

Maritime dispute between India and Pakistan

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ARTICLE DETAILS

Article History

Published Online: 30 March 2018

Keywords

Maritime dispute, Rann of Kutch, Sir Creek.

ABSTRACT

The India-Pakistan relations have been far from normal due to the events leading to the partition of India in 1947. The long historical ties among the various communities in the South Asian subcontinent turned extremely sour and hostile due to partition of the geographical area which was marked by the presence of different religions and communities not clearly demarcated in terms of territorial continuities.

The Indo-Pak relations have traditionally been seen from the prism of boundary disputes and military confrontation at the land borders in the North and North-west. However, the two countries also share maritime borders. They are vehemently at odds over Sir Creek, a 96-kilometre long water body that empties into the Arabian Sea from the Rann of Kutch. The conflict is centred on a wetland about 100–150 square kilometres that is perpetually under water. According to many experts, if the two countries' politicians show the necessary political will, this is probably the easiest conflict that they could resolve.

The irony is that it is the poor fishermen from both sides of the creek are paying the price for inadvertently crossing over to each other's side. As a result of this transgression, they languish in jails for years in the absence of any proper legal aid. This dispute could prove to be a starting point to resolve other tricky issues between the two countries. This paper would take a look at the dispute and try to examine how this could be resolved and also discuss the hindrances in this regard.

Introduction

Since the partition, Indo-Pak relations have not been close to normal. Conflict between the two nations has centred on Kashmir. Numerous other problems that could be resolved more quickly have been pushed to the side because of the focus on this disagreement. In fact, resolving such challenges could create a strong foundation on which to handle additional problems. The Sir Creek problem is one of these divisive topics. The two nations have been independent for many years, but they have yet to come to an agreement on where the marine borders should be drawn.

The Sir Creek dispute:

Ironically, Sir Creek, a 96-KM water body that empties into the Arabian Sea from the Rann of Kutch, is at the centre of the maritime boundary dispute between India and Pakistan. The conflict is centred on a wetland about 100–150 square kilometres that is perpetually under water. According to many experts, if the two countries' politicians show the necessary political will, this is probably the easiest conflict that they could resolve. The Pakistanis' insistence on equating this matter with others like Kashmir is likely impeding any progress on this matter.

The maritime border between India and Pakistan needs to be established because it is still unclear even after 70 years of independence. The maritime boundary will start at the

last place along the edge where the Creek at low tide meets the sea, and depending on whether it faces north or south, it may add or subtract thousands of square kilometres of the oceanic shelf, which is thought to be rich in oil and natural gas. Fish resources are plentiful in the region. The military of the two countries jail hundreds of fishermen from both sides each year for poaching on what they believe is their territory, which unnecessarily worsens the plight of these fishermen and their families¹. The predicament of these fishermen has gone unreported for many years as a result of the bitter rivalry between the two nations. Without adequate legal support, they are treated like prisoners of war and denied access to fundamental human rights.

The main cause of the two countries' inability to resolve these concerns is the outcome of Pakistan's insistence on tying the resolution of every other issue to the Kashmir crisis. The lives of the average person on both sides of the border may be improved if the Sir Creek boundary dispute is resolved. The problem involves more than just political and economic aspects.

As hundreds of them are detained by the security services of the two nations for accidentally crossing sea boundaries that are not clearly defined, the fishermen of India and Pakistan are victims of both defined and undefined maritime borders. Rising conflicts over renewable resources

are also a significant contributing factor. Understanding these coastal issues requires considering them from a number of overlapping but separate angles. Low-intensity wars over environmental issues are as serious as traditional war and concurrently raise questions about the two nations' border and cartographic worries.ⁱⁱ

"We're Prisoners of War," Chacko proclaimed. "Someone has been manipulating our dreams. To no group do we feel a sense of belonging. We are adrift in stormy seas. It's possible we'll never be able to land. It's impossible for us to feel enough sorrow. Never are we truly happy in our celebrations. Despite our best efforts, we can never achieve the lofty heights of our imagination. To no avail, our lives are always second rate. In order to make a difference." Arundhati Roy, *The God of Small Things*.ⁱⁱⁱ

While the majority of research on India-Pakistan tensions have focused on large, well-known conflicts like Kashmir, Kargil, nuclear politics, multiple Indo-Pak wars, and Hindu-Muslim tensions, there has been little mention of the smaller, more frequent disputes occurring throughout the two nations. Millions of people in the region are affected by these conflicts, which are both harmful and risk being ignored at one's own danger.

People, the environment, and resources are all factors that need to be taken into account while discussing issues pertaining to peace and security. Degradation of the natural environment and competition for scarce natural resources are closely linked in more than one manner to the occurrence of conflict. In recent years, some social scientists have advanced the argument that a lack of renewable resources, such as land degradation (including deforestation and the depletion of fisheries), is becoming an increasingly important factor that contributes to political strife.^{iv}

"The administrations of India and Pakistan have endeavoured to remould the stubborn clay of various cultures and civilisations into slim, uniform, hyper-masculine, and disciplined countries, where borders in particular have become sacred" (Norman Meyers, 1993). In the case of land, they have mainly been successful in drawing clear-cut borders; but there is a great deal of apprehension over the seas, because any line of demarcation that could be drawn there would be unclear. The close geographical proximity of the two countries, which enables them to share the resources of the seas, has resulted in fisher people crossing sea borders for a long time. However, they are increasingly perceived as causing grave instability to territorial boundaries, which spills over into everyday tensions and conflicts^v. Fishermen struggle to understand the idea of maritime borders because the sea has played a vital role in their way of life for millennia.

It is ironic that nations have increasingly restricted the mobility and trade of individuals from various nations,

despite the fact that globalisation has brought nations closer together and seems to imply that national boundaries are no longer significant. The challenge is particularly challenging in the case of nations like India and Pakistan, which have shared a same history for centuries and have seen an increase in passport and visa restrictions over time. As a result, the artificial split of countries and the founding of new states have complicated matters for the citizens of those nations.

The natural borders of nations have long been influenced by geographical and ecological considerations. Mountains and the sea have long served as India's natural borders. However, it has been noted that the oceans surrounding India are particularly vulnerable, leading to shaky borders and greater unpredictability. The borders that separate states and serve as the basis for the nation's identity are particularly hazy in the oceans, endangering everything related to the nation's identity.

According to K.M. Panikkar, "It is necessary to emphasise that India has been under the relentless pressure of sea power, steady and unseen over long periods of time, but effectively controlling one's economic life and political life, ever since that historic day when Vasco Da Gama with his fleet of warships arrived at Calicut. In actuality, India has been surrounded since 1498."^{vi} He goes on to say, "The only realistic remedy to India's perennial geographical weakness is the strength of her own internal political and economic structure by a strong central government with complete control of the nation's resources."^{vii} At another point, he says, "To India, the Indian Ocean is a critical sea; to other nations, it is merely one of the significant maritime regions. Her lifelines are concentrated there, and the independence of that coastline surface determines her freedom. She cannot thrive industrially, commercially, or have a stable political system until her shores are protected."^{viii}

In order to organise a blue-water navy that can protect India's extensive coastline and precisely define marine borders, many measures have been made by India. In addition to their shared land border, India and Pakistan also share a sea border. Gujarat alone possesses over 1663 km of India's total 7517 km of coastline, or roughly 1/3 of the entire coastline. A portion of Pakistan's coastline is next to Gujarat's.

Historical background

The coastal dispute between the two countries is centred around Sir Creek, which is a fluctuating tidal channel or an estuary that is sixty miles long and is located in the marshes of the Rann of Kutch. As was noted above, the area in question is located in the Rann of Kutch. The region known as the Rann straddles the international boundary between the states of Gujarat in India and Sindh in Pakistan.

An argument between the rulers of Kutch and Sind broke out around the year 1908, when a pile of firewood that was lying on the banks of a creek that divided the two principalities served as the catalyst for the dispute over Sir Creek. The dispute over Sir Creek can be traced back to the time before independence. The government of the state of Bombay, which had authority over the state of Sindh, became involved in the conflict and attempted to resolve it. The conflict was finally ended in 1914 thanks to the backing of Map Number B44 and, later, Map Number B74.^{ix} Nothing substantial transpired during the next 40-50 years, and the conflict resurfaced until in the 1960s.

In the wake of the 1965 war between India and Pakistan, the Pakistani government claimed ownership of the portion of the Rann that lies south of the 24th parallel. According to India's rebuttal, the border lies along the northern edge of the Rann. The Indo-Pakistani Western Boundary Case Tribunal is an international body that was brought in to arbitrate the dispute. On February 19, 1968, it made public its award, which mostly supported India's claim to the entire Rann while granting Pakistan a smaller piece^x.

It was clear that Pakistan was unhappy with the prize, as evidenced by their desire to have it revoked. The conflict between India and Pakistan, which has a long history and peaked in intensity after the war in 1965 between the two nations, escalated despite the fact that the region at issue was relatively tiny and appeared to be of little consequence. Unfortunately, the two states did not bring up the issue of the westernmost part of the boundary of the Rann of Kutch, nor did they bring up the issue of the demarcation of the boundary between the top of Sir Creek and its mouth at the Arabian Sea. Both of these issues pertain to the boundary between the two states. The conflict at Sir Creek began as a direct result of this lack of planning. It's possible that at that particular period in time, neither nation believed that determining where the river boundary fell was a significant goal.

The delimitation of the river boundary will have implications for the determination of the maritime boundary, the EEZ (exclusive economic zone), and the continental shelf, which is one of the reasons why the conflict has taken on increased significance in recent decades. Studies have proven that this area is abundant in petroleum, oil, and gas, as well as minerals and plant life; as a result, there is the possibility for this region to be used for commercial purposes.^{xi} At this point in time, India maintains that the boundary can be found smack dab in the middle of the Creek. Pakistan asserts that its land extends all the way up to the line, which is located on the creek's eastern bank, and that as a result, the entire creek belongs to Pakistan.^{xii}

There have been multiple rounds of diplomatic talks between the two countries, but neither side has been able to

achieve an agreement on a tangible solution. India suggests that both countries should work together to delimit their maritime boundaries, starting from the edge of their respective EEZs and moving inwards until they reach a point that is mutually acceptable in accordance with the provisions of the Technical Aspects of the Law of the Sea. Pakistan has stated that it is willing to submit the dispute to a third party for resolution, but India has proposed an ad hoc solution to the conflict instead.^{xiii} This idea was rejected by Pakistan, and the impasse has persisted ever since.

India wanted the Thalweg^{xiv} principle to be the basis of the settlement according to which the boundary should be defined where a river or a channel is at its deepest. The argument put up by Pakistan is that the Thalweg principle cannot be utilised in this scenario because the canal in question is inaccessible for navigation for the vast majority of the year. The demarcation that is included in the 1914 resolution and the supporting map that is included with the resolution both indicate a green line that is present on the eastern limit of the Sir Creek, which is the basis for Pakistan's claim to the Sir Creek. This position was never challenged by either of the two states prior to the time that India gained its independence. Therefore, Pakistan is the rightful owner of Sir Creek in accordance with the *uti possidetis* legal norm.^{xv} The fact that every map of the region depicts a green line on the eastern bank of Sir Creek is another factor that lends credence to Pakistan's claim to the territory in question.

The adjudicators in 1968 did not discuss the Sir Creek because it was explicitly stated in pre-partition documents that Sind, which is now in Pakistan, was where the creek was located.

India firmly disputes this assertion. She has disputed Pakistan's assertion by arguing that the map included in the resolution in 1914 was only an annex and had no legal significance. She has also claimed that the 1914 decision was only put into effect in 1924, by which time pillars had already been built to mark the border between Sind and Kutch. India insisted that the Thalweg concept must establish the boundary between India and Pakistan in Sir Creek even if no pillars were placed there.

The subject of the Sir Creek portion of the boundary is not taken into account, the tribunal stated, "In light of the aforesaid agreement." The portion of the boundary closest to Sir Creek that has caused controversy is this.

Conclusion

There have been several talks between India and Pakistan to discuss the problem, but none have resulted in a resolution. Any protracted talks on various topics have also been complicated by incidents like the Kargil War, the December 2001 attack on the Indian Parliament, and the 26/11

terrorist attack in Mumbai because Pakistan has been linked to practically all of the terrorist activity in India.

In accordance with the UNCLOS, if the dispute is not addressed within the allotted period, a third party may theoretically intervene to assert its claim. Therefore, it is

crucial for the two countries to settle the issue and demarcate their maritime borders. Second, the settlement of the maritime conflict may foster an atmosphere of mutual trust and cooperation that can result in deeper relations between the two nations.

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- xiii B. Muralidher Reddy, Joint Survey of Sir Creek completed ahead of Schedule, The Hindu, Jan.18 2005.
- xiv The thalweg principle is the principle in which the boundary between two political states separated by a watercourse is denoted as the thalweg of that watercourse, if those two states have agreed to use the thalweg definition. Various states have also defined their watercourse international boundaries by a median line, left bank, right bank, etc. <http://en.wikipedia.org/wiki/Thalweg>
- xv Uti Possidetis is a Latin term which means 'as you possess' This principle states that "when a country gains independence it inherits the original borders of the predecessor state". https://www.law.cornell.edu/wex/uti_possidetis_juris