CHAPTER I

COOPERATION IN ENDURING CONFLICT: CONCEPTUAL AND THEORETICAL FRAMEWORK

The largely unanticipated end of the Cold War and the consequent difficulties in explaining its demise underline the need to understand better the phenomenon of rivalries in world politics. Over the past two centuries, apart from the Soviet-American relationship, a disproportionate amount of interstate conflict has occurred in the context of extended specific dyadic rivalry with specific pasts and futures termed "enduring rivalry."\(^1\)

This chapter has been divided broadly into three section. The first section describes the concept of enduring conflict and puts the India-Pakistan dyad in this category. This section aim at emphasising the fact that it is very important to study the prior interaction of states (India and Pakistan in this case) to seek solutions to ongoing and future conflicts. The second section describes a framework for analysis which draw on various theories of negotiation. This framework is applied to all five disputes. The last section summarises the framework formulated for the study.

**The Concept of Enduring Conflict**

Enduring conflict can be defined as repeated conflict among the same set of states. Systematic analysis indicates that 45 percent of militarised disputes take place in the context of enduring conflict. Future conflict was likely between parties to a territorial change even if that transfer was completed peacefully and formalised by a treaty. This highlights the importance of considering prior interactions between states.\(^2\)

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Enduring rivalries are also the setting for over half of the interstate wars since 1816. The most serious enduring rivalries are almost eight times more likely to experience a war than pairs of states in isolated conflict. Enduring rivalries are not involved in a disproportionate number of territorial changes; yet, when such transfers occur in enduring rivalries, they are three times more likely to involve military conflict than territorial changes in isolated conflicts.³

Based on a Markov chain analysis of 456 militarised disputes occurring between 1816 and 1986, the findings indicate that power parity and shifts toward parity are approximately twice as likely to be associated with war as is a condition of power preponderance. By definition rival dyads have issues in conflict. Equality of power or shifts toward equality create a situation in which both sides can perceive the potential for successful use of force. Geller's analysis indicates that, with such power distributions, war between rival nations is most probable.⁴

Recent empirical work has demonstrated the importance of a subset of long-term conflicts between pairs of states within the broader domain of international interactions. These conflict-prone dyads or "enduring rivals" account for a disproportionately large amount of international violence. By one estimate, long-term rival dyads between 1816 and 1986 constitute approximately 8 percent of all dyad years of warfare but account for about 36 percent of the militarised interstate disputes that occur during that period.⁵

Goertz and Diehl argue that the analysis of conflict patterns in enduring rivalries might provide additional insight into the temporal diffusion of inter-state violence.

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Specifically, they suggest that the analysis of conflict may influence the probability of future conflict or its escalation for rival dyads.\(^6\) Wayman and Jones produced a highly restrictive definition of enduring rivals which excludes all short and medium term conflict dyads from consideration. This definition delineates a small set of long-term rivalries which are responsible for almost 40 percent of all militarised disputes occurring between 1816 and 1986, despite the fact that the rivalries constitute only about 8 percent of all dyad-years for that period. These are the most conflict prone dyads in the interstate system, and are consequently the most relevant of alternative populations for examining the effects of power differentials on disputes escalation and war. Wayman and Jones defined enduring rivalry according to the following criterion:

1. **Severity.** There must exist at least five reciprocated militarised disputes involving the same two states, such that each of these disputes lasts a minimum of thirty days.

2. **Durability.** There must be at least twenty five years between the outbreak of the last dispute.

3. **Continuity.** When the gap between any two militarised disputes exceeds ten years... [the] rivalry... [continues] only if the territorial domain and issues remain unresolved and there is at least one... dispute within a period of twenty five years.\(^7\)

Diehl identifies an enduring rivalry as any situation in which two nations engage in at least three militarised disputes within a period of fifteen years.\(^8\) Diehl argues that, once established, enduring rivalries need a lesser frequency of dispute occurrence for their maintenance; the competition cannot be considered fully dissipated until the relationship experiences a significant period without military confrontation. Therefore,


\(^7\) Wayman and Jones, op.cit., 1991, p.11.

\(^8\) See Goertz and Diehl, op.cit., 1993, p.147.
there must be a ten-year "dispute free" interval before a rivalry can be certified as ended.⁹

Gochman and Maoz construct a list of enduring rivalry dyads that includes major power, minor power, and mixed types. Their operational criteria, however, are somewhat vague. They consider enduring rivalries as "the pairs... of states that most often have engaged in disputes with one another."¹⁰ In practice, this turns out to be a minimum of seven militarised disputes over the 1816-1880 period. There appears to be no temporal component, as disputes may be years apart and involve wholly unconnected issues; the only thing they have in common is the participants. William R. Thompson has identified rivalries in terms of decision maker perceptions as opposed to the number of disputes, over some period of time, in which states engage. He has differentiated rivalry as two basic types, namely, positional and predominantly spatial. Then, he further categorises positional rivalries with respect to their geopolitical milieu: dyadic, regional, global and global-regional.¹¹ The recurring nature of these dyadic conflicts creates behavioural sequences with retrospective and prospective features. A number of the conflicts in world politics have pasts and futures because their participants respectively clash with the same opponents and frequently over similar issues. Decision-maker choices are presumably constrained by their understandings of what strategies have or have not worked in the past with a particular rival. They must also contemplate what the future implications might be of their current moves involving rivals. The longer these conflict sequences endure, the more they take on a life of their own.

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⁹. Ibid.


The concept of "conflict" continues to be an elusive one in spite of efforts by peace researchers and social scientists to clarify it. Peter Wallensteen defines "conflict as a social situation in which a minimum of two parties strive at the same moment in time to acquire the same set of scarce resources". This definition means that conflict is a social phenomenon that involves a necessary condition, scarcity. In addition, there are three basic requirements if scarcity is to lead to a manifest conflict, one that poses a serious challenge to life and prosperity: actors, issues, and actions. Scarcity plays a peculiar role, being at the same time part of the issue of contention and a factor in the creation of social structures, i.e., an element in forming the actors.

Goertz and Diehl refer to the Correlates of War (COW) enduring rivalry definition: (1) a minimum of five to seven militarized disputes involving the same set of two states; (2) at least 20 years between the outbreak of the first dispute and the termination of the last dispute; and (3) a maximum period of 10 years between disputes and/or identical and unresolved issues in the disputes. Here, "rivalry" signifies a certain level of competition and "enduring" means that competition is not ephemeral.

Of the two fundamental objects of rivalry, mentioned by Thompson, the spatial variety tend to be the less deadly and more common. Good examples include Latin American disputes over boundaries, the Indo-Pakistani feud over Kashmir, the Graeco-Turkish dispute over Cyprus, the Chinese - Vietnamese sparring over the Spratly Islands, and the Arabs-Israeli conflicts over the ultimate disposition of Palestine. Perhaps because most of the major powers have had more time to settle their


15. Thompson, op.cit., p.204.
border questions, contemporary spatial rivalries typically involve minor powers that lack the resources, the latitude, or both from stronger powers to resolve fully their territorial issues. The feuds persist as a consequence, with occasional flare-ups that do not usually last for long periods of time, unless the disputants have access to the types of resources needed to resolve the issue and see some possibility of resolving the issue in their own favour. These characteristics help explain why spatial rivalries tend to be more common and less deadly than positional rivalries. The positional concerns are a monopoly of the major powers who are obsessed with positional gains and losses. Spatial rivalry does not take much in the way of coercive resources to engage in spatial disputes, but it does require some minimum capability level to do much about them, such as forcibly seizing and holding a disputed area.\footnote{16}

Spatial control may be direct or indirect. The value of the space may lie in some combination of its population, resources, location, or even its symbolic significance. Predominantly spatial rivalries emerge when two or more states develop a desire to have exclusive control over the same territory. The rivalry is likely to persist as long as the rivals have some expectation, reasonable or otherwise, of gaining and maintaining exclusive control.\footnote{17}

Spatial rivalries should end when one side convinces its rival that such an expectation is no longer reasonable, too costly to entertain, or simply no longer worth the trouble. Force may be required to achieve this end, even though territorial seizure will not guarantee the end of a spatial rivalry.\footnote{18} Time is also likely to be necessary for all parties to accommodate themselves to a concrete spatial outcome.

\footnote{16. Ibid.}
\footnote{17. Ibid.}
Enduring spatial rivalries do not require some semblance of power symmetry between the disputants. However, one might expect, other things being equal, that two states, one of which is very strong and one of which is very weak, are unlikely to be spatial rivals for long. Some resolution in the favour of the stronger party might be anticipated. But it may be that other things are not equal. Very weak states sometimes have strong friends. The Indo-Pakistani rivalry is one example of an asymmetrical rivalry that has endured with external assistance.\textsuperscript{19} The perceived value of the space may also fluctuate. The stronger party may simply be preoccupied elsewhere. Still, one can hypothesize that spatial rivalries are more probable, more likely to be more enduring, or both, to the extent that disputants are roughly equal in capability.

Clearly, the notion of enduring conflict is not an altogether precise one. But few notions in the social sciences are. The test of a notion is whether or not it is useful descriptively and analytically. Our review suggests that notwithstanding differences amongst the theorists of enduring conflict, some core ideas are fairly widely accepted and appear to have descriptive utility in the case under consideration here, namely, India-Pakistan relations.

At least seven core ideas emerge from this review of the literature. The first is that prior interactions of a conflictual nature influence present and future events and choices. A second and related idea is that in an enduring conflict there is a fair to high expectation of future conflict, on old or new issues. Third, enduring conflict is dyadic. Pairs of states seem to get locked into patterns of rivalry and contestation over some period of time. It is hard to think of enduring conflicts in which there are more than two states. In a triangular situation, there is a tendency for two to ally against the third and the alliance patterns tend to be more fluid than in dyadic conflict. Fourth, enduring conflict tends to be of two major types - spatial and positional. Of these, the spatial

\textsuperscript{19} W.H. Wriggins, 'South Asian Regional Politics: Asymmetrical Balance or One-State Dominance'? in \textit{Dynamics of Regional Politics}, (ed.) W.H. Wriggin\textsuperscript{g}, Columbia University Press, New York, 1992, pp.89-152.
seems more common and more difficult to resolve or even manage well. Spatial conflicts seem also to be more common among smaller, more peripheral powers in the international system. Fifth, there is a tendency for enduring conflicts to occur between powers of some equality. This does not mean that there is strict parity but that there is enough parity so that the conflict can be sustained over a long period of time. Sixth, importantly, enduring conflict may well be serious enough to lead on to actual hostilities which may then in turn become part of the cycle of suspicion and rivalry in the future. Lastly, decision-makers and others in an enduring conflict themselves recognise the lasting and repetitive nature of the interactions and the difficulties of exiting from the relationship.

It hardly need to be said that even a cursory and prima facie view of India-Pakistan relations demonstrates the descriptive validity of enduring conflict as a theoretical notion. Prior conflict is very much a part of present perceptions, behaviour and choices. Virtually from Partition, there has been a feeling that conflict between India and Pakistan was likely in the future, perhaps over some period. The Kashmir war of 1948 and various other issues arising out of Partition signalled that this was a real danger. Conflict between India and Pakistan has attracted outside parties, but the two countries themselves, if in varying degrees, as well as outsiders recognise that the disputes are basically borne out of their mutual encounter and that it is dyadic. Most India-Pakistan conflict is furthermore spatial, as we shall see in this study. Positionality is not absent: India's power relative to Pakistan's is an important factor which drives the relationship. But spatial quarrels are the real, day-to-day material difficulties. Furthermore, all said and done, India is more powerful than Pakistan along virtually any dimension, but Pakistan has managed a semblance of equality with India, particularly militarily. This has been sustained by its alliance-like relationship with two major powers—the U.S. and China. Today, nuclear weapons have underlined that sense of equality. Pakistan has always felt it can stand up to India, and India has never quite felt that it can treat Pakistan lightly. In addition, there has always been a
feeling that the relationship can explode into actual warfare. The fact that India and Pakistan have now fought at least four wars - 1948, 1965, 1971, and 1999 (in Kargil) - shows that the possibility of hostilities is a real one. The two countries have also been involved in a series of crises, most recently during the Brasstacks exercise in 1987 and in 1990 in the wake of the Pakistani military exercise, Zarb-e Momin. Finally, the idiom within which India-Pakistan relations is thought about in the two countries reveals that decision-makers and the public themselves recognise that it is a protracted, intense, cyclical, and violence-prone interaction. In sum, the notion of enduring conflict seems apt for the India-Pakistan relationship.

Theories of Negotiations

This study attempts to show that India-Pakistan negotiations on specific disputes can be studied within a framework of negotiation divided into four parts: ripeness, prenegotiations, negotiations, and agreement. The framework is developed after an analysis of various theories of negotiation.

Ever since the termination of British rule in 1947 India-Pakistan relations have been a subject matter of continuous and acrimonious debate in both countries. Despite a history of three wars, the description of the relationship as completely hostile is questionable. Although mutual mistrust is very deep between the two countries, the two governments have shown restraint and time and have again sought solutions to their disputes. This study attempts to show that India and Pakistan sought settlements based on compromises and were careful not to allow public pressure to subvert the working of reasonable accords discussed here as "successes" and "near successes". In this context, the past experience of India-Pakistan negotiations requires attention so as to ascertain the underlying causes of co-operation despite long-term conflict. The concept of enduring conflict itself, as mentioned earlier in this chapter, addresses the problem of repeated conflict, in particular how the outcome of crises and wars influence the likelihood of future conflict between the same set of states. Robert Axelrod has noted
that the "shadow of the future" makes players more likely to co-operate on current interactions. Rivals are influenced by the strong likelihood that they will confront their opponents in future crises or disputes and adjust their behaviour accordingly.\textsuperscript{20} Leng tries to show that future strategies depend on past experience. Coercive strategies may be re-employed if they were successful; or if reciprocity was the strategy, an opponent's prior behaviour in the conflict would determine one's own choice of actions.\textsuperscript{21} Our inquiry here is placed against the backdrop of enduring conflict. It focuses on cases of territorial/resource issues rather than positional ones. And it tries to show that when the shadow of past conflicts looms large and when the shadow of future conflicts looms long, negotiated outcomes are nevertheless possible. The study examines five territorial/resource issues, namely, the Indus Waters Treaty of 1960 and the Kutch agreement of 1965 (mentioned here as "successes") and the Siachen, Sir Creek and Tulbul/Wular disputes (mentioned as near-successes). It does so in the light of different stages of negotiations that conflictual states go through. The analysis of various theories of negotiations suggests that these different stages can be categorised in the following manner:

1. "Ripeness" of the dispute
2. Prenegotiations
3. Negotiations
4. Agreement.

\textbf{Ripeness of the dispute.} As conflict happens to be the rule in international affairs, the task before diplomats and would-be statesman is to search for ways of eliminating conflict. Failing this, their task is to regulate adversial relationships so they


do not erupt in to war or, if they do, that the violence is of limited duration and intensity.

Richard Haass observes, "Ripeness will often determine the success of these diplomatic efforts. Whether negotiation will succeed or fail will hinge on the shared perception by the disputants that an accord is desirable, the existence of leadership on all sides that is either sufficiently strong to sustain a compromise or so weak that a compromise cannot be avoided, a formula involving some benefits for all participants and a commonly accepted diplomatic process".22

There are also numerous instances of diplomatic failures due to lack of ripeness. Among these are the Middle East beyond Camp David, Cyprus, India and Pakistan, the Falklands, the Aegean, Lebanon, Central America, Northern Ireland, and South Africa. The lesson is not that diplomats could have succeeded had they done things differently, but that success is something beyond reach because those at the core of the dispute are unwilling or unable to make peace.

Haass further comments, Ripeness is anything but a natural condition; in most conflicts the main success are absent. Rarely are these missing ingredients either negotiating formulas or inadequate negotiating techniques, the two matters with which observers and even experienced diplomats most often concern themselves. What tends to be absent instead is a far rarer commodity: leaders who find settlement preferable to conflict and who either are strong enough to convince people in and out of the government of this or so weak that they cannot resist the pressures exerted by others. In the absence of such leadership, the temptation is for mediators or others with a stake in promoting peace to compensate with heightened diplomatic activity for what is missing. But too much diplomacy or mediation in an unripe situation can be counterproductive.23

Haass suggests that diplomatic initiatives launched in unripe situations or circumstances are almost certain to fail. When they do, they can discredit otherwise good proposals, diminishing their appeal and utility should circumstances change. Besides, premature diplomacy can weaken the credibility of high level diplomats and waste their limited time. Moreover, acting against the odds can create an atmosphere of despair in which local political leaders most opposed to compromises are likely to thrive. With so much at stake just good intentions or the need to satisfy widespread political pressures does not suffice.\textsuperscript{24}

One can always argue that diplomatic activism often entails a high cost, but then doing nothing is not advisable. Just letting things happen and making no efforts to control them could be politically unrealistic. Standing back may also be irresponsible. And to allow a catastrophe to happen in the mistaken view that crisis and tragedy are prerequisites to successful diplomacy not only ignores the costs of conflict but is shortsighted. It is possible to control the conflicts in various ways. For Haass some costly conflicts have not been settled, and some settlements have not been preceded by costly conflicts. Often, it means undertaking a range of activities - political, economic, and even military, private and public - to change attitudes and calculations. This can make negotiations prosper in the future and lessen the chances that conflict will breakout in the interim. The question is whether crises constitute an additional prerequisite for diplomatic progress. In some instances, crises or wars clearly precede progress. Yet few crises or wars bring about progress in negotiations. As a rule, crisis or near-crisis can contribute to diplomacy if there is a shared recognition that steps must be taken to avoid developments that will be costly to all concerned. A crisis will promote negotiation only if it leaves the parties believing that accord is in their interest and that either is strong enough to compromise or so weak that they have to compromise.\textsuperscript{25}

\textsuperscript{24} Ibid.
\textsuperscript{25} See Haass, op.cit., pp.39-42.
Governments should be aware that behaviour in seemingly unrelated spheres can affect the course of negotiations. This may require steps to decrease the vulnerability of the parties and the negotiations to disruptions, or steps to discount the impact of disruption if it occurs. These can range from physical (reducing vulnerability to terrorism) to the political (warning the public of possible attempts to disrupt so that the sense of shock and crisis will be diluted if they are made). And one must not overlook the importance of luck, for events can so alter calculations that what seemed ripe for agreement suddenly becomes unripe.26

Talking about external pressure or third party involvement, Haass cautious that resolving conflict often requires caution and modesty. There are limits to the ability of outsiders to reshape perceptions or otherwise "deliver" recalcitrant participants. Excessive outside pressure is perceived as bullying, and this is likely to be exploited by the rejectionist leaders who can claim to be protecting the nation against outside interference. And pressure is in any event difficult to manufacture: there is rarely domestic or international consensus for pressure in a certain direction, sanctions are difficult to orchestrate, and in most instances patrons who impose sanctions can be replaced by other patrons.27

Ripeness is a very important factor in making any negotiation successful. It facilitates the job of analysts and practitioners. In any conflict resolution, an assessment of ripeness is necessary to allow the diplomats to avoid doing things that are useless or counter productive. The absence of ripeness can alert diplomats and highlight the need to promote confidence building measures. And just as important, ripeness utilizes the practitioners' limited time and energy and forces them to choose where to concentrate their resources. It is important to keep in mind that ripeness is dynamic, it can emerge as easily as it can disappear.28

26. Ibid., p.141.
27. Ibid.
Vernon Mendis, a former Sri Lankan diplomat says:

Without a proper process in negotiations, no outcome is possible. But sometimes it becomes a problem because then negotiators use it as an excuse for doing nothing. As far as ripeness is concerned, first an issue has to be identified. Then there has to be a desire on the part of the two states to negotiate.

Ripeness is subjective. We do not have to wait till the explosive stage comes. What is important is the mentality of the government. Ripeness can also be relative. Some leaders are able to solve problems and some aren’t. Therefore, it is a matter of judgement.

There are two things that affect the intentions of the negotiators and leaders. First, the pride of a country and second, making the first move. Taking the initiative for negotiations may sometimes be seen as a sign of weakness, hence people don’t get to the table. ‘Why should I go? Let them come!’ This is the political psychology of a country.29

Ripeness exists in disputes in varying degrees. Often only parts of a problem are ripe for negotiations. It would be unwise not to address part of a problem in an attempt to solve the entire problem. There is some risk in this the easier unsolved parts of the problem can in principle lubricate the more difficult ones - but this danger of not addressing the unripe part of problem tends to be out weighed by the need to reduce tensions and in the process demonstrate that progress is still possible.30 Indeed, the issue of a final comprehensive settlement often is best postponed if the intention is to bring about an agreement that at least resolves some elements of a dispute and sets the stage for further progress down the road.

There are several other things which can be done before the negotiations and help create a better atmosphere for negotiations. One alternative is private and public education. A would-be mediator should try to highlight to the governments and their constituents the costs of disagreement and more so the potential benefits of agreement.


They should be gradually convinced to expect compromises. Public diplomacy prepares leaders and the public for the costs of the negotiation process thereby reducing negative fallouts in case some unpleasant events occur.\textsuperscript{31} Educational diplomacy can create an environment in which leaders will be permitted or even pressured to reach a deal. That public discourse, if carefully controlled, can be useful in the phase leading to negotiations is too often obscured by the traditional bias of diplomats in favour of secrecy.\textsuperscript{32}

It is advisable that formal negotiations should come about only when the parties make clear that they were prepared to negotiate in good faith and that there was a reasonable chance of progress. Mediators and other interested parties can also work more directly to create conditions of ripeness. Military assistance, intelligence support, security guarantees, the commitments of an alliance - all these can be extended or held back to persuade leaders to take risks for peace. Similarly, leaders can be strengthened by gestures and steps ranging from high-level visits to economic commitments and projects. Besides, covert aid to various resistance movements can create conditions in which governments will conclude that compromise is preferable to endless conflict.

Confidence building is also an important alternative to doing nothing and traditional negotiations. In regional disputes, confidence building may not only decrease the chance of conflict by miscalculations, but also contribute to stability over the longer term by fostering change at the personal level, rather than just the governmental level. Often this sort of person-to-person diplomacy, which brings together citizens of rival states or entities when the officials cannot be brought together, is characterised as "track two" diplomacy. Informal conversations and meetings on this second track supplement what takes place on the more traditional, formal first track. Track two diplomacy can have a modest impact over time, if not quite the impact that

\textsuperscript{31} Haass, op.cit., p.146.

\textsuperscript{32} Ibid.
its advocates suggest. Confidence building need not result only from formal agreements, it can be informal when politics require it. Circumstances in which compromise and de-escalation would be even more difficult to bring about can be prevented by tacit regimes of reciprocal restraint, for example, by wartime understandings that certain categories of targets are off limits, or that chemical or nuclear weapons are off limits, or by avoiding provocative statements and actions during peacetime.

Even when negotiations are being held, what helps the cause of the negotiations is unilateral gestures by the parties to reduce tensions and promote peace and tranquility. The parties can say and do things to reduce the likelihood of violence, while possibly creating circumstances in which negotiations might prove both appropriate and successful. This helps in lowering the intensity of the conflict. And, as history tells us, in a world of nation-states, conflict can only be managed, not eliminated. Therefore, such unilateral gestures help in keeping the conflict within manageable proportions.

Prenegotiations. Prenegotiation is a blurred concept in the sense that there is no doubt that there is something before full-scale negotiations, but it is less clear whether it is a prelude to or a part of negotiations. It is less clear whether there is a difference in nature between these two and how sharp the boundaries are and how reversible the flows or what the relation is to other contextual events such as crises and regimes.


34. Haass, op.cit., p.150.

Harold Saunders has highlighted the need to 'reach back' more extensively into the period before the decision to negotiate is made and analyse what can be done to help reach that decision.36 His starting point, however, is the decision of third parties to pursue negotiations, and his prenegotiation period covers two functional needs, 'defining the problem' and developing a 'commitment to negotiations' on the part of the parties, which are followed by a third phase, 'arranging the negotiations'. The first two phases center about the creation of a political commitment to solve a problem which has been defined in such a way as to be susceptible of mutually satisfactory management. The fourth phase, negotiation itself, involves efforts to come to closure or to crystallise the previous intent or search for a concrete agreement. However, even then, "it is apparent that in many ways, negotiation has already begun in the earlier stages of the process."37 Hence, the word 'negotiation' is being used, as it often is, in two ways, referring both to the whole process, including the preliminaries and to the ultimate face to face diplomatic encounters.

William Zartman and Maureen Berman identify the first of three phases of negotiations as the "diagnostic stage", the phase of "bringing about negotiations" long before the first formal session opens. Admitting that the beginning moment of the phase is usually not clear cut, they see it going on until the "turning point of seriousness", when each party has perceived the other to be serious about finding a negotiated solutions. After this, the second or 'formula' phase begins.38

37. Ibid., p.29.
Louis Kriesberg and his colleagues regard prenegotiation (without using the term) as the phase in which conflict is transformed into a search for a cooperative agreement by measures including lowering of conflict (de-escalation), a redefinition of relationships, a re-evaluation of the appropriate means or of the effectiveness of alternative means to an end, and a consideration of potential third-party roles. 39 All of these are useful and even necessary components of the preparations for negotiation, and they suggest defining components of the phase although they do not identify or define them per se.

For Zartman, prenegotiations start when one or more parties considers negotiations as a policy option and communicates this intention to the other party. It ends when the parties agree to formal negotiations (an exchange of proposals designed to arrive at a mutual acceptable outcome in a situation of interdependent interests) or when one party abandons the consideration of negotiation as an option. 40 Basically, prenegotiation is the period when the parties move from conflicting unilateral solutions for a mutual problem to a joint search for cooperative multilateral or bilateral solutions. It is clear that the nature of the activity lies not in conducting the combined search for a solution but in arriving at and in convincing the other party to arrive at the conclusion that some joint solution is possible.

Although activities before prenegotiation are part of negotiations, yet by definition and nature, prenegotiation begins when one side considers the multilateral track as a possible alternative to the unilateral track to a solution in a conflict. It lasts until the next phase, when both parties reach this conclusion. Zartman considers prenegotiation necessary as it is not only a definitional construct but also a preparatory phase without which the negotiation would not have taken place. The purpose of the prenegotiation stage is to enable the parties to move from conflicting perceptions and behaviours (unilateral attempts at solutions) to co-operative perceptions and behaviours.


40. Ibid., p.4.
During prenegotiation moves by the parties go in all directions and there are shifts in finding the final agreed outcome, but these shifts are a necessary precondition to that search. These shifts are repeatedly not tested in the actual negotiation, from time to time and constitute an important part of the prenegotiation phase.

The literature on prenegotiation suggests that it is triggered by an attempt to prevent a crisis or to manage a relationship in the wake of a recent crisis. Stein says that crisis avoidance is as important a trigger of prenegotiation as is crisis itself. Zartman argues that the mutual perception of a hurting stalemate informed by a recent or impending crisis leads policy makers to consider actively the option of negotiation. At a minimum, introduction of this additional option changes the relative weighting of the options already under consideration. At a maximum, consideration of negotiation as one among several options encourages leaders to think about the advantages of a co-operative solution in comparison to unilateral action.

Prenegotiation can be an effective strategy of risk management, especially for leaders whose principal purpose is a negotiated agreement. It can permit the parties to reduce uncertainty and to manage complexity at lower levels of risk than a formal commitment to a strategy of negotiation would allow.

Vernon Mendis attaches very high importance to the prenegotiation stage. He says:

In the prenegotiation stage parties meet to agree about what can be done. There is no publicity or statement given regarding this meeting anywhere including the

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parliament. It's an explanatory exercise without any commitment. Just one or two knowledgeable people go to explore the possibility.

In this stage the framework has to be made and scope of it assessed. Here genuine willingness is very important. There should be a feeling of give and take which is very crucial. Once the framework is established, then only does the formal team go and prepare the agenda. In this way before the actual negotiations, one knows what has to be negotiated. A commonness is thus established.

In prenegotiations, a communique is prepared for negotiations or pre-prepared drafts are put together. After the communique (declarations) is released, meetings with individuals who might create problems are held. This avoids problems during formal negotiations.45

A process of prenegotiation also allows leaders to make preliminary judgments about the bargaining ranges and reservation points of others, again without publicly committing themselves to a negotiation. It allows the exploration of requitements and assessment of the likelihood of reciprocity, again at a lower cost. Reciprocity is in part a function of the way problems are framed, the attribution of others intentions and motives, and the degree of trust.46 Prenegotiation can serve as a useful diagnostic instrument by providing valuable information that leaders need to make judgements about the likely risks and benefits of negotiation. The reduction of uncertainty is especially important in an adversarial relationship, when there can be both strategic and political costs to a strategy of negotiation.

Prenegotiation also helps manage complexity when there is a multiplicity of interests, parties and roles. When leaders first consider going to the table, it is frequently unclear who will come, what their roles will be, how the table will be structured and what will be on and off the agenda. So, prenegotiation promises to lower the costs of critical information.47

45. Interview with Vernon Mendis, op.cit.
46. Stein, op.cit., p.9.
47. Stein, op.cit., p.245.
The proposed study would examine the aforesaid five issues—the Indus Waters Treaty, the Rann of Kutch agreement, Siachen, Sir Creek and Tulbul/Wular—in the light of the research on different stages of negotiations. The literature on negotiations suggests that these different stages can be categorised in the following manner:

1. Ripeness of the dispute
2. Prenegotiations
3. Negotiations
4. Agreement

As noted earlier the proposed study will examine the five India-Pakistan disputes from the viewpoint of the four stages of negotiation dealt with in the previous section. A brief survey of the five disputes follows:

**Indus Waters Dispute.** The Indus Water Treaty of 1960 was the outcome of eight years of discussions and negotiations between the governments of India and Pakistan, carried on under the auspices of the World Bank. It brought to an end the long-standing dispute between India and Pakistan on the uses of the Indus system of rivers—Beas, Ravi, Chenab, Sutlej and Jhelum.

**Rann of Kutch Dispute.** The Rann of Kutch agreement of 1965 settled the border dispute between India and Pakistan. There was no dispute as regards the fact that the state of Kutch went to (India because its prince acceded to it in 1947); the dispute was over whether the entire Rann belonged to the state, as India maintained, or whether the northern parts of it were part of Sind, because this province historically had had some influence in those border areas, as Pakistan argued.

**Siachen Dispute.** The dispute which is normally referred to as the Siachen problem really pertains to the Saltoro ridge. The issue requires settlement based on the Kashmir ceasefire agreement of 1949 and the Line of control (LOC) drawn in 1972, which terminates at NJ9842 in the north.
**Sir Creek Dispute.** Sir Creek is a sixty-mile-long estuary in the marshes of the Rann of Kutch, which lies on the border between the Indian state of Gujrat and the Pakistani province of Sind. In 1968, the tribunal which gave its verdict on the Rann of Kutch dispute did not say anything regarding the Sir Creek part of the boundary. The demarcation of boundary in the Creek area and its linkage with the determination of the maritime boundary of India and Pakistan has led to a hardening of the stands of the two parties.

**Tulbul/Wular Dispute.** India and Pakistan disagree even on the name of the controversial project referred to here as Tulbul/Wular. To India, it is the Tulbul Navigation Project; Pakistan calls it the Wular Barrage. At issue is a barrage that is to be constructed by the government of the Indian state of Jammu and Kashmir on the Jhelum River just below Wular lake with the objective of solving the problem of navigation over a distance of approximately twenty kilometers between Wular Lake and Baramula, thus allowing easier movement between Sopore and Baramula.

The Siachen, Tulbul/Wular and Sir Creek issues have not yet been settled, even after years of talks and negotiations. Settlement of these issues not only would have a considerable impact on relations between India and Pakistan, but it could also impart momentum to consideration of other confidence-building measures, most notably mutual and balanced force reductions and perhaps even reductions of defence budgets in both countries. Resolution of these disputes holds out the promise of talks on the larger question of Kashmir in a more relaxed and more cooperative atmosphere.

The study will seek answers to the following questions: What is meant by ripeness of an issue? Is it something natural that happens in the course of time, or does one bring about ripeness through bilateral efforts? Is it worthwhile to carry on negotiations when the issue is not ripe? If negotiation are held in an unripe condition, then what are the consequences? Does it help or backfire? The study will also examine if the five issues were ripe when negotiation started. Besides, how is the handling of unripe issues different from ripe issues?

The study will attempt to study the significance of the prenegotiation phase. How does prenegotiation help the resolution of conflicts? How are prenegotiations conducted? Did these five disputes pass through the prenegotiation phase? Did the
Prenegotiation also provides an opportunity to lower exit costs. Leaders make a commitment to explore negotiation, not to negotiate. The option to withdraw remains open, and leaders can exercise that option before domestic political interests have had the opportunity to organise and mobilise either on behalf of or against negotiation.\textsuperscript{48}

Prenegotiation is preferred by leaders whose interest is not exclusively in a negotiated agreement as the outcome. In other words, it is an attractive political strategy for the management of a continuing adversarial relationship. William Zartman identifies the following seven functions of prenegotiations, irrespective of the order:

(i) **Risk.** Prenegotiation may lower the risks associated with co-operation and may prepare escape hatches in case things go wrong, because exit costs are lower in prenegotiation.

(ii) **Costs.** Prenegotiation provides an opportunity to the parties to assess and come to terms with the costs of concessions and agreement and also with the costs of failure, before firm commitments are made.

(iii) **Requitement.** The literature on prenegotiation shows that beyond a stalemate, requitement or a belief in reciprocity is the most important element in beginning negotiations. Prenegotiations is the time to convince the other party that concessions will be required, not banked and run away with. The chance to explore requitement not only allows parties to see if concessions are possible but also allows them to see what would happen and where they would be if counter concessions were offered.

(iv) **Support.** Prenegotiation allows each party to estimate and consolidate its own internal support for an accommodation policy, to prepare the home front for a shift from a winning to a conciliatory mentality. Each party has a role to play in the other's politics and that party which has first concluded that negotiation is a conceivable outcome has an especial challenge to reach into the domestic political process of the other and help build a supportive coalition for accommodation.\textsuperscript{49}

(v) **Alternative.** The primary significance of prenegotiation is to turn the problem into a manageable issue susceptible of a negotiated outcome. Identifying the problem, searching for options, and setting the parameters are steps along the path to finding a formula. The whole process of multilateral conflict resolution is all about eliminating alternatives, until only one solution remains. It is a process of establishing boundaries around the issues and "getting one's mind around the problem". If it is not clear how the problem is defined, what the limits to the negotiable issues are, and what the agenda for the negotiations is, then prenegotiation has not done its job and is incomplete.

\textsuperscript{48} Stein, op.cit., p.246.

\textsuperscript{49} Saunders, op.cit., Chaps 9 and 10.
(vi) **Participants.** Prenegotiation selects the participants at the table. Just as a certain amount of selection needs to be done among the alternative definitions of a solution to the conflict, so it may also be necessary to select those who are susceptible of coming to agreement from the participants to the conflict.

(vii) **Bridges.** The core purpose of prenegotiation is to build bridges from conflict to conciliation, with changes in perception, mentality, tactics, definitions, acceptability levels, and partners. Prenegotiation also provides a mechanism on a transitional and provisional basis. The former aims at temporary suspension of conflict activities. The latter is meant for building trust. Before prenegotiation, parties are, generally, not expected to trust each other, because each is looking for unilateral advantage; by the end of a negotiation they must have built some mutual trust. Hence, parties conduct small tests of trust and construct mechanisms by which trust can be shown and monitored. 50

Daniel Druckman and P. Terrence Hopmann note that the outcome of a negotiation on an international issue is generally determined through the process itself. This observation is even more pertinent in the analysis of prenegotiation. The process of prenegotiation is less structured, less governed by norms, and less regulated than negotiation. Prenegotiation is an alternative at the outset in part because it is open ended and fluid. 51

Tomlin thinks prenegotiation as having five stages. 52 If in the preliminary stage of problem identification at least one of the parties adds negotiation to the array of options under active consideration, then the process moves to the next stage. In the search for options, in the second stage, leaders consider their options and choose negotiation as the preferred one, to start with. The third stage, when one party makes a commitment to negotiate, marks the shift from whether to negotiate to what will be negotiated. Tomlin suggests leaders preoccupation with internal dynamics gives way to increased attention to the interests of other parties to the negotiation as leaders begin to try to define the scope of the negotiation. The fourth stage is signalled by the


communication of the desire to negotiate by one of the parties to the others. Here parties must agree to go to the table. The fifth and last stage is dominated by the setting up of parameters for the negotiations. 53

Janice Gross Stein does not agree with Zartman that prenegotiation only promotes a joint solution and a commitment to negotiate. 54 Stein argues that it is not always so, and it is attempts to create structures for negotiation that makes negotiation look attractive. So the emphasis is on creating structures that encompasses all the above activities. Stein's analysis considers the specification of boundaries, participants and even agenda an important part of prenegotiation structure. 55

Robert Putnam argues that domestic politics, however, does not only constrain. Leaders are not passive in their domestic arenas. The process of prenegotiation permits political leaders to perform important structuring activity in the domestic as well as in the international arena. 56 It enables leaders not only to manage domestic constituencies but also to attempt to structure domestic coalitions. Putnam observes that the representative of one side has a strong interest in the political strength of the other; in two-level games, there are synergistic linkages in which strategic moves in one game facilitate unexpected coalitions in the other. Prenegotiation, hence, not only helps leaders build political support at home but also to build transnational coalitions. Summits and other meetings are the medium for doing this.

Fisher argues that the prenegotiation process is especially conducive to the kind of fundamental learning that is required to move parties in a highly escalated and protracted conflict towards alternative strategies of conflict management. A shift

53. Ibid., p.251.
55. Ibid., p.252.
towards more accurate perceptions, more correct images, better communications, and a
cooporative framing of shared problems, although extraordinarily difficult, may occur
in the fluid process of prenegotiations rather than on the table itself.57

In a nutshell, prenegotiation triggers, shapes, and structures the negotiations that
follow. The process of getting to the table defines the boundaries, identifies the
participants, and shapes the agenda at the table. For the leaders, whether they get to
the table and what they do, is less significant than what they learn and do as they
consider going to the table.

**Negotiations.** Elliot Richardson, a leading figure of both Democratic and
Republican administrations in Washington in the 1970s, several times cabinet member
and then special ambassador and a skilled negotiator as well, suggested that negotiation
was merely "trying to do a good job".58 This idea is widespread among diplomats,
many of whom believe that if negotiation does require some special skills these come
through an acquired "feel of things" and are beyond capture and transmission as rules
and theories. Zartman and Berman defined negotiation, particularly international
negotiation, as a process in which divergent values are combined into an agreed
decision. Negotiation theory is based on the idea that there are appropriate stages,
sequences, behaviours, and tactics that can be identified and used to improve the
conduct of negotiations and better the hopes of success.59

Although there is no uniform theory of negotiation encompassing and explaining
the whole gamut of its processes, some theories and experiments have been drawn
upon, relating to timing, trust, concessions, rates, threats, side payments, perceptions,


justice, communications and learning, among others. These have given us some important insights into the determination of outcomes. The entire process combines all these elements, in ways that may not be theoretically comprehensible, but the parts can be examined for a better understanding of the whole.

Zartman and Berman identify three stages in the process and associate different types of problems and behaviours with each stage:

1. diagnose the situation and decide to try negotiations;

2. negotiate a formula, a common definition of the conflict, in terms amenable to a solution; and

3. negotiate the details to implement the formula on precise points of dispute.60

While this is a useful, commonsensical schema, there is little have to suggest how leaders can do these three things - diagnose, negotiate a formula, and negotiate implementation details to produce successful outcomes. Put differently, no formula exists to tell leaders and negotiators how to win. One can only learn how to better the chances. This can be attributed to the following:

First, negotiation is a symmetrical process. Every piece of advice that is available to one party is available to the other, every tactic is open to one as well as the other, both parties can play it tough and come to no agreement or play it soft and give in on crucial points. If one could figure out when the last minute was, one could make an offer one second before the deadline that was minimally acceptable to the other side and too late to be rejected, thereby deciding the terms of the agreement. But if one side had this information - by any other way than by luck and by feel - the other side could have it too. Indeed, if both sides play such strategies as if they were unilaterally available, deadlock is sure to occur.61

Secondly, negotiation is not a finite process. Moves can go in all directions, including backtracking. As long as either side can stop or change direction, it is not

60. Ibid.

possible to provide a deterministic theory or winning strategy for the process. Furthermore, the positions, stakes, issues, demands, and minimums of the parties are not all known, and even when "known" are not fixed. Indeed, the essence of the process is to juggle, combine, eliminate, and change any of these elements, and this may involve changing one's own values as well as those of the other party or parties. There can be more and less effective ways of doing this, but the indeterminate nature of the ingredients keeps one from setting forth any theory that aspires to be determinate or any strategic recipe that is guaranteed to win.62

Thirdly, the participants in a negotiation both anticipate and react. So they have double motivations. One may well react to one's own or the other party's previous moves, but there is no guarantee that either party will continue to react in the same way. When, instead, a party begins anticipating the other party's reactions, a process of indeterminate regression begins. One can suggest very different behaviours, depending on when the process stops.63

A key concern in negotiation theory relates to the fact that few situations are one's of pure conflict and that there are many strategies and behaviours appropriate to such an environment. The theory of games has been developed mainly by mathematicians and economists. Martin Shubnik and Oscar Morgenstern were among the first to recognise the importance of game theory. It is a method of analysis and also of selecting the best course of action. "It is a body of thought dealing with rational decisions, strategies in situations of conflict and competitions when each participant or player seeks to maximise gains and minimise losses."64

62. Ibid.
63. Ibid.
Crucial from the point of view of negotiation behaviour is also the game theory notion of non-zero-sum encounters. The core of the negotiation process is the transformation of zero-sum situations and attitudes into positive-sum solutions and approaches. In the zero-sum situation, one person's loss is the other person's gain. Zero-sum perceptions are characteristic of a conflict before it becomes the subject of negotiations. The secret of negotiation is to change that perception and in the process to change the stages into items that can be used to benefit both parties. In a positive sum situation each party comes out with some benefits; no one comes off unilaterally or exclusively best, but all parties come off better than before even though one party may come of "more better" than the other. 65

Harold Saunders argues that the key to getting negotiations started is in understanding why people fear coming to the table. 66 Early in the negotiating process each party will express its feelings, objectives, and aspirations in relation to a situation, interpreting the situation by itself and in relation to the larger worldview and objective of policy makers. It may seem academic to say that the negotiating process begins with a definition of the problem, but, in policy making, how one defines a problem begins to determine what one will do about it.

Since negotiation is shared decision-making on a shared problem, one must understand (a) how nearly unified or divided each party is internally in defining its objectives and (b) how the parties differ from each other in their definition of a problem. Realistically speaking, unanimity cannot be expected before the negotiations start but by comparing definitions to see where they diverge, essential analytical steps can be taken in identifying the barriers. 67

A critical moment in the preparation for negotiations comes when each party, through its own political processes, attempts to form an internal political base of operations. In doing so, the party must try to narrow or eliminate differences between constituents who view their objectives differently or must at least try to establish a framework within which progress can be made towards reconciliation. The political steps that leaders must take for that political purpose become part of the larger political process that surrounds a negotiation.68

An early condition for negotiation is that each side must define the problem as being at least partly shared with another party. Each side's definition must somehow acknowledge the hopes and pain of the other side. Only when each side sees the other side's problems as part of the problem will the two definitions together suggests that a jointly attempted solution is worth considering.69

The foremost task in trying to break down the barriers to negotiation, then, is to understand what might change a party's picture of the problem. The intention is to strengthen individuals on all sides who are ready to move towards a common or complementary definition of the problem as the basis for negotiation.

The most critical period in a peace process comes when leaders are deciding whether to commit themselves to a negotiated settlement. If policy makers are uncomfortable with the direction that the present situation seems to be taking, they begin looking for alternatives. Particularly if they believe themselves unable to achieve what they want by unilateral action, they begin thinking that negotiation - a bilateral approach - may be necessary, possible, and worth exploring. Although negotiation itself

68. Saunders, op.cit., p.22.
69. Ibid., p.24.
is the central element in the negotiating process, the time when a commitment to a negotiated settlement crystallises in policy makers' minds is the moment of truth, the real heart of that process. Without that commitment, negotiation cannot start.70

The task of the leaders before the negotiation begins is to judge (1) whether a negotiated solution would be better or no better than continuing the present situation, (2) whether a fair settlement could be fashioned that would be politically manageable, (3) whether leaders on the other side could accept the settlement and survive politically, and (4) whether the balance of forces would permit agreement on such a settlement.

Agreement. Finally the process reaches the fourth stage, that is, of agreement. It is not necessary that every negotiation has to end in an agreement. It can go either way. The negotiation may break up without producing any agreement.

Negotiations end when there is agreement on the outstanding issues. This can come when parties have exchanged agreements on each other's positions or when, through concessions or through joint discovery of implementing details, they have both moved to a point which they feel is the best they can do under the circumstances. Agreement can come about simply through a full working schedule of solutions.71

Conclusion

This chapter formulates a conceptual and theoretical framework which will be used as a yardstick for analysing the five disputes in the following chapters. This chapter categorised India-Pakistan relations as being locked in an "enduring conflict". In short, enduring conflict has been defined as repeated conflict among the same set of states. The study noted that 45 percent of militarised disputes take place in the context

71. Ibid., p.191.
of enduring conflict. This highlights the importance of considering prior interactions between states. In this context, the past experience of India and Pakistan of settling their disputes (here referred to as successes and near-successes) has been studied to determine the underlying causes of cooperation despite long-term conflict. The study analyses the India-Pakistan negotiations against the backdrop of enduring conflict in order to highlight that even when the shadow of future conflicts loom large, negotiated solutions are possible.

After a review of various theories, the chapter formulated a framework for understanding negotiation which divides the phenomenon into four stages, namely, ripeness of an issue, prenegotiation, negotiation and agreement. Ripeness, the first stage, was considered an essential condition for dispute settlement. It was defined as a 'shared perception of the desirability of an accord among the parties'.

The second stage or prenegotiation is the next important phase when the parties interact with each other to 'define the problem' and then develop a commitment to negotiate. During this period the parties exchange informations and other relevant facts, without actually meeting formally on the negotiation table.

Prenegotiations is an important activity as it sets the pace and tone for actual or formal negotiation in the third phase. In negotiations, the parties discuss the dispute on the basis of gathered information in the prenegotiation stage. Later, if the negotiations succeed, the dispute reaches the final stage the signing of an 'agreement' and its implementation.

The chapters on Indus Waters, Rann of Kutch, Siachen, Sir Creek, Wular/Tulbul will be studied and analysed in the backdrop of this theoretical framework. The objective of the study is to show how cooperation is made possible in a relationship of enduring conflict.