

## THE SIR CREEK BOUNDARY DISPUTE: A Victim of India-Pakistan Linkage Politics

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### INTRODUCTION

Most of the time and energy of the negotiators and policy makers of India and Pakistan are spent on resolving the conflict in Kashmir and, in particular, in defusing the confrontation on the Siachen glaciers. As a result, other conflicts such as Sir Creek and Tulbul/Wular navigation in Kashmir tend to be accorded a lower priority and are, in effect, neglected. This article deals with the dispute over Sir Creek, in the Kutch area, located in the western most part of India bordering with Sind in Pakistan. The Sir Creek issue also has a direct bearing on the as yet undelimited maritime boundary between India and Pakistan because the definition of the land boundary in the Sir Creek area will in turn determine where the maritime boundary intersects the coast.

### A HISTORY OF THE DISPUTE

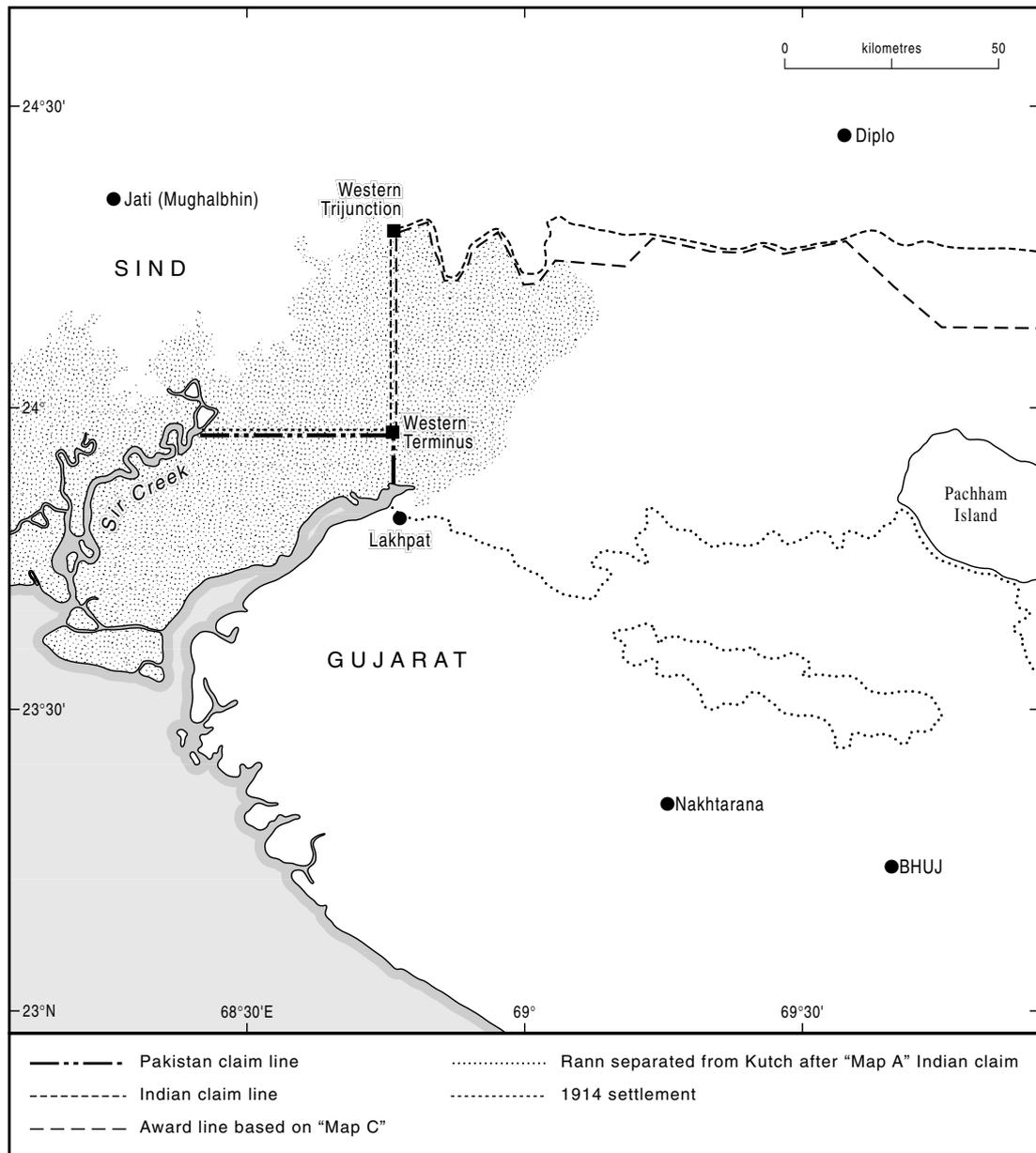
The dispute over Sir Creek can be traced back to the pre-independence period, to around 1908, when an argument ensued between the rulers of Kutch and Sind over a pile of firewood lying on the banks of a creek dividing the two principalities. The dispute was taken up by the government of Bombay state, which, in 1914, resolved the dispute supported by Map Number B44 and subsequently B74.<sup>1</sup> Nothing significant happened in the next 40-50 years, and the dispute came alive again only in the 1960s.

***Sir Creek, a fluctuating tidal channel or an estuary, which is sixty-miles-long, situated in the marshes of the Rann of Kutch***

Sir Creek, can be called a fluctuating tidal channel or an estuary, which is sixty-miles-long, situated in the marshes of the Rann of Kutch. The Rann lies on the border between the Indian state of Gujarat and the Pakistani province of Sind. In 1965, after armed clashes, Pakistan asserted that half of the Rann along the 24th parallel was Pakistani territory. India countered that the boundary ran roughly along the northern edge of the Rann. The matter was referred to international tribunal for arbitration. The Tribunal known as the Indo-Pakistani Western Boundary Case Tribunal announced its Award on 19 February 1968, upheld 90% of India's claim to the entire Rann, conceding small sectors to Pakistan.

The Sir Creek dispute originated after the parties had agreed before the Kutch tribunal to limit their larger dispute over the Rann to the boundary in the north. Well to the south lay an agreed boundary that began at the head of Sir Creek and ran a short distance eastward roughly along the 24th parallel. However, India's contention was that this line moved up sharply at a right angle to meet the northern boundary of the Rann. Pakistan sought to extend the line further eastward and claim half of the Rann along the 24th parallel. 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. The tribunal accepted India's case that it did turn north and that almost the entire Rann was Indian. The dispute hinges on the demarcation of the boundary from "the mouth of Sir Creek to the top of Sir Creek" and from "the top of the Sir Creek eastwards to a point (on land) designated as the Western Terminus." The boundary thereafter has been fixed. A.G. Noorani writes:

*That the short agreed border from the head of Sir Creek eastward was excluded from the tribunal's consideration was understandable. Unfortunately, the parties agreed also to exclude the boundary from the*



head of Sir Creek downward to the west, right up to the mouth of the creek on the Arabian Sea; in short, the Indo-Pakistan boundary along Sir Creek.<sup>2</sup>

According to a former Pakistani foreign secretary, "The adjudicators in 1968 did not discuss the Sir Creek because in the pre-partition documents the creek was clearly indicated as in Sindh which is now in Pakistan."<sup>3</sup> India refutes this claim vehemently. The tribunal noted, "In view of the aforesaid agreement, the question concerning the Sir Creek part of the boundary is left out of consideration."<sup>4</sup> It is this very Sir Creek part of the boundary that has become a bone of contention.

**India asserts that the boundary lies in the middle of the Creek. Pakistan claims that the line lies on the Creek's eastern bank and, therefore, the entire Creek is Pakistan's**

India and Pakistan have so far held six rounds of discussions on the dispute. According to the Ministry of External Affairs, Government of India's annual report 1992-93, the talks failed to make any progress. India asserts that the boundary lies in the middle of the Creek. Pakistan claims that the line lies on the Creek's eastern bank and, therefore, the entire Creek is Pakistan's. The delineation of the Indo-Pakistani maritime boundary is 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 in order 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.<sup>5</sup>

## NEGOTIATIONS ON THE DISPUTE

During the first round of talks held in Islamabad on 2 June 1989, the Indian and Pakistani delegations were led by the Surveyor-General, Major General S.M. Chadha and the Surveyor-General, Major General Anis Ali Syed, respectively. At these talks, the two sides managed to discuss the fundamental aspects of the dispute, but without any concrete results.

Later, the second and third rounds of talks in 1990 and 1991 concluded without making any substantial progress. On 28-29 October 1991 the fourth round of talks were held in Rawalpindi. This time I.P. Khosla of the Indian Ministry of External Affairs and Pakistan's Defence Secretary, Salim Tilani, led the delegations. The Surveyors-General of the two countries also took part in these talks. Although during the talks the political desirability of coming to terms on the delineation of the boundary was apparent, the Surveyor General of Pakistan remained adamant about technical considerations and the linking of the delineation of the maritime boundary with the demarcation of the Sir Creek boundary. The difficulties were compounded by a theoretical debate on what factors should govern the determination of the mid-channel of the Creek, which incidentally shifts quite frequently depending on the pattern of the tides. Concepts of "equidistance" and "equity" in delimiting the maritime boundary from the mouth of the Creek towards the open seas constituted subjects of lively debate but without agreement being reached.<sup>6</sup>

The fifth round of talks on this dispute were held in New Delhi, on 5-6 November 1992, headed by the Additional Secretary in the Ministry of External Affairs (MEA) Nareshwar Dayal and the Additional Secretary in the Pakistan Ministry of Foreign Affairs, Khalid Saleem. Technical experts from the Indian Navy were also part of the talks on this occasion. Although the Indian Navy had done its homework before the talks and had already conducted considerable research on the possible ways of defining a maritime boundary from the sea (whose starting point was undetermined), this issue unfortunately did not figure during the talks.<sup>7</sup>

### **India and Pakistan are in agreement on the horizontal sector of the land boundary**

In 1994, an Indian official/technical delegation on the issue carried a 'non-paper' to Pakistan which proposed that the delineation of the maritime boundary in the territorial sea could be governed by the 'median'/'equidistant' principle, using the low water lines and low tide elevations of both countries, whereas beyond the territorial sea it could be governed by 'equidistant' as well as 'equitable' principles.<sup>8</sup> Two years later, on 10 September 1996, Pakistan made a declaration that straight baselines should be drawn along its coast, consisting of a series of nine straight lines. India, which is yet to declare straight baselines, rejected the declaration on the basis that these lines are not in accordance with Article 7(2) of the UN Convention on the Law of the Sea. India also objected to the fact that Point K in Pakistan's straight baselines system lies off the eastern bank of Sir Creek.<sup>9</sup> But India and Pakistan are in agreement on the horizontal sector<sup>10</sup> of the land boundary. Both agree to delimitation of a boundary line by existing boundary pillars along the horizontal line and fixation of intermediary pillars in the same line.<sup>11</sup> The horizontal sector encompasses the international boundary between India and Pakistan on the land, in the Rann of Kutch area, that was demarcated on the basis of the Tribunal's Award of 1968.

After the fifth round, the talks were shelved for a long time. Eventually, however, after six years, negotiations were again held at the Foreign Secretary level, first in June 1997 and then in September 1998. At these talks, India and Pakistan agreed to form separate working groups for each of six issues, one of which was the Sir Creek dispute. Each issue was to be taken up by its concerned working group as part of a composite dialogue process.

The talks of the Sir Creek working group were ultimately held on 8 November 1998 in New Delhi. The Surveyor General of India, Lt. General A.K. Ahuja, represented

the Indian side whereas Rear Admiral M. Jameel Akhtar headed the Pakistani delegation. As a part of the composite dialogue process these talks sought to promote mutual co-operation and build trust and confidence by addressing the pending outstanding issues. At the talks, the Indian side put forward a proposal for the finalisation of the boundaries based on the following four steps:

1. **Allocation.** A decision on the basis of which the settlement would be made.
2. **Delimitation.** This specified the general criteria for the location of the boundary line and its description. This description would or would not be accompanied by illustrative maps.
3. **Demarcation.** This procedure involved the precise actual relaying of the criteria of delimitation to the ground.
4. **Administration.** This called for regulating the demarcated boundary and exercising administrative control.

The Indian side asserted that in the Sir Creek area the allocation and delimitation were done via paras 9 and 10 of the 1914 Resolution of the Government of Bombay and illustrated on an accompanying map (B-44). Demarcation and administration was already complete in 1925. Since then, the boundary in Sir Creek has been depicted in the mid-channel by a proper boundary symbol. There was no need to erect pillars in the middle of the Creek, since it is a natural fluid boundary. The administration of this territory remained with Kutch and was so inherited by the Governments of India and Pakistan.<sup>12</sup> Indian officials pointed out that Pakistan, while emphasising the 1914 map, was overlooking the basis on which several such maps had been made. The ruling in 1913 of the Government of Bombay, which resolved the dispute on Sir Creek between the then Maharao of Kutch and the rulers of Sind, was the basis for making several sequential maps. This ruling was subsequently endorsed as a resolution by the Government of India in 1914.<sup>13</sup>

India also conveyed to Pakistan that the issue should be addressed while taking into account the overall perspective, so that this boundary, which is already settled and in respect of which all four steps relating to boundary demarcation have already been completed, is formalised.<sup>14</sup> Pakistan, while agreeing that the boundary along the horizontal line and in Sir Creek was a settled issue, maintained that in its interpretation the Green Line (denoting the eastern edge of the Creek) of the map, appended to the 1914 Resolution, should be transposed on to the ground. Even when it was conveyed by India that the Resolution of 1914 had already been implemented and the Green Line was only a symbolic representation, the boundary being mid-channel, Pakistan persisted with its position on the Green Line boundary.<sup>15</sup>

***The Indian delegation proposed that the two sides could consider the delimitation of the India-Pakistan maritime boundary from the seaward side***

The Indian delegation also proposed that, pending formalisation of the boundary in the Sir Creek, the two sides could consider the delimitation of the India-Pakistan maritime boundary from the seaward side, by commencing at Exclusive Economic Zones (EEZ) limit and proceeding landwards up to a mutually acceptable limit according to the provisions of the Technical Aspects of Law of Sea (TALOS). The seaward approach, India pointed out, is based on universally accepted practices and will benefit both countries for the exploitation of resources in their respective EEZ. It is noteworthy that this issue gained importance in view of the continental shelf claims, to be submitted by 2004, to the United Nations by the concerned countries.<sup>16</sup> Also there still remains some pending work for a complete picture to emerge as Pakistan, unlike India has not completed the hydrographic survey of the area between Gujarat and Sind.<sup>17</sup>

The Pakistani delegations' assertion at the talks was that it would consider a maritime boundary only after the determination of the land boundary in the Sir Creek area and that both these issues should not be separated from one another and instead needed to be addressed in one package. India alleged that Pakistan's attitude

reflected its desire to seek an absolute resolution from the map to the exclusion of internationally accepted cartographic procedures as well as the historical developments that have taken place over the years.<sup>18</sup>

**In recent years interest in the delimitation of a maritime boundary in this area has been heightened by the prospect of oil and gas being discovered offshore**

In recent years, interest in the delimitation of a maritime boundary in this area has been heightened by the prospect of oil and gas being discovered offshore. In light of the high commercial potential of the area, Pakistan is insisting on defining the extremity of its land frontier in the Sir Creek area in a manner which will give it control over a larger EEZ. The Pakistani EEZ will be enlarged by around 250 square miles if India accepts the Green Line showing Sir Creek's eastern bank as the land boundary and then subsequently equidistant line used as the basis for the delimitation of the maritime boundary. Pakistan has rejected the mid-channel principle as proposed by India, pointing out that this principle applies only to a 'navigable channel' and Sir Creek, it says, is non-navigable.

Refuting the Pakistani arguments, Chief Hydrographer, Rear Admiral K.R. Srinivasan said, "*The mid-channel principle on Sir Creek was endorsed by the 'Para nine and Para ten' of the 1914 resolution. This was represented in the final map of 1925 by the 'proper' boundary symbols.*"<sup>19</sup> Rejecting the Pakistani claim that the Creek was non-navigable and, therefore, not conducive for commercial use, Indian officials asserted that the channel could be used for navigation during the entire year, especially during high tides.

At the 8 November 1998 talks in New Delhi, India objected to Pakistan's bid to internationalise the Sir Creek issue, reiterating that all differences between New Delhi and Islamabad, after the Simla Accord, had to be resolved bilaterally. Pakistan was of the view that India should agree to its proposal to take the dispute to an international tribunal. Speaking on behalf of the Indian delegation, the Joint Secretary, handling Iran, Pakistan and Afghanistan relations in the Foreign Office, Vivek Katju said, "*There is no place at all for any third party intervention in the Indo-Pakistani matters following the Simla accord.*"<sup>20</sup> He also said that arbitration was unacceptable under the framework of the composite dialogue between the two sides and all issues were to be addressed by the two sides directly. In the end the talks concluded without any progress being made in terms of resolution. The two sides agreed to continue their discussions in the future.

## CONCLUSION

**After eight rounds of talks, India and Pakistan have not yet been able to resolve the dispute**

The Rann of Kutch dispute which was finally resolved by the Tribunal's Award in 1968 excluded the short agreed border from the head of Sir Creek eastward. The two sides had also agreed to exclude the boundary from the head of Sir Creek downward to the west. After eight rounds of talks, India and Pakistan have not yet been able to resolve the dispute. It has, so far, proved too intractable to accommodate both India's and Pakistan's demands. The leaderships in the two countries have shown an interest in resolving the dispute but actual negotiations have proved otherwise. It seems though that the desire to negotiate did prevail on both sides, even when the desire to resolve the quarrel was missing.

The differences in the divergent technical approaches between from sea towards land and land towards sea and the linking of the Sir Creek boundary demarcation with the maritime boundary demarcation have turned out to be the major hurdles during the talks. These factors have led to the unrelenting attitude of both sides and diminished the chances of any compromise. There are also differences between New Delhi and Islamabad on the approach that should be adopted to settle the dispute. Pakistan insists on referring it to an international tribunal, whereas India is determined to solve it bilaterally, in the spirit of the Simla agreement. So far the attitude and approach of the two parties are still conflicting and wide enough to keep the issue unresolved for some time.

**The only ray of hope that the dispute might be solved appears to be the economic opportunity costs in not solving it**

**Unfortunately, over the years the conflict in Kashmir has overshadowed all other Indo-Pakistan disputes**

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Besides, despite extensive pre-negotiations involving the exchange of information on the issue, there is still some groundwork to be done. Before any further negotiation takes place, missing data and facts have to be gathered for a complete picture of the dispute to emerge. Pakistan, unlike India, has yet to complete a hydrographic survey between Gujarat and Sind. In short, there remain a number of unanswered questions which unless addressed and resolved will render futile any effort to negotiate. In addition, after the fact-finding process is complete, firm commitment from both India and Pakistan will be required. The only ray of hope that the dispute might be solved appears to be the economic opportunity costs in not solving it.

However, it should be noted that the differences of opinion on this issue are not so intractable and deep that they cannot be resolved. There is another greater and larger reason for this issue still remaining unresolved – the Kashmir dispute. Unfortunately, over the years the conflict in Kashmir has overshadowed all other Indo-Pakistan disputes. The insistence of Pakistan that progress in resolving the Kashmir conflict is a pre-condition for moving ahead on other issues has hindered all chances of a compromise so far and India for its part has not shown any real urgency in resolving the dispute. Despite separate working groups being formed to deal with all pending issues separately, as a part of a composite dialogue process, the linkage with the Kashmir conflict has derailed all negotiation efforts to date. Because of the prevailing tension in Kashmir, any talks held on other issues are hardly getting any serious attention at all. They start with the Kashmir conflict and end with it as well. As a result of the nuclearisation of the subcontinent, conflict in Kargil in 1999, military take-over in Pakistan in October 1999, regular cross-border shelling and the recent spurt in killings in the Kashmir valley the tension graph has risen in New Delhi and Islamabad. These events have further poisoned the relations and eroded all possibilities of a compromise on any of the pending issues. This can be regarded as the reason for lack of progress on the pending issues in the recent past, and unfortunately, is going to be the status quo for some time. Otherwise, as this paper shows, Sir Creek is not an intractable and complicated

## Notes

- 1 Palash, K. (1998) 'Sir Creek Row Began Over Pile of Fire Wood', *Asian Age*, 10 Nov.
- 2 Noorani, A.G. (1995) 'CBMs for the Siachen Glacier, Sir Creek and Wular Barrage' in Krepon, M. and Sevak, A. (eds.) *Crisis Prevention, Confidence Building and Reconciliation in South Asia*, New York, St. Martin's Press:100, see map.
- 3 Anwar, I. (1991) 'Dialogue on Wular Begins Today as Sir Creek Talks Put Off,' News, 11 October.
- 4 Indo-Pakistani Western Boundary Case Tribunal, 19 February, 1968, cited in Noorani, 1995 *op.cit.*,p.100.
- 5 *Ibid.*
- 6 Dixit, J.N. (1995) *Anatomy of a Flawed Inheritance*, New Delhi, Konark Publishers:157.
- 7 Rear Admiral K.R. Menon, (Retd.), 'Maritime Conflict Resolution and Confidence-Building in South Asia,' India Defence Review, October-December, 1995:32. Also see Rahul Roy-Chaudhury, 'Trends in Delimitation of India's Maritime Boundaries,' Strategic Analysis, Vol. 22, No.10, January 1999:1519.
- 8 Rahul Roy-Chaudhury, *op.cit.*:152.
- 9 See Government of India, 'Suggestion and Confidence-Building Measures Sent by the Government of India to the Government of Pakistan,' Non-paper, 24 January 1994.
- 10 *Ibid.*
- 11 *Ibid.*
- 12 'India-Pakistan Talks: Sir Creek', *Hindu* 7 November 1998.
- 13 'India Rejects Pak. Move on Sir Creek', *Hindu* 10 November 1998.
- 14 'India-Pakistan Talks: Sir Creek', *Hindu* 7 November 1998.
- 15 *Ibid.*
- 16 *Ibid.*
- 17 *Ibid.*
- 18 *Ibid.*
- 19 *Ibid.*
- 20 *Ibid.*