

# Management of Bangladesh-India Border

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## INTRODUCTION

A border is something that indicates a limit where one's responsibility ends and another's begin. The term "boundary" is used in similar sense inasmuch as it is one of the most significant manifestations of state<sup>1</sup> territorial sovereignty. It delimits physical space and has proven to be quite a daunting task that can bedevil state relationship. But not so always if both sides understand each other better and are amenable to rational choices.

In the Eurocentric global model of modernity from which no culture in the world has remained untouched and which the Third World leaders have adopted, national borders left by their colonial rulers continue to provide them with challenges that so far many have been unable to resolve satisfactorily specially with their value system as tools. But this should not necessarily be the case. Borders could be sources of conflict as well as peace and prosperity depending on how the issues are tackled. This paper would look into the options that the two neighboring states Bangladesh and India can adopt in order to overcome the impediments that have alternately soured or given boost to their relationship from time to time taking necessary cue from the Eurocentric practices.

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<sup>1</sup> Article 1 of the Montevideo Convention of 1933 on the Rights and Duties of States enumerates the following characteristics of a state:

"The state as a person of international law should possess the following qualifications:- (a) a permanent population; (b) a defined territory; (c) a Government ; and (d) a capacity to enter into relations with other States." The qualification (d) is the most important. A state must have recognized capacity to maintain external relations with other States. This distinguishes states proper from lesser units such as members of a federation, or protectorates, which do not manage their foreign affairs, and are not recognized by other states as full-fledged members of the international community. The state is by no means necessarily identical with a particular race or nation, although such identity may exist. See Starke's *International Law* (Eleventh ed. 1994), pp 85-86; see also pp 172-173 for case laws on resolution of boundary problems.

## **Prime Minister Sk.Hasina's Proposed Visit to India and the Expectations**

Prime Minister Sk. Hasina's planned visit to India from 11<sup>th</sup> January 2010 onward has raised tremendous positive expectations among the peoples of the two countries, media and policy makers for practical reasons. During her first term as Prime Minister of Bangladesh together with Indian Congress leaders like Mr. I. Gujral and regional leaders like Mr.Deve Gowda she was able to resolve some of the intractable issues like that of long term sharing of Ganges Water and the resolution of Chittagong Hill Tracts insurgency. Similar concrete achievements, if not more, are now being expected by the peoples of the two countries as both the Prime Ministers of India and Bangladesh came to power in recent past with comfortable majority and do have positive track records of taking the bulls by the horn. The title of the today's roundtable discussion, namely "Bangladesh-India Relations: Exploring New Horizons" does symbolize that upbeat expectation amongst all of us. Given the inter-state post 1947 political culture in South Asia of keeping resolution of territorial issues pending, such expectations seem to be reflection of too much of the sunny side on the part of Bangladeshi psyche. Meanwhile, the solemn declaration and its repeated affirmation of Sk. Hasina that Bangladesh's soil would not be allowed to be used by terrorists for attacking India followed by concrete action which lead to ULFA leaders surrender to Indian security apparatus have taken care of a serious security concern of Indian rulers and people on its eastern front. This has generated a huge surge of goodwill in the vocal Indian media whose Bangladesh-critical columnists have not failed to note these unprecedented acts of friendship and tremendous risk to the person of Sk. Hasina and Bangladesh from the revenge seeking insurgent organizations of North east India. But again to many Bangladeshis who got frustrated from little or no implementation of many settled agreements by India despite expression of concrete and repeated measures of goodwill shown by Bangladesh like handing over of Berubari enclave, lowering of tariff to Indian products entering Bangladesh under SAPTA passed without any reciprocal gestures, this unilateral daring act of strategic risk taking appears to be one more act of friendship gesture going to waste. Consequently, any mismatch in give and take from the two sides

during her ensuing visit to India is going to have tremendous impact on the Bangladesh Prime Minister's political capital and goodwill among her people.

### **Bangladesh-India Border Issues**

Bangladesh shares with India a land boundary of 4,096 Kilometers of which 6.5 kilometers including some riverine parts in Comilla-Tripura area remain un-demarcated. Despite the Mujib-Indira Agreement of 1974 resolving the boundary and enclave issues almost 36 years ago, 51 enclaves measuring 7,083.72 acres are in adverse possession of India forcing their Bangladeshi residents to live in abysmal conditions. Some acres of land in the district of Sylhet too is reportedly have been occupied by the Indian Border Forces since independence. Besides, continued killing of over a thousand unarmed Bangladeshis by Indian BSF since 1990 is a negation of the most elementary norms of inter-state behavior unheard of in modern inter-state relations between two supposedly friendly countries having normal political, commercial and cultural relations. It is as if life of individuals and repeated promises not to snuff that out on the slightest pretext is of no consequences in a region which has given birth to two major religions of the world.

On the maritime side the boundary too remains un-demarcated together with the issue of the ownership of the South Talpatty/New Moore Island now forcibly occupied by India despite Bangladesh's protest. On the other hand new measures like drawing of a new unusual maritime base line, etc. keep on emerging side lining recourse to meaningful negotiation and stead putting more pressure on Bangladesh's legitimate interests and positions.

The list seems quite lengthy as old issues remain unresolved while new ones are being added with the passage of time and ever increasing state of politico-economic activities and relations.

So what can be done to redress the situation, bring a measure of respectful behavior and establish good neighborliness that seems to be the stated aim of both the countries? Will these problems and others which will come up in other presentations by concerned and knowledgeable persons in this session could be

positively influenced or resolved through the exercise of unilateral goodwill measures at leadership level on bilateral plane? Or why some of these issues have not been suitably addressed in sub-regional or regional forums which we did set up with high hopes and the kind of which other countries are so successfully using? Could we once again look into some Eurocentric practices to overcome our own generic problems?

### **What is Border Security and Management**

In the light of the complexities of issues and stakes involved given the high level of expectation which may not pass as pragmatic in the light of South Asia's dominant neighborly culture we need to take a look into the border security and management issues between the two countries from the perspective of the best practices of the European countries which gave the present world the very concept of statehood and its social derivatives like democracy and conflict resolution mechanisms, confidence-building lessons at the inter-state level.

The Organization for Security and Cooperation in Europe (OSCE) which has 56 members including some from the Central Asian and Caucasus regions recognizes that border security and management is a matter of the national sovereignty and responsibility of States. While promoting open and secure borders in a free, democratic and more integrated manner they commit themselves to uphold the principles of international law, in particular, international human rights, refugee and humanitarian law as well standards and recommendations laid down by the relevant international organizations. They reaffirm the norms, principles, commitments and values enshrined in the Helsinki Final Act, all of which apply equally and unreservedly and other similar instruments developed to date to address the threats of terrorism, organized crime, illegal migration, and the illicit trafficking in weapons, drugs and human beings

At the regional and sub-regional levels: In the same spirit, the participating States reaffirm their obligations and commitments in all regional and sub-regional formats in which they are members and undertake to promote their co-operation in all relevant organizations and agencies in order to ensure consistency in policies and standards and to avoid duplication of efforts;

Bilaterally: In a spirit of solidarity, and aiming at good neighborly relations, the participating States respect their bilateral agreements on border-related issues and undertake efforts to promote sharing of experience and good practices.

#### Main objectives of co-operation

Co-operation by the participating States is aimed at promoting the implementation of border-related commitments; foster compliance with border-related security and management standards recognized by the participating States, as well as their improvement, *inter alia*, based on sharing of good practices.

2. The participating States promote co-operation between their border services, customs authorities, agencies issuing travel documents and visas, and law enforcement and migration agencies, as well as other competent national structures, with a view to achieving the following aims:

2.1 To promote free and secure movement of persons, goods, services and investments across borders, in conformity with relevant legal frameworks, international law and OSCE commitments, *inter alia*, through enhancing the security of travel documents and encouraging, as appropriate, circumstances that could allow liberalization of visa regimes, in the spirit of the commitments under the documents mentioned above;

2.2 To reduce the threat of terrorism, including by preventing cross-border movement of persons, weapons and funds connected with terrorist and other criminal activities;

2.3 To prevent and repress transnational organized crime, illegal migration, corruption, smuggling and trafficking in weapons, drugs and human beings;

2.4 To promote high standards in border services and competent national structures;

2.5 To promote dignified treatment of all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law,

in particular human rights, refugee, and humanitarian law, and relevant OSCE commitments;

2.6 To create beneficial conditions for social and economic development in border territories, as well as for the prosperity and cultural development of persons belonging to all communities residing in border areas, with access to all opportunities;

2.7 To foster prospects for joint economic development and help in establishing common spaces of freedom, security and justice in the OSCE area;

2.8 To ensure the security of the international transport circuit for supply of commodities.

Guided by the OSCE co-operative approach, they believe that:

3. That their common prosperity and security can be enhanced through an increase in beneficial cross-border movements of people, goods, services and investments.

4. Issues of a regulatory nature raised by cross-border movements can best be addressed through direct co-operation between the border services and competent national structures of the participating States, based on relevant agreements. This co-operation should take place at the bilateral, regional and multilateral levels.

5. Sovereign national authorities, and in particular the border services responsible on each side of the border, have the best knowledge of the issues at hand. Cross-border dialogue, transparency and confidence-building constitute the first logical steps towards generating solutions with added value to the benefit of all.

6. Since every border has a particular character and may call for specific policy choices, each participating State has the sovereign right to choose how to secure and manage its borders, taking into account relevant political, military, economic and social considerations.

In sum, the concept is to treat the matter of security as common, cooperative and indivisible basis and to base their work on security and border management on the basis of pragmatism and realism while a spirit of solidarity and partnership based on mutual interest and respect sustains that. Periodic review and monitoring of activities are undertaken to learn from the many diverse circumstances.

Conflict resolution is effected through peaceful dialogue while the OSCE Court of Conciliation and Arbitration is the tool available to States recognizing its jurisdiction, for consultation and to provide confidential legal opinion

Besides there are methods and arrangements for training, capacity building and initiating confidence-building measures of participating states. <sup>2</sup>

## **CONCLUSION**

It looks like the European practitioners of geo-politics who gave us the concepts of nationalism and colonialism also came up with Eurocentric solutions which are available to the Oriental practitioners of the same art provided they are also willing to follow those prescriptions in good faith and belief that pacts are to be respected. However, selective application of those political constructs by some of us would not lead to any sustainable solution as the problems would keep on accumulating leading to a volatile situation that cannot be the desired goal for regional and global peace and security.

In the context of the resolution of our mutual border problems, if decisive steps taken by SK. Mujib on Berubari transfer and that of SK. Hasina on tackling cross-border terrorism are expected to be forthcoming. And that the likely emerging solutions would be further consolidated through creation of effective cooperative institutions with provisions for compulsory judicial determination to take care of uncertainties and/or bottlenecks that might appear down the lane. When problems are resolved and peace prevails, sovereignty consolidates and cooperation and economic prosperity move ahead while modernism spreads its benefits to the masses. Like the positive impact of the *Rann of Kutch Arbitration*,

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<sup>2</sup> For details see OSCE doc. No. MC. DOC/2/05 dated 6<sup>th</sup> December 2005 and OSCE Handbook, 2007.

let the future arbitration of our common maritime boundary pave way for peaceful resolutions of intractable issues between Bangladesh and India. Joint development of some of the border areas and resources may establish the base for many more peaceful solutions to all the conflicting situations that may rear their ugly heads from time to time in our mutual relationship. Let sanity and statesmanship prevail!

Let leaders and statesmen of the ilk of Mrs. Indira Gandhi, Mr. Morarji Desai, Mr. Gujral, Mr. Deve Gowda, Mr. Jyoti Basu, Bangabandhu Sk. Mujibur Rahman and his daughter Sk. Hasina shine on the horizons of the South Asian politics and beyond for the sustenance of regional and global peace and security that the humanity here and everywhere so intensely crave for!