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**MARITIME ISSUES BETWEEN PAKISTAN AND INDIA:
SEEKING COOPERATION AND REGIONAL STABILITY**

by

Muhammad Ali

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Thesis Co-Advisors:

S Paul Kapur
Carolyn Halladay

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**MARITIME ISSUES BETWEEN PAKISTAN AND INDIA: SEEKING
COOPERATION AND REGIONAL STABILITY**

Muhammad Ali
Lieutenant Commander, Pakistan Navy
B.Sc. (Hon), Karachi University, 2001

Submitted in partial fulfillment of the
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December 2012**

Author: Muhammad Ali

Approved by: Paul Kapur
Thesis Co-Advisor

Carolyn Halladay
Thesis Co-Advisor

Harold A. Trinkunas
Chair, Department of National Security Affairs

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ABSTRACT

Since independence, relations between Pakistan and India have been fraught with contentious issues. Most of these conflicts were related to the demarcation of borders and the non-resolution of the Kashmir dispute. The primary focus of efforts and ideas to resolve these conflicts has been land-based—for example, the future of Kashmir, the delimitation of the Line of Control (LOC), and the Siachen Glacier issue. Less focus has been given to the maritime issues between both countries, including Sir Creek and its effect on the delimitation of the interstate maritime boundary; the arrest and repatriation of fishermen by both sides; and non-cooperation between maritime forces at sea. The resolution of maritime issues between Pakistan and India is essential because it is a potential area of significant cooperation between the two rivals. As this thesis demonstrates through its analysis of these issues and comparable international disputes, small, preliminary steps by both sides toward the resolution of these maritime issues will build and strengthen the cooperation, which could pave the way for the resolution of more complex and substantive disputes in the future. In other words, peace in Kashmir may be wrought at sea.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	THREE MARITIME DISPUTES	2
B.	IMPORTANCE.....	4
C.	LITERATURE REVIEW	6
D.	METHODS AND SOURCES	10
E.	THESIS OVERVIEW	12
II.	MARITIME BOUNDARY ISSUE BETWEEN PAKISTAN AND INDIA: THE CASE OF SIR CREEK.....	13
A.	BACKGROUND	13
1.	Resolution 1192 of 1914.....	14
2.	Rann of Kutch Arbitration	16
3.	Sir Creek since Independence.....	17
4.	Status of Resolution 1192 after Independence	20
5.	Contemporary Stance of Pakistan and India.....	21
B.	CASE STUDIES—MARITIME BOUNDARY DISPUTES	22
1.	Case Study 1: Maritime Boundary Dispute between Suriname and Guyana.....	22
2.	Case Study 2: River Boundary Dispute between Benin and Niger	25
C.	RECOMMENDATIONS FOR A POSSIBLE SOLUTION TO THE SIR CREEK DISPUTE	28
1.	Recommendation 1.....	29
2.	Recommendation 2.....	29
3.	Recommendation 3.....	30
D.	CONCLUSION	33
III.	OTHER MARITIME PLIGHTS: THE FISHERMEN AND OPERATIONAL ENCOUNTERS ISSUES	35
A.	FISHERMEN ISSUE.....	36
1.	Dilemma of Both States' Fishermen.....	38
2.	Current Developments for Facilitation of Fishermen	41
3.	Case Study – South Korea and China Fishermen Dispute	43
a.	<i>Negotiations Process</i>	45
b.	<i>Allocation of Zones</i>	47
c.	<i>Current Fishing Pattern</i>	48
4.	Recommendations for Possible Solutions for the Fishermen Dispute	50
a.	<i>Recommendation 1</i>	50
b.	<i>Recommendation 2</i>	51
c.	<i>Recommendation 3</i>	51
B.	OPERATIONAL ENCOUNTERS.....	52
1.	Atlantique Incident	53

	<i>a. Pakistan's Stance</i>	<i>54</i>
	<i>b. India's Stance.....</i>	<i>54</i>
2.	Incident between Naval Ships.....	57
	<i>a. Pakistan's Response.....</i>	<i>58</i>
	<i>b. India's Response</i>	<i>58</i>
3.	Case Study – INCSEA between the U.S. and USSR.....	60
4.	Recommendations for a Way Forward.....	61
	<i>a. Recommendation 1.....</i>	<i>62</i>
	<i>b. Recommendation 2.....</i>	<i>62</i>
C.	CONCLUSION	63
IV.	CONFIDENCE-BUILDING MEASURES (CBMS) AND THE POSSIBILITY OF CONFLICT RESOLUTION BETWEEN PAKISTAN AND INDIA	65
A.	CONFIDENCE BUILDING BETWEEN PAKISTAN AND INDIA	67
B.	CONFIDENCE-BUILDING MEASURES BETWEEN EGYPT AND ISRAEL.....	72
C.	CONFIDENCE-BUILDING MEASURES BETWEEN CHINA AND INDIA.....	76
	1. Development of Bilateral Relations.....	77
	2. Joint Working Group Meetings—1993 and 1996 Agreements.....	79
D.	A WAY FORWARD ENCOMPASSING CBMS AND THE CASE STUDIES	84
E.	CONCLUSION	85
V.	CONCLUSION	87
	LIST OF REFERENCES.....	93
	INITIAL DISTRIBUTION LIST	99

LIST OF FIGURES

Figure 1.	Map B – 44 Showing Sir Creek and Vicinity.	15
Figure 2.	The Maritime Boundary Between Guyana and Suriname.	25
Figure 3.	The Maritime Boundary between Benin and Niger.	27
Figure 4.	Lines projected from Sir Creek show perceptions of Pakistan and India's maritime boundary. Line X shows India's perception, whereas line Y shows Pakistan's perception.	31
Figure 5.	Equidistance Method of Maritime Boundary Delimitation.	32
Figure 6.	Zones between Korea and China.	46
Figure 7.	Sindo-Indian Border Line showing Line of Control and Disputed Boundries.	76

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LIST OF TABLES

Table 1.	Fish Production – India and Pakistan.....	37
Table 2.	Fishing Data – State of Gujarat.....	37
Table 3.	Detained Fishermen claimed by both countries.....	40
Table 4.	Number of Fishermen Released and the Occasions.....	41
Table 5.	Confidence-Building Measures (CBMs)—Diplomatic and Military.	67
Table 6.	Confidence-Building Measures—Political, Commercial, Cultural, and Communications.	69
Table 7.	Joint Working Group (JWG) Meetings from 1989 to 1999.....	80

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LIST OF ACRONYMS AND ABBREVIATIONS

ASW	Anti-Submarine Warfare
CBM	Confidence-Building Measure
CSCE	Conference on Security and Cooperation on Europe
CTF	Combined Task Force
EEZ	Exclusive Economic Zone
GPS	Global Positioning System
HRCP	Human Rights Commission of Pakistan
IAF	Indian Air Force
ICG	Indian Coast Guard
ICJ	International Court of Justice
INCSEA	Incidents at Sea Agreement
IST	Indian Standard Time
JWG	Joint Working Group
LOS	Law of the Sea
INS	Indian Navy Ship
LAC	Line of Actual Control
LOC	Line of Control
MPA	Maritime Patrol Aircraft
MV	Merchant Vessel
NEFA	North East Frontier Agency
NGO	Non-Governmental Organization
NSC	National Security Council
PAF	Pakistan Air Force
PST	Pakistan Standard Time
PN	Pakistan Navy
PMSA	Pakistan Maritime Security Agency
PNS	Pakistan Navy Ship
PILER	Pakistan Institute of Labor Education and Research
PFF	Pakistan Fisher-folk Forum
ROE	Rules of Engagement

SALF	South Asian Labor Forum
TALOS	Technical Aspect on the Law of the Sea
UNCLOS	United Nations Convention on the Law of the Sea
U.S.	United States
USSR	Union of Soviet Socialist Republics
UN	United Nations

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I. INTRODUCTION

Every kind of peaceful cooperation among men is primarily based on mutual trust and only secondarily on institutions such as courts of justice and police . . . Peace cannot be kept by force; it can only be achieved through understanding . . . There's been a quantum leap technologically in our age, but unless there's another quantum leap in human relations, unless we learn to live in a new way towards one another, there will be a catastrophe."

*Albert
Einstein¹*

Since their independence, relations between Pakistan and India have been fraught with contentious issues. Most of these conflicts were related to the demarcation of borders and the non-resolution of the Kashmir dispute. The primary focus of plans and efforts to resolve these conflicts has been land-based; for example, the future of Kashmir, the delimitation of the Line of Control (LOC), and the Siachen Glacier issue. Less focus has been given to the maritime issues² between both countries, including Sir Creek and its effect on the interstate maritime boundary delimitation; the arrest and repatriation of fishermen by both sides; and non-cooperation between maritime forces at sea. The resolution of maritime issues between Pakistan and India is essential because on the one hand, it is a potential area of significant cooperation between the two rivals, and on the other hand, the failure to resolve these issues can further complicate relations between these two countries. Small, preliminary steps by both sides toward the resolution of these maritime issues will build and strengthen the cooperation, which could pave the way for the resolution of more complex and substantive disputes in the future.³ In other words, peace in Kashmir may be wrought at sea.

1 "The Emily Fund For a Better World," Do One Thing Quotes For a Better World, Accessed July 12, 2012. <http://www.dooneething.org/quotes/conflict-quotes.htm>

2 Hasan Ansari & Ravi Vohra, "Sandia National Laboratories Cooperative Monitoring Center, Confidence Building Measures at Sea: Opportunities for India and Pakistan," Occasional Paper no. 33, (Dec. 2003), 5.

3 Ibid.,6

A. THREE MARITIME DISPUTES

It is pertinent to explain concisely what each of maritime disputes between Pakistan and India involves. First, Sir Creek is one of the enduring disputes between Pakistan and India. It involves conflicting claims to a 60-mile long water strip in the Rann of Kutch, separating the Sindh province of the southern part of Pakistan from the Indian province of Gujarat. This disagreement has sought a solution in bilateral, transnational, or international law for at least a century now. Under the contemporary treaty scheme, including the United Nations Convention on the Law of the Sea (UNCLOS), the dispute has acquired a particular urgency. Because the Sir Creek dispute is not as politically charged as some of the other long-standing points of disagreement between Pakistan and India, however, the resolution of this issue might serve as a catalyst for a broader reconciliation between the great South Asian powers.

Second, as fish rarely regard national boundaries, Pakistani and Indian fishermen adopt the traditional way of fishing—they follow the fish. Both sides' fishermen encroach on each other's territory in search of a good quality of fish, and, as a consequence, both sides' security forces arrest these fishermen and confiscate their boats. In almost all cases, it takes years to release these fishermen from the jails because of the painfully slow process of Pakistan's and India's judicial systems.⁴ These men remain in the jails without any contact with their families. These incarcerations represent one more negative aspect in the minds of the public on both sides; collectively, they tax bilateral relations as well. On some occasions, these fishermen are used for political purposes, when both sides' governments release them as goodwill gestures without any legal process.⁵ Such gestures may resolve a particular case, but the larger issue remains a sore area between Pakistan and India.

Finally, as in the land-based skirmishes, some of the naval forces' actions also contribute to political tension between Pakistan and India. In August 1999, Indian security forces shot down one Pakistani unarmed surveillance and anti-submarine warfare

⁴ Ibid., 29.

⁵ Ibid.

(ASW) aircraft.⁶ Pakistani authorities declared that the aircraft was on training mission; in contrast, the Indian authorities insisted that the aircraft was on a spy mission. According to Sikandar Ahmed Shah, “Pakistan lodged a complaint with the [International Court of Justice],⁷ which was subsequently dismissed by the court. The Court agreed with India’s position that it lacked jurisdiction to entertain the case, because India had filed an exemption in 1974, concerning disputes between India and other countries that are or have been members of the Commonwealth of Nations.”⁸ The Court’s decision did nothing to resolve the issue, of course. Another incident occurred in July 2011, when the Indian Navy ship (INS) Godavari brushed the Pakistan Navy ship (PNS) Babur out at sea. PNS Babur was on a humanitarian mission, escorting Merchant Vessel (MV) Suez, which had just been released by Somalia’s pirates. Pakistan lodged a protest over the incident through the Indian High Commission, noting that the Indian ship had not only hampered the humanitarian mission but also attempted dangerous maneuvers that resulted in damage to the sides of both warships.⁹ Pakistan considered this incident a violation of the 1991 Pakistan-India Agreement on advanced notice of military exercise maneuvers and international regulations related to safe conduct at high seas.¹⁰ Such naval encounters could be avoided through good bilateral relations and cooperation between two navies.

This thesis argues that resolving one or even two of these issues in isolation will not bring about lasting improvements in Pakistan-Indian relations. For example, if the Sir

⁶ Sikander Ahmed Shah, “River Boundary Delimitation and the Resolution of the Sir Creek Dispute Between Pakistan and India,” 395–396, Accessed July 12, 2012, <http://lawreview.vermontlaw.edu/files/2012/02/shah.pdf>. He further explained that, in May, 1999, Pakistan shot down two Indian Air force (IAF) aircrafts along the Line of Control (LoC) in response to an airspace violation, therefore shooting down the Pakistani ASW aircraft by Indian Forces has also been viewed an act of revenge.

⁷ The Court stated that as the Commonwealth reservation raised by India was valid under Article 36, Paragraph 2 of the ICJ Statute, it was “unnecessary for [it] to consider India’s objection based on the reservation concerning multilateral treaties. See Ibid.

⁸ Ibid.

⁹ Oneindia News. “Save Sailors mission: India and Pakistan Start War Again,” (Saturday, June 18, 2011 IST), Accessed May 13, 2012, <http://news.oneindia.in/2011/06/18/india-pakistan-war-help-mv-suez-sailors-godavari-babur-aid0101.html>.

¹⁰ The Times of India. “Naval Maneuver Sparks Indo-Pak war of words” (Jun 19, 2011, 2.48am IST), Accessed May 13, 2012, http://articles.timesofindia.indiatimes.com/2011-06-19/india/29676640_1_somali-pirates-naval-ship-PNS-Babur. The Economic Times. “India, Pakistan in war of words as warships collide” (Jun 19, 2011, 05.49am IST), Accessed May 13 2012, http://articles.economictimes.indiatimes.com/2011-06-19/news/29676900_1_somali-pirates-naval-ship-pns-babur.

Creek and fishermen issues are resolved, but both states still encounter each other's ships or maritime aircraft in less than friendly ways, then no real trust will develop, which will affect the confidence measures in turn. It is therefore necessary that positive steps be initiated to resolve all maritime issues in parallel or thoughtful succession. Neither Pakistan nor India can afford any maritime conflict without risking significant damage to both states' economies. In addition, war at sea is not restricted to any geographical boundaries and always poses global concerns because of other states' maritime interests. Around 70 percent of oil is transported from the Persian Gulf to Northeast Asian states Japan, Taiwan, and Korea through Arabian Sea.¹¹ Therefore, the importance of resolution of maritime issues between Pakistan and India resonates with both states and much of the world besides.

In sum, this thesis argues that resolution of maritime issues can affect the trust deficit and increase cooperation between Pakistan and India, which may lead both states to resolve more complex issues, including Kashmir, the LOC, and the Siachen Glacier in the future.

B. IMPORTANCE

Following World War II, Britain found itself with neither the will nor the resources to continue its involvement in South Asia. Amid rising tensions between the Muslim and Hindu subjects of British India, London decided to pull out from the sub-continent a year earlier than scheduled. This abrupt withdrawal, punctuated by the partition of India in August 1947, heralded a traumatic time as the new state of Pakistan and freshly independent India had to sort out borders and accommodate upwards of five million displaced persons on either side of the new frontier. In addition, the partition left unresolved several significant issues between Pakistan and India, including the status of Kashmir and the Siachen Glacier region, among other border disputes, which afterward caused major interstate conflicts and taxed the bilateral relations between both countries.

¹¹ Peter Walker, "The Evolving Regional Security Environment: What the Maritime Strategist Should Know," Presented to the Regional Maritime Security in the Indian Ocean conference, (Halifax, Nova Scotia, July 2001), 88–100.

More than once, these frictions erupted in war—in 1948 (the first Kashmir war), 1965 (the second Kashmir war), and 1971—between both countries that increased militarism on each side¹²—and which has now escalated to a nuclear contest. The persistence of this unrest, particularly with both states in possession of strategic and tactical nuclear weapons, has made South Asia one of the most volatile regions in the world.

In Pakistan, the armed forces predominate over the domestic political structure, and the military leadership, led by the ground forces, concentrates on such continental disputes as Kashmir, the Siachen Glacier, and the LOC issues. India also remains land-oriented despite its vast ocean coastline.¹³ Indeed, Pakistan and India more or less have ignored their maritime disputes even though some 95 percent of their respective trade is carried by sea.¹⁴ The contentious land issues similarly eclipse the potential for better maritime cooperation, both as a means to ending particular disputes and as a basis for improved relations, in general, between Pakistan and India. The straightforward nature of the maritime disputes between Pakistan and India, as well as the similarities in the culture of both states' naval forces and the less conflicted maritime history between both countries present a very real opportunity in this regard. As Dr. Ayesha Siddiqa Agha states, “the Indian and Pakistani navies do not carry as much psychological baggage as other branches of the services do.”¹⁵ In the same context, Commander Rajesh Pendharker of the Indian Navy has suggested that “the character of the Naval forces themselves makes it possible to cooperate in a manner detached from political wrangling between the two states.”¹⁶

¹² Ahmed Faruqi, *Rethinking the National Security of Pakistan: The Price of Strategic Myopia*. (Aldershot: Ashgate publishing limited, 2003). xxix-190.

¹³ Hasan Ansari & Ravi Vohra, “Sandia National Laboratories Cooperative Monitoring Center, Confidence Building Measures at Sea,” 5

¹⁴ Ibid.

¹⁵ Ayesha Siddiqa Agha, “Sandia National Laboratories, Maritime Cooperation between India and Pakistan: Building Confidence at Sea, Cooperative Monitoring Center,” Occasional paper no. 8, (Nov, 2000), 11.

¹⁶ Rajesh Pendharker, *The Lahore Declaration and Beyond: Maritime Confidence-Building Measures in South Asia*, Occasional Paper 51. Washington, DC: The Henry L. Stimson Centre. February 2003. iii.

To be sure, incidents have occurred between both navies, where they have shadowed each other's ships and even shot down aircraft. Vijai Sakhuja counts four such incidents,¹⁷ whereas Cdr. Pendharker has noted three: one each in the years 1995, 1996, and 1999.¹⁸ These close encounters could have ignited conflicts but, fortunately, both sides took a very moderate stance each time. At the same time, a number of Chiefs of Naval Staff have shown keen interest commencing navy-to-navy cooperation and have urged their respective governments to allow the mutual visit of ships and officers at the senior level in order to develop friendly relations and create a more harmonious environment at sea.¹⁹

C. LITERATURE REVIEW

The body of published materials relevant to this thesis includes numerous studies, reports, and literature in the form of government reports, journal articles, and scholarly books. Most of the South Asian scholars of the topic have given most of their attention to such maritime issues as the Sir Creek dispute; the delimitation of the sea boundary; and, at least by implication, to the problems of the fishermen. Somewhat less material is available on naval encounters between both states. It is a common consensus across the governments of the world that good international relations and effective sea management require clear demarcation of maritime boundaries. The Sir Creek issue, among others, involves exactly this issue and keeps both countries from agreeing on the demarcation of their mutual maritime boundary.

Maritime boundary making is a major task for coastal states, especially if there is oil or gas on the seabed or on the subsoil, which make the acre of sea worth more than an acre of barren land.²⁰ Throughout the world, according to Anderson, "Currently 180 boundaries have been agreed upon, which is far less than the 400 boundaries that potentially exists . . . The reasons are that countries tend not to see boundary-making as a

¹⁷ Vijai Sakuja, "Cold War in the Arabian Sea," *Strategic Analysis*, XXV, 4 (June 2001). 376–377.

¹⁸ Rajesh Pendharker, *The Lahore Declaration and Beyond*, 5.

¹⁹ Hasan Ansari & Ravi Vohra, "Sandia National Laboratories Cooperative Monitoring Center, Confidence Building Measures at Sea," 7.

²⁰ David Anderson. CMG, "Chatham House: Independent Thinking on International Affairs," *Methods of resolving maritime boundary disputes*, (February 14, 2006), 1–6.

priority, in the absence of any incidents or natural resources . . . Furthermore, developing countries often do not have ready access to the required technical advice from hydrography . . . Some of them have nevertheless negotiated boundaries e.g., because of encouragement by the oil industry.”²¹ However, J.G. Merrills’s book *International Dispute Settlement* examines different ways of international dispute settlement such as negotiation, mediation, inquiry, and reconciliation through diplomatic means; arbitration and judicial settlement through legal means; and dispute settlement concerning trade and the United Nations Convention of the Law of the Sea (UNCLOS) as a special arrangement.²² He discusses the *Maritime Delimitation and Territorial Questions Case* between Qatar and Bahrain, which had brought the two states close to war in 1986. The dispute was subsequently settled by the International Court of Justice (ICJ).²³ After settlement of the dispute, both states ended up with good bilateral relations and now they are working on a massive construction project: a 24.85-mile-long “friendship-bridge” between Qatar and Bahrain. When the structure is complete, it will be the longest bridge in the world.²⁴

Another international maritime boundary dispute, this one between Suriname and Guyana, is very similar to the Pakistan-Indian maritime dispute. Suriname and Guyana have adjacent coastlines, and Corentyne is a boundary river separating both states.²⁵ The Corentyne was a source of dispute in terms of river and maritime boundaries. On September 17, 2007, under Annex VII²⁶ of the 1982 United Nations Convention of the Law of the Sea (UNCLOS), a five-member arbitration tribunal was constituted to resolve the dispute. The tribunal supported Suriname’s claim and argued that as the land boundary terminus was located on the western side (towards Guyana) of the river,

²¹ Ibid.

²² J. G. Merrills, *international dispute settlement*, (cambridge university press, new york, 2005), 1–390.

²³ Ibid., 17.

²⁴ Qatar Visitor, “The Qatar Bahrain Friendship Bridge: The Longest Bridge in the World,” Accessed June 6, 2012, <http://www.qatarvisitor.com/index.php?cID=413&pID=1260>.

²⁵ Arbitration (Guyana. V. Suriname), Award of the Arbitral Tribunal, In the Matter of an Arbitration between: Guyana- and -Suriname,” (The Hague, 17 September 2007), 27.

²⁶ UNCLOS Annex VII is regarding Arbitration comprising Article 1 – Article 13.

Suriname had a right over the entire river, and the *thalweg*²⁷ principle was not applicable. After settlement of the dispute, both states developed good bilateral relations. During a meeting in February 2012, both countries' presidents discussed strengthening bilateral cooperation in terms of joint anti-piracy operations, intelligence sharing, and cross-border security. Interestingly, they also discussed building a bridge across the Corentyne River, which would enhance trade and economic relations between both countries.²⁸

These empirical cases show the importance of the resolution of maritime disputes for the enhancement of bilateral cooperation. In this thesis, such cases have been used as examples to seek the settlement of Pakistan and India maritime disputes.

The existing literature focuses largely on the process of past confidence-building measures (CBMs), which are mostly related to land-based issues. Even where maritime issues have been discussed, the analysis is neither wide nor deep enough. Other scholars, including Jayanta Kumar Ray, Dennis Rumley, and Afsir Karim, have also generally discussed the maritime issues, particularly Sir Creek, but they have given more consideration to the land-based issues.²⁹ Still, there emerges in the literature a general agreement on the importance of resolution of the maritime issues, and increasing cooperation through resolution of maritime issues is a viable option, but there is less agreement on the approach to the recognition and resolution of the issues. They have not recognized the importance of naval encounters, how it affect the bilateral relations and changes the political environment like shooting down Pakistani and Indian aircrafts or brushing each other's ships at sea.

²⁷ "Under international law, the *thalweg* is used to demarcate navigable rivers that are also Boundary Rivers. *Thalweg* has also been defined as the down way; that is, the course taken by boats going downstream, which again is that of the strongest current; the middle, or deepest, or most navigable channel; the line of the greatest depth; or the stream line of the fastest current; and the axis of the safest and most accessible channel for the largest ships. See Sikander, "River Boundary Delimitation," 367–368.

²⁸ Kaieteur News, Enhanced Guyana/Suriname relations fuelled by common goals – Luncheon, (February 25, 2012), Accessed May 15, 2012, <http://www.kaieternewsonline.com/2012/02/25/enhanced-guyanasuriname-relations-fuelled-by-common-goals-luncheon>.

²⁹ Ray Jayanta Kumar, *Aspects of India's International Relations, 177–2000 South Asia and the World*, Volume X part 6, PHISPC, Center for the studies in civilizations, 2007, 241–42; Dennis Rumley., Chaturvedi Sanjay., and Sakhuja Vijay. *Fisheries Exploitation in the Indian Ocean Threats and Opportunities*, ISEAS Publishing Institute of Southeast Asian Studies, 2009, 170–74; Afsir. Karim, *Indo-Pakistan Relations: Viewpoints 1989–1996*, (IDR, Lancer publishers and Distributors, 1996), 215–21.

The disagreement in the literature centers on how to convince Pakistan and India to develop trust in one other and increase cooperation. For this purpose scholars have presented different prescriptions, but they highlight the maritime issues in isolation. They argue that navy-to-navy interaction and resolution of the Sir Creek dispute will suffice for the requirement of building confidence between Pakistan and India. Rajesh and Agha have affiliations with the Indian and Pakistani navies; therefore, they believe that visiting of ships to each other's countries, visiting of senior naval officers to each other's navy setup, conducting joint maritime exercises, and maintaining good navy-to-navy communication will work to increase cooperation.³⁰ Shah and Khan emphasize the Sir Creek dispute and believe that resolution of this dispute can cause good cooperation.³¹ They also think that the military forces, especially the navies, of both states rely on each other as experts in the same fields; these authors pinpoint the trust deficit at the political level.³² At one level, they may have a point, but navy-to-navy interaction is not possible without political agreement or good bilateral relations because a military institution cannot act independently. Moreover, resolving one issue in isolation like the Sir Creek issue will not build sufficient confidence until other maritime issues are resolved.

In this connection, the other scholars such as Ravi Vohra and Hasan Ansari (both are retired admirals; the former from the Indian Navy and the latter from the Pakistan Navy) give deep insight into the maritime issues and take a bit broader approach than the previous one. They believe that the sea provides good opportunities to both states in developing confidence. Their view posits more of a trickle-down effect of mistrust—the trust deficit at the political level necessarily colors relations between the military forces as well. They have highlighted the main issues like the Sir Creek dispute, the delimitation of the maritime boundary, the fishermen issue, shipping and cargo security, and the

³⁰ Rajesh Pendharkar, *The Lahore Declaration and Beyond: Maritime Confidence-Building Measures in South Asia*, (February 20, 2003), Accessed May 12, 2012, <http://www.stimson.org/summaries/the-lahore-declaration-and-beyond-maritime-confidence-building-measures-in-south-asia/>; Ayesha, "Building Confidence at Sea," 9–39.

³¹ Sikander, "River Boundary Delimitation," 357–414; Rashid Ahmad Khan, "Sir Creek: The Origin and Development of the Dispute between India and Pakistan." *IPRI Journal*, (2007), 1–13.

³² *Ibid.*

interaction of maritime agencies.³³ They argue that Sir Creek and the maritime boundary are different issues,³⁴ whereas this paper argues that if the Sir Creek dispute is resolved then the maritime boundary will be automatically demarcated; it is the Sir Creek issue that has complicated the demarcation of maritime boundary between Pakistan and India. Moreover, shipping and cargo security is not possible in the presence of the significant trust deficit between both states. This paper argues, in contrast, that resolution of all maritime issues including Sir Creek, fishermen, and operational encounters at sea is important and will increase trust and cooperation. Then both countries can undertake other maritime affairs.

However, as far as the confidence-building measures are concerned, this thesis will cover all maritime issues between Pakistan and India following the second school's idea of confidence-building measures in order to increase trust and cooperation between both states. What is missing from the literature is a deep and consolidated insight into the maritime issues between Pakistan and India that include: (1) recognition of the important maritime issues and possible solutions for these issues in light of international law, specifically case studies of international maritime disputes that have been successfully resolved; and (2) analysis of these issues in terms of confidence-building measures (CBMs), whereby resolution of these issues will help overcome the trust deficit between the two countries and quite possibly lead to the resolution of more complex issues like Kashmir, the LOC, and the Siachen Glacier. This thesis takes up exactly these questions in light of the existing literature.

D. METHODS AND SOURCES

This thesis systematically analyzes and evaluates the maritime issues between Pakistan and India, starting with Sir Creek (the longest-standing maritime dispute) then proceeding through the fishermen issues, and culminates in the simmering operational encounters. By addressing these concerns, both states will benefit, while each and every success can also play a role in building cooperation between both states. The analysis will

³³ Hasan Ansari and Ravi Vohra, "Sandia National Laboratories Cooperative Monitoring Center, Confidence Building Measures at Sea," 1–49.

³⁴ Ibid., 10–19.

account for both Pakistan's and India's perspectives on each issue. Each issue will be examined discretely for context and specifics before the analysis turn to combined conclusions. Ultimately, this thesis highlights the importance of resolving each issue on its own merits and all of them because of their combined gravity in the present and future of relations between both states.

Because these conflicts are current and ongoing, the best information largely comes from books, journal articles from historical and social studies sources, professional and scholarly journals like *Kutch-Sindh Dispute* by Mukund³⁵ and *India and Pakistan: Ten Questions on the Peace Process*,³⁶ and all other resources which have already been mentioned. Occasional papers from Sandia National Laboratory and other sources related to maritime issues and confidence-building measures will also be used, as mentioned in the previous section. Moreover, major Pakistani and Indian newspapers like Dawn, The News, The Times of India, and Hindustan Times will also be consulted, particularly for accounts of events and incidents that have not received much scholarly attention. Contemporary print and electronic media will be utilized for collection of current information, official statements, and recent analysis.

It is worth mentioning that both Pakistan and India are signatories to the United Nations 1982 Convention on the Law of the Sea³⁷ but because of the Sir Creek dispute, they are unable to resolve their maritime boundary dispute under UNCLOS. Both countries have obligations under Article 76 (to decide the continental shelf),³⁸ under

35 Mukund G. Untawale, "The Kutch-Sindh Dispute: A Case Study in International Arbitration," *The International and Comparative Law Quarterly*, vol. 23, no. 4 (October, 1974), 818–839.

36 C. Raja Mohan, "Ten Question on Peace Process" *Economic and Political Weekly*, vol. 39, no. 28 (July 10–16, 2004): 3097–3102.

37 United Nations Convention on the Law of the Sea art. 15, (Dec 10, 1982), 1833, U.N.T.S. 397, http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf. [hereafter 1982 UNCLOS].

38 Delimitation of the continental shelf: "The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance." See *Ibid*.

Article 74 (to decide the Exclusive Economic Zone),³⁹ and under Article 15 (to decide the territorial sea).⁴⁰ International law clauses under which the thalweg principle and Median Line rules (navigable and non-navigable waters) are used for demarcation will also be consulted to test the possible solution of Sir Creek and the maritime boundary between Pakistan and India. To understand and evaluate the maritime incidents between Pakistan and India, some ICJ Articles will also be consulted like Article 36 which favored India in the case of shooting down the Pakistani ASW aircraft.

E. THESIS OVERVIEW

Chapter II illustrates the key maritime issues between Pakistan and India, their significance, and possible solutions in light of international law and case studies of international maritime disputes that have been successfully resolved. Chapter III analyzes how a peaceful resolution of these maritime issues will build confidence and affect the trust deficit between the two countries, and how such CBMs—relatively modest matters that nonetheless have significant impact—will work to resolve the other entrenched issues like Kashmir, the LOC, and the Siachen Glacier. The final chapter concludes and summarizes the findings and attempts to provide an analysis of the issues as a broader, collective concern.

In the end, the analysis makes clear that both the short-term and the long-term effects of the resolution of the maritime issues are positive and can favor both countries. Particularly in the presence of nuclear weapons, stability in the region and good relations between Pakistan and India are extremely important.

³⁹ Delimitation of the Exclusive Economic Zone between States with opposite or adjacent coasts: “The delimitation of the Exclusive Economic Zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.” See *Ibid*.

⁴⁰ Delimitation of the territorial sea between States with opposite or adjacent coasts: “Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.” See *Ibid*.

II. MARITIME BOUNDARY ISSUE BETWEEN PAKISTAN AND INDIA: THE CASE OF SIR CREEK

Since inception, Pakistan and India has numerous border disputes. One of them is the maritime border dispute along Sir Creek. Perhaps the fundamental issue is presented by Sir Creek, whose dispute prevents both countries from agreeing on the demarcation of their mutual maritime border. Sir Creek forms one of the enduring disputes between India and Pakistan. It involves conflicting claims to a water strip some 60 miles in the Rann of Kutch, separating the Sindh province of the southern part of Pakistan from the Indian province of Gujarat. Because the Sir Creek dispute is not as politically charged as some of the other long-standing points of disagreement between Pakistan and India, however, the resolution of this issue might serve as a catalyst for a broader reconciliation between the great South Asian powers.

There is a lot at stake in Sir Creek. According to Ansari and Vohra, “As compared to the highly volatile issue of Kashmir, the delimitation of the maritime boundary and the dispute involving the Sir Creek have not yet attained a flash point status, although both issues have the potential to do so at a future date.”⁴¹ Conversely, resolution of the Sir Creek issue may, then, facilitate a resolution of the larger maritime boundary dispute—and perhaps foreshadows a significant easing of tensions between South Asia’s two major powers. This disagreement has sought a solution in bilateral, transnational, or international law for at least a century now. Under the contemporary treaty scheme, including the United Nations Convention on the Law of the Sea (UNCLOS), the dispute has acquired a particular urgency. This chapter takes up the complex issues of the Sir Creek dispute in light of international law and case studies to present recommendations and viable options for both states’ governments toward a possible solution that could bring peace and harmony to the region.

A. BACKGROUND

According to Khan, “the Sir Creek dispute is the product of conflicting interpretations by Pakistan and India of the boundary line between Kutch and Sindh . . .

⁴¹ Ansari & Vohra, “Sandia National Laboratories Cooperative Monitoring Center,” 8.

When the dispute surfaced, Sindh was part of Bombay presidency of undivided India. After 1947, Sindh became part of Pakistan, while Kutch remained part of India.”⁴² But the tension at Sir Creek well predates independence and partition.

Hindu rulers presided over the Kutch and surrounding areas before the establishment of British rule in India. In 1760, Muslim rulers conquered Kutch State, and the state remained under Muslim control until 1813. When the British took over the Indo-Pak Subcontinent, Kutch State was put under the control of the Sindh⁴³ government. In 1843, Sindh was conquered by the British, and was made a part of the Hindu dominated Bombay Presidency after 1853.⁴⁴ As it was a Muslim populated area, the decision was found very offensive by the Muslim. However, after a powerful unrest, Sindh became a separate province in 1935. In 1947, Pakistan got independence from the British rulers, and Sindh, being a Muslim populated area, became a province of Pakistan. The Rann of Kutch remained an integral part of the Sindh government throughout the time of the British rule in India.⁴⁵

1. Resolution 1192 of 1914

The dispute first came to light in 1907–1908, when the Maharao (Ruler) of Kutch claimed that the part of Sindh lying east of the Green Line (a reference line which was drawn as a boundary line on the eastern bank of Sir Creek), belonged to Kutch State. (See Figure 1, showing Map B – 44).

⁴² Rashid Ahmad. Khan, “Sir Creek,” 2.

⁴³ Sindh is one of the provinces of Pakistan and is located on the western corner of South Asia.

⁴⁴ Mukund G. Untawale, “The Kutch-Sindh Dispute: A case Study in International Arbitration,” *The International and Comparative Law Quarterly*, vol. 23, no. 4 (October, 1947), 821.

⁴⁵ *Ibid.*

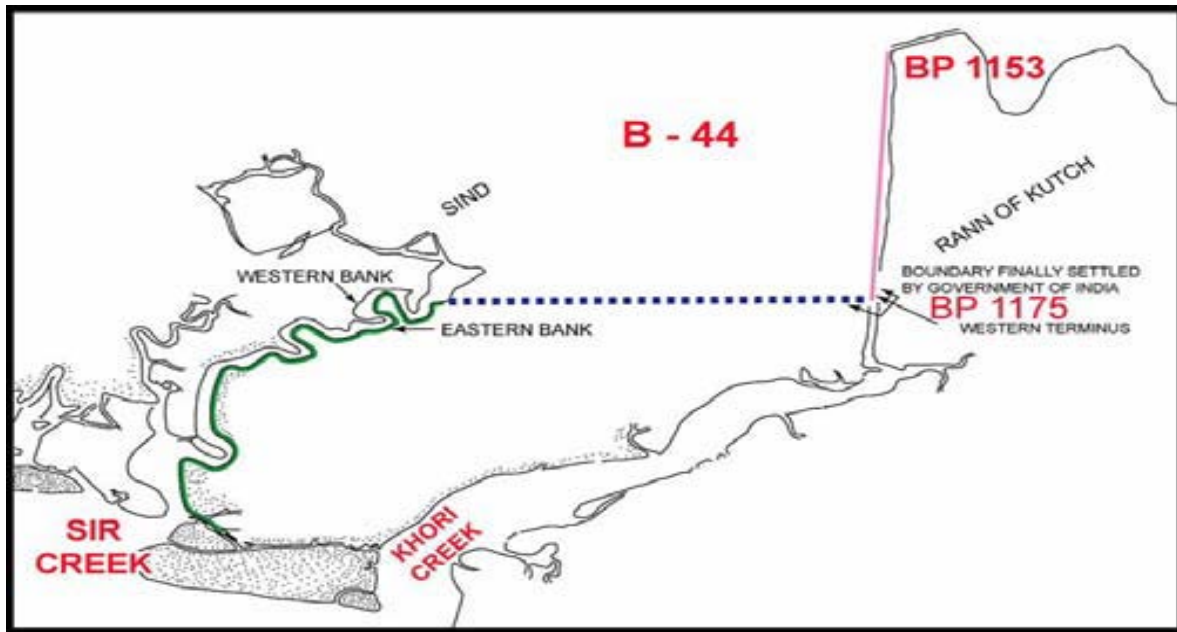


Figure 1. Map B – 44 Showing Sir Creek and Vicinity.⁴⁶

In 1907, wood-cutters from Kutch cut trees from the Sindh area, which formed part of British territory. The Commissioner of Sindh complained to the Bombay Government, which asked for an explanation from the Maharao of Kutch. In response, the Maharao of Kutch claimed that his state's boundaries extend up to the eastern bank of Sir Creek. After considering the claims, the Government of Bombay (Sindh being its administrative part), sent a proposal to the Maharao of Kutch, signaling that Bombay was prepared to agree to the boundary along the eastern bank of Sir Creek from the mouth to its top (shown as the green line on Map B-44, Figure 1). At the same time, the representatives suggested that from the top of Sir Creek, the boundary should follow the east-west line (shown as the blue dotted line) until it joins the Sindh boundary (the vertical purple line.) The Maharao of Kutch agreed to this proposal.⁴⁷ The Secretary of the Bombay Government sent this proposal to the foreign department of the government of India in Letter #5543, dated September 20, 1913. The aim was to accord sanction to

⁴⁶ From Ansari & Vohra, "Sandia National Laboratories Cooperative Monitoring Center," 17, 2003

⁴⁷ Ibid., 399.

the rectification of the Kutch–Sindh boundary in accordance with the agreement reached with the Maharao of Kutch.⁴⁸

Paragraph nine of the letter dictates, “On a full review of the evidence, therefore, the government arrived at the conclusion that the boundary between Kutch and Sindh should be the green line in the accompanying map from the mouth of the Sir Creek to the top of the Sir Creek at the point where it joins the blue dotted line; from there it should follow the blue dotted line to the east, until it joins the Sindh boundary as marked in purple on the resolution map, and His Highness the *Rao* has now expressed his willingness to agree to this compromise.”⁴⁹ The government of India accorded the approval for the rectification of the boundary as per the recommendation of the government of Bombay in Letter#3583-I.A.⁵⁰ Subsequently, the government of Bombay passed Resolution 1192 on February 24, 1914, approving the settlement by reference to Letter #5543 along with Map B-44.

2. Rann of Kutch Arbitration

The critical Rann of Kutch territorial dispute surfaced shortly after Pakistan and India won independence from Britain in 1947. India claimed that the entire area of the Rann of Kutch belongs to India, while Pakistan insisted that the established boundary ran through the “middle of the Rann or approximately along the 24th parallel.”⁵¹ This contentious dialogue between both states continued for a decade and a half. In early 1965, India claimed that Pakistani troops were illegally patrolling along the 24th parallel line. Pakistani troops opened fire on some Indian posts and cleared them in April 1965.⁵²

48 Secretary of the Bombay Government Letter #5543 dated September 20, 1913.

49 Ibid.

50 Foreign Department Government of India Letter #3583-I.A dated November 11, 1913. The letter was quoted in the arbitration awards:

“I am directed to acknowledge the receipt of your Letter #5543, dated the 20th September 1913, regarding the proposed rectification of the boundary between Sindh and Kutch State.”

“The Government of India observed with satisfaction that the dispute between the Sindh authorities and the Kutch Darbar has been settled by a compromise agreeable to both parties, and are pleased to accord their sanction to the rectification of the boundary line proposed in para 9 and 10 of your letter.”

51 Carla S. Copeland, “The Use of Arbitration to Settle Territorial Disputes,” vol. 67 *Fordham L. Rev.* 3073 (1999): 3077.

52 Ibid.

These encounters increased the hostilities, and both states brought several thousand troops to Rann. Britain began negotiations shortly after the fighting commenced, and subsequently convinced both states observed a cease-fire agreement on June 30, 1965. The parties also agreed to have the dispute resolved by arbitration.⁵³

In accordance with the agreement, the India-Pakistan Western Boundary Tribunal was constituted. The Tribunal was chaired by Gunner Lagergren (a Swedish judge) appointed by the Secretary General of the United Nations; Pakistan and India also nominated a non-national as a member of the Tribunal.⁵⁴ In this context, a delegation visited New Delhi (India) in order to inspect maps and other related documents, and another delegation visited Islamabad (Pakistan) for the same purpose.⁵⁵ Keeping in view the existing record presented by both countries and after a thorough deliberation, on February 19, 1968, the Tribunal awarded 90 percent of the disputed area of the Rann of Kutch to India and 10 percent to Pakistan.⁵⁶ The *Nagar Parker* area, which was not legally claimed by Pakistan, was also awarded to Pakistan, because the Tribunal reasoned that the area was surrounded by Pakistani territory. Other areas awarded to Pakistan include *Dhara Banni* and *Chhad Bet*. In accordance with the evidence produced by India in the form of the British waiver of right over Rann, the Tribunal awarded the rest of the territory of the Rann of Kutch (90 percent) to India.⁵⁷ Thus, the Rann of Kutch territorial dispute was resolved in a successful manner through arbitration.

3. Sir Creek since Independence

The Sir Creek dispute surfaced after Pakistan and India agreed before the Rann of Kutch Tribunal to mark the Sindh/Rann of Kutch boundary.⁵⁸ However, the contest before the arbitration tribunal did not include the westernmost area of the Rann of Kutch, commencing from the Western Terminus to the head of Sir Creek further to the west (see

⁵³ Ibid.

⁵⁴ Rashid Ahmad. Khan, "Sir Creek," 5.

⁵⁵ Carla S. Copeland, "The Use of Arbitration to Settle Territorial Disputes," 3078.

⁵⁶ Sikander. "River Boundary Delimitation," 357.

⁵⁷ Carla S. Copeland, "The Use of Arbitration to Settle Territorial Disputes," 3080.

⁵⁸ Ashutosh. Misra, "The Sir Creek Boundary Dispute: A Victim of India-Pakistan Linkage Politics," IBRU Boundary and Security Bulletin, Winter (2000–2001), 91.

Figure 1).⁵⁹ Interestingly, both states also avoided bringing up the demarcation issue between the top of Sir Creek to its mouth at the Arabian Sea in the southwest. This failure to address the entire Sir Creek boundary issue through arbitration ended up giving birth to the current dispute.⁶⁰ Since then, both India and Pakistan initiated claims from their particular perspectives.

Pakistan cites Resolution 1192 of 1914 for the proposition that the entire creek—up to its bank on the eastern side—was part of the Sindh government before the partition of the Indo-Pak subcontinent. Pakistan insists that because of the resolution, neither India nor Pakistan contested the Sir Creek boundary before the Tribunal.⁶¹ Resolution 1192 published vide Letter #5543 and also included map B-44 (see Figure 1), which is known as the 1914 Resolution map.⁶² A green line shown on the map, running along the eastern bank of Sir Creek, is considered by Pakistan as the boundary between Sindh (Pakistan) and Kutch (India).⁶³ Pakistan claims that the boundary line between Sindh and Kutch (the green line on the eastern bank of Sir Creek) was defined on the basis of compromise under which the Sindh Government would give up its claim over Kori Creek so as to claim the entire Sir Creek.⁶⁴ Therefore, Pakistan argues that under the 1192 resolution, delimitation of the boundary between Pakistan and India on the eastern bank of Sir Creek is to be permanently fixed.

It is worth mentioning that, where paragraph nine of Letter #5543 clearly delimited the boundary on the eastern bank of Sir Creek, interestingly, paragraph ten of the same letter documents the contrary views of the Sindh' Commissioner. He stated that, "as the river changes its course from time to time, 'the center of the navigable channel of the Sir Creek' should be used as the boundary."⁶⁵ However, his commanding officer, the Secretary of the Bombay Presidency, contradicted the Commissioner's statement in the

⁵⁹ Sikander, "River Boundary Delimitation," 358.

⁶⁰ Ibid.

⁶¹ Ashutosh. Misra, "The Sir Creek Boundary Dispute," 91–92.

⁶² A. G. Noorani, "Confidence-Building Measures for the Siachen Glacier, Sir Creek and the Wullar Barrage Disputes, Occasional Paper 16 (Apr. 1, 1994), 27.

⁶³ Ansari & Vohra, "Sandia National Laboratories Cooperative Monitoring Center," 17.

⁶⁴ Noorani, "Confidence Building Measures," 27.

⁶⁵ Secretary of the Bombay Government Letter #5543 dated 20 September, 1913, paragraph 10.

same letter and stated that the river was tidal and not navigable in any significant way, which, in turn, was one of the reasons for the boundary not being in the middle of the river.⁶⁶ India asserts that the Commissioner's statement in Letter #5543 supports India's position, and, therefore in accordance with international law, the "thalweg principle" is the only option to delimit the proper boundary in Sir Creek. In hydrography the word 'thalweg' is used for the valley line and for channels that are constantly used for navigation purposes. However, under international law, the thalweg is used for delimitation of navigable rivers and also for rivers' boundaries.⁶⁷ The thalweg can also be defined as "the down way: that is, the course taken by boats going downstream, which again is that of the strongest current; the middle, or deepest, or most navigable channel; the line of the greatest depth or the stream line of the fastest current; and the axis of the safest and most accessible channel for the largest ships."⁶⁸ The 'thalweg principle' can be defined as when "the border between two countries is separated by a flowing body of water (river) and the boundary line is determined when it reaches the greatest depth of the channel or watercourse."⁶⁹ This principle has been used in numerous decisions taken through international law for the delimitation of rivers' boundaries. Commonly, it has been named as the middle of the river or middle of the channel. The word 'middle' has also been used in the median line principle. However, it differs from the thalweg principle in the sense that the phrase 'middle of the channel' or 'middle of the river' in the median line principle is used for demarcation of non-navigable water; whereas, in the thalweg principle, it is used when the channel or river is navigable.⁷⁰

⁶⁶ "I am to explain that the term 'navigable' is really inappropriate in the larger sense. The creek is, of course, tidal, and it is only at certain conditions of the tide that the channel is navigable and then only to country craft as far as the point from which the proposed boundary turns due east from the Creek." See Sikander, "River Boundary Delimitation," 400.

⁶⁷ Ibid., 368–369.

⁶⁸ Ibid.

⁶⁹ National Security Council (NSC), Prime Minister's Department, "The Principle of Malaysia Land Boundary," Accessed October 28, 2012, http://www.mkn.gov.my/mkn/default/article_e.php?mod=4&fokus=9.

⁷⁰ Sikander, "River Boundary Delimitation," 368–369.

4. Status of Resolution 1192 after Independence

It is pertinent to mention that Resolution 1192 was implemented in 1924 in order to demarcate the boundary with the erection of boundary pillars. India claims that during this process, Resolution Map B-44 was fully implemented when these pillars were erected; therefore, the subsequent maps published by India's survey shows the thalweg as the boundary in Sir Creek. India considers the green line on Map B-44 to be a symbolic representation and claims that the boundary between Pakistan and India has been moved westward as a result of accretion⁷¹ due to geographical changes in Sir Creek.⁷² Nevertheless, all concerned agreed upon Resolution 1192 and eventually it was sanctioned by the Federal and Provincial Governments. Moreover, Misra highlights that during implementation process of Resolution 1192 in 1924, no pillars were erected. In addition, the government of India released the maps published by the Survey General of the Sir Creek area in 1937–1938 in which the eastern side of Sir Creek is shown as the boundary line.⁷³ The 1924 proceedings were just the implementation of Resolution 1192 of 1924 to demarcate the boundary. Resolution 1192 was sanctioned and promulgated under the proper legal chain of command by higher authorities; therefore, Resolution 1192 of 1924 can neither be superseded by the 1924 proceedings nor by the thalweg principle. Furthermore, Sikander noted that

. . . an official Indian map of the Kutch region—printed nearly two decades after the independence of India, just antecedent to the Kutch Arbitration in the 1960s, which is entitled ‘This Document Reveal[ing] the Unjustifiable Claim of Pakistan to Indian Territory’— outlines the elimination of the Rann of Kutch area inclusive of the Sir Creek region under Resolution 1192 of 1914. This map reproduces the original Resolution Map of 1914 (B-44), incorporating all subsequent

⁷¹ Accretion is described as, “If left to itself, the course of a river changes very slowly due to erosion, water current, or other forces of nature (like rock formation on the river bed). Infrequently, the river changes its course drastically due to completely breaking away from its river bed . . . Accretion is defined as where one can see progress being made, but cannot recognize it while it is going on.” See Ibid., 371.

⁷² Ibid., 360.

⁷³ Ahmer. Bilal Soofi, “Legal Purview: Wullar Barrage, Siachen and Sir Creek,” South Asian Journal, no.7, (January-March 2005), Accessed May 15, 2012, <http://www.scribd.com/doc/92521421/Legal-Purview>.

modifications through superimposition. Therefore, it indicates the locations of pillar installations undertaken in 1924.⁷⁴

Therefore, the green demarcated line on the eastern line of Sir Creek was inherently a boundary line even after Independence.

5. Contemporary Stance of Pakistan and India

The Sir Creek issue has become a hindrance in the demarcation of the maritime boundary between Pakistan and India. Pakistan insists that first a mutually agreeable land terminus be defined as a reference point. This land terminus will be used to draw the boundary line on charts up to the distance of 200 nautical miles from the shore.⁷⁵ As the distance of 200 nautical miles is the Exclusive Economic Zone (EEZ), this distance has precedence.

India asserts that the Sir Creek boundary delimitation is related to the maritime boundary, but both issues could also be disconnected from each other. The maritime boundary could be demarcated without considering the Sir Creek issue, or both issues could be tackled simultaneously. For example, in January 1994, India proposed a seaward approach in accordance with international law insisting that the Sir Creek boundary issue should be settled through the *thalweg* principle (mid-channel) (see Recommendation 3 in Section C.3.). Pakistan and India, however, have dissimilar stances for how Sir Creek and maritime boundaries are to be delineated. Pakistan insisted that the green line shown on Map B-44 (see Figure 1) that is on the east bank of Sir Creek should be considered the boundary line, and the land boundary was to run along the same line. Thus, Pakistan believes that when the dispute is settled and the land terminus is decided, the issue of delimitation of the maritime boundary can be addressed; the maritime boundary and Sir Creek are two different issues; therefore, disconnect them and they can be addressed separately.

⁷⁴ Information Service of India, Facts about Kutch-Sindh boundary (In maps) (1965), cited by Sikander, "River Boundary Delimitation," 402.

⁷⁵ Ansari & Vohra, "Sandia National Laboratories Cooperative Monitoring Center," 12.

B. CASE STUDIES—MARITIME BOUNDARY DISPUTES

Maritime boundary delimitations involve unique coastal geography; therefore, a resolution of maritime disputes is extremely complicated. While resolving maritime disputes, international courts and tribunals rely on equitable consideration. According to Shah,

The reason why international courts and tribunals have relied on equitable consideration in resolving international maritime disputes is the fact that unlike the international law of transnational river boundary delimitation, which is derived from customary international law and state practice primarily developed during colonialism with the interests of a few colonizing nations in mind, the laws relating to maritime boundary delimitations rely on numerous recently promulgated multilateral treaties.⁷⁶

It is pertinent to highlight that the Sir Creek issue is not a unique one that cannot be resolved. Utilizing “multilateral treaties,” and under certain rules and agreements, numerous coastal nations have bilaterally resolved a similar nature of dispute, but Pakistan and India are still unable to manage a resolution of the Sir Creek dispute. It is therefore necessary to scrutinize some case studies that could identify the probable resolution of the Sir Creek issue. The two case studies below are nearly identical to the Sir Creek dispute. One is the resolution of maritime dispute between Suriname and Guyana, and the other, the resolution of the river boundary dispute between Benin and Niger.

1. Case Study 1: Maritime Boundary Dispute between Suriname and Guyana

Suriname and Guyana are separated by the Corentyne River, which flows northward into the Atlantic Ocean. These states are located on the northeast coast of the South American Continent. They have adjacent coastlines, and Corentyne is a boundary river separating both states (see Figure 2).⁷⁷ The Corentyne was a source of dispute in

⁷⁶ Sikander Ahmed. Shah, “River Boundary Delimitation,” 385.

⁷⁷ Arbitration (Guyana. V. Suriname), Award of the Arbitral Tribunal, In the Matter of an Arbitration between: Guyana- and -Suriname,” (The Hague, 17 September 2007), 27.

terms of river and maritime boundaries. The resolution of this dispute has telling implications for the Sir Creek case.

Previously Suriname was a Dutch colony, while Guyana was a Britain colony. Suriname got independence from the Netherlands in 1975, whereas Guyana got independence in 1966 from Britain. The maritime dispute between the two states can be traced back to 1936, when Holland and Britain formed a commission to delimit the respective maritime boundary. The joint commission determined that the entire river was under Dutch control and the west bank of the river was considered a boundary.⁷⁸ However, in 1962, the Dutch government proclaimed the thalweg as the boundary in the Corentyne River.⁷⁹ When Suriname and Guyana got independence, Suriname claimed that the entire river was under its sovereignty, whereas Guyana insisted that the thalweg should form the boundary in the Corentyne before Independence.

On September 17, 2007, under Annex VII⁸⁰ of the 1982 United Nations Convention of the Law of the Sea (UNCLOS), a five-member arbitration tribunal was constituted to resolve the dispute. The tribunal supported Suriname's claim and argued that as the land boundary terminus was located on the western side (toward Guyana) of the river, Suriname had a right over the entire river, and the thalweg principle was not applicable.

However, as a consequence, the tribunal had offered special circumstances under Article 15⁸¹ of the UNCLOS. In order to accommodate Suriname in navigational access to the river, the tribunal determined that the maritime boundary between both states had to be adjusted.⁸² Moreover, if Guyana and Suriname are signatories to the UNCLOS,

⁷⁸ Ibid.

⁷⁹ Sikander, "River Boundary Delimitation," 390.

⁸⁰ UNCLOS Annex VII is regarding Arbitration comprising Article 1 – Article 13.

⁸¹ Delimitation of the territorial sea between States with opposite or adjacent coasts: "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith." See Ibid.

⁸² Arbitration (Guyana. V. Suriname), 97.

which they signed on July 31, 1996, and July 9, 1998, respectively, they are supposed to adhere to the articles⁸³ concerning the delimitation of the Exclusive Economic Zone (EEZ), the Continental Shelf between states, and all other relevant provisions of the Convention.

The resolution of the Guyana and Suriname dispute provides a recipe for the resolution of the Sir Creek issue. Like Guyana and Suriname, Pakistan and India are also signatories to the UNCLOS. Therefore, in light of this case study a tribunal is required to be constituted to ascertain the claims of Pakistan and India over Sir Creek. In the Sir Creek case, the position of the existing western land terminus is apparently agreeable to Pakistan and India; therefore, the tribunal can easily ascertain its status, as was undertaken in this case study. Upon determining the position of the terminus, Pakistan and India's petitions can easily be defined, which will facilitate the tribunal to convince both the countries on the legitimacy of their respective claims. Thus, the Guyana and Suriname case is a useful empirical model to resolve maritime boundary disputes, particularly the Sir Creek dispute between Pakistan and India.⁸⁴

⁸³ Article 74 (1) states, "Delimitation of the exclusive economic zone between States with opposite or adjacent coasts: The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

Article 83 (1) states, "Delimitation of the continental shelf between States with opposite or adjacent coasts: The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

⁸⁴ Kaieteur News, Enhanced Guyana/Suriname relations fuelled by common goals – Luncheon, (February 25, 2012), Accessed May 15, 2012, <http://www.kaieteurnewsonline.com/2012/02/25/enhanced-guyanasuriname-relations-fuelled-by-common-goals-luncheon/>

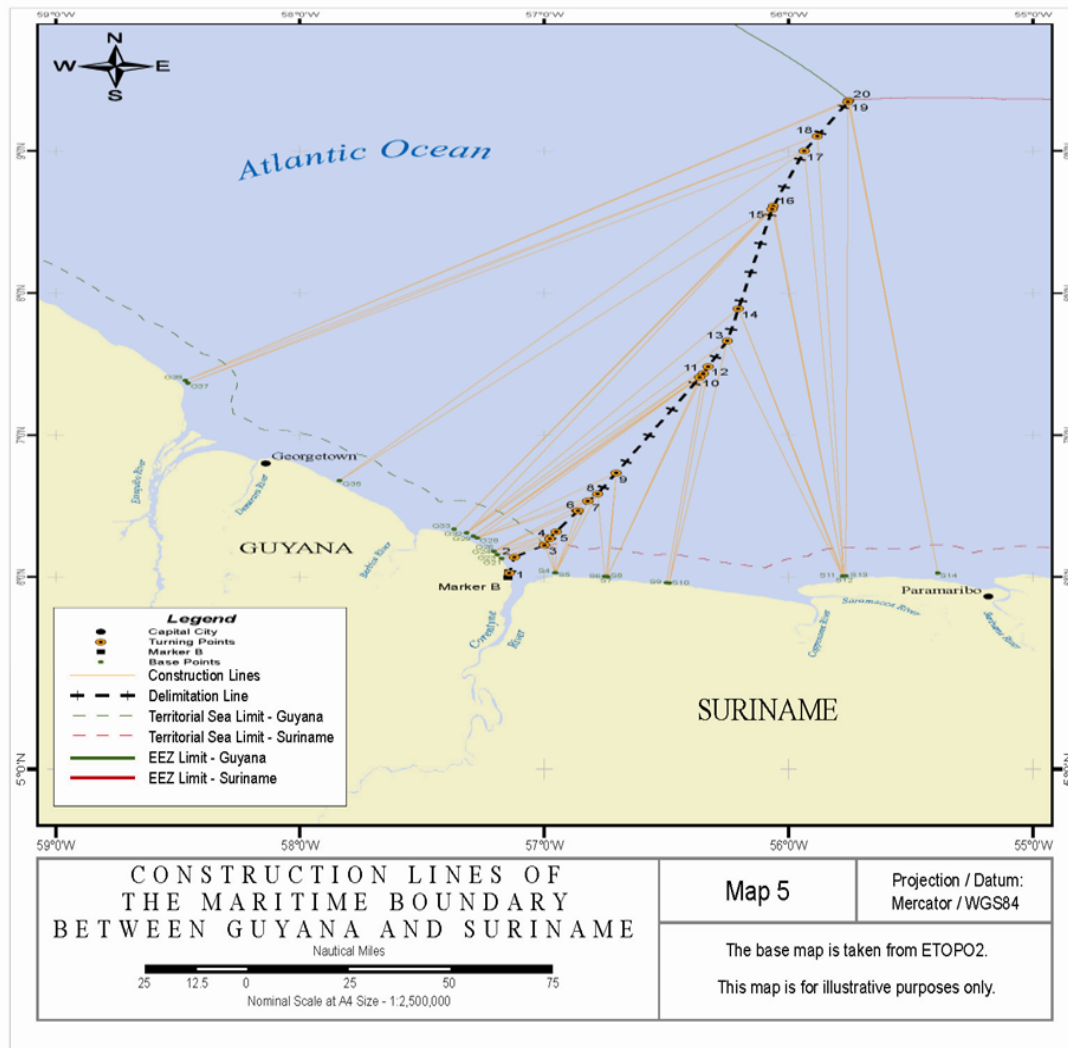


Figure 2. The Maritime Boundary Between Guyana and Suriname.⁸⁵

2. Case Study 2: River Boundary Dispute between Benin and Niger

Benin and Niger were former French West African colonies. In 1960, they got their independence from France. The Niger River was a source of dispute between both states.⁸⁶ On July 12, 2005, the ICJ formed a Chamber to delineate the disputed river boundary. The Chamber decided to maintain the immutability of boundaries fixed by

⁸⁵ From Arbitration (Guyana. V. Suriname), Award of the Arbitral Tribunal, In the Matter of an Arbitration between: Guyana- and -Suriname,” Appendix A-5, 2007.

⁸⁶ Joshua. Castellino, “Territorial Integrity and the “Right” to Self-Determination: An Examination of the Conceptual Tools,” Brooklyn Journal of International Law (2008), Accessed May 15, 2012, <https://litigation-essentials.lexisnexis.com/webcd/app?action>.

colonial rulers, however they added that delineation was to be determined keeping in view the physical “possible appearance or disappearance of certain islands in the stretch concerns.”⁸⁷ Benin claimed that the left bank of the Niger River is the boundary between both states, whereas Niger claimed that the center of the river (the deepest sounding of the navigable channel) is the actual boundary (see Figure 3).⁸⁸ The chamber supported Niger’s claim looking into the previous records, letters exchanged between the colonial rulers, and conduct of the administrative authorities, which were all proof that during the colonial period, the rulers were effectively exercising the territorial jurisdiction as per Niger’s claim.⁸⁹

Moreover, to decide the legal status of the disputed islands and comply with the principle governing the rightful possession of property, the chamber began to ascertain the thalweg of the Niger River as it existed when Benin and Niger got their independence. However, the Chamber decided that the thalweg principle was not to be considered because since Independence, the river could have potentially shifted due to accretion. Shah stated, “The Chamber is arguably a deviation from the international law principle of the fluid nature of the thalweg as the river boundary, on the basis of the argument that a thalweg boundary in a river is only a default rule. Under this view, an explicit or implicit agreement between the parties can preempt this principle.”⁹⁰

Actually, the Chamber applied the thalweg principle to the river that existed at the time of Independence. The islands between the left bank of the river and thalweg were awarded to Niger, and islands between the right bank and thalweg were awarded to Benin. The most debatable island was awarded to Niger.⁹¹ Nonetheless, the fact that specifying the exact coordinates from available records and colonial rulers’ practices, the Chamber defined the river boundary. The Chamber wanted to support the claim that the Niger River boundary was fixed at the time of Independence to uphold the supremacy of

⁸⁷ International Court of Justice (ICJ), Case Concerning the Frontier Dispute (Benin v. Niger), (Judgment of 12 July 2005), 90, cited by Sikander, “River Boundary Delimitation,” 387.

⁸⁸ Ibid., 121, 133.

⁸⁹ Sikander, “River Boundary Delimitation,” 387–88.

⁹⁰ Ibid., 388.

⁹¹ ICJ, Case Concerning the Frontier Dispute (Benin v. Niger), 140.

the principle governing the rightful possession of property.⁹² In sum, there were a total of twenty-five disputed islands in the Niger River stemming from the disputed river boundary. In light of the ICJ's decision, sixteen islands were awarded to Niger and nine to Benin.⁹³

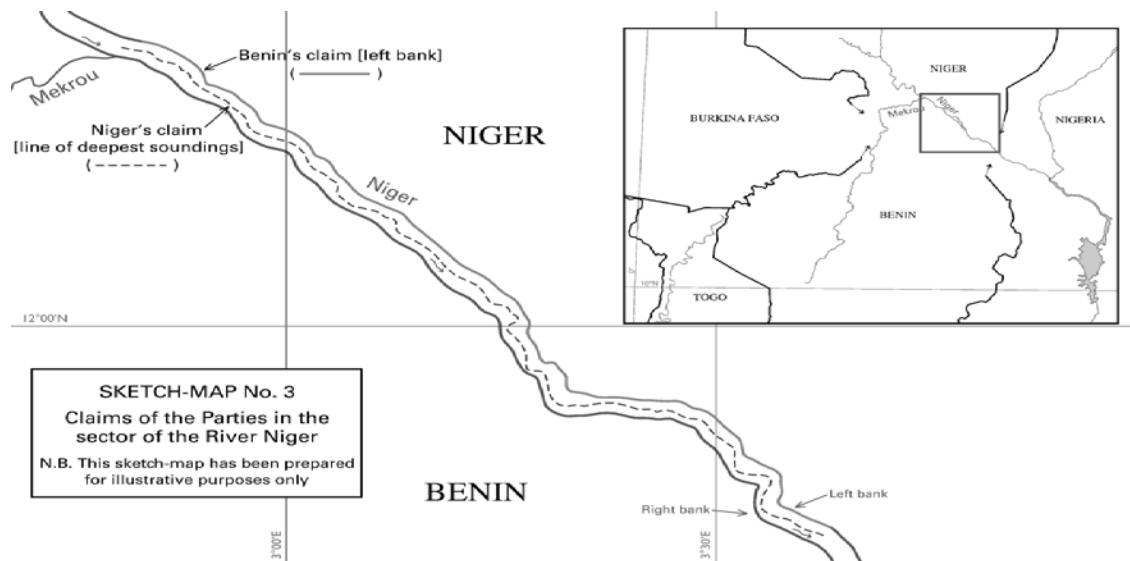


Figure 3. The Maritime Boundary between Benin and Niger.⁹⁴

The Benin and Niger model provides another option to resolve the Sir Creek dispute. Both Pakistan and India are in possession of previous records that can ascertain the position of Sir Creek at the time of Independence; therefore, the precedent of the ICJ's decision from the case of Benin and Niger can also be used for Sir Creek's case. The Benin and Niger case is also a viable option to resolve the Sir Creek dispute.

⁹² Ibid., 135.

⁹³ IRIN News, Benin-Niger: International Court Rules that Main Disputed Island Belongs to Niger not to Benin, (02 June 2012), Accessed 02 June 2012, <http://www.irinnews.org/Report/55426/BENIN-NIGER-International-Court-rules-that-main-disputed-island-belongs-to-Niger-not-Benin>.

⁹⁴ From International Court of Justice (ICJ), Case Concerning the Frontier Dispute (Benin v. Niger), 123, 2005.

C. RECOMMENDATIONS FOR A POSSIBLE SOLUTION TO THE SIR CREEK DISPUTE

The complexity and sensitivity of the Sir Creek dispute can be visualized from the fact that both countries have fought a war in the same area and pursued arbitration, but yet have not been able to solve the dispute. Ten bilateral rounds of discussion have been held since 1989. The last discussion was suspended after the tragic Mumbai attacks in 2008. India believes that Pakistan is intentionally delaying the resolution process for some political reasons and may desire arbitration at a later date. On the other hand, India does not wish to involve itself with another arbitration tribunal and would prefer to resolve the dispute without involvement of a third party.⁹⁵

Over the past six decades, numerous geographical changes have arisen in Sir Creek; therefore, in reality, the Creek is somewhat different from the printed map of 1914.⁹⁶ Ansari and Vohra highlight the changes that are relevant to the dispute:

The orientation of the creek has changed, creating a gap of approximately two kilometers from the point as marked in the 1914 map to the current outflow of the creek . . . The mouth of the creek has widened . . . An island has appeared near the mouth of the creek due to siltation, so that the boundary as marked on the 1914 map ends landwards of the tide line.⁹⁷

A need was felt to carry out a survey of the area before further dialogue on the same issue. In this regard, a joint land and hydrographic survey was conducted in 2007 before commencement of the tenth round of discussion. The survey revealed changes in the bathymetry, topography, and orientation of the creek. Both countries exchanged their charts along with their respective claims during the tenth round. At this point, they decided that their claims would be discussed in future rounds of talks, but the tragic Mumbai attacks suspended further discussion on this issue.

Of great interest to both countries, it is necessary to resolve the Sir Creek dispute utilizing previous records so as to bring harmony and peace to the region. By concurring,

⁹⁵ Ansari & Vohra, "Sandia National Laboratories Cooperative Monitoring Center," 18.

⁹⁶ Rear Admiral (Retd) KR. Menon, "Maritime Confidence Building in South Asia," In *Maritime Confidence Building in Regions of Tension*, Report No 21, (Washington, DC: The Henry L. Stimson Center, May 1996), 78.

⁹⁷ Ansari & Vohra, "Sandia National Laboratories Cooperative Monitoring Center," 18.

the step by step approach such as initially resolving this milder and less controversial maritime issue will strengthen the trust and cooperation which could lead both countries to resolve all outstanding bilateral issues including the Kashmir and Siachen Glacier issues. In light of the abovementioned case studies and norms of international law, some recommendations are proposed here to obtain a possible solution to the Sir Creek and maritime boundary disputes.

1. Recommendation 1

The existing record shows that the boundary of Sir Creek was first established in 1914; therefore, first, it needs to be determined by how much Sir Creek has been shifted due to accretion since 1914. For this purpose, Pakistan and India should analyze British-Indian maps prepared by the Surveyor General since 1914, the maps formulating during the process of erecting pillars in 1924, and those maps which were prepared in 1947 at the time of Independence. Moreover, sophisticated charts prepared during a recent survey of Sir Creek in 2007 that were subsequently exchanged as well by both states can also mark the exact location of Sir Creek as it presently exists.⁹⁸

When this analysis phase is completed and the exact location of Sir Creek at the time of Independence in 1947 will be established, the situation could be substantiated by the recent decision made by the ICJ in 2005 in the case of Benin and Niger's maritime dispute. In this case the ICJ Chamber clearly defined the Niger River boundary by applying the thalweg principle on the status of the river that existed at the time of Independence in 1960. Therefore, Pakistan and India should agree to ascertain the position of Sir Creek at the time of 1947 and subsequently apply the same decision of the ICJ.

2. Recommendation 2

The 1982 United Nations Convention on International Law of the Sea (UNCLOS) offers to extend the jurisdiction of maritime states over adjoining seas. Articles 74 and 83 (see footnote 47) of UNCLOS describe the process of delimitation of the EEZ and the

⁹⁸ Sikander, "River Boundary Delimitation," 404.

Continental Shelf. Resolution of maritime dispute between Suriname and Guyana is one of the empirical examples which could also be modeled to resolve the Sir Creek boundary dispute.

Like Guyana and Suriname, Pakistan and India are also signatories to the UNCLOS; therefore, a tribunal should be constituted to analyze Pakistan and India's claims over Sir Creek. The tribunal should first ascertain the status of the existing western land terminus, which is apparently agreeable to both states as it was undertaken in the Guyana and Suriname case, then find out if either thalweg is applicable (India's claim) or if it will support Pakistan's claim over Sir Creek. When the Sir Creek boundary dispute is resolved through this process, it will delimit the EEZ and Continental Shelf of both countries and through this way, both states' maritime boundary will also be demarcated.

3. Recommendation 3

Before proposing recommendation three, it is necessary to understand perceptions of Pakistan and India regarding demarcation of maritime boundary which has been clearly marked by Agha in Figure 4.⁹⁹

⁹⁹ Ayesha Siddiqa Agha, "Sandia National Laboratories, Maritime Cooperation between India and Pakistan: Building Confidence at Sea, Cooperative Monitoring Center," Occasional paper no. 8, (Nov, 2000), 32.

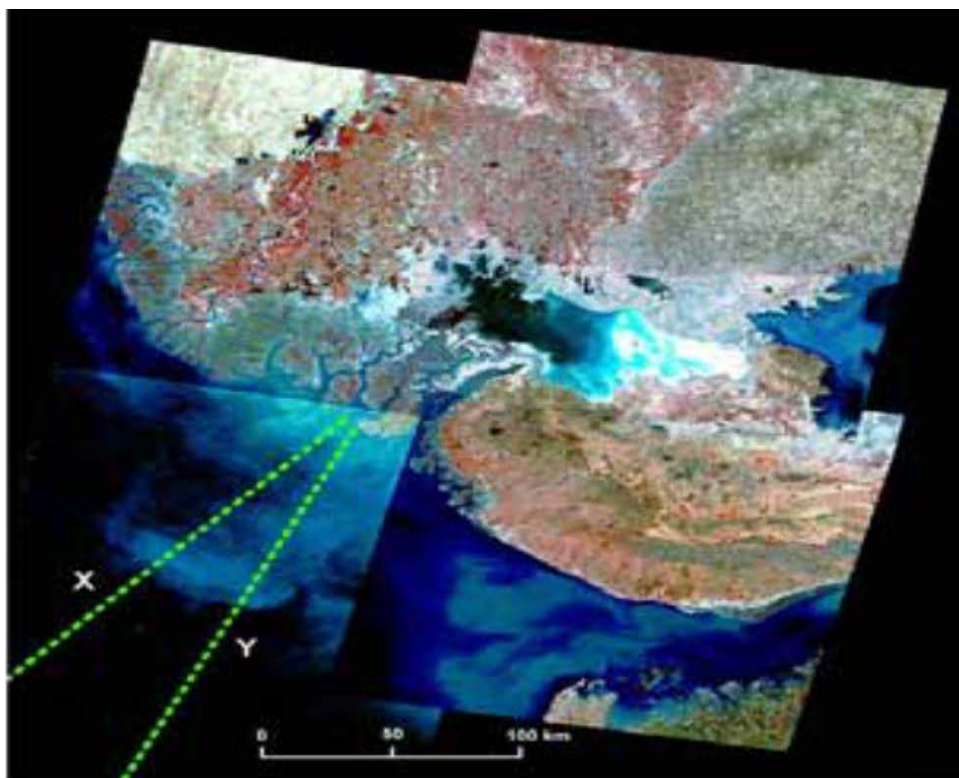


Figure 4. Lines projected from Sir Creek show perceptions of Pakistan and India's maritime boundary. Line X shows India's perception, whereas line Y shows Pakistan's perception.¹⁰⁰

The seaward approach in accordance with Technical Aspect on the Law of the Sea (TALOS)¹⁰¹ is another approach to resolve the maritime boundary issue between two adjacent states. This approach is also recommended by Vohra and Ansari.¹⁰² To apply

¹⁰⁰ From Ayesha Siddiq Agha, "Sandia National Laboratories, Maritime Cooperation between India and Pakistan: Building Confidence at Sea, Cooperative Monitoring Center," 16, 2000.

¹⁰¹ Manual on Technical Aspects of the United Nations Convention on the Law of the Sea – 1982 (IHO, IAG, IOC Advisory Board on Law of the Sea), Chapter 6. "The Equidistance Method: In maritime boundary delimitation an equidistance line is defined as a line every point of which is equidistant from the nearest points on the territorial sea baselines of two States. Article 15 refers to this line as a median line, but in the technical literature a distinction has often been made between a median line, defined as an equidistance line between two opposite States, and a lateral (equidistance) line, which is defined as an equidistance line between two adjacent States (see Appendix 1 of TALOS). In practice, the concept of adjacent and opposition are often difficult to define and apply, but the method used to determine an equidistance line is the same whatever the relationship of the coasts of the States.

The equidistance method of constructing bilateral limits is a useful start to the technical process of delimitation because: a) it is the method that must be employed in the territorial sea in the absence of agreement or special circumstances; and b) it is a well-defined geometric method which is relatively easy to apply, particularly using modern computer methods (if the baselines are clearly defined) and it gives a unique line."

¹⁰² Ansari & Vohra, "Sandia National Laboratories Cooperative Monitoring Center," 12–15.

this method, two undisputed shore points are marked from the mainland of Pakistan and India. Figure 5 illustrates this proposed solution. A point of 200 nautical miles (the EEZ limit) is determined, equidistant from already marked shore points on the respective mainland.

Following the same procedure, other points at 150, 100, 50, and 35 nautical miles are to be marked on the chart from the same mainland points.¹⁰³ Then a point is to be marked on the mouth of Sir Creek equidistant from the positions claimed by India (Point-1) and Pakistan (Point-K) as a solution without any bias to future claims.¹⁰⁴ The line joining these points would be marked on chart and considered the maritime boundary between Pakistan and India.

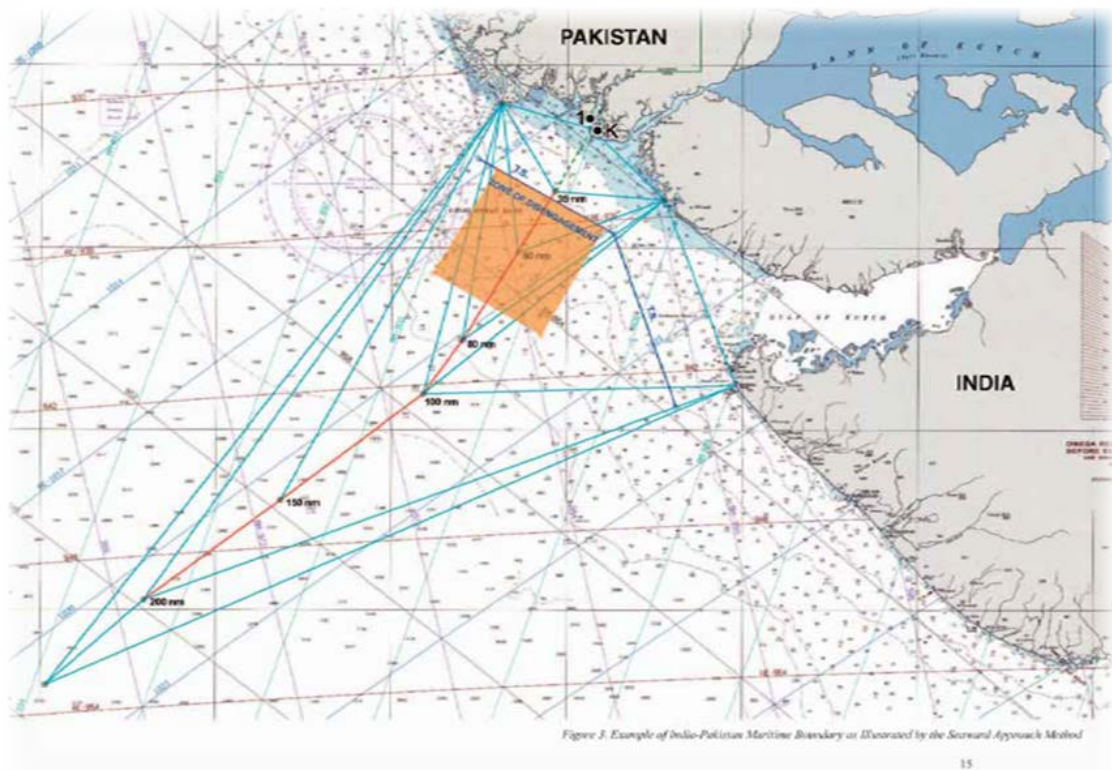


Figure 5. Equidistance Method of Maritime Boundary Delimitation.¹⁰⁵

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

D. CONCLUSION

A peaceful South Asia demands good bilateral relations between Pakistan and India. Leadership on both sides must compromise on certain territorial claims, which could lead them to bring stability to the region, and this also enhances cooperation between both states. In this context, initially they should set aside more controversial issues like Kashmir and the Siachen Glacier, and give consideration to less politically volatile issues, such as the Sir Creek boundary issue, coupled with the maritime boundary delimitation issue, as a means of advancing the progress of peace in the region.

Although the Sir Creek issue has a long and contentious history, at the heart of it, the issue is not difficult to manage. Its resolution is complex mainly because it has been consistently linked with the resolution of other hard-core issues. Why not decouple these issues or at least reverse the order of resolution, starting with such disputes as Sir Creek, which lend themselves more readily to answers?

In principle, looking into the case studies of Guyana and Suriname, and Benin and Niger, it is evident that both decisions were taken on already laid principles of customary law—the *thalweg* principle and the ICJ Chamber's judgment. Though the ICJ Chamber's judgment had undermined the *thalweg* doctrine in Benin and Niger, in which case the principle governing the rightful possession of property applied, even then the decision was taken on the basis of records and history. In case of Sir Creek, similar records (old maps, charts, and letters) are available: a land and hydrographic survey was conducted in 2007, and charts have also been exchanged by both sides. In short, the elements of a happy resolution are already in existence in the case of Sir Creek.

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III. OTHER MARITIME PLIGHTS: THE FISHERMEN AND OPERATIONAL ENCOUNTERS ISSUES

In the maritime domain, Pakistan and India carry two other prominent issues, such as the arrest and repatriation of fishermen and non-cooperative behavior of both sides' maritime forces. The fishermen from both sides often cross the disputed and unidentified maritime boundaries in search of a good quality of fish, and, as penalties, the security forces arrest them, confiscate their boats, and hand them over to local police. In this process, the fishermen not only lose their fish and boats but also lose their livelihood and freedom for years. These arrests have a negative impact on the people's perceptions, particularly on the families of victims, and also strain bilateral relations. Although for political purposes both sides' governments release these fishermen on different occasions as goodwill gestures without any legal formalities, it cannot lessen the larger issue that remains an unresolved area between Pakistan and India. In addition, non-cooperative behavior and actions of naval forces also contribute to enhance political tension between both nations. The two major naval incidents including shooting down Pakistani maritime surveillance and the ASW aircraft, Atlantique, by Indian security forces, and brushing PNS Babur out at sea by INS Godavari have left a deep scar on bilateral relations of both nations.

Nevertheless, in the game of politics and profits, the humanitarian problem of capturing the fishermen and maritime encounters between both sides' navies is a continuous process. These issues could be resolved independently of the Sir Creek dispute for a net improvement in the overall state of relations between Pakistan and India. However, as part of a package of maritime issues, including Sir Creek, the legal and practical solutions to these issues could have an exponential effect on Pakistan-Indian relations, to say nothing of stability and prosperity in the affected areas. With this in mind, this chapter takes up the issues of fishermen and operational encounters at sea, seeking viable options for the resolution of these issues in light of two case studies: the fishermen dispute between South Korea and China for the former issue and the Incidents at Sea Agreement (INCSEA) between the U.S. and USSR for the latter issue.

A. FISHERMEN ISSUE

The arrests and seizures of fishermen and sea crews have become a continuous problem and cause a rise of tensions between Pakistan and India. For example, in the wake of the Mumbai attacks, in December 2, 2008, Indian maritime security forces seized a Pakistani cargo trawler in the Sir Creek area and arrested seven crew members of the trawler. They were held for conducting suspicious activities in the area.

The Indian Ocean, the world's third-largest sea, provides the bulk of the fish supply for domestic consumption to Pakistan and India. This industry is dominated in both states by traditional fishers. According to Charu Gupta and Mukul Sharma,

The fishers of India and Pakistan have been children of the sea, and the ocean their shop floor . . . Fishing is not only an occupation for them but a way of life . . . They also play a large part in the prosperity of the two countries by earning a substantial foreign exchange.¹⁰⁶

In Pakistan and India, the fishing industry has come a long way since Independence and become a source of influential income, employment, and livelihood for the economically-underdeveloped population. More than seven million people use fishing as a source of livelihood in Pakistan and India. Table 1 shows the development of fish production and export earnings.¹⁰⁷

¹⁰⁶ Charu. Gupta and Mukul. Sharma, "Blurred Bordered: Coastal Conflicts between India and Pakistan," *Economic and Political Weekly*, vol. 39, no. 27 (July 3–9, 2004), 3006.

¹⁰⁷ Hasan Ansari & Ravi Vohra, "CBMs at Sea," 28.

Table 1. Fish Production – India and Pakistan.¹⁰⁸

	1961–1962	1999–2000	2000–2001	2001–2002
Fish Production–India (tons)	1,160,000	-	5,657,000	-
Fish Production–Pakistan (tons)	66,600	-	333,047	-
Fish Export–India (million rupees)	39.2	6308.8	N/A	N/A
Fish Export–Pakistan (million \$U.S.)	N/A	188.9	136.0	125.6

Approximately 26,000 fishing crafts from Gujarat and 4,000 to 4,500 from Sindh operate along the coasts of the area.¹⁰⁹ Although the exact data on Pakistani fishermen and fishing vessels are not readily available, the figures for the state of Gujarat’s fishing data appear in Table 2.¹¹⁰

Table 2. Fishing Data – State of Gujarat.¹¹¹

Length of the coastline of Gujarat	1,600 km
Number of fishermen in Gujarat	140,208
Number of fish landing centers	286
Number of fishing villages	851
Number of fishing vessels in Gujarat	9,222 (traditional, non-motorized) 5,391 (traditional, motorized) 11,372 (mechanized)
Total number of vessels	25,985

However, this otherwise peaceable trade arouses becomes problematic with the multiple—and unavoidable—daily boundary crossings that come with following the

¹⁰⁸ From Ansari & Vohra, “Sandia National Laboratories Cooperative Monitoring Center,” 28, 2003.

¹⁰⁹ Moinuddin Ahmed, “Pakistani Fishing Industry in Doldrums,” Dawn, 29 January, 2001, cited by Hasan Ansari and Ravi Vohra, “CBMs at Sea,” 28.

¹¹⁰ Ibid.

¹¹¹ From Ansari & Vohra, “Sandia National Laboratories Cooperative Monitoring Center,” 29, 2003.

fish.¹¹² What's more, fishermen of Pakistan and India carry out their fishing activities where both states share water in the Arabian Sea, off the Rann of Kutch coast and in the Sir Creek area. With an unclear maritime boundary, the fishermen cannot observe the niceties of international borders even if they wanted to do so; of course, the fish themselves rarely regard national boundaries.

The unhappy upshot is the arrest of fishermen on both sides. The Indian Coast Guard (ICG) and the Pakistan Maritime Security Agency (PMSA) are the two bodies that conduct arrest operations in these areas. Each agency hands captured fishers over to the respective police authorities, who, in turn, charge the fishermen for violating maritime borders and the Exclusive Economic Zone (EEZ). At this moment, the full force of the state's coercive power falls on these hapless individuals, who almost certainly had not undertaken their day's work with subversive political intent. Gupta and Sharma cast this dilemma in post-modern terms:

These fisher-folk become deviants and suspects in the eyes of the state, as they resist established identities, and undermine stated boundaries . . . The state thus has to discipline, manage, contain, control and regulate their bodies at all cost, bringing them under constant surveillance . . . Statements of security are inevitably inscribed upon, and made through, the body of the arrested fishermen . . . The body of the fisher-folk is tortured in an attempt to avenge the daily affronts to the might of the state, whose borders they have permeated . . . The result has been the use of physical force, threat, violence, arrests, and even killings, justified in the name of sovereignty of the state.¹¹³

1. Dilemma of Both States' Fishermen

On April 12, 2012, an Indian fisherman, Samant Lakshman Bambhaniya, who is suffering from cancer, was freed from Malir Jail at Karachi, Pakistan along with twenty-five other Indian fishermen as a goodwill gesture. These twenty-five fishermen were repatriated via the land border Wagah (Lahor, Pakistan), and Lakshman was flown back to his home in Gujarat, India. Lakshman explained how he got into his predicament: "[T]here was no one else in my family to earn a living. I was suffering from bone cancer

¹¹² Charu. Gupta and Mukul. Sharma, *Contested Coastlines: Fisherfolk, Nations and Borders in South Asia*, (New Delhi: Routledge 2008), 26.

¹¹³ *Ibid.*

and had spent a lot of money on my treatment. Other members of my family were ill, too, and I began working as a fisherman to pay off my debts.”¹¹⁴ In the course of this work, Lakshman became embroiled in a much larger issue between Pakistan and India when he was picked up by the Pakistani Navy. He was charged with illegally crossing the maritime boundary of Pakistan and was detained in the jail for seven months before the mutual amnesty came.

Lakshman’s case is not unique; some 423 Indian fishermen remain detained in the same jail (Malir, Karachi). At the same time, more than 150 Pakistani fishermen are detained in Indian jails for violating the maritime boundary. They may remain in jail for years.¹¹⁵ While neither government makes much of these cases at present, the human cost is considerable. Mai Khattoo, wife of a Pakistani fisherman who was released after several years from Indian prison said, “You cannot imagine the pain and agony I went through when my husband was imprisoned in India. Besides, worrying about his safety, I had to work day and night to feed five children as he was the only bread earner.”¹¹⁶ Table 3 shows the number of both sides’ fishermen imprisoned for border incursion.¹¹⁷

¹¹⁴ Rediff News, “Pakistan Releases 26 Indian Fishermen,” (April 12, 2012 17:42 IST), Accessed May 15, 2012, <http://www.rediff.com/news/report/pakistan-releases-26-indian-fishermen/20120412.htm>.

¹¹⁵ Ibid.

¹¹⁶ Charu. Gupta and Mukul. Sharma, “Blurred Bordered,” 3011.

¹¹⁷ Dawn, January 17, 2010; The Hindu, January 2, 2010; Pakistan-India Judicial Committee on Prisoners recommended in June 2008 that the lists of prisoners exchanged by the two governments on March 31, 2008 “ . . . are not complete and do not mention names and details of all detainees/prisoners. The Committee expects that the procedure for preparation and updating such lists shall be streamlined and the next lists to be exchanged on 1st July, 2008 will be complete ad without omissions. Such lists shall contain information about the date of arrest, details of sentence, charges under which the prisoner was sentenced and the expected date of release.” See PILER, “Pakistan Institute of Labor Education and Research: Detained Fishermen - Trapped in a Political Game between Pakistan & India,” 2, Accessed July 16, 2012, <http://www.piler.org.pk/newfisherman01.pdf>.

Table 3. Detained Fishermen claimed by both countries.¹¹⁸

Date	Indian-Claimed Pakistani Detained Fishermen	Pakistani-Claimed Indian Detained Fishermen
April 2008	14	410
July 2008	378	412
January 2009	Not submitted	343
July 2009	Not submitted	535
January 2010	Not submitted	510

Both states keep these prisoner fishermen completely in the dark from the time of their arrest. Most of them remain in jail for years without being tried. Those who are convicted are not released even after they have served their full sentences. They wait for years for the announcement of a formal exchange of fishermen by the two countries, like the one that freed Lakshman. This mutual amnesty usually takes place according to the same exchange control procedure followed for the release or exchange of prisoners of war. The occasions of release and exchange normally depend on the relations of both governments,¹¹⁹ and they are often timed to coincide with Secretaries' meetings, Prime Ministers' meetings, regional forum meetings, and local commanders' meetings. Such gestures may resolve a particular case, but the larger issue remains a sore area between Pakistan and India. All the while, as Lakshman stated, the fisher-folk meant only to pursue their livelihood and feed their families. These incarcerations represent one more negative incident in the minds of the public on both sides; collectively, they strain bilateral relations as well. On some occasions, these fishermen are used for political purposes, when both sides' governments release them as goodwill gestures without any legal process. Table 4 shows the data on recently released fishermen on different occasions.¹²⁰

¹¹⁸ From PILER, "Pakistan Institute of Labor Education and Research: Detained Fishermen, 2, Accessed July 16, 2012, <http://www.piler.org.pk/newfisherman01.pdf>.

¹¹⁹ Ibid.

¹²⁰ Ibid.

Table 4. Number of Fishermen Released and the Occasions.¹²¹

Date	Number of Released Fishermen	Occasions
Aug. 14, 2007	48 Pakistani fishermen & 100 Indian fishermen	Preceded by Home Secretary Meeting Independence Day
Nov. 25, 2008	29 Pakistani fishermen & 101 Indian fishermen	Preceded by Home Secretary Meeting
Dec. 25, 2009	99 Indian fishermen	Goodwill gesture by Prime Minister
Jan. 2, 2010	31 Pakistani Fishermen	Response to Pakistan gesture

2. Current Developments for Facilitation of Fishermen

Although the families and relatives of Pakistani and Indian fishermen have been raising the issue with the authorities on both sides, along with media accounts highlighting the painful stories of these fishermen, both governments have been slow to post any official recognition or progress. In the mid-nineties, several Pakistan- and India-based non-governmental organizations (NGOs) became involved to establish the detentions of fishermen as human rights violations. The leading organizations in Pakistan include Human Rights Commission of Pakistan (HRCP); the Pakistan Institute of Labor, Education, and Research (PILER); and the *Anjuman Samaji Behbood of Ibrahim Hydri* in Karachi, which later became the Pakistan Fisher-folk Forum (PFF).¹²² The apprehension of fishers did not stop, but the communities and human rights activists got more vocal about curtailing the arrests of fishermen at sea. Additionally, another organization known as the South Asian Labor Forum (SALF) also surfaced, calling attention to the plight of the fishermen as a human rights violation, which made this issue of international-level

¹²¹ From PILER, "Pakistan Institute of Labor Education and Research: Detained Fishermen, 5, Accessed July 16, 2012, <http://www.piler.org.pk/newfisherman01.pdf>.

¹²² Qurat. Mirza, "Relief Web Update: Fishermen on Both Sides of the Pak-India Maritime Borders are Treated as Prisoners of War -- A Story of Tears," (Report, Asian Human Rights Commission, Feb 3, 2012), Accessed July 20, 2012, <http://reliefweb.int/report/pakistan/fishermen-both-sides-pak-india-maritime-borders-are-treated-prisoners-war-story>.

concern. Because of the combined efforts of these organizations, the fishermen have come begun to figure in the Pakistan-India dialogues and foreign relations.¹²³

Moreover, a joint judicial body known as the Pakistan-India Judicial Committee was formed in January, 2007, comprising eight retired judges from Pakistan and India. Justice (Retd) A. S. Gill and Justice (Retd) M. A. Khan from the Indian side, and Justice (Retd) Nasir Aslam Zahid and Justice (Retd) Mian Muhammad Ajmal from Pakistani side visited the jails. The judges were appointed to inspect the situation of detained civilians in the jails of other nations, exclusively the fishermen who were imprisoned for casting across the territorial waters. They have also been assigned to help facilitate the release of these prisoners.

After the Committee's initial meeting on February 26, 2008, in New Delhi, and an exchange of lists of prisoners on April 1, 2008, the members¹²⁴ of the Committee visited jails in Pakistan (Karachi, Rawalpindi, and Lahore) from June 9 to June 13, 2008, and in India (Amritsar, Delhi, and Jaipur) from August 18 to August 23, 2008.¹²⁵ The Committee recommended several points for consideration, including: (1) if a national of the other country dies in jail, actions must be taken by either country to immediately inform the High Commission¹²⁶ of the other country in writing of the death of the prisoner; (2) the federal/central government of each country will also issue instructions to the Inspectorate-General of all the provinces and the Home Department for strict compliance; (3) instructions may be issued for providing copies of the inquiry report (if any) and any post-mortem report of the deceased prisoner to the other country's High Commission; (4) within three weeks of death, the body of a deceased prisoner will be handed over to his or her country; (5) juveniles, women, and prisoners who are seriously ill or disabled (physically or mentally) deserve humanitarian consideration and may be released on compassionate grounds whether they are awaiting trial or convicted; and (6) prisoners locked up for such minor offences as visa violation, border-crossing, and

¹²³ Ibid.

¹²⁴ Around 46 Pakistani prisoners at Central Jail Tihar, New Delhi, 98 at Central Jail, Jaipur and 45 at Central Jail, Amritsar were presented before the committee.

¹²⁵ The News On Sunday, "*Aman Ki Asha: Both Governments Lack Political Will*," Accessed July 20, 2012, http://amankiasha.com/sp_english_detail.asp?id=52.

¹²⁶ An embassy of one British Commonwealth country to another.

violation of the Foreigner Act also deserve humanitarian and compassionate consideration.¹²⁷

Unfortunately, neither government gave much consideration to the recommendations of the Committee. Justice (retd) Nasir Aslam Zahid, a member of the Committee, noted:

The government has failed to provide us with effective practical support. There are no funds available to us to even hold our meetings regularly. Our recommendations have not been implemented either and here too, the two governments lack political will to make it a robust and active committee. The governments' purported concern over the issue remains largely on paper only.¹²⁸

3. Case Study – South Korea and China Fishermen Dispute

The arresting of fishermen, nationals of one country, by another country's security forces is not a unique issue. Similar incidents take place among other coastal nations in the world. However, most nations have bilaterally resolved these disputes by establishing certain rules and agreements, whereas over the last six decades, Pakistan and India have failed to determine a manageable solution to this critical humanitarian dispute. In this regard, the resolution of the fishers' dispute between South Korea and China provides a case study to ascertain the possible solution to the fishermen dispute between Pakistan and India.

The East China Sea has a continental shelf of nearly 161,987 square nautical miles; and most of the sea is less than 200 meters deep. The shelf inclines from the Chinese and Korean coasts and abruptly drops into the Okinawa Trough, nearly 2,300 meters deep.¹²⁹ China and South Korea have overlapping shelf claims in the western part of East China Sea; they also have small areas of overlap in their EEZ claims in the

¹²⁷ Daily Times, January 28, 2008, Indo-Pak Judicial Committee on Prisoners visits Indian jails, Accessed July 10, 2012, http://www.dailytimes.com.pk/default.asp?page=2012%5C01%5C28%5Cstory_28-1-2012_pg7_5.

¹²⁸ The News On Sunday, "Aman Ki Asha," Both Governments Lack Political Will," Accessed July 20, 2012, http://amankiasha.com/sp_english_detail.asp?id=52

¹²⁹ Mark J. Valencia, "The East China Sea Dispute: Context, Claims, Issues, and Possible Solutions," (Asian Perspective, vol. 31, no. 1, 2007), 127–167, 144.

northern East China Sea.¹³⁰ Incidents of Korean fishing vessels seized by the Chinese authorities occurred from time to time in the area within the East China Motor Trawl Prohibition Line¹³¹ (the so-called Mao Tse-Tung Line), as claimed by China in the early 1950s. Thus, the Korean government had to advise Korean fishing vessels not to approach the Mao Tse-Tung Line for their own safety.

As there were no diplomatic relations between the Republic of Korea and People's Republic of China during the Cold War, talks for a fishers' agreement between Korea and China at the government level were not possible.¹³² Thus, in 1975 the Korean government drew a fishing operation (fisheries) restriction line along and off the Mao Tse-Teung Line to keep Korean fishing vessels from approaching the Line.¹³³ Since the mid-1980s, as Chinese fishing vessels became very active and thus disputes at sea between the fishing vessels of Korea and China frequently arose. The fishermen's organizations, instead of the governments, of the two countries concluded an informal "agreement for dealing with disputes between their fishing vessels at sea" in 1989.¹³⁴ Of significance here is that the two states did not establish normal diplomatic relations until 1992.

¹³⁰ Ibid., 144–146.

¹³¹ Sun Pyo. Kim, "The UNCLOS Convention and New Fisheries Agreements in North East Asia," 1–22, Accessed August 8, 2012, www.mofat.go.kr/webmodule/common/download.jsp. He further explained that, "The East China Motor Trawl Prohibition Line was drawn on December 16, 1950 by the Fisheries Management Bureau of the East China Military Administration Committee. The line is 30–70 miles from the Chinese shore." See also Choon-ho Park, "Fishing under Troubled Waters: The North East Asia Fisheries Controversy," 2 *Ocean Development and International Law* (1974), 114–115.

¹³² The Republic of Korea had diplomatic relations with the Republic of China (Taiwan) until 1992. In the Korean War between 1950–1953, the People's Republic of China's volunteer military troops participated in the war to assist North Korea. After the Cold War, the Republic of Korea established diplomatic relations with the People's Republic of China cutting off the diplomatic relations with the Republic of China. Since 1992, China has maintained diplomatic relations both with the Republic of Korea and the People's Republic of Korea (North Korea). See Ibid.

¹³³ Rules on Safety of Vessel Operation, announced in 1968, amended thereafter several times, See Ibid.

¹³⁴ Since the late 1990s, the number of Chinese fishing vessels found fishing in the territorial waters of Korea has increased rapidly. The number was 249 vessels in 1991, but it was 472 in 1995. According to statistics by the Korean Ministry of Maritime Affairs and Fisheries, the number of Chinese fishing vessels seized by the Agency on charge of illegal fishing in the territorial waters of Korea are 15 in 1992, 17 in 1993, 17 in 1994, 45 in 1995, 45 in 1996, 39 in 1997, 31 in 1998, 60 in 1999, and 24 in 2000. See Ibid.

a. Negotiations Process

China and Korea began to negotiate for a formal fisheries agreement in 1993, a year after they established diplomatic relations. In the early stages of the negotiations, China argued that all the area between the outer limits of the territorial waters of the two countries should be a joint fishing zone until the final delimitation of EEZ boundaries. In contrast, Korea argued that EEZ fishing management should be applied in the largest possible area, with a minimal joint fishing zone.¹³⁵ While the negotiations made little progress, massive fishing activities were conducted by Chinese fishermen off the Korean coasts.

In September 1997, four years after the first round of talks, Korea and China agreed in principle to establish joint fishing zones in the middle of the Yellow Sea.¹³⁶ Starting in December 1997, various proposals on how to shape this joint fishing zone were exchanged between the two countries.¹³⁷ Still, Korea wished to set up a narrow joint fishing zone, whereas China pressed for a wide joint fishing zone. In this situation, the idea of “transitional zones” (see Figure 4) was introduced in September 1998 to settle the dilemma in the negotiations on the shape of the joint fishing zone. The two states decided to establish two transitional zones: one is situated between the joint fishing zone and Korea’s zone, which is regarded as Korea’s EEZ for the purpose of the fisheries agreement; and the other transitional zone is situated between the joint fishing zone and China’s zone. Fishermen from both Korea and China can fish in the transitional zones until the fourth year after the entry into force of the fisheries agreement, and then the transitional zones revert to the zones where each state can exercise its sovereign rights on fishing for the purpose of the fisheries agreement. After settling the different views on

¹³⁵ Korea also proposed that two countries adopt a vertical line, as a fisheries boundary, which equally divides the Yellow Sea in size if the delimitation takes some time: Ministry of Foreign Affairs and Trade of Korea and The Ministry of Maritime Affairs and Fisheries, *Exposition on Korea-China Fisheries Agreement* (written in Korean, unpublished), April 1999, pp.8–9: The Ministry of Maritime Affairs and Fisheries, “Exposition Material on Korea-China Fisheries Agreement (written in Korean),” February 2001, at www.momaf.go.kr, 6. See *Ibid.*

¹³⁶ Ministry of Foreign Affairs and Trade of Korea and The Ministry of Maritime Affairs and Fisheries, *Exposition on Korea-China Fisheries Agreement* (written in Korean, unpublished), April 1999, 7–9. See *Ibid.*

¹³⁷ Ministry of Foreign Affairs and Trade of Korea and The Ministry of Maritime Affairs and Fisheries, *Exposition on Korea-China Fisheries Agreement* (written in Korean, unpublished), April 1999, 8–9. See *Ibid.*

the shape of the joint fishing zone and transitional zones, the two countries were able to initialize the fisheries agreement in November 1998.¹³⁸ It took another two years from that step for the two governments to sign the agreement, and finally the parties agreed to bring the Korean-Chinese Fisheries Agreement into force on June 30, 2001.¹³⁹

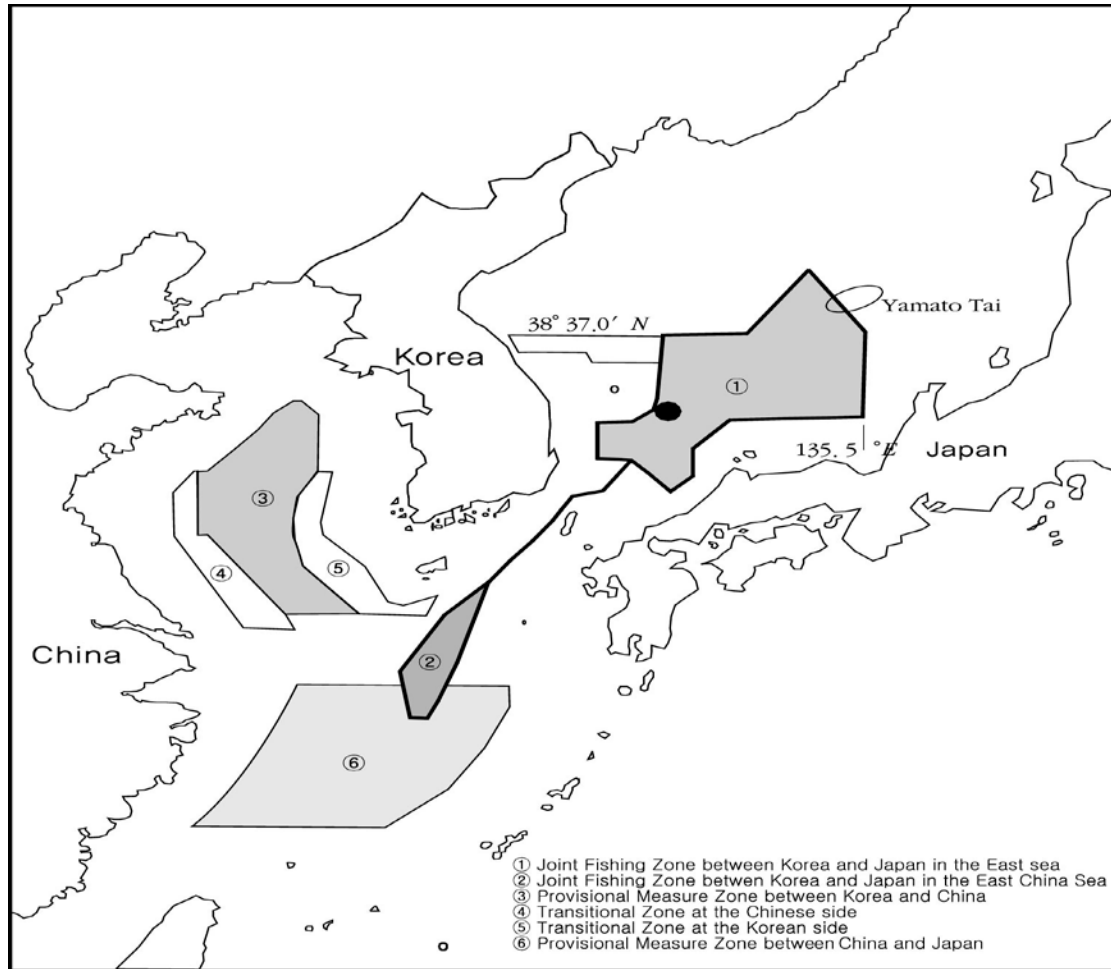


Figure 6. Zones between Korea and China.¹⁴⁰

¹³⁸ The Korea Herald, 12 November 1999. See Ibid.

¹³⁹ “Korean Ministry of Maritime Affairs and Fisheries”, Press Release, 5 April 2001, available at www.momaf.go.kr. See Ibid.

¹⁴⁰ From Sun Pyo. Kim, “The UNCLOS Convention and New Fisheries Agreements in North East Asia,” 1–22, Accessed August 8, 2012, www.mofat.go.kr/webmodule/common/download.jsp.

b. Allocation of Zones

As the Korean-Chinese Fisheries Agreement is a provisional arrangement of a practical nature as seen in Paragraph 3 of Article 74 of the LOS Convention, it shall be without prejudice to the final delimitation of EEZs. For the sake of a double safeguard, the “without-prejudice clause” is adopted in the Fisheries Agreement, providing that: “No provision in this Agreement shall be interpreted in such a way as to prejudice the position of either Contracting Party on issues in the law of the sea.”¹⁴¹

The shape of the Provisional Measure Zone in the Yellow Sea is not a modified form of overlapping claims of EEZ by both parties. In negotiating the shape of the Provisional Measure Zone, representatives of both parties posited a hypothetical line that equally divides the Yellow Sea.¹⁴² Similarly, the two Transitional Zones off the China Sea coasts of both states are almost the same size.¹⁴³ It means that both countries’ fishermen enjoy fishing activities in an equal area, so it could also minimize the chances of hostility by both the countries in the future for the size of the area.

In the Provisional Measure Zone, fishing vessels are only subject to the enforcement jurisdiction of the state of which flag the vessels are flying.¹⁴⁴ In the Transitional Zones, as in the Provisional Measure Zone, enforcement authorities of one party cannot exercise enforcement jurisdiction against the fishing vessels of the other party.¹⁴⁵ Joint monitoring and surveillance measures can take place in Transitional Zones;¹⁴⁶ however, even if the joint monitoring and surveillance is applied, a law

¹⁴¹ Article 14 of the Korean-Chinese Agreement. A question arises here why the agreement adopted the term “issues in the law of the sea” rather than the term “issues in the law of the sea other than fisheries.” Because obviously the fisheries’ agreement can have an effect of modifying the rights and obligations of the LOS Convention between the Parties with regard to fishery matters between the two Parties, and thus the agreement affect each Party’s position on the issues of fisheries though it is a provisional arrangement: Note that the fisheries’ agreement between China and Japan also adopts the same language in its without-prejudice clause. See *Ibid*.

¹⁴² Record of Negotiations on Sino-Korean Fisheries Talks (recorded in Korean for internal use, unpublished), 1998. See *Ibid*.

¹⁴³ Transitional Zone in the Korean side is 28,716 sq. km and the Transitional Zone in the Chinese side is 26,192 sq. km; calculated by using a delimitation software Delma.

¹⁴⁴ Paragraph 2 and 3 of Article 7 the Korean-Chinese Fisheries Agreement.

¹⁴⁵ Paragraph 3 of Article 8 of the Korean-Chinese Fisheries Agreement.

¹⁴⁶ Paragraph 3 of Article 8 of the Korean-Chinese Fisheries Agreement.

enforcement officer of one party would not be able to initiate enforcement when he/she is onboard a fishing vessel of the other party with an officer of the other party because the agreement clearly states that “each Contracting Party may not apply management or other measures to nationals and fishing vessels of the other Party” in the joint fishing zones.¹⁴⁷ There is no provision which alludes to this strict application of flag-state jurisdiction being relaxed in a case of joint monitoring and surveillance. In this case, another form of cooperation is applied in addition to the joint monitoring and surveillance scheme, i.e., when one country’s security force finds a fishing craft of the other country conducting fishing activities with a violation of decisions made by the Joint Fisheries Committee of Korea and Chinese in either Provisional Measure Zones or Transitional Zones, then the attention of the country will be drawn to the violation at sea, and will notify the other country. The violator country will take necessary actions with regards to the vessel violating the rules and must satisfy the country who reported the violation.

c. Current Fishing Pattern

Besides the Provisional Measure Zone and Transitional Zones, there are areas where the “current fishing patterns” will be maintained. It appears that this expression was intended to indicate “free fishing activities” that the nationals and fishing vessels of the two countries have enjoyed thus far in most parts of the sea between them.¹⁴⁸ In the Current Fishing Patterns Zone, the two parties are not to apply their laws and regulations on fisheries against nationals and fishing vessels of the other country, unless agreed otherwise between the two parties.¹⁴⁹

Where are the areas where free fishing activities can take place in the Yellow Sea and in the East China Sea? According to the complicated language of Article 9 of the Fisheries Agreement, the Current Fishing Pattern Zones are “certain areas,” one of which is situated to the north of the Provisional Measure Zone and the other to the

¹⁴⁷ Paragraph 3 of Article 7 and Paragraph 2 of Article 8 of the Korean-Chinese Fisheries Agreement.

¹⁴⁸ The term “current fishing pattern” might seem inappropriate for a term to indicate “free fishing” because both Korea and China already proclaimed their respective EEZ when they initialed the fishing agreement in 1998. It appears that negotiators of both countries had begun to use the term “current fishing pattern” before both countries proclaimed their respective EEZ. See *Ibid.*

¹⁴⁹ Article 9 of the Korean-Chinese Fisheries Agreement.

south of the Provisional Measure Zone and Transitional Zones.¹⁵⁰ In other words, fishermen of Korea and China can engage in free fishing activities in these “certain areas” situated to the north of the Provisional Measure Zone and also in “certain areas” situated to the south of the Provisional Measure Zone and the Transitional Zones, unless there is a special agreement to the contrary. As the term “certain” implies, not all the area situated to the north of the Provisional Measure Zone and not all the areas to the south of the Provisional Measure Zone and Transitional Zones would be the areas where the free-fishing activities are to be guaranteed.

Even after Korea and China settled this problem, they required further negotiations to settle their divergent views on how far south the southern limits of the Current Fishing Pattern Zones extended.¹⁵¹ In the negotiations, Korea argued that the southern limits line of Current Fishing Patterns Zone between Korea and China should be drawn at Lat. 29° 43' N., where the 200-mile line reaches from Korea's southernmost island of Mara-do. The parallel of Lat. 29° 43' N. is far south of the parallel of Lat. 30° 40' N., at which the northern limits line of the Sino-Japanese Provisional Measure Zone is drawn. Thus, in the argument, Korea challenged the legality of the northern limits line of the Provisional Measure Zone between Japan and China, stressing that the Sino-Japanese line was drawn without consultation with Korea, and Korea's EEZ claims go further south beyond the line. Korea and China at last agreed to set the southern limits of the Current Fishing Pattern Zone between Korea and China at Lat. 29° 40' N., under the condition that Korean fishermen should observe seasonal fishing restrictions in the areas where Chinese fishermen are observing them.¹⁵²

¹⁵⁰ Article 9 of the Korean-Chinese Fisheries Agreement.

¹⁵¹ No such differences arose between Korea and China with regard to the area situated in the north of the Provisional Measure Zone once they reached the understanding that Chinese fishermen are not allowed to fish in the Korea's Special Prohibition Zone, because the fishing activities by Korean fishermen are not active elsewhere other than the Special Prohibition Zone in the area to the north of the Provisional Measure Zone and the fishing activities by Chinese fishermen in the area are not matters of concern to Korea. See Sun Pyo. Kim, “The UNCLOS Convention and New Fisheries Agreements in North East Asia,” 1–22, Accessed August 8, 2012, www.mofat.go.kr/webmodule/common/download.jsp

¹⁵² Korean Ministry of Maritime Affairs and Fisheries, “Situations of the Korea-China Fisheries Negotiations and Plans (written in Korean), March 2001 and Press Release of 5 April 2001, available at www.momaf.go.kr. p.6. According to the seasonal restriction, trawl and purse seine vessels are not allowed to fish in the area between June 16 and September 19. See Ibid.

4. Recommendations for Possible Solutions for the Fishermen Dispute

Even when the international maritime boundary issue between Pakistan and India is resolved, it is unlikely that the fishermen will completely stop crossing into the other state's waters. However, the establishment of good communication, coordination, and operational cooperation between both states' maritime security forces may serve to mitigate the suffering of fishermen in general and their families in particular.¹⁵³ The following recommendations will help to resolve the issue in a peaceful manner:

a. Recommendation 1

In light of Korea-China case study, different zones should be established within the disputed maritime boundary in order to allow the fishermen not only to operate without fear of arrest but also to use their traditional fishing methods. These zones would provide an opportunity for both countries to share the trans-boundary migratory fish resources. Both countries' fishing craft would be prohibited from crossing the outer limits of their respective zones, which would be marked with buoys. Fishing licenses may be granted to a certain number of the other country's fishing crafts on a seasonal or yearly basis, limiting them to catch a specific quantity of fish. The total catch of fish would have to be regulated on a yearly basis.¹⁵⁴

For this purpose, a joint commission would be constituted establishing the types and number of craft for both countries that may be allowed to conduct fishing in the zones, the annual catch quantity, and the type of fish. The commission would also resolve cases of violations. Moreover, security forces' aircraft and ships would patrol to warn and escort these fishing craft restricting them to their respective zones, and security forces would be instructed not to arrest the fishermen unless they are found to be involved in such illegal activities as smuggling and human trafficking.¹⁵⁵

¹⁵³ Hasan Ansari & Ravi Vohra, "CBMs at Sea," 31.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid., 31–32.

b. Recommendation 2

In the case of arrest of fishermen, the fishing craft would be returned to their respective countries upon completion of the necessary formalities and legal trials, and the arrested fishermen released and repatriated after registering the case. Moreover, both countries' fishing communities/unions should be informed to provide necessary help for expediting the legal formalities. They would be encouraged to remain in contact with each other electronically for faster correspondence.

Ansari and Vohra have suggested some useful technological steps to aid the fishermen as well as facilitate the securing of the area, including:

- (1) Installation of warning aids on undisputed land on either side of the coast that could be equipped with a transponder designed with tracking and audio warnings to stop craft that appear intent on crossing the boundary limits. The equipment will also transfer this electronic information to both sides' security forces to take timely actions against these craft.
- (2) Installation of high intensity light in the red and green sectors for night navigation, which could indicate to the fishermen to avoid the other country's territory.
- (3) Installation of onboard warning aids that could aid the captains of fishing craft. It may be difficult for traditional fishing craft but vessels of 18 to 20 meters in length or more may be directed to carry a transponder and global positioning system (GPS) that could provide their precise latitude/longitude position.¹⁵⁶

c. Recommendation 3

At central locations in Pakistan and India, data banks could be created to maintain a record of all fishermen and their fishing craft. These data banks would be networked with other fishing harbors of the respective areas. Captains of the fishing craft would be instructed to submit a detailed list of crew members and their particulars.

¹⁵⁶ Ibid., 32–33.

Fishing authorities would be made responsible for maintaining and updating the data bank offices.

In case of arrests, this measure would aid the fishing authorities to identify the seized craft and their crew. In addition, it will help them in crew tagging and craft tracking.¹⁵⁷ Once the respective networking process is matured, both countries should link the system with each other. This connection will provide an opportunity at both ends to ascertain easily the status of fishermen and establish their identity without any doubt in case of arrests. The data may also be made accessible to the fishermen unions and they will help to expediently develop the database.

B. OPERATIONAL ENCOUNTERS

In more than six decades, Pakistan and India could not develop good bilateral relations because of mistrust, suspicion, and hostility. In parallel, both the countries have been engaged in different forms of dialogues and summits in developing cooperation and reducing tension but unfortunately have not yet succeeded. Military-to-military relations of both countries also reveal a disturbing trend. One of the aspects of this trend can be seen in the Arabian Sea where Pakistani and Indian naval forces engage in dangerous maneuvers¹⁵⁸ by coming close to each other and routinely monitoring each other's activities. On one hand, shadowing and buzzing Indian Navy ships and aircraft by the Pakistan Navy is a common practice while operating at sea or on the passage to the Persian Gulf. On the other hand, the Indian Navy cannot be acquitted on this account because when Pakistan Navy ships and aircraft are on their way to Southeast Asia or engaging in exercises in the Arabian Sea, the Indian Navy routinely undertakes similar activities.¹⁵⁹ During these activities, both sides' navies remained silent. Some of these shadowing and buzzing incidents are: (1) in 1983, an Indian ship (Kashin II class destroyer) nearly opened fire on a Pakistani Atlantique aircraft; (2) in 1996, an Indian

¹⁵⁷ Ibid.

¹⁵⁸ Dangerous Maneuvers: A vessel coming dangerously close, crossing the bows, or moving in close vicinity of another at high speed are known as Dangerous Maneuvers and being considered un-seamanlike actions. Such maneuvers can result in collisions and are not permitted by the regulations. It is mandatory for a vessel to make its intentions clear to the other vessel to avoid any embarrassment.

¹⁵⁹ Vijay. Sakhuja, "Cold War in the Arabian Sea," Research Fellow, IDSA, 1–14, Accessed July 15, 2012, <http://www.idsa-india.org/an-jun-3.htm>

Navy Sea King helicopter was shadowing the Pakistan Navy's annual Sea Spark exercise, and a collision between Pakistan Navy's Allouette helicopter and India's Sea King was barely avoided; and (3) in August 1995, the navies of Pakistan and India were invited to Indonesia for the International Fleet Review, where the Indian Navy claimed that the Pakistan Navy Allouette helicopter flew dangerously close over an Indian warship at anchor in the port of Tanjung Priok.¹⁶⁰ Sakhuja has mentioned an Indian Navy official's statement that, "every time our warships enter the northern Arabian Sea, it is shadowed by either an Orion or an Atlantique. We do the same to them using our Bears, IL-38s, Dornier-228s and Sea Kings."¹⁶¹

Keeping in view the nature of these incidents that occurred between Pakistani and Indian navies, it can be argued that both sides have shown tolerance despite being traditional rivals, but most of these incidents have gone unreported other than few diplomatic protests. However, two major maritime incidents badly deteriorated the bilateral relations between both the countries when India shot down Pakistani Atlantique aircraft in the Rann of Kutch area, and both countries' ships brushed each other in the Arabian Sea. These two incidents that increased distrust between both the governments in general and both the navies in particular will be discussed in detail below.

1. Atlantique Incident

On August 10, 1999, the Pakistan Navy's ASW aircraft Atlantique was shot down by the Indian Air Force's aircraft with air-to-air missiles in which sixteen Navy personnel were killed. The incident happened in the Sindh province of Pakistan south of Badin, 30–40 miles north of the coastline of Pakistan in the area of Rann of Kutch.¹⁶² The Atlantique is a maritime patrol aircraft (MPA) and the version that Pakistan has carries modern weapons including air-to-surface missiles. The Pakistan Navy uses these aircraft in anti-submarine and anti-ship roles. When the aircraft was shot down, Pakistan and India had two different viewpoints.

¹⁶⁰ Asian Defence Journal, "Buzzing Fleets in the High Seas," October 1999, p. 34.

¹⁶¹ Vijay. Sakhuja, "Cold War in the Arabian Sea," 1–14.

¹⁶² Zarar Shaheed Trust, "News Coverage: Unarmed Pak Naval Aircraft Shot down by Indian Jets," Accessed July 16, 2012, <http://zararshaheedtrust.org/indianjets.html>.

a. Pakistan's Stance

The unarmed Atlantique aircraft carrying sixteen crew members onboard was on a routine training mission. The Indian Air Force aircraft fired an air-to-air missile without warning when Atlantique was flying over Pakistan's air space. Pakistan considered this an act of unprovoked military aggression and contravention of international norms relating to sovereignty of national borders.¹⁶³ At 0915 hours (PST), the aircraft took off from Pakistan Navy Aviation Base PNS Mehran, informing the Karachi civil airport of the flight plan before the flight in accordance with standard operating procedures. The aircraft was flying at a height of 7,000–9,000 feet in the general area of operation approximately 70 to 90 miles east of Karachi. Radar contact was maintained throughout its flight within Pakistan air space till it was lost at 1055 hours. The aircraft was carrying out training exercises and maneuvers in the same area of Pakistan air space from 1030 to 1055 hours until it was shot down. Upon losing the radar contact, other Pakistani aircraft and helicopters were tasked to carry out an intensive search around 1206 hours. They discovered the wreckage of Atlantique around 1455 hours and reported the scattered wreckage within the radius of one kilometer and two kilometers inside the Pakistani territory.¹⁶⁴ When the radar contact was lost and other Pakistani aircraft and helicopters were tasked to reach the area for search, there was a time gap of about two hours. During this time, Indian helicopters sneaked into the territory of Pakistan to remove part of the wreckage in order to produce some evidence for claiming that Atlantique was shot down in India's territory. All these events led Pakistan to claim that Atlantique was shot down inside Pakistan's territory, and India had violated Pakistan air space and territorial sovereignty.¹⁶⁵

b. India's Stance

India insisted that at 1051 hours (IST) an Indian Air Force's ground radar detected Pakistan's Atlantique aircraft in the Sindh region of Pakistan, and was observed

¹⁶³ Application Instituting Proceedings filed in the Registry of the Court on 21 September 1999: Aerial Incident of 10 August 1999, (Pakistan v. India), (General List no. 119, 1999), 1–4, Accessed July 16, 2012, <http://www.icj-cij.org/docket/files/119/7123.pdf>.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

approaching the international border with a speed of 199.8 nautical miles/hour maintaining a height of 3000–3500 feet. At 1054 hours, the aircraft reached the top of the international border and conducted a series of maneuvers over the same area.¹⁶⁶ When the aircraft crossed the border, India considered the aircraft to be on a spy mission, and tasked two MIG-21 fighter interceptors from the IAF Air Base at Naliya to counter the efforts of Atlantique. The MIG-21 interceptors succeeded in intercepting the Atlantique within ten kilometers of India's territory. The MIGs forced the Atlantique to escort it to a nearby Indian base, but the Atlantique turned back towards the border. When the MIGs' pilot observed that the Atlantique was not intending to land, one of the pursuing MIGs fired a missile and hit the Atlantique's port engine around 2.7 nautical miles short of the international border.¹⁶⁷ The Atlantique was last sighted on Indian radar at 1123 hours. According to Bharat Rakshak,

There was no alternative thereafter but to shoot down the Pakistani intruder to prevent it from running away after being caught while on an obvious illegal operational mission in Indian territory . . . the IAF acted as per the existing Rules of Engagement (ROE), even going so far as to give the intruder a chance for survival which was rejected.¹⁶⁸

In response to India's stance, Pakistan knocked on the door of the United Nations, and requested the UN Secretary General to conduct a "fact-finding mission" so as to ascertain the truth behind the shooting down of Pakistan's unarmed aircraft. The Secretary General informed the government of Pakistan that India had shown a negative response to investigating the case through a third party; therefore, they were unable to send a mission into the region for fact finding since this requires the full cooperation of all the parties.¹⁶⁹ Pakistan also made a formal appeal through India's High Commission in Islamabad that the incident has left Pakistan with the loss of an aircraft and her crew; therefore, India should pay an amount of U.S.\$60.2 million to Pakistan as compensation.

¹⁶⁶ Bharat Rakshak, "Indian Air Force: The Atlantique shoot down," Accessed August 05, 2012, <http://www.bharat-rakshak.com/IAF/History/Kargil/1057-Atlantique.html>.

¹⁶⁷ Maseeh Rahman. Kutch, "Vayusena: Can't Stop the Madness," (vol. 154 no. 7/8, August 23–30, 1999), Accessed August 05, 2012, <http://vayu-sena-aux.tripod.com/other-atlantique-time.html>.

¹⁶⁸ Bharat Rakshak, "Indian Air Force: The Atlantique shoot down,"

¹⁶⁹ International Court of Justice, "Memorial of the Government of Pakistan on Jurisdiction (1999): The Case concerning the Aerial Incident of 10th August 1999,(Pakistan v. India), Accessed August 6, 2012, <http://www.icj-cij.org/docket/files/119/8308.pdf>.

India publically rejected Pakistan's claim and closed all doors for possible negotiations. Moreover, Pakistan insisted that India had also not launched any investigation to ascertain the responsibility of the incident nor informed Pakistan as per existing obligations mentioned in the Prevention of Airspace Violations Agreement between both countries.¹⁷⁰

Nevertheless, Pakistan realized that India is neither willing to accept the UN's fact-finding mission, nor agree for direct bilateral negotiations; therefore, Pakistan invoked the International Court of Justice to determine the international responsibility of India that includes the payment of compensation money and settling the dispute between both the countries. However, the complaint was not entertained and subsequently dismissed by the ICJ, because India had filed an exemption¹⁷¹ in 1974, concerning disputes between India and others that are or have been members of the Commonwealth of Nations.¹⁷² The Court agreed with India's position that it lacked jurisdiction to entertain the case, and stated that as the Commonwealth reservation raised by India was valid under Article 36, Paragraph 2 of the ICJ Statute,¹⁷³ it was unnecessary for [it] to

¹⁷⁰ Agreement between India and Pakistan on prevention of air space violations and for permitting flights and landings by Military Aircraft dated April 6, 1999, According to the Agreement:

Article -1: Henceforth, both sides will take adequate measures to ensure that air violations of each other's airspace do not take place. However, if any inadvertent violation does take place, the incident will be promptly investigated and the Headquarters (HQ) of the other Air Force informed of the results without delay, through diplomatic channels.

Article – 2: Subject to Articles 3, 4 and 6, the following restrictions are to be observed by military aircraft of both the forces: Combat aircraft (to include fighter, bomber, reconnaissance, jet military trainer and armed helicopter aircraft) will not fly within 10 kilometers of each other's airspace including ADIZ. No aircraft of any side will enter the airspace over the territorial waters of the other country, except by prior permission.

¹⁷¹ Declaration by India recognizing as compulsory the jurisdiction of the ICJ in conformity with Article 36, Paragraph 2, of the Statute of the ICJ submitted by Minister of External Affairs India New Delhi on September 15, 1974: "Excellency, I have the honor to declare, on behalf of the Government of the Republic of India, that they accept, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate such acceptance, as compulsory *ipso facto* and without special agreement, and on the basis and condition of reciprocity, the jurisdiction of the International Court of Justice over all disputes other than: (1–11 disputes are mentioned), however, the concerned Para 2 states that, 'disputes with the Government of any State which is or has been a member of the Commonwealth of Nations.'"

¹⁷² Sikander Ahmed. Shah, "River Boundary Delimitation and the Resolution of the Sir Creek Dispute between Pakistan and India," 396.

¹⁷³ The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

consider India's objection based on the reservation concerning multilateral treaties. The Court's decision did not help resolve the issue.

2. Incident between Naval Ships

On August 2, 2010, Somali pirates hijacked an Egyptian owned vessel MV Suez comprising a Pakistani captain with three other Pakistani, six Indians, eleven Egyptians, and one Sri Lankan as crew members. The vessel remained in the pirates' custody for eleven months. The initial demand of ransom money by the pirates is not confirmed; however, a Pakistani human rights activist, Ansar Burney, negotiated with the pirates and brought down the demand to U.S.\$2.1 million.¹⁷⁴ Since the Egyptian owner was not in possession of appropriate insurance, and was unwilling to pay the ransoms,¹⁷⁵ Ansar Burney launched a campaign for soliciting donations, and succeeded in paying the ransom against securing the release of the vessel along with all the crew members on June 13, 2011.

On return passage to Pakistan, the vessel was again reportedly attacked by the pirates; however, the crew of the vessel managed to foil the attempts.¹⁷⁶ At that time PNS Babur was operating as part of the multinational combined task force (CTF). Upon tasking PNS Babur by the government of Pakistan, the ship responded to the call, and rescued the MV Suez's crew after thwarting the pirates' attack. PNS Babur then commenced escorting the MV Suez to prevent the vessel from further attacks.¹⁷⁷ At the same time and in a strange twist, the government of India tasked Indian Navy Ship Godavari to help MV Suez while PNS Babur was already escorting the vessel. When INS

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- The interpretation of a treaty.
 - Any question of international law.
 - The existence of any fact which, if established, would constitute a breach of an international obligation.
 - The nature or extent of the reparation to be made for the breach of an international obligation.

¹⁷⁴ R S. Vasan, "Case Study of MV Suez and Anti-Piracy Operations: Lessons for India and Pakistan," (vol. 5 no. 4 October, 2011), 118.

¹⁷⁵ Christian. Bueger, "The Human Face of Piracy: Pakistan's Response," (Piracy Studies Academic Research on Contemporary Maritime Piracy, March 12, 2012), accessed August 8, 2012, <http://piracy-studies.org/2012/the-human-face-of-piracy-pakistans-response/>.

¹⁷⁶ R S. Vasan, "Case Study of MV Suez and Anti-Piracy Operations," 118.

¹⁷⁷ Ibid.

Godavari reached there, both ships INS Godavari and PNS Babur conducted dangerous maneuvers. During this mid-sea encounter, both ships brushed against each other which led to Pakistan and India accusing each other for conducting aggressive mid-sea maneuvers and muddying a humanitarian operation.

a. Pakistan's Response

Pakistan tasked its naval ship to intervene, escort, and provide necessary assistance to MV Suez. R. S. Vasan noted that,

“The action by the Pakistan naval ship has come in for raise and the crew profusely thanked Ansar Burney for raising the funds required for the release of the ship and the Pakistani authorities for their timely help. Unfortunately, both the Indian Navy and the government of India came in for lot of flak due to the lack of timely action to protect the crew. Even the role of the Indian diplomats in Cairo has been criticized for lacking assertive proactive action.”¹⁷⁸

In response to the mid-sea encounter, the government of Pakistan lodged a complaint through the Indian High Commission in Islamabad accusing INS Godavari for brushing PNS Babur. The complaint highlighted that,

“INS Godavari not only hampered humanitarian operations being carried out by Pakistan Navy Ship Babur for Merchant Vessel Suez but also undertook dangerous maneuvers, which resulted in the brushing of the sides of the two warships . . . This incident constitutes a serious violation of international regulations pertaining to safe conduct at high seas and of the India-Pakistan Agreement of 1991 on Advance Notice of Military Exercise Maneuvers and Troop Movements¹⁷⁹.”¹⁸⁰

b. India's Response

In the whole episode of MV Suez's hijacking followed by release from the pirates by a Pakistani human rights activist, the slow or ignored response of India's

¹⁷⁸ Ibid.

¹⁷⁹ Agreement Between India and Pakistan on the Advance Notice of Military Exercises (April 6, 1991), Article 10 states that, “The Naval ships and submarines belonging to the other country are not to close less than three Nautical Miles (NMs) from each other so as to avoid any accident while operating in international waters.”

¹⁸⁰ Oneindia News, “Save Sailors Mission: India, Pakistan Start War Again,” (June 18, 2011), Accessed August 8, 2012, <http://news.oneindia.in/2011/06/18/india-pakistan-war-help-mv-suez-sailors-godavari-babur-aid0101.html>.

government was highly criticized by the Indian media in general and by the families of crew members in particular. Moreover, tasking a war ship to escort MV Suez when the task was already being undertaken by PNS Babur is also not understood by the Indian scholar community.¹⁸¹

Along these lines, Vasan stated that,

It can be inferred that sending the Indian warship was an afterthought to make amends for the lack of proactive action by India. It appeared that the government of India decided to dispatch the naval ship to salvage its pride much after the event was over (after not doing much while it was most needed) . . . it is evident that there have been failures of command, control and coordination while tasking Godavari for a mission which was already completed.¹⁸²

Nevertheless, in the developing diplomatic war, India also lodged the same complaint against Pakistan and stated that, “INS Godavari had, after failing to get any response from the Pakistani skipper of Suez, started leaving the area when PNS Babur came in from behind and carried out the aggressive maneuver. In the process, the Pakistani ship rubbed against INS Godavari.”¹⁸³

Apart from shadowing and buzzing each other’s ships and aircraft, the incident with the PN Atlantique aircraft and the encounter between Babur and Godavari are the only two major incidents between the Pakistan and Indian navies thus far. The same nature of occurrences will continue in future as well, if both sides do not initiate positive steps. These incidents are identical to the incidents occurred between the U.S. and USSR maritime forces during the Cold War.¹⁸⁴ The dangerous Cold War’s maritime incidents led the U.S. and USSR to negotiate an agreement known as the Incidents at Sea

¹⁸¹ R S. Vasan, “Case Study of MV Suez and Anti-Piracy Operations,” 119.

¹⁸² Ibid., 120.

¹⁸³ The Economic Times, “India, Pakistan in War of Words as Warships Collide,” (Jun 19, 2011), Accessed August 10, 2012, http://articles.economictimes.indiatimes.com/2011-06-19/news/29676900_1_somali-pirates-naval-ship-pns-babur.

¹⁸⁴ Sakhuja Vijay, “Cold War in the Arabian Sea,”

Agreement (INCSEA).¹⁸⁵ This agreement can be used as a model for the naval forces of Pakistan and India to enhance cooperation while operating at sea.

3. Case Study – INCSEA between the U.S. and USSR

In the Cold War era, U.S. maritime supremacy was unchallenged, except when the U.S. ships and aircraft operated close to the USSR waters. The U.S. sea assets faced aggressive response from the then small USSR Navy. The situation further changed when the USSR expanded its naval capabilities in the 1960s and extended their deployments to the Pacific and Atlantic Oceans and the Mediterranean Sea. The expansion of naval capabilities encouraged the USSR maritime forces to test the aggressive tactics not only in the home water but in the open oceans as well. These deployments brought both countries' naval forces in close encounters at numerous occasions. Both sides' forces started harassing each other, and many incidents happened resulting in loss of lives and assets. One of the incidents happened in the Baltic Sea in 1962, when USSR warships crossed bows with American warships, intending to humiliate the U.S. Navy. Junnola mentioned that

The U.S. also tracked Soviet aircraft harassment of American flight operations, recording five accidents of this type . . . one incident in the North Sea in the vicinity of the aircraft carrier USS *Essex* resulted in the crash of a Soviet aircraft . . . other areas of concern included the Soviets' use of search lights to illuminate ships' bridges and helicopter cockpits at night; the use of international signal for deceptive purposes; instances of ships proactively training their guns or missiles; and episodes of aircraft flyovers with open bomb bay door.¹⁸⁶

The results of these irrational and irresponsible incidents at sea¹⁸⁷ led the U.S. and USSR to a realization that both countries could get nothing but loss of lives, ships, and aircraft. Therefore, both the countries negotiated the INCSEA agreement and finally

¹⁸⁵ Department of the Navy, Office of the Chief of Naval Operations, (2000 Navy Pentagon Washington, D.C., 2035G-2000 OPNAVINST, 5711.96C, N3/N5, November 10, 2008): United States/Russian Federation Incidents at Sea and Dangerous Military Activities Agreements.

¹⁸⁶ Jill R. Junnola, "Maritime Confidence Building in Regions of Tension," (The Henry L. Stimson Center Washington, DC), Report no. 21, (May, 1996), 4.

¹⁸⁷ The term "incident at sea" can be applied to any dangerous or close quarters situation that arises due to non-compliance of rules and regulations as prescribed by the 1972 International Regulations for Prevention of Collision at Sea.

succeeded in 1972. Both the countries discussed the issues professionally and with utmost frankness that contributed to the success of the agreement. In addition, they also shouldered the responsibility for any violation related to the agreement.¹⁸⁸ Paul Kesaris viewed that “The 1972 U.S.-USSR INCSEA (Incidents at Sea) Agreement has been successful for 18 years in ameliorating one potential area of superpower tension . . . Development of enhanced confidence-building measures appears to offer the best prospect for reducing residual U.S.-Soviet confrontations and tensions at sea.”¹⁸⁹

The INCSEA agreement played a vital role in reducing incidents at sea, opening communication channels, developing confidence, and reducing tension between the U.S. and USSR navies in general and governments in particular. It also played a role of catalyst for other navies to make agreements on the same lines, such as agreements between the USSR and Germany in 1988, the USSR and Norway in 1990, and recently signed INCSEA agreement between the U.S. and China.

4. Recommendations for a Way Forward

The hostile history of Pakistan and India has created a trust deficit in both the governments and particularly in military forces. In fact, both countries have realized that their rival attitude will damage the countries in many respects. In this regard, they also initiated variety of bilateral peace processes at different occasions, but mistrust and lack of political will discouraged their plans. A former Chief of Naval Staff, Admiral Fasih Bokhari expressed his views saying,

I would like to see India and Iran trading across our soil; Central Asia and India trading across our soil, because that is a part of integration into the region which gives our neighbors a stake in our security . . . moving away from fifty years of India-centric policies which have been hostile and confrontationist into the next fifty years of befriending India.¹⁹⁰

¹⁸⁸ Jill R. Junnola, “Maritime Confidence-Building in Regions of Tension,” 17–18.

¹⁸⁹ Paul. Kesaris, Nuclear Weapons, Arms Control, and the Threat of Thermonuclear War: Special Studies Sixth Supplement, 1991–1992, (University Publications of America), 22–23.

¹⁹⁰ Sakhuja Vijay, in “Cold War in the Arabian Sea,” cited Defense Journal December 1997, “An Interview with Admiral Fasih Bokhari, CNS Pakistan Navy.”

Nevertheless, both the countries are required to take constructive measures to avoid untoward situations at sea, and develop trust and cooperation between two navies. In this context, the following recommendations are proposed.

a. Recommendation 1

The INCSEA agreement between the U.S. and USSR has been perceived as a confidence builder by the world's navies. Although the agreement has not resolved all sea incidents between the U.S. and USSR; however, the grievous problems including harassment that troubled both the countries from 1960s to 1970s were effectively addressed. The agreement also contributed in developing military-to-military relations between the U.S. and USSR. The INCSEA agreement is the perfect example for Pakistan and India to understand each other's problems with a professional manner, to develop trust and cooperation between naval forces, respect each other's sovereignty, and of course avoid sea skirmishes and both intentional and unintentional incidents. Pakistan and India must follow the lines of the INCSEA agreement that will establish the channels of communication between the navies of both the countries. In this regard, both countries' Ministries of Defense and Naval Headquarters should form a committee of professional officers to negotiate the agreement on the basis of the INCSEA agreement between the U.S. and USSR. Moreover the existing agreement of April 6, 1991 between Pakistan and India on the Advance Notice of Military Exercises may be reviewed if deemed appropriate using the INCSEA agreement as a guideline, and then both countries should respect it in the spirit of peace.

b. Recommendation 2

Piracy has become a regular feature in the Arabian Sea. The Pakistan Navy, being part of the combined task force 151 (CTF-151,) is playing a leading role and has a certain edge in the region to conduct anti-piracy operations professionally and in coordination with all coalition partners. Moreover, the induction of surface ships from China and the U.S., and its own ship and submarine building capabilities are bringing the Pakistan Navy into regional power in the near future. On the other hand, the Indian Navy already has the capabilities to maintain its presence and projection of power in the Indian

Ocean Region. Therefore, the Indian higher authorities should direct the Indian Navy to proactively participate in anti-piracy operations, and show a part in maintenance of law and order at sea. A good strategy would be that Pakistan and India should come out from under the hostilities' shell, and should work out joint methodology to curb piracy and maritime terrorism in the region through their powerful navies. In this regard, they should take the initiative in formulating joint policies and standard operating procedures for conduct of such operations. In addition, being strong navies in the region, they should also work out modalities to engage the other regional smaller navies in their cause. These measures will cover the communication gap between both navies, develop trust and cooperation, and as a matter of fact, bring peace and harmony to the region.

C. CONCLUSION

More than sixty years of ongoing confrontation between Pakistan and India have heavily charged both countries in terms of economic and social development. People of both countries desire a tension free environment, where they should not suffer fatigue of crises.

Moreover, cooperation between the Pakistan Maritime Security Agency (PMSA) and the Indian Coast Guard (ICG) are also in need of facilitating fisher-folk of both countries and increasing bilateral relations, as similar to the other navies of world. Nevertheless, shadowing, buzzing, and encountering each other's naval platforms will further hinder bilateral relations. The Atlantique and the ship incidents at sea are to be considered chilling reminders for both the countries. In the changing world order and maritime environment of the present, ships and aircraft meet more often than before. Both countries' governments should realize the gravity of irresponsible actions and activities of these sea platforms, and must negotiate joint methodologies for a better atmosphere in the region to avoid future serious consequences. Now the only requirement is that both governments should show goodwill to resolve the issue bilaterally or involve a third party in the interest of the region in general and in the public of both sides in particular.

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IV. CONFIDENCE-BUILDING MEASURES (CBMS) AND THE POSSIBILITY OF CONFLICT RESOLUTION BETWEEN PAKISTAN AND INDIA

The peace of South Asian region requires good bilateral relations between Pakistan and India, and seeks settlement of their long-lasting conflicts to bring prosperity and overcome the problems of unemployment, illiteracy, and poverty. This process requires a reassessment of the relationship between Pakistan and India.¹⁹¹ Such a reassessment may well begin with confidence-building measures (CBMs) to build an atmosphere of trust between the two rival nations. In the present era, CBMs are considered a useful tool for conflict resolution. This perception mainly emerged from Europe in the 1970s, when CBMs succeeded in preventing a third world war, easing tension between East and West through the so-called Helsinki process: measures and mechanisms that became formalized in the Conference on Security and Cooperation in Europe (CSCE). The Cold War superpowers also relied on CBMs to minimize the risk of an accidental nuclear war. Granted this experience, lessons learned from the successful experiences of one region's CBMs, can, with a careful study of the particular circumstances, apply to another region.¹⁹²

Indeed, in several instances, CBMs have prompted states in conflict—even very bitter rivals—to reduce their latent hostility and to lessen misperceptions, mistrust, and the degree of their mutual fear. A. Z. Hilali argues:

CBMs are instruments for the prevention of war and conflict and for the resolution of existing conflicts between regional neighbors or parties to the kind of long-standing confrontation in which normal channels of communication are weak or have broken down . . . The utility of CBMs is perceived to derive from their gradual creation of an atmosphere of mutual trust, transparency, and predictability in slow and incremental steps in order to provide alternatives to confrontation and conflict where

¹⁹¹ Umbreen. Javaid, "Confidence-Building Measures in Nuclear South Asia: Limitations and Prospects," *South Asian Studies, A Research Journal of South Asian Studies*, vol. 25, no. 2, July-December 2010, 341.

¹⁹² Mohammad El-Syed Salim, "Confidence-Building Measures in Middle Eastern Conflicts: An Egyptian Perspective," 1–10, Accessed October 5, 2012, <http://sam.gov.tr/wp-content/uploads/2012/01/Mohammad-El-Sayed.pdf>.

differences between states recur or have been inflamed or where new points of contention have arisen.¹⁹³

In the case of Pakistan and India, initiatives and small steps from both sides may help resolve bigger issues like the Kashmir conflict, Siachen Glacier, and LOC issues, and ultimately defuse a smoldering nuclear tinderbox of accumulating issues on either side of the long shared border.

In this regard, this chapter begins with an overview the history of CBMs between Pakistan and India. The purpose of this overview is not to go into the details of each event, but to show how and why, despite numerous CBMs and initiatives, Pakistan and India have not yet achieved good bilateral relations and stability in the region. Unfortunately, the history of CBMs between Pakistan and India shows that earlier measures did not enjoy complete success or effectiveness due to unfortunate incidents that occurred during or immediately after the CBM process. This mixed record only underscores the need for renewed CBM efforts.

In terms of better models, this chapter then presents two case studies that explore the features of successful CBMs. The first case study concerns CBMs between Israel and Egypt, where the absence of trust and political will between both sides' leadership, particularly on the Egyptian side, resulted in unsuccessful CBMs. These tensions were exacerbated by the ideological differences between Israel and Egypt as well as external political pressure from the other Arab countries, and therefore the CBMs could not succeed. On the other hand, the second case study presents CBMs between China and India, where trustworthiness and political will on both sides, plus a new emphasis on regional stability and economic concerns paved the way for success. China and India gradually developed their CBMs through small steps, including their 1993 and 1996 agreements and subsequently the joint working group (JWG) meetings.

The case studies are followed by an analysis that suggests a way forward for Pakistan and India, encompassing CBMs and drawing on the case studies. In addition to person-to-person interactions, increased military and trade cooperation, and cultural

¹⁹³ A.Z. Hilali, "Confidence and Security Building Measures for India and Pakistan," *Alternatives: Global, Local, Political*, vol. 30, no. 2, (JSTOR, Sage Publications, Apr-June 2005), 191.

exchange, some promising small steps also include the resolution of such less contentious issues as Sir Creek, captured fishermen, and operational encounters between Pakistan and India.

A. CONFIDENCE BUILDING BETWEEN PAKISTAN AND INDIA

Confidence building is an old phenomenon that has a long but more or less undistinguished record in relations between Pakistan and India. Despite of the unhappy legacy of the 1947 partition and the ensuing decades' four wars and unresolved issues, both nations have agreed at certain times on numerous civil and military bilateral agreements to reduce tensions and promote confidence. In addition, the public on both sides also shows an interest in such measures and wishes to sustain peace and cooperation. Tables 5, 6, and 7 list these measures.

Table 5. Confidence-Building Measures (CBMs)—Diplomatic and Military.¹⁹⁴

Date	Description
1968	An agreement on all outstanding points with regard to the western sector of Rann of Kutch.
December, 1971	Hotline between Pakistani and Indian Director General of Military Operations (DG MOs) was established. In Lahore Summit 1999, agreed to review all existing communication links with a view to upgrade and approve the DGMO and other hotlines.
January 1989	Agreement signed by Indian Prime Minister Rajiv Gandhi and Pakistani Prime Minister Benazir Bhutto, Including agreement of not attacking each other's nuclear facilities, avoidance of double taxation & cultural cooperation.
1991	Air Space Violation agreement signed and ratified in August 1992, stipulates that no combat aircraft shall fly within 10 km. of each other's airspace.
April 1991	Agreement for prior notification of military exercises near their borders, without informing their military counterparts.
1992	Joint Declaration on Prohibition of Chemical Weapons by both countries, agreed not to develop, produce, acquire, or use chemical weapons.
October 3, 2005	Memorandum of Understanding for the establishment of a communication link between Pakistan Maritime Security Agency and Indian Coast Guards. The accord and memorandum were signed after the talks between Foreign Minister Khurshid Kasuri and his counterpart Natwar Singh in Islamabad.

¹⁹⁴ From Stimson–Timeline of South Asia CBMs, <http://www.stimson.org/southasia/?SN=SA20060207948>; Umbreen Javaid, “Compulsive Confidence Building in South Asia” *IPRI Journal*, Winter 2006. vol. VI, no.1, 154–166, citing, Umbreen. Javaid, “Confidence Building Measures in Nuclear South Asia: Limitations and Prospects,” *South Asian Studies, A Research Journal of South Asian Studies*, vol. 25, no. 2, July-December 2010, 348.

Table 5. (cont.)

Date	Description
January 1, 2006	India and Pakistan exchanged lists of their respective nuclear installations and facilities.
February 21, 2007	India and Pakistan signed agreement on “Reducing the Risk from Accidents Relating to Nuclear Weapons.”
August 14, 2007	India released 72 Pakistani nationals, including 48 fishermen and 24 prisoners from Indian jails, and Pakistan released 135 Indian nationals, including 100 fishermen and 35 prisoners, from its jails.
October 19, 2007	Pakistan and India held the Fifth Round of Talks to review the nuclear and missile related CBMs as part of the Composite Dialogue Process. The second round of the Joint Anti-Terrorism Mechanism (JATM) was held in the following week.
October 22, 2008	A second trade route across the Line of Control is opened. The route connects the cities of Rawalkot and Poonch.
December 27, 2008	In the aftermath of the Mumbai attacks that resulted in over 180 fatalities, the Indian and Pakistani Directors General of Military Operations made unscheduled use of their hotline to discuss the troop movements along their border. One likely topic of discussion was Indian troop rotations to exercise the areas, near Pakistani border and small-scale counter-deployments by Pakistani troops.
January 1, 2009	For the 18th consecutive year, India and Pakistan exchanged lists of their respective nuclear facilities. The two countries also exchanged the lists of Pakistanis, held in Indian prisons and Indians held in Pakistani prisons.

Table 6. Confidence-Building Measures—Political, Commercial, Cultural, and Communications.¹⁹⁵

Date	Description
1948	An agreement was made in Karachi on exchange of prisoners, evaluation of urban property and preparation of revenue records and evacuation of moveable property
1950	Liaquat –Nehru signed an agreement in New Delhi on the measures to be adopted to deal with major problems i.e., minorities rights, cultural and trade relations.
1960	Indus Water Treaty Mediated by the World Bank to resolve problems regarding distribution of water resources.
1966	Tashkent Declaration stipulates that “relations between India and Pakistan shall be based on the principle of non-interference in the internal affairs of the other.
1972	Simla Accord followed by 1971 Indo-Pak war. Both countries to renounce the use of force as a means of setting outstanding disputes. Both sides agreed to resolve their disputes in bilateral forum.
1982	A joint Commission set up to review bi-lateral ties.
February, 1999	Lahore Declaration: reiterating the determination of both countries to implementing the Shimla Agreement in letter and spirit. Resolution of all disputes including Kashmir.
January, 2004	Joint Press Statement was given in Islamabad to carry the process of normalization forward, the President of Pakistan and Prime Minister of India agreed to commence the composite dialogue in Feb. 2004. Peaceful settlement of all bilateral issues, including Jammu and Kashmir, to the satisfaction of both sides.
September, 2004	Joint Statement was given in New York by President Musharraf and Prime Minister Dr. Manmohan Singh reiterated their commitment to continue the bilateral dialogue to restore cooperation between India and Pakistan.
February, 2005	Start Sri Nagar–Muzaffarabad bus service from Apr. 7, 2005 and resume rail service between Monabao–Khokhrapar (Sindh) from Oct. 2005 and launch bus service between Amritsar and Lahore.
April 2005	New Delhi Statement: 17-points stated out of which one refers to Jammu & Kashmir issue.
September 28, 2005	To start Lahore – Amritsar bus service in Oct 2005
September 16, 2005	Agreed to continue CBM process and PM Manmohan to visit Islamabad.

¹⁹⁵ Ibid.

Table 6. (cont.)

Date	Description
October-November, 2005	Pakistan accepts 25 tons of food, medicine, tents, blankets, plastic sheets from India after the earthquake.
January 20, 2006	Bus service from Lahore to Amritsar begins.
February 1, 2006	Pakistan and India agree to open rail links between Munnabao in Rajasthan and Khokhrapar in Sind on February 18, 2006.
February 18, 2006	India and Pakistan resume train service after 40 years.
February 27, 2006	Fiber optic link between Amritsar and Lahore becomes operational.
March 7, 2006	Indo-Pak night bus service from Ferozepur and Fazilka to Ludhiana-Chandigarh resumes.
March 8, 2006	India and Pakistan agree in principle to expand airline service between the two nations.
March 22, 2006	India and Pakistan agree to jointly fight human trafficking, counterfeit currency trade, and illegal immigration.
March 24, 2006	Amritsar-Nankana Sahib bus service is flagged off.
May 3, 2006	India and Pakistan reach an agreement to revive trade in Kashmir.
June 1, 2006	India and Pakistan agree to host festivals displaying each other's movies.
September 16, 2006	President Musharraf and Prime Minister Singh agree to "put in place an India-Pakistan anti-terrorism institutional mechanism to identify and implement counter-terrorism initiatives and investigations."
May 21, 2008	The Foreign Ministers of India and Pakistan agree to a series of Kashmir-specific CBMs, including a triple-entry permit to facilitate crossing the Line of Control. The two ministers also agree to provide consular access to prisoners in each other's countries.
September 25, 2008	Pakistani President Zardari and Indian Prime Minister Singh formally announced the opening of several trade routes between the two countries. The Wagah-Atari road link and the Khokhrapar-Munnabao rail link will both be opened to trade, as will the cross-LOC Srinagar-Muzaffarabad and Poonch-Rawalakot roads.
July 16, 2009	The Prime Ministers of India and Pakistan, meeting on the sidelines of a summit of the Non-Aligned Movement in Egypt, issue a joint statement "charting the way forward in India - Pakistan relations."

With so much CBM activity, one might expect at least some reduction of tensions between Pakistan and India. However, the CBM process always seems to go backward and forward, with success just out of reach of any and every measure. “Success” in the case of CMBs means that these measures have seen a clear, if incremental, relaxation of tensions and that the initial small steps lead to new CBMs and more normal relations between the States. In this sense, then, all Pakistan-India CBMs so far have failed because not a single issue has been resolved between both the nations. These CBMs have been derailed amid the uncongenial political situation on both sides—trust deficits, disruptive incidents, and the unresolved state of minor issues as well as the bigger conflicts.¹⁹⁶

Indeed, both Pakistan and India struggled for decades to ensure and sustain military and non-military CBMs to bring normalcy in the border areas in general and in the Kashmir area in particular, despite continuous tensions between the two nations. However, tragic incidents ranging from low-intensity conflicts to major wars and terrorist attacks on both sides repeatedly interrupted the process—and progress—of the CBMs.¹⁹⁷ The hotlines between political and military leaders have barely been utilized, a communication deficit that only deepens mutual distrust and has prompted each side to accuse the other of spreading incorrect information. Pakistan and India constantly exchange lists of nuclear facilities, but each side believes that the information received is wrong and cannot be trusted.¹⁹⁸ In addition,

The ceasefire, which was implemented in 2003, was alleged to have been violated once by Pakistan in 2008, and the Indian Army has gone on record about numerous infiltrations and violations in 2009. While many hundreds of thousands visit India and Pakistan from across the border, the visa formalities for them are far from conducive to confidence building. Each traveler has to register at a police station within 24 hours of his arrival in a city and 24 hours before departing from the same. The whereabouts and wherewithal of his hosts are to be laid bare to the

¹⁹⁶ Javid Umbreen, “Confidence Building Measures in Nuclear South Asia,” 347.

¹⁹⁷ Ghosh Samarjit., “Two Decades of Indo-Pak CBMs: A Critique from India,” India-Pakistan dialogue on Conflict Resolution and Peace Building, IPCS Issue Brief 132, September 2009, 1.

¹⁹⁸ Ibid., 2–3.

authorities and must pass muster with them. These procedures leave inter-country travel to be far from desirable.¹⁹⁹

So far, then, there have been many starts but no happy endings for CBMs between Pakistan and India. But how else can the two nations ever hope to overcome their mutual suspicions? Now is the time for the leadership on both sides to try a new approach. Other States' experiences offer important lessons. In this regard, two case studies, the Egyptian-Israeli CBMs and Sino-Indian CBMs, provide fruitful examples of a less successful and a more successful experience, respectively. The Egypt-Israel CBMs did not work because of an enduring trust deficit and the lack of political will between the states' leadership; a continuous cold war prevailed even after the CBMs. On other hand, China and India adopted a small-steps strategy, which further enhanced their cooperation in the both military and non-military arena. These case studies are empirical models to demonstrate the factors that are necessary for successful CBMs and what factors are to be avoided when two nations follow a path of CBMs.

B. CONFIDENCE-BUILDING MEASURES BETWEEN EGYPT AND ISRAEL

The hostile relations between Israel and Egypt from 1948 to the 1960s are hardly a secret; this period witnessed continued military tensions and a series of wars. Both sides conceived of each other as a major military threat, a distrust that festered in the absence of diplomatic relations and direct channels of communication. As the situation deteriorated, the United States undertook a course of "shuttle diplomacy," interposing itself as the honest broker between both sides, but little progress eventuated.²⁰⁰ Instead, at the end of the 1973 war, Israeli forces cornered their Egyptian counterparts in the Sinai area; the fight ended with Israeli troops near Cairo as both sides' forces were drained of energy. The next conflict promised to be broader, deeper, and more lethal. At this particular stage, however, a change in the relationship commenced with direct talks

¹⁹⁹ Ibid.

²⁰⁰ Gerald M. Steinberg, "The Centrality of Confidence Building Measures: Lessons from the Middle East," *Conflict Prevention: From Rhetoric to Reality* (vol. 2), Albrecht Schnabel and David Carment, editors, Lexington Books, 2004, 269.

between both states' leaders.²⁰¹ Under the aegis of U.S. Secretary of State Henry Kissinger, Israeli and Egyptian officials started negotiation for six weeks to prepare the ground for two agreements attained in 1974 and 1975.²⁰² Subsequently, these agreements established confidence-building measures between both states, though domestic ideological pressure on each side limited the communications, and the effort could not progress as far as the CBMs demanded.

It is worth mentioning that Syria had also taken part in the 1973 war, and the situation of the Syrian war different from the Egyptian. The Syrian leadership never agreed to negotiate with Israeli leadership. Instead, such matters as the exchange of prisoners and other issues related to the ceasefire were negotiated through more of Kissinger's shuttle diplomacy. Despite all these efforts, the Syrians declined all proposals and did not join the signing ceremony in Geneva. This incident also put some pressure on the Egyptian leadership because its ally refused to sign the agreements.

In 1977, following the election of a new government in Israel, an Egyptian representative, Dr. Hassan Tuhami, and Israeli Foreign Minister Moshe Dayan met in Israel to intensify the direct contacts between both countries. The meeting was kept secret so, whatever else it achieved, it did not work to change the public postures or attitudes in attaining the perception of evolving bilateral relations between both the states.²⁰³ Certainly, this activity could not contribute toward ongoing CBMs at the social level. However, this limited approach of direct communication evolved into adequate confidence at the officials' level to further the negotiations. Both states' leaders, Menachem Begin and Anwar Sadat, came to the conclusion, on the basis of substantial talks between Dayan and Tuhama, that further negotiations would advance the common interests of both the states. This meeting also led Sadat to visit Jerusalem in November 1977. Steinberg maintains that, "this visit remains the quintessential example of a confidence-building measure, and illustrates the importance of CBMs in the transition

²⁰¹ Michael N. Barnett, *Confronting the Costs of War: Military Power, State, and Society in Egypt and Israel* Princeton, N.J. Princeton University Press, 1993, 80–90.

²⁰² Sadia. Touval, *The Peace Brokers: Mediators in the Arab-Israeli Conflict, 1948–1979*, Princeton University Press, 1992, 244.

²⁰³ Gerald M. Steinberg, "The Centrality of Confidence Building Measures: Lessons from the Middle East," 270.

from war to peace . . . After three decades of warfare, which exhausted both Egypt and Israel, Sadat recognized the need for a dramatic gesture to break the deadlock and transform myths and misconceptions.”²⁰⁴

The announcement of Sadat’s visit to Israel was viewed with suspicion by the Israeli leadership, who, suffused as they were in the decades of mutual animosity with Egypt, feared the trip could be a cover tactic for a military attack. However, Sadat’s arrival in Jerusalem shattered this old perception, and the Israelis realized that Egypt was honest about ending the state of war and in constituting diplomatic and bilateral relations. Sadat was warmly welcomed, with massive media coverage and thousands of people lined the streets, holding Egyptian flags in their hands. Sadat’s move eventually changed the tense situation between Egypt and Israel—to the extent that he and Begin shared the Nobel Peace Prize in 1978. Israel returned the Sinai to Egyptian sovereignty and dismantled all bases and settlements there. Sadat also emphasized his intention to resolve remaining issues without further violence, a promise—consistently fulfilled—that contributed to confidence building and changed the negative perception of the Israeli society about the Egyptian leadership at all levels.²⁰⁵

The point merits emphasizing that the CBMs between Egypt and Israel could not progress, let alone succeed, until they were backed by consistent political will and trust between both the parties, as well as some softening in their ideological differences. Meanwhile, as a result of the stability and normalized situation, the Israeli public moved towards Egyptian borders, which were opened after the CBMs. Bus and air service was established that facilitated Israeli commerce and tourism to Egypt. Even when terrorism in Egypt drove down the number of people traveling to Egypt, Israelis continued to visit and significantly contributed to the Egyptian economy.

On the other hand, these CBMs did not trigger meaningful underlying changes in the postures of Egyptians, as the Israelis had hoped; rather “the relationship between Israel and Egypt has been characterized by a cold peace, and in some instances, a cold

²⁰⁴ Ibid., 271.

²⁰⁵ Ibid., 271–272.

war.”²⁰⁶ In 1981, Sadat was assassinated and the office was taken over by Hosni Mubarak. The Israeli leadership continued visiting Egypt, but Mubarak avoided visiting Israel with the exception of Rabin’s funeral ceremony in 1995. In addition, other groups like lawyers, journalists, and scholars criticized and even expelled from their professional communities those individuals who were working with Israelis on different projects. The Egyptian press continued to portray Israel as an enemy, and continuously maintained a hostile opinion. Steinberg notes:

Israel is still portrayed as an enemy, and differences over policies with respect to Lebanon, in terms of negotiations with the Palestinians, and the Israeli nuclear policy, are also subject to hostile rhetoric . . . In the absence of significant direct contact between Israelis and Egyptians, the negative images are strengthened . . . The absence of CBMs and dialogues with Egyptians influenced the Israeli perception of negotiations and relations with other partners, including the Palestinians and Syria. The “Cold Peace” which prevails with respect to Egypt is seen as a dangerous precedent for future agreements, and as a result, Israeli leaders seek more direct interaction and symbols of broad acceptance than was the case in negotiations with Egypt.²⁰⁷

It is important to highlight that trust and political will are the two elements of successful CBMs. The ideological differences can also be managed when the political will exists. All measures may be counterproductive if the political will is lacking. “CBMs are only as strong as the fundamental political will for compromise . . . Without pre-existing *détente*, CBMs appear to be of little value. They cannot create *détente* and under certain circumstances, they can be *détente* consuming.”²⁰⁸ In this model of CBMs there was absence of political will and mistrust from the Egyptian side that led to the ultimate failure of the CBMs.

²⁰⁶ Ibid.

²⁰⁷ Ibid., 273.

²⁰⁸ Marie-France Desjardins, Rethinking Confidence-Building Measures: Obstacles to agreement and the risks of overselling the process, Adelphi Paper 307, International Institute for Strategic Studies (London: Oxford University Press, 1996), 5.citing Steinberg, “The Centrality of Confidence Building Measures,” 279.

C. CONFIDENCE-BUILDING MEASURES BETWEEN CHINA AND INDIA

One of the world's largest disputed and un-demarcated borders is shared by China and India (see Figure 7).

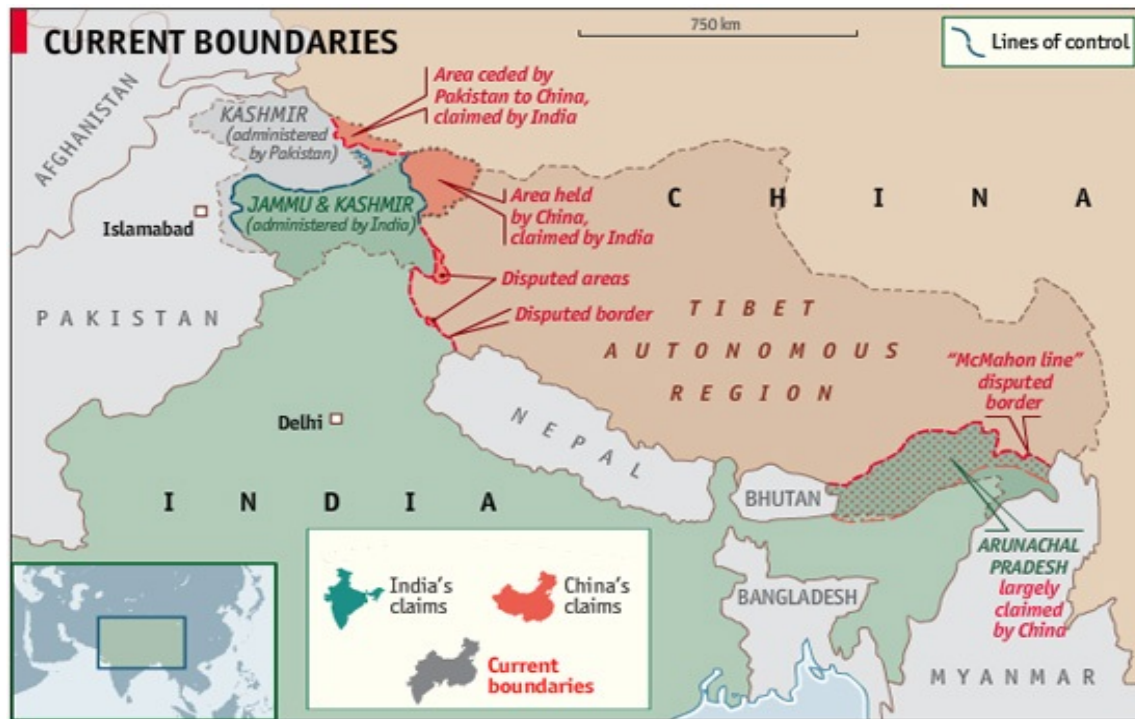


Figure 7. Sindo-Indian Border Line showing Line of Control and Disputed Boundries.²⁰⁹

On October 9, 1962, India entered into armed conflict with the Republic of China to defend its conception of territorial integrity against China's assets in Ladakh, south of the McMahon line.²¹⁰ In response, China launched a counter-attack on October 20, 1962, defeating the Indian Army and following up with another attack on November 16, 1962,

²⁰⁹ From The Economics, citing Shelly Zhao, "China's Territorial Disputes with India," Posted on Friday, June 10, 2011, Accessed October 10, 2012, <http://www.2point6billion.com/news/2011/06/10/chinas-territorial-disputes-with-india-9450.html>.

²¹⁰ The McMahon Line was agreed upon by Britain and Tibet as part of the Simla Accord Treaty signed in 1914. According to the Treaty, the line is considered a boundary line between China and India by the Indians; however, the Chinese government considers this line to be a disputed boundary line. Along the peak of the Himalayas, it extends from Bhutan in the west for 550 miles up to 160 miles east of the Brahmaputra River.

that left the Indian forces with complete defeat.²¹¹ On that same day, China declared a ceasefire and pulled out to 20 kilometers behind the line of actual control (LAC). In this limited war, India suffered 3,120 deaths, 3,100 captures, and 1,000 wounded casualties in comparison with China's 1,400 casualties.²¹²

The border issue was the main cause of the confrontation that led both the countries to war. Since then, China and India clashed several times in the 1970s and 1980s; the Sundurong Chu standoff in 1986–1987 was the most serious of them. However, in the late 1970s, both countries, both of them by now nuclear powers, undertook to resolve the issue through confidence-building measures and border negotiation, as well as by reducing military forces and limiting military activities along the line of actual control (LAC).²¹³ To this end, China and India sought to improve bilateral relations and signed two agreements in 1993²¹⁴ and 1996²¹⁵ as confidence-building measures. The sections below take up both approaches in turn.

1. Development of Bilateral Relations

The 1962 war had badly deteriorated the bilateral relations of China and India. In order to reduce tension and explore ways to resolve the territorial disputes, the Indian Foreign Minister visited China in February 1979. The Sino-Indian initiatives achieved three important aims: (1) a process of meetings between heads of the governments; (2) a process of exchanging visits between high-level ministerial and military officials; and (3)

²¹¹ Aldo D. Abitbol, "Causes of the 1962 Sino-Indian War: A Systems Level Approach," 1–15; Eekelen W. F. Van, *Indian Foreign Policy and the Border Dispute with China*, 114; Yaacov Y.I. Vertzberger, *Misperceptions in Foreign Policymaking: The Sino-Indian Conflict, 1959–1962*, 66.

²¹² Ibid.

²¹³ Waheguru Pal Singh. Sidhu, "Cooperative Monitoring for Confidence Building: A Case Study of the Sino-Indian Border Area," CMC Occasional Paper, (Sandia National Laboratories, Albuquerque, CA, 1999), 12.

²¹⁴ Agreement on the maintenance of peace and tranquility in the border areas along the line of actual control (Beijing, September 7, 1993), cited by Waheguru Pal Singh. Sidhu in Cooperative Monitoring for Confidence Building: A Case Study of the Sino-Indian Border Area, Appendix A, 35.

²¹⁵ Agreement between the government of the Republic of India and the government of the People's Republic of China on confidence-building measures in the military field along the line of actual control in the India-China border areas (New Delhi, December 1996), cited by Waheguru Pal Singh. Sidhu in Cooperative Monitoring for Confidence Building: A Case Study of the Sino-Indian Border Area, Appendix B, 37–40.

a process of establishing CMBs from 1979 to 1999.²¹⁶ Sidhu divided the CBM process into three regimes:

[T]he first consisted of the Sino-Indian border talks. Eight rounds were held between 1981 and 1987. The second regime is the joint working group (JWG) and its attached diplomatic and military experts group. Between 1989 and 1999, eleven JWG meetings have been held. Finally, the concrete result of this process was embodied in the agreements: the agreement on maintaining peace and tranquility in the border areas along the Line of Actual Control in September 1993, and the agreement on confidence-building measures in the military field along the Line of Actual Control in the India-China border in November 1996. Thus, while the first two processes paved the way for improved relations, it was the third process that not only institutionalized the relationship but also proved that the process of normalization was bearing results.²¹⁷

The Sino-Indian confidence-building process afforded significant outcomes; both countries interacted with each other to facilitate dialogue on global, regional, and bilateral issues. In addition they cooperated in education, culture exchange, and trade and steadily progressed to military CBMs.²¹⁸

To be sure, several incidents occurred during this time that interrupted the process of normalization and affected future relations. Sidhu counts four major incidents:

[T]he first was India's upgrading of the North East Frontier Agency (NEFA) to the state of Arunachal Pradesh in December 1986. This incurred strong protest from Beijing, which charged that India 'seriously violated' China's territorial integrity and sovereignty. The second was the 1986–87 border standoffs in Sundorong Chu in the eastern sector, where both sides deployed large number of troops, which almost escalated into open conflict. The third was China's own missile program and its suspected supply of nuclear weapon and missile-related technology to Pakistan as well as other countries in the region was also a bone of contention between New Delhi and Beijing. Finally, India's nuclear tests in May 1998 caused another major setback in bilateral relations.²¹⁹

²¹⁶ Ibid., 13.

²¹⁷ Ibid., 14.

²¹⁸ Ye. Zhengjia, "Sino-Indian Friendship and Cooperation Contribute to Peace and Development in Asia and the World At Large," 11, 1–120; Kanti. Bajpai and Bonnie L. Coe, "Confidence Building between India and China," 199–226; Rosemary. Foot, "Chinese-Indian relations and the process of building confidence: Implications for the Asia-Pacific," 58–76; and Sony. Devabhaktuni, Matthew C.J. Rudolph, and Amit. Sevak, "Key Developments in the Sino-Indian CBM Process," 201–204.

²¹⁹ Sidhu, "Cooperative Monitoring for Confidence Building," 15.

In response to India's nuclear tests, China cancelled the JWG meeting that was to be held in November 1998. Beyond all these skirmishes, however, both countries realized that normalcy in relations is highly important for peace and prosperity in the South Asian region. Therefore, they gave an encouraging turn to their relations towards normalcy in January 1999. In this regard, they exchanged visits and communications, agreed to discuss demarcation of the line of actual control, held bilateral conferences at the level of Directors General, and conducted the eleventh JWG meeting in Beijing on April 26–27, 1999.²²⁰

2. Joint Working Group Meetings—1993 and 1996 Agreements

The JWG meetings, a product of the 1993 and 1996 agreements, have had a seminal role in initiating, developing, and subsequently implementing confidence-building measures in the Sino-Indian military arena. Despite several ups and downs, the will of both sides' leaders favored building confidence in important fields. Both sides agreed to establish military and diplomatic expert groups within the JWG; the initiated regular flag meetings of local commanders twice a year—in June and October—proposed a direct telephone line to facilitate communication between local commanders, and agreed that both sides' concerns and conflicts can be clarified and even resolved through the JWG process.²²¹

In addition, they also adopted measures to ensure transparency in military forces' activities along the line of actual control, to include prior notification of military exercises, draw-back of military troops from posts in the Sundorong Valley, and prevention of air intrusion.²²² Moreover, to enhance the peace and serenity along the line

²²⁰ Ibid.

²²¹ Fang. Jinying, "China and Confidence Building Measures," 24; Swaran. Singh, "Sino-Indian CBMs: Problems and Prospects," 543–558; R. Foot, "Chinese-Indian relations," 63–65; Prakash, "The Sixth Meeting of the Indo-China Joint Working Group," 92; Manoj. Joshi, "Shy hands across the Himalayas," 15; and Hua. Han, "Sino-Indian relations and nuclear arms control," 44.

²²² Swaran. Singh, "Sino-Indian CBMs: Problems and Prospects," Strategic Analysis, (July 4, 1997), Accessed October 2, 2012, <http://www.idsa-india.org/an-jul-4.html>.

of control, the JWG meetings served as a catalyst for frank discussions and as the contact point for developing further CBMs (See Table 7).²²³

Table 7. Joint Working Group (JWG) Meetings from 1989 to 1999.²²⁴

Time Frame	Development
First JWG meeting July 1–4, 1989, Beijing	The two sides agreed that military experts would work out measures to ensure “peace and tranquility” along the LAC.
Second JWG meeting August–September 1990, New Delhi	The two sides agreed that regular meetings in the border areas between the military personnel should be established to expand contacts, especially the respective sides’ border guards.
Third JWG meeting May 13, 1991, Beijing	No substantive progress, but the two sides further enhanced their understanding of each other’s positions and agreed to continue the process.
Fourth JWG meeting February 20–21, 1992, New Delhi	Flag meetings between military personnel formally established, twice a year (June and October) at the Bum La Pass in the eastern sector and the Spanggur Gap in the western sector. In addition, it was also proposed that direct telephone links between local commanders should be set up, as well as exchanges of views on CBMs, including prior notification of military exercises
Fifth JWG meeting October 27–29, 1992, Beijing	The two sides frankly exchanged views on the border issue and stated each other’s positions.
Sixth JWG meeting June 25–30, 1993, New Delhi	Decided on a set of additional measures that would ensure greater transparency in the location of forward posts and military activities along the LAC, including prevention of air intrusion and redeployment of forces.
Seventh JWG meeting July 1994, Beijing	Failed to resolve the persistent differences between the two sides over ways to reduce close encounters in some areas along the LAC.
Eighth JWG meeting August 1995, New Delhi	Agreed to pull back troops from four forward posts some 50–100 yards from each other.
Ninth JWG meeting October 1996, Beijing	Two sides agreed to increase reciprocal visits by military personnel with the rank of major general; to establish two additional meeting places along the eastern section of the Sino-Indian border for military personnel manning the disputed line of control.

²²³ Shri. Prakash, “The Sixth Meeting of the Indo-China Joint Working Group,” 92–93; and Mansingh, “India-China Relations,” 291–292.

²²⁴ From Sidhu, “Cooperative Monitoring for Confidence Building,” Appendix F, 46, 1999.

Time Frame	Development
Tenth JWG meeting August 4–5, 1997, New Delhi	Clarification of LAC discussed and the two sides focused on implementing the 1993 and 1996 CBM agreements. Also pledged to continue dialogue on a mutually acceptable border.
Eleventh JWG meeting April 26–27, 1999, Beijing	The meeting was originally scheduled for November 1998. Because of the Indian nuclear testing and the deterioration of bilateral relations, China cancelled the meeting. The meeting was reconvened and both sides pledged to restore bilateral relations and move the confidence-building process forward.

The Sino-Indian CBM agreements of 1993 and 1996 rightly can be called crowning achievements because these have normalized the long process of bilateral relations. Sidhu has divided the main features of these agreements into three categories:

(1) Declarative Principles include neither side shall use or threaten to use force against the other, both sides shall strictly respect and observe the LAC, both sides shall seek a fair, reasonable, and mutually acceptable settlement of the boundary question, and each side will keep its military forces in the border areas along the LAC to a minimum level;

(2) Information-Exchange Measures include setting up of the diplomatic-military experts group to hold regular meetings on implementation, establishing hot lines and increasing meetings between border troop commanders and other authorities at designated points, and exchanging information on natural disasters and diseases along the border; and

(3) Constraining Measures include limiting the size of military forces within agreed zones along the LAC, including setting ceilings on the number of main battle tanks and infantry combat vehicles with main guns of 75 mm or larger, mortars with a caliber of at least 120 mm, surface-to-air missiles and surface-to surface missiles each side can have (the limits remain to be negotiated), avoiding large-scale military exercises involving more than one division (15,000 troops) and providing prior notification to the other side on exercises involving more than one brigade (5,000 troops), prohibiting combat aircraft flights within 10 km of the LAC without prior notification; however, unarmed transport aircraft and helicopters are permitted to fly up to the LAC, prohibiting firing, blasting, and hunting within 2 km of the LAC, and self-restraint in situations of face-to-face confrontation.²²⁵

²²⁵ Shri. Prakash, “The Sixth Meeting of the Indo-China Joint Working Group,” 92–93; and Mansingh, “India-China Relations,” 291–292, 17.

Over the last two decades, China and India both have made great strides along the path of confidence building, and the 1993 and 1996 CBM agreements provided means of trust and confidence. Though both countries still have unresolved boundary disputes, since the CBMs have evolved, there has been no major incident along the LAC, and the border area has remained peaceful for the last 19 years. In addition, the JWG is also continuously following the boundary question.

The Sino-Indian model differs from Egypt-Israel model in the sense that China and India furthered their relations and strengthened their bilateral ties. Besides observing peace at LAC, exchanging information on diseases and natural disasters, setting up of the diplomatic-military experts group, and limiting the size of military forces along the LAC, several other factors speak to the success of CBMs between China and India.²²⁶ For example, in 1958, INS Mysur entered the Shanghai port, the last port-of-call protocol between both the countries amid their deteriorating relations. Once their CBM regimen commenced, however, Chinese Navy Ship Zheng He entered Bombay harbor and re-established the port-of-call protocol after a long period of 35 years.²²⁷ China and India did not stop here but signed other agreements: In January 1992, they signed an agreement to exchange scholars in the social sciences from the Indian Council and the Chinese Academy; and in September 1993, they signed an agreement to expand mutual awareness through television and radio. Non-governmental organizations (NGOs)—for example, women’s organizations and trade unions—increased their contacts. In 1992, India staged a festival for China in India, and similarly, in 1994, China staged a festival for India in China.²²⁸ The Chinese Communist Party directly linked with India’s communist party (Marxist). Today, various cities on both sides are linked through telecom lines, and direct flights are regularly operating between China and India. At the same time, both countries have devised a mechanism to provide advanced notice to each other on any military movement along the LAC, and to handle likely intrusions from each side.²²⁹ In August

²²⁶ Ibid.

²²⁷ Swaran. Singh, “Sino-Indian CBMs: Problems and Prospects,” Strategic Analysis, (July 4, 1997), Accessed October 2, 2012, <http://www.idsa-india.org/an-jul-4.html>.

²²⁸ Ibid.

²²⁹ Ibid.

1995, during the eighth JWG meeting, they not only pulled back their troops from the four posts near Wangdong, where they had been deployed in close proximity to each other, but they also built ties between both sides' air forces and navies.²³⁰ In 1995, Chinese army and air force officers visited Indian air force bases. Similarly, the two navies cooperated to lessen concerns about the presence of the Chinese navy in Myanmar and Indian maritime capabilities and the naval base at Port Blair.

The real wages of successful CBMs can be measured in terms of trade and commerce between the two former rivals. As far as the trading partnership of both states is concerned, Singh argues:

In 1994, India became China's largest trading partner in South Asia overtaking China's long-standing close friend and ally Pakistan, and this should obtain India greater leverage and psychological advantage in dealing with Sino-Pak ties . . . On July 18, 1994, Foreign Minister Qian Qichen signed another trade agreement on avoidance of double taxation to encourage business, scientific, cultural as well as personnel exchanges in the future.²³¹

All these measures overshadow the Sino-Indian border question—in stark contrast to the Pakistan and India border situation, where ceaseless shooting incidents and continuous infiltration and exfiltration from both sides is a common practice. The peace on the Sino-Indian border since the inception of the CBMs bodes hope in the Indian community that sooner or later these measures will resolve the border question as well.²³² More broadly, the Sino-Indian model of CBMs suggests that cooperation between two rivals is possible and can be undertaken even if two rival states are nuclear powered. China and India started from relatively easy information-exchange CBMs and gradually proceeded toward more stringent verification. Although, in the Sino-Indian case, the political challenge was not easy in the aftermath of Indian nuclear testing and other disputes between the two countries, but even then, both sides' leaders sought cooperation and restored bilateral relations utilizing political will and remaining firmly focused on geographical realities and regional interests.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

D. A WAY FORWARD ENCOMPASSING CBMS AND THE CASE STUDIES

Confidence-building measures usually focus on communication links, increased trade, military cooperation, person-to-person interactions, and cultural exchange, but in the case of Pakistan and India, these measures could not create the required conducive environment for the resolution of the complex issues that divide the two states (and also thwart their CBMs). Instead, political leaders on both sides often use CBMs as political tools to gain the maximum number of voters and for conflict avoidance rather than conflict resolution.²³³ Ghosh argues that “the impact of the CBMs still hinges on political will for their implementation. If the political will is present, the measures can be seen through to their fruition . . . There is no viable alternative to a gradual and incremental peace process through military and non-military CBMs. The derailment in the peace process occurs when there is an attempt to find instant solutions to old and complex problems.”²³⁴ In other words, resolution of the bigger and complex issues cannot be undertaken until a more conducive environment prevails, and this transformation can be made possible through a gradual procedure of resolving minor issues with trust and political will. Instead of fixating on the macro-issues, both nations must turn their attention to micro-issues.²³⁵

China and India’s model of CBMs is a regional precedent for border cooperation. Much as various acute incidents impinged on—but did not ruin—the Sino-Indian CBMs, Pakistan and India also had major wars, other low-intensity conflicts, and concerns about each other’s nuclear programs in parallel with the CBMs’ process. China and India, however, placed more importance on conflict resolution than conflict avoidance. Both nations followed a gradual but steady and process of CBMs by signing the 1993 and 1996 agreements, followed by JWG meetings and the exchange of visits.

In contrast, when India and Pakistan meet, the behavior of both nations abruptly changes. On one side, India shows its anger and frustration over terrorist attacks, while

²³³ Samarjit. Ghosh, “Two Decades of Indo-Pak CBMs.” 3.

²³⁴ Ibid.

²³⁵ Ibid., 4.

on the other side, Pakistan wants faster results and more emphasis on the Kashmir issue, which in turn undermines the CBM process. Tahir-Kheli also suggests that:

. . . while many of the provisions of the two border agreements between India and China (including notifications, exercise limits, and aircraft restrictions) are similar to measures already in place in India-Pakistan agreements, others offer additional prospects for building confidence. Chief among them may be exchanging maps, conducting flag-officer-level meetings at designated border locations, assisting in the sharing of information on diseases, and providing disaster assistance. Similar CBMs could be employed along other sections of the boundary.²³⁶

Pakistan and India should move from the currently low-confidence level to a higher-confidence level, because now, relations (and CBMs) are characterized by insufficient political will, mutual distrust of governments and people, and entrenched miscommunications. Such high- or at least higher-level confidence may not require the wholesale replacement of the previous CBMs; instead, Pakistan and India should augment the existing CBMs through the resolution of the less contentious issues that exist in the maritime domain. The resolution of Sir Creek, the fishermen issues, and the operational encounters will contribute to moving Pakistan and India beyond the prevalent dilemma of distrust, lack of political will, and other impediments that hinder the progress of bilateral relations, and will surely lead them to resolve their complex issues including Kashmir, the LOC, and the Siachen Glacier at a later stage.

E. CONCLUSION

Over the last six decades, ranging from 1947 to 2009, Pakistan and India both have seen a series of CBMs in terms of dialogue and contacts, but no major achievement has been witnessed so far resolving a single dispute. Both nations float a fragile plank of CBMs that is always susceptible to damage as a result of any minor or major incident. History shows that despite interest from the general public on both sides, the governments could not succeed in getting fruitful outcomes from the past CBMs. Unfortunately, such CBMs that would diminish the trust deficit, miscalculations, and miscommunications—and ultimately reduce hostility—have not been utilized by both

²³⁶ Shirin. Tahir-Kheli, "Preventing Another India-Pakistan War: Enhancing Stability Along The Border," Cooperative Monitoring Center Occasional Paper, Sandia National Laboratories, Albuquerque, NM, USA, 2000, 26.

sides because of the persistence of mistrust, the lack of political will, and the failure to learn lessons from other countries across the globe. Noting the serious consequences of harsh relations of Pakistan and India, Hilali notes:

The changed face of conflict today requires us to be perceptive, adaptive, creative, and courageous and to address simultaneously the immediate as well as the root causes of conflict . . . All concrete steps will be useless and ineffective if India and Pakistan are not serious about settling the existing problems. There is a possibility of an automatic escalation from border clashes to local warfare leading to nuclear war.²³⁷

It is evident from the case study of Egypt-Israel that the absence of trust and political will influence, perhaps catastrophically, the overall effects of CBMs. In contrast, in the case of China-India, these influential factors led to successful CBMs. Despite numerous other issues that cropped up during the process of CBMs, both China and India followed the step-by-step procedure to resolve their ongoing and outstanding issues. In fact both sides' leadership realized that further conflicts will harm their overall interests in the region. Although Pakistan-India's case has numerous similarities with the China-India model, the parties do not follow the same path. On one hand, Indian decision-makers presume the status of regional power, and after the Mumbai attacks, they expect Pakistan to behave in a same way it did vis-à-vis the United States after 9/11. On other hand, Pakistan does not accept India's position. The Indian hawks do not want to talk about the Kashmir issue, while the Pakistani falcons insist on a "Kashmir First" stance.

Despite the lack of trust, political will, and encouraging movement on conflict resolutions so far, the CBM history of Pakistan and India does offer a glowing hope that sooner or later, both the nations will come to their senses. Although the outcomes of past CBMs are not especially fruitful, both nations at least concur that the process of peace is vital. In this regard, the step-by-step strategy—the resolution of simpler and less contentious conflicts—will prepare and soften the way ahead, leading both nations to dismantle the obstacles to the final settlement of the complex issues.

²³⁷ A.Z. Hilali, "Confidence and Security Building Measures for India and Pakistan," 216–217.

V. CONCLUSION

In the aftermath of World War II, Britain could no longer sustain its presence in South Asia and withdrew from the sub-continent hastily and with little planning for what should come next. This precipitous withdrawal, exacerbated by the partition of sub-continent in August 1947, left newborn Pakistan and India with traumatic issues, including the resettlement of five million exiled persons on either side of the borders and unresolved border disputes in the Kashmir, Siachen Glacier, and Sir Creek regions, which subsequently caused major interstate conflicts and severely stressed bilateral relations between Pakistan and India. These unresolved issues caught fire in the form of three major wars: the first Kashmir war in 1948, the second Kashmir war in 1965, and the 1971 war. In their turn, these wars increased militarization on both sides, colored political and public perceptions, and escalated both nations to the very brink of a nuclear contest.

The history of conflict and the addition of nuclear weapons (strategic and tactical) have made South Asia one of the most explosive regions of the world. Tahir-Kheli wrote:

Since their respective nuclear tests of 1998, the volatile relationship between India and Pakistan is often referred to as the most dangerous potential flash point in today's international system. The nuclear tests finally demonstrated the highest costs of any future conflict between two neighbors whose past already reflects three major and two less widespread wars. Any future conflict is more than likely to stem from the differences over Kashmir, an area claimed by both sides. Furthermore, the likelihood of war increases if one adds the misunderstandings, the missed signals, and the involvement of non-state elements to the scenario of confrontation. In other words, there is no dearth of reasons why India and Pakistan may go to war.²³⁸

Since Independence, both sides' military forces have squared off, eyeball to eyeball, on the borders, particularly on the land borders. Unfortunately, both sides are more concerned about the land issues, which are more complex and contentious in nature, and have ignored the maritime issues—including Sir Creek, fishermen, and operational encounters—beyond the comparatively low-level tit-for-tat that this thesis has documented. The preoccupation with land-based issues is a fixture of political and

²³⁸ Shirin. Tahir-Kheli, "Preventing Another India-Pakistan War," 11.

strategic thought on either side of the border. Pakistan's military, led by the ground forces remains dominant in the domestic political structure, and it focuses more on Kashmir, Siachen Glacier, and LOC issues. India is also fundamentally land-oriented, despite having a vast and massive coastline that richly contributes in its economy. Indeed, around 95 percent of both states' economies rely on sea routes, which make the inattention to the maritime disputes all the more striking.²³⁹ This statistic also underscores the promise that attaches to the resolution of these issues or at least the improvement of Pakistan-Indian relations in this realm. These maritime issues are very straightforward in nature and do not carry the long-standing emotional and political charge of the major land issues; thus, they lend themselves to resolution. It helps, too, that both sides' naval forces have a less conflicted history. Still, any progress on any contentious issues would be a marked improvement—and can play the role of catalyst in turn to resolve the bigger issues.

Consider Sir Creek. Although the issue has a long and contentious history and numerous talks and meetings so far have failed to resolve the contentions, the issue itself is not difficult to settle. It has become complex because of the trust deficit between the governments and the insistence on linking the issue with the resolution of other hard-core, land-based issues. If both Pakistan and India disconnect these issues and reverse the order of the tasks, Sir Creek can be resolved—with far-reaching consequences. The Sir Creek issue is similar to other international maritime issues like Guyana and Suriname, and Benin and Niger. These countries have successfully resolved the same kinds of disputes through existing rules and principles of customary law. The Guyana and Suriname case was resolved under the *thalweg* principle, while the Benin and Niger decision was taken on the ICJ's judgment. The Sir Creek dispute can be resolved in light of the Guyana and Suriname case study if Pakistan agrees with the India's claim to resolve the issue under the *thalweg* principle. The other option is to resolve the issue through the ICJ, along the lines of the Benin and Niger case study, utilizing the records and history of the Sir Creek case. Pakistan and India have records like old maps, charts, and letters—the kind of documentation that was made available to the ICJ in the case of Benin and Niger. In addition, both Pakistan and India have conducted a hydrographic

²³⁹ Hasan Ansari & Ravi Vohra, "Sandia National Laboratories Cooperative Monitoring Center, Confidence Building Measures at Sea," 5

survey of the Sir Creek area and charts have also been exchanged by both sides. In short, the available elements for a happy resolution of the Sir Creek dispute can and should be used.

Because the Sir Creek issue has not been resolved, the resolution of maritime boundaries remains unsettled. Thus, the poor fishermen of both sides intentionally or unintentionally trespass these un-demarcated boundaries in search of fish. The security forces arrest these fishermen as a consequence, confiscate their boats, and put them in jail for an unlimited time.²⁴⁰ These unfortunate fishermen not only lose their means of livelihood but also their freedom for years without any contact with their families. Khan noted:

[T]he fishermen are trapped in the situation created by the non-resolution of the Sir Creek dispute, and the two states actually seem to be using their fishermen to put pressure on each other to sign on the dotted line. In fact, when the fishermen are released periodically, they provide photo opportunities to state propaganda machines on both sides to defame each other.”²⁴¹

This vicious cycle also can be resolved separately, in light of the case study of the resolution of the fishermen issue between China and Korea. China and Korea allocate different zones for each country’s fishermen as well as a combined zone, a model that provides a complete recipe for Pakistan and India. In addition, cooperation between the Pakistan Maritime Security Agency (PMSA) and the Indian Coast Guard (ICG) is also considered prudent to facilitate the fisher-folk of both sides, which measures will in turn create a positive perception among the people of Pakistan and India and also will develop a sense of good bilateral relations.

The maritime tension between Pakistan and India is further aggravated by both sides’ naval forces’ actions and encounters. Although the shooting down of Pakistan Navy Atlantique aircraft by the Indian Air Force and the brushing of PNS Babur by INS Godavari are the only two major incidents to date, both sides’ naval forces often engage in shadowing, buzzing, and encountering each other platforms, which affect bilateral

²⁴⁰ Rashid Ahmad Khan, “Sir Creek,” 9.

²⁴¹ Ibid., 10.

relations as a consequence. For the purposes of this analysis, it really does not matter who is at fault in which incident; the main point is that these sorts of incidents can easily be avoided by both sides. Numerous examples are available in the world where the nations took responsible actions to avoid such incidents and casualties. In this regard, the INCSEA agreement between the United States and the Soviet Union provide a way forward for other nations in general and for Pakistan and India in particular. If the two nuclear and super-powers of the world can work out a method by which to avoid such incidents at sea, then such accommodation must also be possible between the other nations. Moreover, such an agreement between Pakistan and India will not only avoid further incidents, but also will develop confidence between the two forces operating at sea and undoubtedly improve bilateral relations.

The purpose of seeking resolution of the disputes in the maritime domain is to find an alternative way to build confidence for good bilateral relations between Pakistan and India. As this thesis has shown, a series of confidence-building measures have been undertaken from 1947 to 2009, but none of them has reached a stage where it could resolve a single conflict. In other words, no net gains in confidence have been posted. Where the purpose of CBMs is to lessen miscalculation and miscommunication, and resolve the conflicts, Pakistan and India use CBMs only for conflict avoidance.

The history of CBMs between both the states is not encouraging. For example, in 1965, a hotline was established between the director generals of military operations (DGMO) of Pakistan and India as a CBM to prevent another acute situation from developing, but the facility has been highly underused, particularly during Kargil crisis.²⁴² Similarly, after the 1971 war, both sides' prime ministers met in July 1972 to recapitulate the situation and turn it to improved relations. They agreed on concluding the conflict and adjusting some territory, but instead, the status quo reasserted itself on the international border and both sides' armies remain on the LOC.²⁴³ More generally, any number of agreements exist on "advanced notification on military exercise, maneuvers, and troops movements," and "prevention of airspace violations," but both countries have

²⁴² Shirin. Tahir-Kheli, "Preventing Another India-Pakistan War," 30.

²⁴³ Ibid., 31.

continuously violated the agreements. Another agreement about the exchange of lists of nuclear facilities has never been trusted by both sides.²⁴⁴ The persistence of mistrust and the lack of political will have kept both the countries from developing good relations, just as happened in the case of the CBMs between Egypt and Israel. On the other hand, the model of CBMs between China and India provides hope that two countries—nuclear states with a record of hot wars on their border—have achieved successful CBMs. Pakistan and India also can succeed by following the path of trust and using CBMs as means of conflict resolution, not as conflict avoidance.

The confidence-building measures should take a step-by-step approach based on resolving minor and less contentious issues such as Sir Creek, the fishermen, and operational encounter issues. The resolution of these issues will build up trust in the military and non-military arenas and will create positive perceptions among the people about both sides' governments. Pakistan and India both should realize that settlement of bilateral disputes including Kashmir, the Siachen Glacier, and the LOC is in their interest. Keeping in view the hard stance of both sides on the Kashmir issue, initially the Kashmir issue, including Siachen Glacier and the LOC issues, can be set aside and both governments should give more attention and consideration to the issues that are less politically volatile, notably the maritime issues.

Both sides should understand that war is no option for the settlement of disputes, especially when both countries are equipped with nuclear weapons. The enduring disputes between Pakistan and India have already deeply affected both countries in terms of economic and social development. It is prudent to highlight that the resolution of all maritime disputes will assist Pakistan and India to delimitate their maritime boundaries in the Arabian Sea, solve the fishermen's problems, and increase cooperation between both sides' naval forces, while it will also further the expectations of progress on the other more complex land-based issues such as Kashmir, the Siachen Glacier, and the LOC. From the perspective of Pakistan and India, the resolution of maritime issues is a logical and important way forward toward resolving lasting peace.

²⁴⁴ Ibid.

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