



Unraveling The Intractable Territorial Disputes In The Indian Sub-Continent: Lessons To Be Learnt From The Global Dispute Resolution Mechanisms

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ABSTRACT: *The territorial disputes in the 21st century have acquired dangerous proportions because of their capability to culminate into full scale wars or even nuclear wars. This study discusses the model dispute resolution mechanisms which were instrumental in achieving a breakthrough in territorial disputes of Ecuador and Peru and Egypt and Israel. This study also tries to deduce the principles from the successful dispute resolutions. It ascertains the factors behind such dispute resolutions such as choosing the appropriate method for dispute resolution, political will and favorable public opinion. Finally this study explores the probabilities of applying the deduced principles in resolving the dead-locked territorial disputes in the Indian subcontinent. This study suggests third party intervention mechanisms such as mediation, negotiation, conciliation, arbitration or their hybrid forms for the dispute resolution on the lines of discussed case studies customized to peculiar circumstances.*

Keywords: *Global dispute resolution, Indian sub-continent, International Law, Mediation and conciliation, territorial disputes,*

1. Introduction

International law is basically premised on the notion of a state. The state in its turn is based upon the idea of sovereignty which means internal and external autonomy in decision making. Sovereignty of a state draws its vitality from the fact of territory. Territory is the lynchpin which lends a legal entity the semblance of a state and which non-state actors do not possess. Therefore, territory assumes paramount interest. In 21st century, it has indeed become a manifestation of fervent nationalism due to various political, economic and social factors.¹

In this 18th century and first half of 19th century, territory was the most coveted asset which led to imperialism and world wars. As an aftermath of colonialisation and concomitant colonial cartography, borders were forced upon colonies in Africa, Asia and Latin America as per the convenience and agreements of the rulers. Borders that did not adhere to cultures, history, religion, ethnicity and language barriers became a cause of conflict between nascent states and in some cases between states and insurgents also. Majority of nascent states resorted to war being aggrieved of inchoate territories inherited from colonial powers. Most of these wars were to settle borders, dissents or to acquire territory which they perceived as their own.

After the Second World War and subsequent end of colonization, international law and institution themselves were in nascent and tumultuous phase and were thus, unable to guide and maneuver erstwhile colonies to a peaceful resolution of their respective territorial discords. But gradually it can be observed, International institutions have gained experience and expertise in dealing with such disputes to a certain extent. The name of International Court of Justice and Permanent Court of Arbitration is worth mentioning here in this regard. International law has also been enriched, refined and chiseled to have a more pragmatic approach and to accommodate the sensitive concerns of disputants. That said, it will be an exaggeration to observe that it has evolved into a panacea for all the territorial maladies. Certainly a lot of lacunae needs to be plugged in preferably through treaties, precedents and conventions.

There are some explicit provisions in different sources of International Law that require peaceful settlement of disputes. The United Nations Charter enjoins upon the states to settle disputes by adjudication and arbitration or by negotiations, mediation, conciliation. It also prescribes resorting to regional arrangements or United Nations' (UN) or other international organization's dispute settlement procedures.ⁱⁱ It has authorized Security Council in this regard to call upon warring nations to settle disputes by such means, if it deems necessary.ⁱⁱⁱ Notwithstanding such prescription, territorial dispute resolution is an intricate and cumbersome process resulting in decade long endeavors to sort them out. The major reason of their intransigent nature is that they are always repercussions on the domestic popularity of the government for compromising on territory with an antagonistic state and thus, there are apprehensions of state being labeled as soft power and becoming vulnerable to more territorial demands. On the other hand in this 21st century, it is expedient for the states to realize that the economic and political cost of war outweighs the political and economic benefits which are the cause of a war. Therefore prudence and sagacious statesmanship requires balancing both the interests and thus resolving territorial conflicts expeditiously without compromising national pride and international reputation. Moreover, the valuable human resources and national wealth can be channelized to further the economic and social development of the disputant nations. This may seem like a theoretic rhetorical but it has been possible by some insightful and realistic nations from whom such resolutions are worth taking note of. In this study, these methods of resolution are discussed and then probabilities of their customized application in Indian territorial conflicts is analyzed.

2. Territorial Conflicts in the Indian Sub-Continent

2.1 India- China

China and India are separated by the formidable geographical barriers of the Himalayas. According to Indian perspective, its border with China is approximately 4057 km, with Nepal and Bhutan lying between them. The area of disputed territory is about 1,35,000sq km, which can be classified into three major portions as follows:

- (a) Eastern sector: Arunachal Pradesh Area: 90000 sq km
- (b) Western sector: Aksai chin Area: 38000 sq km and the Trans-Karakoram Tract: 5800 sq km.

(c) Central sector: Bara Hoti in Uttarakhand, Kauril and Shipki in Himachal Area: 1820 sq km.^{iv}

While Aksai chin continues to be under Chinese control, India has maintained its control over Arunachal Pradesh and the areas in Himachal Pradesh and Uttarakhand. All these disputes commenced after Indian independence which was contemporaneous with the communist party of China defeating Kuomintang Party militias. As the two were nascent states without properly demarcated borders with whole new incumbents, both laid claim to same territory and thus got embroiled in intractable territorial disputes which continues till date.

In the above mentioned three sectors, two sectors hold significance from the political perspective and are discussed below:

2.1.1 Western Sector

2.1.1.1 The Trans-Karakoram Tract

This is an inhospitable and permafrost area of nearly 5800 km along both sides of the Shaksgam River. It is bounded on the north by Kunlun Mountain and on the south by the Karakoram Range. To its southeast, it is adjacent to the world's highest battlefield, the Siachen glacier region. Though this territory was part of erstwhile Jammu and Kashmir state, yet Pakistan was exercising control over this territory since the 1948 war and concomitant annexation. In 1963, this disputed territory was ceded by Pakistan to China by means of a boundary agreement entered on 2nd March, 1963, as a concession for enhancing friendly relations with China.^v India claims sovereignty over the said territory and challenges the validity of the agreement. Notwithstanding the claims, China exercises control over this area of immense geo-strategic importance as this area gives China access to Siachen and Baltistan area in Pakistan occupied Kashmir (PoK), which itself makes Ladakh region vulnerable. So both India and China have vital national interests in this disputed territory.

2.1.1.2 Aksai-Chin

This territory is a barren piece of land with sparse population having an area of around 38,000 km². Tracing its history, the border between India and Tibet was not demarcated in this area due to its inhabitable nature. In the early 1950's, both India and China started claiming this area as their area. This led to many border skirmishes and political furor which culminated into full scale India-China war of 1962. Since the war, China exercises control over it and avers it to be governed by a Line of Actual Control (LAC) which itself is disputed and both countries have their own perception of LAC. LAC is not demarcated on ground and delineated on maps. It basically implies area under defacto military control since the end of Indo-China war. Since the war was ended by a unilateral ceasefire by China, perceptions of positions of army at the end of war differ especially in Ladakh sector and hence different perceptions of LAC.^{vi} This area is of vital strategic interest to China as it connects Xinjiang province with defiant Tibet province. For India, this area is important to avoid tactical encircling of its vulnerable Ladakh region. It is pertinent to mention here that China also claims an area of about 500 sq km, known as Demchok. It is under the control of India. It is worth mentioning here that, China has robust military and civil infrastructure on its side of the border while India is relatively lagging behind.

2.1.2 Eastern Sector

2.1.2.1 Arunachal Pradesh

India exercises de-facto control over Arunachal Pradesh and bases its claim on the 890 km McMohan line which was agreed upon during 1914 Simla Convention between British and Tibetan representatives. China does not abide by the agreement as its representatives have not ratified it. China attributes no value to Tibet's accession to the agreement as Tibet was under China's suzerainty and concomitantly making it incompetent to sign any treaty. China claims this territory as a part of 'Southern Tibet', although it recognizes McMohan line roughly as the LAC with some reservations.^{vii} China disputes the logic of McMohan line because the line which lies along the watershed (summit line of peaks) deviates at certain places to include prominent landmarks like Tawang inside Indian Territory.

The Indo-China war in 1962 engulfed this sector also and it constituted eastern theatre of the war. This territory being a large piece of land and having strategic importance due to its proximity to vulnerable north-east regions of India remains a bone of contention for both the nations. It is pertinent to mention here that China claims a 'finger area' also, which protrudes like a finger at the Sikkim's northernmost tip over the Sora Funnel valley located at the Sikkim-Bhutan-Tibet tri-junction.^{viii} This is also the area where in June 2017 the Chinese army incursion took place into Bhutanese territory for the purpose of road construction which prejudiced the strategic interests of India due to which Indian army had to intervene.. After months of stand-off between Chinese and Indian Army, both sides agreed to disengage and demilitarize the disputed area.^{ix}

2.1.3 Efforts for reconciliation

After the Indo- China war, ambassadors were exchanged in 1976. Indian foreign minister visited Beijing in 1979 and subsequently eight rounds of officials took place between 1981 and 1987. In 1988 a Joint working Group (JWG) was established to seek fair, reasonable and mutually acceptable solution on the boundary question. There have been multiple agreements between and China for boundary dispute negotiations and resolution starting from the Agreement on Peace and Tranquility along the LAC in 1993 then, Agreement on confidence building measure in the military field along the LAC in 1996, Declaration on Principles for Relations and Comprehensive Cooperation in 2003, Agreement on Political Parameters and Guiding principles in 2005, Agreement on the Establishment for a Working Mechanism for Consultation and Coordination in 2012 and Border Defence Cooperation Agreement in 2013^x. The significant ones are discussed as under:-

With Declaration on Principles for Relations and Comprehensive Cooperation in 2003, Special Representatives (SR's) for talks were appointed and the three stage process was initiated for resolving dispute. In 2005, the countries reached an agreement on the guiding principles and establishment of the political contours for reaching a consensus on boundary dispute. It represented successful conclusion of the first phase of the work of SR's appointed in 2003. As of now, negotiations are underway to build consensus for an agreement on framework of settlement. It will be followed by delineating the boundary line in accordance with the framework agreement.^{xi}

The 19th round of talks of special representatives were held in April, 2016 under the aegis of 2003 agreement between special representatives of both the nations. In spite of some productive results, China asserted that dispute is regarding the Eastern sector (Arunachal Pradesh) only, thereby circumventing any talks on Aksai Chin and Trans Karakoram Tract. This has significantly affected the effectiveness of talks as subject matter of talks is fluctuating according to the geo-political interests of the disputants which are a manifestation of unwillingness of the concerned nation to reach a consensus.^{xii} In 20th round of talks held in December, 2017 held in New Delhi, nothing substantial came out and both sides just emphasized the need to arrive at an early mutually acceptable border solution and maintain peace along the borders till then.^{xiii}

A Border Defense Cooperation agreement (BDCA) was also signed in 2013. This new agreement was more of a rehash of previous agreements. It entails de-escalatory measures to thwart military face offs. It contained clauses providing mechanisms for exchanging information and enhancing communication between border personnel and headquarters.^{xiv} The BDCA has failed to address the root cause of Chinese military transgression, which is non-demarcation of LAC and thus bellicose misadventures of the Chinese Army on the pretext of different perception of LAC continue unabated. Succinctly, with the present form of negotiations and the prevailing mistrust, there is little hope for resolution in near future.

2.2 India- Pakistan

India and Pakistan share 3323 km of land boundary which includes 776 km of line of control in Jammu and Kashmir sector. There is an additional 110 km of actual ground position line which divides current military positions of India and Pakistan in the Siachen glacier area.^{xv}

Although both countries share common history, culture, language, yet both are embroiled in one of the acrimonious dispute. There are two sectors where there are territorial disputes between them namely Northern sector and Western sector.^{xvi}

2.2.1 Northern Sector

(a) First and foremost is Kashmir including Siachen glacier. Both the countries claim the erstwhile princely state of Kashmir as their integral part. Pakistan bases its claim on 'Two nation theory', which is itself premised on religious lines as Kashmir is a Muslim majority state. India basis its claim on instrument of accession executed by Dogra Maharaja Hari Singh, the erstwhile ruler of Kashmir in 1947 which was subsequently unanimously ratified by elected constituent assembly of Jammu and Kashmir in 1954. The two bellicose nations went to war four times in 1948, 1965, 1971 and 1999 predominantly for the territory of Kashmir except the 1971 war.^{xvii} In the 1948 war, Pakistan attacked the state of Jammu and Kashmir through local tribal militias and irregular Pakistani forces and wrested control of roughly one-third of the Kashmir i.e Gilgit-Baltistan and Azad Kashmir. At the end of war India exercised control over rest of Kashmir. The war came to end after UN brokered ceasefire came into effect on 1 January 1949. A UN Security Council resolution was adopted under chapter VI of UN charter (non-binding) which enjoined Pakistan to withdraw its tribal militias and forces and India to maintain minimum amount of troops to keep civil order and for accomplishing peaceful and impartial plebiscite. Pakistan refuses to

implement the UN mandate and did not withdraw its troops. The bone of contention now is that Pakistan wants a plebiscite in Kashmir but is not ready to retreat to its pre-war position. India's steadfast stand is that firstly accession has already been ratified by a democratically elected popular constituent assembly of J&k, so the question of referendum has become irrelevant. Secondly Pakistan must retreat to its pre war position as a precondition before making demands for plebiscite.^{xviii} Another probable reason for opting against plebiscite is many non-Kashmiris have settled down in Kashmir migrating through PoK and demographics of Kashmir has changed in favour of Pakistan which makes the demand of plebiscite unfair and unreasonable now.

The Siachen glacier is utterly barren and permafrost area. Prior to 1984, neither India nor Pakistan had any permanent presence in the area. The Shimla agreements also presumed that no one would vie for such an inhospitable terrain. Since 1978, mountain expeditions were being allowed from both sides. India in order to secure the strategic glacier had to launch a pre-emptive operation named Meghdoot in 1984. India secured the glacier and it exercises military control over it till date. Pakistan controls the glacial valley. Due to substantial loss of life and colossal amount of resources being spent, there has been constant demand of de-militarization of the glacier but due to deficit of mutual trust, nothing has crystallized.^{xix}

2.2.2 Western sector

(a) Sir Creek - The Creek is a 96 km long water body that stretches from the marshes at the edge of Rann of Kutch to the Arabian Sea. Pakistan claims to the whole of Creek basing its argument on an old Bombay Government order of 1914. India claims half the Creek as its navigable most of the year and according to international law norms, a boundary is fixed in the middle of a navigable channel. This dispute is also lingering on as no country is ready to compromise on valuable maritime territory and special economic zone which will be influenced by the placement of border in the Creek.^{xx}

2.2.3 Efforts for Reconciliation

1. Shimla Agreement: Pakistan was coerced to sign the agreement as an aftermath of defeat of 1971 war. One of the major outcomes of this agreement was UN demarcated 1949 ceasefire line was formally accepted by both the nations as Line of Control (LoC).^{xxi}

2. 1974 Protocol: In 1974, a protocol for the restoration of government to government commercial ties was signed by the two nations. But this attempt to normalize relations also failed.^{xxii}

3. Lahore Declaration: In 1999 Lahore summit, both India and Pakistan agreed on avoiding operational use of nuclear weapons against each other and to abate the nuclear weapons race. Despite such agreements, both nations got embroiled in Kargil war in 1999.^{xxiii}

4. Agra Summit: There was another high level bilateral summit in 2001 in Agra. Despite substantial pre-defined objectives like Kashmir, cross-border terrorism and insurgence, reduction of nuclear-weapons, nothing concrete came out.^{xxiv}

5. Ceasefire Agreement: A ceasefire agreement was signed for the whole boundary between India and Pakistan in 2003. Though this step created a positive atmosphere, yet innocent civilians and soldiers continue to die in cross-border firing.^{xxv}

6. Composite Dialogue Process: The CDP started between India and Pakistan in 2004. The aim was to resolve all sticky issues in a holistic manner. Although all major issues like Kashmir, Sir Creek, economic cooperation, terrorism, etc were being discussed in CDP, it came to an abrupt end in the wake of Mumbai attacks of 2008. Though foreign secretary level talks were also initiated subsequently, yet each year they were either suspended or called off due to some misadventures of Pakistan based antagonistic elements.^{xxvi}

3. Case Studies

3.1 Ecuador-Peru Conflict Resolution, 1998

Ecuador and Peru were involved in a long running and often violent conflict since 1884. There had been 34 blood-ridden military confrontations between them. Their case is worth emulation and appreciation because of their unique and pragmatic arbitration and conciliation mode, guarantors' provision and a treaty of trade and navigation.^{xxvii}

After a 1941 war between the two nations, a treaty framework for resolution of this dispute was established by the disputants as well as four 'friendly powers' i.e. Argentina, Brazil, Chile, and the United States assuming the role of guarantors. This treaty called Rio Protocol provided for demilitarization of the disputed area, avoidance of any further conflict, involvement of guarantors as mediators in resolving any doubt or disagreement in execution of the protocol and donning the role of arbitrator too if need be. This was to be done until a border was clearly demarcated between the two nations. Ecuador was given right to navigate Amazon river and its tributaries. Initial implementation of the Protocol went well and border was almost delineated. However, due an anomaly in the topography of the border region noticed by an aerial survey of the U.S army, a dissent appeared between both the nations regarding the demarcation of border. Ecuador withdrew from the Protocol and reiterated its pre-treaty demands. Peru insisted on the sanctity of the Protocol and its allegiance to the conciliation process. Peru opposed any review of the already delineated border. Due to all this divergent views the process of successfully demarcating the border could not be completed.^{xxviii}

In 1971, U.S president Jimmy Carter tried to reconcile the interests of both the disputants but could not be successful. However, U.S reiterated that the Rio Protocol was still valid. In 1991, an armed conflict was avoided only after two nations decided to create a common security zone in the disputed region. In 1995, an armed conflict ensued between the warring nations in the disputed Cordillera del Condor sector. A ceasefire could be reached after a month and both sides agreed to engage themselves in bilateral talks under the Rio Protocol framework. The next year they zeroed in on the border impasses and decided to concentrate on the sticky issues which were primarily, the location of border in the Cordillera del Condor sector and right of navigation of Ecuador in the Amazon River in the border region.^{xxix} Talks which began in 1997 successfully culminated into Brasilia agreements of 1998 which provided for final resolution of the border conflict. It included a Presidential Act

signed by the President of the two nations countersigned by the representatives of the guarantor states, a treaty of trade and navigation, a treaty of Frontier Integration, delineation of the land border and establishment of a Binational Commission on measures of Mutual Confidence and Security.^{xxx}

The agreements were prepared by four different commissions. Each commission was assigned a single component of the final set of agreements. The remaining issues which reached a stalemate were to be resolved by arbitration by the guarantor states. The guarantors also decided that the summit of Cordillera del Condor would be the border as had been originally decided under the Rio Protocol.

Other provisions of the Rio protocol which are worth taking note of are:-

1. The entire disputed area along the border was devoted to national parks accessible to native communities on both sides of the border.
2. Ecuador was granted one square kilometer of territory on Peruvian side of the border. The title of the land was to be held under the Peruvian law but it was non-transferable.. Ecuadorian nationals were also given free passage to this territory through the territory of Peru. It was a confidence building measure and to instill feeling of fraternity.
3. Peru granted Ecuador free, continuous and perpetual access to the Amazon River and also agreed to establishment of two centers for trade and navigation on the Marañon river managed by private companies chosen by Ecuador but registered in Peru.^{xxxi}

Succinctly, commitment by the political leadership, a change in popular attitudes in both the countries, reposing faith in each other and realization of the futility of war and the role played by the four guarantor states were the key factors in resolving this dispute. The guarantor states were actuated by a strong will to attain stability in the region by dispelling discords and thus promote cooperation and mutual economic development of the region. They did not view this as an opportunity for proxy war, promoting factionalism and indulging in race of regional hegemony as is the case in Asia.

3.2 The Taba Arbitration, 1988

This dispute was between Israel and Egypt regarding a strip of land called Taba in the Sinai desert on the shore of Gulf of Aqaba. When Turkish forces captured this area in 1906, they were forced to withdraw under British pressure. After negotiations between Anglo-Egyptian and Turkish representatives, a territorial agreement was concluded in 1906 which provided for border between Egypt and Ottoman Empire running through Taba and boundary pillars were to be erected along the border at intervisible points. But the British military maps since 1915 showed the border between the two nations approximately three quarters of a mile north-east to the 1906 line. When British were granted the mandate in 1922 for administration of Palestine, it retreated to the 1906 line and disowned the 1915 line.^{xxxii} Nonetheless uncertainty persisted over the years and was inherited by Israel and Egypt. In 1967 Six- Day war, Israel gained control of the Sinai Peninsula including the Taba area but under the Camp David Accords signed in 1979, Israel agreed to return Sinai to Egypt. When post-war border was being ascertained the dissent regarding the Taba area came to the fore. 14 disputed boundary pillars were the reason of discord now. According to the

treaty conciliation or arbitration was to be resorted to if negotiations fail to serve the purpose. Israel wanted conciliation while Egypt wanted a more formal procedure like arbitration.

In 1986 an arbitration agreement was signed between the two nations to “decide the location of the boundary pillars of the recognized international boundary between Egypt and the former mandated territory of Palestine.” Five members were nominated to the tribunal including one national each from the disputants and three non-nationals. The arbitration agreement had two special features:

- (a) The agreement provided for a mix of arbitration and conciliation. It created a three member chamber composed of two national members and one non-national members of arbitration panel other than the President. This chamber was required to submit proposals to the parties for settlement of dispute before completion of written pleadings. Though the conciliation proposal drafted by the chamber could not iron out differences of the parties and arbitration process was only followed.
- (b) The scope of panel was extremely narrow as it could not establish a boundary location of the pillars other than the locations provided by disputants and locations was to be decided only of the 14 pillars.^{xxxiii}

Though the parties presented their arguments focusing more on legal dimension of the subject-matter such as treaty interpretation and principles of International Law, yet they tribunal gave its judgment by adopting a two dimensional approach to the parties’ dispute.^{xxxiv} It gave precedence to the mandate period rather than critical date as averred by both the parties.^{xxxv} It determined the location of pillars as was commonly understood during the mandate period. Therefore it decided that five of Nine Northern Pillars were located on Egyptian territory and four on the Israeli territory. The other four pillars based on factual evidence were fixed at locations averred by Egypt which was adjudged as the recognized boundary during the critical period. The most important ‘Parker Pillar’ was also fixed as claimed by Egypt on the basis of evidence that the pillar was erected by commissioners implementing the 1906 agreement.^{xxxvi} Though there were apprehensions about the adherence of Israel with the award, yet Israel eventually withdrew from the Taba area ceding its control to Egypt. Rest of issues like arrangements for entering Taba area, management of assets there and end of boundary line were separately agreed upon by both the nations.^{xxxvii}

This dispute was primary factual in nature. Thus, after deciding the critical date the tribunal relied on testimony and documentary evidence. Summing up, this dispute resolution process is a model for sensitive areas where a little spark is enough to escalate into war and there is lack of mutual trust.

4.Deducing the Lessons to be Learnt and their Application

4.1 The lessons

1. The disputant nations must pro-actively engage themselves in the resolution process with a positive outlook till the results are achieved. In the case of Ecuador-Peru, it can be observed that till the political class and its citizens made up their mind, a firm settlement agreement could not be reached despite multiple rounds of talks and agreements.

2. The disputant nations should first build a national consensus before entering into reconciliation process so that whatever solution comes out, it is unequivocally accepted. Opposition parties must play their constructive role in this public opinion building and not further their parochial political interests by espousing jingoism and negatively interpreting the territorial settlement to the masses.
3. For bilateral negotiations, it is imperative for the participants to repose faith in each other. In the absence of it, bilateral dialogue is futile. Then a third party intervention becomes necessary. For mechanisms involving third party like mediation or conciliation also, trust deficit undermines the procedure as ultimately in non-binding methods reciprocal promises are made and implemented
4. The disputants must be prepared to make compromises when they set the resolution process in motion. It can never be a zero-sum game. Concessions have to be given from both sides. As seen in case of Ecuador-Peru conflict, mutual concessions were given in form of territory and navigation rights. A winner takes all approach does not produce durable and peaceful settlement even in case of arbitration and adjudication. For instance, in the Beagle Channel Arbitration in 1977 between Argentina and Chile, the Arbitral Tribunal awarded the disputed PNL group islands to Chile. It completely endorsed one party's claim over others. That's why Argentina withdrew from the arbitration and rejected its award.^{xxxviii}
5. As observed in case of Ecuador-Peru resolution, there has to be a comprehensive and holistic solution to all the lingering issues. In this case issues relating to territory, navigation rights, water resource sharing, all were sorted out by Brasilia agreements.
6. An equally important duty of the disputants is to first choose the appropriate method of dispute resolution keeping in view their past relations, value of territory (strategic, economic or even emotive), their claims and probability of abiding by the decision. When method is chosen and if third party are to be involved, then its utmost necessary to choose the arbitrators or mediators that are impartial and credible. Panel must be preferably composed of persons from legal and non legal backgrounds. If peculiar locals details are involved, then national members can also be nominated. In Ecuador-Peru conflict resolution, the guarantor states were appropriately chosen and they had a major role in resolution.
7. For the adjudicators, arbitrators or mediators, it is important to take equity into considerations before reaching conclusion. They have to act as judges and diplomats simultaneously. The Beagle channel arbitration failed because it was decided solely on international legal principles. On the other hand when the same dispute was referred for papal mediation in 1979, which decided the dispute partially on equity and justice, outcome was mutually accepted.^{xxxix}
8. For the arbitrators and mediators, it is also necessary that they must be familiar with the ground reality of the territory for which they are undertaking the resolution. This is instrumental in avoiding of outcomes that are contrary to

the nature or topography of the area or causes prejudice to the rights of local inhabitants.

4.2 Application

1. In reference to India-Pakistan and India-China territorial disputes, it is essential that first and foremost strong political will is employed. Political mileage which hitherto is drawn from war and hate mongering must be effectively discouraged. It is pertinent to mention here that war is not a pragmatic option for these nations as conventional war is highly prone to escalate into nuclear war. A national consensus in both the nations must be build for granting 'reasonable' concessions for resolving dispute. Public participation should also be encouraged in this process by inviting ideas from the public for dispute resolution in order to make issues subject to more discussion and the outcomes more acceptable. The benefits of reconciliation and economic and social losses of war must be propagated widely. Radical elements thriving on hatred must be contained so that public opinion is inclined in favour of resolution. Extra-legal forces which are inherently inimical to resolution must be discarded and their authority needs to be curtailed.
2. In reference to India-Pakistan dispute, third party intervention is required as there is deficit of mutual trust. It can be by means of arbitration or mediation or both because six decades of bilateral talks have not yielded results. Although the United Nations (UN) intervention after the 1948 war on request of India left a bad taste as the UN did not make Pakistan (the aggressor) to retreat back to its pre-war positions as per the norm of International law, yet India needs to give a fresh chance to impartial and credible negotiators. These can be international organizations or impartial states also. The provision of guarantor states as conciliators and supervisors as in case of Ecuador-Peru conflict can be emulated here but with unbiased non-regional powers as regional powers are prone to bias.

It is worth mentioning here that India and Pakistan had submitted the dispute of Rann of Kutch to Arbitration and it was successfully resolved by a 1969 award on the basis of documentary evidence and testimonies. On similar lines a maritime boundary dispute between Indian and Bangladesh in Bay of Bengal was also submitted before Permanent Court of Arbitration and issue was resolved by an award dated 7 July, 2014 by the Tribunal constituted under United Nation Convention on the Laws of the Sea. The award was peacefully accepted and complied by both nations.^{x1}

A congenial atmosphere can also be created in both the nations to subject the Kashmir issue and other pending disputes to conciliation and in case of its failure, arbitration. The model adopted for using both the methods simultaneously can be emulated from the Taba Arbitration, where a three member chamber within the arbitral panel was appointed to draft a reconciliation proposal. This amalgamation is best of both the worlds as it creates avenues for the disputant nations to actively engage with each other in presence of a neutral third party on one hand and on the other hand in case of

both the parties failing to reach a consensus, an arbitral award on legal and equitable principles can resolve the impasse. So the issues between Indian and Pakistan are highly complex legal and factual issues so an equitable approach along with juridical principles is imperative. A demilitarized area along the mutually accepted boundary line accessible to citizens of both the nations as in case of Ecuador-Peru can also be considered. Under the peculiar circumstances in this dispute, a robust framework for the enforcement of any final agreement under the supervision of international community will also be required, if any reconciliation is reached or award is given.

3. In reference to India- China dispute, first and foremost there has to be equivalent military and civil infrastructure development on the Indian side of the border so that talks are held on the basis of equality and non dictated by one party to the other. Secondly, the LAC needs to be demarcated first or at least a consensus should be reached on approximate location of LAC by exchanging of maps. Thirdly, China needs to abandon using border disputes with India as a tool for emphasizing military prowess and asserting regional hegemony. Fourthly, there is lack goodwill and mutual trust between these neighbors, so dispute resolution mechanisms such as conciliation or arbitration or both can be appropriate. It is worth mentioning here that China being an aspirant of becoming superpower may not submit itself to non-institutional mechanism like conciliation which usually comprises of nation-states as conciliators but chances of its submission to institutional arbitration (PCA) are more as China basis its claims on historical evidences. Fifthly, both countries should come to the negotiating table with open mind devoid of any rivalry, actuated by benefits of shared economic progress and prosperity in the region.

International experts often suggest that the dispute between India and China can be resolved through a ‘swap agreement’ as was offered by Chinese leaders Zhou Enlai and Deng Xiaoping.^{xli} It basically means relinquishing claim on Aksai Chin by India and in return China giving up his claim on Arunachal Pradesh. Such swap agreement and its benefits needs to publicized in both the nations so that public opinion becomes favourable. The terms of this swap can be negotiated with the help of impartial conciliators. Such a swap agreement known as Land Boundary Agreement has been done by India with Bangladesh ratified by the parliament in 2015 although it was for a smaller area.^{xlii} A demilitarized area for instance a peace park after dissecting the Aksai-chin area along the Lakhsang watershed accessible to local population on both sides of the border is also a decent option for resolution of dispute in the western sector.^{xliii} The recent stand-off at Doklam which was resolved reportedly through back-door diplomatic negotiations also corroborates the point that negotiations can break the ice, howsoever intricate and cumbersome the dispute may become.

5. Conclusion

The observations in this study shows peaceful resolutions of the intractable territorial disputes are possible in any kind of relations as was demonstrated by Israel and Egypt, the only requirement is the resolve to attain peace and stability. Be it methods

like mediation or arbitrations, a zero-sum settlement should be avoided for the sake of mutual acceptance although it may be based on sound legal principles. Equity, justice and fairness should be guiding principles. Judicial precedents of the ICJ are not suffice, international conventions are needed to codify international law on proving sovereignty over territories. International institutions like UN and Security Council need to formulate sanctions and penalties so that new territorial misadventures do not take place and lingering ones are settled peacefully. International institutions like the ICJ and Permanent Court of Arbitration needs to adopt a flexible and diplomatic approach so as to become attractive forums for territorial dispute resolutions. These institutions should encourage and also provide effective institutional support for mediation, conciliation and enquiry or any of their hybrid form as per the agreement and suitability of the disputants.

Succinctly, complex territorial disputes are a manifestation of arrogance, competition, politics, convoluted history and pursuit of resources. World wars have demonstrated that territory does not bring prosperity, peace does. So nations have to push for win-win deals by bartering territory for peace and animosity for friendship.

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