

Analysis of Sir Creek Issue between India and Pakistan; Problems and Options

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Abstract

Amongst various major disputes existent between India and Pakistan, the conflicting stance of both the countries regarding interpretation of the international boundary in the Sir Creek region has been a chronic, significant and sore issue. This maritime dispute, concurrently with other issues, has been diluting and bruising the bilateral relations of the two countries since 1958 when India and Pakistan embarked upon the demarcation of the Eastern land border. Against this backdrop, this paper attempts to revisit the Sir Creek issue between India and Pakistan, examine the problems of its hitherto unsettlement and recommend viable options to address the problems identified.

Keywords: India, Pakistan, Sir Creek, Issues, EEZ, India-Pakistan border.

Introduction:

In April 1965, India and Pakistan indulged in armed clashes in Rann of Kutch (RoK forthwith) (Ali, 2020). Pakistan asserted that half of the RoK along the 24th parallel was Pakistan's territory whereas India claimed that the boundary ran along the northern edge of the Rann (Chaudhuri, 2021). The matter was referred to international arbitration and Indo-Pakistan Western Boundary Case Tribunal's Award (IPWBCT) was formed (Ahmad, 1953). On 19 February 1968, the tribunal upheld most of India's claim to the entire Rann, conceding very small sections to Pakistan. Unfortunately, the tribunal left the Sir Creek part of the boundary out of consideration as it was supposedly agreed upon by both states. The issue now is whether the boundary lies in the middle of Sir Creek as India believes, or on its east bank, as Pakistan claims. Pakistan claims its rights, following the Government of Bombay (GoB) Resolution of 1914, to the entire waters surrounding and fed by the creek. India, for its part, insists that it owns half of the area based on the Thalweg Doctrine of international law (Treat, 1914). The economic, hydro-carbon and mineral potential of the creek has contributed to its importance and opposing claims of the parties. Eleven rounds of talks until 2011 and joint surveys in 2005 and 2007 by Indian and Pakistani authorities still looking for resolution of the issue. Despite different interpretations regarding international boundaries in Sir Creek (Figure 2), the issue is one of the number of subjects that could be resolved relatively easily between India and Pakistan, initiating a gradual process of minimizing strain in bilateral relations (Wetter, 1971).

Significance of the Study:

The thesis addresses an important issue that has diverse implications attached to it for India and Pakistan. The peaceful resolution of the issue, in essence, would not only fetch an end to the conflict itself but would also offer optimal prospects to pave the way for socio-economic benefits

to the populace (fishermen) of the related areas of the two countries. The settlement has prospects for launching further initiatives to eradicate other irritants in the bilateral relations between India and Pakistan.

Problem Statement:

The thesis attempts to revisit the Sir Creek issue between India and Pakistan, examine the problems of its hitherto unsettlement and then recommend viable options to address the problems identified. Various aspects or sub-questions from the statement are as follows:

- i. Root causes and gradual development of the Issue.
- ii. Comparative viewpoints of opposing parties.
- iii. Efforts and way ahead made by India and Pakistan.
- iv. Legal perspective of the Issue.
- v. Examination of the unsettlement to identify underlying problems.
- vi. Viable Options.

Delimitation of the Study:

The study offers different facets of the Sir Creek issue. It touches upon India and Pakistan relations in perspective. However, it mainly addresses the issue and does not address the bilateral or diplomatic inferences present between India and Pakistan in general. The research does not look beyond the military implications rooted in this problem. Economic gains attached to the creek have also not been dilated as the focus remains on the Sir Creek-related problems.

Objectives of the Study:

The following are the key objectives of this study:

- i. Reflect upon the Sir Creek issue and recount its historic account.
- ii. Lay a foundation for understanding the issue from Indian, Pakistani and third-party perspectives.
- iii. Identify broad trouble areas including legal standpoints leading to peculiar problems which obstruct the resolution of the issue.
- iv. Propose practicable options for the elimination of the underlying problems to facilitate the resolution of the issue.

Literature Review:

Sir Creek is a 96 km (60 NM) strip of water counter-claimed between India and Pakistan in the RoK marshlands. The creek, which opens up into the Arabian Sea, divides the Kutch region of the Indian state of Gujarat from the Sindh province of Pakistan. It is located between 23°58'N 68°48'E and 23.967°N 68.8°E. Locally, it is called 'Baan Ganga' and is named 'Sir Creek' after the British representative (Ali, 2020).

Ownership of the Sir Creek has been an issue since India and Pakistan gained independence from British Rule in 1947. Originally, the creek dispute was argued between the rulers of Kutch and Sindh over a pile of firewood lying on the banks of a creek dividing the two principalities.

This problem was referred to by the then GoB, which gave its decision in 1914 in the form of Map number B44 and subsequently Map B74. Nothing significant happened on the issue until 1960 (Khan, 1965).

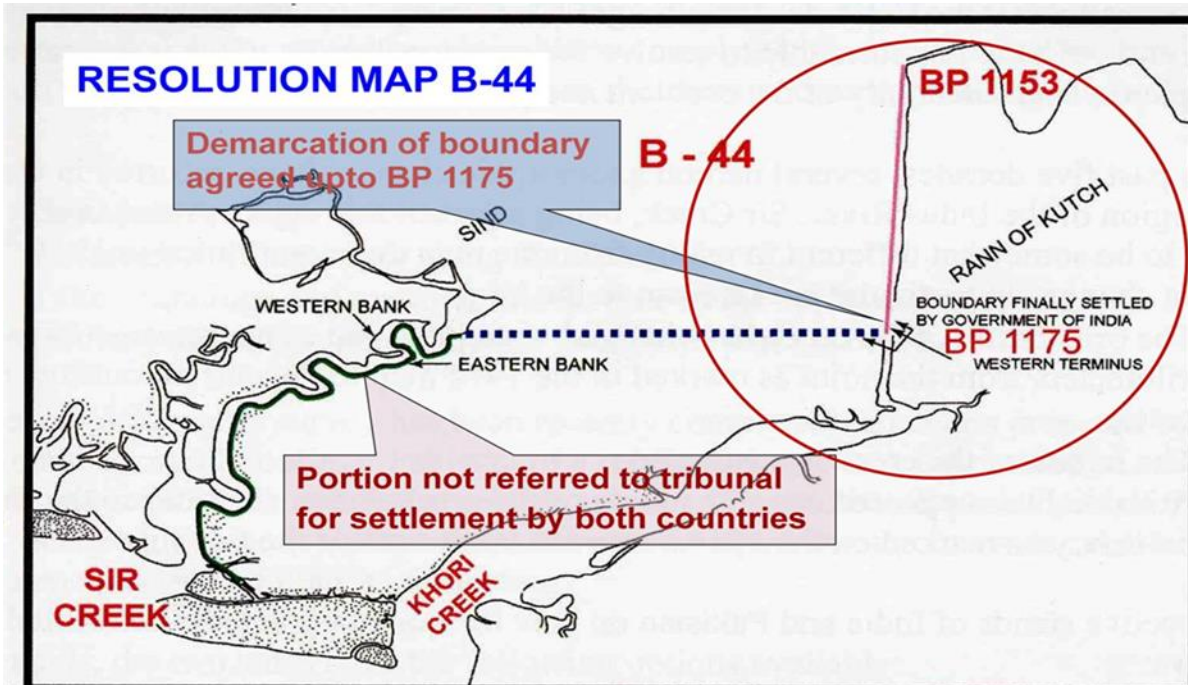


Figure 1: Bombay Government 1914 Resolution Map (Khan, 1965)

Indo-Pakistan Western Boundary Tribunal:

In April 1965, hostilities broke out a few months before the commencement of a full-fledged war between India and Pakistan. Consequently, British Prime Minister Harold Wilson managed to convince both nations to cease fighting and create a tribunal for the resolution of the greater RoK boundary dispute. Pakistan sought to extend the line further eastward and claim half of the Rann along the 24th parallel. However, India contended that this line moved up sharply at a right angle to meet the northern boundary of the Rann. The sole issue, therefore, was whether the short agreed boundary from the head of Sir Creek went all the way east or rose at a right angle at its western end to reach the northern limit of the Rann. From this point onwards, the boundary is unambiguously fixed as defined by the tribunal award of 1968. The IPWBCT was constituted according to the agreement of June 30, 1965. The ad hoc tribunal delivered its award on February 19, 1968, and awarded India 90% of its claim to the RoK, whereas Pakistan was awarded 10 per cent of the disputed Kutch (Figure 1). The long-standing dispute hinges on the actual demarcation “from the mouth of Sir Creek to the top of Sir Creek, and from the top of Sir Creek eastward to a point on the line designated on the Western Terminus” (Dissenting Opinion of Judge Ales Bebler, 1968).

Interestingly, while presenting their position to the tribunal, the two nations did not contest the westernmost part of the boundary of the RoK, which commenced from a point called “Western Terminus” to the head of Sir Creek further to the west. In addition, both

states avoided tabling the issue of the demarcation of the boundary between the top of Sir Creek to its mouth at the Arabian Sea in the southwest before the tribunal. By avoiding addressing it through arbitration, the present-day issue took birth (Ahmad, 1953).

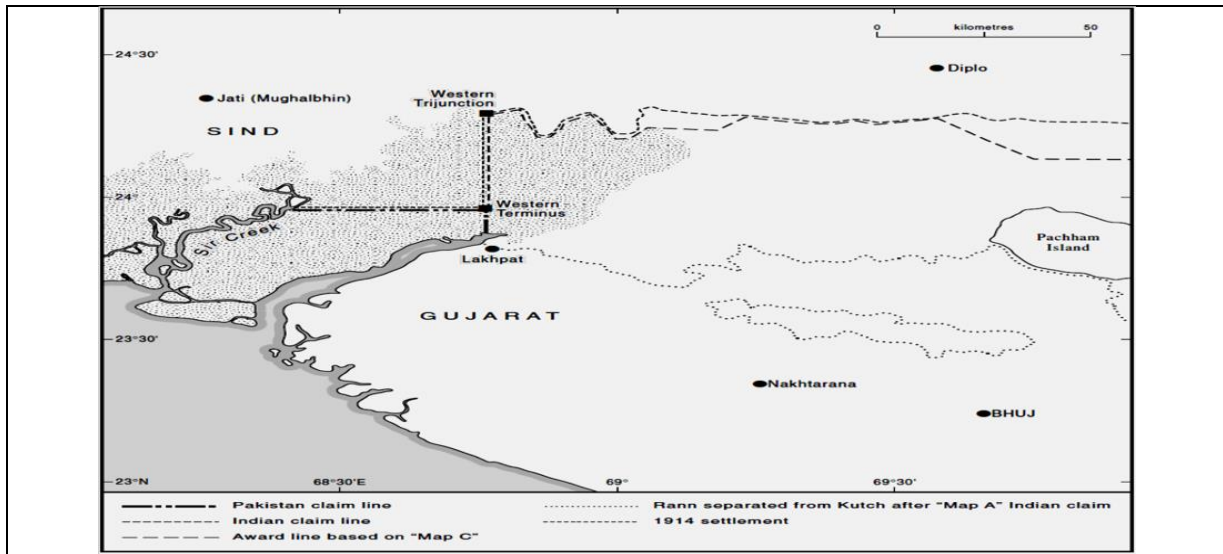


Figure 2: Geographical depiction of Sir Creek Issue (Ahmed, 1953)

The stance of Pakistan on the Issue:

Pakistan claims that the reason why both states did not contest the Sir Creek boundary before the arbitration tribunal was because the entire creek until its bank on the Indian side was part of the Sind province of Pakistan (Figure 6). Pakistan supports its position by citing a resolution promulgated by the GoB on 24 February 1914, before the independence of India and Pakistan (Colman, 2009).

The stance of India on the Issue:

India asserts its consonant with one of the principles of international law i.e. The Thalweg principle; it says that Thalweg is the proper boundary in Sir Creek. India supports this assertion by arguing that Pakistan officially accepted its position in an official note of May 19, 1958. As per this note, Pakistan, from an Indian point of view, admitted that the 1914 Resolution Map was intended to be no more than an annexure to the 1914 Resolution. Consequently, India extrapolates that the 1914 Resolution, and not the 1914 Resolution Map, is decisive in resolving the Sir Creek dispute (Figure 1). It points to the fact that Letter Number 5543, the basis of Resolution 1192, contains a statement of the Commissioner in Sind, who is also “the predecessor in interest of Pakistan,” as supporting India’s position that the Thalweg of Sir Creek is the actual boundary in the river (Misra, 2010).

India also claims that the 1914 Resolution Map was fully implemented in 1924 when the region was demarcated by pillars. India states that subsequent official maps of the area, such as Map Number B74, have the appropriate boundary symbols and substantiate its position that the Thalweg is the boundary in the Sir Creek River (Meena, 2016).

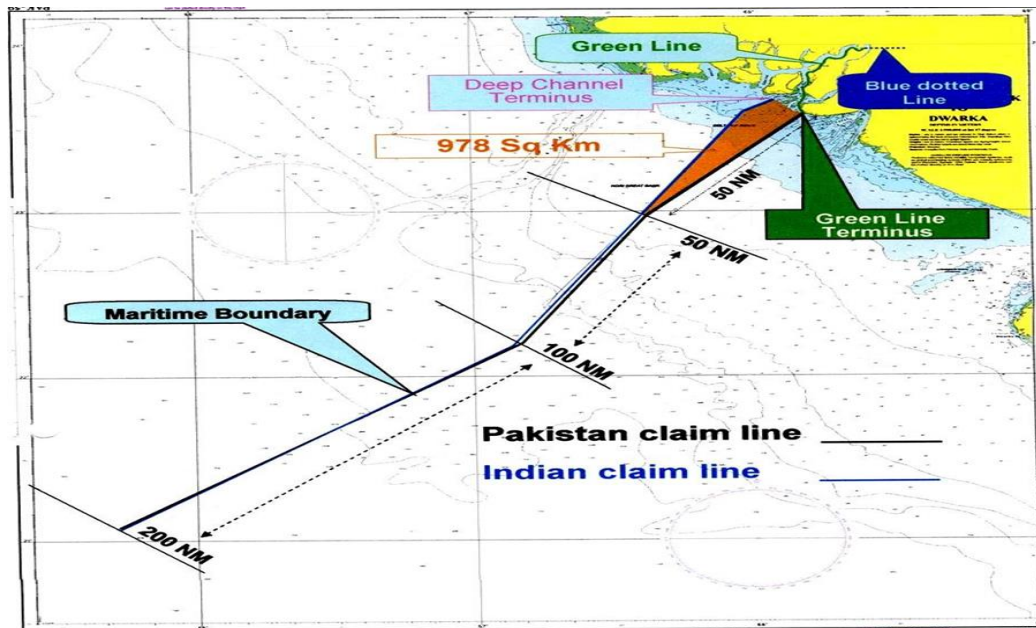


Figure 3: Implications of Indian Stance on Pakistan (Misra, 2010)

In other words, the midpoint of the line joining the creek mouth will be the terminus point from where the maritime boundary will originate to the outer limit of EEZ. In this case, the sea surface area inside the creek towards Pakistan would be 80 sq. km. Pakistan if accepts this option, will lose of the maritime area of about 1274.12 sq. km (Figure 3). India argues that the green line mentioned in the 1914 Resolution Map was only meant for symbolic representation. India also claims that the international boundary between India and Pakistan has moved westward into what was originally Pakistani territory because of geomorphic changes in Sir Creek as a result of accretion or geographical changes as depicted in Figure 4 (Shah, 2009). As shown in Figure 3 ahead, the orientation of the creek has changed, creating a gap of approximately two kilometres from the point as marked in the 1914 map to the current outflow of the creek. The mouth of the creek has widened and an island has appeared near the mouth of the creek due to siltation (Misra, 2010). The delineation of the Indo-Pakistani maritime boundary is essentially linked to determining the course of the Sir Creek section of the land boundary. Pakistan insists that the boundary in the Creek must first be delimited to establish the point on the land from which a maritime boundary may be defined. In contrast, India's concerns centre on the maritime boundary.

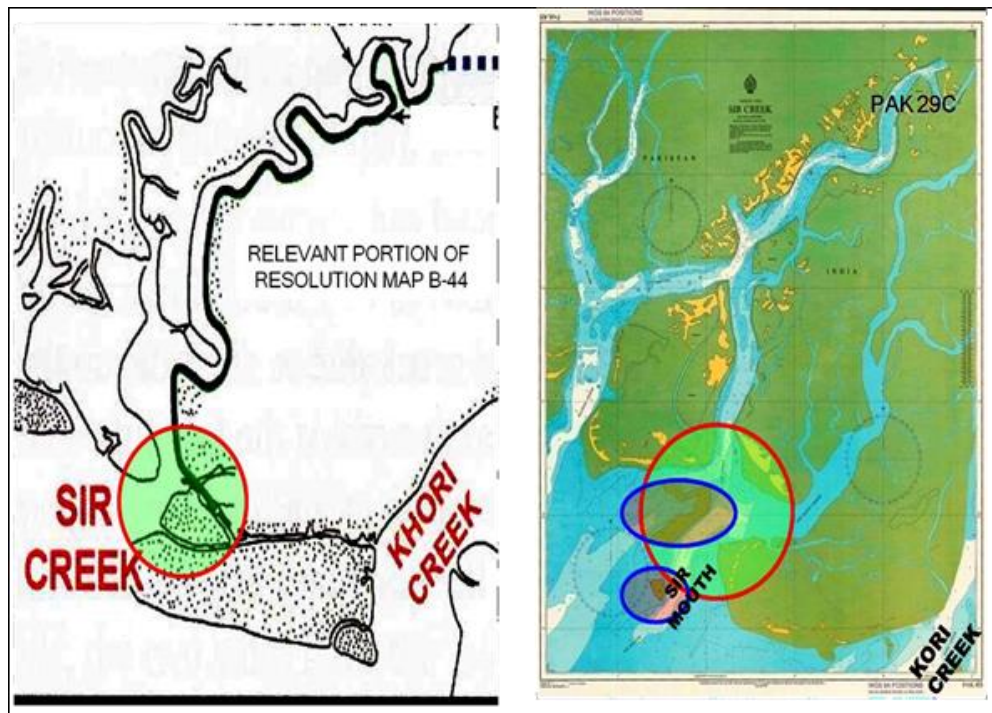


Figure 4: Geographical Changes in Sir Creek (Sarvarian, 2015)

Application of International Law to Sir Creek Issue:

Both Pakistan and India are signatories to and have ratified the United Nations 1982 Convention on the Law of the Sea (UNCLOS), but they have not been able to effectively utilize the elaborate dispute resolution mechanism under the UNCLOS to resolve their maritime boundary disputes. India has proposed that pending the resolution of the Sir Creek dispute, both countries should bilaterally delimit their maritime boundaries by commencing delimitation from the frontier of their EEZs and then moving inwards to a mutually acceptable point as per the provisions of the Technical Aspects of the Law of Sea (TALOS).

The United Nations Convention on the Law of the Sea (UNCLOS) allows for alternative arrangements of maritime delimitation in the form of the thalweg or Median Line principle (Figure 5). The preemption of the Thalweg principle can also come through historical title or where one state acquiesces or renders recognition (Harsson & Preiss, 2012) to another arrangement via practice, being subsequently stopped from raising the doctrine of Thalweg. Indian stance desires resolution of the issue through Thalweg doctrine. Pakistan does not consider Sir Creek to be navigable and hence views Thalweg as irrelevant to the creek. Also, there has been a difference of opinion between international law experts on whether the thalweg is to be primarily defined by navigability-based parameters or on physical features, such as the “line of deepest soundings.” Furthermore, under the principle of *uti possidetis juris*, newly established states inherit the territorial boundaries established during their colonial period by the paramount power, as international boundaries (Sarvarian, 2015).

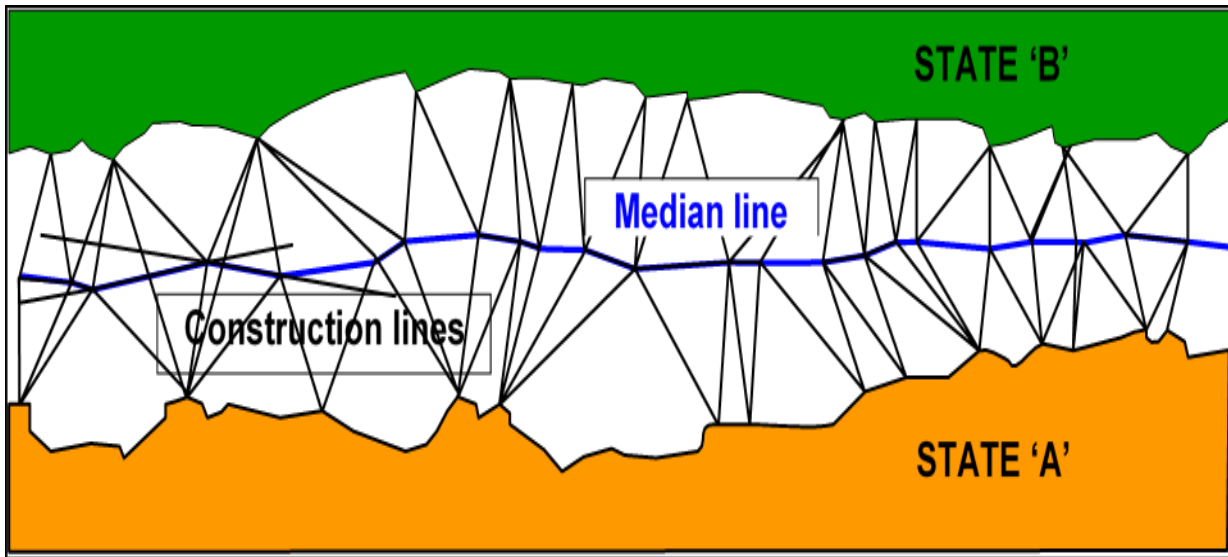


Figure 5: Median Line Delimitation Principle (Misra, 2010)

The dispute made a headline before the Mumbai terrorist attack in November 2008 when the post-attack scenario forced the cancellation of the next scheduled round of talk between Pakistan and India. These talks were particularly important for two reasons: one, it was expected to focus on a common map of the Sir Creek estuary, formulated through a joint survey of 2007; second, as one of the conclusive attempts to resolve the issue of maritime boundaries for timely submission of mutually-inclusive claims to UN for extension of respective continental shelves (Misra, 2010). Eleven rounds of talks have been held between India and Pakistan so far to settle the issue till May 2011. However, the talks appeared to fall victim to political expediency.

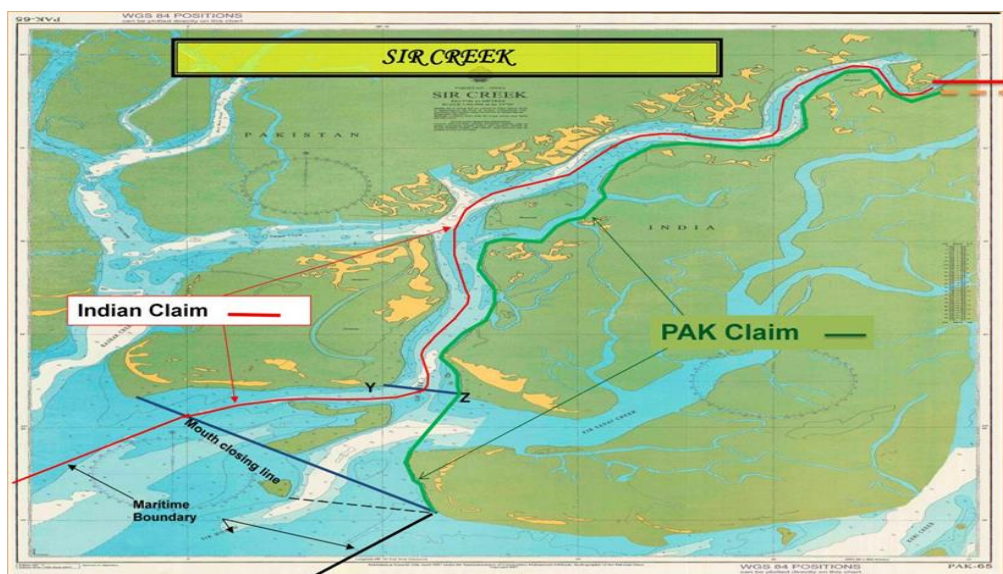


Figure 6: Opposing Claims of Pakistan and India (Misra, 2010)

Owing to gradual changes that occurred in the orientation and bathymetry of the creek, a survey of the creek was deemed necessary. Both countries had been referring to their respective charts during the talks without common and undisputed data. Importantly, as per the Law of the Sea, charts based on recent surveys should be used for boundary delimitation. India's agreement for joint surveys was an indicator of India's newfound seriousness in solving the issue (Misra, 2010).

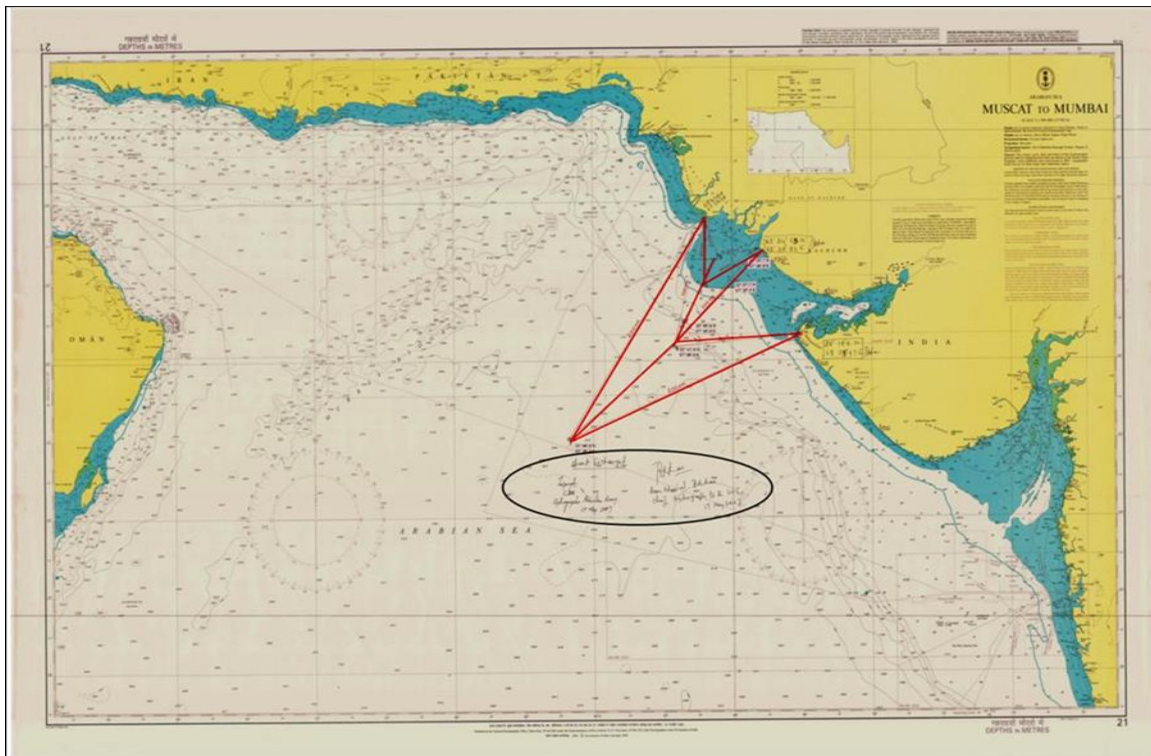


Figure 7: Hydrographic Survey Chart given to Pakistan by India (Ali, 2020)

Joint Land Survey:

The initial requirement was to determine the actual position of the boundary pillars in the horizontal segment i.e. line extending westwards of BP 1175 till it reaches Sir Creek, as it was felt during the meeting held at Islamabad in December 2004 that these positions were not as per blue line on the Resolution Map of 1914 (Ali, 2020). It may be stated that these 68 pillars had been constructed in 1924 between the Indian states of Gujarat and Sind and the same were used to define the boundary between India and Pakistan after the partition (Ashraf, 1989). The survey was jointly conducted by the survey teams of the respective land survey departments of the two countries from 3 to 12 Jan 2005. Pak Marines and Indian BSF who are deployed in the respective border areas supported the teams. Reps from the PN Hydrographic Department were also part of the Pakistani team. Only one-third of the pillars could be accessed through land transport whereas the rest of the pillars were approached by boats. During the survey, the remains of 38 out of 67 pillars were located. These were however sufficient to determine the alignment of the boundary line between the two states. During the survey, it was established that the pillars' position is

not as per the Blue dotted line on Resolution Map B-44, which resulted loss of 7.772 sqkm area to Pakistan. India changed their previous stance on the Blue dottedline during IPWBCT constituted in 1968 (Figure 7).

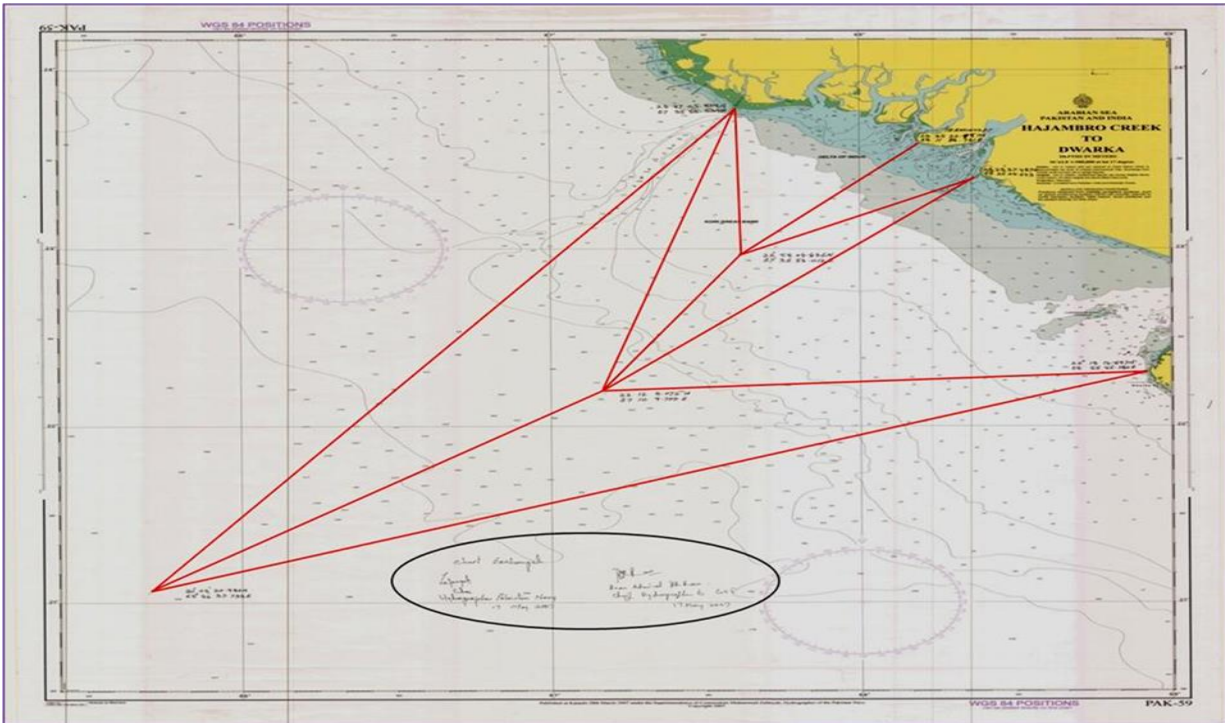


Figure 8: Hydrographic Survey Chart given to India by Pakistan (Ali, 2020)

The other important need was to determine the current alignment of Sir Creek, which required hydrographic collection of data such as the existing coastline and depths etc. The decision for a joint survey was made during a Foreign Ministers level meeting held in Islamabad in Oct 2005. Terms of reference to conduct the survey were finalized in New Delhi in Dec 2005. The survey was conducted from 15 January to 17 February 2007. PN's SV BEHR PAIMA from Pakistan and INS SUTLEJ conducted the survey. Teams of the land survey departments of the two countries were also integral parts of the joint survey and they collected the data to delineate the coastline in the area. All teams collecting data had a joint composition to avoid any dispute regarding the authenticity and quality of the data.

Data collected from month-long surveys was processed by the two countries at their respective facilities and thereafter survey data was also jointly processed at Wagha. Till 2007 both sides had finished the joint survey of the marshy area on horizontal and vertical axis and had reported progress on the issue. Subsequently, both countries published nautical charts which were essentially based on common data but on different scales (Figures 7 & 8).

The outcome of Joint Surveys:

During the 10th round of talks held at MoD, Rawalpindi, both sides exchanged charts with their respective stances shown based on the joint survey (Misra, 2001). The survey results have

revealed changes in the topography, bathymetry and orientation of the creek. These changes are significant but not unexpected. Before the survey, as per Pakistan’s stance, the boundary in Sir Creek is a Green line as shown on the Resolution map. However, it was found during the survey (Shah, 2009) that the Green Line touches the both east and west banks (Ijaz et al., 2018). Both countries continue to maintain their respective stances to date (Masood et al., 2024,). However, the description of boundaries in Sindh shown in the British Imperial Gazzete shows by inference that Rann was never part of the state of Kutch (Ahmed, 1973, p. 4).

Research Methodology:

In this study, analytical research methodology has been adopted. The research is a Qualitative type of inquiry. Based on this methodology, literature review and correlation have been conducted to determine a realistic perspective on the issue. Objectivity in research has been the denominating factor. The steps comprising the research process are explained in the Research Conceptual Cycle diagrammed in Figure 9 (Timothy & Yair, 2008).

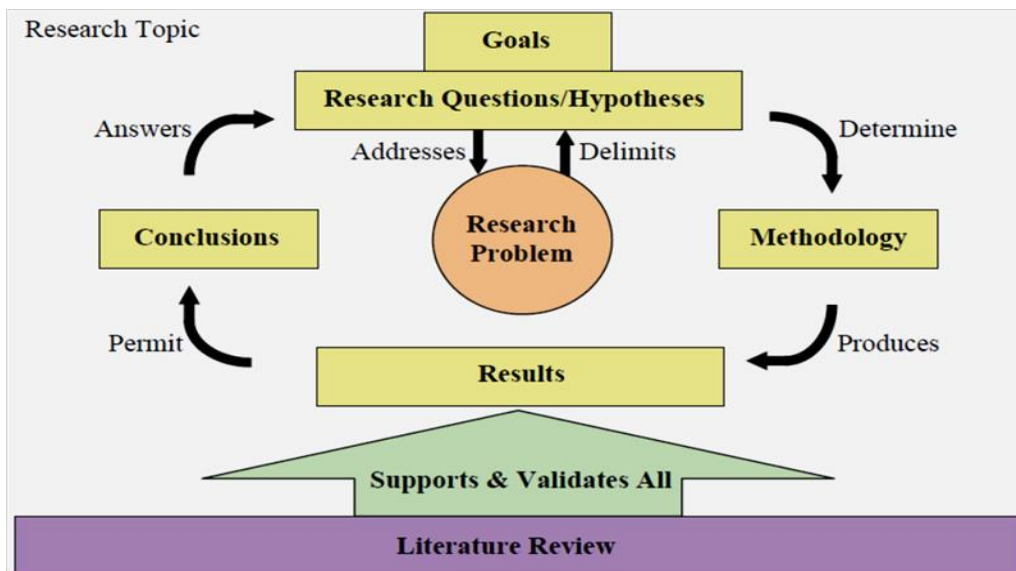


Figure 9: Research Conceptual Cycle (Timothy & Yair, 2008)

Research Framework:

The framework of research is founded upon three stages. As *Input*, a study of the prime reasons for the conflict has been made. How the issue hastaken its present form throughout its age has been taken into account. This phase also includes how the paradigms of India and Pakistan differ in the interpretation of the issue. The way the Neutral studies view this issue has also been considered. In this, a legal viewpoint has been added and an account of the efforts made by both parties to settle the issue has been narrated. In *Processing*, the unsettlement of the dispute hitherto has been examined vis-a-vis the Composite Dialogue Process, opposing stances and international legal perspective. As *Output*, problems have been identified based on deductions from previous phases. Options to address the problems have been delineated.

Conclusive remarks reiterating the significance of the issue make the last section of the thesis (Figures 9 & 10).

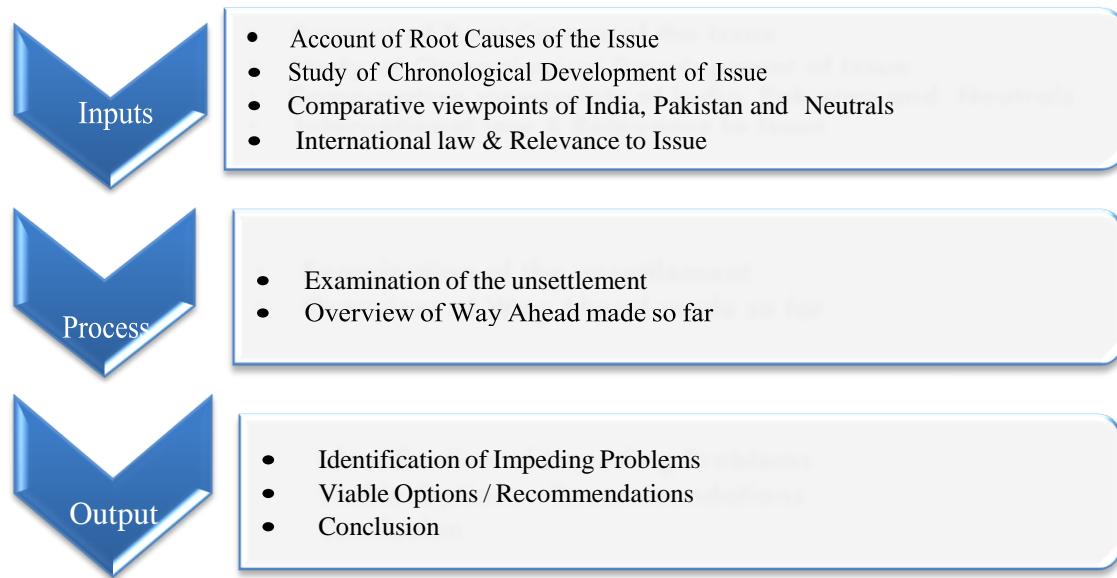


Figure 10: Research Framework (Courtesy of the author)

Data Sources:

The methodology is founded on the type of research and determines primary and secondary sources. The secondary sources include books, and related articles published in research journals and available on the internet. As a primary source, interviews with the professionals of the field afforded to undertake the investigation and answers to the problems in perspective. The study of the information gathered through the literature review and the cumulative outcome of interviews outline the problems and the suitable courses of action to nullify these problems.

Analysis of Data and Findings:

More than a century-old issue of Sir Creek continues to hang over the Indo-Pak diplomatic landscape. From the Literature review of the Sir Creek issue, the following impediments are identified that hinder the resolution of the issue:

Technical Disparities: The following technical differences prevail between India and Pakistan on the issue of Sir Creek:

- i. India considers the boundary of Sir Creek to be defined by its mid-channel. Pakistan argues that the map attached to the Resolution of 1914 (B44) shows a “green line” on the eastern bank (thereby indicating the official boundary), the Indian counter-argument remains that this does not have any legal value as it is only a mere ribboned (cartographic symbol), as also that the map served simply as an annexure to the 1914 Resolution.

- ii. Furthermore, Pakistan claims that any changes caused by accretion could not alter the agreed-upon boundary.
- iii. India's case is based on the asserted characteristic of Sir Creek as a navigable channel, especially so during the period of high tide. Pakistan, however, states that as the creek is not a navigable channel, this principle does not apply to it. India identifies its case for mid-channel demarcation as under the Thalweg principle of international law, which concerns primarily the river boundaries between states.
- iv. India's proposal for the initial delimitation of the maritime boundary from the 'seaward' side was rejected by Pakistan; she insisted that Sir Creek and the maritime boundary delimitation issues were inseparable (Menon, 1995). India further suggested that the delimitation of the maritime boundary could proceed towards land from the extremity of the EEZ limit to a mutually acceptable limit. The internationally recognised Technical Aspects of the Law of the Sea (TALOS) could govern this limit. In effect, India appeared establishing its maritime limits for CS and related economic gains.
- v. Finally, Pakistan's declaration of straight baselines on September 10, 1996 (a series of nine straight lines), has been challenged by India. India considers that these lines are not following UNCLOS III, and her Point K lies off the eastern bank of Sir Creek as well (Mishra, 2015). On the other hand, Pakistan has also raised quite a few objections to the Indian baseline declared in 2009 by India hastily just to submit her CS claim to the UN (Khan, 1965).

Problems Related to Commonality of Data: Before 2007, impeding problems were rather complicated as both countries did not have a common and recently surveyed chart of the creek area. Pre joint hydrographical survey of Sir Creek eradicated the following impediments:

- i. Technical data of disputed areas were made available for future negotiations.
- ii. The green line was plotted by both countries on their respective charts.
- iii. The terminus point was decided.
- iv. The orientation of the creek was surveyed.
- v. The Blue dotted line was found to be different from the actual position of the pillars.

Numerous meetings of senior diplomats and a joint meeting of the Surveyor General of Pakistan and the Indian Chief Hydrographer were carried out as part of the Indo-Pakistan composite dialogue process initiated in 2004. Both nations completed a second joint survey of Sir Creek and its adjoining areas, which commenced in January 2007 and have officially expressed that they have agreed on a common map of the disputed boundary region. Signed maps of the area were exchanged between the hydrographers of both countries on March 22, 2007. Nevertheless, the following observations are relevant:

- i. Survey area limits at Sir's mouth, the agreement remained inconclusive.
- ii. During the joint survey, India plotted data on a 1:150000 chart and Pakistan plotted its data on a 1:500000 chart (Chaudhuri, 2021), therefore both countries' hydrographers need to plot the data on a common chart and delimit jointly.

Legal/Statutory Problems: In principle, the customary international law doctrines of the thalweg, and median line are applicable in their original form to river boundary delimitations. However, such application of customary law is explicitly or implicitly preempted by a special treaty or agreement between the concerned state parties. Thus, lacks substantial and authoritative implementation of the laws. In any case, the application of international law to the Sir Creek boundary dispute is purely an academic exercise. Conciliation in terms of Annex V (UNCLOS) can be sought, though is unlikely to yield any result as any one country's disinterestedness can scupper the move. In terms of the delimitation of the EEZ or the continental shelf between adjacent states, such as India and Pakistan, no universally acceptable formulation could be evolved. As a result, UNCLOS-III vaguely states that the delimitation of the EEZ or the continental shelf between states with opposite or adjacent coasts shall be affected by an agreement based on international law (as per the International Court of Justice) to achieve an equitable solution. As no distinction has been made in terms of the delimitation between the EEZ and the continental shelf, or between adjacent or opposite coasts, such a formulation has considerable potential for misinterpretation. In effect, it is widely agreed that this does not constitute a reliable guide to negotiators or even arbitrators to respond effectively to delimitation questions (Sharma, 1998). The principle of *uti possidetis juris* is relevant to Pakistan as Pakistan proceeds with its assertion based on historical account.

Economic Concerns: Sir Creek has been considered an insignificant dispute between India and Pakistan. However, both states now view the dispute as being moderately important because the boundary delimitation of the Sir Creek estuary impacts the maritime boundary delimitations of both states. It will impact the determination of the Territorial Sea, EEZ, and the CS of both states. It has been calculated that the differences between the two countries on Sir Creek involve a disputed area of only 6-7 sq NM of marshy swamp land, but as much as 250 sq. miles of ocean and ocean floor. Moreover, this area is expected to be rich in hydrocarbons, with considerable potential for exploitation. At stake here is more than 2000 sq km of maritime area, dependent on which country accedes to the other's stand. So as deadlines of all sorts flick by, neither of the countries want to back down from their official stance. In addition, both India and Pakistan have submitted their Continental Shelves claims to the UN which would remain in the doldrums until the settlement of the maritime delimitation of Sir Creek. Both countries, even after the progress made until joint surveys, remain firm on their respective claims. It maybe reasserted that Pakistan could lose 1374.12 square kilometres of EEZ if the thalweg of Sir Creek is delimited as the boundary.

Political Hindrances: The Indo-Pak maritime dispute is essentially tied to the political relationship between the two countries, and from Pakistan's point of view, is dependent on the resolution of the other disputes, particularly the Kashmir dispute. Indian political leadership persists in detachment from the issue and precludes looking at the bilateral relations in totality (Roy-Chaudhury, 1999). In such perspectives, there can be no resolution of the disputes over the demarcation of the maritime boundary or Sir Creek. From the perspectives of both India and Pakistan, it is imperative to stress the economic and political gains to be achieved mutually (Khan, 2007). This could then possibly lead to modifications of India's position on Sir Creek.

Viable Options to Address the Issue: Because of the prevalent problems/impediments, the following are the viable options to address the issue:

Option I: Hybrid Settlement of the Issue: Firstly, the horizontal land boundary issue¹ can be resolved based on the joint survey of January 2005, which managed to locate more than half of the original 67 pillars erected during the 1922-24 demarcation. Secondly, the joint survey of 2007 has established the eastward drift of the Sir Creek Channel, in that India's position is naturally inclining itself towards Pakistan's bearing. Reliance on the joint survey data as well as on the equidistance method of delimitation as recommended by the IHO Technical Manual (Kastrisios et al., 2022) can form a possible compromise. Once the land terminus at the mouth of the Sir Creek has been agreed upon, delimitation of the maritime boundary would pose the least problems. Importantly, with the adoption of this option, even if Pakistan loses a certain maritime portion, a bargain elsewhere, in other territorial disputes would be gained.

Option II: Seaward Delimitation Approach: The only other initiative being strongly pursued by the Indian side since 1994 pertains to the delimitation of the maritime boundary from the seaward side first, while leaving the remaining 30 km until the decision on the land terminus (Roy-Chaudhury, 1999). While not disputing this contention on technical grounds, Pakistan has preferred to stick to its stand in favour of a complete, rather than a partial, solution. Importantly, both India and Pakistan have submitted their claims for the extension of respective Continental shelves with UNCLCS (Mishra, 2015). According to the laid down criteria of the commission, if an applicant country contesting/lodging the claim is involved in a maritime boundary dispute with a neighbouring country, then its claim is not considered. To get facilitation for their claim to be passed by the UN commission, Indian authorities are keen to delimit some portion of the maritime boundary with Pakistan at the earliest. India has, therefore, proposed delimitation of the maritime boundary from the seaward side. The median line length of 102.5 NM, from the seaward side can be delimited using the equidistance method, as it is not affected by the near shore coastal geography of Sir Creek. Though resolution of the Sir Creek dispute or partial delimitation of the maritime boundary from the seaward side is in the interest of both the countries vis-a-vis the continental shelves' claims. With partial delimitation, India would be able to get its CS claim through from UN Commission and would be under no compulsion to resolve the land boundary dispute.

Option III: International Arbitration: It is in the interests of both India and Pakistan not to let mutual issues continue to affect bilateral relations at the expense of socio-economic prosperity. The humanitarian issue of the fishermen being regularly picked up by opposing LEAs for violation of a non-existent maritime border and incarcerated for long periods, is also the most pressing (BBC News, 2005). The sooner that both countries put the issue of the maritime boundary behind us, the sooner they can get into the profitable offshore business of oil and gas prospecting. However, it is expected that India will continue to contain the resolution of the issue between bilateral under the provisions of the Simla Agreement (Pathak, & Mushahary, 2024). Conciliation in terms of UNCLOS-III Annex V (Kunoy, 2024), jurisdiction of courts and tribunals under the UN Convention on the Law of the Sea over Disputed Land Areas, can be sought, though is unlikely to yield any result as any one country's disinterestedness can scupper the move (ibid.). The only practicable means thus available is a resort to an arbitral tribunal constituted following Annex VII of UNCLOS 1982. The Jamaica-based International Seabed Authority (ISBA) Commission on Continental Shelves or the German-based International Tribunal for the Law of

¹ the famous blue-dotted line from the western terminus until the head of the Sir Creek

the Sea can be approached by Pakistan to arbitrate over this dispute.

Discussion:

The dispute over Sir Creek began even before Independence in 1908 in then-undivided India. Its origin lies in an argument between the rulers of Kutch and Sindh over a pile of firewood lying on the banks of a creek dividing the two principalities. This problem was referred to then GoB, which gave its decision in 1914 in the form of Map number B44, and subsequently as Map number B74. Although this dispute was not resolved, it remained dormant at Independence. The issue came into prominence once again in the 1960s.

In the wake of opposing territorial claims of India and Pakistan, the 1965 Indo-Pakistani war followed soon after. Later, it was decided that the issue be decided through arbitration. Consequently, the Indo-Pakistan Western Boundary Case Tribunal upheld 90 per cent of India's claim to the entire Rann, conceding small sectors to Pakistan. However, the dispute over the boundary to the south was excluded from the purview of the Tribunal.

The Indo-Pak maritime dispute comprises two related issues - the resolution of the 38 km land boundary in Sir Creek in RoK, Gujarat (India) and Sindh (Pakistan) provinces; and, the delineation of the maritime boundary seaward within the territorial sea and beyond. A reasonable and satisfactory solution to this dispute has eluded India and Pakistan for decades. Not only do both countries differ from each other on a solution on technical grounds, but insistence on respective stances has made it impossible for a political resolution of the dispute. Pakistan asserts Creek's boundary on its eastern bank as decided pre-independence by GoB in 1914. India, on the other hand, claims a mid-channelor Thalweg principle. Pakistan also continues to urge resolution of the maritime boundary with that of the land boundary in Sir Creek, contrary to the proposal of India to attempt to tackle both issues separately.

Eleven rounds of talks as Indo–the Pakistan composite dialogue process started in 2004 and joint surveys of Sir Creek and its adjoining areas in 2005 and 2007 led virtually nowhere so far. However, the positive aspect was that both parties agreed on a common map of the disputed boundary region, signed maps of the area and exchanged them as a reference for future talks.

Conclusion:

Application of international law, both UNCLOS and other Customary laws, to the Sir Creek boundary dispute hold the least prospects to achieve substantial gains towards resolution of the issue. Importantly, India appears adamant not to allow any third-party involvement in the resolution of this dispute. Until recently, the resolution of the dispute through the process of bilateral negotiations seemed highly probable, keeping in mind that both states were keen to improve their historically hostile relations. Both India and Pakistan ought to pursue settlement of the maritime boundaries to avoid loss of maritime territory belonging to either nation to the ISBA.

Intrinsically, the Sir Creek boundary dispute is not intractable. Its resolution is complex mainly because of the historical antagonistic relationship between India and Pakistan, but also because its resolution has been invariably linked with the resolution of other issues - over which both India and Pakistan are inflexible. The resolution of Sir Creek, whenever it happens, will catalyze the resolution of other more pressing concerns between the two states.

Recommendations:

Based on the analysis of the maritime boundary dispute of Sir Creek pending between Pakistan and India, the following recommendations are presented:

- i. Pakistan may commit to proactive diplomatic initiatives to settle the maritime boundary delimitation issue on a mutually rewarding basis.
- ii. A high-level negotiation team consisting of technical and legal experts may be formed to carry out an in-house analysis of the probable Sir Creek issue vis-a-vis their pros and cons to Pakistan.
- iii. Hydrographers of both countries must plot the associated hydrographic data on a common chart and similar scale to minimize the technical misinterpretations and convenience of discussions.
- iv. A joint working team may be formed in collaboration with India to deliberate on the opposing baselines to address raised objections.
- v. Prior settlement of the issue, Pakistan may consider forming a Joint Development Zone along with India in the disputed areas as an interim solution.
- vi. To gain political ascendancy, Indian compulsions and urgency to resolve the issue in the earliest timeframe, Pakistan must continue to view all mutual issues connected in an overall framework and link Sir Creek with other disputes for territorial bargains.
- vii. Given India's changed stance on the declaration of the international boundary along the pillars discovered during the joint survey of 2005, Pakistan should use the Blue dotted line as a bargaining chip to assert 7.72 sq km of potential territory loss to Pakistan.
- viii. If all the bilateral options smother down, Pakistan may raise the matter with the ICJ or if both countries agree, may go for arbitration as provided in the statute of the ICJ.
- ix. The maritime boundary in the Creek should be delimited only after the land boundary dispute is amicably settled and the land terminus is established to keep politico-economic pre-eminence over India.

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