huq was the president of Pakistan, the Indian exercise was reported to him as a massive military build-up with a view to launching an invasion. The generals asked his permission to move tanks and artillery to the border for defensive purposes. President Ziaul Huq pondered over the matter for about five minutes and then was said to have instructed the generals, "Don't bother. Instead move the missiles (which were armed with nuclear warheads) to the firing position. As soon as the invasion begins, I want a report of the attacks. I'll then issue an order for firing these missiles at Indian targets." As the missiles were being moved to their firing position, the US satellites spotted their movements. The US Government immediately contacted Islamabad and New Delhi and arranged for direct talks between them to defuse the situation.

This shows the dangers of the current military/nuclear postures of India and Pakistan. While the Indians thought that they were doing their military exercise, the Pakistanis thought that an invasion was about to begin. This is the kind of misunderstanding that could start a nuclear war. If nuclear war does break out between India and Pakistan, it is very likely to follow this pattern. On this occasion, a small border incident could have started a full-scale nuclear war.

This saga was nearly repeated in May 1998. While Pakistan was exploding its nuclear devices in Baluchistan, a foreign military plane was sighted on the coast. The plane was thought to have been engaged in a reconnaissance mission. Pakistan took it as a prelude to an attack by India on its nuclear and defense installations for the purpose of their destruction. Pakistan issued a warning to India that any such attack would be met with a devastating response. The United Nations was also informed of such a response. By 'devastating response' Pakistan meant nuclear bombardment of India. India is a nuclear-equipped power with its own delivery system. While Pakistan's Shaheen and Ghauri (test-fired in April 1998) missiles have a range of 470 and 937 miles, India's Prithvi and agni missiles are of 155 and 1500 miles range respectively. Pakistan's Ghauri-II (of 1,440 miles range) and India's Agni-II (of 1,375 miles range) ballistic missiles were test-fired in April 1999. Any nuclear attack on India by Pakistan would have provoked a nuclear response. As a result a full-scale nuclear exchange between the two countries would have followed with all its consequences. Pakistan is believed to possess as many as 30 tactical nuclear warheads, each with a capacity roughly two and a half times the bomb that destroyed Hiroshima.

Pakistan is likely to use its nuclear weapons in two sets of circumstances : First, if she is, **in actual fact**, threatened by an attack of an overwhelming military/nuclear strike; and second, if she takes the view **mistakenly** that she is being attacked by an overwhelming military/nuclear strike, even when no such threat is planned or is in existence. The kind of military exercise that India conducted close to Pakistan's border at the beginning of December 1998 could very easily create conditions in which such a **mistaken perception** by Pakistan could occur with all its repercussions. It could lead Pakistan to believe **mistakenly** that such a military/nuclear strike is imminent and resort to nuclear response. Indeed, in response to India's latest nuclear/military exercise close to Pakistan's border, the official in charge of Pakistan's atomic energy commission said on 2nd December 1998 that scientists had built the Sub-continent's most modern surface-to-surface missile and were awaiting a government signal to launch it. **This shows that India and Pakistan could plunge the world into a thermo-nuclear war at any moment. Therefore the Indian military planners would be well advised to bear this consideration in mind while pursuing their strategies.**

It demonstrates that a point has been reached in the Indo-Pak relations when a gigantic nuclear holocaust involving risks to over a billion population and those beyond has become a serious possibility. This calls for a search for the means to avoid nuclear war in the Indian Sub-continent.

The means to avoid nuclear war in the Indian Sub-continent

The above discussion makes it necessary (indeed essential) to consider ways and means to avoid a nuclear war between India and Pakistan. I anticipated this in **my book "A federal Constitution for the United Kingdom-An Alternative to Devolution"** (1987, Ashgate-Dartmouth ISBN 1 8552 8763). In Appendix 5, in answering a questionnaire issued by the Commission on Centre-State Relations in

India of January 1984, I suggested at pp.253-256 three models for a political settlement amounting to some form of reunification of the sub-continent. These are :

1. a federal/confederal solution based on the model constructed in my book, ie. that the units of the confederation viz. India, Pakistan and Bangladesh will retain their membership of the United Nations and their role in foreign affairs to the extent indicated in chapter six of the book, **the status of Kashmir being determined by the parties viz. India, Pakistan and the representatives of the people of Kashmir including those engaged in armed struggle-a procedure comparable to the peace process in Northern Ireland, in accordance with the wishes of the people of Kashmir;**
2. Collaboration among India, Pakistan and Bangladesh based on the model of the European Union, the subsidiarity principle dictating the division of functions between the Union and the Member States;
3. establishment of an Inter-governmental Council based on the model of the Anglo-Irish Inter-governmental Council to deal with the question of Kashmir and overall relations between India, Pakistan and Bangladesh.

I have spelt out my ideas on how to approach the issue of Kashmir for a solution. The dispute over Kashmir is the greatest stumbling block for the improvement of overall relations between India and Pakistan. So long as the dispute is unresolved the risk of a deadly nuclear war breaking out between India and Pakistan will remain. **The importance of finding a solution to the problem of Kashmir is underlined by the outbreak of the third undeclared war over the disputed territory during May/July 1999 (known as the Kargil Conflict) between India and Pakistan, both of which are now nuclear powers. During this period, the conflict had always the potential of developing into a full scale nuclear war affecting the peace and well-being of the whole of the Sub-continent.**

I have recommended certain procedural steps to be taken. Actual solution is for the parties themselves to work on. There is a wide range of possibilities-accession of Kashmir to Pakistan or India, independent Kashmir, special status for Kashmir within the confederation of India, Pakistan and Bangladesh (as proposed by myself) etc. It would be up to the parties themselves to decide as to which option is preferable.

As to the parties to the dispute, I recognize that there are three parties viz.

- 1. India; 2. Pakistan; 3. the Representatives of the People of Kashmir including those engaged in the armed struggle. It is extremely important to bring those engaged in the armed struggle to the conference table. Therefore, my recommendation is that there should be a Round-Table Conference on the question of Kashmir where these three parties viz.1] the Government of India, 2] the Government of Pakistan, 3] the Representatives of the People of Kashmir on both sides of the Line of Control, including those engaged in the arms struggle, would be represented. It will be the job of this Round-Table Conference to find the actual solution to the dispute over Kashmir. Originally I**

considered the machinery of an inter-governmental council for dealing, *inter alia*, with the question of Kashmir. However in view of the gravity of the situation over this dispute, it would be more appropriate to provide the procedure of a Round-Table Conference to deal exclusively with this issue. The question might arise as to what should happen if the parties represented at the proposed Round Table Conference were to fail to agree to any specific solution. The answer is that under my proposal the Round Table Conference ought to be guided by the wishes of the people of Kashmir in its deliberations on the matter. Thus I have stated "The eventual settlement of the Kashmir questions (embracing both the Indian and Pakistani sectors of Kashmir) will have to be based on the consent of the people of Kashmir" [M.A. Fazal, *A federal Constitution for the United Kingdom-An Alternative to Devolution* (1997) at p. 256].

In Appendix 4 (at pp. 207-212) of the same book my recommendation for Northern Ireland was similar.

I said :

"Almost endless rounds of talks between the British Government and the 'constitutional parties' in Northern Ireland seem to have got nowhere while violence continues, increasingly affecting the mainland of Great Britain. It is submitted that any search for a settlement ought to have two objectives in view. First, the settlement, to be a durable solution, must be arrived at by way of broad consensus on both sides of the divide, i.e. the Protestants and the Catholics. Secondly, the settlement must result in the restoration of peace and security both in Northern Ireland and on the mainland of Great Britain."

"These two objectives dictate that the constitution process ought to assume the form of a Round Table conference. To secure wide acceptance representatives from all sections of both the communities must be invited to attend. These would include not only the constitutional parties but also the churches on both sides and those engaged in violence. It ought to be appreciated that the constitutional parties alone cannot deliver a settlement which would restore peace and security and secure consensus across the board. For this reason the stigma about talking to the terrorists has to be overcome. Indeed, it is only if the terrorists are able to play a part in the constitutional process that they are likely to abandon violence. The objective of restoring peace and security cannot be achieved without their participation in the process of settlement."

This proposition was acted upon for Northern Ireland by the Mitchell Commission.

As I see it, this is the only way to end violence in Kashmir.

Each of these solutions calls for public discussion. As for instance, if the common market model on the basis of the second solution were adopted, Pakistani and Bangladeshi industries might not be able to compete with the Indian industries which are more advanced in relation to others. If the Pakistani and Bangladeshi industries cannot stand in competition with their Indian counterparts their factories will close down and the people will be thrown out of employment. Indeed this might prove to be the greatest hurdle. One solution could be that of the European

Economic Community. That is to say, the unification could proceed by stages and the customs barrier could be progressively lowered at each stage, **unanimous decisions being required over whatever the parties consider to be important issues.** During the transitional stages each of the parties could specialise on certain industries, Pakistan and Bangladesh being given priority over industries in which they enjoy certain advantages, India deciding to slow down the growth of those industries (in which priority has been assigned to Pakistan and Bangladesh). These decisions will be a matter of negotiation between the parties as is the case with the Council of Ministers of the European Union.

In order to succeed the system adopted must be one that benefits all the parties and not one where the strong wins and the weaker parties lose out. If successful, such a union of the Indian Sub-Continent could be enormously beneficial to all concerned. A billion population could create a much more powerful economy than that of the European Union. A successful economic and political union could bring prosperity not only to the peoples of the Sub-continent but would also contribute to the stability and growth of the world economy.

Implementation of the fazal Proposal for a Confederation of India, Pakistan and Bangladesh Coupled with a Just and Fair Settlement of the Dispute over Kashmir as a Means of Avoiding a Nuclear War between India and Pakistan.

The Governments of India, Pakistan and Bangladesh ought to consider the above proposal as contained in this article for necessary actions. The way forward in search of peace and security in the Indian Sub-continent on the basis of this proposal will involve the following steps :

- (1) Public discussion of this proposal in the press, media and Parliament.
- (2) Discussion of the same among the Governments of India, Pakistan and Bangladesh with a view to setting up the appropriate machinery for pursuance of the Fazal proposal, viz. (a) Indo-Pak-Bangladesh Intergovernmental Council to examine the proposal for **the confederation** (please see M.A. Fazal, 'A Federal Constitution for the United Kingdom-An Alternative to Devolution (Dartmouth/Ashgate, 1997) pp. 253-256 on this) and (b) a Round Table Conference on **Kashmir** (as stated above).
- (3) Establishment of the machinery as envisaged here to pursue the Fazal proposal.

Restoration of Environmental/Ecological Balance Calls for a Sub-continental Approach

According to the press reports made available in May 2000, the arid zones of India, and Pakistan were badly affected by acute drought. It appears that the areas experienced successive drought for the previous three years. In India, in particular, Gujarat and Rajasthan suffered heavy losses of cattle amounting to hundreds, possibly thousands. People were being driven from rural areas to the towns in search of water. In fact drought has been recurrent in the Indian Sub-continent since 1965. The climate of the Sub-continent is very much affected by the presence of the Thor desert. There is evidence to prove that the desert has been expanding itself in all directions, and now comprises Pakistan and central and western regions of India. There is every reason to believe that the desertification is proceeding east

and southwards. The presence of the arid zones of India and Pakistan is decisive in influencing the climate, causing frequent occurrences of drought in the Sub-continent. Therefore, any attempt to restore ecological cum climatic balance of the Sub-continent must take account of what happens to the arid zones of India and Pakistan, as well as to Nepal and Bangladesh.

This author tried unsuccessfully to persuade the Governments of India, Pakistan, Bangladesh and Nepal to adopt a Sub-continental approach on the utilization of water resources, flood control and restoration of an ecological balance. Due to inherent mistrust between the countries of the Indian Sub-continent, their Governments are not prepared to collaborate on the issues that affect the life and death of the population. In fact the issues are of immediate and enormous importance. Unless they are satisfactorily and speedily resolved, a holocaust of gigantic proportion could descend on these countries owing to the breakdown politically, economically and socially caused by the desertification of what is the most densely populated area in the world. This could involve tragedies of unprecedented magnitude. Therefore, it is of utmost importance that the countries concerned collaborate on these matters. The proposal for such collaborations are to be found in the articles of this author entitled 'Utilization of Water Resources and Flood Control in India, Bangladesh and Pakistan', *Asian Studies*, 1981 and 1982, published by the Center for Asian Perspectives', (1979) Vol. 5, No. 3, p. 16.

Since such collaboration was not forthcoming from the countries of the Sub-continent, it would make sense for them to pursue such a strategy once the proposed confederation of India, Pakistan and Bangladesh comes into existence. Indeed such a confederation would remove the air of mistrust and suspicion, and create the necessary and desirable political climate for collaboration in the sphere of ecological and environmental protection.

The measures recommended by this author included the afforestation and soil conservation of the Thor desert embracing the arid zones of both India and Pakistan and the same along the entire length of the Himalayas running between the eastern and western ends of the mountain range. The object was inter alia, the recreation of the conditions in which the ancient civilizations of Mohenjo-Daro and Harappa flourished about five thousand years ago. The archeological findings suggest that the climate of the areas concerned were wet at that time with a considerable amount of rainfall which required drainage facilities for these cities. Once these conditions are recreated, the re-emergence of an advanced civilization would once again become a possibility in that part of the world. However, if the Pakistani part of the Thor desert remains unchanged, no amount of afforestation within the Indian part alone could bring about the change of climate and rainfall necessary to recreate the conditions for the growth of the Mohenjo-Daro and Harappa civilizations. Conversely if the current drought persists that could spell the destruction of the existing civilization, as was the case with the ancient civilization of Mexico about 560AD. This again shows the importance of this proposal for a confederation involving India, Pakistan and Bangladesh which is essential for the afforestation of the whole of the arid zones of the Indian Sub-continent.

The Upper House of the Proposed Federal/Confederal Parliament

Introductory

The strategy behind this model for the upper house two-fold. First, the countries constituting the proposed confederation ought to retain much of their current independence at the state level. Secondly, they should all have a meaningful share of power at the centre. This objective is the guiding consideration behind the formulation of the detailed proposals for (a) composition, (b) powers and (c) for devising machinery for the resolution of deadlocks/disputes between the lower and the upper houses of the confederal/federal parliament. A federation normally comprises large and small states, the latter being apprehensive of domination by the former. As a consequence, the second chamber is so designed as to be able to protect the interest of the weaker states as against the stronger states.

Composition of the Upper House

The question of composition involves two issues, viz. (1) distribution of seats i.e. how many seats each of the territories comprising the federation ought to have in the upper house of the federal parliament. (2) Representation of the territorial units in the upper chamber. On the first point, since some states are likely to be more populous than others, a compromise is called for. Thus the US model gives two seats in the Senate to each State in the USA irrespective of population so that small states are not swamped in a parliament elected on the basis of population. In Germany, on the other hand, the compromise formula gives neither equal representation to states, nor is it strictly based on population. thus Art. 51 of the German Constitution provides,

- “(1) The Bundesrat [the upper house] consists of members of the Länder [states] governments which appoint and recall them. Other members of such governments may act as substitutes.”
- (2) Each Land has at least three votes; Land with more than two million inhabitants have four, Land with more than seven million inhabitants six votes.
- (3) Each Land may delegate as many members as it has votes. The votes of each Land may be cast only as block vote and only by members present or their substitutes.”

The effect of the Art. 51 formula might be that larger states are under-represented (e.g. the state of North Rhine Westphalia have almost thirty times the population of Bremen, but has only double the number of Bundesrat seats), but it provides a strong voice for the small states or under-populated areas. Therefore, the German model is recommended for adoption for the proposed confederation. However, weighted voting for the countries constituting the confederation (as distinct from the federating units such as the states in India) might deserve consideration.

In the European Union the Council of Ministers is represented by the Member States on the basis of weighted voting. Where the Council is required to act by qualified majority voting, the votes of its members are weighted as follows :

| | | | |
|---------|----|----------------|----|
| Belgium | 5 | Luxembourg | 2 |
| Denmark | 3 | Netherlands | 5 |
| Germany | 10 | Austria | 4 |
| Greece | 5 | Portugal | 5 |
| Spain | 8 | Finland | 3 |
| France | 10 | Sweden | 4 |
| Ireland | 3 | United Kingdom | 10 |
| Italy | 10 | | |

[EU Treaty, Art 205 (2)]

Representation in the European Parliament is weighted as follows :

| | | | |
|---------|----|----------------|----|
| Belgium | 25 | Luxembourg | 6 |
| Denmark | 16 | Netherlands | 31 |
| Germany | 99 | Austria | 21 |
| Greece | 25 | Portugal | 25 |
| Spain | 64 | Finland | 16 |
| France | 87 | Sweden | 22 |
| Ireland | 15 | United Kingdom | 87 |
| Italy | 87 | | |

[EU Treaty, Art 190 (2)]

In our model, the Council of Ministers and the European Parliament of the European Union ought to be perceived as comparable to the upper and lower houses of the proposed confederation.

One the second issue the territorial representation of the federating units in the upper chamber may be achieved through either (a) governments of the states e.g. through appointment by the state governments as in Germany or (b) state assemblies as in India or (c) the people i.e. direct election as in the USA or Switzerland. Election of the upper house by the state assemblies or by the voters might make the chamber democratically accountable but the elected members have no automatic connection with the state government of the area they represent; not do they provide any meaningful link between the upper house of the federal parliament and the respective state assemblies.

We have stated at the outset that our guiding consideration is to ensure that the countries constituting the proposed confederation must have a meaningful share of power at the centre. This consideration dictates that we should adopt the German model i.e. representation of state governments to constitute the upper house. The German Parliament is the only example in the world where the upper house is entirely composed of members of the government of the federating states. The

German Bundesrat is said "to be closest comparator to the European Council of Ministers. There are considerable advantages associated with such a system : [a] It creates a real institutional link between the states and the centre ... [b] It makes intergovernmental relations transparent ... [c] It genuinely binds regional and national concerns together. Because state governments can scrutinize national policy and because they bring their own policy concerns to the table, this fosters a better understanding between the states and the centre and allows joint strategies to be developed. It may even result in territorial governments being prepared to effectively 'pool' their powers to legislate upwards-since they have an opportunity through the upper house to influence national legislation" [Meg Russell Representing the Nations & Regions in a New Upper House (1999, the Constitution Unit, UCL,) p.13].

However, we are not advocating a wholesale adoption of the practices and procedure of the German Bundesrat (i.e. the upper house). It has been said that "the German Bundesrat is not a parliamentary chamber in the usual sense of the term. It meets only once every six weeks, for a session which generally lasts around half a day. There are no lengthy debates in plenary sessions, with much negotiation going on in committee. Instead plenary sessions, which are generally poorly attended, are quick and efficient events where positions negotiated in committee are formally voted on. Meanwhile the committees themselves are attended almost exclusively by civil servants, who deputize for ministers" (meg Russell, op. cit. 13-14).

We envisage the upper house of the proposed confederation to be a full scale legislative chamber.

Powers of the Upper House

In true federal systems (as opposed to quasi-federal ones) the upper chamber tends to be more powerful. Thus in the USA bills are introduced in either house but the Senate can amend or veto any legislation including financial legislation (although finance bills have to be introduced in the lower house). Constitutional amendments have to be passed by a 2/3 majority in both houses. In addition, the Senate has powers to approve executive appointments, ratify treaties, declare war etc.

In Germany the upper house has the opportunity to see and comment on all the bills before their introduction in the lower house. Constitutional amendments have to be passed by a 2/3 majority in both houses of the federal parliament.

The upper house of the federal parliament in Germany has an absolute veto on all bills affecting the jurisdiction of the states around 60 per cent of bills. This is because the states administer most federal laws. One commentator has said "The German bundesrat is successful at binding the states and the national parliament together because of the particular nature of German federalism. Whilst most policy is decided in outline at national level, the implementation of this policy and consideration of its detail, goes on in the Länder (i.e. the states). The Länder are the mechanism for implementation of government policy and thus central to decision-making. This is reflected in their powers in the Bundesrat, where they

have an absolute veto on all bills affecting their work around 60 per cent of legislation. This includes most financial legislation. The existence of two categories of legislation in Germany and the power of the links between national and state levels. If the powers of the Bundesrat were not so considerable, it would not be able to maintain the involvement of senior government ministers from the Länder. This would not be feasible if, for example, the upper house had only the power to delay legislation... If a chamber is to function effectively as a territorial upper house ... it must be given some genuine powers over territorial issues [i.e. issues affecting the states] (Meg Russell, *op. cit.* 14)

In Germany the upper house is decisive on European matters affecting the states in addition to its role in electing the judges of the federal Constitutional Court and for 'state of defence'. The above consideration ought to be borne in mind in prescribing the powers of the upper house in our proposed confederation.

Resolution of Disputes between the Upper and Lower Houses

In devising an appropriate procedure/machinery to resolve disputes between the houses of parliament we will be guided by our starting premises viz. 1. that the countries constituting the proposed confederation ought to be able to safeguard their allocated sphere of independence/autonomy and 2. that they should have a real share of power at the centre. The possible options for such procedure/machinery are as follows.

- A. The 'suspensive veto' as exercised by the British House of Lords. It merely interposes a delay between the introduction of a bill and its final passage into law. Ultimately the will of the House of Commons which is elected on the basis of population prevails. In the context of our proposed federal framework this will not provide the necessary checks and balance as envisaged. Therefore this option is ruled out.
- B. The endless shuttle of bills between the two houses as experienced in Australia. This is also unsatisfactory. The process could only end by dissolving both houses of parliament.
- C. Joint sitting of two houses of parliament. This is used in India. The objection to this device in a federal context is that under this procedure the will of the lower house which is generally elected on the basis of population will prevail as its members are likely to be more numerous. Under this system the smaller states cannot possibly safeguard their position against the more populous states.
- D. Joint committee of both houses of parliament. This procedure is used in Germany and the USA. It is thought to be more productive than other devices. "Taking discussion off the floor of the house is likely to create a more constructive and less confrontational atmosphere in which to negotiate" [Meg Russell, *Second Chambers: Resolving Deadlock* (The constitution Unit, UCL, 1999) p.5]. However, as Meg Russell states in the paper cited here adoption of this device calls for consideration of the following questions.

1. Who can call the joint committee?

In Germany the request will generally come from the upper house if they receive a bill they cannot agree with. However, the request may also come from the lower house or government in response to an upper house veto. Whoever requests all the parties are bound to co-operate. The German procedure is to be recommended as it provides the opportunity to all the parties involved to initiate the process.

2. Who are the members of the joint committee?

In Germany the upper house is composed of the members of the states. One member from each of the 16 states is represented on the committee. These will be senior members of the state governments. Considering the fact that the consent of the upper house is required to a bill where the state jurisdiction is involved (and Bundesrat will have a veto over such a bill). This is a satisfactory way of safeguarding the states' interests even at the committee stage of a bill and is therefore recommended.

3. Ad hoc or permanent committee

In Germany a permanent committee is set up at the start of each parliamentary session, comprising of senior figures (as in the USA). Because it consists of senior figures its recommendations are likely to be weighty and therefore acceptable. Being a permanent committee its members are likely to develop trust and co-operation (Which is less likely on ad hoc committees). For this reason permanent committee is recommended.

4. What can the joint committee discuss?

In the USA the committee is limited to the specific clauses of the bill which are in dispute. In Germany the committee's remit is somewhat wider. It is restricted only to matters which are specified in the motion to convene it. This might permit the committee to add a new clause not previously covered by bill. The German Constitutional Court ruled in 1986 that this was permissible but that it was 'close to the limit of the legally acceptable'. Nonetheless the German procedure provides for flexibility and is recommended.

5. How is the joint committee decision taken?

In the USA the groups representing the two houses vote as blocks with one vote each, agreement depending on a majority among representatives of each house. The decision is very often a compromise between the parties.

In Germany the decision is taken by a majority of votes of committee members. Here the decision is a compromise among the states. In the joint committee the states have one representative each but in the upper house the states have different number of votes. The committee have to take this fact into account.

On our approach it is the interests of the states rather than of the parties that matter most and consequently the decisions have to reflect a compromise among the states. For this reason the German model is recommended.

6. Can joint committee proposals be amended by the house?

In the USA and Germany the committees' proposals may not be amended by either house when they are discussed in the house, unless the committee itself recommends otherwise. It is submitted that this position is preferable in the interest of the integrity and status of the committee.

7. Who has the last word?

In Germany there are two classes of bills- (1) The upper house has a veto on bills that affect the jurisdiction of the states. (2) On the remaining bills the lower house has the last word. On a bill that is subject to veto by the upper house, once the committee has been called (a committee may be called on any bill where the houses disagree either by the lower house or by the federal government or by the upper house), its recommendations must be accepted or else the bill dies.

In the USA all legislation must be agreed by both houses. The recommendations of the joint committees are subject to the same rule. Failure to agree results in the death of the bill or in another committee being called.

It is submitted that the German procedure of joint committee (in which each of the sixteen states are represented by one vote) provides a far more effective voice for the states and is recommended for adoption.

Overall the objectives of maximum independence/autonomy for the countries joining the confederation and their having a significant share of power at the centre are better served by the adoption of the German model for the upper house than any other in existence. For this reason, the German model is recommended for adoption subject to the modifications noted above.

Machinery and Model for the Removal of Regional Disparity

Maintenance of integrity and unity of a federation requires measures to maintain a comparable standard of living, employment opportunities and economic development throughout the country. Relative backwardness of some states compared with others tend to set in process disintegrating forces. This is why Pakistan was dismembered owing to the fact that East Pakistan was perceived to be at a disadvantage economically. This is also recognized by the European Union where Art. 158 of the Treaty provides,

"In order to provide overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and backwardness of the least favoured regions or islands including rural areas."

Art. 263 has established the Committee of the Regions where the Member States are represented as follows :

| | | | |
|---------|----|----------------|----|
| Belgium | 12 | Luxembourg | 6 |
| Denmark | 9 | Netherlands | 12 |
| Germany | 24 | Austria | 12 |
| Greece | 12 | Portugal | 12 |
| Spain | 21 | Finland | 9 |
| France | 24 | Sweden | 12 |
| Ireland | 9 | United Kingdom | 24 |
| Italy | 24 | | |

Art. 265 has imposed a mandatory duty on the Council of Minister and the European Commission to consult the committee of the Regions "where the Treaty provides and in all other cases".

Model for Development of Regional Parity

In his answer to the questionnaire (q.5.6.) issued by the Commission on Centre-State Relations in India as to whether a special federal fund for ensuring 'faster development in economically backward areas relative to other developed areas of the country' is necessary, this author suggested a model for development in the following terms :

"I have indicated... that such a fund is clearly necessary in the case of India. It could be funded by taxes on petrol, gas or other forms of energy, or alternatively on consumption of good and services. The Finance Commission is not the appropriate body to administer such a fund which would involve regional planning. It has got to be the planning commission acting in collaboration with the state governments concerned. The strategy would be first to develop the economic infrastructure. When that is done, a balanced development-balanced between the urban and rural sectors-would be aimed at. This would be an all-round development of the villages involving an integration of trade, industry and agriculture coupled with the restoration of ecological balance and afforestation as a part of soil and environmental conservation measures. Elimination of the distinction between the town and the villages in terms of amenities and economic activities ought to be set as the objectives. It is submitted that each Thana [the size of a police area in the British-ruled Bengal] should be taken as a unit of development. This model roughly corresponds to, but is not identical with the commune system in China. It is designed to prevent drift to the cities and deprivation of rural areas."

"The upsurge in the Third World urban population has overwhelmed recourses. Sprawling slums, massive traffic jams, chronic unemployment, breakdown of essential services etc. are causing communal tensions (as happened in Bombay and hydrabad in 1984). In 1984 the population of Delhi, Karachi and Calcutta is estimated to be 7 million, 7 million and 11 million respectively. By the year 2025, the population projection of these cities is expected to be 20-30 million each. The development that I am advocating here i.e. a balanced development between the rural and urban sectors is designed to stop the drift to the towns and avoid the urban explosion."

[M A Fazal, A Federal Constitution for the United Kingdom- An Alternative to Devolution (1997, Dartmouth/Ashgate) pp.256-257]

It is submitted that appropriate machinery and model for the removal of regional disparity is crucial to ensure the success of the proposed confederation.

Concluding remarks

The peoples of the Indian sub-continent are at a cross-road at the present time. They could proceed along the road to nationalism, engage in nationalistic wars and destroy themselves. They have certainly acquired the

capacity to do so. Alternatively, they could choose for themselves a positive and constructive path and lay the foundation for a bright future. They have the potential for such a development. The need for sheer physical survival alone dictates the choice for the latter. Speaking of the Cuban missile crisis Robert McNamara said “to initiate a strike against another nuclear-equipped opponent would have been suicide.”

The same would be true today and in the future as between India and Pakistan. One hopes that they would opt for the better course.

