The Politics of International Law and India-Bangladesh Land Border Management: A Critical Theory Approach

Humayra Morsheda Mishu

Nottingham Trent University

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Abstract

This thesis explores the management of specific aspects of land border disputes on the India-Bangladesh frontier. Drawing on a critical theory approach which problematizes the politics of international law, it asks how a partial border dispute resolution between India and Bangladesh became possible and how and why it proved difficult to achieve in and after 1974, and it suggests that the interaction of law and politics is a major underlying cause of the patterns in that resolution. The specific approach used is taken from Koskenniemi (2005, 2011), who has argued that international legal theories tend to universalise conflicts which are better understood as specific problems in specific historical and political contexts, and that it is the politics of a dispute rather than the legal dimensions as law which shape the processes and possibilities of their resolution. The research asks how effective the available means for conflict resolution have been and why the ongoing border dispute between India and Bangladesh have proved so intractable. The employed methods, derived primarily from Strydom's (2011) account of critical theory methodology, use a qualitative analysis approach to examine substantive issues between the two countries, their history, diplomacy and geography, and to examine carefully how the disputes are seen, defined and acted upon by key players on both sides. The thesis includes a critical analysis of the India-Bangladesh land border dispute with the primary focus on the weaker actor, making sense of Bangladesh's response to attempts to dominate its border policies by a much larger country that was also, in the early 1970s, the sponsor of its independence. The thesis draws on a wide range of original sources, including primary documents sources from both sides and interview sources conducted by the author. It also includes a critical appraisal of the process of negotiation and the interlocking of legal and political arguments in the management of the conflict. The dispute has been partially resolved since the thesis was started, and the analysis aims to explain both the management and the degree of agreement reached by 2015.

Acknowledgement

ABBREVIATIONS

BDR   Bangladesh Rifles.

BGB   Border Guards Bangladesh.

BJP   Bharatiya Janata Party.

BNP   Bangladesh Nationalist Party.

BSF   Border Security Force (India).

CTIR   Critical Theory of International Relations.

CUFL   Chittagong Urea Fertilizer Limited.

ICJ   International Court of Justice.

INC   Indian National Congress.

                       (Often called Congress).

JBWG   Joint Boundary Working Group.

KSS   Kuchibari Songram Shomiti.

                       Kuchibari Movement Committee (translated).

LBA   Land Boundary Agreement.

NDA   National Democratic Alliance.

SAARC   South Asian Association for Regional

                       Cooperation.

SAFTA   South Asian Free Trade Area.

SEATO   Southeast Asia Treaty Organisation.

TMC/AITC   Trinamool Congress/

                       All India Trinamool Congress.

TSS   Tin Bigha Songram Shomiti.

                       Tin Bigha Movement Committee(translated).

ULFA   United Liberation Front of Assam.

UPA   United Progressive Alliance

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Introduction

This research focuses on interstate border dispute management by exploring the case study of the India-Bangladesh border dispute management, looking at specific aspects of land border disputes. It also explores the politics of this dispute settlement. This is not a study of international law but rather of the politics of international law. Drawing on a version of the critical theory approach which problematizes the politics of international law, it asks how a partial border dispute resolution between India and Bangladesh became possible and how and why it proved difficult in and after 1974 up to 2015. It suggests that the interaction between law and politics is a major underlying cause of the patterns in that resolution.

Aims and objectives

 1. Critically analyse and assess the practice of Bangladesh and its neighbouring states on the settlement of land boundary disputes in the light of the principles and political practice of the international law of conflict management.

 2. Explore how the management of border disputes can be explained with particular respect to Bangladesh's external relations (regarding Bangladesh's relations with India), drawing on Martti Koskenniemi's (2005, 2011) version of the critical theory of the politics of international law.

 3. Critically evaluate the management of this dispute.

Theory and Methodology

The particular theoretical approach used in this research has been taken from critical theory. The major tasks of critical theories are exploring the "ideologically distorted subjective situation of some individual or group" (Sumner, 2003, p. 4) and understanding the hidden forces which created that situation and emancipation. Critical theory also works with the concept of 'reconstruction', which is one of the most important concepts in the methodological understanding of critical theory. This concept points towards a methodological direction of critical theory which Strydom and others characterised as 'reconstructive explanatory critique' (Strydom, 2011, p. 136). This dimension of 'reconstructive explanatory critique' is a significant characteristic of critical theory, according to Strydom (2011). This defines the specific Critical Theory of International Relations approach which this thesis uses.

The research begins by problematising 'inter-state territorial conflict management' and its conceptual structure of language, process and policy, which allows it to demonstrate an initial reconstructive explanation of the chosen topics. In doing so, it draws on Martti Koskenniemi's (2005, 2011) account of the politics of international law. His work forms a

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significant contribution to the analysis of the law of conflict and also critically analyses territorial conflicts. However, the major limitation of his work is that it has not so far been used in the specific analysis of border disputes. To avoid the limitations of his work, the study attempts to explain his theory more specifically by building an explanatory critical theoretical framework grounded on the key explanations of the major theoretical question the research implies; how does international law deal with international dispute specifically? In building this theoretical explanatory framework, the research primarily relies on (but is not limited to) a critical reading of Koskenniemi (2005, 2011) and also similar arguments from a critical reading of Higgins (1994) and Henkin (1979). This framework potentially leads the research to incorporate the critical theoretical assumption of the international law of conflict management and analyse the constituting elements creating the problem of India-Bangladesh border dispute management as well as build a reconstructive critical explanation of the blocking forces and factors challenging the success of this management. Therefore, it enables the research to analyse "dialectical tension and contradiction" (Strydom, 2011, p. 138) at the interface between this presupposed or standard explanatory framework and the actual problem of the India-Bangladesh border dispute.

This research employs critical theory's methodological framework along with qualitative methods for gathering information. It uses qualitative content analysis together with a qualitative approach for analysing documents. It also uses some _quantitative data_ of the economic relations between these two countries to provide ancillary support to the qualitative analysis employed in this research, but doesn't employ quantitative methodology. It deploys knowledge reconstruction as a strategy, primarily relying on Strydom's (2011) critical methodological framework of reconstructive explanatory critique. The first phase of the critical methodological framework employed in this research is problem identification. It relates the research with the remaining phases. It also links the research with the logical-presumptive idea of the problem; its initial theorization leads to diagnosis and knowledge construction. This initial theorization follows critical theory's own tradition, which primarily relies here on Martti Koskenniemi's (2005, 2011) *The Politics of International Law*. The second phase of the critical methodological framework aims to engage the object domain (i.e. the problem of India-Bangladesh border conflict management) with its methodology. It focuses on the necessity of explanation and identifies evidence and concealed factors which need to be taken into account. This is basic work of diagnosis which is analytic and normative in nature, which also includes reconstruction, and which "is presupposed by the subsequent explanation and, particularly, the kind of critique that is characteristic of Critical Theory. This means that Critical Theory's engagement with its object traverses a number of methodologically distinct yet closely interrelated dimensions" (Strydom, 2011, p. 156). This diagnosis starts with an analysis of the actual condition of the real problem. This analysis requires different relevant methodological tools.

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In this research, the employed methodological tools are critical realist ontology, interpretivist epistemology, normative axiology, use of language analysis, qualitative methods, ethical consideration, positionality and reflexivity. The final stage of the critical methodological framework is validation and practical application (all these ideas are elaborated in chapter 3).

Thus, by analysing the case study of India-Bangladesh border dispute management through the critical methodological framework along with critical theory used in this thesis, the research argues that the context of the India-Bangladesh border dispute resolution is grounded in law, politics and power interwoven together. This dispute resolution has been significantly influenced and reshaped primarily by politics and power, particularly by domestic and international politics. In the context of the India-Bangladesh border dispute, the unequal power relations between India and Bangladesh is an unavoidable factor. But, equally, the relationship between the two and the management of the boundary dispute, including its recent partial resolution, cannot be only reduced to power relations. Leadership has continually been a factor. Law plays a role in the management of these issues, but understanding its role requires a more nuanced analysis than an insistence that 'law' and 'politics' go head to head against each other. They interact, shape each other, and jointly explain outcomes.

In this research, the author has explored a wide range of sources, many of which are original primary sources. That includes a range of official documents, news reporting from a variety of sources, interviews conducted by the author herself, and other primary sources alongside a rich body of secondary literature. One of the main claims to originality in the work is the wide range of original material which other scholars have not yet been able to use. At the same time, the thesis recognises both the limitations of the sources accessed, the safety issues which prevented more field research, and the impact of the author's own position on her assessment of the sources used.

Finally, the research provides an analysis of its case study of India-Bangladesh border dispute management, providing an example of developing critical theory but also an example of exploring the interface of law and politics in global relations, which other researchers might find valuable to follow or at least to draw upon. At the very least, by providing a detailed and fully developed case study, the research offers an example of a research procedure from which others might learn; the main claim to originality of this research has been demonstrated in the concluding part of this thesis, the last section of the conclusion.

Chapter Structure

Chapter 1 provides an account of the employed literature in this research, setting the main parameters of the work. Chapter 2 offers an understanding of theory and the theoretical underpinnings of this research. Chapter 3 demonstrates the methodological framework along with the specific methods employed in this research. It includes an account of the author's justification for its methodology, methods, epistemology, ontology and axiology. Chapter 4 provides a critical clarification of the concepts of the 'international law of conflict management', while chapter 5 does the necessary task integral to critical theory of setting the context of the research. Chapter 6 explores the relationship between the two key state actors after 1971; it also critically demonstrates the recent disputed issues of the India-Bangladesh border conflict. Chapter 7 explores, analyses and explains as far as it can the nature of the negotiation process which India and Bangladesh have followed to reach the partial solution agreed as of 2015. It also provides a critical explanation of the contingent causes which undermine/determine the success and failure of these negotiation as a process of dispute management. The research ended at 2015 and other scholars will in due course take the story further as and when other agreements can be reached.

Chapter 1

Literature Review

1.0 Introduction

This research explores the international law of conflict management, challenging the success of dispute resolution in the case of the India-Bangladesh border. There is not much literature on this topic, which has enjoyed strong recent interest and upon which the thesis builds. This chapter aims to provide an explicit description of the literature employed in this research. The employed research methods build on desk research and critical reading of relevant documents and primary and secondary sources. Therefore, essentially the literature used for research derives from those primary and secondary sources. This is not an experimental research, but it does include some semi-structured interviews to strengthen the analysis.

The Bangladesh-India border conflict settlement is considered to be a significant case of conflict management. First of all, it is rooted in colonial and post-colonial history as well as cultural, linguistical and religious commonality. Secondly, the geographical positioning of disputing countries as well as, thirdly, the domestic and international political influence have shaped the settlement procedure and, finally, this long-standing (more than 44 years) dispute has recently reached a conclusion. Moreover, using a critical theoretical framework, specifically the approach by Martti Koskenniemi (2005, 2011), whose work has been influenced by Critical Legal Studies, also adds significant originality to this research (For a detailed discussion of the original contribution of this research, see pages 274-277).

As discussed earlier, the India- Bangladesh border dispute management has recently reached a conclusion, so this is a relatively new topic. For this reason, there are not many primary sources of literature on this subject. So, information and documents have been collected from various sources including newspaper articles, journal articles and so on. The research has been enriched through some semi-structured interviews, governmental speeches, press releases and so on. To provide analyses, the research has also included some secondary literature (see chapter 3 for more details).

1.1 Theory

The research uses a version of critical theory, specifically that of Martti Koskenniemi (2005, 2011). Martti Koskenniemi is considered as a critical theorist, but critical legal studies (CLS) also influenced his work. Critical theory is one of the most recognized and leading schools of thought in humanities and social science. The original concept of critical theory came from the Frankfurt School, which was established in 1923. Roach (2013) and Patrascu and Wani's (2015) works are important in tracing back the origin of critical theory. "Max Horkheimer and Theodor Adorno (1972), Herbert Marcuse (1972), Walter Benjamin, Erich Fromm, Jürgen Hebarmas (1971), Lukacs and Gramsci (1971), Jurgen Habermas, Axel

Honneth, Robert Cox, Mark Hoffman and Richard Ashley's works are turning points, especially in the field of International Relations" (Patrascu and Wani, 2015, pp. 1390-1391). Devetak (2013) outlines the origin of critical theory in the context of international relations. He thereby analyses the "political nature of the knowledge claim" (Devetak, 2013, p. 163). Linklater's (2007) work is quite relevant and significant to understanding critical theory as well as determining the emancipatory goal of critical theory, which is, according to Linklater (2007), the provision of social freedom. Farrands and Worth (2005, p. 45) argue that the goal of critical theory is to provide a "greater self-awareness … without which a politics of reflexivity is impossible; greater empowerment for those previously oppressed by structures of domination, so as to enable them to resist and transform those structures in their favour; and a recognition that shared knowledge provides a key element in an emancipatory strategy". However, to demonstrate the emancipatory goal of critical theory, Linklater imposes some restrictions/conditions to qualify any work as critical, but his work is unable to clearly identify those conditions with any great accuracy. Critical theory also explains its connection with knowledge construction. The works by Horkheimer (2002) and Ashley's (1987) are important in this perspective. The critical theory of international relations often provides consideration to explain relations between knowledge and interest. "As Richard Ashley asserts ... 'Knowledge is always constituted in reflection of interest', so critical theory must bring to consciousness latent interests, commitments, or values that give rise to and orient, any theory" (Ashley, cited in Devetak, 2013 p. 168). Critical theory provides importance to the needs and interests of human being by denying the 'subject-object distinction'. This is termed as "valuable knowledge" in critical theory (Linklater, 2007).

There is an obvious connection between critical theory and critical legal studies. CLS argues that the established legal practice is developed and extends from the power relations between law and society and that legal rules have been set up to serve the interest of the powerful actors who create it as well as to justify social injustice. Hunt (1986) and Binder's (2010) works are significant in exploring critical legal studies. Hunt (1986) emphasises the critical legal studies movement (1970-1980). Her writing is considered as an initial contribution to the critical legal studies literature. She argues about "the theoretical problems confronting critical legal studies revolve around the … contradictory reality of law" (Hunt, 1986, p. 45). An indirect link could be found between CLS and critical theory in Caudill's (1986-1987) writing, in which she analyses Marx and Habermas's work, but she ignores it by only emphasizing a critical appraisal of the CLS movement in the discourse of law. Balkin's (2008) work is quite significant in this respect. Balkin (2008, p. 7) argues "They well recognized that rule of law values and right discourse were hardly perfect – after all, they had been used repeatedly to justify slavery and the subordination of women – but they had also allowed people to speak out against and to restrain the worst excesses of power … these critical scholars retained a sense of the political importance of rules of law values

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and right discourse". However, critical theorists like Martti Koskenneimi (2005, 2011) emphasise both the contradictions of legal regulations and the political importance of legal rules to draw the complete picture, combining both critical theorist and critical legal scholar thought.

As stated earlier, this research employed Martti Koskenniemi's (2005, 2011) argument. In his book *From Apology to Utopia: The Structure of International Legal Argument* (2005), Koskenniemi (2005, p. 18) argues that the key to understanding the structure of modern international law discourse lies in the methodological separation between two hypostatized entities called 'doctrine' and 'theory' (see page 44 for more details). Koskenniemi (2005, p. 24) argues that "International law, meanwhile, is a through-and-through practical discourse aiming to be objectively different from both the self-serving spin-off power politics and the transcendental nonsense of the moral discourse". Grounding in his work, this research seeks to ask who the system of rules benefits and how power is expressed through legal regulation. To pursue a clear understanding of Koskenniemi's work, Jouannet's (2011) work is very supportive, providing a critical introduction to Koskenniemi and his work. In her work, she describes the foundation of Koskenniemi's work from a critical viewpoint and also critically evaluates Koskenniemi's methodology and positionality. At the same time, she firmly tries to relate his work with critical legal studies (see page 43 for more details). Nevertheless, this research was unable to deny the influence of critical legal studies on Koskenniemi's work, but it is also true that his works have developed through his assumption and interpretation of legal rules and practice. Moreover, his methodology is both challenging and unique.

Koskenniemi's work *The Politics of International Law (2011)* is more significant from the perspective of this study as he provides a critical explanation of international law and politics (for more discussion see pages 43-48). Compared with Jouannet's (2011) work, Beckett's (2006) critical arguments add some more significant points in demonstrating Koskenniemi's thought. It is also considered as a potential literature to fill the gaps led by Jouannet. The aim of his work was not merely to criticise Koskenniemi's argument, but also to practically "elucidate Koskenniemi's writings and arguments in an attempt to demonstrate their *consistency;* but also, to question their limits, their radicality, and their utility" (Beckett, 2006 p. 1046). Bernstorff (2006) reveals a similar thought to that of Becket (2006). The particularity of Bernstorff's (2006) work is that it critically evaluates Koskenniemi's work. A critical point that is noted in Beckett's work is that he doesn't completely agree with Koskenniemi's arguments. It is understandable from the context, as being critical is a precondition of a critical review. Regardless, Higgins (1994) went through the same critical appraisal in evaluating the discourse of international law, but she reached a different conclusion from that of Koskenniemi. However, in employing Koskenniemi's argument, the

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research found a limitation, namely that Koskenniemi's argument has been used to examine a number of different kinds of dispute and has also helped to explain different territorial conflicts (i.e. Lake Lanoux case, 1957, Eastern Greenland case, 1933, etc.) including many post-colonial conflicts, but has not so far been used in a specific analysis of a border dispute. This study will fill this research gap by employing his critical appraisal in evaluating the case of the India-Bangladesh border dispute. In doing so, the research constructs an explanatory critical theoretical framework that is built on, but is not limited to, a critical reading of Koskenniemi. It also pursues similar arguments from a critical reading of Higgins (1994) and Henkin (1979), which are relevant to this analysis.

In this context, Higgins' (1994) work is very significant for this explanatory framework as it provides a critical explanation of the key issues of international law to demonstrate the necessity of choice to be made between the existing perception of international law as a natural rule and the reality of international law as a decision-making system. Her work is very substantial for explicating Koskenniemi's argument of the international law of conflict management by providing a clear conceptual framework to see how international law is used to address difficulties in worldwide problems, including conflict management. Although her work provides an important contribution to the explanatory critical framework employed in this research, it was unable to complete it. Henkin's (1979) work fills that gap by providing a clear picture of a long-needed reappraisal of the relationship between international law and politics, which is essential to explicate Koskenniemi's work and which subsequently helps the research to complete the critical explanatory theoretical framework.

1.2 Methodology and Methods

The research employed a critical theoretical methodological framework, reflecting the idea of Strydom (2011). In his work, Strydom (2011) uses the critical theoretical significance of 'reconstruction' as a basis for his critical theoretical methodological framework. This could be considered as a comprehensive restatement and development of current critical theories' methodology. It also places importance on the concepts of "reconstruction, normative and casual explanation, explanatory mechanism and communitive framework which enables the critical theory to link up with its addressees" (Strydom, 2011, p. 1). His work is generally considered as a contemporary methodological approach which needs further explanation to be used in specific research. For this purpose, the research derived a conceptual understanding of the methods and methodological framework from Henn et al. (2009), Morrow and Brown (1994), Lamont (2015) and Wight's (2006) work.

Henn et al. (2009) aim to help the social researcher to become more efficient in their research by creating 'awareness'. The most important part of their work is that they critically assess the different research methods and techniques of conducting research and its

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applications. They also include some exercises by which a researcher can explore different types of research methods and choose the appropriate one. Morrow and Brown's (1994) work is quite significant in the context of this research. Compared with Henn et al., (2009), Morrow and Brown's (1994) writing is precise and lively, and they precisely describe the history of the critical theory and its aims and objectives, whereby most important aspect of their writing is that it demonstrates the power structure (political and ethical) of society and its domination on human life. It also discusses the relations between critical methodology and critical theory in the context of doing social research. Nevertheless, both works are considered very helpful for this research as they provide precise methodological instructions for doing critical (social) research.

Associated with the literature stated above, Lamont's (2015) work is imperative. Lamont explicitly emphasises exploring various methods of international relations research. He also includes critical methodological traditions of international relations. His work is a practical guide to doing research in international relations and also focuses on qualitative and quantitative research methods. It also tries to cover the entire methodological debate of international relations, which seems to be very ambitious. Nonetheless, the work explicitly focuses on different methods of international relations, although there is a good attempt to cover the methodological issues, especially ontology, epistemology, etc. However, it to some extent ignores the issue of positionality, axiology, and the agency-structure problem. One of the most important drawbacks of the book is that it discusses critical methodological tradition as a part of interpretivist methodology, which couldn't provide an explicit discussion in this context. Wight's (2006) work contends that 'politics' is the 'ontology' in her work, which is relatively significant to understand the ontological grounds of conducting critical social research. One major limitation of her work is that, although she provides a good defence of the importance of the ontological position in the field of theoretical analysis of international relations, its scope is quite uncertain. It is not clear enough how her contribution can advance the theory of social science, especially regarding international relations. It is not even clear how her contribution of unpacking the agency-structure problem and relating it to ontology could further develop the methodological practice of international relations. Moreover, her conclusion on epistemology and methodology is also not sufficiently notable. However, the research provides an example of doing critical research by employing critical theoretical methodology, reflecting Strydom's (2011) work with essential methodological tools mentioned here, which will provide a better understanding of doing research by using this specific critical theoretical methodological framework.

1.3 Territorial Disputes: Causes and Resolution

Okano (2010) discusses some of the leading causes of territorial disputes and some significant ways in which territorial disputes used to be handled in the light of international law. As a government official, Okano (2010) used his personal experiences of being a part of decision-making processes of the Japanese government when involved in border disputes with its neighbour countries. He discusses the most typical reasons for territorial and maritime disputes and the best procedures to deal with them. Most significantly, he argues that territorial disputes occur because of a lack of clarification of a treaty, whereas some other scholars, such as Anderson (2008), Hensel (2000), and Vasquez (1993), focus on geography as a primary reason for territorial dispute. Mandel (1980) argues that inequity in terms of technology and power are the primary cause of territorial disputes.

It is contended in this study that in the case of Bangladesh's territorial conflict with India, geographical location is one of the major causes of this conflict. However, "The territorial perspective suggests that territorial issues are especially salient and especially likely to lead to conflict and war" (Hensel, 2000 p. 12). Hensel (2000 p .12) gives salient importance to territory for three reasons; "1. Its tangible contents or attributes 2. Its intangible or psychological value and 3. Its effects on a state's reputation". Similarly, Anderson (2008) relates territorial conflicts with boundaries. He argues that, "-it is apparent that a high proportion of all current conflicts is in some way related to boundaries. In the modern world, boundaries are as close as anything can be to a fighting zone" (Anderson, 2008 p. 135). Discussing some relevant examples, Anderson contends that territorial conflicts are closely related to territorial boundaries. Therefore, any discussion regarding territorial conflict should be conducted within a geopolitical approach. The constraint of his work is that he ignores other significant causes of territorial conflicts while emphasizing geography. It is appropriate that he significantly relates politics with geography, but the problem is that he overlooks the importance of law (international) as a cause of boundary conflict. However, Hensel (2000) also identifies similar reasons for the creation of territorial conflicts. According to him, "Many territories have been the subject of dispute because they contained valuable commodities or resources, such as considered valuable because they provide access to the sea or to other commerce routes, particularly when they include deep water ports, warm water ports or control over strategic waterways" (Hensel, 2000 p. 12). He further includes that, "Territory may also be seen as important for its population, particularly when it includes members of ethnic or religious groups that inhabit a neighbouring state" (Hensel, 2000 p. 14). The aim of Hensel's (2000) paper is to provide a theoretical argument which suggests a link between inter-state conflict and geography. Like Anderson (2008), Hensel's (2000) aim is to demonstrate the role of 'geography' as a source of the territorial conflict. His emphasis is on military conflict caused by territorial disputes. Hensel's writing is an excellent

piece of work, but he builds his arguments only by considering the realist point of view. Moreover, not all territorial disputes always end up in military conflict, and they are also potential threats to the peace and security of existing international system.

Typically, the reasons for territorial dispute have been established on the grounds of power politics, which is not deniable. However, it is not somewhat justifiable to agree with the realist claim that territorial conflict only occurs for selfish reasons, especially for reasons of political power (Diehl and Lepgold, 2003). Unlike these authors, Forsberg (1996) attempts to analyse the causes of territorial dispute from a normative point of view rather than a power political platform. According to him, it is always seen in the existing literature that territorial disputes are analysed from the context of power political assumption, but "-these models of explanation are severely misleading, since many of today's territorial disputes can be better explained from a normative perspective, by referring to subjective conceptions of justice and international norms" (Forsberg, 1996 p. 433). The dilemma within his work is that while he does not deny the influence of power politics in territorial disputes, but he does not accept 'power politics' to be the primary cause of territorial dispute and that it has the most substantial effect in resolving a territorial dispute. Moreover, as his work is concentrated on 'norms,' methodological problems arise because 'norms' are complicated to measure. Compared with Forsberg (1996), an entirely different argument is provided by Johnson and Toft (2013). According to them, "Territory is central to some of the most vexing cases of conflict, especially where different groups lay claim to the same ground. Jerusalem, for example, has momentous significance for Christians, Jews, and Muslims alike" (Johnson and Toft, 2013 p. 7). Their writing attempts to question the reasons behind the importance of humans in dealing with territory and territorial dispute. However, their work provides new and valuable insights into the analysis of territorial dispute, but it is overlooked compared to other relevant perspectives (such as power politics, recourses, etc.), which leads to an incomplete analysis so far. Mancini's (2013) work *Uncertain Borders: Territorial Disputes in Asia* is very significant in the context of this research. This is an attempt to cover the entire causes of territorial disputes. After evaluating existing and resolved territorial disputes in Asia, he suggests that a territorial dispute should be addressed in the arrangement of regional or sub-regional organisations for a quicker and more stable solution. However, the problem is that this proposed approach is quite optimistic and challenging, which he doesn't deny.

McCorquodale and Pangalangan's (2001) work is very informative in the context of this study. Their article demonstrates some critique of existing international law of conflict management. It is contended in their work that, "- these approaches are largely trapped within the framework of nineteenth-century colonial concepts. As a consequence, the international legal system — which is still largely constructed on ideas of a certain type of

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territorial sovereignty — recreates and affirms the dispositions by colonial powers, it privileges certain voices and silences others and it restricts the identities of individuals to the limits of state territorial boundaries" (McCorquodale and Pangalangan, 2001 p. 867). Carter and Geomans (2011) reveal completely different arguments. They argue that the new boundaries (determined in the 20th and 21st century), which were based on their previous or colonial demarcations, are relatively stable in the context of the territorial dispute. According to them, "Borders drawn along previously existing internal or external administrative frontiers experience fewer future territorial disputes and have a much lower risk of militarized confrontation if a dispute emerges" (Carter and Geomans, 2011 p. 301). However, both arguments are significantly relevant to this research as they both analysed territorial disputes, albeit focusing from a different angle.

Two more notable texts are Hansen (2008), who has shown substantial interest in the critical theory of conflict resolution, and Lowe (2007), who discusses the current principles of international law of conflict management. Hansen (2008, p. 404) "-brings together a variety of ideas from critical theorists and practitioners in order to present a coherent critical approach for the field of conflict resolution. The historical roots of critical theory are briefly presented, along with critical practices that conflict resolution practitioners and theorists have developed". Relevantly, Lowe (2007, p. 16) has provided "a concise and analytical overview of what the 'law' means in an international context and an introduction to the main institutions and mechanisms of international law". The primary limitation of this literature is that they are based on theoretical arguments rather than using any real and contemporary example of conflict resolution.

Applying legal rules of international law in the resolution of a territorial dispute is known to be a complicated issue. The reason behind it is "the lack of clarity of such laws or fields but also due to the state-centred approach that still dominates in international discourse" (Parmar, 2011 p. 3). Territorial dispute settlement also depends on the leaders' 'will' within the disputing parties, which make the process more complicated. Sometimes the leaders become very much reluctant to sign a treaty to solve such a dispute. Parmar (2011, p. 1) argues that, "Territorial disputes are usually highly salient to domestic political audiences, regardless of strategic or economic value of land in question. Leaders' inefficiency in deriving mutually acceptable solution and sometimes, unwillingness to do so, accompanied by ego-clashes create a strong incentive for many leaders to refrain from compromise of any form". Parmar's argument has a similarity with Okano's (2010) argument, but the differences are that Parmar's argument is clearer and more significant and realistic. Parmar explores her argument on the basis of realism, while Okano's view is much more liberal.

In solving territorial disputes, Okano (2010) places more importance on international law along with political leadership, the international community and public understandings.

Okano (2010) admits that, because of some limitations, international law is not strong enough to "bring a dispute to a settlement" (Okano, 2010 p. 48), which supports one of the main arguments of this thesis. According to his observation, as a result of the exclusion of the use of force in dispute resolution, international law is playing a more significant role in solving disputes and the "international community are more confidence in international law than ever before" (Okano, 2010 p. 48). Okano is much more optimistic in his personal opinion when he says that, "It is the role of the practitioners of foreign policy to use international law effectively and strategically in solving of disputes and the same time to help political leaders and the public deepen their understanding of the usefulness and limitations of international law" (Okano, 2010 p. 48). Sumner (2004) provides a comprehensive overview on the justification of judgment criteria employed in solving the territorial dispute in the International Court of Justice. According to him, there are nine categories which are used to justify any territorial claim. However, his note only provides a few validations to defend the claim, while there also some other logics that need to be discussed. Moreover, the other forms of conflict resolution, such as negotiation and arbitration, which have not been included in his writing, need to be discussed to understand the entire concept. Miall, Ramsbotham, and Woodhouse's (1999) work is quite significant and also contemporary in this context. Their work "-offers a comprehensive survey of the theory and practice of conflict resolution" (Miall, Ramsbotham, and Woodhouse, 1999 p. 11). Their conclusion is very optimistic, whereby they argue that, "-a new form of cosmopolitan conflict resolution is emerging, which offers a hopeful means for human societies to handle their conflicts non-violently and eventually to transcend and celebrate their differences" (Miall, Ramsbotham and Woodhouse, 1999 p. 11). However, the only problem of their work is that it emphasises new issues of conflicts (i.e. environmental, economic, etc.) rather than the conventional causes of territorial conflicts.

Huth's (1998) work is quite important in analysing state behaviour in dealing with territorial disputes. Analysing 129 territorial dispute from 1950 to 1990, "-Paul Huth presents a new theoretical approach for analysing the foreign policy behaviour of states, one that integrates insights from traditional realist as well as domestic political approaches to the study of foreign policy" (Huth, 1998 p. 12). In his later work, Huth, Croco and Appel (2011) raised the question of the effectiveness of international law to promote the peaceful resolution of the international dispute. They have analysed territorial disputes from 1945 to 2000 in their empirical research and conclude, "When the legal principles relevant to the dispute are unambiguous and clearly favour one side, a law-based focal point will emerge. This focal point, in turn, facilitates the settlement process by helping leaders overcome distribution problems, a central obstacle in reaching a final agreement" (Huth, Croco and Appel, 2011 p. 415). In other words, they emphasise 'leader's behaviour', but their argument is quite ambiguous when they state, "- international law, broadly speaking (i.e. not just treaty law),

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has the ability to shape leader behaviour, even in the realm of security where many would expect law's influence to be minimal" (Huth, Croco and Appel, 2011 p. 434). Most critical thinkers would not agree with them, such as Parmar (2011, p. 1), who argues that it immediately affects the dispute, and it is the political influences which keep the disputes unsolved. Moreover, Parmar (2011, p. 1), who claimed that, "-sometimes unwillingness…accompanied by ego-clashes create a strong incentive for many leaders to refrain from compromise any form". Thus, this context requires international law to face a difficult test to prove its effectiveness in legitimating the behaviour of disputing states. In most cases, international law has failed to behave so (see chapter 4 for more details). Therefore, it is apparent from the above discussion that none of the existing literature has tried to critically analyse the politics of the international law of conflict management by using any particular and recent territorial dispute, which this research attempts to do.

1.4 Case Study: India-Bangladesh Border Dispute

The India-Bangladesh border dispute is rooted in their colonial and post-colonial history. This dispute was also inherited from India-Pakistan border dispute, which was a result of the 1947 partition. There is not much literature on this topic, which has enjoyed recent strong interest. Among them, Schendel (2002), Jamwal (2004) and Hamburg (2013) are the most significant. Schendel's (2002) work was primarily based on an evaluation of the history of the enclaves situated in India and Bangladesh territory, the most important cause of India-Bangladesh border dispute. Most significantly, he includes literature of other enclaves located in other parts of the world. Although Schendel's aim is related to exploring the potential national identity of the people living in the enclaves (which this thesis does not deal with), his historical search concerning the root of the enclaves is very necessary for this research. Schendel's (2002, p. 1160) conclusion suggested "-to reconsider assumptions about the continuity of national space". This study does not completely agree with him, rather the study argues that the enclaves are the creation of contradictory principles of international law and these enclaves existed until 2015 because of political influence over the effectiveness of the process of dispute management in the framework of international law (see chapters 5 and 7 for more details). Catudal's (1979) writing in *The Enclave Problem of Western Europe* is very significant in this context, but his work is not recent, so the study has searched for other, more recent, literature.

The research argues that the process of the international law of conflict management needs to be reconsidered. A similar suggestion is provided by Chowdhury (2013). Moreover, he claims that, "-early settlement of the outstanding border issues and formulation of a people-friendly border management policy will promote inter-state relations, boost economic activities between the two countries and above all, bring succour to people living along the

border belt" (Chowdhury, 2013, no pagination). However, Chowdhury (2013) also demonstrates a historical review of India-Bangladesh border conflict which is of significant interest for this study. The only problem of his work is that he only emphasises three issues (enclaves, adversely possessed land and un-demarcated land) and he avoids border fencing, push-in push-back problems, and the boundaries of common rivers, which are equally important in this context and which leaves this discussion incomplete. Faruque's (2014) writing is very significant and is the most recent, which could potentially fill the gap discussed here. His work to some extent covered all disputing issues that are responsible for this conflict including enclaves, adversely possessed land, border fence, etc. Compared with Faruque's (2014) work, Jamwal (2004) has pursued issues of greater significance for this study. Jamwal (2004) covered the whole picture of this dispute, including the management process. Most importantly, he evaluates the historical perspective of this dispute and also includes a political background. Faruque's (2014) work is descriptive rather than evaluative, but it boosts the research by providing relatively new information on this dispute. On the other hand, although Jamwal (2004) aims to evaluate the causes and the management of this border dispute, his methodology along with his positionality have an adverse impact on his work. As he was a BSF (Border Security Force, India) commander and a Research Fellow of Border Management, India, he took a standpoint on the Indian side, which is clearly visible from his argument. For instance, he argued that one of the main causes of this dispute is the Bangladesh "-government's intelligence agencies and the ISI who training insurgent groups operating in India's north-eastern states" (Jamwal, 2004 p. 11). First of all, this is an allegation against Bangladesh which Bangladesh always denied. Secondly, this might be an issue in India-Bangladesh political relations, but it is not a cause of the India-Bangladesh border conflict. However, as discussed earlier, this research argues that the causes of the India-Bangladesh border dispute are rooted in their colonial and post-colonial history. It also contends that political (international and domestic) influence over the management of this dispute is also one of the leading causes of this long-standing border dispute.

Miller, Vandome and John's (2011) arguments are similar to the arguments of this thesis. According to their writings, the enclaves are the creation of contradictory and unclear treaty that was done in the Mughal empire, with which the research agrees. The problem of their work is that it is a historical description which concentrates only on the history of the enclaves. Moreover, their methodology is quite doubtful as their writing is based on Wikipedia and other free online sources, which raises questions of ethical issues (i.e. plagiarism). However, Odhikar's (2010) report is relatively strong in this context. It includes a history of the enclaves, adversely possessed lands, and fencing around Bangladesh and, most importantly, it also analyses political influences in resolving this dispute. The methodology of this report is quite reliable as it is based on semi-structured interviews and

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obtained reliable empirical data as well. However, the only problem is that it covered a time period only up until 2010 and didn't include the recent development of this dispute.

Rashid (2010) and Haider (2006) provide a detailed description of the Bangladesh-India border conflict which is crucial for this thesis. However, their arguments only attempt to cover the political and economic issues of this dispute and they didn't discuss the legal rules related to this dispute. Explanations for the management of border disputes here require political rather than legal analysis, albeit a political analysis cognisant of the parameters of the legal issues. However, it is also true that these disputes raise specific political questions of the human rights of neglected minorities living around these borders, which constitute the subjects of recent border disputes. In exploring human rights issues, either related to border killing or border fence, Chowdhury (2016) and Shamshad (2008) are relevant and significantly important. Chowdhury's (2016) work is very recent, focusing on the violation of human rights in the border area. Chowdhury (2016, p. 1) argues that, "The common people as well as the border guards get enmeshed in this border consciousness, contributing in their own way, to redefining and often subverting statist definitions of regulation, legality, and illegality". This research agrees with his argument to some extent, but it also includes that politics have a vital role in this context, manipulating the whole process. Compared with Chowdhury's (2016) work, Shamshad's (2008) writing is quite different, although both of them try to explore human rights violations in the border area. However, the India-Bangladesh border dispute is not a new problem, but it has recently reached a resolution. None of the existing literature has tried to evaluate the phenomenon of this dispute from the angle of both politics and law. Most of them have focused on a descriptive historical analysis, while some of them have only discussed the legal terms related to this dispute. Therefore, there is an immense gap in the existing literature in this context. The research aims to fulfil this by combining political and legal dimension and the origin of this dispute and analyse it from a critical viewpoint.

1.5 India-Bangladesh Border Dispute Resolution

The study argues that the India-Bangladesh border dispute negotiation process is vastly influenced by the domestic political environment, international politics, political choice and inter-state relations. These issues have explicitly determined the decisions taken by the governments of both countries in the negotiation process. From this perspective, the study has found some substantial literature that is of significant interest. Rashid (2010), Haidar (2006) and Chakma (2012) are the most important among these. Although none of them work specifically on border dispute management, the argument emerges as a part of their discussion. In discussing India-Bangladesh relations, Haider (2006, p. 1) "-highlights the changes in Bangladesh foreign policy during Mujib and Zia regimes (1971-1981)".

According to him, "Mujib's policy ultimately proved fatal because Bangladesh's Indo-Soviet allies failed to deliver the necessary economic support to Bangladesh" (Haider, 2006 p. 1). Moreover, Mujib could have obtained a better political deal with India rather than India-Bangladesh land boundary Agreement 1974, the Ganga's water sharing treaty, etc., but Bangladesh was left behind in this political negotiation during the Mujib regime. In contrast, there is a disagreement that stems from Rashid's (2010) argument. He perceives the India-Bangladesh Land Boundary Treaty, 1974 as a milestone that is a result of the India-Bangladesh positive relations between 1971 and 1975. According to Rashid (2010, p. 23), "In my opinion, these issues could have been resolved during the term of the government of Sheikh Mujibur Rahman who was close to and respected by Indian leaders". There existed two powerful and high-profile leaders of India and Bangladesh – Mrs. Gandhi and Sheikh Mujib – and the people of both countries would have accepted the solutions agreed upon by their respective leaders. However, Haider (2006) perceived Major General Ziaur Rahman (Zia) as a strongman in Bangladesh politics. According to him, "[Major] General Ziaur Rahman emphasised the national interest and deeply transformed the foreign policy of Bangladesh, moving away from the Indo-Soviet axis […] helped Bangladesh develop its economic resources sufficiently" (Haider, 2006 p. 1). On the other hand, Rashid (2010) considered Ziaur Rahman's foreign policy to be a negative approach towards the political and economic development of Bangladesh as a new nation. Moreover, according to him, Zia's close relation with India's rival state China made India suspicious and concerned about its own national security in that cold war epoch. The border incursions from eastern Indian states increased, and insurgency in the Chittagong[1] Hill Tracts intensified. India provided refuge to many Bangladeshi nationals who left Bangladesh after the assassination of Sheikh Mujib. It was alleged that India provided assistance to them (Rashid, 2010). All ongoing negotiations on bilateral issues, including border dispute negotiation and implementation of a land boundary agreement, came to a halt. Bangladesh found it difficult to gain any headway with India on any issue (Rashid, 2010). Nevertheless, the major limitation of both these literature is their bias (positionality) that is a part of their methodology. In comparing the Mujib and Zia regimes, their contradictory standpoint is quite clear in their argument.

Rashid's (2010) book concludes that, "A few key bilateral disputes remained unresolved because of hard-line stance of India, making it difficult for people of Bangladesh to understand India's unfriendly attitude" (Rashid, 2010 p. 1). He compared Bangladesh's policy approach towards India between the Awami League and BNP (Bangladesh Nationalist Party) and contended that, "In 2009, there is a view in many quarters that the installation of the Awami League and the Congress party to power in Dhaka and in New Delhi has created a congenial ambience to settle the long-standing issues through

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[1] A division of Bangladesh.

constructive negotiations" (Rashid, 2010 p. 1). A similar argument can be seen in Chakma's (2012) writing. According to him, "-in January 2009, Sheikh Hasina radically overhauled Bangladesh's foreign policy approach toward India and brought Dhaka much closer to New Delhi. Consequently, Bangladesh-India bilateral relationship has improved significantly in the past four years" (Chakma, 2012 p. ii). His writing is very significant because he builds an international relations theoretical debate in analysing Bangladesh's foreign policy approach towards India. But one limitation of his work is his emphasis mostly on the 'personal performance' of Sheikh Hasina as a pull-up factor for India-Bangladesh positive relations in last few years rather than 'power relations' between these two neighbouring countries. Most of the theoretical approaches to international relations (i.e. critical theorist) do not agree with his argument. This opens an opportunity for further intellectual debate. Smruti Pattanaik's (2012) edited book *Four Decades of India-Bangladesh Relations* is also very significant for this research. This book mainly contains nine chapters which explicitly focus on India-Bangladesh economic and political relations, but it also includes water problems and border problems as well. Although these issues are related to this research, the whole border management issue is not completely covered. Shaheen Afroz's (2012) chapter is very relevant in the context of this research, whereby she discusses killings in the border area and the enclave's problems, but this is very much related with the security issues of these two countries. However, this book significantly helps the research to provide a kind of balance between Bangladeshi and Indian scholars' opinions. Her edited book basically addresses the issues from an Indian point of view, but it also includes some articles by Bangladeshi scholars.

To analyse the recent development of India-Bangladesh border management, Datta (2016) emphasises the political will of both country's leaderships. According to her, "The recent success of India and Bangladesh in settling the complicated issue of political enclaves in each other's territories could be traced to the spirit displayed by the leaders of the two countries in 2010 through a leap of faith in the promise of shared prosperity" (Datta, 2016, no pagination). Even though some issues still need to be solved, the recent developments are very significant improvements of this long-standing border dispute. Similar arguments are found in Wirsing and Das' (2016) work. Their paper is based on five issues of India-Bangladesh border dispute settlement, including enclaves, adversely possessed land, un-demarcated borders and so on. "The paper's focus is on the potential and capacity of the political entities sharing the Bengal region to identify, agree upon, and implement effective and sustainable solutions to these problems" (Wirsing and Das, 2016 p. 385). Their conclusion is quite extensive for this research, while the study will argue that land border management is significantly determined by political 'will' and other factors. It is contented in their writing that, "-the present scale as well as the severity of the consequences of these problems are not permanent fixtures and will vary enormously with the political will,

perseverance, and skill of those charged with determining the political destiny of this hugely important region" (Wirsing and Das, 2016 p. 386). Comparatively, Khan's (2009) writing provides a different argument whereby he blames Bangladesh for the constraints in bilateral relations with India and the remaining long-standing border dispute. According to him, "Though India has tried to improve and consolidate its bilateral relations with Bangladesh, the latter continues to indulge in hostile acts, completely neglected India's security and territorial integrity" (Khan, 2009, no pagination). However, this is a blame game between India and Bangladesh. On one side, India is blaming Bangladesh for keeping this dispute unsolved, while on the other hand its counterpart is doing the same.

Jason Cons' (2014) *Impasse and opportunity: Reframing Postcolonial Territory at the India-Bangladesh Border* is a unique piece of work which is of major interest in the context of this research. His work explicitly covers the entire border management process since 1947. He concludes that, "-a possible starting point for reconstituting and the regional notion of South Asia […] is to rethink territory from the perspective of both margins and centres" (Cons, 2014, no pagination). His work mainly builds on the empirical data from his fieldwork. A major limitation of his work is that it only focuses on the enclave issues rather than on the whole border dispute, which means the analysis is inadequate. Finally, Dinesh Mahur's (2014) work is found to be quite substantive for this research. His research paper significantly analyses the India-Bangladesh border dispute, theorising the concept and also finding the reason for this long-standing border dispute. He concludes that no single theory is sufficient to theorise this specific border dispute. However, his work only evaluates the historical description of this dispute, especially its colonial and post-colonial history and its political context. It doesn't include any evaluation of the international law of conflict management as a process of this dispute resolution and does not even analyse the negotiation process of resolving this dispute, upon which this research concentrates. Hence, this research explicitly concentrates on evaluating the phenomenon of this dispute from the angle of both politics and law, and there is a gap in the existing literature regarding this concept.

Some of the literature discussed above worked on bilateral relations between India and Bangladesh, whereby border management formed only a small part of their focus. Others cover the management process, however they had no specific focus on politics and the political relations between the two neighbours, and these topics were often only briefly mentioned. None of the previous literature aimed to cover the interplay between relations, politics and political relations along with other factors such as power, context or interests or in light of the process of the international law of conflict management. Most importantly, none of them tried to evaluate these issues critically using mainly the critical theoretical framework. Therefore, as is apparent from the literature discussed above, there is a gap in

the existing literature. The purpose of this research is to fill the gap by conducting an analysis from a critical theoretical standpoint.

1.6 Conclusion

The above discussion shows that there is not much literature on the topic of this research, which has enjoyed recent strong interest and upon which the thesis builds. However, the research employs critical theoretical approach specifically the approach by Martti Koskenniemi (2005, 2011). Koskenniemi (2005) argues that due to problems in explaining compliance and the absence of centralized political order, states and members of the international community frequently ignore the rules of international law. He shows that it is important to re-examine international law, amending it to make it more effective, recognising that the liberal (Lauterpachtian) ideal of the universal legal framework has failed and that legal processes are circumscribed by the political contexts which frame them. His theoretical arguments come from critical theory. Koskenniemi (2011) also argues that contextual justice issues cannot be solved by the application of ready-made rules and principles. He added that, "their solution requires venturing into fields such as politics, social and economics which were formally delimited beyond the point at which legal argument was supposed to stop to remain 'legal' to be sure, we shall remain uncertain" (Koskenneimi, 2011 p. 59).

However, the gap in the existing literature is that Koskenniemi's argument is used to examine a number of different kinds of dispute and also helps to explain differences in territorial conflict (i.e. Lake Lanoux case, 1957, Eastern Greenland Case, 1933, etc.) including many post-colonial conflicts, but has not so far been used in the precise analysis of border disputes. Moreover, none of the existing literature has tried to evaluate the phenomenon of India-Bangladesh border dispute from the angle of both politics and law, while most of it focuses on a descriptive historical analysis. There is also some literature in the field of international relations which analyses this issue; however, the problem is that they analyse it as a tiny part of India-Bangladesh relations. Some of them only discuss the legal terms related to this dispute. Therefore, there is an immense gap in the existing literature. The research fills it by combining political and legal dimension as well as the management and origin of this dispute and analysing it from a critical viewpoint. Consequently, the research has sought to answer the following questions: Does international law provide an adequate foundation to solve territorial dispute? How far, drawing on a case study, can one conclude that the current process of territorial dispute management of international law needs rethinking, considering the political influences and with respect to human rights issues in the border dispute? How have India and Bangladesh managed the legal process of border dispute on Bangladesh's frontier? How has it shaped relations between India and Bangladesh?

Chapter 2
Theory

2.0 Introduction

This research explores the management of border disputes on the India-Bangladesh frontier, looking at specific aspects of land border disputes. The particular approach used derives from Martti Koskenniemi's (2005, 2011) account of the politics of international law, which argues that international legal theories tend to universalise conflicts which are better understood as specific problems that arise in specific historical and political contexts, and that it is the politics of a dispute rather than the legal dimensions, such as law, which shapes both the process and the possibilities of their resolution. Koskenniemi's work is influenced by critical legal studies (CLS), the original thought of which closely connects with critical theory in social studies, including the critical theory of international relations (CTIR). This work also draws on some other legal writers as well as on CTIR scholars, including Linklater (1996, 2007), and Cox (1986) in the 'first generation' of critical theorists in IR in the 1990s (see Brown, 1994), and more particularly on more recent work by Strydom (2011) and Roach (2013). However, Koskenniemi offered the ideas which provided the origin for this study.

The objective of this chapter is to provide a well-defined understanding of the theoretical underpinning of this research. It is divided into three parts. The first describes the concept of critical theory, its role in international relations, and its particular notion of 'knowledge', creating a distinction between critical and mainstream or empiricist theory. It further describes critical legal studies and its relations with critical theory. It also includes a brief explanation of critical theory as an antecedent of post-colonial critique. The second part demonstrates the critical theoretical significance of choosing the research problem and theorising that problem to build a reconstructive explanatory critique. It further describes the theory of Martti Koskenniemi and the influence of CLS on his work. It includes an evaluation of his (2011) study *The Politics of International Law*, which contributes to a reconstructive explanatory critique as well as sets limitations to theorising the research problem. The third section of this chapter explores how the thesis builds on this critical theoretical explanation, elaborating on a critical reading of Koskenniemi (2005, 2011), Higgins (1994) and Henkin (1979), which is subsequently deployed for an understanding of the management of the India-Bangladesh border dispute. In each section, the question 'in what ways is critical theory critical?' is addressed in the context of that section.

Part 1

2.1 Critical Theory: An Overview

Critical theory is a leading school of thought in humanities and social science. The purpose of critical theory is to assess and criticise the established philosophy and the social order, questioning its assumptions and practices and identifying the inequalities and injustices it produces. There is no perfect definition of the term of 'critical theory', but it is both an epistemological critique and a critique of research practice (i.e. methodology, for which see chapter 3). It often blends itself with the literary terms of 'critical' or 'criticism' and social science's 'theory approach', which could be taken as critical. Critical theory emerged in the 1930s, derived from non-orthodox (i.e. non-Leninist) Marxist thought. Roach (2013, p. 172) argues that, "The origins of critical theory can be traced back to the modern theories of consciousness and dialectics of the Enlightenment period (Hegel 1977; Kant 1989)". Hegel, Kant and Marx's work are most influential in critical theory. Their work has been rooted in the 20th century's influential domination of the Frankfurt School. "Max Horkheimer and Theodor Adorno (1972), Herbert Marcuse (1972), Walter Benjamin, Erich Fromm, Jürgen Habermas (1971), Lukacs and Gramsci (1971)" (Patrascu and Wani, 2015, pp. 1390-1391).. "…Leo Lowenthal and more recently, Jürgen Habermas and Axel Honneth '[argued]' that critical theory acquired a renewed potency and in which the term *critical theory* came to be used as the emblem of a philosophy which questions modern social and political life through a method of immanent critique" (Devetak, 2013, p. 163). The method of critical theory is different from other theory because it emphasises a questioning of knowledge claims. It built on normative assumptions rather than the abstract claim of neutrality and objectivity rooted in empirical understanding (Linklater, 1996, pp. 284-287 and 290-295). According to Patrascu and Wani's (2015) argument, critical theory is interpretive and reflexive in nature rather than treating the world as natural and objectively knowable. The researcher's position and values shape aspects of the research (this point is developed below).

2.1.1 Critical Theory in International Relations

Over the last decade, we have perceived a significant influence of critical theory in international relations theory. It has also proven itself as a crucial substitute to conventional methods in international relations (Linklater, 1996, 2007). Robert Cox said, "Critical theory as theory which stands apart from and challenges the existing order" (Cox, cited in Brown, 1994, p. 56). The purpose of critical theory is the "restructuring of social and political theory which involves both challenging positivist approaches to social science and proposing alternatives" (Bernstein cited in Brown, 1994, p. 58). The determination of self-reflection, which contains the emergence and situation of knowledge in a particular context, is one of the crucial features of critical theory. "In the years since 1981, according to these self-reflective accounts (Rengger and Thirkell-White 2007, Brincat, Lima and Nunes 2012), the discipline of International Relations has been transformed, not least because of the theory's

critical interventions across a broad range of topics in the study of international relations" (Devetak, 2013, p. 162). Critical theory attacks the knowledge production practices of more 'mainstream' (empiricist) approaches to research, arguing that they can only produce knowledge which serves the interests of established powers and an established order; but it also seeks to address problems which can be solved in the real world of human suffering or injustice, and to rethink those problems in ways which might lead to action, or which can at least expose more clearly the structures and policies which explain those problems (Brown, 1994). Thus, critical theory as deployed here makes the assumptions (a) that there is an indeed a 'real' world, and (b) it is possible to construct knowledge practices which enable either the researcher or others to engage with that real world so as to change or transform it, and (c) those knowledge practices cannot but be rooted in specific ethical commitment which is lodged in research practices as normative theory. These three points stand respectively as ontological, epistemological and axiological arguments which are explored in more detail with appropriate referencing throughout this chapter.

The revision of Marx's conventional scientific approach is known as the first-generation work of the Frankfurt School. This first generation's critical approach explored the inseparable effect of totalitarianism and conformity on society and culture. "Herbert Marcuse (1964) and Walter Benjamin (1968) are leading critical theorists of this first generation" (Roach, 2013 p. 172). Throughout the cold war period, the subject area of IR was being dominated by realism and neorealism, which mainly explored the power domination of world politics from a position closely tied to western foreign policies. However, during that time, critical theorists in IR were trying to do more than simply explore and describe the established international system, but also tried "...to interpret reality as an open-ended totality of the changing and unfolding social relations and identities in international relations" (Roach, 2013, p. 174, see also Linklater, 2007). "Jurgen Habermas (1963, 1971), Axel Honneth (1985, 1992, 1995), Robert Cox (1981) and Richard Ashley's (1987)" (Roach, 2013 p. 179) work have been figured together as forming a turning point in the field of IR. "Together these works were predicated on the idea that realism's ontological, scientific approach – which stressed objectivity through the observation of recurrent events – had impoverished our understanding of the complex, evolving social and political relations among states and other international actors" (Ashley, cited in Roach, 2013, p. 174). At the same time, Robert Cox has successfully explained the foundational inconsistency between the state's hegemonic power and international institution using Gramsci's work of "hegemony, civil society, historical bloc, passive revolution and organic intellectuals" (Roach, 2013, p. 177). By the end of the 1980s and the beginning of 1990s, Richard Ashley (1987) and Walker's (1991) analysis of the changeable meanings of 'sovereignty' began to build a parallel drive of critical theory of IR through a poststructuralist approach (which is not the main concern here).

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Andrew Linklater's (1996, 2007) work is also a significant contribution to CTIR. "Among the most pressing issue areas addressed by critical theorists of international relations in recent years are: international security (Fierke, 2007), ballistic missile defence (Peoples, 2010), the war on terror (Burke, 2004, 2005), humanitarian intervention (Boja 2005, Devetak 2007; Head 2008) and the global trade regime (Kapur, 2004), just to name a few" (Devetak, 2013, p. 162). Moreover "Beardsworth 2011; Benhabib 2006; Fine 2007………Anievas 2005, Haacke2005, Roach 2010, Weber, 2002, 2005, 2007" (Devetak, 2013, p. 162) have also made important contributions to CTIR. Even now, critical theorists of IR are working to explain the precarious and contradictory patterns of international law, war, international institution, diplomacy and foreign policy. The accomplishment of the overall aim of critical theory is creating an alternative theory and practice of IR in varied areas of the field. Critical international relations theorists believe that this alternative theory and exercise has the potential to establish better peace, security, freedom and justice in the world (Devetak, 2013).

2.1.2 Connection between Critical Theory and Knowledge in International Relations

Cox has argued, "Knowledge is always for someone and some purpose" (Cox, cited in Linklater, 2007, p. 46). "Problem-solving knowledge", according to Linklater (2007), is designed to help make the existing international system function more easily or more in the interests of one or another party; it is incompatible with, and perhaps intentionally incapable of, major change in the working of the existing system of international relations. However, critical theory rejects this premise. "Critical-theoretical knowledge searches for evidence of change on the assumption that present structures are unlikely to be reproduced indefinitely" (Linklater, 2007, p. 46). Unlike other theories, critical theory believes that all groups or individuals living in a same political organization are not always treated in the same way. Discrimination and inequality always exist. Linklater (2007, p. 47) argues that, "If international order works to the advantage of the most privileged groups, then the well-meaning aim of managing an existing order has the unpalatable political effect of neglecting marginal groups and harming subordinate interests". Thus, "The assumption that critical theory starts from normative and inevitably subjects preferences, whereas problem-solving theory avoids moral commitments in order to grapple with intractable realities, is, therefore, untenable" (Linklater, 2007, p. 47; see also Brown, 1994).

Critical theory in international relations questions the relations between knowledge and interests. "As Richard Ashley (1981:207) asserts "knowledge is always constituted in reflection of interest", so critical theory must bring to consciousness latent interests, commitments, or values that give rise to and orient, any theory" (Ashley, cited in Devetak, 2013, p. 168; see also Linklater, 1996). Critical theory tries to search how this so-called

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'neutrality' hides the crucial role of knowledge in recreating social order which is unjust and divisive. Whitehead (1999, p. 722) argues that, "Unlike empiricism, which maintains the possibility of pure objective knowledge, critical theory stresses that the thinker is always part of the society she studies". Positivism and empiricism suggest that people have the agency and power to make free choices in line with their rational interests; critical theory points to the constraints, psychological and internalised as well as externalised, in financial, economic and power structures which prevent that freedom or present it in an illusory manner. Hence, the aim of critical theory is not only to describe society, but also to change it, or at least to elaborate the grounds on which it can be challenged.

Horkheimer (1999) argues that, "the notion of unifying research with practice, however, does not reduce itself to the pragmatist notion that whatever is effective is also true. Rather for critical theory, truth is an understanding of society as a totality – both its facts and its possibilities – that also contributes to the overcoming of that totality" (Horkheimer, cited in Whitehead, 1999, p. 723). Critical theory points to the importance of human needs and the interests of disadvantaged valuable knowledge, according to Linklater (2007), which can focus on suffering as a primary human wrong (Strydom, 2011, p. 9 and pp. 115-117). "Ashley (1981) and Cox (1981) followed Habermas (1972) in identifying three fields of interest: technical, practical and emancipatory" (Linklater, 2007, p. 56). The technical interest is to explore how to spread effective control over society. Practical interests are generated and continued to maintain order. Emancipatory interests are to find out and eliminate all avoidable restrictions and obligations from the society and to liberate individuals from social, political, psychological and economic constraints some of which may derive from underlying structures invisible to post individuals (Linklater, 2007). "From the critical-theoretical perspective these three interests constitute knowledge, [they] frame [the] subject's mode of analysis and reveal that serious difficulties attend the claim that knowledge is value free" (Linklater, 2007, p. 47). It is important to stress that the form of CTIR used here does not sit in an ivory tower and deny the possibility of effective action after the evolution of a critique; but neither does it leap instantly to naïve action in response to its own analysis.

2.1.3 The Central Concepts of Critical Theory

Critical theory is a paradigm which structures the way we see the world with a critical attitude on all levels. It questions the nature and scope of traditional features and ideas that have been used. The traditional theoretical approach suggests the theorist should be detached from the objects of analysis. For example, natural sciences often determine that in a particular context of research, 'subject' and 'object' must be separated in order to theorise them accurately. However, critical theory rejects this conception. The basic idea of this rejection came from Horkheimer (see Horkheimer, 1972; also, Horkheimer and Adorno,

1972). He provided a distinction between 'traditional' and 'critical' theory (see Horkheimer, 1972), as referred to above. Devetak (2013, p. 165) argues that, "by recognizing that theories are always embedded in social and political life, critical conceptions of theory allow for an examination of the purposes and functions served by particular theories". Thus, critical theory asserts that the future of humanity depends on the existence of a critical attitude necessary for the development of society (Horkheimer, 1972).

Critical theory rejects the idea of 'objective' knowledge on the basis of psychology. Critical theory claims that cognition does not come from a subject's impartial commitment to a neutral truth. Thus, while it borrows from Marxism, from social critique, from an accent on culture as opposed to 'pure' economics, it also draws on the newer ideas of Freudian (and other) psychology, which played a significant part in its development. This led to an emphasis on the difficulty of understanding consciousness and so of understanding human motivation 'objectively'. Consciousness, it suggests, arrives from the priority aims and interests of society. It is through this process that knowledge claims to usually serve interests of some kind. Nielsen (1992) argues that critical theory "aims to give us knowledge of society: its structure and its dynamics and its life-world… [thus] enabling us to determine what our true interests are" (Neilsen, cited in Sumner, 2003, p. 3). This casts a distinctive light on the Marxian notion of 'false consciousness': according to Hegel and Marx, knowledge is always conditioned by historical and material context. As critical theory considers 'society' as an object of analysis, by drawing attention to the relation between 'knowledge' and 'society', critical theory stresses the political nature of knowledge claims and puts epistemology and the process of knowledge construction at the heart of a research project that uses it. Thus, Robert Cox (1986, p. 228) argued that "theory is always for someone and for some purpose". "Whereas traditional theories would tend to see power and interests as *a posteriori* factors affecting outcomes in interactions between political actors in the sphere of international relations, critical international theorists insist that they are by no means absent in the formation and verification of knowledge claims" (Devetak, 2013, p. 166), or indeed in the choice of questions a researcher asks. So, there are some prior factors or interests which shape knowledge formation. For this reason, Hutchings (2012, p. 69) argues that "international relations theory is not only about politics, it also is itself political".

Critical theory raises the question of power and inequality, rejecting the empiricist claim that the existing social structures are 'immutable' (Linklater, 1996, 2007). Linklater holds that "the central objection of these claims is that notions of immutability support structured inequalities of power and wealth which are in principle alterable. Critical theory investigates the prospects for new forms of political community in which individuals and groups can achieve higher levels of freedom and equality" (Linklater, 2007, p. 45). As discussed earlier,

critical theory believes that all groups or individuals living in a same political organization or society are not always treated in the same way. Discrimination and inequality always exist, and for critical theorists, the existing social system and social order naturally provide and sustain a specific power distribution. "Power leads to distorted communication, but by becoming aware of the ideologies that dominate in society, groups can themselves be empowered to transform society. We can understand the rationality of power as self-reflection and the branch of scholarship that deals with it is critical theory" (Seiler, 1992, p. 2). Habermas (1987) called this 'emancipation', and it can empower powerless groups of a society by challenging existing dominant knowledge tropes and imagining the possibility of alternatives. "Critical social researchers, therefore, are committed to raising emancipatory consciousness, to the empowerment of individuals and the confronting of injustice in society" (Henn et al., 2009, p. 28). The word 'emancipation' refers to being free from all kind of (legal, social or political) restriction (Oxford dictionaries.com, 2016). Farrands and Worth (2005, p. 44) argue that "critical theory aims to produce thought, which is in itself emancipatory". Thus, critical theory commits to a focus on domination and unequal power structures and provides a basis for the demolition of these inequalities by empowering the dominated group to resist. Moreover, Max Horkheimer (1972) argues that, "humans can change reality and that the necessary conditions for such change already exist" (Horkheimer, cited in Sumner, 2003, p. 3). In this way, critical theory is both critical and emancipatory. It is critical because it criticizes the existing power and structure of the society and it is emancipatory because it is committed to supporting a transformation of that power and those structures. But as Farrands and Worth (2005) suggest, and as Strydom (2011, p. 178) also notes, it is not necessary for CTIR to actually effect transformation; to be emancipatory, it must provide the possibility of transformation or open a challenge to existing power structures. How it might do so also depends on which theorist one is reading; 'emancipation' in CTIR is a broad and diverse idea. This challenge provides a means for delegitimating the existing structures of power and privilege. Finally, "It criticizes and debunks theories that legitimize the prevailing order and affirms progressive alternatives that promote emancipation" (Devetak, 2013, p. 169). It is in this sense that this thesis makes modest steps towards an understanding of its case study, without proposing specific steps towards emancipation, which is beyond its scope (and might be beyond the correct scope of a PhD thesis).

From a critical viewpoint, the major tasks of critical theories particularly relevant to this study are:

- To explore the "ideologically distorted subjective situation of some individual or group" (Sumner, 2003, p. 4).

- To understand the hidden forces which created that situation, for example, social, cultural, ideological and contextual forces.

- To explore how these forces can be overcome through emancipation (Strydom, 2011, pp. 118-120).

2.2 Critical Legal Studies

Critical legal studies (CLS) forms a challenging approach in social science. It confronts the established norms and conventions of legal theory and judicial practice. CLS argues that established legal practice is developed and extends from the power relations between law and society. Legal rules, it holds, have been set up to serve the interest of the powerful actors who create it and justify social injustice. "It raises the prospects of generating an impact on legal scholarship that outreaches the impact of Realism in the 1920s and 1930s" (Hunt, 1986, p. 1). The origin of CLS lies in the Critical Legal Studies Conference at the University of Wisconsin, USA, in 1977 (Binder, 2010). Binder (2010, p. 267) argues that "as an intellectual movement, critical legal studies combined the concerns of legal realism, critical Marxism, and structuralist or poststructuralist theory". The conference was dissolved by 1990, but CLS continues as an influential approach in the study of international and other legal rules (Binder, 2010).

Influential scholars in critical legal studies include "Duncan Kennedy, Roberto Mangabeira Unger, Katharine Alice. Mackinnon, Morton. J Horwitz, Robert W. Gordon" (Legal Information Institute, 2015, no pagination). CLS was also influenced by the thought of "Karl Marx, Friedrich Engels, and Max Weber, Max Horkheimer and Herbert Marcuse of the Frankfurt school of German social philosophy; the Italian Marxist Antonio Gramsci; and poststructuralist French thinkers Michel Foucault and Jacques Derrida" (Legal Information Institute, 2015, no pagination). Legal realism also influences CLS: "legal realism is the theory that judges may decide cases by taking into account factors other than pre-existing law" (D'Amato, 2010, p. 1). It is a school of thought which challenges what is usually called the American orthodox approach to exploring jurisprudence, which British lawyers also refer to as the 'theory of strict construction of law'. Hasnas called this challenge the "indeterminacy argument" (Hasnas, 1995, p. 39), a view originally developed by the legal realists in the 1920s and 30s, and famously revived and updated in the 1980s by the adherents of the Critical Legal Studies movement (Hasnas, 1995). Although the notion of CLS has differences among its scholars, the central concepts are:

- To explain the indeterminacy of legal principles and norms.

- To explore how this indeterminacy makes legal rules contradictory to each other, which makes it difficult to resolve any dispute.

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- In spite of this indeterminacy, to conduct analysis of legal doctrine to explore how some groups and institutions benefit, while some others are overlooked or excluded from legal decision making.

- To clarify how power politics legitimates and is legitimated by legal regulations and doctrines.

2.3 Relations between Critical Theory and Critical Legal Studies

Critical legal studies (CLS) is rooted in the same assumptions and understandings as critical theory discussed above, and they share the same history of thought through much of their evolution. Critical theory aims to promote a more equal society by identifying and demolishing social and cultural barriers, such as racial, sexual or gender-based inequality and discrimination. CLS uses the same approach and the same view of knowledge to study law. The primary aim of CLS is to demolish social injustices inherited in traditional law and to establish equal justice for everyone. The critical legal studies movement has been largely influenced by the thoughts of the Frankfurt School. Thus, CLS draws on the insights of the Frankfurt School "to expose the disguised oppressive elements and contradictions in 'capitalist' society, with the aim of liberating humanity from oppression ... [CLS] brings this perspective to legal scholarship" (Johnson, cited in Caudill, 1986-1987, p. 298). Critical legal studies are a systematic approach to the analysis of the law. "We can find significant commonality between CLS and critical theory in Horkheimer's (1972) and Habermas's (1971) writing" Caudill (1986-1987, p. 302). Caudill (1986-1987, p. 302) identified that "Horkheimer's denigration of the "given" world as socially determined (in great part) and changeable (for the better) is shared by most CLS scholars". CLS aims to find and deploy grounds for potential transformative change in the same way as CTIR: "the idea of *worldview* as an explanation of the beliefs that legitimate social and legal relations and give rise to objective illusions (e.g., natural rights) as well as the perceived need for open communication after recognition of ideological commitments, are foundational to CLS analysis" (Caudill, 1986-1987, p. 302).

One primary concern of CLS scholars is to question the relations between law and politics. That leads one also to challenge relationships between law and different forms of power, such as economic, political, cultural and military. This is because "politics refers to people's contrasting visions and to the values that they want to realize or recognize in public life. But it also relates to the power to realize or recognize those values and visions" (Balkin, 2008, p. 10). Therefore, when we discuss the relations between law and politics, we also need to consider the relationship between law and power. We may also need to consider thinking about how people utilize the law to defend or justify power (Balkin, 2008). Their discussion reveals different viewpoints about what critical scholars believe regarding the 'discourse of

law'. Some scholars pointed out the defect of law and the contradictory features of rules of law. Others (critical theorists such as feminist scholars) argue that the principles of law are an 'emancipatory discourse' (Balkin, 2008). "They well recognized that rule of law values and right discourse were hardly perfect – after all, they had been used repeatedly to justify slavery and the subordination of women – but they had also allowed people to speak out against and to restrain the worst excesses of power ... these critical scholars retained a sense of the political importance of rules of law values and right discourse" (Balkin, 2008, p. 7).

It can thus be argued that if we want to critically analyse any discourse of law in a wider sense, including international law, we must consider both law and politics, and the dialogues and interaction between them. Martti Koskenniemi (2011) emphasises both the contradictions of legal regulations and the political importance of legal rules to draw a complete picture that combines both critical theorist and critical legal theorist thought together. Moreover, "all societies develop rules and norms for conducting relationship ... these rules and norms instruct members of the given society about their behaviour" (Henderson, 1998, p. 351). However, people living in a society do not obey or practice these norms and rules automatically. According to Henderson (1998, p. 351), "People want a body of law to provide a social order … Law can be draconian rules of the strong for controlling and exploiting the weak". This is how law forms an essential element and constituter of culture (norms and rules), in which critical theory is interested. It is also interested in how culture is regulated and managed, which is done in part through law. These particular interests of critical theory underpin the essential importance of combining critical theory with critical legal theory.

2.4 Critical Theory as an Antecedent of Post-Colonial Critique

Postcolonial theory is a scholarly practice which analyses and explains imperialism and colonialism and their post-imperial impacts and resonances. 'Postcolonial critique' works towards explaining and understanding the "issues of power, economics, religion and culture and how these elements work in relation to colonial hegemony (western colonizers controlling the colonized)" (Brizee, Tompkins, Chernouski and Boyle, 2015, p. 1). Postcolonialism in international relations is a relatively recent critical theoretical approach. Postcolonial theory of IR critically discusses the perseverance of colonial power and discrimination and racism in politics of the world. "Leading postcolonial critical scholars include Homi Bhabha (1990, 1994), and Gayatri Spivak (1999), and critical theorists including Michel Foucault and Jacques Derrida have had significant influence in postcolonial critique" (Hladik, 2011, p. 14). Here, critical theory provides not only a theoretical perspective but also a 'normative aspiration' (Hutchings, 2012). The postcolonial

critique also builds on critical theorists' claims about peace, solidarity, equity and emancipation (Hutchings, 2012). Hutchings (2012, p. 65) argues that, "in terms of the practice of critical theory, postcolonialism raises the question of the meaning of the universal reach of the critique's claims, and the accounts of truth and history on which they rest". Post-colonial scholars redecorate critical theoretical practice by "challenging it to take its identification with the subaltern seriously" (Hutchings, 2012, p. 74). "The subaltern classes refer fundamentally in Gramsci's[2] words to any 'low rank' person or group of people in a particular society suffering under hegemonic domination of a ruling elite class that denies them the basic rights of participation in the making of local history and culture as active individuals of the same nation" (Louai, 2012, p. 5). Thus, it forces the critic to address issues of cultural imperialism and paternalism in emancipatory projects. It also radicalizes thinking about how historical injustices may be addressed. The thesis has not directly employed 'postcolonial' theory for analysis, but to understand the context of the India-Bangladesh border conflict, it necessarily needs a clear understanding of the 'postcolonial' history that has shaped these relationships into the present, and which are examined in more detail in chapter 5.

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[2]"The notion of the subaltern was first referred to by the Italian Marxist political activist Antonio Gramsci in his article "Notes on Italian History" which appeared later on as part of his most widely known book Prison Notebooks written between 1929 and 1935" (Louai, 2012 p. 5).

Part 2

2.5 Critical theoretical concepts employed in this research

Along with the critical concepts discussed above, critical theory also works with the concept of 'reconstruction'. This concept has become one of the most important central notions in the methodological understanding of critical theory. The concept 'reconstruction' refers to the overall methodological direction of critical theory, which could be characterised as 'reconstructive explanatory critique' (Strydom, 2011, p. 136). To enable a better understanding, this 'reconstructive explanatory critique' could be divided into two interrelated parts: 'reconstructive explanation' and 'explanatory critique'. According to Strydom (2011, p. 137), reconstruction should "focus on observable surface correlations indicating regularities or laws as well as the interpretative focus of intersubjectively understandable meanings … and, accordingly, identifies the deep-seated, formal, generative and regulative set of elements and relations that lay down the parameters of what transpires in the actual concrete situation". On the one hand, 'reconstructive explanation' identifies the situation based on knowledge of a specific problem or situation as well as the possibilities (which have been ignored or only limitedly used in reality) inherent in that actual situation based on a pre-theoretical assumption. On the other hand, 'explanatory critique' focuses on vague, incorrect or inadequate practice in that specific context of the problem or situation or in any relations of the actors as well as their understanding, orientations and practices. It also aims to expose distorted or partial explanations and their production of inequality, suffering or power domination in those particular settings. At issue here is first of all analysis, which is (as in the everyday use of the word in natural science) breaking a phenomenon or behaviour into its constituent parts, and then reconstruction, building an interpretative understanding from the analysis of those parts. This dimension of 'reconstructive explanation' and 'explanatory critique' is a significant characteristic of critical theory, according to Strydom (2011). CTIR can mean quite a variety of possible approaches; here, this defines the specific CTIR approach which this thesis will use, and it is set out below and applied in detail in chapter 3. In using it, the author does not claim any theoretical innovation, as she does not claim innovation in using Koskenniemi. She draws first on Koskenniemi (2005, 2011) and then on Strydom (2011), constructing a tighter logical process for understanding the world of international relations by evaluating the case study of India-Bangladesh border dispute management. The approaches are important because they provide focus and specific concepts and channel the methodology of the research discussed in chapter 3, making explicit the assumptions and context of the concepts and methods used. This approach is not original, but it is distinctive in the tight logical reasoning which will link the discussion of this chapter with chapter 3, which will be executed in chapters 5, 6 and 7.

2.5.1 Critical theoretical significance

The first step of 'reconstructive explanatory critique' is to demonstrate the theoretical significance of the research topics or concepts. This begins by explaining the formal dimension or knowledge of the theory of society (Strydom 2011) of the specific context of the research, and of previous work in that field, for example, as is explored here already in the literature review chapter. This leads to the deconstruction of the case into its elements, including the underlying structures of power relations, the ideas, ideologies and political practices as well as the more obviously visible elements upon which an empiricist explanation would focus. This explanation leads to the reconstruction of the supposed structure or structural possibilities or potentials of a concrete situation or practice of life related to the specific context of the research. This reconstruction is the formation of an understanding of how the separate elements of a case interact, causing the concrete situation understudy to come about (see chapter 7). In critical methodological terms, it can be explained in the concept of reconstruction, reconstructive critique and reconstructive explanation, which is discussed more clearly in the methodology chapter (chapter 3). The research here initially chose the topic of inter-state territorial conflict management along with a case study of the India-Bangladesh territorial border dispute management. The critical theoretical significance of choosing this topic implies that critical theory differs from other theories by exploring the importance of real-life problems: "suffering, moral indignation, resistance or conflict as qualitatively felt and perceived manifestations of the state of a society" (Strydom, 2011, p. 146). The further stage of narrowing down the topic is directed by its employed critical methodology, which will be discussed in the next chapter.

In order to justify the critical theoretical significance of 'reconstructive explanatory critique', the CTIR researcher begins with the formal theoretical concept of 'inter-state territorial conflict management' and the conceptual structure of language, a process which demonstrates an initial possible reconstructive explanation of the chosen topic. It is reconstructive in that it leads it to a methodical investigation of the object domain (inter-state territorial conflict management) by opening up the reality of inter-state border conflict management. Research does this in order to demonstrate the potential or the possibilities of reconstruction of that specific structure. In other words, a preliminary or pilot work is necessary to establish whether the line of research is initially capable of yielding an understanding. What, the researcher asks, are the forces and actions and structures which we might need to take into account in this particular case? In this research, what might be the important elements in an understanding of India-Bangladesh border dispute management? The process of generating this 'reconstructive explanatory critique' is then derived from its critical methodology; this, in turn, produces a detailed analysis with purpose. This approach is summarised here in figure 2.1 (see page 62). Moreover, the purpose of

this 'reconstructive explanatory critique' is to explain the causes or constituting elements of this specific 'problem' (not only the visible causes of the problem, but also the blocking forces or structures or elements which obstruct the management process). The analysis can then outline the possibility of fulfilling the 'emancipatory' potential of critical theory to change the situation being analysed. As noted above, the claim here is not that *full emancipation* (whatever that means) must follow from a CTIR analysis, but that, following Farrands and Worth (2005), critical theory is able to identify the *emancipatory potentials of the knowledge* it produces. For this thesis, this 'emancipatory potential' could be explained as the constituting elements and blocking forces which, in the case under study here, undermine the process of India-Bangladesh border dispute management. That process invokes questions of international law as much as of political and economic interest, which is why a fusion of the overlapping approaches of CLS and CTIR is appropriate in this particular study. A better understanding, in turn, has the potential to make clear how the influences and dominations that create human rights violations, including torture and murder, can be challenged and changed.

In most conventional theories of international relations, territory is considered as a subject of conflict because of its psychological importance, its inhabitants, its geopolitical position, and its ethnic or religious make-up. It is also important for its natural resources and its historical and cultural value. Territorial disputes are thus a prominent cause of inter-state conflict (Northedge and Donelan, 1971). The causes of territorial disputes are usually defined and explicated by the strategic power relations, according to the realist assumption. They are also closely connected with the political and economic interests of disputing states, as is the case in the India-Bangladesh border conflict. Conventionally, any territorial dispute should be resolved according to the norms, rules and procedures of existing international law. Therefore, in order to construct a reconstructive explanation of 'inter-state territorial conflict management' it is essential to conceptualize the social presumption of the topics as well as demonstrate the relations between the relevant structure of 'international law' and 'inter-state territorial conflict management'. It is a key premise of critical theoretical research that it is not just concerned about the concrete situation of a reality; rather, it also concentrates on the formal or structural features of that situation. The next section of this chapter provides a brief explanation of the reconstructive explanatory conceptualization of the initial research topic and its relations with the relevant formal structure of the international system (including international law), which is described more fully in chapter 4.

2.5.2 Reconstructive explanation in the international law of territorial conflict management

As Northedge and Donelan (1971) argued, international territorial disputes form an important sub-set of disputes between sovereign states for a wide variety of reasons; however, there is also a necessity for participants in a dispute to resolve it, and to do so through peaceful means. Territorial disputes always form a challenge to world peace and security, particularly in regions of relative instability such as South Asia (Forsberg 1996). States are obligated to endeavour to resolve their disputes peacefully, not least by the United Nation's Charter. One formal structure to deal with inter-state territorial disputes is international law. One of the most important tasks of international law is to solve international conflict peacefully, a principle which demonstrates the close structural relationship between inter-state territorial conflict and international law. The United Nation's Charter laid down the means of peaceful settlement of disputes in Article 33 of the Charter, and Article 2(3) of the Charter identifies the need for justice in dispute settlement (Rashid, 2003, p. 409) (for a detailed discussion of the international law of conflict management and inter-state territorial dispute, see chapter 4).

2.5.3 Reconstructive critical explanation of the contemporary conflict management process to identify the 'research problem'

Conflict management is challenging because of the systematic, sophisticated approach it demands. Huth, Croco and Appel (2011, p. 415) argued that "in a system defined by anarchy, there are reasons to question whether international law can play a central role in the orderly and peaceful resolution of disputes when security issues are at stake for leaders". Unresolved territorial disputes, particularly in Asia and Africa, critically challenge the effectiveness of or compliance with international law in solving territorial conflicts. It has been argued that international law doesn't have any understandable, prioritized set of norms and rules to resolve these. However, the traditional international law approach denies these drawbacks because it is originally liberal in nature. As Koskenniemi holds, "it is difficult to understand 'liberalism' as materially controlling because it does not accept for itself the status of grand political theory" (Koskenniemi, 2005, p. 5). Liberalism rejects – or is blind to – the influence of politics on international legal theory and practice. Furthermore, territorial disputes are frequently rooted in the past colonial era. The majority of the Asian and African states achieved independence – in so far as they genuinely did – from colonial powers during and after decolonization. These still relatively newly independent countries face a body of rules almost entirely framed without their participation, and some of the rules of international law are either inadequate or do not serve their interests (Rashid, 2003). As a result, the international law of territorial boundaries, which is still based on those colonial

concepts, in effect privileges some states and neglects others while pretending to create a level juridical playing field. In some cases, that colonial legacy legitimates the division of peoples with the same the language, culture, identities or religions into different entities. For example, at the time of decolonization, the British colonial power divided the Indian subcontinent into two separate countries, India and Pakistan, based purely on religion. They ignored cultural, identity or linguistic commonalities. Moreover, the demarcation of the boundary ran into difficulties in ways described in chapter 5. Thus, there were many border disputes between India and Pakistan before Bangladesh was born. The research explores the 'problem' that current perceptions of the international law of conflict management are starting to challenge, exploring the idea that the dispute settlement framework for post-colonial countries needs rethinking.

This thesis employs a critical realist ontology which argues that there is a 'real world' which research can engage, but that discovering and addressing it requires more complex ways of identifying and picturing reality than a simpler empiricist model would suggest (Linklater, 2007). The first step of its employed critical methodology is to identify the 'research problem'. Critical theory is particularly selective and differs from other theoretical approaches in that it only considers a specific problem as a 'problem' when something unusual or suspicious happens. "An iconic embodiment of the unusual, strange or disturbing quality of something … symbolic breakdown of mutual understanding, protest, conflict and so forth-attracts the attention … and gives rise to a mood or feeling that something is amiss and vague perception of the world as being out of joint" (Strydom, 2011, p. 154). This initial stage of knowledge production is always predominantly shaped by the researcher's views and values. She is the one who identifies the problems of suffering, dominations and/or inequality on the basis of her own theoretical perception and relates the process of knowledge production to critique. At this point, there are overlaps between critical realism and critical theory, which are explored further in chapter 3.

The second step of 'reconstructive explanatory critique' is to demonstrate the theoretical significance of the research topics or concepts, which leads the research to identify and diagnose the hidden forces which are rooted in the particular situation under study. The critical theoretical significance in this sense refers to "the fundamental substantive theoretical perspective it implies in so far as, from the viewpoint of critical theory, it concerns not just a concrete situation and its formal features, but some instance of a force deeply rooted in concrete social life that persistently, time and time again, exerts pressure towards transgressing, transforming and overcoming the status quo" (Honneth, cited in Strydom, 2011, p. 138). This identification, in turn, leads to a detailed analysis of the concrete situation, which can then be reconstructed as an interpretation or explanation. In this research, the role of international law is problematized and the character of the relationship

between law and politics is further explored, as is explained in the next section of this chapter.

2.5.4 The theoretical paradox in explaining the nature of international law: reconstructive explanatory critique

According to the realist assumptions of international relations, the terms 'international' and 'law' contradict each other. Some realist theorists (i.e. Morgenthau, 1985; Carr, 2001) have denied that international law is properly law, since it does not have an agency to enforce it, and they consider it as just another tool of power politics. The three ingredients to implement the law – authority, legislature and judiciary – are missing in international law. Shaw (1997) argued that, "international law has no legislature … there is no system of courts … and there is no executive governing authority … there is no identifiable institution either to establish rules, or clarify them or see that those who break them are punished" (Shaw, cited in Shimko, 2013, p. 223). The realist concept of international law considers it weak and ineffective compared to domestic law. According to Henderson (1998, p. 351), "international law is the rules and norms that states, and other actors as subjects of law, feel an obligation to obey in their mutual relations". Others, liberals argue that the existence of international law is essential to the international system. For example, Higgins (1994) does not deny the criticism, but defends international law by arguing that "international law is not rules; it is a normative system … Without international law, safe aviation could not be agreed, resources could not be allocated, people could not safely choose to dwell in foreign lands" (Higgins, 1994, p. i). This is perhaps an unresolvable philosophic debate. However, critical theory and critical legal studies aim to explore the major contradictions of the rules of international law, questioning how it actually works more than how it is theorised. CLS and CTIR observe international law as a societal contract in progress, that "is the view that persons' moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live" (Friend, 2016, no pagination). "Despite the absence of a world government, a clear understanding of expected behaviour operates in international society and in such a way as to control conflict" (Henderson, 1998, p. 351). This understanding of expected mutual behaviour is the base of this societal contract. Higgins (1994) and Henkin (1979) also contradict the claim that there is no clear source or arbitration of international law, pointing to treaties and the work of the United Nations International Law Commission as sources and the International Court of Justice as an effective arbitration body. In contrast to both liberal and realist writers, critical theorists consider 'politics' as a

key hidden force which undermines and manipulates the structure and outcomes of international legal process.

In order to sketch a 'reconstructive explanatory critique' of the 'research problem' discussed above, the thesis needs to identify a critical explanation of the current process of international law and its structural relations with conflict management and, more importantly, explain the structural relations between law and politics. This critical explanation will significantly lead the research to substantiate its view that the current structure of international law of conflict management needs to be reconstructed. In doing so, it draws on Martti Koskenniemi's (2005, 2011) account of the politics of international law, which "attempts to understand the basic challenges facing the international law … to identify the roots of its pervasive sense of alienation" (Rasulov, 2006, p. 584). Koskenniemi's (2005, 2011) work is based on a critical evaluation of the actual practice of international law, focusing on contradictions which arise between the proposed norms of international law and the process and actual practice. His work forms a significant contribution to the analysis of the law of conflict management using arguments to examine a range of different kinds of dispute. In his work, he also critically analyses various territorial conflicts (i.e. the Lake Lanoux case, 1957, and the Eastern Greenland Case, 1933) including many post-colonial conflicts. Therefore, his work meaningfully bears on the management of the India-Bangladesh border conflict and its resolution.

2.5.5 Martti Koskenniemi: an introduction

Martti Koskenniemi was the president of the International Law Study Commission and the author of *From Apology to Utopia-The Structure of International Legal Argument (2005)* and *The Politics of International Law (2011)*. His work is a turning point in explaining the rules of international law. In his work, he has pursued an account of the nature of the legal norms and the way they operate and has also revealed the limits and contradictions of the current legal rules of international law. "In doing so, he has sought to illustrate the ways in which international legal discourse is articulated, the ways in which it operates, and to illuminate and improve our practice of international law in full awareness of both its limits and its promise" (Jouannet cited in Koskenniemi, 2011, p. 2). His work is based on an evaluation of the actual practice of legal rules and norms. He focuses on contradictions which arise between proposed norms and understood rules and their actual practice in both legal realist and liberal legal thought. His principal aim is to draw lessons from theory and practice to develop a practical legal framework for international law. He believes that this framework could help to understand the discourse of international law. Another strength of his work is that he has never explained the discourse of international law externally; he has always explored it in its own terms, internally, by giving an account of the structure of its theory, assumptions, ideology and practice as well as its historical development. According to

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Koskenniemi (2011), the proper way to explore international law is by studying the mechanisms of the rules and regulations it sets up and the way legal practitioners pursue it. Critical theory in general, alongside critical legal studies, seeks to locate practice and theory in the history which gives rise to it as well as in the consciousness and blind spots of the understanding which informs them. In this sense, Koskenniemi is in the mainstream of critical theory.

2.5.6 Martti Koskenniemi and critical legal studies

Martti Koskenniemi's work has also been taken up by others in the CLS tradition (Koskenniemi, 1999). Koskenniemi relates himself to CLS in his composition (Koskenniemi, 1999). His work is explicitly reflected in the critical legal studies. Slaughter (2000, p. 240) argues that "Martti Koskenniemi's *From Apology To Utopia*, for instance, … is the foundation for his and many others' application of Critical Legal Studies' (CLS) critique of domestic liberalism and international law". According to Rosulov (2006, p. 584), "within a decade of its release, FATU [From Apology to Utopia] turned into one of the most talked about books on international law, a compulsory point of reference for everyone writing about the nature of the international legal order, an obligatory item on every serious international lawyer's reading list, and the most famous CLS piece about the international law discourse ever". He is one of the exceptional international lawyers "who have managed to truly integrate the linguistic turn into their thought (and thus the work of Sassure, Wittgenstein, Pierce and Austin), also taking into consideration Pereman's theory of legal argumentation, the critical approaches of Foucault in France and the CLS movement in the United States, and the anthropological work of Levi-Strauss" (Jouannet, cited in Koskenniemi, 2011, p. 7). His work has unquestionably influenced that by "Roberto Unger, and Duncan and David Kennedy" (Jouannet, cited in Koskenniemi, 2011, p. 7), who are considered influential scholars of critical legal studies.

2.5.7 An evaluation of Martti Koskenniemi's (2011) *The Politics of International Law* as a contribution to a reconstructive explanatory critique of the international law of conflict management

Koskenniemi's *The Politics of International Law* (2011) is a unique piece of work because of its originality, thoughtfulness and challenging nature. In his book, he "works towards an immanent critique of international law: that is, a critique based on premises that are themselves accepted in professional international law discourse" (Koskenniemi, 2011, p. 35). This immanent critique has been explained by Koskenniemi (2011, p. 64) as an "assumption that the demonstration of the contradictory and inconsequential nature of legal argument, the way everything about the law deferred to contested ('political') assumptions" in theory and practice. In the context of this research, this immanent critique could be

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established as a formal critique and critical explanation of the socially accepted knowledge or paradigm of international law. This can contribute to the reconstructive critical explanation of conventional knowledge of international law's mechanisms. Koskenniemi (2011, p. 35) further added, "As there is no necessary closure to this discourse, but arguments continue interminably, any closure must come from outside the structures of law itself, and such closure may be characterised as a politics of international law". According to Koskenniemi's (2005) immanent critique, there are some major contradictions in legal rules and perceptions. In practice, these contradictions often make it more difficult to reach an acceptable decision of legal disputes. Moreover, the current framework of legal dispute settlement does have some significant patterns to determine a dispute, but in many cases, these are not enough to conclude a decision. In that situation, to solve the dispute, the decision maker mostly takes controversial decisions and justifies these by contextual interpretation (for some relevant examples, see chapter 4). Critics question the 'impartiality' of 'contextual justice' of that decision, which Koskenniemi (2011, p. 62) didn't deny. But, he contended that, "The turn away from general principles and formal rules into contextually determined equity may reflect a … turn in development of international legal thought and practice". He further suggested that "issues of contextual justice cannot be solved by the application of ready-made rules or principles. Their solution requires venturing into fields such as politics, social and economic causality, which were formally delimited beyond the point at which legal argument was supposed to stop in order to remain 'legal'" (Koskenniemi, 2011, p. 62).

In his book *From Apology to Utopia: The Structure of International Legal Argument*, Koskenniemi (2005) argues that to interpret the structure of modern international legal discourse, the essential element lies in the methodological distinction between two hypostatized entities called "doctrine" and "theory" (Rasulov, 2006). "Doctrine" is something that is functional, concrete, sensible and definite, while "Theory is something that is vague, highfalutin, abstract and indeterminate" (Rasulov, 2006, p. 584). He added that "For every natural law theory, there is a positivist rival; for every "law is a social contract" thesis, there is a "law is the will of the dominant group" counterpart, and so on and so forth" (Rasulov, 2006, p. 584). According to Koskenniemi (2005, 2011), international law is neither a natural law nor a universal law derived from natural law, nor it is an independent entity. It is a kind of social contract existing to serve international life; "but its social function is profoundly ideological" (Rasulov, 2006, p. 584). Here, the term 'ideological' refers to a morally rooted (normative) approach based on an ideological understanding of what ought to be rather than a concrete reality rooted in the interests of established powers. This "has served to deny the essentially political nature of the international law project, strengthen the sense of international law's objective identity (which it shapes in the likeness of the liberal ideal of legal formality), and, because it is inherently self-contradictory, furnish the means whereby

every *valid* legal argument can be always criticized as political and subjective. The way in which the latter condition is produced is then what forms the immediate object of reference for the bulk of FATU's narrative" (Rasulov, 2006, p. 18).

Koskenniemi (2005) contended that the legal rules of international law lie between two opposites. One side is considered as utopianism (idealist thought based on normative structure) and the other side as apologizing for power politics (realist thought). There is no other way to escape: in addressing any conflict, any decision will be criticized either as an 'apologist' or 'utopian' solution. This issue is rooted in hidden forces which critical theory intends to disclose and is also continuously rooted in an accepted international legal paradigm which must be challenged: "from one perspective, this criticism highlights the infinite flexibility of international law, its character as a manipulable *façade* for power politics. From another perspective, the criticism stresses the moralistic character of international law, its distance from the realities of power politics" (Koskenniemi, 2011, p. 40). Now the critical question is, what is the actors' consideration of international law in their interactions? Do they consider it as strict rules/process or liberally flexible while they follow it? "There are two ways of arguing about order and obligation in international law," observes Koskenniemi (2005, p. 59): "one argument traces them down to justice, common interests … or other similar idea to which it is common that they are anterior, or superior, to State behaviour, will or interest. They are taken as a given normative code which precedes the State and effectively dictates how a State is allowed to behave … Another argument bases order and obligation on State behaviour, will or interest. It takes as given the existence of States and attempts to construct a normative order on the basis of the "factual" State behaviour, will and interest" (Koskenniemi, 2005, p. 59). Caught between apology and utopia, international law is often criticized as being too political or, alternatively, as unrealistic. According to the former view, international law is naturally political and depends on the political will of states. The latter opinion does not deny the political nature of international law but argues that it is political because it is grounded in unrealistic or moralistic discourse. Koskenniemi (2011, p. 40) argues that, "The standard point about the non-existence of legislative mechanism, compulsory adjudication and enforcement procedures captures both criticisms". But the problem here is that there seems to be no other way by which international law could escape from this dichotomy.

Koskenniemi (2005, p. 24) concluded that "international law, meanwhile, is a through-and-through practical discourse aiming to be objectively different from both the self-serving spin-off power politics and the transcendental nonsense of the moral discourse". But international law fails in that aim, and we have to ask who the system of rules benefits and how power is expressed through legal regulation. In a nutshell, this is the summary of the traditional strategy for international law's professional self-determination, says Koskenniemi. The problem with it, he suggests, is that, unfortunately, it does not work. First, there is the

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problem of explaining compliance. On the one hand, in the absence of a centralized political order, states and other members of international community quite frequently ignore existing international legal regimes, but when they do so, it is more a consideration of political expediency than a sense of legal obligation (Rasulov, 2006). Now the question remains: although the basis of the obligation is wobbly in nature, as previously explained, what aspects make states obey international law? According to Higgins (1994), the "consent" or "will" of the states is the basis for obeying international law. "In so far as consent has been regarded as central to obligation, there has been a tendency to mitigate its rigours through a variety of techniques" (Higgins, 1994, p. 15). This "consent-based theory" (Higgins, 1994) has been elaborated by Koskenniemi (2005).

"Koskenniemi elaborates the consent-based theory thus: since international law is, according to the modern doctrine, based on the consent of the states, it is open to the criticism that international law is whatever states choose to regard as law, so that the law cannot be an effective external constraint on their behaviour" (Higgins, 1994, p. 15). In practice, on the basis of this consent, states can decide which rules or norms they will obey and which they will not. Sometimes they deny the rules to which they have already consented. A significant example is the Israeli West Bank barrier[3], which runs completely against Geneva Convention iv Article 49[4]. The International Court of Justice issued an obligation to remove the barrier on 9th July 2004, but Israel rejected this, arguing that this is a matter of self-defence and solely a political issue (see also chapter 4). 'Obey' or 'disobey' mainly depends on Israel's 'consent' or 'will.' Koskenniemi discovered that the basis of this obligation is either 'apologist' or 'utopian.' "If states simply want to obey, the basis of obligation is apologist; if it is claimed norms exist which states are not prepared to obey, then the basis of obligation is utopian" (Higgins, 1994, p. 15).

Koskenniemi (2011, p. 43) further claimed that, "International law's contradictions force it into an impoverished and unreflective pragmatism. On the one hand, the 'idealist' illusion is preserved that law can and does play a role in the organisation of social life among states. On the other, the 'realist' criticisms have been accepted and the law is seen as distinctly secondary to power and politics". However, legal rules and process of international law are an unrealistic idea in our existing international world order. If we presume that we are living in a system where every actor is serving their interests rather than any other higher purpose, and all actors and their interests are equal, still it is questionable whether legal rules of international law will work or not. Because all actors and their interests are often

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[3] The West Bank barrier is a separation wall which was built in the West Bank by the Israeli government.
[4] "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive" ((Icrc.org, 2015, no pagination).

contradictory to each other; "sort of the *Bellum omnium*[5]" (*sic*; Koskenniemi, 2011, p. 35). "For one calleth wisdom what another calleth fear and one cruelty what another justice; and prodigality what magnanimity ... And there – from such names can never be grounded for any ratiocination" (Hobbes, cited in Koskenniemi 2011, p. 36). Establishing legal rules of law is a battle against relativist politics, "understood as a matter of furthering subjective desires, passions, prejudices and leading into an international anarchy" (Koskenniemi, 2011, p. 36).

Koskenniemi has further argued that if we want to establish the universality of legal rules or processes in international law, we have to prove the objectivity of the legal rules of international law, separating it from international politics. Only thus can we ensure "concreteness" and "normativity" in international law. This distances law from "theories of natural justice" (Koskenniemi, 2011, p. 38). In the same way, "it aims to guarantee the normativity of the law by creating distance between it and actual state behaviour, will or interest" (Koskenniemi, 2011, p. 38). The requirement of "concreteness" argues that international law comes neither from paradise nor from universality; it is an artificial construction which originates from the social contract, as mentioned before. It should focus on actors' behaviours and interests, and the rules of the law should be interpreted according to these conditions. On the other hand, "normativity" claims that the rules of jurisprudence should not be influenced by states' will or interest. It must be critical of such 'will' and 'interest.' Koskenniemi (2011, p. 39) argues that, "legal rules whose content or application depends on the will of the legal subject for whom they are valid, are not proper legal rules at all but apologies for the legal subject's political interest". So, the neutrality of the legal rules and the biases of politics confront each other. "If the law could be verified or justified only by referencing to somebody's views on what the law should be like (i.e. theories of justice), it would coincide with their political opinions. Similarly, if we would apply the law against those states which accept it, then it would coincide with those state's political views" (Koskenniemi, 2011, p. 39). Thus, it is impossible to prove that both "concreteness" and "normativity" exist in international law, which dismisses its claim of universality.

Koskenniemi (2011, p. 61) also offers examples, implying that in practice "it is impossible to make substantive decisions within the law which would imply no political choice". It is entirely possible to make a decision which is only political. "A choice which must ultimately defend itself in terms of a conception of justice – or then remain substantively unjustified. We accept it because that is what we do" (Koskenniemi, 2011, p. 40). There are no means by which an international lawyer or the conflict management procedure (by negotiation, arbitration, mediation, etc.) could escape the influence of politics. According to Koskenniemi (2011, p. 44) "Such a decision would, under the social conception of law and the principle

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[5] *Bellum omnium contra omnes* is a Latin phrase which means "the war of all against all" (Oxford Reference.com, 2015, no pagination).

of subjectivity of value, be one which would seem to have no claim for objective correctness at all. It would be a political decision". On the other hand, in the absence of any centralised authorised power, disputing states sometimes try to deny the decision. Consequently, the mechanism of international dispute resolution becomes less effective. However, there is a paradox here, in that Koskenniemi argues that the policy gets in the way of legal reconciliation/dispute management, yet his 'solution' appears to be a recognition of the politics of a case, allowing it to play a fuller role. However, this is not avoidable. Therefore, in this context, (i) the law is always essentially political and (ii) this conception of law also embodies a sense of what the social is and (iii) this has a bearing on the forms of knowledge and action. It is this unspoken set of assumptions about the political framing of law which CLS in general and Koskenniemi in particular seek to expose, analyse and critique.

Now we return to the initial presumption of this research problem that the current structure of international law of conflict management needs to be reconstructed and the hidden forces which create this problem primarily comprise 'politics'. Koskenniemi's argument described above justifies these initial arguments to the extent of unpacking the structural and inseparable relations between international law and politics. It signifies 'politics' as a hidden force which is responsible for influencing the rules and process of international law. At the same time, he also demonstrates the constitutive elements creating this specific problem:

- There are contradictions which are inherent in rules of international law.
- The rules and process of international law are too flexible and are manipulated by politics and power politics.

- It is flexible because it based on moralistic/unrealistic norms and rules.

- The non-existence of legislative mechanisms, authoritative compulsory adjudication and enforcement procedures undermines its effectiveness.

- There is the problem of contextual interpretation and contextual justice, and their solution requires venturing into fields such as politics, social and economic causality (Koskenniemi, 2011).

- As it is inherently self-contradictory, international law implies that every *valid* legal argument can be always criticized as political and subjective (Rasulov, 2006).

Koskenniemi's immanent critique helps to theorise the initial research problem and potentially provides a theoretical base for 'reconstructive explanatory critique' (see figure 2.1 on page 62). In doing so it can also break down the problem into its constituent elements: the influence of politics (including inseparable structural relations between law and politics), power politics, historical and other contexts, and the inherent deficiency of international law. Thus, as an integral part of its employed methodology and analysis, the

research will critically evaluate the problem of India-Bangladesh border dispute management to determine these causes, which lead it to a 'critical explanation'. This will then justify its initial claim that the international law of conflict management needs rethinking and reconstruction.

The research confronts the problem of employing Koskenniemi's theory, which demonstrates a generalised critique of international law, but the research is more specific in examining a particular case of conflict management focusing on inter-state territorial conflicts as well as in its methodology. Koskenniemi does not directly explore territorial disputes. So, it is necessary to draw his arguments out to an analysis of these, which extends his theory and so contributes to the originality of this work. He does not wholly neglect territorial disputes, such as the Lake Lanoux case, 1957, and the Eastern Greenland case, 1933, however, these are only done in general terms. So, the dispute between France and Spain regarding the Lake Lanoux case was based on the controversial Treaty of Bayonne (1866). In this case, the tribunal concluded that "in carrying out, without prior agreement between the two Governments, works for the utilization of waters of Lake Lanoux in the conditions mentioned in the utilization of waters of Lake Lanoux agreement, the French Government was not committing a breach of the provisions of the Treaty of Bayonne of May 26, 1866, and the Additional Act of the same date" (Koskenniemi, 2005, p. 59). Koskenniemi (2011, p. 60) criticised the relevant principles of international law, in this case arguing that "both arguments support both positions. The case cannot be solved by reference to any of the available concepts (sovereignty, non-harmful use of territory, territorial integrity, independence, good neighbourliness, equity, etc) as each of the concepts may be so constructed as to support either one of the claims. Also, the constructions have no *legally* determined preference". He further evaluates the court's decision by arguing that "in justifying in conception of what is equitable, the court will have to assume a theory of justice – a theory, however, which it cannot justify by further reference to the legal concepts themselves" (Koskenniemi, 2011, p. 60).

Another relevant example where Koskenniemi evaluates the international law of conflict management is the Eastern Greenland Case, 1933. The territorial dispute regarding the ownership of Eastern Greenland between Norway and Denmark was resolved by the court with reference to the relevant rules and principles of international law. Norway made the claim of 'sovereign equality', while Denmark claimed, 'general recognition'. Koskenniemi (2011) argued that it was a contradiction between 'pure fact' and a 'legal rule' approach. Koskenniemi (2011, p. 47) further argued that in order to reach a decision "Court had to make interpretation about the facts (effective occupation) as well as the law (the extent of general recognition) which, however, were external to the applicable facts and the law which were difficult to justify against Norway's conflicting sovereign interpretation of them". He

added that "the crucial point in the judgement was the Court's discussion of the Ihlen declaration which allowed the Court to protect Norwegian sovereignty by denying its possession in reference to the construction according to which Norway itself had already 'recognised' Danish sovereignty in Eastern Greenland" (Koskenniemi, 2011, p. 47).

None of these explanations stated above could be considered as specific and adequate enough to be relevant to the India-Bangladesh border and its dispute management. They are relevant to the research problem to the extent that they provide a reconstructive critical explanation of the mainstream of international law and relevant process and principles applicable to international conflict management, but only in general terms and they are inapplicable to the specifics of the case here. Moreover, there are some limitations to Koskenniemi's work. As mentioned in chapter 1, the major paradox of Koskenniemi's work is that "Koskenniemi does sustain a meaningful distinction between law and politics even within the "politics of law"" (Beckett, 2006, p. 1051). On the other hand, Koskenniemi (2005) argued that it points to the apparent paradox that even a "literal" application is always a choice that is undermined by literality itself. "There is no space in international law that would be free from decisionalism, no aspect of the legal craft that would not involve a 'choice' – that would not be in a sense, *a politics of international law*" (Koskenniemi, 2005, p. 596). Now comes the critical question of is it possible to sustain a reasonable distinction between law and politics? Moreover, Bernstorff (2006, p. 1038) asked whether *"From Apology to Utopia's* central message that international law as a language is inherently political? If international legal practice is political through and through, how can a call for a distinct culture of formalism be sustained?" However, in reply, Koskenniemi (2011, p. 35) argued that, "as there is no necessary closure to this discourse, but arguments continue interminably, any closure must come from outside the structures of law itself and such closure may be characterised as a politics of international law".

The key limitation of Martti Koskenniemi's work is generally held to be that he never tried to construct a theory of international law. According to Rasulov (2006, p. 584), he "was never supposed to become a grand statement of legal philosophy. It was, and still is, 'only' an amazingly candid – and insightful – attempt to understand the basic challenges facing the international law community in its day-to-day practice; to identify the roots of its pervasive sense of alienation; to show that the constant anxieties it faces in its professional life are not a sign of some unique curse or blessing, but part and parcel of the universal human predicament". Rosalyn Higgins suggested that "the critical studies scholars will see the law as contradictions or as essentially indeterminate at its core … [which] leads to the pessimistic conclusion that what international law can do is to point out the problems but not assist in the achievement the goal" (Higgins, 1994, p. 9). Like CLS theorists, Koskenniemi (2005, 2011) is mainly focused on trying to explore major contradictions of the

legal rules of international legal philosophy which make it hard to solve any case. On that point, there are no means by which an international lawyer or the conflict management procedure (by negotiation, arbitration, mediation: Northedge and Donelan, 1971) could escape from the influence of politics. But there is a paradox here that Koskenniemi argues that politics gets in the way of legal reconciliation/dispute management in the international law framework, but his arguments appear to be a recognition of the role of politics. However, also "the politics of international law cannot pretend to resolve. But … can give expression to the experience of fluidity and contestability and provide tools for the cool-headed analysis of what our participation as legal language – users in our professional contexts does to the world and to ourselves" (Koskenniemi, 2011, p. vii).

Finally, the key argument of Koskenniemi's work is that it is politics rather than the structure of international law which shapes the process and possibilities of any inter-state dispute, conflict or simply actors' interactions. He is trying to explore the inter-relations between politics (in general), power politics (to some extent) and law while exploring controversial principles of international law relating to decisions of the International Court of Justice. And while politics is always important in international law, legal language, legal framing, and the imaginary structure of international law and the prejudices it may conceal matter very much in global politics. Thus, it is important to critically reflect on the international law of conflict management although it may not explain the causes of the outcome in the International Court of Justice or elsewhere. Much inter-state conflict is normally resolved through negotiation, arbitration or mediation, as Henkin (1979) elaborates and Higgins (1994) explains. And Koskenniemi demonstrates a critical appraisal of arbitration and mediation in relevant cases, but tends to neglect the process of 'negotiation'. This qualifies but does not undermine the value of his work. To avoid the limitations discussed above, this study attempts to elaborate and qualify his theory. The research builds an explanatory critical theoretical framework grounded on the key explanations of the major theoretical question the research implies: how does international law deal with specific international disputes? In building this theoretical framework, the research primarily relies on, but is not limited to, a critical reading of Koskenniemi (2005, 2011). It also pursues similar arguments from a critical reading of Higgins (1994) and Henkin (1979) relevant to this analysis. This theoretical explanatory framework incorporates the critical theoretical 'reconstructive explanatory critique', which leads to critical evaluation of the 'factuality' of the case study of 'India-Bangladesh border dispute management', identifying the blocking forces which are undermining a possible successful management process. "It relates to the centrality of the concept of the dialectical tension and contradiction at the interface between the facticity or concretely settled and inertial quality of the actual situation and the critical regulative force excreted on it socio practical ideas of the reason" (Strydom, 2011, p. 138).

Part 3

2.6 The theoretical explanatory framework leading to reconstructive explanatory critique

What does international law do in conflict management specifically? This question invites one to analyse what Strydom calls the "dialectical tension and contradiction" (Strydom, 2011, p. 138) at the interface between a supposed or standard explanatory framework and the actual problem of India-Bangladesh border dispute management (see figure 2.1 on page 62) as critical theory identifies it. Each of the following sub-sections implies specific issues about how to approach the research as well as maps a conceptual landscape of critical legal studies and critical theory in relation to conflict management, although the important methodological implications are developed much more comprehensively in the next chapter.

Law as a 'process'

In dispute resolution, international law is an accepted decision-making procedure. The key task of international law is to define the procedures of conflict management. International law defines the key issues of a conflict which lead to its management. However, there is no world government in this anarchic society which could guarantee security to states. Moreover, there is no central authority to enforce international law. This sharply contrasts with domestic laws, which are enacted by a legislature and implemented by an executive and where violators of the law are punished by a judiciary. The United Nations is a step towards this; but it is not and never was intended to be a world government, and it cannot prevent conflict. Austin (1832) held the view that international law was not 'law' at all, but consisted of rules of conduct of moral force, what he called 'moral suasion'. Only moral force and public opinion might force compliance with international law. To many others, international law is 'law,' although it may be weak in some cases.

There is a more precise distinctive scholarly debate whether the law will count as 'rule' or 'process.' To many liberal theorists, law counts as a rule. On the other hand, to many scholars (such as Higgins and Koskenniemi), it is not possible to count law as 'rule': it is, they aver, a decision-making process. Rosalyn Higgins argued that "so, I should state … a choice has to be made. The choice is a perception of international law as a process. As we will see, this entails harder work in identifying sources and applying norms, as nothing is mechanistic and context is always important" (Higgins, 1994, p. 8). Critical legal scholars also reject counting international law as a body of rules. Critical legal studies scholars agree. "Both take as the starting-point that law is deeply rooted in social theory and practice. Both locate legal process in a social context and make the place of values quite explicit" (Higgins, 1994, p. 9). Critical studies also refuse to consider 'law' as 'rule', and Koskenniemi (2011) suggested that "international law's role lies less in offering substantive rules, whether

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absolute or flexible, than in providing a decision process that allows a controlled treatment of the situation" (Koskenniemi, 2011, p. 123). Law can thus define what counts as a reasonable or proper procedure of conflict resolution. In partial agreement, Higgins taught that law communicates, defines and constitutes a body of rules and a reality; but, in particular, she rejects the notion that international law functions as an 'international criminal code', which she says is as much a misunderstanding of law as it is of international politics (Higgins, 1994).

Thus, 'international law' also provides the defining language of a dispute, i.e. what counts as a dispute or conflict? What counts as domestic or international? It also defines the language of what constitutes possible solutions. In international law, the international dispute is a social condition that arises when two or more actors pursue mutually exclusive or mutually incompatible goals. The existing literature on determining disputes is indeed in need of clarification. In the Mavrommatis Palestine Concessions case (1924), the International Court of Justice (ICJ) proposed, "a dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (Schreuer, 2008, p. 960). The ICJ defines a dispute as "a situation in which the two sides held clearly opposite views concerning the question of performance or non-performance of certain treaty obligation" (Schreuer, 2008, p. 960). In the same way, in Texaco vs. Libya (1979), the ICJ described a dispute as a situation when the difference of interests and of legal views arises.

The role of international law in communications between states during conflict management

States play a crucial role at all levels of a dispute. While they can be a source of dispute, they can play an important role in dispute resolution. How do they do this, and what sort of rules do they need to follow? From where do these rules come? Usually, in the international system, "the relations of one nation with another, as soon as they begin, are permitted by basic legal concepts: nationality, national territory, property, torts, contracts, the rights and duties and responsibilities of the state" (Henkin, 1979, p. 17). It is a basic principle of law and of the UN Charter that all states should settle disputes peacefully. In order to do this, they need to communicate with each other. The existence of a dispute assumes a certain degree of communication between states, and international law plays a central role in communication during that dispute management (Schreuer, 2008). Higgins (1994, p. 1) argued that "The role of law is to provide an operational system for securing values that we all desire – security, freedom, the provision of sufficient material goods … The identification of required norms of behaviour and techniques to secure routine compliance with them play an important part". Thus, the primary purpose of international law is to regulate relations between states, to communicate norms and to constitute core realities (statehood, sovereignty and territory, for example), and the principles of peaceful co-existence among

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states has been confirmed in many bilateral and international documents, such as the well-known Chou En-lai/Nehru Declaration of 1954 and a resolution of the General Assembly of the UN of December 1957.

Negotiation as a process of solving international dispute

Negotiation heads the list of means in Article 33 of the UN Charter. It is argued that this is deliberate. Negotiation opens up a dialogue between the parties and provides the disputing parties with the first opportunity to settle their dispute peacefully. It also helps in stabilising the relations of the parties in the future (see chapter 4 for more details). The basic techniques of negotiation include persuasion and compromise as well as building confidence or trust. But negotiation may not end with an effective solution (see also chapter 4). However, in a possible negotiation, areas of potential agreement are defined while areas of disagreement are identified and as far as possible reduced until an accord is reached. The nature of negotiation and the rules which regulate it (such as the various Vienna Treaties on Diplomacy and Representation since 1815) are also formulated in legal texts. It follows from all this that states resort to law in their behaviour in resolving disputes, as Henkin (1979) and Higgins (1994) both stress. Law also defines what counts as an 'enclave', what counts as a border, and what counts as a citizen or non-citizen on either side of a border. For example, according to international law, successful negotiations usually conclude with an agreement or treaty. In basic terms, international law defines the terms 'treaty' and 'agreement' and the difference between them.

2.7 Context, law, politics/power, interests and specific issues on the ground are always the forces which are in interaction in a dispute management

None of these stated explanations implies that law embodies the whole explanation of the management or resolution of a conflict, and a critical approach requires that politics, power politics and power relations also have a key role in explaining any dispute, alongside the contexts in which it is played out. As discussed earlier, critical theory is a paradigm which structures the way we see the world with a critical framework on all levels. It questions the nature and scope of the traditional features and ideas that have been used. Huth, Croco and Appel (2011, p. 415) argue that, "there are reasons to question whether international law can play a central role in the orderly and peaceful resolution of disputes when security issues are at stake for leaders".

Critical theory provides an instrument for delegitimating the existing structure of power and politics. Critical theory argues that, "Power leads to distorted communication … We can understand the rationality of power as self-reflection and the branch of scholarship that

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deals with it is critical theory" (Seiler, 1992, p. 2). Koskenniemi (2005, p. 24) argues that, "International law, meanwhile, is a through-and-through practical discourse aiming to be objectively different from both the self-serving spin-off power politics and the transcendental nonsense of the moral discourse". Instead, we have to ask who benefits from the system of rules? And how power is expressed through legal regulation? Moreover, "law is a social contract reflecting the will of the dominant group counterpart, and so on and so forth" (Rasulov, 2006, p. 584). Higgins argues that, "the authority which characterizes law exists not in a vacuum, but exactly where it intersects with power. Law far from being authority battling against power, is the interlocking of authority with power" (Higgins, 1994, p. 4). However, the maintenance of peace and security is of paramount importance to states and the orderly and peaceful conduct of relations (both in the time of peace and of conflict) needs some accepted norms of behaviour from states. The accepted norms are the result of customs, practices, and precedents and, with the passage of time, they attain clarity, precision and the status of general application. It is this usefulness which underpins the observance of international law. Koskenniemi (2011, p. 265) explained that, "first, international law exists to advance the repertory of substantive values, preferences and practices that those in dominant positions seek to realise in the world". Although politics and law are not identical, they interact at various levels, and this inseparable relationship cannot be ignored. According to Koskenniemi (2011, p. 266), "there is no fixed set of objectives, purposes, or principles that would exist somewhere 'outside' or beyond international law itself, that they are always the objectives of particular actors involved in hegemonic pursuits", adding that "the law is instrumental, but what it is instrument for cannot be fixed outside the political process of which it is an inextricable part" (Koskenniemi, 2011, p. 266). Thus, law cannot be 'neutral' in the ways many claim or wish.

Higgins suggests that, "an efficacious legal system can also *contain* competing interests, allowing those who hold them not to insist upon immediate and unqualified vindication" (Higgins, 1994, p. i). However, one can assume that the international legal system is effectively operable based on mutual interests; but we need to understand in particular cases, and not only in general, what happens when 'power' and 'interests' of states conflict with international law in the context of a dispute settlement. Which one prevails? Henkin (1979, p. 89) argued, "Violations are not punished by representatives of the legal order acting in the name of society. Any undesirable consequence of violation is political, not legal; they are the actions of other nations vindicating their own interests". Critical theory argues this is unavoidable: Koskenniemi called it 'the politics of international law', suggesting that "if the legal assessment happens to coincide with the speaker's known political views, the doubt must always remain that the assessment is simply a rationalisation, in legal language, of a political position" (Koskenniemi, 2011, p. 201). He offers an imaginary example: what if the International Court of Justice were to declare all

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nuclear weapons had to be destroyed as they could take innocent people's lives, which is forbidden under international law? This declaration could place the law in a conflict with the long existing "politico-military system of the nuclear age" (Koskenniemi, 2011, p. 202). He adds that "in a conflict between the law (as declared by the Court) and the long-standing policy of the most powerful states, the law could hardly prevail" (Koskenniemi, 2011, p. 202). Liberal international lawyers might say that this is over claimed; but critical theorists defend it by their counter-arguments. Koskenniemi (2011) argued that, in that case, they neither give up their nuclear power nor even violate the law straight away, rather they will argue that "absolute prohibition would have condemned the law to irrelevance already in advance" (Koskenniemi, 2011, p. 202). Therefore, "the opposition would then not have appeared as (good) law against evil (politics) but one contesting one law with another" (Koskenniemi, 2011, p. 202). However, the possible outcome will be some nuclear weapons could still be maintained to ensure 'self-defence' and that some killing is permitted for the sake of 'self-defence.' Koskenniemi contended that it is not a conflict between 'law' and 'politics' in this context, rather "the law's inability to grapple with the massive killing of the innocent" (Koskenniemi, 2011, p. 203). Therefore, the deficiency within law gives way for politics to play a fuller role in any conflict. Moreover, international law is naturally political, and it depends on the political will of states to execute it.

We might then ask, with Schreuer, "under what circumstance does 'a disagreement' or 'conflict' become a dispute justiciable by law?" (Schreuer, 2008, p. 960). His answer is that this is determined by the interpretation depending on the context. According to Koskenniemi, it could be considered as an 'indeterminacy' problem which undermines the effectiveness of the international law of conflict management. Koskenniemi (2011, p. vi) argues that, "international law is not about operating an algorithm but about deciding between alternative types of action each of which may, with some ingenuity be brought within the conventions of plausible legal argument". "Decisions turn on contextual interpretations about the facts and the law interpretation" (Koskenniemi, 2011, p. 47). Again 'context' is crucial. However, Koskenniemi (2011) further argued that, "indeterminacy, decision and bias are inevitable aspects of all work in international law, from giving legal advice to drafting judgements of international tribunals, from academic system-construction to the argumentative interventions by activists" (Koskenniemi, 2011, p. vi). As already noted, defining language is also essential because it determines the language of what constitutes a possible solution. Moreover, in a negotiation process, the law cannot define what is negotiable between the parties, which is a political question. Higgins (1994) explained, "Policy considerations, although they differ from 'rules', are an integral part of that decision-making process which we call international law; … A refusal to acknowledge political and social factors cannot keep law neutral ... There is no avoiding the essential relationship between law and politics" (Higgins, cited in Higgins, 1994, p. 5).

From the above discussion, it is evident that context, politics/power, interest and specific issues on the ground are always hidden forces which are in interaction in dispute management. At the same time, law itself is a regulating force in any conflict management. This research will critically evaluate how far these grounding forces determine or undermine the constituting elements of the problem of the India and Bangladesh border dispute and the success of its management in chapters 5, 6 and 7.

2.8 Summarising the critical theoretical grounding and implications of this research

Critical theory sees the world through a critical attitude on all levels, considering 'society' as an object of analysis. It provides recognition of the political nature of knowledge claims by drawing attention to the relation between 'knowledge' and 'society', and offers an alternative which also does not claim to be neutral but is a normative yet grounded form of knowledge production. It raises the question of power and inequality. Law forms an essential element in constituting norms and rules and shaping cultures and procedures, so critical theory is also interested in how political culture is regulated and managed. This particular focus of critical theory demonstrates the value of combining critical theory with critical legal theory in this study (see pages 32-33 for details). Critical theory also works with the concept of 'reconstruction', which is one of the most important concepts in the methodological understanding of critical theory. This concept points towards a methodological direction of critical theory which, as Strydom and others characterised, is 'reconstructive explanatory critique' (Strydom, 2011, p. 136). This will be employed in this thesis. Grounding on the main assumptions of critical theory, one of the most important parts of this reconstructive explanatory critique is to expose distorted, partial, or unequal forms of power domination which cause injustice and suffering, as is the case here in the India-Bangladesh border dispute. Here, critical theory directs the research to choose this topic by providing a clearer focus on real-life problems involving "suffering, moral indignation, resistance or conflict as qualitatively felt and perceived manifestations of the state of a society" (Strydom, 2011, p. 146). The research begins by problematising 'inter-state territorial conflict management' and the structure of language, process and policy, which allows it to demonstrate an initial reconstructive explanation of the chosen topics. It is reconstructive in the way that, from this starting point, critical theory will lead to a methodical investigation of the object domain (inter-state territorial conflict management) by opening up the actual lived experience of the border conflict to demonstrate the possibilities of reconstruction of that specific structure (see pages 37-38 and also chapter 3 for details).

Grounding in its critical theoretical approach, the employed reconstructive explanatory critique further aims to understand and expose the hidden forces which created that

situation, for example social, cultural, ideological and contextual forces. The purpose of this 'reconstructive explanatory critique' (from Strydom) is also to explain the causes or constituting elements of this specific 'problem' (not only the immediate causes of problems, but also the blocking forces or structures or elements obstructing the success of management). In doing so, it is important to establish that the line of research is initially capable of yielding an understanding. What, the researcher asks, are the forces and actions and structures which we might need to take into account in this particular case? In this research, what might be the important elements in an understanding of India-Bangladesh border dispute management? The process of generating this 'reconstructive explanatory critique' is then derived from its critical methodology; this will, subsequently, produce a detailed analysis with purpose which, in turn, will allow the emancipatory determination of critical theory and that will lead to the *emancipatory potential* (nothing in this thesis leads *directly* to emancipation.) of its knowledge production. This emancipatory potential could be explained as the constituting elements and blocking forces which in the case under study here undermine the process of India-Bangladesh border dispute management (in a broader sense, inter-state territorial conflict management). That process invokes questions of international law as much as of political and economic interest, which is why a fusion of the overlapping approaches of CLS and CTIR is appropriate in this particular study. A better understanding, in turn, will have the potential to make clear how the influences and dominations that create human rights violations, including torture and murder, can be challenged and changed. This is an element in the logic of the thesis; however, it is not a significant part of the claim to originality.

The framework of this research thus opens up the possibility of drawing together CTIR and CLS in studying conflict management and of analysing constituting elements which have shaped the India-Bangladesh border dispute management. This framework also leads to the building of a reconstructive critical explanation of the blocking forces and challenging factors preventing the success of this management. In doing so, it will break down the problem into its constituent elements: the influence of politics (including inseparable structural relations between law and politics), power politics, historical and other contexts, and the inherent deficiency of international law. Thus, as an integral part of its employed methodology and analysis, the research will critically evaluate the case to find out those causes which lead to a 'critical explanation'. This will then justify the initial claim that the international law of conflict management needs rethinking and reconstruction. This research will critically evaluate how far these grounding forces determine or undermine the constituting elements of the problems of the India/Bangladesh border dispute, leading to an understanding of the (partial) success of its management in chapters 5, 6 and 7. In doing so, chapter 5 will do the necessary task integral to critical theory of setting the context of the research and will also provide an initial understanding of the case study along with the

major elements of the dispute upon which the research focuses. The central assumption of critical theory also enables the setting of the prior aim of uncovering the context of the dispute, as critical theory argues that any knowledge is necessarily conditioned by social, cultural, ideological and contextual influences.

Chapters 6 and 7 will investigate and explore the value of critical theoretical arguments by evaluating this dispute management. It will adhere to the following steps of critical analysis (adapted from Strydom, 2011, and also Schimdt, 2006). First, it will describe India-Bangladesh political relations since 1971 to the extent of the historical description of the border conflict management. Second, it will identify the possible 'constraints' underpinning the 'problem' of dispute management. It will reflect from the first phase of its employed methodology, where it will identify, expose, structure and open up the reality of this specific 'problem'. Third, it will demonstrate the causes of those 'constraints'. Fourth, it will propose a critical reconstructive explanation of those 'causes', which will lead it to construct and clarify the core arguments of the research by evaluating the research findings. Fifth and last, it will draw conclusions about the actual condition of India-Bangladesh border conflict management. Following this, chapter 6 will explore the relationship between the two neighbours after 1971 in the context of this dispute management. The critical theoretical assumptions stated here will be employed to interpret the problems addressed. According to critical theoretical arguments, this 'actual condition' covers almost every aspect of the situation (Strydom, 2011), which will lead chapter 6 to analyse the detailed phases of conflict management in the context of political relations. This will enable the research to obtain a "reflexive abstraction and statement of the normative principles or ideas of reason having a foothold in, yet simultaneously generatively regulating, those social practice" (Strydom, 2011, p. 200).

The analysis in chapters 5 and 6 and the further development of that analysis in chapter 7 will also explore how this long-standing dispute has created human rights violations, including torture and murder in the conflicted border area. This aim is also derived from critical theoretical concepts employed in this research, which argue that one of the major aims of critical theory is "to explore the distorted subjective situation of some individual or group" (Sumner, 2003, p. 4). Moreover, as discussed above, one of the distinctive characteristics of critical theory is that the kinds of questions asked relate to the dynamics of power and exploitation in ways that are potentially linked to practical intervention and transformations (Morrows and Brown, 1994). The central concepts of this study relate directly to the dynamics of power relations between India and Bangladesh in resolving the conflict, which, while it did not involve direct confrontation, was framed by conflicting ideas and unbalanced power politics as a dominant factor in the dispute management (as the literature review suggested). The combination of CLS and CTIR will enable a more carefully focused analysis of this particular problem in chapters 6 and 7. This critical theoretical

insight will lead the research to the further step of knowledge production by reconstructively criticising and questioning the existing theoretical idea of peaceful international borders, interstate relations and, more importantly, the existing process of the international law of conflict management in chapters 6 and 7.

In deepening the reconstructive analysis, the research will take the reference point of 'negotiation' as a frequently used process of interstate conflict management. It refers to the quality of the reconstructive explanatory critical framework that will permit it to recognize the specific problem in a given context so as to reach a rationally grounded understanding of the problem which will be analysed (Strydom, 2011). For this purpose, it will firstly evaluate the negotiations in chapter 7. Then it provides a 'critical explanation' of the 'causes' of success or failure of those negotiations, employing the critical theoretical concepts used in this research, as stated above. This 'critical explanation' will also include the causes of the 'contingent constraints' conditioning current disputed issues. Finally, the critical theoretical assumptions demonstrated above will enable the research to analyse what Strydom calls the "dialectical tension and contradictions" (Strydom, 2011, p. 138), creating the actual problems of India-Bangladesh border dispute management (see figure 2.1). To fulfil this task, chapters 5, 6 and 7 employ significant methodological tools, including critical realist ontology, interpretivist epistemology, normative axiology, analysis of the use of language (by employing McGregor's (2010) critical analysis but not specifically critical discourse analysis), qualitative methods (with some subsidiary use of quantitative data to provide ancillary support to qualitative analysis employed in this research but without employing a quantitative methodology), and ethical considerations. This process is captured in figure 2.1.

Figure 2.1: Critical theoretical grounding and implication of the research

Research Problem
Inter-state territorial conflict management: A case study of India-Bangladesh border dispute management.

Structure
-Relation to/use of critical realism.
-Researchers presumption is directed by its ontology – critical realism.
- Critical theory's methodology places more importance on the actual/real dimension of ontological implications.

Critical Orientation
-Places importance on real life problems, such as sufferings, resistance, conflicts and so on.
-Critical theory leads to a methodical investigation of the object domain (inter-state territorial conflict management) by opening up the reality of the specific problem.
-Critical theory is not just concerned about a concrete situation of a reality or problem, rather it also concentrates on the formal or theoretical knowledge of that situation or reality.
-Critical theory only considers a specific problem as a 'problem' when something unusual or suspicious happens.
-Critical theory aims to identify or diagnose the hidden forces, which are rooted in a particular situation or context that are responsible for creating the problem.
- Emancipatory potential (not direct emancipation in the context of this research).
- It also evaluates the blocking force or factors, which are protesting in a situation to overcome the problem.

Define the problem more clearly
-Inter-state territorial conflict is a subset of international conflict which should be resolved by following the rules and principles of international law, but the current perceptions of the international law of conflict management are challenging because it is not doing its job properly.
-The hidden force which is creating this problem is primarily 'politics'.
-It requires further investigation and reconstruction.

Presumption of existing theoretical knowledge
How does international law work in dispute management specifically?
- Law is a process of conflict management. It also provides the 'defining language' of a dispute.
- Law plays a central role in communication among states during a conflict.
- Negotiation opens up a dialogue between conflicting parties to resolve the conflict peacefully.
- States cannot but resort to law in their behaviour and tend to resolve disputes through law.

Critical theory sets the aims of analysis
- Opening up the reality of the specific problem by analysing the 'history', 'context' and other dimensions of the problem.
- Explore the hidden 'forces' rooted in the particular situation that are responsible for creating the problem.
- Explore the blocking forces or factors which are protesting in a situation to overcome the problem.
-Creating emancipatory potential knowledge.

Three Steps of the Critical Methodological Framework (Strydom, 2011)
-Problem disclosure and constitution.
-Diagnostic reconstructive explanatory critique.
-Evaluate practical significance of produced knowledge.

Analysis

Methods
-Qualitative analysis of interviews and other documents.
-Qualitative content analysis of documents related to border dispute management.

Implication of critical theory Including Martti Koskenniemi's (2005, 2011) critical thought and the Influences of critical legal studies
-Contradictions inherent in the rules of international law, the rules and process of international law are too flexible and are manipulated by politics and power politics; it is flexible because it is based on moralistic/unrealistic norms and rules, non-existence of legislative mechanism, compulsory adjudication and enforcement procedures undermining its effectiveness; the problem of contextual interpretation or contextual justice and their solution requires venturing into fields such as politics, social and economic causality .
- A critical approach often requires that politics, power politics and power relations also have a key role in any dispute, alongside the contexts in which it is played out.
- There is an inseparable relationship between power (politics) and law when states communicate with each other in the framework of the international law of dispute management.
- In a negotiation process, the law cannot define what is negotiable between the parties which is, of course, a political question.
- Context, politics/power, interest and specific issues on the ground are always hidden forces which are in interaction in any dispute management.

Methodological Tools
- Critical Realist Ontology.
- Interpretivist Epistemology.
- Normative Axiology.
- Positionality and Reflexivity.
-Ethical Consideration.
- Use of language (employing McGregor's (2010) critical analysis).

Analyse the Process of India-Bangladesh Border Dispute Management

History and context of the dispute (ch.5).

Border conflict management in the context of India-Bangladesh relations and the current disputed issues (chapter 6).

Evaluation of border negotiations (chapter 7).

Break down the problem into constituting elements as well as exploring the blocking forces and factors undermines the success of the resolution.
Initial presumption: Politics, Power politics, Interests, Context and changing context.

Reconstruction as Critical Explanation and Knowledge Production
Reconstructive explanation will demonstrate a situation based on theoretical knowledge of a specific problem or situation as well as the possibilities inherent in that actual situation based on a pre-theoretical assumption. Explanatory critique will demonstrate the vague, incorrect or inadequateness in that specific context of a problem, its understanding, orientations and practices and also targets the exposure of distortion, partial, inequality, sufferings or power domination of that particular setting. It explores the emancipatory potentials (nothing in this thesis leads _directly_ to emancipation) of its produced knowledge. This emancipatory potential could be explained as if these constituting elements and blocking forces which are undermining the process of India-Bangladesh border dispute management (in a broader sense, inter-state territorial conflict management) are removed, then the structure of the international law of inter-state territorial conflict management would be free from all influences and dominations that challenge its effectiveness in this specific context. It could also free the people living in the conflicted border area from suppression, including killing, torture and overall human rights violations. This will be demonstrated explicitly in chapters 5, 6 and 7.

Source: Author's self-produced illustration.

2.9 Conclusion

Critical theory is a paradigm which structures the way we see the world with a critical attitude on all levels, considering 'society' as an object of analysis. By drawing attention to the relation between 'knowledge' and 'society', the critical theory provides recognition of the political nature of knowledge claims. It raises the question of power and inequality. Law forms an essential element constituting norms and rules and shaping cultures. It is also interested in how political culture is regulated and managed, which is done in part through law. This particular focus of critical theory demonstrates the value of combining critical theory with critical legal theory in this study. The original thought of CLS is, this chapter has shown, closely connected with and influenced by critical theory in social studies including CTIR. Critical theory also works with the concept of 'reconstruction' which is one of the most important concepts in the methodological understanding of critical theory. This concept points towards a methodological direction of critical theory which Strydom and others characterised as 'reconstructive explanatory critique' (Strydom, 2011 p. 136). 'Reconstructive explanation' identifies the situation based on theoretical knowledge of a specific problem as well as the possibilities of change or transformation inherent in that actual situation. 'Explanatory critique' focuses on vague, incorrect or inadequacy in the account of that specific context of a problem or in the relations of actors, their understanding, orientations and practices which have a potential for change towards justice and the ending of suffering. It also seeks to expose distorted, partial, or unequal forms of power domination which cause injustice and suffering.

The research focuses on inter-state territorial conflict management in the India-Bangladesh territorial border dispute. Here critical theory differs from other theories by providing a clearer focus on real-life problems involving "suffering, moral indignation, resistance or conflict as qualitatively felt and perceived manifestations of the state of a society" (Strydom, 2011, p. 146). The research begins by problematising 'inter-state territorial conflict management' and its conceptual structure of language, process and policy which allows it to demonstrate an initial reconstructive explanation of the chosen topics. It is reconstructive in the way that, with this starting point, critical theory leads to a methodical investigation of the object domain (inter-state territorial conflict management) by opening up the actual lived experience of the border conflict to demonstrate the possibilities of reconstruction of that specific structure. The purpose of this 'reconstructive explanatory critique' (from Strydom) is to explain the causes or constituting elements of this specific 'problem' (not only immediate causes of problems, but also the blocking forces or structures or elements obstructing the success of management). This, in turn, allows the emancipatory determination of critical theory and it leads to the *emancipatory potential* (nothing in this thesis leads *directly* to emancipation) of its knowledge production. This emancipatory

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potential could be explained in pointing to the ways assumptions and practices block the possibility of conflict resolution and can potentially be overcome (this point is fully explained in chapter three). This can only be achieved, CTIR and CLS suggest, when and if the border conflict can be freed from all influences and dominations that challenge the effectiveness of dispute settlement. It could also free the people living in the conflicted border area from oppression, including the killing, torture and overall human rights violations which have continued to haunt the area.

The research explores the problem that current perceptions of the international law of conflict management challenge. It suggests that the disputes settlement framework for post-colonial countries needs rethinking. Therefore, it requires further investigation and reconstruction that leads to knowledge production. In doing so, it drew on Martti Koskenniemi's (2005, 2011) account of the politics of international law. His work forms a significant contribution to the analysis of the law of conflict. In his work, he also critically analyses territorial conflicts referred to above including some post-colonial conflicts. His work meaningfully bears on the management of the India-Bangladesh border conflict and its resolution. Koskenniemi's argument justifies these initial arguments to the extents of unpacking the structural and inseparable relations between international law and politics. It signifies 'politics' as an often-hidden force responsible shaping the rules and processes of international law. At the same time, he demonstrates contradictions inherent in the rules of international law, and that the rules and process of international law are too flexible and open to manipulation by power politics. It is, he claims, flexible because it is based on unrealistic norms and rules while exhibiting in practice the non-existence of a defined legislative mechanism, compulsory adjudication and enforcement procedures. This undermines its effectiveness. The problem of contextual interpretation or contextual justice and their solution requires venturing into fields such as politics, social and economic causality rather than a focus on narrow legal concerns (Koskenniemi, 2011). Every *valid* legal argument can be always criticized as political and subjective, he and other CLS scholars agree (Rasulov, 2006).

As discussed earlier, Koskenniemi's work is a contribution to the analysis of the international law of conflict management since examines a number of different kinds of dispute and also helps to explain different territorial conflict (i.e. Lake Lanoux case, 1957, Eastern Greenland Case, 1933, etc.) including many post-colonial conflicts; but it has not so far been used in the specific analysis of border disputes. To avoid the limitations of his work, the study attempts to explain his theory more specifically. In that context, the research builds an explanatory critical theoretical framework grounded on the key explanations of the major theoretical question the research implies; how does international law deal with international dispute specifically? In building this theoretical explanatory framework the research

primarily relies (but is not limited to) on critical reading of Koskenniemi (2005, 2011). It also pursued similar arguments from a critical reading of Higgins (1994) and Henkin (1979) which are significant for this analysis. This framework potentially leads the research to incorporate with the critical theoretical assumption of international law of conflict management and analyse constituting elements of creating the problem of India-Bangladesh border dispute management as well as build a reconstructive critical explanation of the blocking forces and challenging factors to the success of this management. Therefore, it enables the research to analyse "dialectical tension and contradiction" (Strydom, 2011 p. 138) at the interface between this presupposed or standard explanatory framework and the actual problem of India-Bangladesh border dispute which will be assessed in detail in chapters 5, 6 and 7.

Chapter 3

Methodology and Methods

3.0 Introduction

Research methodology is the process of doing research with various tools and techniques, the justification for 'how you do it' and the justification for the research itself. Hervey (1990, p. 1) writes that "methodology is viewed as the interface between methodic practice, substantive theory and epistemological underpinning". Distinctively, Sprinz and Wolinsky-Nahmias (2007, p. 4) emphasise testing theory, suggesting that "methodology refers to systematically structured or codified ways to test theories". Therefore, the methodology is considered as the particular combination point of theory, methods, and epistemology in which any investigation process of social inquiry is performed.

This research aims to provide an analysis based on a version of critical theory and evaluation of the practice of Bangladesh and its neighbouring state, India, in respect of settlements as to the boundary dispute in the context of the principles and political practices of the international law of territorial disputes, as chapter 2 has demonstrated. This chapter explains and justifies the methodology used, consistent with its use of critical theory. This methodology draws on, but is not limited to, the approach developed in detail by Strydom (2011). In gathering data, it utilizes qualitative methods and analysis built on a qualitative approach to document analysis and a qualitative content analysis. It also uses a limited body of quantitative data to provide ancillary support to the qualitative analysis. It does not employ quantitative analysis as a methodology. It employs interpretivist epistemology, critical realist ontology and a normative axiology, consistent with its methodological position. This chapter includes a justification of its methodology, methods, epistemology, ontology and axiology. It offers an explicit description and explanation of the researcher's positionality, ethical consideration, language, and sources of evidence as well.

3.1 Diverse methodological traditions in international relations and critical social research

Although traditional methodologies (realist and empirical historical) remain dominant approaches in international relations, it is a discipline well known for its uses of diverse genealogical methodologies (Lamont, 2015). These genealogical methodologies are grounded in various studies of social science. The primary objectives of traditional international relations unambiguously concentrate on interactions between actors, such as states and governmental organisations, non-governmental organisations, and social movements. In doing so, it crosses other social science disciplines, including political science, law, economics, history and anthropology. Thus, this discipline has mostly tended to synthesise methodologies and methods from diverse fields of study. Since its emergence in the 20th century, international relations (IR) has expanded to include new agendas and newly emerged methods, such as "two-level game analysis and spatial analysis" (Sprinz

and Wolinsky-Nahmias, 2007, p. 1), critical methods, discourse analysis and others. "At the same time, the combination of new research themes, greater diversity, and increased subfield specialization has overshadowed common methodological concerns among IR scholars" (Sprinz and Wolinsky-Nahmias, 2007, p. 1). Thus, IR has become more fragmented as it has evolved. According to Lamont (2015, p. 17), "it is evident that IR is a discipline defined by its *inclusiveness* of competing approaches to methodology, although at times the perception that there is a certain methodological intolerance toward research that falls outside a particular tradition is also visible". Nevertheless, the comprehensiveness of the opposing methodological traditions of international relations explicitly derives from its interactions with other areas of social science; one of these 'newer' approaches is critical theory.

The main aims of critical theory and its many different approaches are summarised in chapter 2. Henn et al. (2009, p. 27) argue that, "drawing their inspiration from ideas of critical theory, as developed by the Frankfurt School of Social Research, critical social researchers contend that social research should serve a particular purpose in emancipating oppressed groups within society". According to Hervey (1990, p. 1), "Critical Social Research is underpinned by a critical-dialectical perspective which attempts to dig beneath the surface of historically specific, oppressive, social structure". Troyna (1994, p. 72) adds, "the central concerns of critical social research seem to resemble those conventionally associated with all forms of social inquiry which adopt a critical perspective; that is, they crystallize around an interest in two related questions: 'what is really going on?' and 'how come?'". It is different too in its aim of promoting, or at least opening up the possibility of, change in society. Thus, it aims to explore real-life problems of oppressed groups or people, minority groups, and political groups to create awareness among its subjects and create knowledge which can form the basis for political and social action. "Practically, this requires the critical investigator to begin from the intersubjective understandings of the participants of a social setting and to return to these participants with a program of education and action designed to change their understanding and their social conditions" (Comstock, 1982, p. 378).

3.2 The methodological framework of critical theory

The methodology applied in this study is grounded in specific accounts of critical theory but also embodies some distinctive insights from related writers. While methodology and methods are commonly used as synonyms, researchers more precisely recognise an intelligible difference between the two concepts. Thus, methodology incorporates the process of structuring perceptions by theory, epistemology, ontology, and method, the meta-practice of research, whereas methods are what the researcher actually does in her research practice together with "a reflection on the tools" (Aradau and Huysmans, 2013, p. 10). In this perspective, this study deploys qualitative methods for gathering information. It

draws on a qualitative content analysis along with a qualitative approach of document analysis as the key methods of enquiry. It also used (limited) quantitative data to provide ancillary support to qualitative analysis employed in this research. Following its key methodological source, Strydom (2011), it breaks the evidence into key components (analysis) and then deploys knowledge reconstruction to evaluate and draw together that evidence. In doing so, it takes into account the position of the researcher and the context of the research topic when asking the core research questions.

Morrows and Brown (1994, p. 257) argue that "one of the distinctive characteristics of critical research is that the kinds of questions asked relate to <u>dynamics of power and exploitation</u> in ways that potentially are linked to practical <u>intervention and transformations</u>" (this author's emphasis). The central concepts of this study relate directly to the dynamics of power relations between India and Bangladesh in resolving the case study conflict, which, while it did not involve direct confrontation, was framed by conflicting ideas and unbalanced power politics as a dominant factor in the dispute management. The combination of CLS and CTIR enables a more carefully focused analysis of this particular problem, as chapter 2 has proposed. As Booth has said, "critical theory is not a misnomer. It does not promise to deliver the impossible – objectivity – [.…] but rather seeks to expose the problems of contemporary social and political life from a standpoint of critical distance, and it does so with an emancipatory interest" (Booth, 2005, p. 12).

3.2.1 Justification of using critical methodology

The critical methodology employed in this research essentially rejects the idea of positivist or scientific research. It argues that "as research within a given society cannot be ideologically neutral, it is legitimate to justify rationally the definition of forms of research guided by critical- emancipatory cognitive interests" (Morrow and Brown, 1994, p. 268). In the analysis and the evaluation of boundary conflicts between India and Bangladesh, it is justified to use a critical research methodology rather than adopting a positivist view, because neither is the conflict settlement process neutral nor is it possible to answer the research questions from a positivist perspective. In order to explore political influence over the procedures of international law of conflict management, the study needs to analyse underlying factors, such as the post-colonial history, the context of boundary demarcation, the context of human rights violation in the India-Bangladesh border, and the pre-colonial and post-colonial roots of this conflict. Critical methodology "therefore, differs from the positivist use because, rather than just providing the basis for ordering appearances and ultimately reifying them, they are used to get beneath the surface of appearances" (Hervey, 1990, p. 3). Critical theory embodies both an ethical and a methodological choice, which also reflect the commitment of the author herself.

The distinctive features of this methodology include a focus on the importance of the context in building understanding. Unlike other positivist or scientific research, the context plays a more important and significant role. Border disputes are not a new concept in international relations; however, every conflict is different and requires a different resolution. The India-Bangladesh border conflict is also different because of its nature, its colonial and post-colonial history, the history of Bangladesh's independence, cultural and historical specificities, language commonality, as well as power relations between the two countries. These are reflected in the literature review chapter, in chapter 4 (the context of law and legal thought) and chapter 5 (the historical context of the India-Bangladesh relationship as a whole).

The concepts of 'positionality[6]' and 'reflexivity[7]' also play an important part in this research approach (see below). The research used online sources but also technologies such as Skype and video calls to help conduct the interviews. Use of mobile phone, computer, and online data gathering gave the researcher greater control over her data in addition to greater flexibility. It also helps to access vast amounts of literature in a manageable time. This research worked through analysis and interpretation, which involves interpretation based on the context. It accompanies this process until it achieves expressive and meaningful interpretation consistent with available evidence. This approach also enabled a closer control of the research design and research execution throughout, drawing also on the researcher's prior experience of research in this field.

3.3 Major methodological phases

This section systematically demonstrates the methodological process and tools of research and presents the justifications for their employment. Following Strydom (2011), one can describe three principal methodological moments of the framework of the critical theory. These are set out in the next three sub-sections.

3.3.1 Problem identification, expose and structure

The first phase of critical methodology identifies the specific problem to be analysed. Critical theory does not consider just any problem as a 'problem' worthy of investigation. It only considers a 'problem' as worthwhile when something forms a development that brings about suffering or injustice through conflict. It then seeks to open up the reality of sufferings,

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[6] Positionality refers to the personal, social and political view of a researcher. Positionality can be defined as a 'practice' or 'custom' of a researcher which describes his/her position in relation to the research with the connotation that the position of the researcher might influence the process of the research.

[7] Greenbank (2003, p. 798) argues that, "Users of both quantitative and qualitative methods all need to recognise the influence of values on the research process … The inclusion of reflexive accounts and acknowledgements that educational research cannot value free should be included in all forms of research … researchers who do not include a reflexive account should be criticised".

injustice and conflict. "Some instance – whether of suffering, the expression of moral indignation, resistance, struggle, conflict or the like – opens up the possibility of gaining knowledge of the structure or mechanisms generating social reality by rendering uncertain, questioning or problematizing the taken-for-granted background assumptions underpinning everyday social life", which "thus allows an appropriate cognitive or knowledge producing relation[s] to be established with reality" (Strydom, 2011, p. 152).

The topic of a specific inter-state territorial dispute is the core problem here, problematizing the regulating body of international law (discussed in detail in chapter 4). That leads to an assessment of India-Bangladesh border dispute management, and so to an analysis of the negotiations which led to the partial resolution of that problem up to 2015. The initial sign of 'sufferings' in this context is the life experience of the people on the ground, noting that international law is not doing its job in managing or resolving territorial disputes properly. Moreover, in 1947, nearly 4,156 km of the border (Chowdhury, 2013) was drawn between India and East Pakistan (now Bangladesh) by the Boundary Commission. Over the last 44 years, almost the whole length of the border has been demarcated while 6.5 km remained un-demarcated in addition to the problem of enclaves and adversely possessed land. Yet after 44 years (1971-2015), the issue has reached only a partial settlement, with some issues still pending, creating problems in the conflicted border area. Critical theory signifies this as a 'problem' by identifying the question: why did dispute resolution take so long? What are the hidden facts and/or structures which are undermining the effectiveness of international law of conflict management in this case?

Important visible 'sufferings' which qualify this for critical theoretical research include the continuing killing of Bangladeshi people by Indian Border Security Force (BSF) in the conflicted border area. It also includes gunfire between BSF and BGB (Border Guards Bangladesh), leading to insecurity and suffering in the border area, as well as the 'push-in' 'push back' problem (explained in chapter 6). As Strydom notes, "The initial moment of problem disclosure in critical theory's methodology, [the] sign-bearer expressing the singular quality of such an instance or objective movement. An iconic embodiment of the unusual, strange or disturbing quality of something – conflict and so forth – attracts the attention … that something is amiss and a perception of the world as being out of joint" (Strydom, 2011, p. 154). This critical theoretical concept further leads to the possibility of knowledge production by clarifying the reality of border dispute management. Along with opening up reality and focusing research, critical theoretical approaches have the significance of disclosing the problem while connecting the knowledge production process with practice. Strydom says this "regards genuine problems as objectively produced and as emerging from existential problems or practical troubles which are confusing, conflicting and

disorienting, and thus call for an enquiry, clarification, transformation into a definite problem and the development of a practical meaningful solution" (Strydom, 2011, p. 152).

The most important part of this phase is establishing the importance of the researcher's ontological position because the presumption or initial idea of the problem is significantly shaped by one's view of reality and how one sees the problem: "one's view of reality and being is called ontology" Mack (2010, p. 5). Empiricists can only include what is directly observable (including historical issues evidenced in documents); for critical theorists, there is much more to social reality: "The opening up of reality…….the rendering visible of the structures or generative mechanisms of reality is by no means [only] the preserve of the critical theorist" (Strydom, 2011, p. 154).In common with most, but not all, critical theory-based research, the ontological position here is critical realist. Critical realist ontology tries to cover the immediately observable <u>and</u> underlying factors and causes of an issue, its context as well as its surface and immediate actuality, but also the underlying structures and ideas and social movements which a pure empiricist enquiry would find hard to analyse (and might deny the existence of altogether). Critical theory and critical realism, which can diverge in important respects, converge here. First of all, "for a materialist or realist theory of society concerned with societal structures and their transformation, adequate observance of the objective dimension is not only vital but also characteristic of critical theory" (Strydom, 2011, p. 147). Secondly, both focus on finding solutions of real-life problems. A further overlap with critical realist ontology is CTIR's emphasis on knowledge production. For Honneth, critical theory's methodological starting point is "made possible by a suspicion that all is not well in … society … a suspicion of social pathology" (Honneth, cited in Strydom, 2011, p. 156). Initially, this suspicion could be considered a starting point to identify a problem which then needs a more theoretically informed definition. Critical theory's subject is always a real-life problem. Strydom (2011, p. 155) argues that "a particular quality of reality, for example, the suffering of a specific group or the resistance of another against oppression, affects the critical theorist in a way which connects him or her emotionally and perceptually with reality". Strydom goes on to explain that "the mood of the time, the feeling of unease … that serves as material sign-bearer, if not widely shared, is manifest in particular sections of the population or specific groups whose reactions, responses, resistance, actions, struggles ... or the like attract the attention of Critical Theory and spur it on in its pursuit of knowledge that could make a difference to the constitution of society". It can also justify a researcher's 'positionality' (where she shares affected people's feelings, emotions, anger, expectations and so on; see the positionality and reflexivity section) in taking interviews for the purpose of the research where she aims to analyse the 'problem' on the presumption of her own recognition that something disturbing is happening. It also makes necessary the making of interviews: if the affected people's feelings, emotions and experience could not be taken into account, the knowledge construction of a specific critical

theory approach could not be completed. At the same time, it also justifies the employed specific combination of critical theory and critical methodology along with the methodological tools employed here by arguing that this allows for the researcher to recognise and reflect on her own position and to understand and communicate to the reader her understanding of how her positionality shapes or limits the research done. An empiricist approach would not allow this, while many broadly 'postmodern' approaches would, while adopting some kind of critical stance, refuse to recognise the 'reality' and possibility of real change which might follow from an analysis of the border dispute management in this case. The claim is not that research can be fully 'objective', but neither does it claim to be 'subjective'; trying hard to be as objective as possible, the researcher recognises the limitation both of that approach and of her own interests and position.

Another significant feature of critical realist ontology is that it stresses multilevel inquiry as well as the context or surface of actuality. Against post-modernism, it holds that there is a knowable real world; against shallow empiricism, it holds that that reality is difficult to excavate and requires more careful tools than 'sense-experience' alone. As human beings, our own presence as researchers influences what we are trying to measure (Silver and Bulloch, 2016, p. 7). Thus, knowledge is socially constructed, but not subjective or merely 'relative'. For example, while analysing India-Bangladesh border management, it is apparent that it has been resolved following the processes of international law, but that has not been the only, or even the primary, reality, and other factors always mattered, as chapters 6 and 7 will show.

All of these features of critical realist ontology constitute the researcher's initial understanding of the specific problem here, and these ground the methodological tools used in this research. In this first stage, this initial theorization is very important because it is the only valid source of knowledge construction. It also sets up the possibility of creativity in research practice by opening up the problem to a diversity of levels of explanation and methods of approach (Strydom, 2011, p. 155). In initial theorizing the concepts at issue in this research, it follows the theoretical assumptions explained in chapter 2. It firstly relies on Martti Koskenniemi's (2005, 2011) account of the politics of international law. The study begins logically with a critical reading of Koskenniemi (2005, 2011), but it suggests that while Koskenniemi sets up a potential critical analysis of border disputes (and of international conflict more broadly), he never actually follows his own logic to suggest methodologies and specific methods of research practice rather than leaving the core argument at a more general level. This study asks how a partial border dispute resolution between India and Bangladesh became possible and how and why it proved difficult in and after 1974 up to 2015. The research will critically evaluate how far the forces (outlined in chapter 2) determine or undermine the constituting elements of the India-Bangladesh

border dispute and the success of its management in chapters 5, 6 and 7. Thus, this research adds a specific approach in methodology and methods to the broader critique of Koskenniemi. Discussion of the research epistemology and axiology follow below, these together forming a single coherent position.

3.3.2 Diagnosis to construct a reconstructive explanatory critique
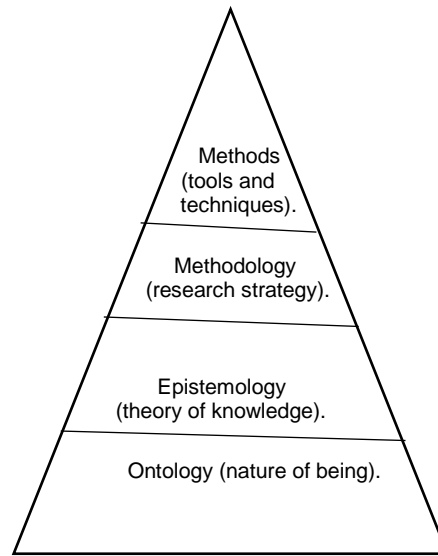
The second phase of the critical methodological framework aims to engage the object domain (i.e. the actual problem) with its methodology. It focuses on the necessity of explanation, thinking critically about the 'concrete reality' understood in the first methodological phase above. Here, critical theory directs one to identify the problem in its specific context. This is a basic work of diagnosis which is both analytic and normative in nature. It also includes reconstruction and "is presupposed by the subsequent explanation and, particularly, the kind of critique that is characteristic of Critical Theory. This means that Critical Theory's engagement with its object traverses a number of methodologically distinct yet closely interrelated dimensions" (Strydom, 2011, p. 156).

This diagnosis starts with an analysis of the actual condition of the real problem via documentary and interview analysis. This 'actual condition' covers every aspect of the situation. Here, this covers the history of the border problem (see chapter 5 for details), the normative structure and the inadequacy of the structure of international law of conflict management (see chapter 4 for details), and the political and economic relations between India and Bangladesh in the context of the conflict and its management (see chapter 6 and 7). The influences of political relations on the conflict and its management process and vice versa (see chapters 6 and 7 for details), the success and failure of the process of conflict management (in this case, negotiation) (see chapter 7 for details) are also assessed. This analysis requires varied relevant methodological tools. In this research, the employed methodological tools are critical realist ontology, interpretivist epistemology, normative axiology, use of language, qualitative methods (with some subsidiary use of quantitative data), and ethical considerations as described below. The following sections also demonstrate the justification of the specific combinations of these methodological tools employed in this research.

Epistemology, ontology and axiology

Methodology, methods, ontology and epistemology are considered as essential components grounding any research, particularly in IR, which has become more methodologically aware in the last 20 years. Each element structures the research questions, research process and research events. Hesse-Biber and Leavy (2006, p. 4) argue that, "Furthermore, ontological and epistemological positions invariably inform methodological and methods choices".

Figure 3. 1: Relations between methodology, methods, epistemology and ontology.

Methods
(tools and
techniques).

Methodology
(research strategy).

Epistemology
(theory of knowledge).

Ontology (nature of being).

Source: Author's own illustration, derived from Henn et al., (2009, p. 18).

Ontology (the theory of the nature of being), already discussed in more detail, is often vital in doing research as it is the foundation on which a research agenda is built. Consequently, in any research in international relations the methodology serves the function of providing a logical bridge between theory and appropriate methods. This choice of methodological tradition recognises that "what is under study and how to go about studying presupposes ontological and epistemological assumptions about International Relations" (Lamont, 2015, p. 18).

The study employs an interpretivist epistemology. Interpretivist epistemology considers that understanding any action by an actor must take account of an actor's interpretation of the situations they are engaged in and of possible varied interpretations between actors which shape interactions and outcomes. Henn et al. (2009, p. 27) assert that "interpretivism holds that to explain human behaviour, social researchers need to understand the meanings and interpretations that people attach to phenomena in social world … research is designed to explore the motivations, perceptions and experiences of social actors". Unlike positivism, interpretivist epistemological research denies any "foundational base of knowledge" (Scotland, 2012, p. 5) and "questions of validity" of established or 'common sense' interpretations (Scotland, 2012, p. 5). The principal aim of interpretivist epistemology is to bring into awareness underlying meanings and structures of social action through understanding. That concept of 'understanding' is grounded in the writing of Max Weber. Weber argued that "in order to increase our knowledge of the social world, we must seek to understand it from the points of view of the people we are studying, rather than explaining human action by means of cause and effect" (Weber, cited in Henn et al., 2009, p. 15).

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Thus, the research employed an interpretivist epistemology which builds on the idea that "Knowledge as constructed, not as objective [which] can be found" (Silver and Bulloch, 2016, p. 7). It emphasises the 'subjectivity' of the knowledge of actors studied but does not imply that its own knowledge production is merely subjective; rather it is not 'objectivity' and it emphasises 'meanings' (intersubjective meanings) not 'the facts.' It is through closely exploring the interplay of subjective meanings that (valid, sound) knowledge can be constructed. The justification for using interpretivist epistemology and combining it with the other methodological tools employed in this thesis lies on the premise that it is clearly consistent with critical theory, while critical theory argues that knowledge production is always conditioned by historical, material and other contexts, and as a researcher one needs to understand and be aware of this social conditioning. This is something both the ontology and the epistemology of a positivist approach will not allow. Moreover, as mentioned above, employed critical realist ontology tries to cover the immediately observable and underlying factors and causes in an issue, its context as well as its surface and immediate actuality, which is only possible by employing interpretivist epistemology as other approaches will not allow this.

One important part of this critical methodology is the interpretation of language. An interpretive approach demands a more sensitive understanding of the ways language can construct reality as well as form the basis for conflict or conflict resolution in an international dispute. In this research, the 'use of language' means not only the language proficiency of the researcher or the language of documents and interviews, but also the language of the research. In international relations, language also refers to forming an understanding and interpretation of social relations, including sometimes hostile language between actors. Every key actor comes with their own forms of expression, which reflect many elements including national interests. At the same time, one must also consider the interpretation of differences between legal language and political language. In India-Bangladesh border conflict management, legal language is more moral and general rather than specific. The most significant thing is to interpret the political language used in the negotiation when both countries were trying to influence the decision in their interest. Koskenniemi called this the vocabulary of international law. Koskenniemi (2009, p. 7) argued the importance of "the politics of definition, that is to say, the strategic practice of defining international situations and problems in new expert languages so as to gain control over them". He added, "much about the search for political direction today takes the form of jurisdictional conflict, struggle between competing experts' vocabularies, each equipped with a specific bias" (Koskenniemi, 2009, p. 9). The researcher needs to understand this political and legal vocabulary of conflict management and the often-hostile language of political management: "-of particular importance is that language use and communication, but also action and practice" (Strydom, 2011, p. 150). For instance, while interpreting the language of

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negotiations between India and Bangladesh regarding border conflict management, when this postponed discussion to 'further negotiation', the interpretation of the language needs further explanation. Similarly, we cannot assume that when negotiators claim success that this cannot be questioned. That particular language of 'further negotiation', of postponement, points to a less effective negotiation process at that point. Thus, in the evaluation of India-Bangladesh border dispute management, a critical theoretical approach takes account of the practice of diplomacy and the practice of its own research as a positivist approach would generally not do. "For Critical Theory, explanation, critique and the potential practical relevance of the explanations and critiques it develops are of defining significance" (Strydom, 2011, p. 151). Moreover, in interpreting the language of the documents used, the analysis follows significant techniques reflected from McGregor's (2010) _critical analysis:_ topicalization, nominalisation, presupposition, insinuations, connotations and some more (see pages 108-109 and 208-209 for details of how this critical analysis has been used in analysing documents and interviews). The reader should note that this is an account of the critical document analysis used throughout the thesis; that is not the same as particular forms of 'critical discourse analysis', which the thesis does not use.

The epistemology of this research shares Cox's view that "knowledge is always for someone and some purpose" (Cox, cited in Linklater, 2007, p. 46). Unlike many other theories, critical theory believes that all groups or individuals living in the same political organization are not always treated the same. Discrimination and inequality always exist. Linklater, (2007, p. 47) argues that, "If international order works to the advantage of the most privileged groups then the well-meaning aim of managing an existing order has the unpalatable political effect of neglecting marginal groups and harming subordinate interests". Consistently, here, the study assumes on the basis of its critical ontology that the weight of the 'India factor' – the unequal capacity to act and to dictate narrative which India possesses – deserves much attention in the conflict resolution between India and Bangladesh just for its multifarious importance, with a core underlying power inequality shaping day-to-day relations. Beyond the gamut of the political and strategic interests of both countries, domestic grandstanding appears to be most often the prime reason for leaders taking negative views of each other.

The epistemological status of 'interpretivism' also engages the issue of axiology, that is, the values and system of values which underpin knowledge production. That is generally accepted as 'normative' in CTIR. This first of all means that, in rejecting the notion of objective or value-free research proposed by empiricist or 'scientific' models of research, an interpretive approach requires that one interrogates the values of research; however, critical theory indicates the scope of the axiology of research in its emphasis on identifying and reacting to injustices and to conventional knowledge production practices. Unlike

positivism, the normative approach analyses 'what ought to be?' and the choice of values the decision-makers *and* research analysts make (Voitti and Kauppi, 1987, p. 31). This element of self-criticism and dialogue in research, questioning the process undertaken but also the values of research, is a critical part of CTIR. According to those writers and to Patrascu and Wani (2015), critical theory is interpretive and reflexive in nature rather than objectifying, stressing the importance of testing knowledge claims, which demands the critical normative axiology that is used here.

Methods

This research uses qualitative methods built on qualitative content analysis and the qualitative approach of document analysis. It also uses some quantitative data, but these do not comprise the main part of the methodology of the thesis; rather, the quantitative data are used here to provide ancillary support to the qualitative analysis in assessing economic factors in India-Bangladesh relations (in chapter seven). The research doesn't employ quantitative analysis beyond a descriptive use of statistics. These research methods require desk research and the critical reading of relevant documents and primary and secondary sources, leading to a critical appraisal thereof. Pursuing qualitative data, the researcher has examined primary and secondary sources including speeches and press releases (i.e. from the Ministry of Foreign Affairs, Bangladesh, and the Ministry of External Affairs, India) and signed India-Bangladesh treaty texts. To test and enrich the whole work, she undertook some interviews with people living in the border areas, with government officials in Bangladesh, and with members of civil society organisations who are aware and connected to this dispute (see appendix E for the interview list). As mentioned before, the research employed a qualitative analysis approach for analysing documents and interviews. Henn et al. (2009, p. 150) argue that "the qualitative research method … [involves] … research carried out in 'real-life' settings. In order to build up an understanding of how people experience the world around them". Following this insight, the research aims to reveal the real-life suffering of the people living in the conflicted border area and also the causes of their sufferings. It is not possible to do so by using the quantitative method. Critical theory and its consistent use of the qualitative approach are valuable in making the analysis, because it enables the research to throw light on both evident and less empirically observable causes of the failure to reach an agreement over a long period of time followed by a thawing of relations and an effective implementation of the ideals expressed in their initial relationship, when India helped a newly independent Bangladesh in the early 1970s. The underlying structures of ideas, ideology and power can be examined alongside both the effect of accidents and contingency and the more empirically evident sources of behaviours. Finally, critical theory along with the qualitative approach used here are able to link the more rigorous logical process of research to an ethically explicit examination of the

case itself. The ethical basis of a critical theory and qualitative approach allows an examination of the specific human consequences of the failure to reach agreement over the years and so of the importance of the agreements reached so far as well as the importance of continuing the impetus of that partial agreement into the future. The ethical focus here is not an add-on but rather an integral part of the research process. At the same time, this allows the researcher to recognise and reflect on her own position and to understand and communicate to the reader her understanding of how her positionality shapes or limits the research done. An empiricist approach would not allow this, while many broadly 'post-modern' approaches would, while adopting some kind of critical stance, refuse to recognise the 'reality' and the possibility of real change which might follow from an analysis of the border dispute management in this case.

The justification for using qualitative content analysis lies in the premise that, firstly, it is quite consistent with the critical theory employed in this thesis. This is because the aim of critical theory is to recognise the effect of power, interests, domination and cause of the domination and suppression in a given context. Qualitative content analysis enables the research to fulfil the aim of the employed critical theory by providing a logical means of deconstructing latent meanings as well as explicit communication in the text it has analysed. "It exposes the … latent meaning behind the surface of texts, allowing us to grasp the power relations" (Newbold et al., 2002, p. 249). For example, in analysing the content of the negotiation documents produced by Ministry of External Affairs, India, while it has been found that the negotiation was focused on the border disputing issue, India raised its security concern and wanted Bangladesh act against some Islamic groups. The BNP-led Bangladesh government couldn't satisfied India's security concern and, as a result, the negotiation concluded without any decision and only providing hope for further negotiation (India. MEA, 2003a); here, the 'further negotiation' reveals the latent meaning of 'postpones'. This latent meaning could only possibly be revealed by analysing the content of the document. Secondly, the employed qualitative content analysis consistently advances the aim of the research as well as aim of critical theory by sharing a critical awareness of the social knowledge constructing process. This is because the employed content analysis explicitly concentrates on uncovering the influence of social conditioning (i.e. politics) in the process of knowledge production. By doing this, it enables the research to create a critical awareness of this domination and influence in this context. Thirdly, it enables the research to reveal what the negotiators actually mean to say by interpreting the actual or latent meaning of the content/words used. This can also reveal the hegemonic perception of the negotiators – as Habermas (1992) suggested, considering all "perspectives of representation" (Habermas cited in Clarke, 2017, no pagination). Clarke (2017, no pagination) argues that, "It is difficult to assess sincerity when a speaker is engaged in unconscious hegemonic participation". Finally, using qualitative content

analysis and qualitative approach of document analysis provide a potentially valuable way to throw light on the evidence (by analysing effectiveness and frequency of the negotiations against the domestic political contexts of India and Bangladesh), and on less empirically observable causes of the success and failure of these negotiations. The qualitative content analysis and qualitative document analysis are explained below (see pages 85-119).

Ethical Considerations

Every issue related to research has a possible impact on every phase of inquiry. Barnes (1979) described ethics as "[arising] when we try to decide between one course of action and another not in terms of expediency or efficiency but by reference to standards of what is morally right or wrong" (Barnes, cited in Henn et al., 2009, p. 78). Recently, because of uses of information technology, especially in data collection, methods have become more sophisticated. Yet ethical issues remain the foci of discussion because of the uses of advanced computer technology in data collection. Henn et al. (2009, p. 78) argue that, "social research has widened its scope and now has the potential to be far more intrusive and penetrating". Thus, a researcher should now have an awareness of any ethical issues arising in her research which could harm the research participants, and the research shouldn't violate any ethical issues of the standard ethical code of practices (to which NTU in any case subscribes).

The researcher was aware of the potential ethical issues which could arise as a result of the research. As part of her research training, she undertook and passed an 'ethics for researchers' short course. As it was decided to use online materials, this induced a clear idea of the ethical issues of using online materials. Before using any reading materials, she noted the copyright status of that article. The research faces some difficulties in using maps and pictures because some authors withheld permission to use them. The research uses only information, maps, and pictures which permit use for educational purposes. In research projects, one also needs to identify ethical issues in gaining access to and using interviews. It interviewed 34 people, including those living in villages situated near the India-Bangladesh boundary as well as government officials and members of civil society in Bangladesh. There were difficulties in visiting villages near enclaves, both regarding the researcher's personal security and establishing of appropriate contacts. Also, the researcher drew on steady contacts with research colleagues working with government and non-government organizations and universities, which allowed the researcher to deepen and critique her own work more effectively.

Government officials were more reluctant to be interviewed than others. Most of them only started discussing with the researcher after they were assured that she would not disclose their name and position or record interviews. She understood their limitations. It was a

political matter and thus depended on politicians' willingness. She didn't receive as much information as she expected, but this did not affect her research greatly because the research is not primarily based on these interviews. She ensured that her research did not cause any physical or mental or other harm to any human being, creature or herself during the research process. She also ensured that her research didn't violate any ethical issues.

Critical theory does not only interest itself in opening up the reality of an actual situation; it is also interested in the generating mechanisms bringing about that situation/problem. This is where the critical method of 'reconstruction' becomes significant, implying an effort to obtain a complete description of an event or problem using the information or explanation revealed. This 'reconstruction' differentiates critical theory from other approaches, such as empiricist or positivist, by arguing that "by allowing a penetration of the various layers of the actual concrete situation to the deep level of structural rules or generative mechanism which although neither empirically observable nor interpretatively discernible, can be unearthed with the appropriate methodological means" (Strydom, 2011, p. 156). For this purpose, it also critiques existing knowledge of the specific problem and its regulating forces grounded in underpinning structures. The next step of creating a reconstructive explanatory critique is to explore 'what needs to be reconstructed'. This has been determined by critical theory along with the critical legal studies approach to exert pressure for transformation or reconstruction. It argues that the structure of international law and its regulating relations for conflict management need to be reconstructed. In other words, the mechanism of international law of conflict management needs to be reconstructed (see chapter 2 for more details). The following step of the reconstruction is very significant, whereby it uncovers the elements embedded in the actual problem which are responsible for constituting that problem. For example, in this research, it aims at analysing the history of the conflict, the political and economic relations of the actors involved in the conflict, and the negotiation process along with its success and failure. It simultaneously interrogates the present situation and the constituting elements of the problem (i.e. power, politics, interests and the changing context, as determined by its critical theoretical approach). In order to provide a reconstructive explanation, it sketches out the inherent tensions between the constituting elements (primarily politics) and the functioning body of international law (see chapter 2 and chapter 7). It must ask how these tensions operate in this specific case, not just in general. This reconstructive explanation is the basis of a reconstructive critique of the 'problem' and leads to the further step of explanatory critique. In this research, this provides a critical explanation of the forces or obstacles, such as the domestic political context (when the India-friendly political party, the Awami League, was in power in Dhaka the conflict management process moved faster, but the process slowed or stuck when the Bangladesh Nationalist Party (BNP) came to power; see chapter 6 and 7 for details) and the invisible structural obstacles rooted in the problem situation, which prevented resolution. This

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analysis also explores the possible (or difficult) effectiveness of international law in the dispute.

The final step in constructing a reconstructive explanatory critique is 'explanatory critique', which is the defining aspect of critical theory's methodology, having "the task of accounting for whatever causes the problem … characterizing the situation. Its concern is with the contingent yet powerful interfering, distorting … mechanisms or related processes that give rise to the unexpected, strange or disturbing quality" (Strydom, 2011, p. 158). It also concentrates on the potential of reduced or eliminating exploitation, following the core values of the normative structure. More clearly, "explanatory critique focuses in on what exactly would explain the problem or pathology, namely the real causal structure or mechanism representing the contingent deforming factor, obstacle or blocking that, if identified, could be transformed to allow a more adequate and justifiable practical realization of structural possibilities of socio practical rationality" (Strydom, 2011, p. 158). An explanatory critique of this research demonstrates the critical explanation of the real causes creating the problem of the India-Bangladesh border dispute, undermining its possible resolution. This enables the researcher to draw attention to potential means of removing these causes. This will also bring the possibility of emancipatory potential through creating knowledge which is (or can be) practically applicable, but which recognises the needs and interests of the weak or dominated rather than of those in power. Critical social emancipatory research associated with human thought or action, also coherent with critical theory, has "empowerment [and] emancipation as its goal" (Fay cited in Henn et al., 2009, p. 17).

'Empowerment' is thus a principal aim of emancipatory social research. Farrands and Worth (2005, p. 44) contended in discussing Linklater's (2007) argument that "his view implies a significant but relative (rather than absolute) move towards a social (not only individual) form of freedom". As Mike Oliver argued, "the issue then for the emancipatory research paradigm is how to empower people … This does then mean that the social relations of research production have to fundamentally change; researchers have to learn how to put their knowledge and skills at the disposal of their research subjects, for them to use in whatever ways they choose" (Oliver, 1997, p. 15). He further added that "empowerment is not in the gift of the powerful; albeit whether they are politicians, policymakers or researchers; empowerment is something that people do for themselves collectively" (Oliver, 1997, p. 30), to establish better peace and security, freedom and justice in the world (Devetak, 2013).

This research makes only a weak emancipatory claim. Nothing in this thesis leads _directly_ to emancipation. However, this explanatory critique leads to the _emancipatory potential_ of its produced knowledge, opening a door to better crisis management in this and possibly

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other cases. This emancipatory potential could be explained as concerning how these constituting elements and blocking forces, such as politics, power, interests and the historical and geopolitical context, which are undermining India-Bangladesh border dispute management might be removed. From this, stronger and more just outcomes might follow. This is an element in the logic of the thesis; it is not a significant part of the claim to originality, however. Therefore, the critical theoretical concept of 'emancipation' has not been reflected in the research, including in the analysis.

Thus, critical theory, in its significance and engagement with the real problem, will go through stages of critical diagnostic analysis, reconstructive explanatory critique, reconstructive explanation and explanatory critique. These stages structure the discussion in chapters 5, 6 and 7.

3.3.3 Validation and practical application

Validation of the knowledge produced by research through a reconstructive explanatory framework leads to its application. This is also an important test of the effectiveness of the work. "Critical Theory has to engage in multilevel reflexivity in order to clarify its own conditions and to justify itself on a number of dimensions: its conceptual, theoretical and methodological elaboration relative to its own tradition …; the practical relevance and application of its knowledge relative to the transformation of its object; and self-referentially its knowledge as an instance of responsible participation in the process of elaborating and developing reality" (Strydom, 2011, p. 159). In the context of this research, as it is a PhD level work rather than for policy influence, the practical applications of the knowledge created will be open for application by future researchers and possibly policymakers. The validation of its produced knowledge is an ongoing process that has already been started by the researcher: she has presented it at several conferences for peer comment and review. Some significant parts of this research have been published in the *International Journal of Interdisciplinary Social Science Studies* and in a couple of conference proceedings (Mishu, 2017 see also Mishu, 2016, and Mishu, 2014).

3.3.4 Other methodological tools

Some significant critical methodological tools have been employed in the analysis but have not yet been discussed. These are:

Positionality

The positionality of a researcher refers to his or her cultural background, race, religion, gender, class, political orientation, educational background, experience, social customs or rules, as well as the institutional context of the research and the power relations within that

framework. Explicitly recognising these factors and seeking to reflect on their significance for the work is essential to minimise possible bias in drawing conclusions while recognising that these personal factors can never be wholly eliminated as influences. Thus, reflexivity seeks to minimize any influences which make the research biased. Positionality refers to the personal, social and political background and views of the researcher which must be questioned. Self-questioning positionality can be defined as the practice or custom of researchers which describes a self-critical stance designed to mitigate problems with data collection and interpretation. These issues may be highly personal, but they remain important points to set out and absorb into the research practice. Greenbank (2003, p. 798) supports this view, focusing on the influence of a researcher's values in the research process. According to him, "Users of both quantitative and qualitative methods all need to recognise the influence of values on the research process ... The inclusion of reflexive accounts and acknowledgements that educational research cannot be value-free should be included in all forms of research … researchers who do not include a reflexive account should be criticised". Sultana (2007, p. 374) uses this definition for understanding 'reflexivity', meaning "reflection on self, process, and representation, and critically examining power relations and politics in the research process, and researcher accountability in data collection and interpretation". Sultana (2007, p. 382) adds, "A reflexive research process can open up the research to more complex and nuanced understandings of issues, where boundaries between process and content can get blurred".

The researcher is from Bangladesh, which helped her to interpret the case study from her experience and gives her language expertise to do the work in English, Bengali and Hindi. At the same time, it could be argued that as the researcher is from Bangladesh, her work might give insufficient attention to the Indian context. To avoid potential problems, she sought to be reflexive, meaning she was self-critical but also viewed the whole topic in a critical way as far as she could. In the field of IR, "autobiographical reflexivity is often invoked by scholars, particularly when they seek to explain to audiences their research trajectory and how environmental circumstances have shaped certain inquiries" (Eagleton-Pierce, 2009, p. 113). Eagleton-Pierce (2009, p. 113) defines 'autobiographical reflexivity' as "critically examining their (researchers) own social background and coordinates, most notably in terms of categories such as gender, class, or geography". Therefore, the researcher was aware of this situation and was reflexive throughout the interpretation of her data and also balancing the chosen data. She did not only use texts and other sources from Bangladesh, but also from India, although she was unable to visit the Indian side of the disputed border. She used governmental and non-governmental opinions of India, which helped to shape her work significantly. In some cases, she simply set aside dubious sources altogether. Moreover, the researcher was aware of 'institutional reflexivity' (Eagleton-Pierce, 2009), which "means developing awareness for how academics, like other cultural

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interpreters, owe something to their position in a social space" (Eagleton-Pierce, 2009, p. 115). The research project is a self-funded research, so there has been no external or internal pressure in performing this research.

Evidence and sources

The researcher used _Journal of Strategic Studies_, _World in Conflict_, _The Journal of Asian Studies_, _Journal of Humanities and Social Science_, _Modern Asian Studies_, _Institute for Defence Studies and Analyses_, _European Journal of International Relations_, _South Asia Multidisciplinary Academic Journal_, _Eurasia Border Review_, _Journal of Conflict Resolution_, _Journal of South Asian Studies_, _International Organisation_, _Geopolitics_, _Geography and Strategy_ and so on. She also accessed United Nations Human Rights reports, Human Rights Watch reports, Bangladesh government websites, _BBC News_, _The Daily Star_ (Bangladesh)_, The Daily Prothom Alo_, _The Hindu_, _The Times of India_, _Star News_ (India), _NTV News (_Bangladesh), the International Border Research Institute (IBRU), the University of Durham website, Institute of Peace and Conflict Studies website, East Asia Forum website, and the International Court of Justice website as a source. Essentially, she also went through the Ministry of External Affairs, India, and the Ministry of Foreign Affairs, Bangladesh, with the proper permissions. She also needed to translate some Bengali literature. Those texts were significantly important for this research, especially the historical documents and speeches, press releases and newspapers articles that were written in Bengali. That writing helped the researcher to understand the conflict.

3.4 The methods of analysis

It has been discussed earlier that the research employed qualitative content analysis and qualitative approach for analysing the collected documents and interviews. It also analysed some _quantitative data_ of the economic relations of these two countries to provide ancillary support to the qualitative analysis employed in this research, although it does not used any quantitative methodology. The process of the entire analysis will be explained in this section. The application of these methods is demonstrated in chapter 5 (interview and document materials in particular) and chapters 6 and 7 (interview and documentary analysis).

3.4.1 Qualitative content analysis

The research employed qualitative content analysis adapted from Erlingsson and Bryseiwicz (2017) as well as Hsieh and Shannon (2005), Elo and Kyngas, (2007), Datt (2016) and Bengtsson (2016). Content analysis explicitly designed to analyse the appearance of a particular word or content in textual material is referred to as manifest content analysis (Hsieh and Shannon, 2005). This research is designed to analyse the

content of the selected documents. The process of the content analysis employed here follows from the directed/deductive content analysis, as demonstrated by Hsieh and Shannon, (2005) and Elo and Kyngas, (2007). This is not about analysing and interpreting word frequency; rather it refers to the interpretation of content (Hsieh and Shannon, 2005). It focuses on discovering underlying meanings of the specific content of a whole document. This analysis process starts by focusing on and developing Martti Koskenniemi's (2011) critical arguments, as described below.

3.4.1.1 Reflections on the theoretical approach (The Politics of International Law)

This part of the analysis has been built to explicate its critical theoretical explanation established in chapter 2. It will particularly explicate the critical theoretical arguments based on a critical reading of Martti Koskenniemi's (2005, 2011) account of the politics of international law. He argues that the rules and processes of international law are too flexible and are manipulated by politics. He further adds that "It is impossible to make substantive decisions within the law which would imply no political choice" (Koskenniemi's, 2011, p. 61). It is entirely possible to make a decision which is only political (see pages 47-48 for details). Thus, he argues, it is the politics of international law that matters in dispute handling (and in other areas which law touches) rather than legal details or legal rules.

Despite wide popularity, Koskenniemi's (2005, 2011) account of the politics of international law has not been confirmed through other research emphasising an analysis of a specific case study which followed negotiation as a process of dispute management (see page 51 for details). From this perspective, the research wondered how well Koskenniemi's (2011) argument demonstrates the influence of politics in India-Bangladesh border conflict management. This is very significant because it demonstrates a solid theoretical analytical ground to answer the research question, namely how far, drawing on a case study, can one conclude that the current process of territorial dispute management of international law needs rethinking, considering the political influences in dispute management? The research designed an analysis plan directed by qualitative (directed/deductive content) analysis, which will be demonstrated here.

3.4.1.2 Critical theoretical and methodological tools employed in analysing documents

In analysing documents, the research employed the critical concepts of its employed critical theory (see chapter 2). Critical theory provides the assumptions and generates the core questions that follow. In general, it does not propose specific research methods; however, the use of the qualitative content analysis drawing on the methodology outlined in this chapter fill that gap. It also uses a critical methodological framework along with methodological tools, as mentioned earlier in this chapter (for more details of where and

how these critical theoretical and methodological tools are used in analysing the documents for this part of analysis, see pages 204-210).

3.4.1.3 Qualitative content analysis of government documents on bilateral negotiation regarding India-Bangladesh border dispute resolution

The qualitative content analysis of written documents followed the steps described below.

3.4.1.3.1 Setting the selecting criteria for documents and document collection

In this step, in selecting documents for analysis, the researcher had to consider what type of documents needed to be included and reviewed, the date of the publication, and the context of their release. The India-Bangladesh border dispute resolution is entirely an inter-governmental issue, so research into the 'negotiations' and the 'resolution' requires government documents, including press releases, bilateral documents, speeches, statements and media briefs in so far as they are available. In order to collect them, it was essential to obtain them through the Ministry of External Affairs, India website and the Ministry of Foreign Affairs, Bangladesh website.

The research collected documents included in the websites between 2001 and 2015 (for the justification for choosing this time frame, see page 198). To search for documents, the key words "India-Bangladesh border dispute negotiation" were used. Using these keywords, 18 governmental speeches and statements, 16 press releases and 22 media briefings and bilateral/multilateral documents from the Ministry of External Affairs, India, were found. There were also 17 documents from the Ministry of Foreign Affairs, Bangladesh, which included press releases, joint statements and media briefings (the references for the collected documents have been enclosed in Appendix C). In total, 15 significant bilateral negotiations were identified from these documents.

Table 3.4.1: Document collection by searching keywords.

Searching keywords.	Number of documents found in the Ministry of External Affairs, Government of India website (documents from 2001 to 2015).	Number of documents found in the Ministry of Foreign Affairs, Bangladesh website (documents from 2001 to 2015).	Number of the negotiations found.
India-Bangladesh border dispute negotiation.	56[8] documents which include governmental speeches and statements, press releases, media briefings and bilateral/multilateral documents.	17[9] documents which include press releases, joint statements and media briefings.	15 significant negotiations found in the years between 2001 and 2015.

Source: Author's self-produced table.

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[8] For details references see Appendix C.
[9] Ibid.

3.4.1.3.2 Narrowing down the documents

In narrowing down the documents, the researcher focused on four 'disputed issues'. These issues were derived from the reviewed literature. They were used because although 73 relevant documents had been found in the previous step, some documents did not specifically discuss the land border issue; rather, some of them discussed the maritime border or some other issues. The 'disputed issues' focused on were:

Disputed Issue A: Implementation of the Land Boundary Agreement, 1974.

Disputed Issue B: Peaceful Border Management.

Disputed Issue C: 2011' Protocol of Demarcation of the Land Boundary between India and Bangladesh.

Disputed Issue D: Joint River Boundary Issue.

The collected documents were originally reviewed and grouped with reference to the four disputed issues discussed above. These issues were deemed to be important and relevant for this analysis, as has been found in the literature review. It also became apparent that throughout the course of the analysis it would need to be more explicit about what the issues really meant in terms of the analysis. The research needed to be clear about what exactly it was looking for at the time of analysing a document for its commitment to, e.g., the implementation of the land boundary agreement or peaceful border management, and what could realistically be expected from the negotiation table. Therefore, it only selects the four specific disputed issues which are exactly significant for this analysis. These are the concepts which the research regards as a part of critical dimensions of analysis.

In this step, the researcher needed to critically read and reread the contents of the documents. It followed the content analysis for each document. An example of the content analysis has been enclosed in appendix A. However, the content analysis led the research to the identification of 15 bilateral negotiations which discussed these four disputed issues (for a detailed description of these negotiations, see pages 199-204). Moreover, as these negotiations were bilateral negotiations which did not only focus on land border dispute issues, other issues (i.e. trade, investment, terrorism and so on) were also discussed. The research only includes a discussion of land border dispute matters and excludes other unconnected matters, using the specific disputed issues as selecting parameters.

3.4.1.3.3 Setting significant areas for analysis

As mention before, the analysis is set for explicating Koskenniemi's (2005, 2011) theoretical argument mentioned above, that is, it is politics which shapes process and possibilities of the dispute resolutions, which also includes their outcomes (see chapter 2 for details).

Therefore, this part of analysis aims to reveal the political influences in the negotiation processes and their outcomes. In doing so, it compares the 'frequency' of the negotiations and the outcomes of the negotiations between the domestic political regime (i.e. BNP regime, Awami League regime, BJP regime and Congress regime) of the key actors (India and Bangladesh). The justification for employing the term 'domestic political context' lies in the premise that in the critical theoretical methodological framework outlined (earlier in this chapter), for the analysis initially it is questioned how far 'politics' is the hidden force which is undermining the success of negotiation processes, which places significant importance on the domestic political context in this case. The researcher further developed an operational process to define the outcome of the analysis process, whereby the key areas for analysis which it needs to set are the 'frequency' and 'effectiveness' of the negotiations against these domestic political contexts of the disputing countries. Here, frequency quantifies and compares the number of the negotiations that took place in the different political contexts of these two countries, i.e. negotiations between governments led by different political parties (for more details see chapter 7). 'Effectiveness' further explores the success or failure of the negotiations. To simplify the process, the 'effectiveness' of the outcomes of the negotiations have been coded (see next step for clarification) to compare the outcomes of the negotiations.

3.4.1.3.4 Document coding and analysis

Each document was analysed to determine the extent to which negotiation is described, addressed or considered in relation to each of the identified disputed issue for analysis. Text relevant to each disputed issue was highlighted manually by a critical reading of the documents. Based on the analysis of the text and its meanings, relevance and contexts, for each disputing issue the outcome of the negotiation was coded against its 'effectiveness', such as 'most effective', 'less effective', 'not effective' and 'no discussion'. Here, coding has been done according to the condensed and latent meaning of the relevant text found (see table 3.4.2), adapting the work of Datt (2016), Elo and Kyngas, (2007), Bengtsson (2016) and Hsieh and Shannon (2005). The code formulation is reflected from the research questions stated in chapter 1. In this analysis, coding was done according to the latent meaning of the condensed text as interpreted by the researcher. It is acknowledged that using the qualitative approach involves a high degree of interpretation.

Code: 1: 'Most Effective': The negotiations which end up with an effective decision (for example signing an agreement, declaration and so on) have been coded as 'Most Effective'-1.

Code: 2: 'Less Effective': The negotiations which end up with a less effective decision, but with some definitive outcome (for example agreement for further negotiation/the issue will

be discussed in the next negotiation/ provide or reiterated commitment for resolving the issue and so on) have been coded as 'Less Effective'-2.

Code: 3: 'Not Effective': The negotiations which end up with no decision have been coded as 'Not Effective'-3.

Code: 4: 'No Discussion': If any particular disputed issue (i.e. joint boundary river issue) was not discussed in any negotiation, then that issue has been coded as 'No Discussion' for that negotiation. For example, if a negotiation didn't discuss the 'joint boundary river' issue, then this issue has been coded as 'no discussion' (Code 4) for this particular negotiation. An example of the coding process for the outcome of the negotiation is demonstrated below:

Table 3.4.2: An example of the coding of the negotiation outcome.

Negotiation	Discussed disputed issues	Outcome of the negotiation	Condensed meaning	Code
Negotiation in 2001 during the Bangladeshi joint secretary, Ministry of Home Affairs' visit to India.	Disputed Issue A: Implementation of the Land Boundary Agreement, 1974.	Both sides reiterated their promise towards the LBA 1974 and emphasized pending implementation to resolve this issue by mutual effort and agreement.	The issue will be negotiated further.	Less effective Code 2.
	Disputed Issue B: Peaceful Border Management.	No outcome found in the statement of the document.	No outcome.	Not effective Code 3.
	Disputed Issue D, Joint River Boundary Issue' was not been discussed in this negotiation.	--------------	------------	Not discussed Code 4.
	Disputed Issue C, 2011 Protocol of Demarcation of Land Boundary between India and Bangladesh' was not relevant for this negotiation as this issue emerged in 2011, so it has been indicated as not applicable.	N/A	N/A	N/A

Source: Author's self-produced table, based on the analysis.

The findings of the coding process are presented in tabulated form belo

Table 3.4.3: Document Coding

Negotiations	Implementation of Land Boundary Agreement, 1974	Peaceful Border Management.	2011 Protocol of Demarcation of Land Boundary between India and Bangladesh.	Joint River Boundary Issue.
2001, Bangladeshi joint secretary, Ministry of Home Affairs' visit to India.	Code 2	Code 3	N/A[10]	Code 4
2002, Goodwill visits of the Bangladeshi foreign secretary to India.	Code 3	Code 4	N/A	Code 4
2003, Meeting between the foreign secretaries of India and Bangladesh.	Code 2	Code 3	N/A	Code 4
2005, Foreign office consultations between India and Bangladesh.	Code 2	Code 2	N/A	Code 4
2006, Bangladeshi prime minister's visit to India and meeting with Indian prime minister.	Code 3	Code 3	N/A	Code 3
2007, Meeting between the foreign secretaries of India and Bangladesh.	Code 2	Code 4	N/A	Code 4
2009, Indian external affairs minister's visit to Bangladesh.	Code 2	Code 2	N/A	Code 4
2009, Meeting between the Bangladeshi foreign minister and Indian external affair's minister.	Code 2	Code 2	N/A	Code 4
2010, Bangladesh's Prime Minister Sheikh Hasina visits India.	Code 2	Code 2	N/A	Code 4
2011, Meeting between prime ministers of India and Bangladesh.	N/A[11]	Code 1	Code 1	Code 4
2012, Bangladesh's Foreign Minister Dipu Moni's visit to India.	N/A	Code 3	Code 2	Code 4
2012, Joint foreign office consultation between India and Bangladesh.	N/A	Code 3	Code 3	Code 4
2013, Joint foreign office consultation between India and Bangladesh.	N/A	Code 2	Code 1	Code 4
2014, Joint foreign office consultation between India and Bangladesh.	N/A	Code 3	Code 2	Code 4
2015, Indian prime minister's visit to Bangladesh.	N/A	Code 2	Code 1	Code 4

Source: Author's self-produced table, based on the documents of the websites of the Ministry of External Affairs, India, and the Ministry of Foreign Affairs, Bangladesh.

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[10] As this theme emerged in 2011, it is not relevant for this negotiation. The same condition is applicable for the subsequent negotiations.
[11] The implementation of the Land Boundary Agreement, 1974 has been replaced by the 2011' Protocol of Demarcation of Land Boundary between India and Bangladesh as an integral development of the Land Boundary Agreement, 1974, so it is not relevant for this negotiation. The same condition is applicable for the subsequent negotiations.

Table 3.4.3 demonstrates the findings of the coding process of this analysis. In reviewing the negotiation in 2001, during Bangladeshi joint secretary, Ministry of Home Affairs' visit to India, it was found that the 'Implementation of Land Boundary Agreement, 1974' was discussed and that it ended with a 'less effective decision' (as it ended with their reiteration to their commitment to implement the Land Boundary Agreement of 1974 but did not sign, announce, declare or exchange any agreement, treaty or pact), so it has been coded as a 'code 2', 'Peaceful Border Management' was also discussed in that negotiation and it ended with no decision, so it has been coded as 'code 3'. Another issue, the 'Joint River Boundary Issue', was not been discussed in that negotiation, so it has been coded as 'not discussed'- 'code 4'. Finally, the '2011 Protocol of Demarcation of Land Boundary between India and Bangladesh' was not relevant for this negotiation as this issue only emerged in 2011, so it has been indicated as not applicable. The entire coding followed the same coding process.

Please note that, adapting the work of Datt (2016), Elo and Kyngas, (2007), Hsieh and Shannon, (2005), and Bengtsson (2016), in coding the frequency of the negotiation, the analysis followed a distinctive process of coding. This is because coding was not possible before comparing the frequency of the negotiations between the domestic political contexts of the two negotiating countries. Therefore, the frequency of the negotiations has been coded as 'more frequent' and 'less frequent', which will be demonstrated in chapter 7.

As mentioned above, the research analysed the documents of the negotiations in relation with the effectiveness and frequency. It also grouped the negotiations according to the domestic political context of India and Bangladesh. It grouped them according to the selected disputed issue discussed earlier. However, before proceeding with further categorising, it compared the number of most effective, less effective and not effective negotiations and the frequency of the negotiations between the domestic political regimes of India and Bangladesh. The findings of the comparison have been summarised in table 7.1.1 (see pages 211-212 for details). Once the comparison of the frequency and the effectiveness of the selected negotiations against the domestic political context of these disputing countries had been done, the outcome of the comparison was interpreted and categorised as 'domestic politics' according to the latent meaning of the findings of the comparisons, which has been demonstrated in chapter 7. Here, 'category' followed the work of Datt (2016), Elo and Kyngas, (2007), Hsieh and Shannon, (2005), and also Bengtsson (2016), which is defined in their work, although this analysis followed a distinctive categorising process to uncover the influence of the domestic political context on the negotiation process. Finally, the category (domestic politics) has been grouped under a broad theme (politics), as demonstrated in a diagram (7.1.2 in chapter 7), to explore how far the findings support Koskenniemi's (2005, 2011) account of the politics of international law set above and in chapter 2.

3.4.1.3.5 Verify the reliability of the documents

In adapting the work of Datt (2016), Elo and Kyngas, (2007), Hsieh and Shannon, (2005), and Bengtsson (2016), in this step the researcher verified the collected documents by reviewing their sources and checking their authenticity. Each document used in this step of the analysis has been verified. This was largely a clerical process of checking, but did lead to some documents being questioned more closely.

3.4.1.3.6 Findings

The detailed findings will be described in chapter 7.

3.4.2 Qualitative approach of the document analysis

The analysis in chapter 7 concentrates on drawing upon the analysis of the negotiation documents, whereby it has been found that the India-Bangladesh border management negotiation process has been continuously moulded by (but not solely determined by) the politics, more specifically by the domestic political leadership of Bangladesh (see page 217 for details). One of the most important questions the research asks is, 'How far, drawing on a case study, can one conclude that current processes of territorial dispute management of international law need rethinking considering political influences and with respect to the human rights issues in the border dispute? How have India and Bangladesh managed the legal process of border dispute management?' It is not possible to answer these questions by merely showing that politics is a determining factor in these bilateral negotiations; it requires a further analysis of the interactions between law and politics. Moreover, it must reveal other contingent matters of social conditioning of this knowledge production process (i.e. power, contexts, interests, politics and so on) (for more details see chapters 2 and 7). In this step, the research follows the qualitative approach of document analysis. This has been set out according to the nature of the documents and the aims of the analysis.

3.4.2.1 Critical theoretical and methodological tools employed in analysing documents

In analysing the documents, the research employed concepts derived from critical theory, as set out in chapter 2. As mentioned above, critical theory provides the assumptions and generates the core questions which follow (see page 86 for details). The research also used a critical methodological framework along with methodological tools, as mentioned earlier in this chapter (for more details on where and how these critical theoretical and methodological tools are used in analysing documents, see pages 204-210) Please note that the research used some *quantitative data* on the economic relations of these two countries to provide ancillary support to the qualitative analysis employed in this research;

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it did not used any quantitative methodology; these data, mainly relating to the economic relations between India and Bangladesh, are presented in chapter 7. However, the qualitative analysis of the written documents follows steps adapted from Pushkar and Victor (2004), Saldana (2009) and Burnard et al. (2008).

3.4.2.2 Setting selecting criteria for documents

In this step, the researcher had to consider what types of document needed to be included and reviewed, the time of the publication, and the context of the release of that publication or document. The research collected both primary and secondary sources in library desk research, especially based on Nottingham Trent University libraries. The research collected literature from books, newspaper articles, statements of ministers, press releases of the Ministry of Foreign Affairs of Bangladesh from Bangladesh during a research visit in 2013. It also collected statements, briefings, press releases from the Ministry of External Affairs, India, online. It collected both Bangladeshi and Indian publisher's books from Bangladesh. Indian records and journals written in English are mostly available in Bangladesh. It gathered some books and articles from stores unavailable in Bangladesh. It used some books brought for the author from Kolkata, India. Moreover, it explicitly focused on the two most famous newspapers of Bangladesh, *The Daily Star*, and *The Daily Prothom Alo*. On the other hand, it also used *The Hindu, The Times of India* and *The Indian Express*. It used other international and regional news sources such as *BBC News* and *The Guardian* where relevant. The Indian newspapers were accessible online, so it was comparatively convenient to collect articles online by searching for keywords. The Bangladeshi newspaper, *The Daily Star* was also available online, however, *The Daily Prothom Alo* had started publishing online version. Thus, the research used both the online and paper version. It collected the paper version from Bangladesh.

The research searched for and collected documents by using the key word 'Causes' (success/failure of the India-Bangladesh border dispute negotiation and/or management). This time, it was not possible to do it only electronically because in that case it would have been very limited. In order to overcome this limitation, the research sought other documents such as published books, newspaper articles and comment discussion ('op-ed' pieces).

3.4.2.3 Collecting published documents

The documents were collected for analysis from the sources mentioned above (see the Sources and Evidence section for details). In searching for documents, it used the key word 'Causes' (success/failure of the India-Bangladesh border dispute negotiation and/or management), but it was not straightforward because the documents did not mention these words directly. So, the researcher needed to use various documents which discussed India-Bangladesh relations along with their political issues, economic issues, disputed issues and

so on. Initially, it found 11 journal articles, 20 newspaper articles, 10 books. It also found 25 governmental speeches and statements, 28 press releases, 20 media briefings, statements and bilateral/multilateral documents from the Ministry of External Affairs, India, website, and the Ministry of Foreign Affairs, Bangladesh, website. Furthermore, 28 other documents were taken from other sources.

3.4.2.4 Narrowing down the documents

In narrowing down the documents, the researcher focused on three key questions (derived from the understanding of the reviewed literature as well as the findings from the previous part of the analysis, as demonstrated in chapter 7) because although in the previous step 132 relevant documents had been found, some documents did not discuss the causes of the success or failure of the negotiations/management. In narrowing down the documents, the researcher asked the question 'is this document significant for this analysis?' for each document while going through them by hand. The documents which were not significant for this analysis were excluded in this step. Finally, 81 relevant documents were selected. The references of these 81 documents have been enclosed in appendix D.

Key question 1: What are the causes of the mostly ineffective discussions between the BNP-led Bangladesh and the BJP/Congress-led government of India in 2001-2006?
Key question 2: What are the causes of some of the significant and effective discussions between the Awami League-led Bangladesh and the BJP/Congress led government of India in 2009-2015?
Key question 3: What could be considered other relevant factors rooted in the longer-term context, which only implicitly – but significantly – shaped the negotiations held between 2001 and 2015?
In this step, the researcher needed to critically read and reread the content of the documents (an example of how the documents were reviewed is attached in appendix B). This led to the identification of the causes of the success and failure of the border dispute negotiations/management, which significantly answered these three key questions. Moreover, as these negotiations were bilateral negotiations, they not only focused on border dispute issues but also discussed other issues including trade, investment etc. The researcher only included border dispute issues and excluded other issues using these specific key questions. In presenting the causes the research paraphrased and rephrased them while maintaining the actual meaning.

3.4.2.5 Setting significant areas for analysis

The collected documents were originally reviewed and analysed with reference to the three 'key questions' discussed above that were deemed to be relevant for this analysis. There were other 'key questions' the researcher considered, but as she went along, it became

apparent that these key questions were not appropriate for this analysis. It also became apparent that throughout the analysis, she would need to be more explicit about what the 'key questions' really meant in terms of the analysis. The research needed to be clear about what exactly it was looking for in analysing a document, asking what was realistic to expect from the negotiation/management process at that specific moment as well as about the success and failure. Therefore, the discussion only selected the three specific 'key questions' that are exactly significant for this analysis.

An example of the document review is presented in table 3.4.4 below:

Table 3.4.4: Example of a document review

Type of the document reviewed.	Document reviewed.	Is this document significant for this analysis?	Searching keyword	Causes of success/ failure of the negotiation/management found in this document.	Related domain name.
ISSI[12] Publication	"Improving ties with India: Prime Minister Sheikh Hasina's visit to India" Hamayoun Khan	Yes	'Causes' (success/ failure of the border dispute negotiation and/or management).	-The Sheikh Hasina-led Awami League is considered very positive about regional cooperation and forging good relationships, particularly with India. -India considered Bangladesh very important to balance emerging Chinese influence in Asian politics. - India needs transit through Bangladesh. -India's intention to build an image of a responsible regional power by showing its willingness to co-operate with its neighbour Bangladesh. -India had a distrustful relationship with Bangladesh while the Begum Khaleda Zia-led BNP was in power, which often negatively affected bilateral relationship between them, including this dispute management.	ISSI.org.pk

Source: Author's self-produced table, based on the analysis.

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[12] Institute of Strategic Studies, Islamabad, ISSI.

3.4.2.6 Document coding and analysis

Each document was analysed to determine the extent to which management is described, addressed or considered in relation to each of the identified key questions. Text relevant to each key question was highlighted manually by a critical reading and the researcher's interpretation. Based on the analysis of the text and its meanings, relevance and contexts, for each key question the negotiations were coded according to the condensed meaning of the relevant text found. The code forming was done by the researcher through her formulation of coding definition adapting the work of Saldana (2009). According to Saldana (2009, p. 3), "A code in qualitative inquiry is most often words or phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for ... data". Code formulation is reflected from the research questions and key questions as well. In this analysis, coding was done according to the inner meaning of the condensed text as interpreted by the researcher. It is acknowledged that using the qualitative approach involves a high degree of interpretation. Moreover, in demonstrating the 'causes', it grouped them by the number of the documents in which each cause was found, which makes the analysis reliable. Every single cause has been coded as follows:

Code: A: Hegemonic regional power relation. The cause which demonstrates the hegemonic regional power domination as a cause of this problem is coded as code A. Please note that in using this, it is recognised that many factors surrounding hegemony intersect at regional and global levels; however, for analytic purposes they have as far as possible been distinguished.

Code: B: International context. The cause which is connected with the international context as a cause of this problem is coded as code B.

Code: C: Domestic context. The cause which is connected with the domestic context as a cause of this problem is coded as code C.

Code: D: International politics. The cause which demonstrates international politics as a cause of this problem is coded as code D.

Code: E: Domestic politics. The cause which demonstrates the domestic politics of India and Bangladesh as a cause of this problem is coded as code E.

Code: F: Political interests. The cause which demonstrates the political interests of India and Bangladesh as a cause of this problem is coded as code F.

Code: G: Economic interests. The cause which demonstrates the economic interests of India and Bangladesh as a cause of this problem is coded as code G.

Table 3.4.5 Coding of the identified causes

Causes	Found				
Key question 1: What are the causes of the mostly ineffective discussion between BNP-led Bangladesh and BJP/Congress-led government of India in 2001-2006? **Key question 2:** What are the causes of some significant and effective discussions between Awami League-led Bangladesh and BJP/Congress-led government of India in 2009-2015?	Journal article	Newspaper article	MEA India and MOFA Bangladesh[13]	Others	Code
India's power dominated relations with Bangladesh.	2	6	0	4	A
The political context of Bangladesh which implies Begum Khaleda Zia-led BNP's close ally with a major Islamic party, Jamaat-e-Islami.	5	7	0	3	C
Begum Khaleda Zia-led BNP's 'right-wing' political ideology.	6	3	0	5	E
Indian government's security concern and allegation against the Begum Khaleda Zia-led Bangladeshi government regarding the ten-truck arms case, in which it was believed by the Indian government that Bangladesh patronised India's Northeast area's insurgency movement.	4	8	0	5	D
Narendra Modi-led NDA government's (India) concern about China's emerging role in Asia.	2	4	0	6	D
BNP-led Bangladeshi government's foreign policy approach towards Pakistan, China and other Muslim countries.	6	3	0	2	D
Assurance of powerful hegemonic neighbour India's support for the Sheikh Hasina-led Awami League.	3	2	0	1	D
India's distrustful relationship with the Begum Khaleda Zia-led Bangladeshi government.	3	8	0	3	D
The Sheikh Hasina-led Awami League's positive approach about regional cooperation and forging good relationships, particularly with India.	4	6	0	5	E
India's suspicion about Bangladesh's involvement in the disruptive activities of	5	11	0	4	D

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[13] Ministry of External Affairs, India, and Ministry of Foreign Affairs, Bangladesh, websites, respectively.

Pakistan's ISI aimed at destabilizing India's Northeast.				
The positive influence of the Awami League's election manifesto on India, which was the party's commitment to friendly relations with Asian countries, whereby India was pointed out by name and Pakistan was left out.	3	4	0	3	E
Begum Khaleda Zia-led Bangladesh's negligence of India's concerns regarding security and territorial integrity.	6	7	3	9	D
The installation of the India-friendly Awami League government in Bangladesh.	4	4	0	7	C
India's suspicion about BNP's patronising India's Northeast area's insurgency movements, especially the Assam separatist movement.	2	3	0	4	D
Awami League-Congress close historical links since 1971.	4	5	4	6	E
India wants (political interest) Bangladesh to act against groups that have reportedly established bases on Bangladesh's soil, such as Harkat-ul-Jihad-al-Islami, which was not fulfilled by the BNP government.	3	4	0	5	F
Changing political context of Bangladesh by the formation of the Sheikh Hasina-led Awami League government in Bangladesh.	3	5	0	1	C
Bangladesh's increasing importance in Indian foreign policy to keep its hegemonic power in South Asian politics.	6	5	0	4	A
India's power political intention to build an image of a responsible regional power.	4	5	0	5	A
India-Bangladesh power relations.	3	9	0	7	A
Bangladesh government's domestic political identity as well as its changing foreign policy approach during the Awami League regime.	1	0	0	3	D and E
Awami League-led Bangladesh's defensive foreign policy approach towards India.	2	2	0	3	D
Bangladesh's importance in India's growing economy.	7	5	1	5	G
India's political and economic interest to have closer cooperation with Bangladesh so that Chinese influence in Bangladesh can be balanced.	5	4	0	8	F and G
India's need (economic interest) for transit through Bangladesh.	4	6	0	7	G

Bangladesh's interest to have a closer cooperation with India so that all bilateral issues, including disputing issues with India, could be resolved.	6	4	0	8	F
India's demand (political interest) to have a bilateral anti-terror pact with Bangladesh, which was only possible to obtain while the India-friendly government of the Awami League was in power.	5	0	0	6	F

Source: Author's self-produced table, based on the analysis. The causes presented in this table are based primarily on an analysis of 81 documents which have been subject to detailed analysis. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about the causes and processes of negotiations and their outcomes in chapter 7 are identified. The 81 documents are also identified in Appendix D.

Table 3.4.6 Coding of the identified causes

'Key question' 3: Other causes What are the other relevant factors rooted in the longer-term context, which only implicitly – but significantly – shape the negotiations held between 2001 and 2015?	Found			Code
	Journal article	Newspaper article	Others	
Contextual influence of Cold War politics.	2	3	1	B
India's intention to secure its national interest by signing the India-Bangladesh Treaty of Friendship, Cooperation and Peace, 1972.	3	3	2	F
Hussain Mohammad Ershad's continuation with the main thrust and directions of the policy pursued by Ziaur Rahman.	2	3	3	D and E
The removal of the word 'secularism' from the Bangladesh constitution by Ziaur Rahman, the founder of BNP in the late 1970s and Begum Khaleda Zia's following the same policy.	6	3	7	E
Bangladesh's economic dependency on India for huge reconstruction of Bangladesh after the liberation war.	2	2	4	G
Begum Khaleda Zia's persuaded conservative policies rather than secular policies.	4	2	3	E
Bangladesh's significant move towards the USSR alliances by signing India-Bangladesh Treaty of Friendship, Cooperation and Peace, 1972 in the Cold War period.	3	2	2	A
India-Bangladesh positive political relations after Bangladesh won independence.	3	0	2	D
India's power political aspirations in the Cold War period.	3	0	2	A
Newly independent Bangladesh's importance in Indian foreign policy	4	2	6	D
Bangladesh's importance in emerging India's hegemonic position in South Asia.	3	0		A

India's significant bonds of friendship with Bangladesh and the Awami League.	9	8	6	D and E
India's security concern about Bangladesh's cooperation with China.	7	5	4	D
Close ties between Indian political elites and the Awami League since 1971.	5	3	4	E
Congress-Awami League close alliance.	8	3	6	E
India's lack of interest in forming a positive relationship with Bangladesh because of Zia's aggressive response to the border clashes.	3	0	2	F
India's inclination to maintain a good relationship with the Sheikh Hasina-led Awami League government.	3	0	2	D
India-Bangladesh worsening bilateral relations after the assassination of Sheikh Mujibur Rahman.	3	1	2	D
Bangladesh's geopolitical position within the range of the Indian security system.	3	2	1	A
Mrs. Indira Gandhi's harder line policy with Bangladesh.	5	3	2	D
Zia's close relationship to China and other countries in the Cold War era.	3	2	1	D
India-Bangladesh worst phase of relations in the time between Mrs Gandhi's return to power and Zia's assassination.	7	3	0	D

Source: Author's self-produced table, based on the analysis. The causes presented in this table are based primarily on an analysis of the 81 documents, which have been subject to detailed analysis. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about the causes and processes of negotiations and their outcomes in chapter 7 are identified. The 81 documents are also identified in Appendix D.

Tables 3.4.5 and 3.4.6 demonstrate the coding process of this analysis. In the reviewing process of the analysis, it was found that 'India's power dominated relations with Bangladesh' is considered a significant cause of the success or failure of the border dispute management. This cause has been found in 2 journal articles, 6 newspaper articles and 4 other documents. The latent meaning of these causes is expressed as the code of the 'hegemonic regional power relation' cause, thus it has been coded as code A. The following causes followed the same coding process. A point to be noted is that no single document discussed only one cause; rather, the documents often discussed several causes. These have been listed in these tables. Therefore, an overlapping could be found in the number of documents listed in table 3.4.5 and table 3.4.6. Moreover, the causes listed in these tables have not been directly copied from the relevant documents; rather, in reviewing and interpreting the documents, the researcher paraphrased them.

Once the coding was done, the research categorised the coded causes into four categories, namely power, politics, context and interest. Here, category refers to "segregated, grouped,

regrouped and relinked in order to consolidate meaning and explanation" (Grbich, cited in Saldana, 2009, p. 9). For example, in this analysis code D 'international politics' and code E 'domestic politics' are grouped together as the 'politics' category. Finally, all of the categories come under the broad theme of "causes of the success/failure of the border dispute management". The findings here are used to explicate the theoretical structure given in chapter 2, where it was argued that context, politics, power and interests are specific issues on the ground which are always significant in dispute management (see chapters 2 and 7 for details). This is very significant because this provides a solid theoretical analytical ground for demonstrating the research's reconstructive explanatory critique. It should be noted that, as a subsequent part of the methodological implications of 'reconstructive explanatory critique', the research analyses the relevant documents and texts of India-Bangladesh economic relations since 1971 and finds the causes for the political constraints conditioning the actual economic relations of these two neighbours. In doing this, the research did not separate them from the analysis stated above as the causes were also analysed from the same documents collected, they are also interrelated, and are furthermore similar to the causes demonstrated above. Therefore, the causes found were integrated with the causes demonstrated above. The whole body of findings is presented in tabulated form in chapter 7 tables 7.1.3 and 7.1.4 (see pages 218-222 for details). These causes will be evaluated and brought together through critical explanation in chapter 7.

3.4.2.7 Verify reliability of the documents

In adapting the work of Pushkar and Victor (2004), each document used in this step of the analysis has been verified for its reliability. These checks have involved confirming the authenticity of the source of the document as well as checking the copyright status. For official sources or readily available news sources, this required patience but was not problematic. For other sources, it proved more difficult. For example, most of the blogs which were found in the initial stage of the analysis were excluded because they were not reliable or not from reliable sources. Moreover, the research did not evaluate and represent conclusions from only a single source wherever sources could be brought together, compared and triangulated against each other. Thus, every cause represented in this analysis has been collected and tested as far as possible from several documents or other sources (see tables 3.4.5 and 3.4.6).

3.4.2.8 Findings

The detailed findings will be discussed in chapter 7.

3.4.3 Qualitative analysis of interviews and collected documents regarding unresolved issues which are currently creating problems in the conflicted border area

In this step, the research conducts a qualitative analysis rather than a qualitative content analysis. It has been set out according to the nature of the documents and aims of the analysis. The qualitative analysis of the interviews (analysis approach is adapted from Hoyos and Barnes, 2012, Polkinghorne and Arnold, 2014) and the written documents (analysis approach is adapted from Pushkar and Victor, 2004, Saldana, 2009 and Burnard et al, 2008) followed a number of steps; the following sections provide detailed descriptions of these.

3.4.3.1 Conducting interviews and collecting documents

3.4.3.1.1 Conducting interviews

In this step, 34 semi-structured interviews were conducted, including with those living near the India-Bangladesh boundary as well as government officials, members of BGB (known as BDR before) and members of the civil societies in Bangladesh. There were difficulties in visiting villages near enclaves. There were 16 interviews with local people living in near the India-Bangladesh border in Rajshahi, Dinajpur, Lalmonirhat, Jaipurhat and Chapaijawabgonj areas, which included some Indian people who claimed to have been 'pushed-in' by the BSF. There were seven interviews with people working in BGB (previously known as BDR) in those areas. There were a further 11 interviews which included five government officials and six other members of the civil societies, working in human rights issues-related NGOs in Dhaka. This also included one Indian citizen working at Jawaharlal Nehru University, India (She came to Bangladesh in 2014). Some interviews were taken in 2008 by the researcher before the doctoral research had begun. Although the research focuses on India-Bangladesh border dispute management, especially between 2001 and 2015, the interviews from 2008 provide valid evidence of the context as well as of the issues discussed in chapters 5, 6 and 7. Some interviews also took place in 2014. The researcher used Skype and video calls for some interviews that were taken in 2014, but also for further clarification and explanation when she returned to the UK. These were semi-structured interviews, not specific questionnaires, allowing respondents to express their own views of the border issue in their own words. Questions included:

- For the local people: How have their lives and their human rights been affected/violated by the border problem (i.e. BSF/ BGB's torture, gunfire, killing, 'push-in push-back' problem and other problems)? What do they see as the causes of this problem?

- For other interviewees: What do they think regarding the human rights violations, including killing, torture, push-in push-back, and other problems of the India-Bangladesh border? Who is responsible for this? What are the reasons of these problems? What are the causes undermining the success of this dispute management?

Please note that these interviews were conducted in Bengali (two of them in Hindi). The researcher transcribed them in Bengali after finishing each interview. They then needed to be translated to a significant part into English (not the full version) for analysis purposes. It is this material which has been textualized in the analysis (i.e. treated as the equivalent of written text for the purpose of analysis).

3.4.3.1.2 Collecting documents

For the documents, the researcher had to consider what type of document needed to be included and reviewed as well as the time of the publication and the context of the release of that publication or documents. The study collected documents from both Indian and Bangladeshi sources, many of which were collected online such as through online newspapers, journal articles and so on (for more details of the collected documents see page 85). It was essential to search for and collect diverse types of documents which included journal articles, books, newspaper articles, blogs, publications from the Institute for Defence Studies and Analyses, India, and so on. The research searched for and collected documents using the key words '_actual situation_' of the India-Bangladesh border and the '_causes_' of the current unresolved India-Bangladesh border dispute issues. This time, it was not possible to do it only electronically because that would have severely limited the results. In order to overcome this limitation, the research searched for other documents, such as published books, journal articles, newspaper articles and so on.

Please note that it could be argued that as the researcher is from Bangladesh, her work might give insufficient attention to the Indian context. To avoid potential problems, she sought to be reflexive, meaning she was self-critical but also viewed the whole topic in a critical way as far as she could, and also balanced chosen sources. For example, she collected information from some prominent Indian newspapers: _The Hindu_, _The Indian Express_, and _The Times of India_. She also collected information from some international sources: _The Guardian, BBC News, Channel 4 News_, and so on. Thus, sources from Bangladesh as well as from India more widely were used, although it was not possible to visit the Indian side of the disputed border. Nevertheless, government and non-governmental sources from India were used and are cited in chapters 6 and 7 as and when appropriate, which helped to shape this work significantly. Finally, 40 documents and 34 interviews were collected for analysis purpose.

3.4.3.2 Justification for conducting interviews and combining them with document analysis

This discussion explains the grounds for analysis later in chapters five and six, and the further development of that analysis in chapter seven; it concentrates on analysing related documents of current issues which cause problem in the conflicted border area. These issues were not included in the Land Boundary Agreement 1974 nor even in the 2011 Protocol, so it was obvious that there was not much discussion between the governments of India and Bangladesh regarding these matters. The justification for taking the interviews lies in the premise that they are very significant in answering part of the research question: "How far, drawing on a case study, can one conclude that the current process of territorial dispute management of international law needs rethinking, considering the political influences and with respect to human rights issues in the border dispute?" In order to do this, the critical theoretical concept of 'reconstruction' employed in this research takes the elements of these interviews and document analysis and from them creates a narrative to show the human cost in misery, disrupted lives and sometimes lost lives, inflicted by a failure to secure a settlement of a border dispute, in addition to the human as well as political and economic value of achieving a settlement (even if, as in this case, it is incomplete). These interviews and documents have also been analysed together to explore the causes for these unresolved issues. Another significance of using interviews is to compensate for the lack of documents found on these topics as well as reliability of these documents. This is because all these issues are recent and are related to killing, torture and overall human rights violations, which is a very sensitive issue for both governments as well as for media and other sources. Little significant research has been done on these disputed issues, as evidenced in the literature review chapter. Most documents on these issues were found in this research in the form of newspaper articles, journal articles, news broadcasts and so on. However, to overcome this limitation, the research conducted these 34 interviews, potentially helping the research to triangulate the collected data (interviews and documents). It also facilitated the employed qualitative method to overcome the weakness brought about by a lack of primary data as well as provide an authentication of this analysis. Finally, these interviews, along with the collected documents, were analysed to create narratives to explore the overall human rights violation in the conflicted border area, which is being caused by this dispute. These narratives are demonstrated in chapters 5 and 6. The interviews have also been analysed to explore the causes of these problems, which also undermine the success of this dispute resolution and will be demonstrated in chapter 7 through a critical explanation.

3.4.3.3 Critical theoretical and methodological significance of interviews and documents analysis

The analysis in chapters 5 and 6, and the further development of that analysis in chapter seven, explores how this long-standing dispute creates human rights violations, including torture and murder in the conflicted border area. This is very significantly contributing in its first methodological phase where it will complete the problem identification, construct and structure. Moreover, it is significantly involved in the second part of its employed methodology, where it will diagnose the 'causes' of these current unresolved issues that are undermining the success of the management process. The justification for exploring these effects 'on the people living in the border area through human rights violation' is directed by the critical theoretical approach employed in this research. This is because critical theory starts from a real-life problem by choosing a methodological or theoretical approach. Critical theory begins by opening up a reality, suppression, inequality, conflicts and so on (see chapter 2). This also confronts the question of how we define a peaceful border in international law. These killings also violate "the prohibition on the threat or use of force' (Lowe, 2007 p. 101). Apart from the perspective of international law, this also challenges the perception of friendly international relations between India and Bangladesh. The number of the killings is significantly higher in Bangladesh, which also raises the question of the inequality between the powerful actor that is India and its weak counterpart of Bangladesh. Furthermore, India's repeatedly ignoring of the need to resolve the issue raises a question of power domination by India.

Critical theory, and the methodological approach arising from it, is not only about disclosing a specific reality or problem; rather, it also raises a new possibility of change, of restructuring the issue while critiquing it. For example, sufferings, resistance, conflict, violation, domination and struggle always 'open up' the possibility of gaining knowledge of the structure or specific context of sufferings or the procedures of enquiring into social reality by questioning, criticizing or problematizing the theoretical assumptions of that reality. This critical methodological insight leads the researcher to a further step of knowledge production by reconstructive criticising, questioning the existing theoretical idea of peaceful international borders, interstate relations and, the role of international law in conflict management which is discussed in chapter 7.

According to critical theorist Strydom, "the feeling of unease, lack of well-being or malaise that serve as material sign-bearer, if not widely shared, it manifests in particular sections of the population or specific groups which reactions, responses, resistance, actions, struggles, identity formation, claims, slogans or the like attract the attention of critical theory and spur it on in its pursuit it of knowledge that could make a difference of the constitution of society" (Strydom, 2011 p. 155). As discussed earlier in this chapter, the understanding of the reality of a social world can only be possible by taking into account participants' self-knowledge,

language and context. The critical realist ontology used leads the researcher to identify the problems of sufferings, dominations and their causes (by analysing and interpreting these interviews and documents) on the basis of this theoretical perception. It relates the process of knowledge production to critique as an important criterion of its 'reconstructive explanatory critique'. All the explanation discussed here demonstrates the coherence of the critical theoretical and methodological analysis used here.

3.4.3.4 The role of critical theoretical approach and methodological tools in the analysing interviews and collected documents in this analysis

The text and interviews were analysed by looking at the kind of texts, the contents, the underlying message of the text and the researcher's viewpoint. By doing this, the research aims to uncover the underlying meanings of the texts and the interviews it analysed. This goal is ultimately derived from the central critical theoretical concepts used in this thesis (methodologically), termed as the 'reconstructive explanatory critique' (Strydom, 2011). As discussed in chapter 2, this refers to a focus on vague, incorrect or inadequate practice in the specific context of a problem or situation or in any relations of the actors, their understanding, orientations and practices. This dimension is a significant characteristic of critical theory according to Strydom (2011) (see chapter 3 details). Finding out this underlying meaning enables the research to understand and interpret the vague, incorrect and adequate practice of international law of conflict management, which is evident from this human rights violation in the conflicted border areas. It argues that international law is not doing its job properly; as a result, the dispute is still continuing, which causes this human rights violation. This aim is derived from the critical theoretical concepts employed in this research, which argues that one of the major aims of critical theory is "to explore the distorted subjective situation of some individual or group" (Sumner, 2003, p. 4). By exploring the killings, human rights violation and torture happening in the conflicted border area, the research reveals the distorted subjective situation of the people of this area. Moreover, one of the distinctive characteristics of critical theory is that the kinds of questions asked relate to the dynamics of power and exploitation in ways that are potentially linked to practical intervention and transformations (Morrows and Brown, 1994). The central concepts of this study relate directly to the dynamics of the power relations between India and Bangladesh in resolving the conflict, which, while it did not involve direct confrontation, was framed by conflicting ideas and unbalanced power politics as a dominant factor in the management of the dispute. The combination of CLS and CTIR enables a more carefully focused analysis of this particular problem, as chapter two has proposed. Better understanding, in turn, has the potential to clarify how the influences and dominations that create human rights violations, including torture and murder, can be challenged and changed, which is where this part of analysis aims at. For example, it aims to reveal the unequal power relations between India and Bangladesh, which is evident from the fact that the number of killings is

very much higher in Bangladesh, which also raises the question concerning the inequality between the powerful actor India and its weaker counterpart Bangladesh. Furthermore, India's repeatedly ignoring of the need to resolve this issue raises the question of power domination by India in this context. It also seeks to expose distorted, partial, or unequal forms of power domination which cause injustice and suffering.

This part of the analysis is also aimed to reveal the causes of these problems which undermine the success of this dispute resolution. Critical theory directs this by arguing that knowledge is always conditioned upon a historical and material context. Devetak (2013) advanced this argument more preciously, claiming that "Whereas traditional theories would tend to see power and interests as *a posteriori* factors affecting outcomes in interactions between political actors in the sphere of international relations, critical international theorists insist that they are by no means absent in the formation and verification of knowledge claims" (Devetak, 2013 p. 166). In analysing the documents and interviews, the research emphasises an exploration of the effect (positive/negative) of some prior factors (power, politics and others) and interests which have caused this current problem in the conflicted border area. One of the major aims of critical theory is to understand the hidden forces which created a situation, for example, social, cultural, ideological and contextual forces. It argues that any knowledge is necessarily conditioned by social, cultural, ideological and contextual influence. One of the most important tasks of critical theory is to reveal the effects of these conditionings. If we consider the dispute and its effect on the people in the conflicted border area here as a process of knowledge production, then the critical approach raises the most vital questions: why and how has this knowledge production been influenced by power and other factors? To answer these questions, it is essential to reveal the effects of the social conditioning of this knowledge production process (i.e. power, politics, contexts and interests). In doing so, the researcher aims to explicate the theoretical structure in chapter 2, where it has been argued that context, law, politics, power and interests are specific issues on the ground that are always significant in any dispute. This potentially fulfils the critical theoretical assumption, which argues that power and interests as prior factors affect outcomes in interactions between political actors in the sphere of international relations, as critical international theorists argue there are some prior factors or interests which shape knowledge formation (Devetak, 2013).

The research employed an 'interpretivist' epistemology for this analysis. It suggests that any actions should be interpreted by taking into account the context of the action and interpreters' understanding of that action, because it is believed that knowledge is constructed and cannot be found objectively (see page 76). The researcher analyses the interviews and documents using the same specific methods (having textualized the interview transcripts -see below) and by keeping these epistemological requirements in

mind. The only difference within the method of the analysis was the abstraction process between the interviews and documents, however, critical theoretical methodological insights were employed in the same way for both analyses (for the interview abstraction process, see page 111; for the document abstraction, see page 113).

In the analysis of the documents and interviews, the thesis follows the following significant techniques adapted from McGregor 's (2010) *critical analysis* as set out in chapter 2 and 3. The reader should note that this is an account of the critical document analysis used throughout the thesis; that is not the same as particular forms of 'critical discourse analysis', which the thesis does not use.

- Critically read and interpret every sentence of the interviews and collected documents to reveal the information about power relation in the specific context. This is because, according to McGregor's (2010) critical analysis, a sentence can also bear information about power relations. For example, when a sentence asserts that "Indian authority always tries to push-in Bengali-speaking Indian people to Bangladesh without showing proper evidence" (Md. Jamal Uddin Khan, Interview: Dhaka, Bangladesh, April 5, 2014), it speaks about the power domination of the Indian authority in this context. By exploring this, the research fulfils an essential criterion of the critical theoretical assumption employed in this research, which reveals the effect of power domination on this dispute and its management.

- The analysis interrogates the use of language as a form of political rhetoric which invokes but often also seeks to conceal power relations for specific purposes which a careful analysis can explore. It can at the same time interpret the intended impression an agent seeks to create through their use of rhetoric in argument or public records.

- Nominalisation, which refers to a process where, while interpreting the documents, a verb converted into a noun reveals an underlying meaning more specifically; for example, converting 'aggressing' to 'aggressiveness' to understand and interpret the term as a 'power' demonstration more specifically.

- Connotations are examined, meaning that a 'word' can bear a strong set of meanings other than the direct specific meaning they point towards (denoting). For example, while a sentence asserts that, "We need to hide leaving our house until a flag meeting occurs" (Atik Mia, Interview: Dinajpur, Bangladesh, August 20, 2008), the word 'flag meeting' refers to an 'effort' to resolve the situation. This effort is most often shaped by the domestic political context of the disputing countries. Therefore, easing the distorted

situation of the people living in the border area is conditioned by political efforts taken by border security force.

- Insinuation, which implies a more indirect suggestion which, whatever the author/speaker's intention, can convey an opinion underpinning the text which the analysis can bring forth and explain.

- Topicalization, which refers to what to put under which topic or theme. In this analysis, the summary of each interview and document has been grouped under four specific themes/topics, which will be discussed below.

Therefore, the approach here allows the interpretivist epistemology to throw critical insights through the interpretation of collected documents by considering 'of particular importance [the] language use and communication, but also action and practice' (Strydom, 2011, p. 150). This interpretation demands self-criticism and dialogue in research, questioning the process undertaken but also the values engaged, as a critical part of CTIR (Patrascu and Wani, 2015). Reflexivity, as already emphasised, has been employed at all stages of the research, including this part, to mitigate the adverse possible effects of positionality. The ethical issues have also been considered at this stage. For example, the confidentiality of the interviews has always been maintained while presenting the findings. Moreover, documents have been used by respecting copyright. Please note, to restress a point made earlier, that this research does not make specific emancipatory claims. Nothing in this thesis leads *directly* to emancipation. However, this explanatory critique leads to the *emancipatory potential* of its produced knowledge (see pages 59 and 82-83 for details). This is an element in the logic of the thesis; it is not a significant part of the claim to originality, however.

3.4.3.5 Reviewing and analysing the interviews and documents
3.4.3.5.1 Reviewing and analysing interviews

For reviewing and analysing the interviews, the research also borrowed from the 'recursive abstraction process' (Polkinghorne and Arnold, 2014), meaning a dialogue between the researcher and her sources wherein she reads and then re-reads the interview and documentary sources to establish patterns and disconnections in the sources. In practice, this leads to the highlighting and evaluation of sources, identifying words or sentences of particular relevance and leaving aside the irrelevant. This identified key themes, which are identified and specifically derived from the literature studied. Some other issues are deducted (for instance, border fencing and the water dispute) as the research found them to be irrelevant (see pages 161-162 for details). The themes are formed as below:

Theme: 1: Firing on Bangladeshi people at the India-Bangladesh border and killing them.
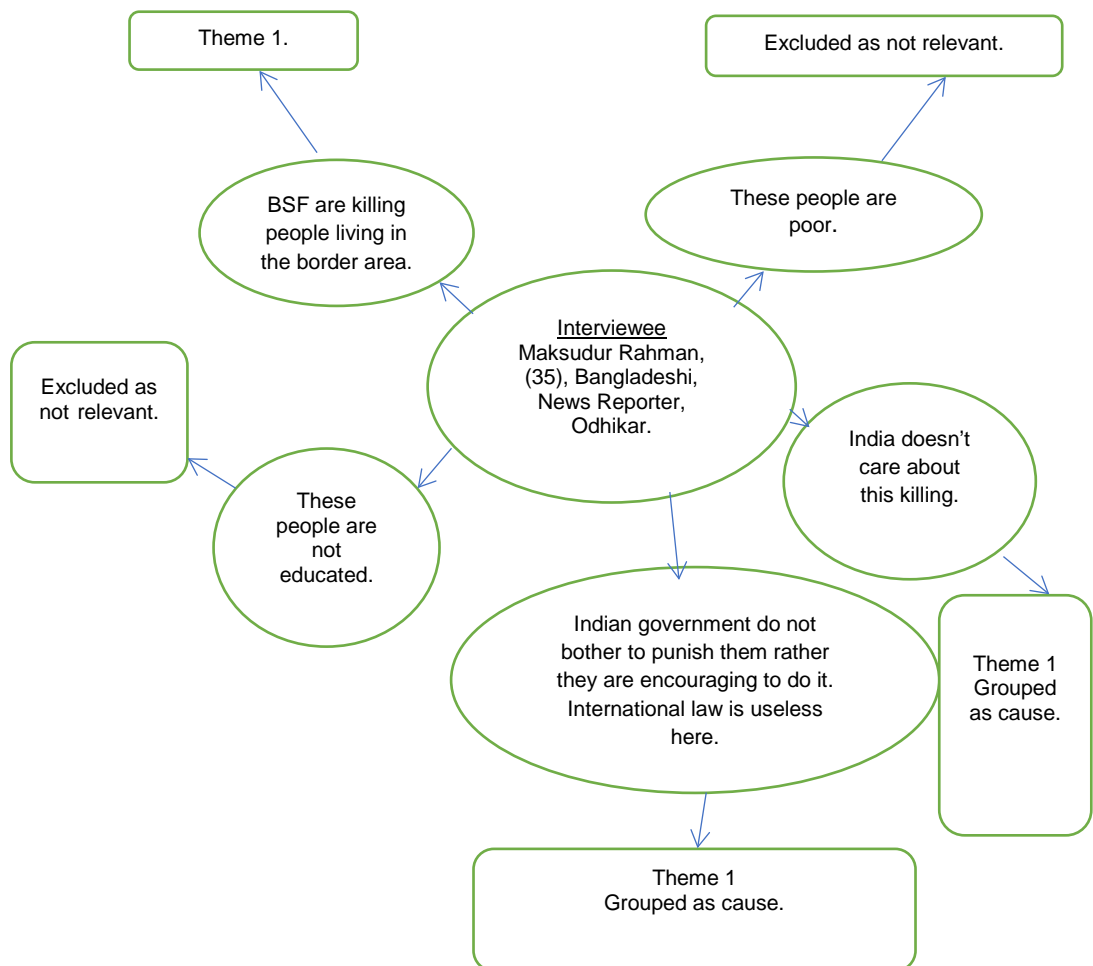Theme: 2: Tension and gun firing between BGB and BSF.
Theme: 3: The 'push-in' and 'push-back' problem.
Theme: 4: The boundaries of common rivers problem.

An example of reviewing the interviews is demonstrated here:

Figure: 3.4.7: Example of Interview Review

Figure 3.4.7 demonstrates an example of how the interviews were reviewed. It shows how some of the significant texts of the interview conducted with Maksudur Rahman discussed the BSF's killing, which has been grouped as 'Theme: 1: Firing on Bangladeshi people at the India-Bangladesh border and killing them'. Other issues, such as poverty and lack of education, have been excluded as they were not relevant for this research. The other three significant texts, 'India doesn't care about this killing', 'The Indian government do not bother to punish them rather they are encouraging to do it' and 'International law is useless here' are grouped under Theme 1. They are also categorised as significant causes of this killing/dispute. The research used the same process to review the rest of the text of this

interviewee. All interviews were reviewed following the same process. After getting the full review, the original sentences or parts of sentences grouped under a theme were paraphrased by carefully considering the original meaning. This led to an abstraction of each interview, which was combined with other interviews and the document analysis; this enabled the author to identify both human and political issues which needed to be factored into the final analysis. The table of this final abstraction of all interviews is demonstrated in chapter 6 (see pages 179-182). The findings of the analysis of these causes are demonstrated through a reconstructive explanation in chapter 7.

3.4.3.5.2 *Reviewing and analysing documents*

In reviewing the documents, the researcher focused on four specific themes, as mentioned above, because although initially more than 40 documents were found, some documents did not discuss the 'actual situation' and the 'causes' of current unresolved India-Bangladesh border dispute issues. In narrowing down the documents, the researcher asked the key question 'Is this document significant for this analysis?' for each document. The documents which were not significant for this analysis were excluded in this step. Finally, 40 documents were found that were relevant and focused on the four selected themes.

In this step, the researcher needed to critically read and reread the contents of the documents, whereby the information was read and themes were identified on a sentence-by-sentence basis with the underlying or wider message of the text. This led to the identification of the 'actual situation' and the 'causes' (these key words 'actual situation' and 'causes' were used as a code/category for analysing the documents) of the unresolved India-Bangladesh border dispute issues (as well as the causes which undermine success of the dispute management), which significantly discussed these four themes. Therefore, the research only includes border dispute issues and excludes the other issues using the specific themes. Finally, each document was reviewed and interpreted. An example the review and interpretation process for the documents is demonstrated in table 3.4.8, whereby each document used in this analysis underwent the same process.

Table 3.4.8: Example of a document review

Document reviewed.	Is this document significant for this analysis?	Interpretation and abstraction of description provided of the actual situation.	Theme found	Findings Causes of the unresolved disputed issues.	Related domain name.
Human Rights Watch Report (2012). Abuses by Border Force Increasing [online].	Yes	This report used MASUM's (An Indian NGO which is working on the issue of India-Bangladesh border killing) report as a source. According to this report the actual situation of India-Bangladesh border demonstrates that BSF soldiers are brutally beating, killing and torturing people.	Theme 1	-The Indian government is responsible as it has failed to hold the committers accountable. - The Indian government does not pay proper attention by ordering an independent investigation and ensuring prosecution. -The Indian government does not ensure compliance with the United Nations Basic Principles on the Use of Force and Firearm's by Law Enforcement Officials. -Lack of enforcement system of the international law on human rights violation (as it doesn't have the same enforcement system as domestic law).	www. hrw.org

Source: Author's self-produced table, based on the analysis.

3.4.3.5.2.1 Significant areas for analysing documents

The collected documents were originally reviewed and analysed with reference to the four themes discussed above. These themes were deemed to be important and relevant for this analysis. There were some more themes that the researcher considered, but as she went along, it became apparent that these themes were not appropriate for analysing these documents. It also became apparent throughout the course of analysis that she would need to be more explicit about what the themes really meant in terms of analysis. The research needed to be clear what exactly it was looking for at the time of analysing a document for its commitment to, for example, the key words 'actual situation' and the 'causes' of the current unresolved India-Bangladesh border dispute issues. Here, 'actual situation' refers to the real conditions or suffering caused by the current disputed issues, which includes killing, torture and overall human rights violations. The documents were also analysed to uncover the 'causes' of current unresolved India-Bangladesh border disputed issues. Texts relevant to each theme were manually highlighted by critical reading and the researcher's interpretation. Based on the analysis of the texts and their meanings, relevance and contexts, only four groups of causes were selected, namely the four specific themes which are of exact significance to this analysis. These are the concepts which the research regards as critical methodological perceptions to this analysis.

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3.4.3.6 The Summary

Every single interview and document was considered following the same review process demonstrated in figure 3.4.7 and table 3.4.8. The summary of the review and analysis of the documents and interviews is presented below.

Table 3.4.9: Summary of the interview and document review

Documents and interviews reviewed and analysed.	Summary of findings.	Theme
34 interviews and 40 documents.	25 documents demonstrated killings at the disputed border area by BSF. Among these 25 documents, 14 documents significantly discussed BGB-BSF gunfights, 14 interviews revealed that they and their friends, families or relative's lives have been negatively affected and their human rights have been violated by BSF's killing and torture and BGB-BSF gunfights. A further 14 interviews revealed that they were not directly affected by this dispute (as they were government officials, members of NGOs and civil societies and also were working for BGB, but they were aware of this situation and some of them were indirectly involved in policy making about this dispute resolution) but they explored the human rights violation in the conflicted border area, including killing and torture by BSF; the <u>causes</u> of their sufferings as well as of the undermining of the success of the dispute management are demonstrated in table 3.4.10.	Theme: 1 Theme: 2
	18 other documents revealed the push-in push-back problem and how it causes human rights violation in the conflicted border area. 17 documents revealed information on the effect of the boundaries of the common rivers problem, while 6 interviews revealed the human rights violations caused by the push-in push-back problem. 3 of these were Indian citizens and were pushed back by BSF. 2 of them explored the problem of the boundaries of common rivers. The <u>causes</u> of their sufferings as well as of the undermining of the success of the dispute management are demonstrated in table 3.4.10.	Theme :3 Theme: 4

Source: Author's self-produced table, based on the interviews and documents analysis. Reference of the interviews and documents are identified as enclosed in Appendix E and F.

Please note that no single document solely discusses one specific issue, so there is a significant overlap between a number of the documents.

The summary of the interviews, provided in a table setup to demonstrate a comprehensive description of the actual problem, is presented in chapter 6. The list of the interviews and the refernce of the documents which have been analysed is also presented in Appendixes E & F. It is not possible to present the findings of the document analysis of the 40 documents in tabulated format as the documents are quite long and the analysis aimed to produce a summary of the actual sufferings, killings and other human rights violations as well as the causes of this problem. The comprehensive description of the actual border problems, taking elements from the abstraction of the 34 interviews and 40 documents, which significantly discussed killing and torture in the conflicted border area, BSF-BGB gunfights, the push-in push-back problem, and the boundaries of common rivers, will be demonstrated briefly in chapter 5 and in details in chapter 6.

3.4.3.7 Analysing the identified 'causes' of the current disputed issues which are undermining the success of the management process

As previously discussed, the interviews and the documents were analysed with the aim of finding out the 'causes' of the current unresolved India-Bangladesh border disputed issues which are undermining the success of the dispute management process. Causes found from the interviews and documents, as stated above, related to each theme were highlighted manually by critical reading and the researcher's interpretation. Based on the analysis of the texts and their meanings, relevance and contexts, for each theme the documents were coded according to the condensed meaning of those causes. Here, condensation or condensing refers to a process of shortening the sentences or texts found (i.e. causes found in this context) while preserving the actual meaning of those sentences or texts (Pushkar and Victor, 2004). The code forming was done by the researcher by her formulation of the coding definition adapting the work of Saldana (2009). According to Saldana (2009, p. 3), "A code in qualitative inquiry is most often words or phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for ... data". Code formulation reflects the research questions and key questions discussed throughout the thesis. Moreover, in demonstrating 'causes' of current unresolved India-Bangladesh border issues, it grouped them by the number of the documents in which each cause has been found, aiming at a more reliable process of research. Every single cause has been coded as follows:

Code A: Hegemonic regional power relation. The cause demonstrating hegemonic regional power domination as a cause of this problem is coded as code A. This code has been formulated as a distinctive code for analytic purposes, although it is recognised that it overlaps in practice with some others.

Code B: International context. The cause which is connected with the international context as a cause of this problem is coded as code B.

Code C: Domestic context. The cause which is connected with domestic context as a cause of this problem is coded as code C.

Code D: International politics. The cause which demonstrates international politics as a cause of this problem is coded as code D.

Code E: Domestic politics. The cause which demonstrates the domestic politics of India and Bangladesh as a cause of this problem is coded as code E.

Code F: Political interests. The cause which demonstrates the political interests of India and Bangladesh as a cause of this problem is coded as code F.

Code: G: Economic interests. The cause which demonstrates the economic interests of India and Bangladesh as a cause of this problem is coded as code G.

Code H: The cause which demonstrates reasons including contradictions inherent in the rules of international law, as discussed in chapter 2, including the rules and process of international law are too flexible and easily manipulated by politics and power politics, the non-existence of legislative mechanisms, the compulsory adjudication or effective enforcement procedures is coded as Code H. This code has been formulated as a distinctive code for the bundle of issues which potentially weaken dispute management processes.

The following table demonstrates the coding of the causes:

Table 3.4.10 Coding of the identified causes

The causes which are currently responsible for creating problems at the India-Bangladesh border as well as the undermining of their resolution.	Found				Code
	Journal article	Newspaper article	Human Rights Watch reports and other reports	Others (including interviews)	
India-Bangladesh continuous political argument over the push-in push-back problem and other disputed issues in negotiation.	1	4	0	6	D
India's interest to prevent illegal immigration.	5	2	0	6	F
India's power demonstration in its relations with Bangladesh (for instance, reportedly blocking streams of some major rivers flowing from India to Bangladesh, never considering discussing or consulting with Bangladesh on the blockage or diversion or consumptive use of the waters of these rivers).	6	7	2	2	A
Contextual interpretation of the flawed and inadequate boundary lines drawn by the British colonial power in 1947.	3	8	0	4	B and C
Contradictions and lack of binding forces inherent in international law.	2	1	0	6	H
India's self-image of hegemony.	2	4	3	6	A
BSF's aggressive attitudes.	2	4	4	8	A
India's power demonstration by forcefully pushing people into Bangladesh without showing any evidence.	3	5	3	4	A
Incapability of international law to stop border killings.	2	5	0	6	H
India's power dominance in its relations with Bangladesh.	2	3	0	8	A
The Indian government's violation of the 'United Nations Basic Principles on	3	5	3	5	H

the Use of Force and Firearms by Law Enforcement Officials'.					
Lack of enforcement system of international law to protect human rights from violation (as it doesn't have the same enforcement system as domestic law).	2	1	3	4	H
Contradictory rules and principles of international law.	1	2	2	2	H
The complicated nature of delimiting the river boundaries designed by international law.	1	2	2	3	H

Source: Author's self-produced, based on the analysis. Information presented in this table is based primarily on an analysis of 34 interviews and 40 other documents which have been subject to detailed analysis, as outlined in here. The material is analysed in detailed tables; referencing to key sources is identified when the sources relate to specific claims regarding the causes of the current disputed issues (undermining the success of the resolution) as given in chapter 7. The 34 interviews and 40 documents are identified in Appendix E and F.

Table 3.4.10 demonstrates the coding process of this analysis. In the reviewing process of the analysis, the cause "India-Bangladesh continuous political argument over the push-in push-back problem and other disputed issues in negotiation" was found. It has been considered as a significant 'cause' of the current unresolved India-Bangladesh border disputed issues and was found in 1 journal article, 4 newspaper articles and 6 other documents. This cause has been coded as Code D. The following causes followed the same coding process. An overlap can be found in the number of the documents and interviews listed in the table 3.4.10, which the researcher has recognised. Moreover, the causes listed in this table were not directly copied from the relevant documents and interviews, but were paraphrased.

Once the coding was done, the researcher categorised the coded causes into five categories namely, power, politics, context, interest and inherent deficiency of international law. Here, category refers to – "segregated, grouped, regrouped and relinked in order to consolidate meaning and explanation" (Grbich, cited in Saldana, 2009, p. 9). In this analysis, Code D 'international politics' and Code E 'domestic politics' are grouped together under the 'politics' category. Finally, all of the categories come under the broad theme of "the causes which are responsible for creating problem at India-Bangladesh border currently as well as undermining their resolution". All of the categories are used to demonstrate and explicate the theoretical structure given in chapter 2, where it is argued that context, politics, power and interests are specific issues on the ground that are always significant in dispute management. The inherent deficiency of international law identified by Koskenniemi (2011) is also significant cause undermining the success of dispute management. This is very significant because it builds on solid theoretical analytical grounds to lead logically to its reconstructive explanatory critique. The whole findings are presented in a tabulated from in

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chapter 7 table 7.1.5 (see pages 223-224 for details). These findings will be demonstrated through a critical explanation in chapter 7.

3.4.3.8 Verifying reliability of the documents

In adapting the work of Pushkar and Victor (2004), each document used in this step of the analysis has been verified for its reliability. These checks have involved confirming the authenticity of the source of the document as well as checking the copyright status. For official sources or readily available news sources, this required patience yet was not problematic. For other sources, it proved to be more difficult. For example, most of the blogs found in the initial stage of the analysis were excluded because they were unreliable. Moreover, the research did not evaluate and represent conclusions from only a single source whenever sources could be brought together, compared, and triangulated against each other. Thus, every 'cause' represented in this analysis has been collected and tested as far as possible from several documents or other sources (see table 3.4.10).

3.4.3.9 Findings

The details findings will be discussed in chapters 5, 6 and 7.

3.5 Conclusion

This research employs a critical theory methodological framework along with qualitative methods. It uses qualitative content analysis together with a qualitative approach for document analysis. It also uses some quantitative data to provide ancillary support to the qualitative analysis employed in this research, although it does not use any quantitative methodology. At the same time, the unique features of the employed methodology are the positioning implications of the critical theory, the researcher-research relationship, and the importance of the political and historical context of the inquiry in explanation and interpretation. This chapter systematically demonstrated its methodological process and the tools used along with the justification for employing them. The employed methodology has relied on (up to some extent but not limited to) Strydom's (2011) book *Contemporary Critical Theory and Methodology*, which is extensively discussed above. In order to create a reconstructive explanatory critique, the first phase of the critical methodological framework employed in this research is, problem identification, expose and structure, is very significant. It relates the research with the remaining phases. It also links the research with the logical-presumptive idea of the problem; its initial theorization leads to diagnosis and knowledge construction. This initial theorization follows critical theory's own tradition, which primarily relies here on Martti Koskenniemi's (2005, 2011) *The Politics of International Law*. The second phase of the critical methodological framework aims to engage the object domain (i.e. the problem of India-Bangladesh border conflict management) with its methodology. It focuses on the necessity of explanation and identifies evidence and concealed (usually

structural) factors which need to be taken into account. This is the basic work of diagnosis and is analytic and normative in nature, which also includes reconstruction and which "is presupposed by the subsequent explanation and, particularly, the kind of critique that is characteristic of critical theory. This means that critical theory's engagement with its object traverses a number of methodologically distinct yet closely interrelated dimensions" (Strydom, 2011, p. 156). This diagnosis starts with an analysis of the actual condition of the problem. This analysis requires different relevant methodological tools. In this research, the employed methodological tools, which form a necessarily linked single framework, are critical realist ontology, interpretivist epistemology, normative axiology, use of language analysis, qualitative methods (including some quantitative data), ethical consideration, positionality and reflexivity. The final stage of the critical methodological framework is validation and practical application, as set out above (see page 83).

Chapter 4

Territorial Disputes in International Law

4.0 Introduction

International border disputes form an important sub-set of disputes in general. These arise between sovereign states for a wide variety of reasons, including historically rooted conflicts, disputes over resources, national identity and economic conflicts. However, there are also important pressures on the participants of a dispute to resolve it, and to do so through peaceful means. Recently, international border disputes have been flaring up all over the world, especially in Asia and Africa (Mandel, 1980). Roughly one-quarter of the world's borders were unstable, and two-thirds of maritime borders were not yet settled in the 1990s (Anderson, 1996). The existing literature on the nature of disputes concerning boundaries is very well established, but that does not mean that boundary disputes have become any less likely. These expansions have challenged the concept of sovereignty in this international system. Moreover, the people living near a disputed border area often suffer because of severe violations of their human rights. Also, in some cases, disputing countries do not care about the existing norms and regulations of international law, which is a threatening situation for the existing international legal system. The purpose of this chapter is to provide a brief description to conceptualize territorial boundaries, territorial disputes and their resolution in international law. It also provides a critical explanation of different types of territorial disputes and the management process of those disputes with some relevant examples that are potentially relevant to the first phase of its employed critical methodology.

In chapter 3, a critical methodological framework is established consisting of three methodological phases. The starting point for this critical methodological framework is problem identification, expose and structure, which begins with the sense of a disturbing or negative quality relating to the discourse of the international law of conflict management. This sense of a negative quality is also associated with the suspicion that the process of international law of conflict management is not working in practice in the way it is expected to do (see chapter 2 for more discussion). This initial presumption is primarily dominated by the researcher's 'critical realist' ontological position, as discussed in chapter 3. This initial presumption, particularly in this subject of research, is also significantly directed by a critical theoretical approach, as discussed in chapters 2 and 3. However, this chapter explicitly concentrates on identifying and exploring this presumed problem of the international law of conflict management. This problem is becoming apparent in the recent territorial disputes that challenge the effectiveness of the process of the international law of conflict management, which will be demonstrated with some relevant examples here. The significance of this chapter in the diagnostic analysis – which is central to its critical methodology – is its contribution to the reconstructive critical explanation of the normative nature of the international law of conflict management. This will enable it to achieve an

abstraction of the problem whereby it opens up the reality by providing a critical explanation of the normative structure (i.e. international law) which is still regulating social practice (i.e. conflict management). This chapter is also significant in that it answers the research question, namely does international law provide an adequate foundation to solve territorial disputes?

4.1 Territorial Boundaries

The notion of 'territory and boundary' is inherent in international law and international relations. One of the key structural features of the state is an established, recognized and well-defined territorial boundary, which forms the basis of the state's territorial sovereignty. Jowitt argues that, "A boundary is defined as an imaginary line that divides two pieces of land from one another" (Jowitt cited in Pan, 2009 p. 34). The boundaries of all nation states are referred to as international territorial boundaries in the international legal system. Territorial boundary has been defined thus: "Boundaries of state territory are imaginary lines on the surface of the earth which separate the territory of one state from that of another, or from unappropriated territory, or from open sea" (Oppenheim cited in McCorquodale and Pangalangan, 2001 p. 868). In defining territorial boundary, Okano (2010, p. 37) states, "The border is the outer limit of the area where the state has its territorial sovereignty". According to him, these borders are drawn where two neighbouring states encounter each other. Anderson (1999) focuses on governmental control and the recognition of international territory in defining a territorial boundary. He states that, "Boundaries indicate the accepted territorial integrity of the state and the extent of governmental control" (Anderson, 1999 p. 125). Thus, the territory is the physical platform of a state where its authority can exercise its sovereign power. A boundary draws the limits of that platform and is mutually recognised by the states themselves and the international community.

Territorial boundaries are determined or created by human beings. These boundaries are determined on the basis of "-a treaty, an arbitral award, a court decision or a boundary commission report" (Pan, 2009 p. 20). The notion of territorial rights (in the sense of supreme law-making authority) is significantly practised to regulate territorial sovereignty in international law. The reason is that, "-at the basis of international law lies the notion that a state occupies a definite part of the surface of the earth, within which it normally exercises, subject to the limitation imposed by international law, jurisdiction over persons and things to the exclusion of the jurisdiction of other states" (Brierly cited in Bentsi-Enchill, 1965 p. 262). Reports of the international arbitral award in 1928 based on the Island of Panama dispute between the United States and the Netherlands stated,

"*Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other*

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State, the functions of a state. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations" (Reports of International Arbitral Awards 1928 cited in McCorquodale and Pangalangan, 2001 p. 870).

Therefore, in this existing international system, the notion of a boundary between states has been formed to outline the territorial boundary within which a state can apply its power and rights based on sovereignty (Pan, 2009).

4.2 Territorial Disputes

4.2.1 An Overview

Territory is often considered to be a subject of dispute in the international system because of its psychological importance and its inhabitants, specifically when it contains ethnic or religious groups etc. It is also important for its natural resources as well as historical and cultural value. Hensel (2000, p. 12) argues, "Many territories have been the subject of dispute because they contained (or were thought to contain) valuable commodities or resources, such as strategic minerals, oil, fresh water, or fertile agricultural land". Conventionally, territorial disputes are considered to be a prominent cause of inter-state military conflict in this epoch of globalization. The causes of territorial disputes are usually defined and explicated by the strategic power relations, and are also closely connected with the political and economic interests of disputing states. However, territorial disputes always go against world peace and security as a whole. Scholars consider territorial dispute to be a challenging threat to international peace and security, particularly in East Europe and Asia since the end of the Cold War (Forsberg, 1996). Schachter (1993 p. 31) is in complete agreement, according to him, "-territorial conflicts must be included in the category of threats to the peace". Some scholars, such as Holsti (1970) and Vasquez (1993), also argue that contest over territorial possession was the primary cause of many wars in the past century. However, Vasquez (1993) also determined that if we want to sustain peace, we have to settle territorial disputes peacefully.

4.2.2 Causes of Territorial Dispute

Forsberg (1996 p. 433) contends that "The increase in territorial disputes after the end of the Cold War was poorly anticipated and the responses of the international community to territorial disputes are said to be retrospective, inconsistent and confusing". Factors affecting this have included uncertain boundaries in addition to uncertainty over geographical features which were designated as forming boundaries. For example, river
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systems may move, maps may be old and unreliable, or boundaries in mountain ranges may have been inaccurately traced. There may also be cultural issues among populations directly affected in a border area, which leads to disagreements – often perfectly honest disagreements, but sometimes manufactured conflicts – concerning where 'traditional' boundaries lie. Topological terms may be unclear, as in the Cambodia temples case, where the "watershed line of the Dangrek range" proved an unreliable identification of a key feature (Mancini, 2013 p. 4). What is no longer recognised as outlining a legitimate boundary line is the 'right of conquest'[14] in itself, which has been effectively outlawed since the 1945 United Nations Charter, although historical boundaries once established by conquest may still be accepted for other reasons.

4.3 Decolonization as a Cause of Territorial Boundary Conflict and its Significance in International Law

Nicolson, who attended the post-war Versailles conference, said,

*"During the afternoon [at the Quai d'Orsay] …the fate of the Austro-Hungarian Empire is finally settled. Hungary is partitioned by these five distinguished gentlemen – indolently, irresponsibly partitioned – while water sprinkles on the lilac outside – while the experts watch anxiously – while AJB, in the intervals of dialects on secondary matters, relapses into somnolence – while Lansing draws hobgoblins on his writing pad – while Pichon, crouching in his large chair, blinks owlishly as decision after decision is actually recorded…They begin with Transylvania, and after some insults flung like tennis balls between Tardieu and Lansing, Hungary loses her south. Then Czechoslovakia, and while the flies drone in and out of the open windows Hungary loses her north and east. Then the frontier with Austria, which is maintained intact. Then the Jugo-Slav frontier, where committee's report is adopted without change. Then tea and macaroons" (*Nicolson cited in McCorquodale and Pangalangan, 2001 p. 869*).*

This approach, which created many boundaries in and after the colonial period, is the cause of many territorial conflicts, particularly in Asia and Africa. Such as in the case of a conflict between two African states, which had been occupied by former colonial powers and which requested that the International Court of Justice determine a boundary line.

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[14] "This is an enquiry into the place of the right of conquest in international relations since the early sixteenth century……It was a recognized principle of international law until the early years of this century that a state that emerges victorious in a war is entitled to claim sovereignty over territory which it has taken possession" (Korman, 1996, p 1).

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Lord Salisbury said,

"*We have engaged in drawing lines upon maps where no white man's feet have ever been trod; we have been giving away mountains and rivers and lakes to each other, but we have only been hindered by the small impediment that we never knew exactly where those mountains and rivers and lakes were" (*Lord Salisbury cited in Muiu, 2010 p. 1332*).

Given the haste with which the India-Bangladesh border was outlined during Partition in 1947, it is unsurprising that the border was sometimes merely sketched; "The new international border between India and East Pakistan was drawn quickly by a Boundary Commission that based itself on the district maps rather than field surveys" (Chatterji cited in Schendel, 2002 p. 118). Such hasty procedures are very likely to lead to future disputes, as Rashid (2003) also noted. However, the assertion of the right of self-determination challenged established colonial borders both in terms of the processes which created them and in terms of the effects, including the human, economic and cultural effects, which they had. In this context, self-determination rejects the principle of *res nullius*[15]. An obvious example has been ascertained in the case of the Western Sahara at the International Court of Justice (International Court of Justice, 1975). In that case, it was claimed that at the time of Spanish colonial acquisition the territory of Western Sahara was not *res nullius* because the indigenous nomadic tribes had some strong associations with the neighbouring people. Instead of providing support to the peoples' voice, "-the underlying concern in the international legal system remained the preservation of the state and its territorial boundaries, usually by avoidance of inter-state recourse of aggression. Thus, the right of self-determination was forced to yield repeatedly to the primacy of the claims of inter-state peace and security" (McCorquodale and Pangalangan, 2001 p. 874). Both the notion of conquest[16] and the notion of prior possession (*uti possidetis*, discussed in detail in the next chapter) proved to be at best inadequate foundations for boundary settlements between states which were former colonies.

4.4 Territorial Dispute Resolution in International Law

Conventionally, any territorial dispute should be resolved according to the norms and rules and should follow the procedure of the existing international order. Dispute deterrence, management and resolution can be applicable in the context of a territorial dispute, but this depends on the situation and the context of the conflict and in particular on disputing states' desire to choose the procedure. There are means for the peaceful settlement of disputes in United Nations Article 33 of the Charter. "A wide range of dispute-settlement possibilities

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[15] The territory, which was acquired by colonial powers, had no ruler or owner, and there was no autonomous power there. This assumption was known as '*res nullius*' in international law.

[16] See page 125.

envisaged in Article 33 beyond enquiry as to the facts: negotiation, mediation, conciliation, arbitration, judicial settlement and resort to regional agencies" (Higgins, 1994 p. 171). According to the present international law framework, a territorial dispute can be solved by any of the following processes:

- Negotiation
- Arbitration
- Mediation
- Litigation (usually by the International Court of Justice) (Rashid, 2003).

4.4.1 Negotiation

Negotiation refers to official or non-official talks or dialogue between disputing parties with the aim of reaching a beneficial decision. In negotiation, disputing parties discuss the potential outcome of the conflict, often discuss their demands, and present arguments until they reach an acceptable decision. If they cannot progress to a decision, the negotiation process continues. The negotiation process can be divided into three approaches, namely "-interest-based, rights-based and power-based – and they can result in different outcomes" (Ury et al. cited in Shamir and Kutner, 2003 p. 6). Interest-based negotiation is known as a fair and transparent type of dispute resolution where conflicting parties should agree that they should accept the agreement that is the ultimate end of the negotiation. The 'agreement' should reflect both parties' interests. However, the problem is that this is often very difficult and sometimes impossible. Mostly, leaders become very reluctant to reach any conclusion which might have negative consequences for their national interest and security, especially if the disputed territory has a high economic, political or strategic value. Shamir and Kutner (2003 p. 16) argue that, "The international negotiation process is more complicated, because of the various interdependencies between countries, cultural issues, and past history, and the fact that individual people or a group of people negotiate on behalf of a collective. Their culture, psychology, emotional state, behaviour, ethics, values and private agendas may affect the outcome of the negotiation". Moreover, although interest-based negotiation is considered to have the most potential process for a dispute resolution that could provide a better outcome, it still depends on the conflicting parties' 'will' to accept it or not. The critical thinker Koskenniemi (2005) criticizes it by arguing that it merely depends on the consent of a state, and is not an effective obligation (see pages 45-46 for more details). Hence, this non-obligatory pattern in the interest-based negotiation process becomes ineffective more often than not. This is a problematic question, since normally it is assumed that what creates an obligation in international law is explicit consent. According to Higgins (1994) 'consent' or 'will' of the states is the foundation of the bindings of obeying international law; "In so far as consent has been regarded as central to obligation, there has been a tendency to mitigate its rigours through a variety of techniques" (Higgins, 1994 p. 15) (see pages 45-46 for more details).

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If the disputing parties cannot reach any satisfying resolution through interest-based negotiation, then they seek right and power-based negotiation. Right-based negotiation involves taking the dispute to an international litigation body, such as the International Court of Justice. Power-based negotiation is considered most controversial; however, it is also considered an essential type of conflict resolution. This procedure is often used when the dispute involves a military threat or war-type situation. Frequently, the resolution depends on the power, political and strategic prospects of their relations. According to the critical theory of international relations, it is called the politics of international law.

4.4.2 Arbitration

Arbitration usually involves an ad-hoc court of arbitration, which is merely intended to resolve the related dispute. In this process, the disputing parties agree to one or three arbitrators being selected. Both conflicting parties agree to accept the determination before proceeding. The process always occurs with a reference to the norms and rules of international jurisprudence. Although it is voluntary in character, an agreement is concluded between the parties on how the arbitration will function, including whether the decision of the arbitrators will be binding or not. According to critics, this process is not invariably successful in every conflict, especially in resolving disputes which involve ethnic conflict. Sometimes it can lead to military engagement. For example, the arbitration process of 1997-1999 was unable to solve disputes between Slovenia and the Socialist Federal Republic of Yugoslavia regarding the Bracko area due to a lack of co-operation between the conflicting parties (see Copeland, 1999).

This process has often been successful in the past. The modern form of arbitration, where a tribunal arrives at a reasoned decision through an essential judicial process, is based on a law that originated in the 1871 treaty between Britain and the US. The arbitration tribunal established under the 1871 treaty dealt with the *Alabama* claims in 1872 and found in favour of the US claims. The US sought to recover compensation from Britain for not diligently observing neutrality during the American Civil War (1861-1865). Britain had built several vessels, one of which was the *Alabama*, which was used by the Confederates against the US government (Rashid, 2003).

4.4.3 Mediation

Mediation is a well-thought-out process of conflict settlement. Bercovitch and Rubin (1992) define the mediation process as "A process of conflict management, related to but distinct from the parties' own efforts, where the disputing parties or their representatives seek the assistance, or accept an offer of help from an individual, group, state or organization to change or influence their perceptions or behaviour, without resorting to physical force, or invoking the authority of law" (Bercovitch and Rubin cited in Shamir and Kutner, 2003 p.

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21). The precondition of this operation is that the mediator should be impartial or neutral and should not have any particular interest in any disputing country. The mediator should work in the process of negotiation with the disputing parties to arrive at a solution. It is generally the case that the resolution or agreement coming from this process is not necessarily obligatory, and it depends on disputing parties' 'will' to reach a solution or accept the resolution. Furthermore, this process has also been criticised for the potentially biased role of the mediator. As Koskenniemi (2011) states, any decision that comes from the framework of international law cannot escape political decisionalism (see page 50 for more details). For example, Britain's role as a mediator in the Saudi Arabia vs. Abu Dhabi territorial dispute has been criticised for the partial role of Britain as it had a direct interest in the disputed area (details discussed on page 138).

Mediation is adopted by the parties involved because in some disputes the degree of the bilateral relationship has reached a point where direct negotiation are unlikely to resolve the dispute. For example, in the Tehran hostage crisis in 1979, it was the Algerian mediator who oversaw the release of US personnel on 19th January 1981 after they had been held hostage for 444 days. Another example of mediation is the Beagle Channel dispute between Chile and Argentina. In 1971, both countries submitted the dispute to the International Court of Justice. The ruling was in favour of Chile in 1977, which Argentina rejected. In 1979, Argentina and Chile asked the Pope to mediate the dispute and the Pope's representatives worked as mediators for five years and, as a result, a peace treaty was concluded on 2nd May 1985 (Rashid, 2003).

4.4.4 Litigation (Usually by the International Court of Justice)

If the territorial dispute cannot be solved by following any of the above paths, then there is an opportunity to solve it through litigation, which is usually operated by the International Court of Justice, which is recognised as an autonomous organ of the United Nations. When the International Court of Justice deals with any case, it complies with the following sources:

- General principles of international customs are considered as an important source of international law. Article 38 of the International Court of Justice defines "international custom, as evidence of a general practice accepted as law" (Lowe, 2007 p. 36); and, more appropriately, "a general practice as evidence of an international custom accepted as law" (Lowe, 2007 p. 36)
- General principles of law accepted by existing civilized nations.
- General, particular or any established rules solely approved by disputing states.
- International convention.

- Judicial decision; "subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law" (Sumner, 2004 p. 1781).
- The equity principles of *ex aequo et bono*[17] can be utilized upon the agreement by the disputing parties.
- ICJ is also limited by the volume of cases it faces.

Nevertheless, the International Court of Justice deals with cases based on the claims detailed in the following:

4.4.4.1 Treaty

In agreement with ICJ Statute 38, the treaty is considered as a basis for a territorial claim. A treaty can be specified as any agreement done internationally. States are free to reach any agreement. If they make any treaty or agreement, they accept to fulfil it by law. The treaty is considered superior (as long as it is unambiguous) to customary international law. Lowe (2007, p. 64) argues that, "If States have made an agreement, the rights and duties of the parties are determined by the treaty, not by customary international law. Treaties are therefore the first place to look to determine a State's rights and duties". Hereafter, their importance is set by ICJ Statute Article 38. However, applying treaty law is fraught with difficulty as sometimes enforcing treaties is contradictory and instead represents breaching the rules and norms of international law. In other cases, the principles are not clear at all. Very often, the disputing countries are not the original parties who signed it, especially in the case of newly sovereign states following colonialism. The territorial dispute between Libya and Chad over the Aozou Strip, which has been brought to the International Court of Justice, is an example. The court resolved the case exclusively by a treaty in 1955, although this treaty was not clear enough to determine their boundary and, in addition, it was signed by the colonial administration and not the original disputing country. The court also denied justifying the merit of the accord and the claim based on *uti possidetis.*

4.4.4.2 *Uti Possidetis*

If there is no existing treaty between disputing states, then the court makes its decision based on the principle of *uti possidetis*. Commonly, most of the boundaries of the colonial states of Asia, Latin America and America were drawn in the past based on the principle of *uti possidetis*. It "-is a doctrine under which newly independent states inherit the pre-independence administrative boundaries set by the former colonial power. The doctrine posits that title to the colonial territory devolves to the local authorities" (Sumner, 2004 p. 1790). *Uti possidetis* is a principle of international law that is connected with the notion of territorial integrity and was applied for many boundary demarcation processes in the

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[17] According to the right and good.

colonial and post-colonial period. According to Lone (2012, no pagination), the term *uti possidetis* refers to "as you possess, you may now possess". *Uti possidetis de facto*, which is rooted in the early 1800s argues that, in the absence of a valid treaty, the territory should be defined by current effective possession (see pages 152-153 for more details). More significantly, this doctrine rejects any claim based on self-determination and establishes the claim of the boundary drawn by the internal administration as the international boundary. Sumner (2004, pp. 1811-1812) argues that "Although territorial disputants perennially make arguments based on all these justifications, only three of these justifications have operated consistently as the ICJ's decision rule: treaty law, *uti possidetis*, and effective control". He added that the ICJ goes for equity only when decision making is impossible on the basis of these three grounds. Moreover, he considered that in "the hierarchy among treaties, *uti possidetis* and effective control has the effect of giving a broad scope to treaty law and possibly imputing more meaning to the principle of *uti possidetis* than its merits at this stage in the evolution of public international law" (Sumner, 2004 p. 1812).

The principle of *uti possidetis* has been criticised as it is seen as being a major cause for many territorial conflicts in Asia and Africa. According to the critics of this principle, boundaries drawn by colonial powers are frequently unclear and do not reflect inhabitants' desires. The India-Bangladesh boundary dispute is a significant example of this (details will be discussed in the following chapter). Another instance is the frontier dispute between Burkina Faso and Mali in 1983. The International Court of Justice resolved the case on the principle of *uti possidetis* as the boundary had been determined by the French colonial power because it could not find any other basis for settlement. The ICJ suppressed disputing parties' claim based on 'effective control' and 'treaty law.'

4.4.4.3 Effective Control

Where there is no existing treaty and dispute resolution is not possible based on *uti possidetis*, then the court regards the case on the basis of effective control[18]. The claim based on effective control is complex to justify as well as controversial. Professor Andrew Burghardt argues that, "-the principal questions surrounding any such claim are twofold: (1) what constitutes an abandonment of the land by the last governing entity, and (2) what constitutes administration of the land" (Burghardt cited in Sumner, 2004 p. 1787). The application of the word 'abandonment' is often difficult to define in the context of effective control. The principle of effective control has often been criticised by many scholars, like Hill (1945), Blum (1965), Sumner (2004), Burghardt (1973) etc. It has been contended that in order to be able to make any territorial claim based on effective control, the territory should

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[18] In international law, effective control provides full control of a newly discovered territory to a new occupier assuming that those territories did not have any sovereignty or sovereign ruler before.

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be *terra nullius,*[19] which implies there is no sovereign power in that territory. On the other hand, it has been argued that abandonment means that the existing sovereign power has failed to maintain its sovereign control in that territory. Each condition contradicts the other and makes them impossible to employ. This controversy often arises in many territorial disputes. For instance, a dispute between the United Kingdom and France regarding the claim over the Minquiers and Ecrehos islands has been administered by the International Court of Justice based on effective occupation, whereby the court dismissed France's claim on treaty law and history. The tribunal considered a fisheries agreement from 1648 (between France and the UK) irrelevant in this context and dismissed the claim based on 'treaty law'. However, according to critics, it was a valid complaint. Controversially, in dealing with the estate dispute between Belgium and the Netherlands over several enclaves (1843- 2016) and the territorial dispute between Nigeria and Cameroon over Bakassi Peninsula in 1994, the court dismissed the claim on effective control and ruled on treaty law. More significantly, in the Bakassi Peninsula case, according to critics the treaty on which court based its decision was not perfect and unclear unlike Nigeria's claim, which was based on effective control. Moreover, the treaty was not sufficient to determine the whole border and Nigeria had substantial evidence of its effective control over the territory.

4.4.4.4 History, Economy, Culture and Identity

The International Court of Justice often deals with territorial claims based on history. If the question concerns any particular culture, religious belief, or ethnic group's motherland, then the application becomes very strong, although the claim needs to be judged by the time of possession (who possessed the land first) and the length of the possession. A historical claim is often closely linked to a cultural claim, which is based on the commonality of language, religion etc. However, this is often confused with the issue of ethnicity which can lead to civil war, violence and conflict. Moreover, the cultural claim has various dimensions in different portions of the world. In the Western world, linguistic commonality gets preference while in the Middle East it is religious commonality. Additionally, the justification for economic claims should establish economic relations with the claimant's land, which usually has a common route of transportation, corridor, sea port, common pipeline route etc. Although these issues are considered as a basis for justification in the International Court of Justice, it is very hard to prove a claim based on them. For example, in the dispute between El Salvador and Honduras[20] over their boundary determination in 1986, the court instantly dismissed the claimant's economic claim. In the example of the Vihear Preah Temple between Cambodia and Thailand (coming before the International Court of Justice regarding clarification of the 1962 judgement), although culture was discussed it didn't get

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[19] The disputed land does not belong to any sovereign power (usually states).
[20] ICJ case regarding Land and Maritime and Island dispute between El Salvador vs Honduras: Nicaragua Intervening, Judgement on September 11, 1992.

preference and the decision was based on treaties signed in 1904 (For more details see pages 136-137).

4.4.4.5 Geography

Justification based on geographical features like rivers, mountains and oceans is not a new concept. Sometimes these geographical features provide advantages when dividing national entities, but they sometimes complicate it and often make the border demarcation process difficult. Another problem is that there is an obvious tendency for a geographical boundary to move, especially the maritime boundaries. The India-Bangladesh boundary demarcation is an instance of this (see chapter 6 and 7 for more details). The dispute was also linked to the claim of ownership of South Talpatti Island, which was situated in between the India-Bangladesh maritime boundary. The beginning of this dispute comes from the unrealistic legal rule, the "Thalwang doctrine", which assumes that the river's flow will remain unchanged; however, in practice the flow of the river changes every year. If decision makers follow this doctrine, then South Talpatti Island will belong to India one year and Bangladesh in the following year. As the island disappeared into the sea, the dispute has since been settled; nevertheless, it could be a potential matter of dispute in the future because, according to the specialists' opinion, it could appear once more. In the example of the case of the Vihear Preah Temple between Cambodia and Thailand, although the border should have potentially been demarcated by the geographical claim of the watershed line, the court rejected that claim and emphasised the treaty (see pages 136-137 for more details). Moreover, the use of geographical boundaries depends on the reliability of geographers in the past. It also depends on the interpretation in each specific dispute. For example, the history of the Curzon line can be traced back to after the First World War. It was drawn to determine the boundary between Poland and Former Russia and was promoted by the foreign secretary of Britain, George Curzon. It was subject to geopolitical dispute during the Second World War and was resolved by the Tehran Conference and the Yalta Conference. The present Curzon line has a 5/8-kilometre variation compared to the original line, and the current border is considered to be an estimation of the Curzon line (Eberhardt, 2012).

4.5 A Critical Appraisal of Territorial Conflict Resolution in the Structure of International Law

As discussed earlier, international law is viewed as the foundation of the operating modern state system. One of the most important elementary features of the modern state is territorial sovereignty. A territorial boundary sets the lines of limit in which a country can exercise its sovereignty, but sometimes states become involved in a conflict over the setting of their territorial boundary. The term "territorial sovereignty" is grounded in the "Treaty of

Westphalia" from 1648. This territorial sovereignty has been challenged by many territorial disputes since then. Nevertheless, one of the chief tasks of international law is to enable states to settle their territorial disputes peacefully as they can apply their rights (Chestermen, 2011). Mbuh (2004, p. 15) argues that, "International law is said to exist because states in their actions reference international law". In order to deal with any territorial dispute, states often come with their claim based on the rules and norms of international law. Sometimes, this leads them to the International Court of Justice to solve the conflict.

Unsolved territorial disputes, particularly in Asia and Africa (i.e. the Kashmir dispute between India and Pakistan, the China-India dispute, etc.) as well as recent violations and non-compliances with rules of international law have critically questioned and raised the issue of the effectiveness or compliances of international law in solving territorial conflicts. Huth, Croco and Appel, (2011, p. 415) argue that, "In a system defined by anarchy, there are reasons to question whether international law can play a central role in the orderly and peaceful resolution of disputes when security issues are at stake for leaders". If international law is not able to provide a peaceful resolution to territorial conflict, then what factor prevents it from doing so? In the current international system, where power plays the most important role in the relations of states, what role does the 'hegemonic and regional power structure' play in settling the territorial dispute through the structure of international law of conflict management? How can less powerful states pursue their interests in a complex dispute when their relationship is with more powerful states? These are some of the central critical questions in this research.

The precondition for the peaceful settlement of any dispute by international law is the legal principles that solving the conflict should be relevant and precisely clear. Moreover, according to the conclusion of Huth, Croco and Appel (2011, p. 416) "-international law will only emerge as a focal point for states if two conditions are present: namely, if the legal principles relevant to the dispute are clear and if one state has an unambiguous legal advantage over its adversary". If either or both conditions are missing, then international law is less likely able to solve the dispute peacefully. The territorial dispute between Saudi Arabia and United Arab Emirates from 1934 to 1974 regarding the claim over the Buraimi Oasis and other territorial border issues based on the legal principles of international law were not relevant or precise enough to work. Apparently, the relevant legal principles were "*territorium nullius*," "effective control" and "rationality of blue cable" (Huth, Croco and Appel, 2011, p. 427). Neither Saudi Arabia nor UAE could have established its claim to the disputed territory effectively based on those principles. Also, territorial dispute is very often difficult to resolve if the disputed territory is viewed as having high value and importance to a state's international reputation and position as well. Although a treaty was signed in 1974, UAE

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claimed to revisit some sections of the treaty regarding the Zararah oil and gas field 30 years after the signing of the treaty (Al Mazrouei, 2014). It has been contended that this issue kept the dispute unsolved and had a negative impact on their political and economic relations.

The current framework for legal dispute does contain some significant patterns to steer a legal dispute, but in many cases, these are not enough to conclude a decision (Koskenniemi, 2005). Antonius (2003, p. 21) claims that "-if there are no specific rules to determine the outcome of a given negotiation, one can determine nevertheless whether or not a given outcome is compatible with accepted norms". The diligence of the "Inadmissibility of the acquisition of territory by war"[21] is one such controversial norm. Before the First World War, conquest was the normal and traditional method for the acquisition of territory. Now, lands that are occupied as a result of war cannot be annexed by the victor states. Under international law, the occupied lands should be returned to vanquished states following a peace treaty. Israel occupied the Palestinian lands of the West Bank and Gaza in 1967. The UN adopted Resolution 242, asking Israel to withdraw from the occupied lands (Rashid, 2003). However, this norm has been criticised by various scholars. Among them, according to Antonius (2003 p. 23), "A peace 'agreement' imposed upon one of the parties, which aims at getting that party to recognize, against its will, the control of the other party over its territory contradicts an important founding norm of the international system: that of the inadmissibility of the acquisition of land for war". In this context, the decision makers very often presume that their 'will' should be everyone's 'will'.

If any treaty exists between disputing states, the dispute should be solved according to that treaty. However, some disputes cannot be solved based on any existing 'treaty' because some treaties are too hard to apply. Enforcing treaties is contradictory, and sometimes breaches the rules and norms of international law. In other cases, the principles are often not clear at all. In analysing the border conflict between China and Nepal, several treaties can be found which were signed in the eighteenth and nineteenth centuries. The problem was that they disagreed to demarcate their border on the basis of that treaty because the treaty was contradictory, inconsistent and unclear. "The Sino-Nepalese treaty of 1792, for example, appears to give territories South of the Himalaya to Tibet, but the exact provisions are unclear. The March 24, 1856, treaty of peace between the Gurkha Kingdom and Tibet cedes to Nepal the ryots of Kerong, Kuti, Junga, Tagla Khar, Chewur, and Dhakling without specific details as to their limits" (Shrestha, 2010, no pagination). The dispute went through a series of 'negotiations' between the Government of China and the Majesty of Nepal, and both parties agreed to sign a treaty on 21 March 1960. "The boundary agreement stipulated that the 'traditional customary line' would serve as the basis for a boundary treaty. The

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[21] Inadmissibility of the acquisition of territory by war is a basic fundamental principle of the UN charter which determines that claims over territory acquired in a time of war is unacceptable.

boundary was to be determined and demarcated 1) where maps of both sides agree, and 2) according to local jurisdiction or administration where they did not" (Shrestha, 2010, no pagination). Thus, the Boundary Treaty, 1961 (later, The Protocol, 1963) was signed to settle the boundary dispute permanently. However, "it was settled forever in accordance with the principles of equality, mutual benefit, friendship and mutual accommodation" (Shrestha, 2010, no pagination) rather than based on a previous 'treaty.'

Compared with other claims related to territorial boundaries, 'treaty law' is considered legally more influential in solving territorial disputes. Sumner (2004 p. 1782) argues that, "Nevertheless, claims based on treaty law are particularly persuasive at the ICJ because Article 38 of the ICJ Statute obligates the court to consider treaties". However, the application of treaty law is problematic because "Many treaties contain their own enforcement provisions permitting parties to take certain actions in response to breach or to refer disputes to the ICJ; historically, many treaty disputes have been resolved by force" (Sumner, 2004 p. 1783). In some instances, the treaty cannot bind disputing states into an obligation because the related treaty was signed by other authorities while the formers were being ruled by a colonial power. After independence, these new state authorities were subject to that obligatory treaty. A significant example is the Thailand and Cambodia dispute over the ownership of the Preah Vihear Temple. Based on some contradictory and unclear provisions of the treaty formerly signed in the year of 1907, both countries claimed that the Preah Vihear Temple was situated on their soil. The dispute was rooted in the French colonial period of Thailand and Cambodia. The origin of this conflict was based on the contradiction and unclear indications of the 1904 convention and the 1907 treaty signed by the French colonial power and Thailand (known as Siam at that time). French officers drew a map to demarcate the mutual borders based on Article 4 of the 1907 treaty, and the Preah Vihear Temple was situated in Cambodian territory according to that map. The Siam (Thailand) government never accepted this map officially and claimed ownership of the temple. "In 1961 when the case was brought before the ICJ, Thailand argued that those maps were not legally binding because they had not been accepted by the first French-Siamese Mixed Commission (which was dissolved when maps were released) and also because Thailand had never officially accepted them" (Svay, 2015, p. 2). Moreover, the Thai government also argued that they are not the authority signing the 1907 treaty (as the Siamese authority signed it during the colonial period) and deny accepting it. However, in 1962 the court reached a conclusion which went in favour of Cambodia. The judgement was based on the French-Siamese commission and due to "Thailand's passive attitude for years the Court concluded of its "tacit acceptance" of the maps" (Svay, 2015, p. 2). There was some lack of clarity regarding this verdict, thus it couldn't solve the problem entirely, which led to military conflict between Thailand and Cambodia. Svay (2015 p. 3) argues that the "-ICJ has done here when considering that both Thailand and Cambodia consented to

the treaties on the boundaries established between 1904-1907 and that the maps drawn after – due to the passive attitude of the parties – had entered the treaties. The Court therefore interpreted them and brought some clarifications on the current situation but not enough to solve the controversy related to the whole disputed area". Cambodia again raised the issue in the International Court of Justice regarding the clarification of the 1962 judgement. In 2013, the ICJ reached a conclusion, ruling in favour of Cambodia. Although the 2013 judgement is a significant step towards solving this problem, some potential issues of dispute still exist regarding the possession of the area surrounding the Preah Vihear Temple. Similarly, inconsistency and unclear historical documentation are also the leading causes for disputes between Saudi Arabia and other neighbouring countries in the Persian Gulf (Huth, 1998).

Realism has always criticized international law in solving conflicts from the context of power and political domination. According to realist theorists, the main cause of a territorial dispute is "power political interests and favourable power relations" (Forsberg, 1996 p. 436). They consider territory to be a vital stage for power, providing the economic, political and strategic importance in politics. Thus, the expansion of a boundary will increase the ability of a state. There is also an effort to rationalize this power political context from a realist point of view. Realists justified their claim by arguing that "-in the absence of a supranational authority, it is practically unavoidable for any state to care foremost for its national interest, and it is therefore rational for statesmen to pursue their state's national interest" (Oppenheim cited in Forsberg, 1996 p. 435). Some scholars have attempted to explain it from a normative point of view. Then again, they couldn't deny the influence of power politics in solving any dispute. As Forsberg (1996 p. 434) argues, "I do not deny the possible significance of various domestic political and other circumstances". They also argue that international law is nothing but a tool for pursuing the interests of powerful countries. However, realists may think that international law is and should be a tool of the dominant powers (if it is not, then it is uselessly unenforceable), whereas critics say this and intend it as a critique. However, critical theorists do not wholly agree with this concept while they are arguing that power politics might be the single cause of territorial dispute; but, this is not the only cause of territorial dispute. In analysing the role of international law, critical thinker Koskenniemi (2011, p. 43) claimed that "International law's contradictions force it into an impoverished and unreflective pragmatism. On the one hand, the 'idealist' illusion is preserved that law can and does play a role in the organisation of social life among states. On the other, the 'realist' criticisms have been accepted, and the law is seen as distinctly secondary to power and politics". It is not possible to preserve both of these by international law as they oppose each other (see chapter 2 for more detail explanation). Koskenniemi's overriding point is that it is impossible to separate law from politics, that there is no pure theory of international law, as lawyers from many schools have often argued, and that therefore we need to

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deconstruct the law in terms of the politics. However, we also need to deconstruct politics in terms of the legal issues they engage. Koskenniemi argues that the legal rules of international law lie between two opponents. One side is utopianism (idealist thought based on normative structure) and the other side is apologism (realist thought based on power politics) (discussed in detail on page 44-45). There is no other way to escape from this, and any decision coming from it will be criticized as being either apologist or utopian. Koskenniemi (2011, p. 35) "works towards an immanent critique of international law: that is, a critique based on premises that are themselves accepted in professional international law discourse". Establishing legal rules of law is a battle against politics, "understood as a matter of furthering subjective desires, passions, prejudices and leading into an international anarchy" (Koskenniemi, 2011 p. 36). It is entirely possible to make a decision which is only political. "A choice which must ultimately defend itself in terms of a conception of justice – or then remain substantively unjustified. We accept it because that is what we do" (Koskenniemi, 2011 p. 40).

In the conventional framework of the international law of conflict management, the leaders of the disputing countries need to establish their claim by the rules of law or by any documents. Yet most often both parties come with a valid claim. In that case, the dispute continues until a party takes back its claim or both countries agree to a cooperation, although in that case leaders often consider various preferences for their interest in solving the dispute. Very frequently, they become very much reluctant to sign any treaty which might be harmful to their security issues or economic preferences. Moreover, in most states, leaders are under a certain degree of domestic political pressure. Huth, Croco and Appel (2011 p. 416) argues that, "Territorial disputes are often salient to domestic political audiences, regardless of the strategic or economic value of the land in question. The potential backlash for a leader who would offer even limited concessions creates a strong incentive for many leaders to refrain from compromise in any form". Moreover, Parmar (2011 p. 1) argues that "-sometimes unwillingness…accompanied by ego-clashes create a strong incentive for many leaders to refrain from compromise in any form". Therefore, this context sets international law with a difficult test to prove its effectiveness in legitimating the behaviour of disputing states. In most cases, international law has failed to behave in this manner. A significant criticism also arises in discussing the role of a third party in the negotiation, mediation or arbitration process in the context of promoting a national interest or the political and sometimes economic interests of the mediator. For example, it has been argued that "The 'honest broker' role suggests that there were at least some British officials who saw Britain as a neutral mediator in dealing with Abu Dhabi-Saudi border dispute…….reveals that the honest broker role was declared as a way of protecting the company's

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interests in the disputed areas" (Al Mazrouei, 2014 p. 145). This was because the disputed area was important for Britain in relation to the ADPC[22] company.

From the above discussion, it becomes apparent that current legal process and rules of the international law of conflict management might provide a general foundation to solve territorial disputes, but in most cases, they are not sufficiently adequate to provide a strong foundation. Contradictory rules and norms of international law, the non-binding procedure of conflict management, the indeterminacy problem of interpreting legal rules, the non-compliances pattern of legal process, and politics (Koskenniemi, 2011) in a particular context undermine the legal rules and process of the international law of conflict management in constructing a strong basis to solve territorial disputes. This argument significantly constructs and explores the 'problem' that current perceptions of the international law of conflict management are starting to challenge, exploring the idea that the dispute settlement framework needs rethinking. This critical explanation will significantly lead the research in substantiating its view that the current structure of the international law of conflict management needs to be reconstructed.

4.6 Conclusion

Critical theorists raise legitimate doubts about the process of reasoning through the settlement of disputes, suggesting that each of the likely criteria are flawed or at least incomplete. The current framework for legal dispute does have some significant patterns to solve a legal dispute, but in many cases, these are not enough to conclude a decision (Koskenniemi, 2005, p. 3). Antonius (2003, p. 21) claims that "-if there are no specific rules to determine the outcome of a given negotiation, one can determine nevertheless whether or not a given outcome is compatible with accepted norms". The diligence of "Inadmissibility of the acquisition of territory by war"[23] is one such kind of controversial norm. Before the First World War, conquest was the normal and traditional method for the acquisition of territory. Now, lands occupied as a result of war cannot be annexed by victor states, and under international law, the occupied lands should be returned to vanquished states following a peace treaty. Israel occupied the Palestinian lands of the West Bank and Gaza in 1967. The UN adopted Resolution 242, asking Israel to withdraw from the occupied lands (Rashid, 2003). However, this norm has been criticised by various scholars. Among them, according to Antonius (2003, p. 23), "A peace 'agreement' imposed upon one of the parties, which aims at getting that party to recognize, against its will, the control of the other party over its territory contradicts an important founding norm of the international system: that of

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[22] Abu Dhabi Petroleum Company.
[23] Inadmissibility of the acquisition of territory by war is a basic fundamental principle of the UN charter which determines that claims over territory acquired in a time of war is unacceptable.

the inadmissibility of the acquisition of land for war". In this context, the decision makers very often presume that their 'will' should be everyone's "will".

One of the most important questions that this research answers is: does international law provide an adequate foundation for resolving a territorial dispute? In answering the question, the research found that current legal process and rules of the international law of conflict management provide a general foundation for solving a territorial dispute, but in most cases, they are not quite adequate enough to provide a strong foundation. What these arguments establish in this chapter is that the UN enjoins the peaceful settlement of border or boundary disputes, but that the available resources for actually doing this are difficult and uncertain as well as incomplete. This allows the recognition of the difficulty of managing disputes, such as that between Bangladesh and India, but also asserts the importance of doing so, which chapters 6 and 7 will discuss in more detail.

Chapter 5

History, Origin and Context of the India-Bangladesh Land Border Dispute

5.0 Introduction

Bangladesh has most of its international border with India, which contains significant land border disputes. The issues of enclaves, adversely possessed land and 6.1 kilometres of un-demarcated borders were resolved by the 2011 Protocol, however, some disputed issues have caused severe violations of human rights, including killing and torture by border security forces and the push-in push-back problem, which still need to be solved. The origin of the India-Bangladesh border conflict is rooted in their colonial and post-colonial history. More specifically, the boundary conflict is the result of colonial domination and negligence. This chapter primarily provides a comprehensive account of the history and origin of the India-Bangladesh border dispute, leading the reader to understand the root of this dispute and the overall context of the specific problem. It also includes a critical interpretation of the history and origin of the dispute, whereby the first section of this chapter provides its colonial and post-colonial history. Then, a brief account is provided of the Bangladesh Liberation War, through which this problem was shifted to be a problem between India and the newly independent Bangladesh. The second part of this chapter provides a brief account of the disputed issues upon which the research focuses. This leads the research to specifically identify the significant issues of this land border dispute that need further analysis and evaluation, which will be done in the subsequent chapters.

5.1 History and origin of the India-Bangladesh border dispute

The boundary dispute between India and Bangladesh inherited a legacy of colonial history and fractured politics (India. MEA, 2015j). This part explores the background of this legacy of colonial history, which leads to a critical understanding of the context of the dispute. Exploring the background is necessary because it provides a platform for an understanding of the context of the dispute while also staking out the further analysis. Paasi (2005, p. 634) argues "What is needed is a deeper scrutiny of the social practices and discourses in which boundaries are produced and reproduced … still provide the social, political and cultural framework for 'reading' the *contextual* but simultaneously rescaling meanings of boundaries and the power relations that are involved in the very constitution of them". There are around 300 borders in this world which have their own history (Paasi, 2005). The India-Bangladesh border is not exceptional. Consequently, the discourse of the India-Bangladesh border dispute cannot be understood without proper contextual historical knowledge. It points to the essentiality of understanding the colonial and post-colonial history and origin of this border dispute in order to analyse the problem and explore the constituting elements of this dispute. Accordingly, this chapter will discuss the creation of the border through the partition of the Indian subcontinent and the creation of Bangladesh. In that sense, this part is not a subsequent part of the analysis, but it is also very important because it provides grounds

for the analysis. It is also significant because it associates with the first phase of the methodology outline in chapter 3, which will be referred to later.

The critical theoretical significance of this historical description lies in the fact that critical theory signifies that any knowledge is necessarily conditioned by social, cultural, ideological and contextual influences (Devetak, 2013). According to Hervey (1990, p. 1), "Critical Social Research is underpinned by a critical-dialectical perspective which attempts to dig beneath the surface of historically specific, oppressive, social structure". It implies that in order to critically analyse the India-Bangladesh border dispute, it is very important to explore its nature, colonial and post-colonial history, the history of Bangladesh's independence, and the cultural and historical specificities between the two countries. In this context Koskenniemi's (2011) immanent critique, as demonstrated in the chapter 2, is very significant (see pages 43- 44 for details). It helps to theorise the initial research problem and potentially provides a theoretical basis for 'reconstructive explanatory critique' (see chapter 2, figure 2.1 on page 62). In doing so, it also breaks down the problem to its constituent elements: the influence of politics, power politics, historical and other contexts, and the inherent deficiency of international law. Therefore, without evaluating the historical context, the goal of improved knowledge production as an integral part of critical theory could not be fulfilled in this case. This historical context thus facilitates the research to understand the dispute by exploring the constituting elements that are rooted in its history.

The unique feature of the employed methodology of this research is the positioning of the importance of the political and historical context of the inquiry into the explanation and interpretation. It highlights the significance of exploring its contextual background in its employed critical methodology. In this context, this part of the chapter provides an understanding of the history of the India-Bangladesh border conflict, and the political context will be explored in the following chapters, which will contribute to the 'reconstructive critical explanation'. This reconstruction, or reconstructive critical explanation, depends on both 'description' and 'interpretation', as argued by Strydom (2011). This description and interpretation lead it to achieve an abstraction of the context of this problem. The first step of this 'description' and 'interpretation' requires a critical clarification of the concepts of 'international law of conflict management', which has been briefly established in chapter 2 and in detail in chapter 4. The historical description and interpretation demonstrated here will lead the researcher to go into in the detailed process of the problem identification associated with first phase of its employed methodology. It further builds up a relation between this critical knowledge production and the reality of the problem, which will facilitate a better understanding of land boundary management.

One of the integral parts of critical methodology is data collection and analysis. In this step, this part of the research collected information mainly from primary and secondary sources.

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For collecting documents, it followed the same process described in chapter 3. In interpreting the documents for this part, the research followed three steps of critical analysis: description, interpretation, explanation, as reflected from Strydom (2011). Hereby, the text was interpreted by looking at the kind of text, the contents, the underlying message of the text and the researcher's viewpoint. In doing so, the research aims to uncover the underlying meanings of the texts it interpreted. This goal is ultimately derived from the central critical theoretical concepts used in this thesis (methodologically), termed the 'reconstructive explanatory critique' (Strydom, 2011). As discussed in chapter 2, this refers to the focus on vague, incorrect or inadequate practice in that specific context of the problem or situation or in any relations of the actors, their understanding, orientations and practices. This dimension is a significant characteristic of critical theory, according to Strydom (2011) (see chapter 2 and 3 for details). With this implication, this historical description and interpretation established a clear understanding of the overall context, which demonstrates the vague and incorrect practice of the power relations by exploring colonial power domination along with hostile Hindu-Muslim politics, the inherent deficiency of international law, the distorted political relations between India and Pakistan, which constitute and expand this dispute. This will further fulfil the task of critical theory, which argues that knowledge is always conditioned by historical as well as other contexts (see page 29 for details). In plain English, by drawing on this critical assumption, this part demonstrates how the knowledge production (through the history of the India-Bangladesh border dispute) has been conditioned by those historical contexts.

The research employed an 'interpretivist' epistemology. This suggests that any actions should be interpreted by taking into account the context of the action and the interpreters' understanding of that action because it is believed that knowledge is constructed and cannot be found objectively (see page 76). The researcher interpreted the narratives (from the collected texts relating to this narrative) while keeping these epistemological requirements in mind. In doing so, the research followed significant techniques reflected from McGregor's (2010) _critical analysis_[24], as set out in chapters 2 and 3. Firstly, each sentence of the collected document was critically read and interpreted to reveal the information about power relations in the specific context. This is because, according to McGregor's (2010) critical analysis, sentences can also bear information about power relations. For example, when a sentence asserts that "the voice of 'self-determination' of Bengal province has been suppressed by British colonial power and prominent Hindu-Muslim hostile politics" (Pirzada, 1969 p. 11), it speaks about the power domination by the British colonial power and the Hindu-Muslim hostile politics of the inhabitants of Indian subcontinent in that context. By exploring this, the research fulfils an essential criterion of

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[24] The reader should note that this is an account of the critical document analysis used through the thesis; that is not the same as particular forms of 'critical discourse analysis', which the thesis does not use.

the critical theoretical assumption employed in this research, revealing the effect of power domination on this dispute and its settlement. Secondly, the analysis interrogates the use of language as a form of political rhetoric which invokes, but often also seeks to conceal, power relations for specific purposes, which can be explored through a careful analysis. It can, at the same time, interpret the intended impression an agent seeks to create through their use of rhetoric in argument or public records. Thirdly, there is nominalisation, which refers to, while interpreting the documents, converting a verb into a noun to understand the underlying meaning more specifically, such as converting 'effectively controlling' to 'effective control' to understand and interpret the term more specifically. Fourthly, connotation is employed, which means that a 'word' can bear a strong meaning. For example, in evaluating the significance of the Nehru-Noor Accord, 1958, it interprets a statement provided by former Indian Prime Minister Jawaharlal Nehru in 1960: "At the time I was clear in my mind that the whole agreement, in spite of certain aspects of it which were not agreeable to us, was profitable and advantageous... [….] But there is a 'but.' I did not realise then that there is a certain human aspect of it. […] And subsequently when this aspect has come before me, I have felt troubled in my mind" (Cons, 2014, no pagination). In this sentence, the word, 'but' and 'troubled' imply the domestic 'political' opposition which halted the issue at that point. Finally, there is insinuation, which implies a more indirect suggestion concerning the author/speaker's intention, whereby an opinion is conveyed underpinning the text and which an analysis can bring forth and explain. Therefore, the employed 'interpretivist' epistemology, along with the critical theoretical insights of critical analysis, leads the researcher to interpret the collected documents by considering "of particular importance is that language use and communication, but also action and practice" (Strydom, 2011 p. 150) (see chapter 3 for more details). In addition, along with its interpretivist epistemology, an essential criterion of its employed 'critical realist' ontology is also to analyse and interpret the fact through the lens of a researcher's own understanding of interpretation; this questions the risk of the negative effects of a researcher's positionality. Reflexivity, as already emphasised, has been employed at all stages of the research, including this part, to mitigate the possible adverse effects of positionality (see pages 83-84 for details discussion of reflexivity). She was also very reflexive while understanding and interpreting the sources as well as in drawing inferences/conclusions. The value of self-criticism has also been employed as an essential criterion of the employed normative axiology (see pages 77-78 for details discussion of axiology). This element of self-criticism and dialogue in research, of questioning the processes undertaken but also the values engaged, is a critical part of CTIR (Patrascu and Wani, 2015). The ethical issues have also been considered at this stage of interpretation (see chapter 3 for a detailed discussion of ethical issues). Therefore, this interpretation further enables the researcher to provide an explanation, which is demonstrated below.

The border dispute was initially related to the Berubari area[25] exchange and enclave[26] transfer problem. The Berubari dispute and the problem of enclaves are rooted in the colonial history of these disputing countries. According to local myth (Ranganathan, 2016), the enclaves were created as a result of a gambled chess game between the Cooch Bihar Royal Kings, but there no historical evidence had been found. However, the Mughal empire expanded its regime to the northern region of Bengal province during the late 17th century, but was unable to occupy the Cooch Bihar Kingdom. Cooch Bihar was situated in the Dinajpur and Rangpur districts of Bangladesh (former East Pakistan) and Jalpaiguri of India (Schendel, 2002) (For the location of Cooch Bihar and the other Princely States, see map 1). Puissant landlords of the Cooch Bihar regime maintained control of their occupied area, which was in Mughal empire's domain, by entering into coalitions with them or by assaulting them. Like all other states in Bengal province, these lands were split up into many widespread areas (inherited from the Bengal landholding system) which were separated from their former state. They are known as enclaves. These dominions pay taxes to one state but are encircled by another state's territory.

Bengal province became *de-facto*[27] independent after the Mughal empire disintegrated. By the end of 1772, the British East India Company gained control over Cooch Bihar, and the state of Cooch Behar was integrated into Bengal province. Astonishingly, the East India Company's decision was to control it indirectly by a British agent. In this way, "Cooch Bihar" became a Princely State. Directly British-ruled lands surrounded it on every side.

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[25] Berubari Union no 12 was divided into India and Pakistan by the Radcliffe line.
[26] An enclave refers to a component of one state's territory circumvented\encircled by the territory of another state (Schendel, 2002).
[27] *De facto'* is a Latin term which means in actual possession.

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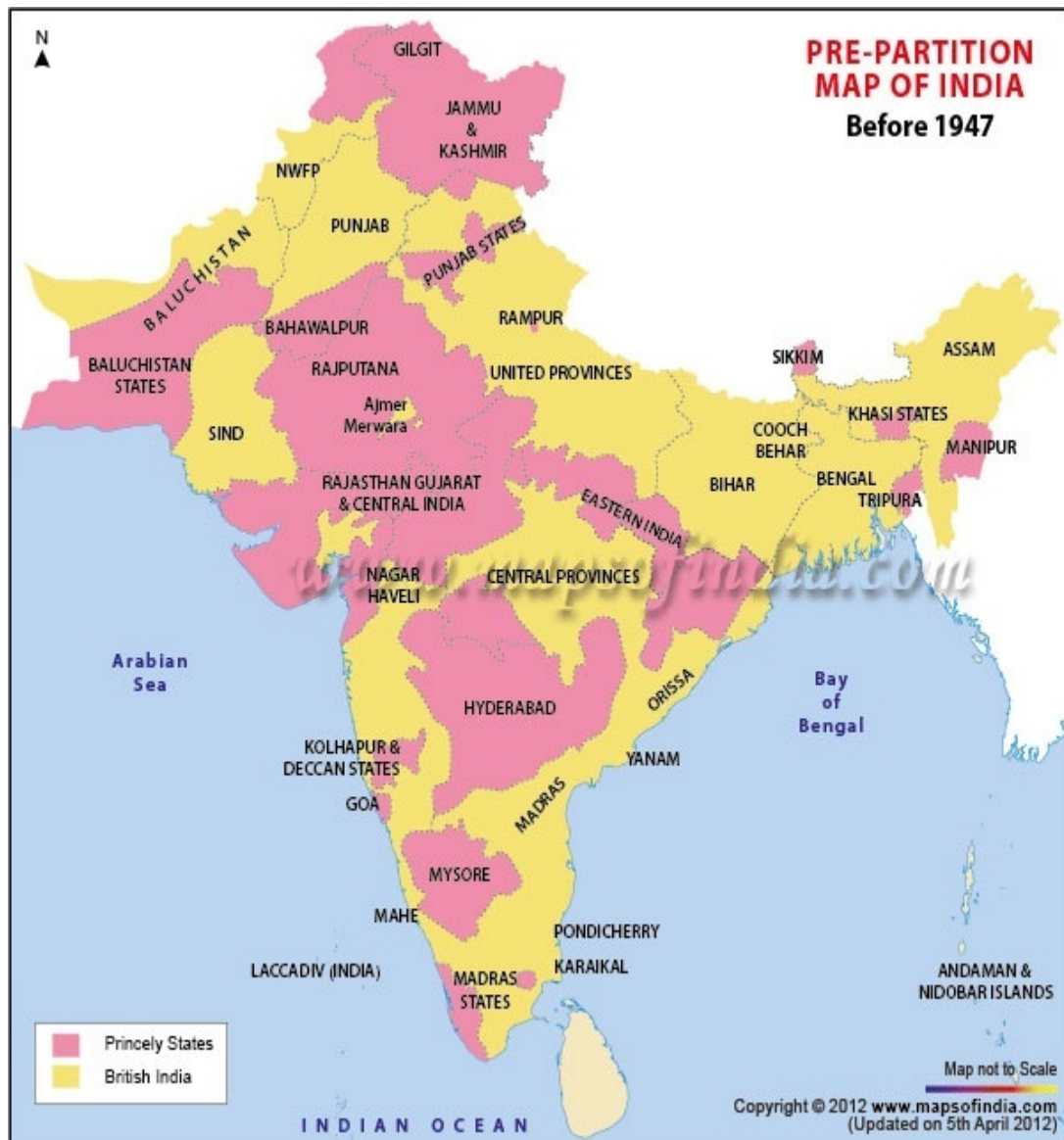
Map 1: Pre-partition maps of India (Mapsofindia.com, 2012).

This continued until the decolonization process and finally ended on 1947 when British India was divided into two separate nations, namely India and Pakistan, by the British colonial power. However, in 1905, Lord Curzon partitioned the former Bengal presidency based on the 'divide and rule' policy adopted by the British colonial power. In 1911, the British revoked the Bengal partition due to terrible resentment (Haider, 2006). In 1940 in the Lahore session, the All India Muslim League (Known as Muslim League) demanded a resolution; as a consequence of this, the notion of separate states, namely India and Pakistan, took hold. This is because the population of British India, including Bengal province, comprised primarily of Hindus and Muslims, whereby Hindus were the overwhelming majority. There was a strong sentiment among the majority of Muslim leaders that Indian nationalism was rooted mainly in Hinduism. The Muslims came to believe that they would not be adequately safeguarded by Hindu leaders in an independent undivided India. Furthermore, the leaders of the Muslim League argued that since Hindus and Muslims were separate nations, the

country ought to be partitioned according to the 'two-nation theory'. The configurations of a separate 'Bengal' emerged at that time. There was a strong voice from Bengal province, which was claiming a third country (apart from India and Pakistan) named 'Bangistan' (see Pirzada, 1969).
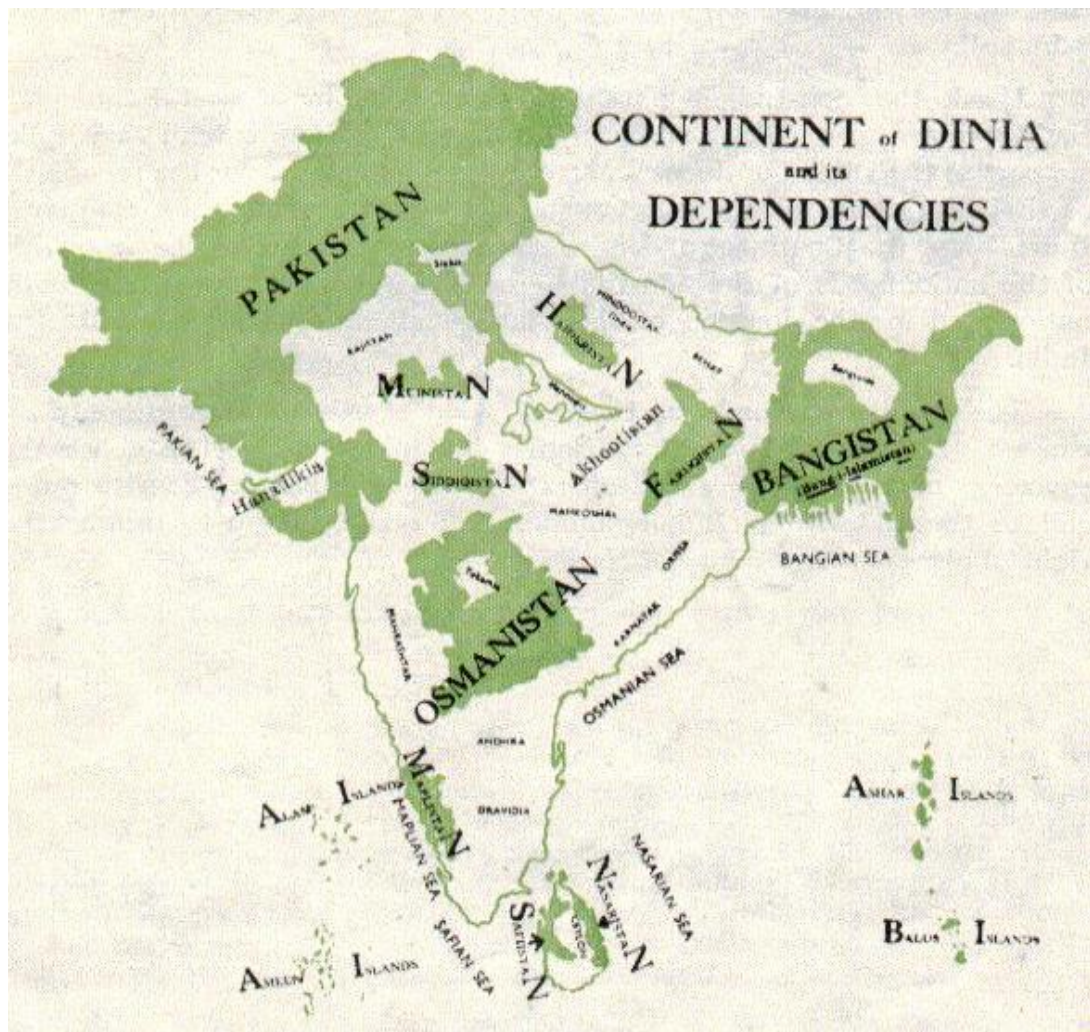
Map 2: The first proposed map of Pakistan and the partition of India (Games, Atlas, and Map, 2016).

This claim was solely based on 'Bengal nationalism'. But their rising voice of 'self-determination' was suppressed by the British colonial power and prominent Hindu-Muslim hostile politics (Pirzada, 1969).

After the Second World War, following the Indian independence movement, the British colonial power decided to leave India. One of the most significant reasons behind it was the UK's massive expenditure in the Second World War, which led it into austerity. Britain was almost bankrupt at that time, and the US suddenly cut off its lending lease at the end of 1945 (see Grant, 1995, also Morgan, 1984). Moreover, the Labour Party came into power in the UK in 1945, which did not want to bear the expenditure of India and the other colonies. Therefore, Governor General Mountbatten was specially appointed to implement Indian independence on whatever basis he could and as quickly and as cheaply as possible

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(Ranganathan, 2016). An Oxford law professor, Sir Cyril Radcliffe (who had never visited India before) was assigned to draw a boundary lines in the Indian subcontinent. He arrived in India on 8 July 1947 and met his Oxford colleague Lord Mountbatten, Viceroy of India. Radcliffe was given only five weeks to finish his work (History.info, 2016).

Sir Cyril Radcliffe did this with his two Muslim and two Hindu assistants, Mr Justice C.C. Biswas, Mr Justice Bijan Kumar Mukherjea, Mr Justice S. A. Rahman and Mr Justice Abu Saleh Mohamed Akram, who rendered the actual plan of partition, which was constituted on 30 June 1947 (Jamwal, 2004). The commission consisted entirely of legal personnel. Moreover, the requirements of experts, such as representatives from the United Nations, were not fulfilled because of the British government's policy of shirking expenditure and, most importantly, their egoistic attitude did not allow any outside help to intervene in their colony. Siwach (2011, p. 24) contends that "Radcliffe had never visited India and knew no one there. To the British and the feuding politicians alike, this liability was looked upon as an asset. He was considered to be unbiased toward any of the parties, except, of course, Britain. Wanting to preserve the appearance of impartiality".

Map 3: Radcliffe line between India and former East Pakistan (Chatterjee, 2012).

In August 1947, the British left India, dividing the country into two separate states, namely the Indian Union and Pakistan. According to the report submitted to the Governor General of India by the boundary commission headed by Radcliffe on 12 August 1947, the India-Pakistan border had been drawn. Some "basic questions over Calcutta and its claim on the waters of Nadia, Ganges-Padma-Madhumati rivers, Khulna and Jessore, Malda and Dinajpur, Darjeeling and Jalpaiguri, and Chittagong Hill Tracts (CHT)" (Jamwal, 2004 p. 7) remained as questions. However, only three-fifths of the whole Indian subcontinent which was directly ruled by British Raj was partitioned. The rest of the land was divided into 565

Princely States (Schendel, 2002), which did not take part in the partition nor even gain independence. The only option granted to them was to join with India or Pakistan (Miller, Vandome, and John, 2011). Cooch Bihar was one of those areas which lay between India and Pakistan. There were 130 Indian enclaves located in East Pakistan and 51 East Pakistani enclaves in India at that time. After two years, the ruler of Cooch Bihar decided to merge with India.[28] The enclaves located in the Indian territory became Indian land. The enclaves which were situated in East Pakistan (now Bangladesh) turned into real international enclaves. The other enclaves which were besieged by Indian territory integrated with their located district. On the other hand, the East Pakistani (now Bangladesh) enclaves in Cooch Bihar which was besieged by Indian land turned into international enclaves as well. Bangladesh (former East Pakistan) become independent in 1971, and this enclave problem shifted to being between India and Bangladesh.

The Berubari dispute was another dispute between India and Pakistan. The Radcliffe Commission divided the district of Jalpaiguri between India and Pakistan by awarding some Thanas (sub district)[29] to one country and others to the other country. The boundaries of the Thanas determined the boundary line. Radcliffe awarded the Berubari Union no 12, which lay within Jalpaiguri Thana, to India (Rashid, 2010). He also granted another part of Berubari district to the then Pakistan. Dashiar Chara was another, and the biggest, Indian enclave situated inside the Fulbari Upazila (sub-district) of Kurigram district of Bangladesh. Within a year of the partition of Bengal, the issue of enclaves and Berubari dispute began to surface and posed potential political and communal tensions between India and Pakistan. To tackle the situation and also resolve the enclave problem, Indian Prime Minister Jawaharlal Nehru and Pakistan's Prime Minister Feroz Khan Noon entered an agreement in 1958. A point to be noted is that the research primarily focuses on the dispute management process between India and Bangladesh, not between India and Pakistan. However, it is also true that it is not possible to avoid the significance of the Nehru-Noon Accord, 1958, agreed upon between India and Pakistan. Thus, it only includes a brief interpretation of the significance of this accord in this chapter to facilitate the initial understanding of the context of the India-Bangladesh border dispute resolution.

This accord is regarded as the first attempt[30] to solve the complex problem of the Bengal border. India and Pakistan had both encountered conservative protest in their respective states (Cons, 2014). Nehru faced criticism from the opposition party in India, contending that this accord was entirely illegal because it went against the rights of the enclaves' citizens. On the other hand, in Pakistan, Fazlur Rahman, a Muslim League leader and a

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[28] "The Maharaja continued to be a substantial landlord (zamindar) in East Pakistan" (Schendel, 2002 p. 1156). Moreover, "He owned the large and fragmented Chaklajat Estate, which had its own tax offices at Debigonj (Dinajpur district) and Patgram (Rangpur district), and his estate staff collected land taxes from his Pakistani tenants till the abolition of zamindari rights in East Pakistan in 1952" (Schendel, 2002 p. 1156).
[29] Lowest tier of the administrative network.
[30] The first attempt of exchanging enclaves was proposed by the British colonial power in 1910, but the rulers of Cooch Bihar kingdom refused it.

member of Pakistan parliament, claimed that this accord was an attempt "to hoodwink and mislead the people to hide the fact of the shameless surrender of Pakistan's vital interests at the altar of Bharati appeasement" (Dawn, cited in Cons, 2014, no pagination).

As discussed in chapter 2, the key task of international law is to define the 'procedure' of conflict management. To resolve any dispute, states should choose any of the 'legal procedures' determined by law. The options enumerated in Article 33 of the Charter are negotiation, mediation, arbitration, conciliation or judicial settlement. Now, how do states choose the proper process to solve their dispute? What are the underlying factors determining their choice? According to Koskenniemi (2011), it is context, which consists of states' 'interest', 'will,' 'power' and 'politics. In the context of the India-Bangladesh border conflict, the Nehru-Noon Accord, 1958, was a significant step towards solving this dispute. Both states chose negotiation as a process of peaceful resolution. Both countries reached an accord, but unfortunately, this accord could not lead to a valid implementation, primarily because of a domestic political veto from both countries (discussed above). This 'problem', it could be called 'political crisis', halted the issue at that point. Moreover, the accord faced a legal problem from the Supreme Court, which challenged its validity. This legislation was challenged in the court by a series of writ petitions, which prevented the implementation of the agreement. The Supreme Court's decision on March 29, 1971, finally cleared the way for the implementation of the accord (India. MEA 2015j). By then, the Bangladesh Liberation War had begun, and Bangladesh became an independent country. After the liberation war, India and Bangladesh decided to conduct further negotiation to solve the issue rather than implement the accord, and the issue turned into a boundary dispute between them.

The interpretation of the above discussion following critical theoretical and methodological tools, as demonstrated beginning of this chapter, reveals the constituting elements of this dispute that are rooted in its history. The constituting elements are explained below.

Firstly, as discussed in chapter 4, the borders are generally drawn on a map, which sometimes leads to disputes. The accuracy, reliability and scale of the map are very significant in avoiding disputes. The Radcliffe line was drawn on the old district map, whereby the accuracy and reliability of that map were questionable (Chatterjee, 2011). If the commission had been more careful, many of the problems in this dispute could have been avoided.

Secondly, like other boundary demarcations of colonial countries, the British colonial power determined these boundaries primarily based on the controversial principle of '*uti-possidetis*'. *Uti-possidetis* is a principle of international law which is connected with the notion of territorial integrity and was applied for many boundary demarcation processes in the colonial and post-colonial period. The term *uti-possidetis* refers to "as you possess, you may now possess" (Lone, 2012, no pagination). There are two types of *uti-possidetis*, which

overrule each other. These are "*uti-possidetis iuris* (de jure, legal possession) and *uti-possidetis de facto* (effective possession)" (Lone, 2012, no pagination). *Uti-possidetis de facto* argues that, in the absence of a valid treaty, the territory should be defined by current effective possession. However, the condition of effective possession has a close link with 'effective control'. Effective control is a category of current principles of international law often used to justify the territorial claims of disputing countries (Sumner, 2004). Some scholars (i.e. Sumner, 2004, and Hill, 1945) claim that to establish the principle of 'effective control', the territory should be *terra nullius*, which means that there is no current occupier of the claiming territory. However, it is hard to establish the claim of *terra nullius*. In order to avoid this precondition, a modified principle of *uti-possidetis de facto* emerged, namely *uti-possidetis iuris* (legal possession). "*Uti-possidetis* juris 1810, found in several constitutions and boundary treaties … reflects the conviction of many state officials that the boundaries should be those of the former colonial jurisdiction" (Parodi, 2002 p. 5). Therefore, it provides supremacy to the colonial power over the validity of rules and principles of international law. This is because of an intricate pattern of the former principle of *uti-possidetis*, which faced the problem of compliances in some particular situations (i.e., for determining boundaries in South America in the post-colonial period)*.* However, although it was not reasonable to categorise the Indian subcontinent as *terra nullius*, in demarcating Indo-Bangla (formerly Indo-Pakistan) border, the British colonial power used the *uti-possidetis de facto* principle. They divided the Indian subcontinent based on their 'effective control/possession'. As a result, Pakistan was created with the majority Muslim possessed area and India was formed with the majority Hindu possessed area. They suppressed the claim of a separate Bengal province based on their 'self-determination' and Bengal nationalism. Hereby, part of the postcolonial context is the way in which sovereignty was constituted as well as the potentially conflicting ideas of sovereignty it contained. The significance of the doctrine and practice of *uti-possidetis* for the India-Bangladesh border problem is one which previous commentators have not noted.

The principle of 'self-determination' often urges that it is the 'right' for a group of people to regulate their sovereign individual statehood and practice their governmental power. It is often argued that the principle of *uti-possidetis* and the principle of 'self-determination' contradict each other."*Uti-possidetis* is predicated on a rejection of self-determination and assumes that internal, administrative boundaries are functionally equivalent to international boundaries ... did not correspond to the inhabitant populations. Consequently … reliance on *uti-possidetis* has led to many border disputes" (Hill and Ratner, cited in Sumner, 2004 p. 1191). In the context of Indian subcontinental partition, if the colonial power followed the principle of 'self-determination', it contradicted the principle of *uti-possidetis.* As it went through *uti-possidetis*, it denied the right of 'self-determination' of Bengal province. However, the paradox is that it could also be argued that if they followed self-determination

as a guiding principle, this would also have led to conflicts and difficulties given the integrated nature of communities (i.e. Panjab) before partition. This is explainable through Koskenniemi's (2011, p. v) argument that "it points to the experience of a certain fluidity and contestability that most people lawyer and non-lawyers have when they enter the world of international law and find themselves in the presence of alternative and often conflicting rules, principles or instinctive avenues between which they are expected to choose". So, it could be argued that, this dispute originated from the contradictory pattern of international law in this context.

Thirdly, in the case of the Indian subcontinent, the colonial power followed a 'divide and rule' political policy to weaken the Indian subcontinent. Moreover, they provided the preference of political choice for Hindu and Muslim communities based on hostile religious politics.

Fourthly, as discussed earlier, the overwhelming factor driving this was the weakness of the British colonial power and its desperation to rid itself of entanglement in India. This was agreed by the UK in 1935, but implementation was delayed until after the Second World War, by which time the London government was weak, financially deprived and militarily and financially highly dependent on the US (which had been pushing for Indian independence in some form since the 1920s). British India became a political and symbolic liability as well as an economic problem. These factors, combined with domestic political considerations of the newly elected Labour Party, meant that ridding itself of its responsibilities in India suddenly became a priority to His Majesty's Government (HMG) (Chester, 2002).

Finally, in the case of the Nehru-Noon Accord, the failure of the implementation of this accord comprised domestic politics, legal challenges and hostile political relations between India and Pakistan. Arguably, if Bangladesh had not become a country separate from Pakistan in 1971, there is a strong possibility that the India-Bangladesh border dispute would have remained as unresolved as the Kashmir conflict. More specifically, the context changed after the Bangladesh Liberation War.

As discussed before, in August 1947 the British left India, dividing the nation into two separate states, namely the Indian Union and Pakistan. Pakistan became a country that was split between East and West Pakistan, with India in between. There was a deliberate neglect by the Pakistani Central Government towards East Pakistan in all areas of development and political activities. Moreover, they strained to suppress the East Pakistani voice by Z. A. Bhutto and a brutal military crackdown was inflicted on the unarmed population on 25 March 1971 by the army junta, and thus the liberation war began (Rashid, 2010, see also Hasan, 1992). India began to involve itself in this liberation war by supporting East Pakistan (now Bangladesh) from the beginning (Haider, 2006). However, India became very actively involved in the months of June and July 1971 (Hossain, 1988). Finally,

India formally declared war on Pakistan on December 3, 1971. As a response to India's action, the US requested an emergency session of the Security Council. The US permanent representative to the UN made a statement in the Security Council, calling upon India and Pakistan to implement an immediate ceasefire and a mutual withdrawal of armed forces, but this was blocked by Soviet vetoes (Haider, 2006, Hasan, 1992). The former Soviet Union actively sided with India as a significant strategy of Cold War politics and presented the Soviet doctrine to defend the Bangladesh war as a struggle for national liberation. As a response to this, and as a party to the Cold War, US undertook all diplomatic and indirect ways to assist Pakistan and lastly began a direct 'power' demonstration against India (Anderson, 1973). The US decided to send a formidable naval task force into the Bay of Bengal to prevent the outbreak of the war and to help Pakistan. Apart from its continuous vetoes against US proposals to the UN, it was reported that, from December 3, 1971, three Soviet warships passed through the Strait of Malacca into the Indian Ocean (Anderson, 1973). Finally, after great loss of life in the liberation war, Bangladesh became an independent nation on 16th December 1971.

Following the critical theoretical and methodological significance, as set out in chapter 3 and demonstrated earlier in this chapter, the research reveals that India's motive for supporting Bangladesh in its liberation war was to weaken its rival country Pakistan. India's involvement in the Bangladesh Liberation War was caused by power political game between India and Pakistan. As described by Haider (2006 p. 6), "A far weaker enemy on one side and a friend on the other will replace a political enemy on both of its borders". From domestic political grounds it can be argued that the interests of the Awami League and those of the Indian government converged on several points; India had some principal objectives in mind within the overall strategic considerations, which could only possibly be endorsed by the Awami League (Rashid, 2010) (chapter 7 includes a detailed explanation of this). The alliances, along with the international political and regional power political background, potentially explain the context of further bilateral relations between India and Bangladesh, including dispute resolution between these two neighbours. As a result, the conflict resolution 'process' became smoother than it had been before (see chapter 6 and 7 for more discussion).

Therefore, from the above discussion, interpretation and explanation, it becomes clear that the border dispute problem of India-Bangladesh is rooted in their colonial and post-colonial history. The constituting elements of this problem are primarily the contradictions inherent in international law, hostile Hindu-Muslim politics, and the domestic political considerations of the colonial power. This preliminary understanding of the context of this dispute leads the researcher to analyse the effect of these particular constituting elements, more importantly politics and the political consideration of the conflicting parties, on this dispute management.

It also enables the researcher to generate the initial presumption that the practical import of the paradigm of international law needs reconstruction because of its inherent deficiency. Most importantly, it also justifies its initial presumption that politics, as the hidden force embedded in this specific problem, is responsible for creating this. It further reveals that the failure of the implementation of the Nehru-Noor Accord, 1958, to resolve this problem comprised domestic political considerations, legal challenges and hostile political relations rooted in the changing political context between India and Pakistan (see page 154). Thus, context was always important. This context further changes during and after the Bangladesh Liberation War, as discussed above. The relations between India and newly independent Bangladesh could also be explained by a 'power politics'[31] and 'domestic politics' point of view. This preliminary understanding of the context for the further dispute negotiation process between India and Bangladesh leads the research to open up the reality of the actual problem, which is an important part of the employed methodology (see chapter 3 for details). These aspects facilitate it to construct the research problem more specifically. Thus, it further leads the research to a diagnostic level of the employed methodology, where it justifies the critical theoretical arguments in which it attempts to explicate that context, politics/power, interest and specific issues on the ground are always hidden forces that are in interaction in dispute management. This research will critically evaluate how far these grounding forces determine or undermine the constituting elements of the problem of the India-Bangladesh border dispute and the success of its management, offering a critical analysis in chapters 6 and 7.

5.2 The elements of the India-Bangladesh land border dispute: identifying the 'problem'

This research focuses on the topic of a specific inter-state territorial dispute. In doing so, it problematizes the regulating body of international law (discussed in detail in chapter 2 and 4). This chapter introduces the case study of India-Bangladesh border dispute management in order to lead the research into a further evaluation of the 'factuality' of the case study of India-Bangladesh border dispute management, identifying the blocking forces which are undermining a possible successful management process. Hereby, the first part of this chapter provided a description and interpretation of the historical context of this dispute until Bangladesh won independence as well as the constituting elements of this dispute which are rooted in its history. These preliminary understandings of the context for the further dispute negotiation process lead the research to open up the reality of the actual problem, which is an important part of its employed methodology (see chapter 3 for details). This will

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[31] The paradigm of 'power politics' focuses on the nation-state as the principal actor in international relations, and its central proposition is that since the purpose of statecraft is national survival in a hostile environment, the acquisition of power is the proper, rational and inevitable goal of foreign policy. International politics, indeed all politics, is thus defined as a struggle for power.

be demonstrated in chapters 6 and 7. This part of this chapter explicitly concentrates on familiarising the elements of the problem in the present context of the India-Bangladesh border dispute. This is a significant part of its first methodological phase, as defined in chapter 3, which facilitates the construction of the research problem more specifically. This problem identification further leads to an assessment of India-Bangladesh border dispute management and so to an analysis of the negotiations leading to the partial resolution of that problem, which will be demonstrated in the following chapters. However, after the liberation war, the primary land border disputes with India included the following issues:

- Enclaves.
- The 6.5 km un-demarcated border.
- 3,500 acres of adversely possessed land.

Enclaves

After Bangladesh gained independence, there are were 111 Indian enclaves existing in Bangladesh and 51 Bangladeshi enclaves in India, including some counter-enclaves and counter-counter enclaves (Das and Raju, 2013). These are the most complex enclaves concerning their number, political paramountcy and convivial eccentricity; however, these are, unfortunately, mostly ignored in the literature on enclaves.

Map 4: India-Bangladesh enclaves (Tasch, 2015).

The small points (see Map 4) in the northern part of the Bangladesh border are 162 enclaves, which look like a group of unequally sized islands. These enclaves were very significant elements of the India-Bangladesh border dispute.

Un-demarcated border

In 1947, an approximately 4,156 km border was drawn between India and East Pakistan by the boundary commission passing through canals, agricultural land, markets, villages, rivers, etc. (Chowdhury, 2013). The India-Bangladesh border was not fully demarcated when Bangladesh achieved independence in 1971, whereby 6.5 km were totally un-demarcated, consisting of 1.5 km in Nilphamari district, 3 km running through Moulavibazar district, and around 2 km running through the Muhurir char of Feni district (Chowdhury, 2013).

Map 5: 6.5 km of un-demarcated boundary at the India-Bangladesh border (The Tribune, 2001).

Adversely Possessed Land

Adversely possessed[32] land (APL) was another issue responsible for the India-Bangladesh border dispute. Like enclaves, approximately 3,518.56 acres of Bangladeshi lands have been in Indian possession and approximately 2,326.61 acres of Indian lands have been in

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[32] Adverse possession is "A method of gaining legal title to real property by the actual, open, hostile, and continuous possession of it to the exclusion of its true owner for the period prescribed by state law" (TheFreeDictionary.com, 2016, no pagination).

Bangladeshi possession (Land Record and Survey Department, Bangladesh, 2015) since 1947. On the other hand, according to Indian claim, nearly 2,504.89 acres of Bangladeshi lands have been in Indian possession and almost 2,260.84 acres of Indian land have been in Bangladeshi territory (India. MEA, 2015j).
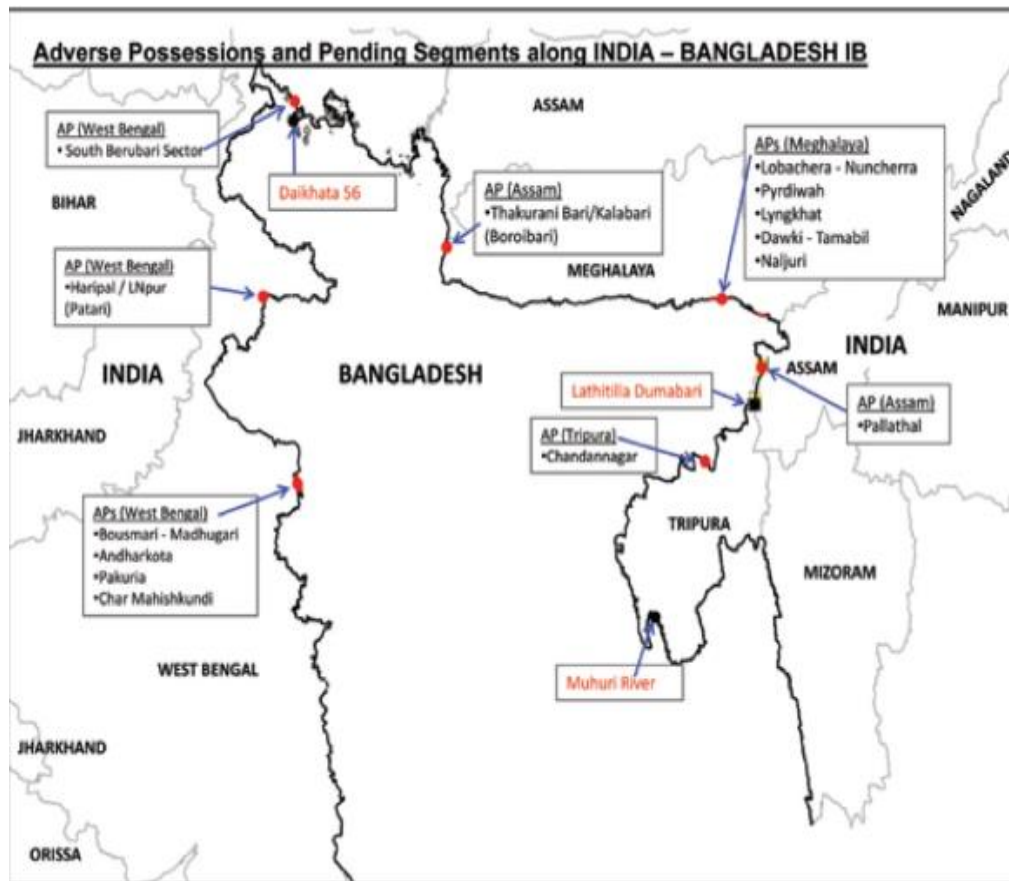
Map 6: India-Bangladesh adversely possessed land (India. MEA, 2015j).

The Radcliffe division included four international border villages; Bara Putni, Karkhana Putni, Lathitila, Damobari and some tea estates. The initiative was to demarcate the boundary line between India and Pakistan without retardation and so no delay was implemented for the governmental process to be over in the eastern part of India. As a result, many important places or spots were not given proper attention at the time of making the list; these were termed as places of "Adverse Possession" (Chatterjee, 2011 p. 3). These areas were divided into three regions (see map 6) (Chatterjee, 2011). This adversely possessed land dispute was a consequence of the arbitrary 1947 Radcliffe Award.

Other problems

Often, the border areas of a third world country are undeveloped and impoverished. These are also quite densely populated in many places. Bangladesh-India border villages are no exception. However, their biggest problem has been their insecurity (BBC News 2001). One

of the primary reasons for their insecurity are BGB-BSF gunfights, killing and torture of the people by border security forces (Odhikar, 2007). These conflicts are more frequent than before. Moreover, the push-in, push-back problem and the boundaries of common rivers disputes are also considered recent disputed issues that are creating problems in the conflicted border area (Odhikar, 2008, The Daily Prothom Alo, 2008) (see chapter 6 for more details of these issues). The people residing in the border area struggle against difficulties every day, and they are living their lives with endless problems and deprivation. Overall, the insecurity of life is a nightmare for them (Ghosh, 2013, The Daily Star, 2009). They know that a bullet from a border guard could take away their life at any time. Rahim Haque, who lives in a village near Lalmonirhat district, complained that as they are frontiersmen, they are neglected by the government. After the liberation war in 1971, the government changed several times, but none of these came to resolve the problem. He stated that, "we have lots of problems, but the biggest problem is insecurity" (Rahim Haque, Interview: Lalmonirhat, Bangladesh, August 23, 2008). Sadekul Islam said, "When tension arises between BGB and BSF [we] have to give up our work. BSF starts shooting as soon as they see anyone approach near the borderline. Sometimes it takes a long time to cool down the tension. Villagers can normally live after a flag meeting[33] between BGB and BSF" (Sadekul Islam: Interview: Dinajpur, Bangladesh, November 24, 2008). He added, "Although we are living in an independent nation, we are not independent" (Sadekul Islam: Interview: Dinajpur, Bangladesh, November 24, 2008). People living near the borderline between India and Bangladesh face the same difficulties every day. Neither the Indian nor the Bangladeshi government nor international law spokesmen are helping them. This is the real scenario of the India-Bangladesh border, which clearly indicates the human rights violation in the India-Bangladesh border area. The description given here is a very significant part of the problem identification as the research aims to answer – "how far, drawing on a case study, one can conclude that the current process of territorial dispute management of international law needs rethinking, considering the political influences and with respect to human rights issues in the border dispute?" This description provides a preliminary understanding of the issues that are currently being disputed and which are causing human rights violation including killing, torture and so on. The following chapters will provide further analysis and evaluation of these current disputes as well as overall human rights violation caused by these disputed issues. The above narratives in this section of the chapter have been created from part of the 34 interviews and 40 documents analysed, which will be further demonstrated with a detailed discussion in chapters 6 and 7. These analyses all employed the critical theoretical approach and methodological tools outlined in

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[33] Usually, 'flag meeting' refers to a meeting between border security commanders from both sides are which held at the border (sometimes at the line of control). This usually happens when required (Nanjappa, 2013).

chapters 2 and 3 (for more details of how and where critical theory and methodological tools have been employed, see pages 106-110).

Among the issues discussed above, enclaves, un-demarcated borders and adversely possessed land were resolved through the Land Boundary Agreement, 1974 and finally the 2011 Protocol. It took nearly 44 years to resolve this issue. Critical theory signifies this as a 'problem' by identifying the question of why did dispute resolution take so long? What are the hidden facts and/or structures which undermine the effectiveness of international law of conflict management in this case? The responses to these will be analysed and demonstrated through a 'reconstructive explanatory critique' in the following chapters. Moreover, there are further issues emerging between India and Bangladesh after 1971, as mentioned above. These issues are still creating problems, including killing, torture and overall human rights violation in the conflicted border area. The research further focuses on four specific current disputed issues, namely 1) firing on people at the India-Bangladesh border and killing them; 2) tension and gun firing between BGB and BSF; 3) the 'push-in' and 'push-back' problem; and 4) the boundaries of common rivers problem (see chapter 6 for more details). Please note that there are also other issues which are related to the border problem, such as illegal trade, illegal immigration, border fencing, the river water sharing problem and so on. The research did not address the illegal trade and illegal immigration issues as they are not explicitly connected with border disputing issue; rather, they are very significant economic and political matters of these two neighbours. Another issue is the border fencing issue. The research found that border fencing is rooted in the illegal immigration problem (see chapter 6 for details). International law does not prevent states from constructing border fences in their own territory (Trouwborst, Fleurke and Dubrulle, 2016), and the India-Bangladesh border fence is constructed inside Indian territory. According to India's claim, this fence was constructed to prevent illegal immigration and illegal trade. The research primarily focuses on the land border dispute, which has been partially resolved through LBA, 1974 and the 2011 Protocol. However, the recent disputed issues could not be ignored, as stated earlier. It is true that human rights have been violated in the conflicted border area by this border security fence. After conducting the initial literature review, the researcher found that in order to get a comprehensive analysis of this issue an account needed to be provided of (to some extent) illegal immigration and other related issues as well, which is not obviously the focus of this research. Moreover, this issue is considered a peripheral issue to this research topic. It is not possible to cover all of the peripheral issues in this research, since focus must be maintained on the subject of the PhD research and its core questions. Therefore, it only provides a brief description of this issue and does not go into a further analysis. This could be a potential topic for future researchers. Another significant issue is the water dispute issue between India and Bangladesh. Most of the literature found on this issue relate it with the boundaries of common rivers issue, but

after conducting the literature review, the researcher found that they are in fact separate issues. The boundaries of common rivers issue is about identifying and resolving disputes concerning common river sharing by these two neighbours. The government record shows that there are 54 rivers flowing between India and Bangladesh, but in reality, there could be many more (Singh, 2014). Recently, the India-Bangladesh Joint River Commission found ten more rivers which needed to be identified and demarcated (Siddique, 2016) (see chapter 6 for details). The research includes this common boundary river issue as it is a part of the border dispute issue. The water sharing issue could be considered as a resource sharing issue between these two neighbours, which is different from a border dispute. However, this is a small but significant part of the overall issues existing between them, originating in the inadequate boundary line drawn by British colonial officials in 1947 (see chapter 6 for details). Therefore, the thesis merely provides a brief account of this issue in chapters 6 and 7 and does not conduct a deeper analysis. However, the research will further explore the selected four problems as mentioned above by providing a narrative from the analysis of the interviews and documents to show the human cost in misery, disrupted lives and sometimes lost lives that has been inflicted by a failure to secure a settlement of the border dispute, in addition to the human as well as political and economic value of achieving a settlement (even if, as in this case, it is incomplete) (see chapter 6 for details). It will diagnose and critically explain the causes of these current disputed issues which are undermining the success of the dispute management process in chapter 7.

5.3 Conclusion

The border dispute problem of India-Bangladesh is rooted in their colonial and post-colonial history. The constituting elements of this problem are primarily the contradictions inherent in international law, hostile Hindu-Muslim politics and the domestic political considerations of colonial power. The problem is also rooted in the changing political context between India and Pakistan. This 'context' further changed during and after the Bangladesh Liberation War. The relations between India and newly independent Bangladesh could be explained by power politics and domestic political point of view. This preliminary understanding of the context leads the researcher to construct the research problem more specifically and to analyse the further dispute negotiation process between India and Bangladesh.

The major elements of the land border dispute between India and newly independent Bangladesh after 1971 were primarily confined to enclaves, un-demarcated borders and adversely possessed land issues, which were identified through the Land Boundary Agreement, 1974, which set much of the agenda for later talks, and then finally the 2011 Protocol. It took nearly 44 years to resolve this issue. Critical theory signifies this as a 'problem' by identifying the question of: why did dispute resolution take so long? What are

the hidden facts and/or structures which are undermining the effectiveness of international law of conflict management in this case? The responses to these questions will be analysed and demonstrated through a 'reconstructive explanatory critique' in the following chapters. Moreover, there are some more issues that have emerged between India and Bangladesh which are still creating problems, including killing, torture and overall human rights violations in the conflicted border area. The research will further explore these problems by providing a narrative from the analysis of the interviews and documents in the following chapter. It will diagnose and critically explain the causes of these current disputed issues that are undermining the success of the dispute management process in chapter 7.

Chapter 6

The India-Bangladesh Border Conflict and its Management in the Context of India-Bangladesh Relations

(1971 - 2015)

6.0 Introduction

The India-Bangladesh land border conflict is not a new issue. Both countries have undertaken many initiatives through 'negotiation' to solve this conflict since Bangladesh won independence. Unfortunately, some issues still remain unsolved, which has led a severe violation of human rights in border areas, including the killing of people by border security forces, the 'push-in' 'push-back' problem, and gunfights between BGB and BSF. This thesis primarily emphasises the issue of land border dispute management between India and Bangladesh, thus it does not encompass the entirety of the issues contained in the border dispute. The present problems, such as killings at the border, the 'push-in' 'push-back' problem, and the boundaries of common rivers problem could not be ignored because these are an inseparable part of this land border dispute. Therefore, this research excludes the problems of illegal trade and illegal migration as well as other peripheral issues between these two neighbours. Those issues are significantly related to illegal trade matters, the migration problem and other complex issues and it was not possible to cover all of these in this research. This could be considered a limitation of this research.

This chapter is very significant for this research as it explores the 'problem' of India-Bangladesh border dispute management while also disclosing the 'problem' of the current unresolved disputed issues. It is an important part of its methodological framework which significantly contributes in its 'reconstructive explanatory critique' (Strydom, 2011), demonstrating the distorting relations between (actual/real) social practice and the normative idea of international law of conflict management. This 'reconstructive explanatory critique' depends on both 'description' and 'interpretation' (Strydom, 2011 p. 200). This 'description' and 'interpretation', along with analysis, lead it to achieve a critical explanation of the 'problem' together with the causes of the 'problem' while also providing a critical explanation of the normative structure (i.e. international law) which is still regulating those social practices (i.e. conflict management). The first step of this process was a critical theoretical understanding of the normative concepts of 'international law of conflict management', which has been briefly established in chapter 2 and critically explained in chapter 4. This chapter and the following chapter further explicate the critical theoretical arguments established in chapter 2 by evaluating this dispute management. In doing so, it adheres to the following steps of critical analysis (adapted from Strydom, 2011 and also Schimdt, 2006): 1. Describe India-Bangladesh political relations since 1971 to the extent of the historical description of the border conflict management. This significantly helps to understand the context of the dispute and its management. 2. Identify the possible 'constraints' underpinning the 'problem' of the dispute management. This is reflected from the first phase of the employed methodology, whereby it identifies, exposes, structures and opens up the reality of this specific 'problem'. 3. Demonstrate the causes of those

'constraints'. This leads the research into the second phase of its critical methodology, whereby it interprets those descriptions and conducts further analysis to diagnose the 'causes' of the identified 'constraints' conditioning the problem. 4. Propose a critical reconstructive explanation of those 'causes', which will lead it to construct and clarify the core arguments of the research by evaluating the research findings. 5. Draw the conclusion. This chapter and the following chapter will demonstrate these steps together.

6.1 Problem disclosure and the identification of possible constraints undermining the success of India-Bangladesh border conflict management

The research emphasises a demonstration of the distorting relations between (actual/real) social practice and the normative idea of international law of conflict management. This is achieved by a 'critical theoretical methodological approach', which stresses the 'possible constraints' conditioning the process of realization and focuses on identifying and explaining the 'causes' of those constraints (Strydom, 2011) (for more details, see chapters 2 and 3). The starting point of this methodology directs this research towards an enquiry to disclose the reality of – in a sense – a disturbing or negative quality relating to the discourse of international law of conflict management, one that assumes that international law is not doing its job in managing or resolving territorial disputes properly (see chapter 2 and 3 for details). This presumption is primarily dominated by the researcher's 'critical realist' ontological position and also significantly directed by the critical theoretical approach (see chapters 2 and 3 for details). However, this 'presumption' is also becoming apparent in the recent unresolved territorial disputes undermining the effectiveness of the international law of conflict management (see chapter 4). In order to make sense of what this negative or distorting quality is, the research refers to a logical yet imaginative understanding of the distorting relationship between 'what is the actual condition?' (i.e. the actual condition India-Bangladesh border conflict management) and the normative idea of 'what ought it to be?' (i.e. the normative idea of international law of conflict management).

Following the employed methodology, this first section (6.1) of the chapter explicitly concentrates on properly identifying the 'constraints' of overcoming the 'problem' of the 'India-Bangladesh border conflict management'. In doing so, it initially provides the historical description of this conflict management from the perspective of the disputing countries' political relations since 1971. The critical theoretical significance of including the political relations between these two neighbours points to the requirements of critical analysis and the interpretation of the 'actual condition' of a specific 'problem'. According to critical theoretical arguments from Strydom (2011), 'actual condition' covers almost every aspect of the situation; this leads this section to include the political relations between India and

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Bangladesh (in the context of the conflict and its management) and to explore the influences of political relations on the conflict and its management process. It is very significantly leads the research to disclose the reality of the 'problem', which is the first stage of its employed methodology as described in chapter 3. This also eventually helps the reader to understand the context of the dispute as well as the underpinning factors/constraints that influence the management process. Exploring context is important because this specific problem of the India-Bangladesh border dispute cannot be understood without proper contextual historical knowledge (Mahur, 2014). It also justifies employing 'interpretivist' epistemology in this research, which argues that "Knowledge as constructed, not as objective [which] can be found" (Silver and Bulloch, 2016 p. 7) (see pages 75-77for details of epistemology). It refers to understanding the reality of the 'problem' by subjectively interpreting human or social actors' interactions (i.e. the political interaction between India and Bangladesh). Exploring the dispute and its management in the context of the disputing countries' political relations further justifies the emphasis of this research on the domain of international relations, which leads it to contribute to the knowledge of international relations (see pages 274-277 for details). This chapter is also significant in supporting the answer to the research question: how far, drawing on a case study, can one conclude that the current processes of territorial border dispute management of international law need rethinking considering political influences and with respect to human rights issues in border disputes? How does this shape relations between India and Bangladesh?

The 'actual condition' discussed above significantly covers the history and the origin of this border problem until 1971 and is presented in chapter 5. From the discussion in chapter 5 it becomes evident that Bangladesh inherited this dispute from its mother country Pakistan after it become independent on 16th December 1971. During the liberation war, Sheikh Mujibur Rahman was declared the President of Bangladesh. Initially, Bangladesh's official relations were primarily confined with India and the Soviet Union, whereby India eventually decided to attain a good relationship with Bangladesh (Haider, 2006). During this phase, the crucial bilateral issues with India significantly included re-sketching the land boundary between the two neighbours (Rashid, 2010). India and Bangladesh reached an agreement on 16th May 1974. This is known as the Land Boundary Agreement (LBA). The LBA, 1974 provided instructions for some specific issues, including the exchange of enclaves and resolving the un-demarcated border and adversely possessed land issues (see LBA, 1974, attached in Appendix G). It also instructed how the remaining boundaries were to be demarcated. Moreover, it further instructed that after demarcation, strip maps were to be prepared and signed so that the transferral of adversely held areas could take place by 31 December 1975 for the area already demarcated, and six months after signature for remaining areas (Whyte, 2002). LBA, 1974 is a revised agreement of the Nehru-Noon

Accord, 1958 (see pages 151-152 for discussion of the Nehru-Noon Accord, 1958). Whyte (2002, p. 158) further explained the implication of LBA, 1974 as,

"Bangladesh abandoned Pakistan's claim to half of Berubari, and in return, India allowed it to keep Dahagram-Angarpota enclave, which had not suffered the same isolation and difficulties of the other enclaves, and whose residents desired to remain Bangladeshi. The other enclaves would be exchanged, as agreed in 1958, without compensation to India for its net loss of area. In addition, to guarantee Bangladeshi access to Dahagram-Angarpota, India would lease Bangladesh a corridor of land at Tin Bigha".
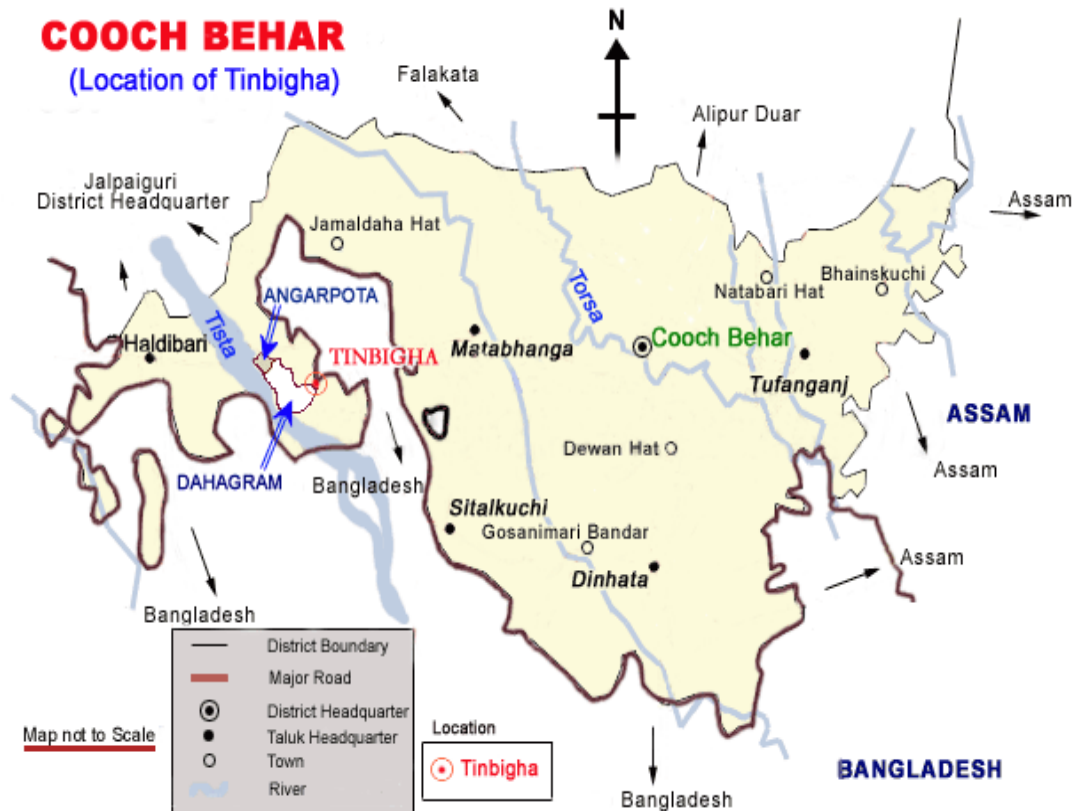
Map 7: Location of Angorpota-Dahagram enclaves and the Tinbigha Corridor (Tinbigha: a profile, n.d.).

The agreement needed to be ratified by the both countries. Bangladesh government, led by the Awami League, amended Bangladesh's constitution for ratification of the agreement on 28 November 1974 (Madhav, 2013). On the other hand, India argued that it was not possible to ratify the LBA, 1974 because it required constitutional amendment, which required a majority vote in the Indian parliament. It faced the Government of West Bengal's (also known as the State Government of West Bengal) veto and there followed a huge protest, mostly from the opposition party, and thus it remained unratified. Controversy also arose regarding the leasing of the corridor. Two organisations, Tin Bigha Songram Shomiti[34] (TSS) and Kuchibari Songram Shomiti[35] (KSS) were formed to oppose the transfer. "These

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[34] Tin Bigha Movement Committee (translated).
[35] Kuchibari Movement Committee (translated).

two groups were comprised of local politician and people of Kuchibari[36] including members from both West Bengal's Left Front Government and the Hindu Nationalist Bharatiya Janata Party" (Cons, 2016 p. 61). However, in the meantime, Sheikh Mujibur Rahman was assassinated on 15th August 1975. As a result, the positive relationship with India ended (Rashid, 2010).

The narrative presented above enables not just a description but also a theoretically informed account of the reality of the border dispute problem. It primarily 'opens up' the reality of the problem here. This first phase of border dispute management came through an effective negotiation and a valid signed agreement. Thus, international law was still operating as a generative regulating force in this context. The problem was that the dispute couldn't be resolved. Now, the critical question is, why? The answer requires further interpretation, and it will be referred back to later. However, the critical theoretical significance of using these historical narratives and interpretations is that they enable one to get underneath the surface of appearances rather than only providing the foundation for ordering appearances and ultimately reifying them (Hervey, 1990). It signifies that to explore the distorted relationship between 'actual/real' social practice (i.e. the actual condition of India-Bangladesh border conflict management) and the normative idea of international law of conflict management by identifying the possible 'constraints' (primarily assumed as 'politics', as demonstrated in chapters 2 and 3), the study needs to understand and interpret underlying factors, including the level of political relations between the two countries, as well as to consider other facts, the role of the international law, and the extent of the influences of the opposition political parties as well as other state governments of India. This goal is ultimately derived from the central critical theoretical concepts used in this thesis, (methodologically) termed as 'reconstructive explanatory critique' (Strydom, 2011). As discussed in chapter 2, this refers to a focus on vague, incorrect or inadequate practice in that specific context of the problem or situation or in any relations of the actors and their understanding, orientations and practices. It also aims to expose distorted or partial explanations and the production of inequality in that particular setting. This dimension is a significant characteristic of critical theory according to Strydom (2011) (see chapter 3 for details). This historical description and interpretation established a clear understanding of the overall context of this dispute, eventually fulfilling the task of critical theory, which argues that knowledge is always conditioned by historical as well as other contexts (see page 29 for details). In plain English, in drawing on this critical assumption, this part will show how knowledge production (through the process of the India-Bangladesh border conflict and management) has been conditioned by historical and political relations.

The research employs an 'interpretivist' epistemology. This suggests that any actions should be interpreted by taking into account the context of the action and interpreter's

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[36] Kuchibari was located in the south-eastern part of the proposed Tin Bigha corridor.

understanding of that action because it is believed that knowledge is constructed and cannot be found objectively (see page 76). The researcher interpreted the narratives (from collected texts relating to this narrative) while keeping these epistemological requirements in mind. In doing so, the researcher needed to understand the political and legal vocabulary (i.e. ratification, veto, oppose, agreement, constitution, amendment, majority vote and so on) of conflict management and the purpose of using such vocabulary in this description with her own critical understanding and interpretation. Moreover, the research followed significant techniques to interpret the text reflected from McGregor's (2010) *critical analysis*[37], as set out in chapters 2 and 3. Firstly, each sentence of the collected document was critically read and interpreted to reveal the information about power relations in the specific context. This is because, according to McGregor's (2010) critical analysis, sentences can also bear information about power relations. By doing this, the research fulfils an essential criterion of the critical theoretical assumption employed in this research, revealing the effect of power domination on this dispute and its settlement. Secondly, the analysis interrogates the use of language as a form of political rhetoric which invokes, but often also seeks to conceal, power relations for specific purposes, which can be explored through a careful analysis. It can, at the same time, interpret the intended impression an agent seeks to create through their use of rhetoric in argument or public records. Thirdly, there is nominalisation, which refers to, while interpreting the documents, converting a verb into a noun to understand the underlying meaning more specifically. Fourthly, connotation is employed, which means that a 'word' can bear a strong meaning. Finally, there is insinuation, which implies a more indirect suggestion concerning the author/speaker's intention, whereby an opinion is conveyed underpinning the text and which an analysis can bring forth and explain. Therefore, the employed 'interpretivist' epistemology leads to its interpretation by considering "of particular importance is that language use and communication, but also action and practice" (Strydom, 2011 p. 150) (see chapter 3 for more details). In addition, along with its interpretivist epistemology, an essential criterion of its employed 'critical realist' ontology is also an analysis and interpretation of the fact through the lens of a researcher's own understanding of interpretation; this questions the risk of negative effects of a researcher's positionality. Reflexivity, as already emphasised, has been employed in all stages of the research, including in this part, to mitigate the adverse possible effects of positionality (see pages 83-84 for a detailed discussion on reflexivity). She was also very reflexive while understanding and interpreting and in drawing inferences/conclusions. The value of self-criticism has also been employed as an essential criterion of its employed normative axiology (see pages 77-78 for a detailed discussion of axiology). This element of self-criticism and dialogue in research, of questioning the process

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[37] The reader should note that this is an account of the critical document analysis used through the thesis; that is not the same as particular forms of 'critical discourse analysis', which the thesis does not use.

undertaken but also the values engaged, is a critical part of CTIR (Patrascu and Wani, 2015). The ethical issues have also been considered at this stage of interpretation (see chapter 3 for a detailed discussion of ethical issues).

In that context, the research interpreted the actual 'constraints' were: 1) a complicated treaty ratification process of international law (for more discussion, see pages 244-245) and 2) domestic political influences which were undermining the effectiveness of international law and in effect took precedence over it. However, these constraints initially 'open up' the reality by indicating a 'distorted relationship' between 'international law' and 'politics' – by arguing that the attempts to resolve the dispute followed the framework of international law of conflict management as there was agreement to a resolution (following a good political relationship between India and Bangladesh) through 'negotiation'. However, the dispute couldn't be resolved due to domestic political opposition from India as well as from the State Government of West Bengal's opposition. This interpretation further reveals that the inherent deficiency of international law (a difficult implementation process) is also a dominant factor here. It finally shows how these elements interplayed in this specific problem, which will be referred to later. However, this description and interpretation construct the initial understanding and structure of the 'problem' as an integral part of its employed methodology. The following discussion will complete the remaining steps of the 'problem' construction.

After Mujib's assassination, following the coup and counter-coup, Major General Ziaur Rahman became President of Bangladesh (Haider, 2006). With the appearance of Ziaur Rahman, Bangladesh-India relations worsened. Bangladesh-India relations faced the worst phase after Mrs Gandhi's return to power in the early 1980s (Rashid, 2010, see also Haider, 2006 and Hasan, 1983). In 1980, Ziaur Rahman had an official visit to India, but his initiative couldn't convince Mrs Gandhi. The border incursions increased. Moreover, insurgency in the Chittagong[38] Hill Tracts area also increased. All ongoing bilateral negotiations, including border dispute negotiation and implementation of the LBA, 1974, slowed. Bangladesh found it problematic to advance any progress with India on any issue. The LBA, 1974 has not been implemented and, as a result, a few border problems occurred, which also resulted in a great deal of suffering for people in the enclaves of Dahagram-Angorpota. This was because there was no link corridor between the enclaves, and Bangladesh mainland that India did not provide a corridor facility to Bangladesh, which was one of the terms of the 1974 agreement (Odhikar, 2008). Moreover, India sent naval vessel in 1981 to protect its fishermen. They didn't have any lawful rights to be on a disputed island, known as South Talpatti. Both countries increased their naval power in the arena. Disputed South Talpatti

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[38] A division of Bangladesh.

Island[39] is known to have arisen after the 1970 cyclone and is located to the south of the Hariabhanga river (BBC News, 2010, see also Mail Foreign Service, 2010). Both India and Bangladesh claimed ownership of this island, and the possession of the island became a burning issue in 1981. "India's naval vessel docked at the island with its armed personnel to protect Indian fishermen who camped illegally on the island. Against this perceived threat of India, Ziaur Rahman increased the number of both paramilitary and armed forces. Armed naval clashes were avoided through diplomatic negotiations" (Rashid, 2010, p. 179). According to Rashid (2010, p. 179), "Both sides agreed that the island should remain uninhabited as was in the past until its sovereignty was decided. This is, however, an interim solution similar to an emergency "Band-Aid" to an injury". Bangladesh wanted to resolve this issue by a joint survey, but India didn't cooperate. However, this island disappeared in 2010 (BBC News, 2010). This issue was not mentioned in LBA, 1974, nor is it a current disputed issue as this research primarily focuses on the land boundary dispute between India and Bangladesh. Therefore, it does not go into any further detailed analysis of this issue. However, "The Indian river flows blockade attempts, unilateral seizure of two newly raised islands in the Bay of Bengal and the failure to implement the 1974 border agreement seriously strained the Bangladesh-India relations" (Haider, 2006 p. 38).

Employing the critical theoretical implication and methodological tools previously mentioned (see pages 169-170), the narrative above enables not just a description, but also a theoretically informed account of the reality of the border dispute problem. This opens up the reality of the border dispute problem in this phase, in which it was not possible to find a way to reach a resolution of the dispute as the LBA, 1974 had not been implemented, leading to suffering at the conflicted border area due to border clashes (for more details on how these methodological tools and critical theoretical insights have been employed in interpreting the text relating this description, see pages 169-170) A point to be noted is that one could think that the description presented here is politically biased as the researcher is from Bangladesh. To avoid potential problems, she sought to be reflexive, meaning she was self-critical but also viewed the whole topic in a critical way as far as she could. This further study and its interpretation identify the 'constraints' as: 1) Poor political relations between India and Bangladesh. 2) Reluctance of India to resolve the dispute. 3) Power demonstrations of both conflicting parties in border clashes. 4) Complicated process of the implementation of the boundary agreement directed by the international law of conflict management. 5) Domestic political opposition from the opposition party and the State Government of West Bengal, India, which undermined the ratification process. However, the State Government of West Bengal always "managed to influence through their assembly

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[39] "Although it is called an island, most of it is understood to be a low tide height of about two metres (the maximum elevation). At the time of low tide, the length of this island was maximum ten thousand square metres. It is located approximately 4 kilometres south of the Hariabhangha river" (Rashid, 2010 p. 179, see also BBC news, 2010).

resolution and representation to the President who right earnestly pursued the matter further" (Mahur, 2014 p. 25).

In the aftermath of Zia's assassination, Hussain Muhammad Ershad (who established a new political party later) came to power in Bangladesh. There was no improvement in the India-Bangladesh border dispute, with the exception of the clarification of the leasing of the Tin Bigha corridor in 1982; "but despite the claiming that Indian sovereignty over this corridor would be remained same" (Whyte, 2002 p. 135). However, the Indian government faced legal difficulties regarding this matter, as a local resident of Mekhliganj (probably also Khuchlibari) challenged the validity of the 1982 clarification matter and the LBA, 1974 in the Calcutta High Court. A final verdict was not delivered until 1991 (Whyte, 2002). In this phase of relations between India and Bangladesh, the study interpreted (using the same methodological and theoretical tools described in pages 169-170) the same constraints (as explained in the above paragraph) which meant that the border dispute remained unresolved.

The Bangladesh Nationalist Party (BNP), led by Begum Khaleda Zia, came to power in Bangladesh in 1991. Begum Khaleda Zia's government was unable to include India to resolve the key bilateral disputes. The only progress was the Tin Bigha Corridor Lease, 1992. India and Bangladesh entered to a lease agreement based on 1982, lease clarification which concluded a temporary solution for Dahagram-Angorpota enclaves. Begum Khaleda Zia visited India in May 1992 (Mahur, 2014). After huge protests, controversies and tension, according to this lease agreement, from 26th June 1992, the Tin Bigha corridor, "was open for one hour only due to the security problem on the day, but would be open for three hours ... in the first week to assess traffic volumes, to be reviewed after 2 July, with hopes that it would be soon open for full six one-hourly daylight intervals as per agreement" (Whyte, 2002 p. 147). This lease cannot be considered very significant; rather, it is regarded as a diplomatic failure for Bangladesh because it did not meet Bangladesh's national interests. This lease is based on the LBA, 1974, and the continuation of the 1982 discussion. In the LBA, 1974, it was decided that Bangladesh would get a permanent lease of the Tin Bigha corridor, which means it would open continuously (see Appendix G), but Bangladesh didn't get this in this lease agreement (Whyte, 2002). Moreover, India placed a fence to secure the boundary of this corridor, which was not included in the agreement (see page 231 for a detailed discussion).

Employing the critical theoretical and methodological approach discussed above (see pages 169-170), the narrative enables not just a description but also a theoretically informed account of the reality of the border dispute problem. This interrogates the relative roles of international law acting as a regulating mechanism as well as of other factors shaping border dispute management and seeks to understand how it failed to reach an effective

resolution. However, the same sufferings continued in the conflicted border area. The possible constraints identified and interpreted here are: 1) Poor political relations between India and Bangladesh. 2) Reluctance of India to ratify the LBA, 1974. 3) Less effective process of the implementation of the LBA, 1974 as directed by international law of conflict management (see pages 244-245 for further explanation).

The Awami League Party was in opposition for 21 years. After the 1996 election, the Awami League, came to power in Bangladesh in June 1996 with Sheikh Hasina as a prime minister. Border cooperation did occur as in late 1997, an Indian delegation from India come into Bangladesh for initial attempts at border demarcation (Whyte, 2002; see also Das, 2010). Moreover, "On 31 March 1998, a letter from the BJP's only West Bengal MP, Tapan Sikdar of Dum Dum constituency in Calcutta, was delivered to BJP Prime Minister Atal Behari Vajpayee, imploring an immediate resolution of the enclave problem…. By late 1998, only 6.5 km of the Bangladesh-India border remained un-demarcated" (Whyte, 2002 p. 151). Two Joint Boundary Working Groups (JBWG) were agreed to be formed to do the initial fieldwork in December 2000 (India. MEA, 2010a). In June 2001, the Bangladeshi Joint Secretary of Ministry of Home Affairs visited India and both countries committed to implementing the LBA, 1974, emphasising mutual arrangement. They also agreed to maintain peaceful border management (India. MEA, 2001b).

The situation changed when the Begum Khaleda Zia-led BNP came into power in Bangladesh in October 2001. Therefore, not unexpectedly, India lost its interest in resolving this issue as well as other bilateral issues. For instance, in April 2003, a meeting was held between India and Bangladesh regarding the border and other bilateral issues, ending without any decision on the border problem and they were only able to agree to further negotiation (India. MEA, 2003a). Moreover, BSF did not cooperate with the joint measurement commission to figure out the paperwork for enclave measurement on 27th February 2002. It was scheduled to measure the enclave at the Panchagarh border, but BSF representatives did not participate (Odhikar, 2008). However, the Indian government, led by the BJP, did not seem to be enthusiastic in resolving the border dispute with Bangladesh's new government. Instead, they raised issues such as 'the rise of Islamic fundamentalism in Bangladesh, harbouring of Indian terrorists within Bangladesh', etc. (India. MEA, 2003a). A cool political relationship existed between the two countries at that time. A Congress-led UPA coalition government came into power in India in 2004 (Rashid, 2010). Despite the wide-ranging efforts to improve bilateral relations with Bangladesh, India remained cool and was not interested in implementing the LBA, 1974. The increasing misunderstanding and tension were caused by accusations and counter-allegations regarding the presence of hardcore criminals, insurgents and militants in each other's countries, particularly in the border areas and enclaves (Rashid, 2010). The boundary dispute became a complex issue at that time and remained unresolved.

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The critical theoretical and methodological tools discussed above (see pages 169-170) lead to the interpretation of the narratives above, finding that there were '(limited) possibilities' to speeding up the process of border dispute management when Sheikh Hasina came to power in Dhaka. It has been evident that, "In 1997, a mutually reconciled list of enclaves was prepared and accepted by both countries. For the resolution of the boundary issue, the decision to constitute a mechanism was taken during the foreign ministers meeting in 2000" (Das, 2010, no pagination). Subsequent negotiations happened between India and Bangladesh in this phase. Moreover, two Joint Boundary Working Groups (JBWG) were formed to do the initial fieldwork (India. MEA, 2010a), as mentioned above. However, it could be questioned as to why, although the India-friendly Awami League was in power in Bangladesh, the dispute was not resolved? However, it is too optimistic to expect that such a long-standing issue could be resolved overnight (Hussain, 2000). It took time for the left wing Awami League government to obtain trust from India's BJP-led government, which has been considered a 'right wing' party, although there was no 'left-right' swing issue seen at that time (Wright, 2007). Wright (2007, p. 384) argues that, "it made it harder than ever for either major party in Bangladesh to find consistency in Indian policy when trying to negotiate the relationship between them". Moreover, in explaining Sheikh Hasina's foreign policy approach towards India, Chakma (2012, p. 10) argues that, "-following the capture of power in India by the Bharatiya Janata Party (BJP) in 1998, the steady improvement of Bangladesh-India relations were stymied as the BJP government strongly raised the controversial issue of 'illegal Muslim immigrants' from Bangladesh to northeast India". Yet it is also true that, despite these issues, the Sheikh Hasina-led Awami League achieved a significant improvement in resolving this dispute, as discussed before. However, the identified 'constraints' which slowed down the process of border dispute resolution while the Begum Khaleda Zia-led BNP was in power in Bangladesh were :1) Poor political relations between India and Bangladesh. 2) Reluctance of India to resolve the dispute along with other issues. 3) Less effective process of the implementation of the boundary agreement as directed by international law of conflict management.

Sheikh Hasina succeeded in the general election in 2008 in Bangladesh. In India, the Congress-led UPA came back again into power in the 2009 general election after facing problems created by the Left Front Parties' withdrawal (Rashid, 2010). These two parties for the term of five years created a friendly atmosphere to resolve the long-standing border dispute through constructive negotiation because of the historical associations between the two parties since the 1971 (Rashid, 2010; see also Chawdhary, 2009). During bilateral negotiations held in 2009, both countries reviewed the importance of the implementation and ratification of the LBA, 1974. Both sides agreed to comprehensively address all outstanding land boundary issues (India. MEA, 2009a). Following this, Sheikh Hasina visited India in 2010 and discussed the unresolved issues, and both sides agreed to solve

this dispute by implementing the LBA, 1974. After her visit, Indian Prime Minister Manmohan Singh visited Bangladesh in 2011, and both of them discussed how to advance the issue. Finally, both countries came to an agreement, namely that, "the Protocol to the Agreement between Government of India and Bangladesh Concerning the Demarcation of Land Boundary between India and Bangladesh and Related Matters (hereafter, the 2011 Protocol)" (Wirsing and Das, 2016 p. 8) on 6th September 2011. The ratification of the protocol faced massive protest from the State Government of West Bengal, which used to oppose the ratification of the protocol. Moreover, according to Pusarla (2015, no pagination) "When the 119th amendment[40] [bill] was introduced in 2013 in Rajya Sabha, BJP stiffly opposed the bill as its unit in Assam expressed serious concerns of the local people. Finally, the bill was stalled by Mamata Banerjee". BJP led NDA (National Democratic Alliance) government came to power in India in 2014. Lastly, Mamata Banerjee, Chief Minister of West Bengal, who offered her 'consent' to ratify the 2011 protocol, was always in opposition to ratify this agreement. An important point to be noted here is that, before it came to power in 2014, the BJP was against the ratification of the boundary agreement with Bangladesh. Surprisingly, both the Bharatiya Janata Party (BJP) and the Mamata Banerjee has changed their stance on this issue (the research provides a critical explanation of this in chapter 7). Thus, on 6th May 2015(Lok Sabha approved it on 7th May), the Indian parliament passed the historic constitution (119th[41] amendment) bill, 2013. Following this, both prime ministers agreed to an 'Exchange of Letters on Modalities' for the implementation of the 1974 Land Boundary Agreement and its 2011 Protocol' (India. MEA 2015j). According to the protocol, on 31st July 2015 the exchange of enclaves (formally) was to take place along with the demarcation of 6.1 km of un-demarcated border (India. MEA, 2015j) (the research stopped collecting information at 2015 and didn't go into any further study of the matter). However, the delineation of adversely possessed land was set to be finalized by 30 June 2016.

Employing the critical theoretical implications and methodological tools described earlier (see pages 169-170) the research interprets the description above. This time, however, it has interpreted both 'possibilities' and 'constraints'. The possibilities refer to when Sheikh Hasina led the Awami League came to power in Bangladesh and a friendly political relationship developed between the two countries, which sped up the process of border conflict management. This time, the constraints come from the domestic political opposition and the opposition from the State Government of West Bengal.

From the above description and interpretation, it could be summarised that the 'constraints' can be identified as: 1) Complicated treaty ratification and implementation process of international law. 2) Domestic political influences. 3) Poor political relations between India

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[40] Constitution 100th amendment act 2015.
[41] Ibid.

and Bangladesh. 4) Reluctance of India to resolve the dispute. 5) Power demonstrations by both conflicting parties in some border clashes. 6) Less effective process of the implementation of the boundary agreement as directed by international law of conflict management. 7) Obstruction from the State Government of West Bengal to ratify the agreement. The 'possibility' is identified as referring to a friendly political relationship between these two countries, which sped up the process of border conflict management.

This section of this chapter was aimed to 'open up' the reality of the research 'problem' in the context of the employed case study by identifying 'possible constraints' undermining the success of this dispute resolution. It has been done through 'description' and 'interpretation', as demonstrated above. This is a very significant part of its employed first methodological phase, namely 'problem identification, expose and structure'. From this discussion, the research has disclosed the problem of 'India-Bangladesh border dispute resolution' as the fact that although international law was still operating as a generative regulating force in this dispute resolution, it couldn't fulfil its purpose as it is supposed to, primarily because of 'politics' but also due to other factors interplaying in this context (the research will go into further analysis in chapter 7). As a result, this dispute remained unresolved for a long time. This obviously indicates a distorting relationship between international law and politics in this context. Moreover, international law could not work effectively because of its inherent deficiency, lack of compliances and the weak, vague nature of its implementation process. This also explicitly indicates how these elements (the inherent deficiency of international law of conflict management as well as politics) interplayed in this specific problem.

Moreover, the discussion also reveals the 'possibility' that, as a result of positive political relations between these two countries, the dispute resolution process sped up and finally reached a resolution. It significantly directs the researcher to reach an initial decision (not fully confined), namely that 'politics' has played the dominant role in this dispute resolution, negatively but also positively influencing the process of the dispute management. This fact justifies the pre-assumptions of the research, which argues that there is something unusual or disturbing happening in the practical application of the international law of conflict management and that 'politics' is the hidden force which influences the process of conflict management (for more discussion see chapter 2). It also reveals, from the interpretation stated above, that this dispute (in some cases) negatively affected the relations between these two countries. For example, during Zia's regime, India-Bangladesh relations were seriously strained due to border conflicts (Rashid, 2010). Finally, the research explores the influences of political relations on the conflict and its management process, and/or vice versa. This very significantly leads the research to disclose the reality of the 'problem'. This problem identification further directs the research to substantiate its view that the current structure of the international law of conflict management needs to be reconstructed, which

justifies its initial assumption, as demonstrated in chapters 2 and 3. This problem identification also, in turn, leads to a detailed analysis of the dispute management, which can then be reconstructed as an interpretation or explanation in chapter 7.

6.2 The remaining issues of the border dispute

The following matters were not subjects of the LBA, 1974. Therefore, they were not considered in the border dispute resolution by the 2011 Protocol.The following issues still need to be resolved as part of India-Bangladesh border management.

- Firing on people at the India-Bangladesh border and killing them.
- Tension and gun firing between BGB and BSF.
- The 'push-in' and 'push-back' problem.
- The boundaries of common rivers problem.

The main problem the research has identified is that, although these issues lead to huge human rights violations in the conflicted border area and breaches in international law, they have not received much attention from India's government (see the detailed findings of the analysed negotiations in chapter 7 pages 211-217). The research found that Bangladesh has repeatedly taken these issues to the India's government, but it has always been ignored. Neither the Indian nor Bangladeshi governments deny that the deaths are taking place at the border area. India often argues that BSF is doing this to prevent illegal immigration; on the other hand, Bangladesh blames BSF's aggressive attitude. Therefore, it has become a political blame game between these two neighbours. However, these issues need to be resolved urgently to secure a peaceful border between India and Bangladesh. All of these issues are currently being negotiated between India and Bangladesh, but little progress has been made (see chapter 7 for details).

The previous section of this chapter has (partly) identified, constructed and structured the 'problem' of India-Bangladesh border dispute management by exposing the 'reality', namely how the border dispute and its management have been affected by the political relations between these two neighbours and/or vice versa. This was a significant part of its employed methodology and was directed by its employed critical theory (see chapter 3 for details). This part (6.2) explicitly focuses on exploring how this long-standing dispute creates human rights violations, including torture and murder in the conflicted border areas. It is very significant in answering part of the research question: How far, drawing on a case study, can one conclude that the current process of territorial dispute management of international law needs rethinking, considering the political influences and with respect to human rights issues in the border dispute? This also significantly contributes to its first methodological phase, where it conducts the problem identification, construction and structuring together with the previous section and chapter 5 (for more details of methodology see chapter 3).

For this part, the research conducted 34 semi-structured interviews and 40 other documents were analysed. The justification for conducting interviews and combining them with document analysis along with the critical theoretical and methodological significance of the interviews and documents analysis is demonstrated in chapter 3 (see pages 104-106 for details). Chapter 3 also demonstrated when and how critical theory and methodology have been employed in analysing the interviews and documents used in this part (see pages 106-110 for details). Table 6.2.1 demonstrates the abstraction of the analysis of the interviews in a tabulated form.

Table 6.2.1: Abstraction of the analysis of the interviews

Interviewee name, age, nationality and occupation.	Is this interview significant for this analysis?	Summary of the statement	Theme	Causes found
Sadekul Islam, 35, Bangladeshi, Farmer.	Yes	They cannot live their normal lives including work when BDR[42]-BSF gunfights take place near their village. This situation continues until a BDR[43]-BSF meeting happens.	Theme: 2	BSF-BDR[44] gunfight.
A confidential interviewee working in the (former) BDR, Lalmonirhat.	Yes	Few days before, ten people were injured, and five people were shot dead by BSF. Nobody knows what happened to the other people who were gathered by the BSF for a 'push-in'. According to the local people's information, they were killed and buried near border.	Theme: 1 Theme: 3	No
A confidential interviewee working in the (former) BDR, Lalmonirhat.	Yes	BDR[45] announced a 'Red Alert' in the border area few days before. Local people left their houses to save their lives; BSF tried to push some people at that time, but BDR[46] protested.	Theme :1 Theme: 3	No
A confidential interviewee working in the (former) BDR, Rajshahi.	Yes	BSF shoot people as soon as they see anyone near the borderline.	Theme: 1	BSF's aggressive attitude.
A confidential interviewee working in the (former) BDR, Rajshahi.	Yes	People killed by the BSF are innocent and the allegation that they are illegal immigrants is not true.	Theme: 1	No
A confidential interviewee working in the (former) BDR, Rajshahi.	Yes	Some people have their agricultural land near the zero line; sometimes they are killed by BSF while working in their agricultural fields.	Theme: 1	No
A confidential interviewee working in the (former) BDR, Chapainawabgonj.	Yes	Recently, BSF killed a man named Nuru Mia (25). BSF shot him while he was working on his agricultural land near the zero line.	Theme: 1	No
A confidential interviewee working in the	Yes	BSF killed a Bangladeshi man named Mojibur Rahman (27) in Chapainawabgonj district. He was killed while coming back from his work; as soon as he reached near 379-5 point, he was killed by BSF.	Theme: 1	No

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[42] Known as BGB now.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.

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(former) BDR, Chapainawabgonj.				
Maksudur Rahman, 35, Bangladeshi, News Reporter[47] working at Odhikar.	Yes	BSF is violating international law by killing the people near the border area. They should be punished by law, but, unfortunately, they are not a subject of Bangladeshi domestic law. The Indian government do not bother about this killing or even to punish them; rather, they are encouraging to do it. International law is useless in this context.	Theme: 1	-Incapability of international law. - India's power dominance in its relations with Bangladesh.
Jamir Uddin, 65, Bangladeshi, Farmer.	Yes	He has agricultural land near the zero line but BSF do not let him to work on it.	Theme: 1	No
Atik Mia, 30, Bangladeshi, Farmer.	Yes	He only has a small piece of agricultural land near the zero line. If he is not working on it, his family will starve. He still works on that land at a risk to his life. He knows that he could be killed by BSF anytime, but he has no other options.	Theme: 1	No
Moyin Islam, 45, Bangladeshi, Farmer.	Yes	Same situation as described for Atik Mia.	Theme: 1	No
Ramjan Ali,6 43, Bangladeshi, Farmer.	Yes	Same situation as described for Atik Mia.	Theme: 1	No
Shahid Mia, 22, Bangladeshi, Farmer.	Yes	Same situation as described for Atik Mia.	Theme: 1	No
Shaheb Ali, 38 Bangladeshi, Shopkeeper.	Yes	BSF often come to the village (crossing the border) and start firing on the inhabitants without any reason. Sometimes gunfire happens between BSF and BDR[48] regarding this issue.	Theme: 1 Theme :2	No
Rahim Haque, 23 Bangladeshi, Farmer.	Yes	When BDR[49]-BSF tensions start to affect their everyday lives, they become decrepit, including stopping their everyday work.	Theme: 2	No
Riaz Ali, 45 Bangladeshi, Local businessman.	Yes	BSF often gather their soldiers at the border area without any reason. They point their gun towards them. Sometimes this initiates gun firing between BDR[50] and BSF. They need to run away from their village. Indian criminals often take the advantages of this situation. They often come to their village and snatch their money, cattle, etc. Sometimes they rape women.	Theme: 1 Theme: 2	No
Imaj Ali, 54, Indian, Farmer.	Yes	He has been recently pushed-in by BSF to Bangladesh. He was arrested while he was working on his agricultural field. He is a Bengali-speaking Muslim Indian. BSF pushed him inside Bangladesh by crossing the border. They also gathered hundreds of people on other side of the border fence in India and threatened them, saying that if they do not go to Bangladesh, they will kill them.	Theme: 3	No
Taz Miah, 30 Indian, Fisherman.	Yes	Similar to situation described by Imaj Ali.	Theme: 3	No
Sufia Begum,34, Indian, House wife.	Yes	Similar to situation described by Imaj Ali.	Theme: 3	No
Romoj Mondol, 29 Bangladeshi, Farmer.	Yes	They don't have any place to go. They are very poor. They are living their lives in this scary situation. They want to live in peace and without fear of BSF bullets.	Theme: 1	No
Banu Hazra, 25	Yes	Similar to situation described by Romoj Mondol.	Theme: 1	No

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[47] The position or the designation mentioned here was the position or designation of the interviewee while interview was taken.

[48] Known as BGB now.

[49] Ibid.

[50] Ibid.

Bangladeshi, Farmer.				
Moyna Begum, 27 Bangladeshi, Housewife.	Yes	Similar to situation described by Romoj Mondol.	Theme: 1	No
Priya Begum, 28 Bangladeshi, Housewife.	Yes	Similar to situation described by Romoj Mondol.	Theme: 1	No
Mir Charan, 35 Lecturer[51], Jahangirnagar University, Bangladesh.	Yes	N/A (As he discussed the causes of this problem and not the actual situation, the explanations are applied for the following).	Theme: 1 Found as cause.	-India's power dominance in its relations with Bangladesh.
Apura Kumar Das, 35, Consultant[52], Ain o Shalish Kendra (ASK), Bangladesh.	Yes	N/A	Theme-1 Theme-2 Theme-4 Found as cause.	-India's power dominance in its relations with Bangladesh.
Mahbubur Rahman, 45 Director[53], Bangladesh Manobadhikar Songsha.	Yes	N/A	Theme-1 Theme-2 Found as cause.	-BSF's aggressive attitude.
Mrs. Pajekta Deshmukh, 34, Research Associate[54], Jawaharlal Nehru University, India.	Yes	N/A	Theme: 1 Found as cause.	-BSF are doing this killing to prevent illegal immigration.
Md. Jamal Uddin Khan, 55, Research Officer[55], Bangladesh Secretariat, Home Affairs, Public Security Division, Bangladesh.	Yes	BSF's killing is increasing day by day. BSF killed 77 Bangladeshis in 2013, but in 2012, the number was more than 60 according to Bangladeshi government statistics. Push-in push-back is also a major issue in the border area.	Theme-1 Theme-3	-India-Bangladesh continuous disagreements and argument over the push-in push-back problem. - India's power dominance in its relations with Bangladesh.
Mr. Vinay Sen, 56 Co-ordinator[56], Institute of Democratic Right, Bangladesh.	Yes	N/A	Theme-1 Theme-3 Found as causes.	-India's power dominance in its relations with Bangladesh.

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[51] The position or the designation mentioned here was the position or designation of the interviewee while interview was taken.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Ibid.

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				- Indian central government is responsible as it has failed to hold offenders accountable.
A confidential interviewee, Bangladesh Government Officials. Dhaka, Bangladesh.	Yes	N/A	Theme-1 Theme-2 Found as cause.	-BSFs aggressive attitudes.
A confidential interviewee, Bangladesh Government Officials. Dhaka, Bangladesh.	Yes	N/A	Theme-1 Found as cause.	-Indian central government is responsible as it has failed to hold committers accountable.
A confidential interviewee, Bangladesh Government Officials. Dhaka, Bangladesh.	Yes	N/A	Theme-1 Theme-2 Found as cause.	-India's power dominance in its relations with Bangladesh.
A confidential interviewee, Bangladesh Government Officials. Dhaka, Bangladesh.	Yes	N/A	Theme-1 Theme-2 Theme-3 Found as cause.	-India's power dominance in its relations with Bangladesh. - Indian central government is responsible as it has failed to hold committers accountable.

Source: Author's self-produced table, based on the analysis of the interviews and reflected from Polkinghorne and Arnold, (2014) and Hoyos and Barnes, (2012). For reference, the list of interviews is enclosed in Appendix E.

The findings of the qualitative analysis of the 40 documents could not be represented in tabulated format as done for the interviews. The documents are quite long and all discussed more than one theme. The analysis set out to give a summary of the actual sufferings, killings and other human rights violations as well as the causes of the problems which means that the findings are very long. However, 'reconstruction' or the 'reconstructive explanatory critiques' employed in this research take the elements of these abstractions of

interviews given in the table above and in the document analysis, and from them create a narrative to show the human cost in misery, disrupted lives and sometimes also in lost lives inflicted by a failure to secure a settlement of the border dispute, in addition to the human as well as political value of achieving a settlement (even if, as in this case, it is incomplete). The narratives are demonstrated below. The causes found in interviews and documents analysis have been demonstrated together in a tabulated form in chapter 7 (see pages 223-224).

6.2.1 Firing on the people at the India-Bangladesh border and killing them

This and subsequent sub-sections draw together and synthesise the information in the section (6.2) above. People living in the India-Bangladesh border area have become news. The analysis found that the number of killings at the conflicted border is increasing day by day. The killing of Bangladeshi people is not new for BSF "BSF killed a Bangladeshi man named Mojibar Rahman (27) at Chapainawabgonj District. BSF killed a man named Nurul Huda (25) at the Bholarhat Upojila. According to the local villagers, when Indian Krisnapur camp's BSF fired on him, while he was working in his field. He was not a criminal. He had been shot while he was coming back from his work. As soon as he reached near 379-5 point, BSF killed him. Local people always use this route to go to work" (Confidential source, interview: Chapainawabgonj, Bangladesh, April 18, 2014). Advocate Alina Khan said, "Innocent Bangladeshi peoples have been killed by BSF in the border area. BSF is doing this with a hostile intention. As they are violating international law by doing this, so Bangladesh should take this issue to the International Court of Justice" (Khan, cited in Network, 2003, p. 10). Moreover, Indian criminals always get direct or indirect help from BSF. Odhikar, an NGO in Bangladesh, has been working with the border killing issue for last 9/10 years. According to a report published by Odhikar in 2007, it was reported that 94 people was killed, 45 kidnapped, 244 injured, and one raped by BSF in 2001; 5 people were killed, 54 injured, and 118 kidnapped in 2002; and in 2003 it was much higher. According to the Odhikar report (2008), they attack Bangladeshi villagers, kidnap and kill people, and snatch their cattle and crops. Neither the Indian nor the Bangladeshi government denies that the deaths are taking place (Reuters, 2008). The research found that the number of border killings differs between non-governmental and governmental figures. This is often because the Bangladeshi government tries to hide the actual number of killing as it is related to public sentiment. Moreover, the opposition party always exploits this public sentiment to use it as a weapon against the government. The news of the killing of local Bangladeshi people by BSF is always in the local and international media. In a press conference in 2008, a BSF representative admitted that "A total of 59 people have been killed trying to cross the border between India and Bangladesh illegally in the last six months … Ashish Kumar Mitra, director-general of India's Border Security Force (BSF), said the dead included 34 Bangladeshis and 21 Indians, while the others could not be identified" (Reuters, 2008, no

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pagination). Maksudur Rahman from Odhikar said, "Because of the violation of international law by BSF at the border area, India-Bangladesh border become a killing point. The murder of the innocent people at Bangladesh-India border can be comparable with genocide" (Maksudur Rahman, Interview: Dhaka, Bangladesh, 3 August 2008).

Advocate Alina Khan, former investigation director of the Bangladesh Human Rights Organisation, and Mahbubur Rahman, former assistant director of the Bangladesh Human Rights Organisation, said that BSF is committing a crime by killing innocent people at the India-Bangladesh border (Odhikar, 2008). They are intervening in Bangladesh's national security by doing so. Mahbubur Rahman said that "The main duty of BSF and BDR [now BGB] is to ensure national security. In this case, if it threatened the people living near the border they should be punished by domestic law, but unfortunately, BSF is not a subject to the domestic law of Bangladesh. Their killing is very pathetic" (Mahbubur Rahman, Interview: Dhaka, Bangladesh, 12 November 2008). Jamir Uddin (65) from Kalamkanda, Gobindopur said that, he has an agricultural field near zero line, but he cannot cultivate in his land because of BSF (Jamir Uddin, Interview: Gobindopur, Bangladesh, November 20, 2008). Jamir Uddin was able to give up his land because he has another source of income, but not everybody can do this. It is not possible for others as they are very poor. Atik Mia (30) said, "I only have one small land near zero line on which my family depends. If I do not cultivate in that land, my family will starve. So, I have to take the risk of my life and go" (Atik Mia, Interview: Dinajpur, Bangladesh, August 20, 2008). Hundreds of people, including Moyin Islam (45), Ramjan Ali (43) and Shahid Mia (22), are also facing the same situation (Moyin Islam, Ramjan Ali and Shahid Mia: Interview: Dinajpur, Bangladesh, August 20, 2008).

Channel 4 News also reported that hundreds of Bangladeshis are killed at Bangladesh border by BSF (News at 7, Channel 4 News, 2009). According to The Daily Star (2009 no pagination), "Indian Border Security Force (BSF) abducted five children from Haripur Border under Haripur Upazila in Thakurgaon on 23 January". An officer of the Bangladesh Secretariat, Home Affairs, Public Security Division said that BSF killed 77 Bangladeshi in 2013, but in 2012, the number was more than 60, according to the Bangladesh government statistics. He also said that the actual figure is higher than this (Md. Jamal Uddin Khan, Interview: Dhaka, Bangladesh, April 5, 2014). According to the Human Rights Watch Report (2011 no pagination), "Over 900 Bangladeshi nationals have been killed by the BSF over the last decade". A British newspaper, The Guardian (2011) reported that, "India's Border Security Force (BSF) has carried out a shoot-to-kill policy – even on unarmed local villagers. The toll has been huge. Over the past 10 years' Indian security forces have killed almost 1,000 people, mostly Bangladeshis, turning the border area into a South Asian killing field" (Adams, 2011, no pagination). It has also been described in the report that BSF's attack on

Bangladeshi people happens regularly now. Often, they intentionally target civilians living near the border (Adams, 2011; see also, The Daily Prothom Alo, 2015).

Table 6.2.2: BFS's attack and killing ledger

Year	BSF's attack on Bangladeshi people	Killing	Injury
1996	130	13	18
1997	39	11	11
1998	56	23	19
1999	43	33	38
2000	47	25	39
2001	10	69	13
2002	77	105	54
2003	48	32	16
2004	56	30	31
2005	58	87	77
2006	76	97	63
2007	57	119	33
2008	88	61	21
2009	90	98	48
2010	77	76	72
2010-2015	736	136	199

Source: Authors own calculation, based on Odhikar report, 2006 and 2010, Human Rights Watch Report 2015, 2016, The Daily Prothom Alo 2014, 2015.

The figures clearly show that the number of people killed in the border area is increasing day by day. According to an Indian newspaper, The Hindu (2013), "India's force has killed almost 1,000 people, both Indians and Bangladeshi, in the ten years between 2001-2010 … That implies the stunning frequency of a deadly shooting every four days; the very people whose interests it is ostensibly protecting" (Ghosh, 2013 no pagination). The Hindu (2015) also reported that at least 28 Bangladeshi people had been killed by BSF shooting in last the seven months (Habib, 2015, no pagination).

The people living in Shibgong in Chapainawabgonj district, Poba in Rajshahi, Hili in Dinajpur, Burimari in Lalmonirhat, Jaipurhat located near borderline live with the fear of death every day. They don't have any other choice. They must cultivate their land. Otherwise, they would not have anything for their families to eat. Not even the fear of death can stop them.

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6.2.2 Tension and gun firing between BGB and BSF

Usually, the border area of a third world country means a lack of development and poor settlement, Bangladesh-India border villages are no exception. However, their biggest problem is their insecurity. According to BBC News (2001, no pagination), "At least 18 soldiers have been killed in an exchange of fire between Indian and Bangladeshi border guards at a frontier outpost". One of the primary reasons for their insecurity is the BGB-BSF conflict. These conflicts occur much more frequently than before. Peoples living in the border area complain when BGB-BSF firing starts; they need to leave their houses to save their lives. Shaheb Ali (38) from Jaipurhat district said, "We are always living with the fear of death. We are not even safe in our house. We don't know when bullets will come and kill us. Moreover, BSF often comes to our village and kill us. On the 25th April 2008, some BSF members came to our village and fired on us without any reason" (Shaheb Ali: Interview: Jaipurhat, Bangladesh, October 4, 2008). This event brought tension between BDR (now BGB) and BSF, and they left their houses to save their lives. It took almost two months to solve the matter; meanwhile, hundreds of peoples were hiding here and there and spending nights under the open sky until issue was resolved. Rahim Haque (23) from Lalmonirhat district said, "When BDR [now BGB] -BSF tension starts, our everyday life become decrepit. Children need to stop going school. Everybody become scared. Children are growing up in this situation. We also grew up in such a condition" (Rahim Haque, Interview: Lalmonirhat, Bangladesh, August 23, 2008).

Riaz Ali (45), a local businessman from the Hili border are said, "BSF often gather their soldiers at border area without any reason. They put their gun towards us. As a result of this BDR reacted the same way, which creates a war-type situation. Sometimes they start gun firing. We need to run away from our village to save our life. Indian crook also takes advantages of this position. They often come to villages and snatch our money, cattle. Sometimes they raped women. We can't do anything. This is how our life is going on" (Riaz Ali: Interview: Dinajpur, Bangladesh, November 24, 2008). Sadekul Islam (55), a local farmer said, "We cannot live our normal life including work when BRD-BSF gunfight take place near our village. This situation continues until a flag meeting happens" (Sadekul Islam: Interview: Dinajpur, Bangladesh, November 24, 2008).

6.2.3 'Push-in' and 'push-back' tension

Pushing Bengali-speaking Indian people (claims from the Bangladesh government) and Bangladeshi people (claims from the Indian government) through the border from India to Bangladesh is called 'push-in' or 'push-back' and is not yet defined as such in official documentation. Push-in and push-back comprise a very significant reason for the India-Bangladesh border conflict, one which often causes raised tensions at the India-Bangladesh

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border. Such collective expulsions by India and Bangladesh across the border without offering recourse to judicial remedy or appeal to the persons being expelled appears to be arbitrary and to deny them their fundamental human rights. It causes a deterioration in BGB-BSF relations. It also creates frightening and unsecure circumstances for the people living in the border area (Joseph and Narendran, 2013).

This problem is rooted in 'operation push back', conducted by BSF in September 1992. At that time, BSF gathered Bengali-speaking people from West Bengal, India, and pushed them into Bangladesh. BDR strongly protested this. According to a study conducted by the Center for Development Studies, India "The first operation took place in September 1992. A group of 132 people were identified as illegal Bangladeshis and removed from a slum in New Delhi and taken to the West Bengal-Bangladesh border for deportation in an inhumane manner and handed over to the Indian Border Security Force (BSF) to push back to the Bangladesh side" (Joseph and Narendran, 2013 p. 23). This led to gunfire between BDR and BSF. As a result, a war-like situation has been created near the zero line. Tension regarding 'push-in' and 'push-back' has continued from 1992 to 1996 (Odhikar, 2008). This situation has since cooled off, but it has increased again recently, creating tension in the India-Bangladesh relationship (The Daily Prothom Alo, 2008). It also creates insecurity for the people living near the border area. In 2003, the largest push-in was done by BSF, when it brought hundreds of people from West Bengal and forcefully pushed them into Bangladesh. BDR sent them back. Bangladesh's former foreign secretary Shamser M Chowdhury said, "BSF has tried to push-in people 30 times in last few days. Bangladesh foreign ministry requested India not to do this. It can affect India-Bangladesh relations" (Joseph and Narendran, 2013 p. 23). According to the Bangladeshi foreign ministry, 50 such attempts were made by BSF in 2003 (Odhikar, 2008).

On 30th January 2003, BSF 91 battalion tried to push-in 213 people through Patgram Upojila of Lalmonirhat district border, but BDR 19 battalion protected them (Odhikar, 2008). According to The Hindu (2003, no pagination) "The India-Bangladesh border seem to be growing disturbingly as the two neighbours argue over the nationality of over 200 people who have been trapped in a "no man's land" near a border post in the Cooch-Behar area for four days now". After that, the former BDR announced a 'Red-Alert' at the border area, and local people left their houses to save their lives. According to local information, BSF tried to push them, but BDR protested (Confidential source, Interview Lalmonirhat, Bangladesh, December 20, 2008). On 3rd February 2003, former BDR and BSF commanders discussed the issue in a flag meeting. BSF commander argued that these 213 peoples were Bangladeshi but failed to prove it. The meeting concluded without any decision being made regarding the matter, and BSF started firing within 10 minutes after completing the flag meeting (The Hindu, 2003). Ten people were injured, and five people

were shot dead. Nobody knows what happened to the 213 people. According to information from local people, they were killed and buried near the border (Confidential source, Interview: Lalmonirhat, Bangladesh, July 20, 2008). A similar situation happened at the Hili border area the following next year. On the 19th February 2004, BSF tried to push 12 people into Bangladesh and the former BDR protested. A meeting between former BDR and BSF commanders regarding this issue concluded without any decision being made. However, these 12 people also vanished subsequently (Noor, 2004). This situation has become an everyday issue for BSF and BGB. BGB is unable to protest every time. Imaj Ali (54), who has been pushed in by BSF, said he was arrested while he was working in his field. He is a Bengali-speaking Indian Muslim, and BSF pushed him into Bangladesh by crossing border fence. They also gathered hundreds of people from different parts of West Bengal and threatened them by saying that if they don't go to Bangladesh, they will kill them (Imaj Ali, Interview: Lalmonirhat, Bangladesh, August 23, 2008). Taz Miah (30), from near the border in Lalmonirhat district said, "We are living our life with the fear of death. We don't know when will this war finish" (Taz Mia, Interview: Lalmonirhat, Bangladesh, August 23, 2008). Sufia Begum (34) said, "We don't have any place to go. We are very poor. We passed scary nights with our children" (Sufia Begum, Interview: Lalmonirhat, Bangladesh, August 23, 2008). Romoj Mondol (29), Banu Hazra (25), Moyna Begum (27), Priya Begum (28) asked: "When will this situation change?" They want to live in peace (Romoj Mondol, Banu Hazra, Moyna Begum, Priya Begum, Interview: Lalmonirhat, Bangladesh, August 23, 2008).

6.2.4 Boundaries of common rivers

Another significant problem is the demarcation of the border rivers' boundaries. The river border is in the "mid-stream of the rivers" (Rashid, 2010) between India and Bangladesh. The monsoons as well as constructions built on the embankment of the river can change the midstream and thus the boundary. People including fishermen and farmers of both sides are badly affected by this. There are major trans-boundary rivers flowing from India to Bangladesh. It is exceptional that not a single river flows the other way around, i.e. from Bangladesh to India. This is probably because of Bangladesh's position in the floodplain, and it is also one of the largest deltas in the world. Bangladesh has a unique network of rivers, canals, and streams, which have a length of about 24,135 kilometres (Ahmed, 2013). The availability of water is a very crucial matter for the people of Bangladesh. The river flow continues to maintain the ecological balance in the country (Siddique, 2016). As discussed in chapter 5, the boundaries of common rivers issue is different from the water-sharing issue as that one is about identifying and resolving common river sharing by these two neighbours. This research has found that the literature and research on this issue is very poor. However, the government records say that there are 54 rivers flowing between India and Bangladesh, but in reality, there can be many more (Singh, 2014). A Joint River Commission was established in 1972. Recently, the India-Bangladesh Joint River

Commission found ten more rivers which needed to be identified and demarcated (Siddique, 2016). A permanent resolution to these issues could significantly help both countries to manage riverbank erosion, pollution, navigability and river basin management (Siddique, 2016). This issue has been discussed by both India and Bangladesh, but not very significantly. The negotiations have been analysed together with other disputed border issues in chapter 7. The causes identified through qualitative analysis as well as other issues are also discussed through a critical explanation in the following chapter.

The above discussion and interpretation is achieved through analysing mostly primary sources along with some secondary sources, significantly identifying the reality of the 'problem' of the current unresolved disputed issues of the India-Bangladesh border. This problem is identified as a human rights violation due to border killing and torture, as described in first two cases. It is also identified as sufferings of people in the conflicted border area by the push-in -push-back problem and the boundaries of common rivers issue. This description also exposes the reality of the 'actual situation', which is the consequence of this unresolved border dispute issue. This sign of 'suffering' in this context is the life experience of the people on the ground, whereby it should be noted that international law is not doing its job in managing or resolving territorial disputes properly. As a result, these issues are still unresolved. Critical theory signifies this as a 'problem' by identifying the question of, why are these sufferings and human rights violations taking place? What are the hidden facts and/or structures which undermine the effectiveness of international law of conflict management in this case? To answer these questions, the research conducts a further analysis to uncover the causes (the purpose of chapter seven below). The causes found in this analysis and the further analysis of these relevant collected documents and interviews are together demonstrated through a 'critical reconstructive explanation' in the following chapter. However, these important and visible 'sufferings' which qualify this for critical theoretical research include the continued killing of Bangladeshi people by Indian Border Security Force in the conflicted border area. It also includes gunfire between Indian Border Security Forces and Border Guard Bangladesh, leading to insecurity and suffering in the border area, as well as the 'push-in' 'push-back' problem, as described before. This critical theoretical concept helped the research to achieve knowledge production by clarifying the reality of the border dispute management. Along with opening up reality and focusing the research, critical theoretical approaches have the significance of disclosing the problem while connecting the knowledge production process with practice. Finally, it accomplishes the task of its first methodological phase of 'problem identification', exposing underlying structures in this chapter, arguing that international law is not doing its job in managing or resolving territorial disputes properly in the context of the India-Bangladesh border dispute problem. It has become evident in this chapter by disclosing and exploring the influence of political relations on the conflict and its management process and/or vice

versa, as well as showing that the sign of 'suffering' in this context is the life experience of the people on the ground. Therefore, the structure of the international law of conflict management needs to be reconstructed.

6.3 Other peripheral issues

There are some other issues which need to be resolved. These are:

Fencing around Bangladesh

Another issue is fencing by India with barbwire fence at the India-Bangladesh border. The idea of fencing border is not a new concept. The USA's and Israel's border fences at the USA-Canada border and the West Bank are significant examples. The first proposal for building a border fence came from a regional politician in Assam[57] in 1960. At that time, Bimala Prasad Chaliha's Congress government of Assam launched a controversial campaign to deport Bangladeshi immigrants who had been living in Assam for a long time (Shamshad, 2008). It didn't receive any support from the Central Government. The Central Government of India didn't agree to deport Bengali immigrants, but the campaign was able to convince the Central Government to build a fence (in some selected places) at the Assam-Bangladesh (Former East Pakistan) border. At the end of the 1970s, the central government was convinced by robust and violent anti-Bengali protest of Assamese regional politicians and finally approved an India-Bangladesh border fence in 1986 (Shamshad, 2008; see also Rashid, 2010). Thus, the government of India took initiatives to seal the border along a total of 3436.59 km. Although this was protested by Bangladesh, human rights organisations and also some regional political groups in India, "The total length of India-Bangladesh border sanctioned to be fenced is 3,436.59 km; out of which 2,709.39 km of fencing has so far been completed, and the work of construction of fencing in approximately 727km is under implementation" (Shamshad, 2008 p. 10). Moreover, "India has been quietly sealing itself off Bangladesh, total 2500 Kilometres in the past seven years. The fencing project will eventually reach across 3,300 Kilometres, hundreds of rivers and long stretches of forests and fields. Of the total 3,300 Kilometres fencing, 577 kilometres and gradually India will seal off this 577 Kilometres Bangladesh border in this sector" (Rashid, 2010, p. 182).

The research found that although this issue began in 1960, it was not included in the LBA, 1974 nor in the 2011 Protocol. The research primarily focused on the land border dispute, which was partially resolved through the LBA, 1974 and the 2011 Protocol. However, the recent disputed issues couldn't be ignored, as stated earlier. It is true that human rights have been violated in the conflicted border area by this border security fence. The research also found that border fencing is rooted in the illegal immigration problem as stated above.

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[57] A province of India.

Moreover, international law does not prevent states from constructing border fences in their own territory (Trouwborst, Fleurke and Dubrulle, 2016). But the fact remains that this fence is constructed inside Indian territory. According to India's claim, this fence was constructed to prevent illegal immigration and illegal trade. After conducting the initial literature review, the research found that in order to obtain a comprehensive analysis of this issue, the research needed to provide an account of (to some extent) illegal immigration and other related issues as well, which is not obviously the focus of this research. Moreover, this issue is considered a peripheral issue of this research topic. It was not possible to cover all of the peripheral issues in this research, since it has to maintain the focus of the PhD research. Therefore, it only provides a brief description of this issue and does not conduct a further analysis. This could be a potential topic for future researchers.

Water-sharing issue

The thesis primarily emphasises the land boundary dispute and has not explored the water-sharing problem between India and Bangladesh, as mentioned in chapter 5 (see pages 161-162). However, this is a small but significant part of the issues existing between them, originating in the inadequate boundary line drawn by British colonial officials in 1947. Therefore, the thesis provides a brief account of these issues here and in chapter 7, but does not conduct further analysis. India completed construction of the Farakka barrage in 1975, despite massive protest from Bangladesh (Anam, 2016). Bangladesh took this issue to the United Nations in 1976. "Ergo, a Consensus Statement was adopted on 26 November 1976. The Consensus Statement was a sort of an embarrassment for India and led to the signing of India-Bangladesh Water Agreement in 1977 for a period of five years" (Ranjan, 2015 p. 39). It may be noted that the river boundary should be distinguished from the maritime boundary, because the river boundary does not fall within the domain of United Nations Conventions on the Law of the Sea (UNCLOS) of 1982 (Rashid, 2010). To solve this problem, the Agreement on sharing of the Ganges waters at Farakka and on augmenting its flow, 1977, 1980 (MOU), 1982 (MOU) and 1996[58] were signed. Another dispute regarding the sharing of the Teesta River is currently being negotiated between India and Bangladesh. It is very unfortunate that, due to protest from Mamata Banerjee, the West Bengal Chief Minister, India halted the Teesta water-sharing deal (The Indian Express, 2016). However, the only significant part of this issue is that it helps to understand the contingent constraints of the India-Bangladesh border conflict shaping the 2000-2015 negotiations, which are briefly explained further in chapter 7.

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[58] Ganges Water Sharing Agreement, 1977 (for 5 years), Memorandum of Understanding, 1982, Memorandum of Understanding, 1985 (for 3 years), Ganges Water Sharing Treaty 1996.

6.4 Conclusion

The India-Bangladesh border dispute is a long-standing conflict rooted in their colonial past. It is also a notable example of the negotiation process of solving disputes in the international law of conflict management structure. It took 44 years to reach a partial resolution, and some significant issues are still pending. The research has asked, how far, drawing on a case study, can one conclude that the current process of territorial dispute management of international law needs rethinking considering political influences and with respect to human rights issues in border disputes? How does it shape relations between India-Bangladesh? In order to answer these, using the critical theoretical framework, the first section of this chapter aimed to open up the reality of the research 'problem' by identifying 'possible constraints' undermining success in India-Bangladesh dispute resolution. This is a significant part of the first methodological phase, namely problem identification, exposed and structured. The research has disclosed the problem existing in the 'India-Bangladesh border dispute resolution', namely that although international law is still operating as a generative regulating force, it has been unable to fulfil its purpose as it is supposed to, primarily because of 'politics', but also due to other factors interplaying in this context. As a result, this dispute remained unresolved for a long time. This indicates a distorting relationship between international law and politics in this context. It also reveals that international law could not work effectively because of its inherent deficiency, lack of compliances and the weak nature of its implementation process. This explicitly indicates how these elements (the inherent deficiency of international law of conflict management and politics) interplayed in this specific problem. Moreover, the discussion also reveals a 'possibility', namely that positive political relations sped up the dispute resolution process to reach a resolution. Therefore, it explores the influences of political relations on the conflict and its management process and/or vice versa.

This chapter further identified the problem by disclosing human rights violations due to border killing and tortures. It discloses the sufferings of people in conflicted border areas including common rivers areas, identifying the power domination by the powerful actor of India in this specific context. Finally, it accomplishes the task of its first methodological phase in this chapter, arguing that international law is not doing its job in managing or resolving territorial disputes properly in the context of the India-Bangladesh border dispute. This became evident in this chapter by disclosing and exploring the influences of political relations on the conflict and its management process and/or vice versa, as well as the sign of 'suffering' in this context, namely the life experience of people on the ground. Therefore, it could be argued that the international law of conflict management needs to be reconstructed. This problem identification leads to a detailed analysis of the dispute management, reconstructed as an interpretation or explanation in chapter 7.

Chapter 7

Evaluation of the India-Bangladesh border dispute and its settlement

7.0 Introduction

The long-standing India-Bangladesh border conflict has shown itself to be particularly intractable, taking 44 years to progress to only a partial resolution. This chapter concentrates on how effective the available means for conflict resolution have been; it will also analyse why this conflict has proved so intractable. It examines more carefully how the disputes are viewed, defined and acted upon by key players and enquires as to how international law specifically shapes conflict resolution/management. The chapter contains an evaluation, drawing on analyses from both sides, but the principal focus is the weakest actor, whereby it makes sense of Bangladesh's response to attempts to dominate its border policies by a much larger country which was also, in the early 1970s, the sponsor of its independence. It further includes a critical assessment of their negotiation and the interlocking of legal and political arguments in the management of the conflict. It also contains a discussion of economic relations between these two neighbours as an integral part of this analysis. Throughout this discussion, the chapter interrogates the relationships between international law and politics, seeking to identify the clusters of causes which have shaped both the process and the outcomes of the partial agreements that India and Bangladesh achieved until 2015.

In chapter 2, the critical theoretical significance of this research was demonstrated along with a critical theoretical framework. This is the base upon which the critical theoretical characteristic comprising 'reconstruction' and 'reconstructive explanatory critique' builds. Chapter 3 justified and illustrated the methodological tools and the three main phases of this 'reconstructive explanatory critique'. The first phase, which used the framework for 'problem identification and disclosure', was given in chapters 4, 5 and 6. Chapter 6 also built on those bases to examine more relations since Bangladesh won independence. These chapters also establish that the current normative practices of international law in conflict management is problematic. It is problematic because of its internal deficiencies (i.e. contradictory pattern and non-compliances of rules and practices) and because powerful external influences (i.e. politics, power, context, interests, leadership, and ideology) undermine its effectiveness in interstate dispute management. Therefore, it needs to be re-evaluated. Chapter 6 justified this claim by analysing the case study of India-Bangladesh border dispute management, which involved the first step of employing critical methodologies to identify the 'contingent constraints' which in this case 'block' successful conflict management.

This chapter will identify the 'causes' of those constraints by employing the second step of its methodological structure. The findings of the analysis presented in tables 7.1.3 and 7.1.4 of this chapter are based primarily on an analysis of 175 documents, of which 81 have been subject to detailed analysis, as outlined in chapter 3. The material is analysed in detailed

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tables; the referencing to key sources is identified when the sources related to specific claims about the causes and processes of negotiations and their outcomes as given below are identified. The 81 documents are also identified in appendix D. Likewise, the findings of the analysis presented in table 7.1.1 and figure 7.1.2 of this chapter are based primarily on an analysis of 63 documents derived from the Ministry of External Affairs, India, and the Ministry of Foreign Affairs, Bangladesh, and have been subject to detailed analysis, as outlined in chapter 3. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about the effectiveness and frequency of negotiations as given below are identified. The 63 documents are also identified in appendix C. In the same way, the findings of the analysis presented in table 7.1.5 of this chapter are based primarily on an analysis of 34 interviews and 40 other documents and have been subject to detailed analysis, as outlined in chapter 3. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about the causes of the current disputing issues which undermine the success of the resolution as given below are identified. The 74 documents are also identified in appendixes E and F. This chapter also provides a reconstructive critical explanation of the normative practice of international law of conflict management by assessing the impact of the practice of international law of conflict management in the case study. Taking negotiation as the means of conflict management, it aims at an assessment which analyses and then reconstructs the ideas and events shaping the management and outcomes of this conflict. This also enables the precise investigation of other intervening factors (i.e. power, interests, contexts, leadership, core ideas and assumptions) as the primary theoretical source of the approach here, as proposed by Strydom's work (2011) and other authors cited here.

7.1 Diagnostic reconstructive critical explanation of negotiation as a process of solving international disputes

Central to the 'diagnosis of the pathologies' (Strydom, 2011, p. 200) of the 'problem' of a negotiation is the 'reconstruction' of the normative practical import of the everyday social practice (i.e. India-Bangladesh border conflict management) relevant to the existing paradigm of international law. In this respect, such reconstruction depends on both interpretation and description. For this purpose, chapter 5 has already offered an interpretation of the history of the problem of the India-Bangladesh border dispute. Chapter 6 analysed the detailed phases of conflict management in the context of political relations. This enables one to obtain a "reflexive abstraction and statement of the normative principles or ideas of reason having a foothold in, yet simultaneously generatively regulating, those social practice" (Strydom, 2011, p. 200). According to this critical explanation (as demonstrated by Martti Koskenniemi; see chapter 2 see also chapter 4) 'politics' is the

hidden force and the internal deficiency of international law of conflict management which harbours the potentials of these recurrent problems. More accurately, politics is a factor which is always present; however, dispute management cannot be reduced to politics (domestic or international) alone, given the continuously shaping role of law as well as ideas. The research analyses (i.e. breaks down into component elements) the factors which limited and then created a context where partial agreement was possible and then seeks to provide a normatively alert reconstruction as an explanation of both agreements and failures to agree in this case.

The reconstructive explanatory structure which is emerging here firstly engages with the reconstructive critique of the current political theoretical approach of international law (for more details see chapter 2) and finally draws on its critical theoretical approach to bring the argument to a conclusion, drawing on Koskenniemi (2005, 2011), Higgins (1994), and Henkin (1979). This critical theoretical approach criticises the current paradigm of international law of conflict management, exposing its weaknesses and its easily manipulated nature by powerful intervention; it exposes the possibility that international law is still workable in a particular area of conflict management. This reconstructive critique leads the research to a reconstructive analysis of the real-life problem of India-Bangladesh border conflict management. The critical analysis of what are in reality justice issues regarding the difficulties that ordinary people suffer on the border as well as the economic impacts and consequences of the dispute are important parts of the discussion in this chapter.

In deepening the reconstructive analysis, the research took the reference point of 'negotiation' as a frequently used process of interstate conflict management. Negotiation is a very significant step of conflict management and is associated with the expectation of generating a conflict resolution decision. The research also assumed that the principles applied in negotiation would be normative and sought to challenge that normative basis. This follows from the justificatory framework which was derived from the approach used here. This justificatory framework has one foot in the everyday social practice and another in the space of reasons justifying the normative practice of international law. This is the reflexive discursive medium by which the employed reconstructive critical explanatory framework obtains an 'epistemic dimension' or 'cognitive potential' (Habermas cited in Strydom, 2011, p. 202). It refers to the quality of the reconstructive explanatory critical framework that permits it to recognize the specific problem in a given context so as to reach a rationally grounded understanding of the problem being analysed (Strydom, 2011). For this purpose, it firstly evaluates the negotiations. Then it provides a 'critical explanation' of the 'causes' of success or failure of those negotiations, signifying the critical theoretical

concepts employed in this research. This 'critical explanation' also includes the 'causes' of the 'contingent constraints' conditioning current disputed issues.

In chapter 2, the major arguments and limitations of Koskenniemi's (2005, 2011) critical work have been identified, as noted above (see chapter 2 for details). Politics is always important in international law, in legal language, in legal framing, and in shaping the imagery of international law and the prejudices it may conceal. Thus, it is important to critically reflect on the international law of conflict management, although it may not explain the causes of the outcomes in the International Court of Justice or elsewhere. However, equally, much inter-state conflict is normally resolved through legal processes and legally constituted arrangements, including negotiation, arbitration or mediation, as Henkin (1979) elaborates and Higgins (1994) explains. Furthermore, Koskenniemi demonstrates a critical appraisal of arbitration and mediation in relevant cases but tends to neglect a more detailed assessment of the process of 'negotiation'. This study adds to an understanding of his work through its application of these ideas to a specific negotiation.

The manner in which India and Bangladesh have managed their border dispute issues has mostly comprised direct negotiations between officials and ministers. Chapter 4 briefly acknowledged the various forms dispute settlement that have followed, providing evidence both of the difficulties and the possibilities for success. In general, as that chapter noted, law and politics interleave together in dispute settlement. Negotiation is difficult, and the conditions for a successful negotiation lie at least as much in the context and images and perceptions of the parties as in any legal mechanism. Nevertheless, the UN Charter does enjoin parties to pursue settlement by a range of means, of which negotiation is a primary instrument. In a possible negotiation, areas of potential agreement are defined while areas of disagreement are identified and as far as possible reduced until an accord is reached. For instance, negotiation between Indian Prime Minister Mrs Gandhi and Bangladeshi Prime Minister Sheikh Mujib in 1974 was apparently considered as an effective negotiation because it concluded with an effective land boundary agreement (Rashid, 2003).

The 'agreement' should reflect both parties' interests. The problem is, however, that this is often difficult and sometimes impossible. In the majority of cases, leaders become very reluctant to reach any conclusion which might have a negative consequence on their national interest and security, especially if the disputed territory has a high economic, political or strategic value (see chapter 4 for details). Moreover, although negotiation is considered the most likely process of dispute resolution to succeed, it depends on conflicting parties' will to accept the outcome. Koskenniemi (2005) criticised this by arguing that the success of negotiation merely depends on the 'consent' of a state and is not a compelling 'obligation' (see pages 45-46 for more details). Hence, this non-obligatory pattern of the negotiation process often become ineffective. It is the task of the research to

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follow the trail of evidence in order to discover when, why and how particular discussions led to successful outcomes, and that is what this chapter aims to do.

7.1.1 India-Bangladesh border dispute negotiations

As discussed in chapter 6, Bangladesh inherited the border dispute from its mother country Pakistan after it become independent in 1971, at which point both countries decided to resolve the issue through negotiation. A significant negotiation was done in 1974 between these two neighbours, which resulted in the signing of the Land Boundary Agreement, 1974 (Madhav, 2013). However, it was not implemented as it was not ratified by India (see chapter 6 for details). Following the assassination of Sheikh Mujibur Rahman in 1975, with the exception of the corridor issue, the agreement was not implemented until 2015 (see chapter 6 for details). The research doesn't conduct a detailed analysis of the corridor issue as it found two significant studies, by Whyte (2002) and Cons (2016), which explicitly focused on the enclaves including corridor issue; therefore, there is no gap in the literature concerning this issue. The research did find that there, no significant research has been done on India-Bangladesh land border dispute resolution through the implementation of LBA, 1974 in the context of international law of conflict management, upon which this research focuses (see chapter 1 for details). However, as mentioned earlier, the research primarily focuses on the land border dispute, which has been (partially) resolved through LBA, 1974 and the 2011 Protocol. It also significantly includes the recent disputed issues which are creating problems at the border area, as mentioned earlier. After doing the initial literature review, the research found that there was no significant improvement regarding the implementation of LBA, 1974, including enclave transfer and related issues, until 2001. Whyte (2002, p. 148) argues that, "No follow-through on enclaves… until 2001". Das (2010, no pagination) further supports this by arguing that, "It was only during Sheikh Hasina's tenure that India-Bangladesh relations began to incrementally improve, and steps towards the resolution of some outstanding issues were taken, the boundary dispute being one of them … For the resolution of the boundary issue, the decision to constitute a mechanism was taken during the foreign ministers' meeting in 2000. Subsequently, two Joint Boundary Working Groups (JBWGs) were constituted on June 13, 2001". However, in agreement with this, the research found that the land border dispute resolution through the implementation of LBA, 1974 were significantly made by a series of negotiations held between 2001 and 2015. These significant negotiations began when Sheikh Hasina led the Awami League came to power in Bangladesh for the first time. Consequently, both countries agreed to resolve this issue and, finally, the 'effective negotiation' process started in June 2001.

7.1.1.1 The final stage of negotiations (2001-2015)

In selecting the most significant negotiations for the analysis which explicitly addressed the border dispute issues (through documents collected from the Ministry of External Affairs, India, and the Ministry of Foreign Affairs, Bangladesh), the research found that during the negotiation phase, some (not all) ministerial meetings (for example some Home Minister or Home Secretary level discussions as well as some Foreign Secretary level discussions and more) supported the head of government discussions, and both were heavily underpinned by a series of official exchanges constituted in a high level bilateral relations group. After top-level negotiations, there were also meetings of senior officials which followed up those negotiations; however, the documentation from those follow-up meetings was bland and uninformative and were excluded during the choice of main documents for this analysis.

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2001-2004[59]

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In June 2001 a Bangladesh Joint Secretary of Ministry of Home Affairs visited India and a negotiation took place that explicitly concerned pending matters relating to the India-Bangladesh Land Boundary Agreement, 1974 (India. MEA, 2001b).

- **Agenda relating to border dispute:** Border management and implementation of the Land Boundary Agreement, 1974 (India. MEA, 2001b).

Outcome: Both sides reiterated their "commitment to the Land Boundary Agreement of 1974 and, consistent with its provisions, emphasized that pending implementation by mutual agreement, the status quo shall be maintained and peaceful conditions should prevail along the border" (India. MEA, 2001b, no pagination).

- In February 2002, during a goodwill visit of the Bangladeshi Foreign Secretary to India, a bilateral negotiation took place (India. MEA, 2002).

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[59] India-Bangladesh bilateral negotiations between 2001 and 2004 included Bangladesh Prime Minister and Prime Minister of India's talk on 4 January 2002 at Kathmandu during the SAARC summit, as well as at the Islamabad SAARC summit on January 2004, which didn't significantly address border dispute issues according to the Ministry of External Affairs, India (2002) (see also, Kriti, 2006). Other bilateral discussions include the Bangladesh's Foreign Minister's India visits on February 2003 and June 2004 (carrying a letter from Bangladesh's Prime Minister to India's Prime Minister after forming new government in Bangladesh). The Indian External Affairs Minister visited Bangladesh in August 2002 and in July 2003 for bilateral economic commission meetings and significantly discussed economic and trade issues (India, MEA, 2002, 2003a, 2003b, Kriti, 2006). The Bangladesh Foreign Minister visited India on November 2004 to invite the Indian PM for a SAARC meeting and discussed trade and economic issues as well as other bilateral issues (Kriti, 2006). The research found that the most significant negotiations regarding the border dispute issue taking place during this period were the negotiation during Bangladesh's Joint Secretary of Ministry of Home Affairs visits to India in 2001, the negotiation during Bangladesh's Foreign Secretary's India visit in February 2002 and the bilateral meeting between the Indian and Bangladesh Foreign Secretary, 2003.

Agenda relating to border dispute: Border demarcation and related issues (India. MEA, 2002).

Outcome: No decision made except a promise to conduct further negotiation (India. MEA, 2002).

- In April 2003, during the Indian Foreign Secretary's visit to Bangladesh, a bilateral negotiation took place (India. MEA, 2003a).

Agenda relating to border dispute: Issues relating to the completion of demarcation of the India-Bangladesh land boundary and border management (India. MEA, 2003a).

Outcome: No decision. Provided hope that the JBWG would meet and discuss this issue (India. MEA, 2003a).

2005-2006[60]

- In June 2005, in New Delhi there were Foreign Office consultations between India and Bangladesh (India, MEA, 2005b).

Agenda relating to border dispute: Peaceful management and demarcation of the border (India. MEA, 2005b).

Outcome: No decision except a promise to conduct further negotiation (India, MEA, 2005b).

- In March 2006, during Bangladeshi Prime Minister Begum Khaleda Zia's visit to India, negotiation took place in New Delhi (India. MEA, 2006).

Agenda relating to border dispute: Implementation of border demarcation, peaceful border management and other related issues (India, MEA, 2006).
Outcome: No decision (India. MEA, 2006).

2007-2008[61]

- In June 2007, in Dhaka a bilateral meeting was held between the Foreign Secretary of India and the Bangladesh Foreign Secretary (India. MEA, 2007b).

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[60] High level bilateral discussions during this time significantly included home secretary level talk, 2005 and the Indian External Affairs Minister's Dhaka visit in 2005. These discussions didn't address border dispute issues (India, MEA, 2005a, 2005b). The research found that, during Foreign Office consultations in 2005 and 2006, Bangladesh PM's visit to India border dispute issues were discussed significantly.

[61] During this period, high-level negotiations included an Annual Foreign Office consultation in 2008, the Indian External Affairs Minister's visit in 2007, which didn't discuss the border dispute issue, and a Home Secretary level talk in 2008, which didn't include border demarcation or related issues and only reviewed the discussion held during the Foreign Secretary level meeting in 2007 (India.MEA., 2007b).

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Agenda relating to border dispute: Border demarcation and related matters (India. MEA, 2007b).

Outcome: Both parties agreed to consider a practical way to resolve this matter (India. MEA, 2007b).

2009-2010[62]

- In February 2009, Indian External Affairs Minister Shri Pranab Mukherjee visited Bangladesh and a bilateral negotiation took place with Bangladeshi Foreign Minister Dr Dipu Moni. (India. MEA, 2009a; see also Bangladesh. MOFA, 2013a). Shri Pranab Mukharjee was the External Affairs Minister of India between 24 October 2006 and 22 May 2009. He was also Minister of Finance of India between 24 January 2009 and 24 July 2012.

Agenda relating to border dispute: Cooperation in a range of areas, including border management and implementation of the Land Boundary Agreement, 1974 (India. MEA, 2009a; see also Bangladesh. MOFA, 2013a).

Outcome: Agreed to a Border Management Plan and to resolve the border demarcation issue in a comprehensive manner (India. MEA, 2009a; see also Bangladesh. MOFA, 2013a).

- In September 2009, in New Delhi at a meeting between Bangladeshi Foreign Minister Dr Dipu Moni and Indian External Affairs Minister Shri S. M Krishna a bilateral negotiation took place (India. MEA, 2009c; see also Bangladesh. MOFA, 2013a).

Agenda relating to border dispute: Border demarcation and related issues as well as peaceful border management (India. MEA, 2009c; see also Bangladesh. MOFA, 2013a).

Outcome: Both sides agreed to comprehensively resolve the outstanding land border issue and they agreed to mandate their respective Foreign Offices to meet and discuss the technical and other parameters of this issue. They also agreed to resolve the Dahagram-Angorpota corridor issue as an urgent matter and they considered it a humanitarian issue.

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[62] A series of bilateral talks took place between 2009 and 2010. Visits and talks included the Indian State of External Affairs occasional talk with the Bangladesh Foreign Minister in New York in June and later in Delhi in July 2009 and the two PM's bilateral talks in Egypt on the side-line of the NAM summit in July 2009, whereby border-related issues were not explicitly discussed except as a mention (India. MEA., 2009a, 2009c, 2010a, 2010c).

Both parties decided to reconstruct border Haats at the border as a part of peaceful border management (India. MEA, 2009c; see also Bangladesh. MOFA, 2013a).

- In January 2010, Bangladesh's Prime Minister Sheikh Hasina visited India and a meeting was held with Indian Prime Minister Dr Manmohan Singh. (India. MEA, 2010c; see also Bangladesh. MOFA, 2013a).

Agenda relating to border dispute: Demarcation and related border issues (India. MEA, 2010c; see also Bangladesh. MOFA, 2013a).

Outcome: Agreed to comprehensively address all outstanding land boundary issues. Agreed to convene the JBWG to take this process forward. Agreed that the respective border guarding forces exercise restraint and hold regular meetings for peaceful border management (India. MEA, 2010c; see also Bangladesh. MOFA, 2013a).

2011-2012[63]

- In September 2011, during Indian Prime Minister Dr Manmohan Singh's visit to Bangladesh, a bilateral negotiation took place with the Bangladeshi Prime Minister (India. MEA, 2011a; see also Bangladesh. MOFA, 2011b).

Agenda relating to border dispute: Border demarcation and peaceful border management (India. MEA, 2011a; see also Bangladesh. MOFA, 2011b).

Outcome: Protocol of demarcation of the land boundary between India and Bangladesh was signed and satisfaction was expressed regarding the agreed Co-ordinated Border Management Plan, which was done at the Home Secretary level as a groundwork for this meeting (India. MEA, 2011a).

- In May 2012, Bangladeshi Foreign Minister Dipu Moni visited India while a bilateral negotiation took place during a Foreign Office consultation (India. MEA, 2012d; see also Bangladesh. MOFA, 2012c).

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[63] India-Bangladesh high-level meetings between 2011 and 2012 include the Indian Finance Minister's Dhaka visit in 2011, the Foreign Secretary meeting in 2011, Bangladesh Prime Minister's visit to Tin Bigha Corridor, the Indian External Affairs Minister and Home Minister's Dhaka visit in 2011, the Indian Finance Minister and Home Minister's Dhaka visit in 2012, and the Bangladesh Home Minister's India visit in 2012. The research found that the Indian Prime Minister's visit in September 2011, the Bangladesh Foreign Minister's visit to India in 2012, and the Joint Foreign Office Consultation in 2012 discussed here are very important because they all significantly addressed border-related issues. Other high-level talks basically provided groundwork, while some only briefed on the decision taken by these meetings (India. MEA, 2011d, 2012a, Bangladesh, MOFA, 2013a). To avoid overlapping in the frequency analysis, the research excludes these.

Agenda relating to border dispute: Implementation of the 2011 Protocol and border management (India. MEA, 2012d; see also Bangladesh. MOFA, 2012c).

Outcome: Prioritised and agreed on the early implementation of the 2011 Protocol (India. MEA, 2012d; see also Bangladesh. MOFA, 2012c).

- In July 2012, a Foreign Office consultation took place between India and Bangladesh (India. MEA, 2012a, 2012f).

Agenda: Cooperation, including progress of activities under border management and other border-related issues (India. MEA, 2012a, 2012f).

Outcome: No decision (India. MEA, 2012a, 2012f).

2013-2014[64]

- In February 2013 in Dhaka, negotiations took place during a joint consultation between India and Bangladesh (India. MEA, 2013d; see also Bangladesh. MOFA, 2013a).

Agenda relating to border dispute: Coordinated border management plan and implementation of the 2011 Protocol (India. MEA, 2013d; see also Bangladesh. MOFA, 2013a).

Outcome: Exchange of all the signed Strip Maps of the land boundary as part of the implementation of the 1974 Land Boundary Agreement and its 2011 Protocol. Confirmed that Indian Cabinet had already discussd the Constitution Amendment Bill to pave the way for full implementation of the agreement and agreed on the implementation of the border management plan (India. MEA, 2013d).

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[64] High-level bilateral talks between India and Bangladesh in 2013 included the Indian President's visit to Bangladesh in 2013, the India-Bangladesh Home Secretary Consultation in 2013, a video conference between the Indian and Bangladeshi Prime Minister in 2013, the Indian Foreign Secretary's visit in 2013, and the Joint Consultative Commission meeting in 2013. After reviewing these, the research found that the Joint Consultative Commission meeting in 2013 very significantly discussed the border issue, while the other bilateral talks at the Home Secretary and Foreign Secretary level and the Presidents' talks didn't significantly address this issue but rather provided only briefing about the previous decision (India. MEA, 2013d, 2014g; see also Bangladesh, MOFA, 2013a, 2014b, see Appendix C for more reference). In 2014, the Prime Ministers of both countries met in New York during the UN Assembly. Moreover, the Indian Minister of State of External Affairs visits to Bangladesh were not very significant regarding the border dispute (Bangladesh. Mofa, 2013a India.Mea,2014g; see also Bangladesh. MOFA, 2014b, see Appendix C for more reference). The research found that the most significant negotiation was held in September 2014 during the Joint Consultative Commission meeting followed by the Indian External Affairs Minister's visit to Bangladesh (the research combined them together to avoid overlapping in the frequency analysis).

- In September 2014 in New Delhi, during a joint consultative meeting between the Bangladeshi Foreign Minister and Indian External Affairs Minister, a bilateral negotiation took place (India. MEA 2014g; see also Bangladesh. MOFA, 2014b).

Agenda relating to border dispute: Implementation of the coordinated border management plan, ratification of the implementation of the 2011 Protocol (India. MEA, 2014g; see also Bangladesh. MOFA, 2014b).

Outcome: India confirmed that the ratification of the 2011' Protocol was underway (India. MEA, 2014g; see also Bangladesh. MOFA, 2014b).

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2015[65]

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- In June 2015, during Indian Prime Minister Narendra Modi's visit to Bangladesh and meeting with Bangladeshi Prime Minister Sheikh Hasina, a bilateral negotiation took place (India. MEA, 2015g; see also Bangladesh. MOFA, 2015b).

Agenda: Ratification of the 2011' Protocol and discussion on border management (India. MEA, 2015g; see also Bangladesh. MOFA, 2015b).

Outcome: Both Prime Ministers signed, adopted and exchanged an "Exchange of Instruments of Ratification of 1974 Land Boundary Agreement and its 2011 Protocol" (India. MEA, 2015g). Agreed on further negotiation to implement the border management plan and "exchange of letters on Modalities for implementation of 1974 Land Boundary Agreement and its 2011 Protocol" (India. MEA, 2015g, no pagination) took place.

7.1.2 Reflection on the main assumption of the critical theory and methodology employed in analysing documents

The research found that the negotiations[66] stated above are very substantive and could be considered as actual moves towards resolving this dispute between 2001 and 2015. The research has analysed the documents related to these negotiations stated above against the 'political regimes' of these two countries. For analysing documents and texts, it employed qualitative content analysis (for details of how data were collected and analysed, see pages 85-93). For the purpose of analysis and interpretation, the research used the critical theoretical approach outlined in chapter 2. The documents analysed for this chapter

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[65] In 2015, according to the Ministry of External Affairs, India (2015), the most important high-level talk was the Indian Prime Minister's visit to Bangladesh in June 2015, in which the 2011 Protocol was exchanged (This research stopped collecting documents at this point).

[66] Please note that the information and the documents related the negotiations presented here have been collected through the Ministry of External Affairs, India, website and the Ministry of Foreign Affairs, Bangladesh, website. As these negotiations are mostly bilateral negotiations between India and Bangladesh, they not only discussed the border dispute issues but also covered other issues such as trade, investment etc. Therefore, the research uses qualitative content analysis through data collection to analyse the collected documents as demonstrated in chapter 3 and presents them as below.

(the detailed process is presented in chapter 3) aims to fulfil the second phase of the critical methodological framework demonstrated in chapter 3. Most significantly, this part of the analysis has been built to explicate its critical theoretical explanation, drawing from the mainstream of critical theory, as described in chapter 2. However, this section will explain where and how critical theoretical and methodological assumptions have been employed in analysing the documents used for this chapter. As mentioned in chapter 3, for the first part of the analysis (the findings are demonstrated in table 7.1.1 and pages 212-217), the research analysed governmental documents through qualitative content analysis (see pages 85-93 for details). This part of the analysis sets out to uncover the distorted relationship between law and politics in the context of the India-Bangladesh border dispute negotiation, which is a significant part of its employed critical theoretical assumption of 'reconstruction' or 'reconstructive explanatory critique' (see chapter 2 and 3 for a detailed discussion of reconstruction). This initial aim also is significantly directed by the assumption of CTIR and CLS which the research employs, that is, to clarify how politics legitimate and are legitimated by international law and doctrine. However, in the content analysis the researcher's primary critical emphasis is on exploring the motivation/perception of the negotiators in the negotiation of the border dispute. In doing so, it employs critical theoretical significance, which stresses the difficulty of understanding perception/consciousness and thus of understanding human motivation objectively. Consciousness, or the motivation (in this context), arrives from priority aims and interests. Understanding the perception or motivation is very significant because it leads the research to understand and interpret what the true interests of the negotiators are. More preciously, it will expressively point out whether there are any compelling interests which motivate the negotiators to resolve this dispute or whether it has followed the straight forward negotiation process of the international law of conflict management. These compelling interests are primarily considered as (but not limited to) 'politics', as explained in theory and methodology chapter, which signifies 'politics' as a key hidden force responsible for influencing the rules and processes of international law (see chapter 2 and 3 for details). Moreover, one of the major aims of critical theory is to understand the hidden forces which created that situation, for example, social, cultural, ideological and contextual forces. It also gradually leads the research to explore the interplay between law and politics in this context of dispute management. In order to determine how these negotiations are shaped by 'politics', the research further employed the critical theoretical argument of Koskenniemi (2005, 2011), whereby it aims to explicate his account of the politics of international law. Despite its wide popularity, Koskenniemi's (2005, 2011) account of the politics of international law has not been confirmed through other research with an emphasis on analysing a specific case study which followed negotiation as a process of dispute management (see page 86 for details). From this perspective, the research considered how well Koskenniemi's (2011) argument

demonstrates the influence of politics in India-Bangladesh border conflict management (see page 86 for details). Furthermore, an essential criterion of its employed qualitative research is context sensitivity (see pages 88-89 for details). Therefore, along with critical theoretical significance, the researcher analysed the negotiation documents in relation to the domestic political context of both India and Bangladesh. Finally, in this chapter, the researcher compares the 'frequency' and the 'effectiveness' of the selected negotiations against the domestic political contexts of these disputing countries to explore how far the findings support the critical theoretical argument of Koskenniemi's (2005, 2011) the account of the politics of international law, as presented in chapters 2 and 3.

Another important thing is that the employed qualitative analysis of this research requires a clear sense of what the parameters of the approach are but also a flexibility and open-mindedness in reading and assessing the evidence so that different possible interpretations can be born in mind. Critical theory provides the assumptions and generates the core questions which follow. In general, it does not propose specific research methods; however, the use of the qualitative approach comprising the document analysis and qualitative content analysis drawing on the methodologies outlined in chapter 3 fill that gap. Moreover, to fulfil the requirement of the research as demonstrated in chapter 3, this analysis employed interpretivist epistemology, which builds on the idea that "Knowledge as constructed, not as objective [which] can be found" (Silver and Bulloch, 2016 p. 7). It emphasises the 'subjectivity' of the knowledge of the actors studied but does not imply that its own knowledge production is merely subjective; rather it is not 'objectivity' and emphasises 'meanings' (intersubjective meanings of the negotiation process) instead of 'the facts.' It is through closely exploring the interplay of subjective meanings that (valid, sound) knowledge can be constructed. In doing so, the interpretation of the language of the document is very significant. In this research, the use of 'language' means to form an understanding and interpretation of social relations, including sometimes hostile language between actors. Each key actor comes with their own national interests and no one considers giving up that interest in the negotiation. At the same time, the interpretation of the differences between legal language (the language of the international law of conflict management) and political language must also be considered here. In the India-Bangladesh border conflict negotiation, legal language is more moral and general rather than specific. The most significant thing is to interpret the political language used in the negotiation, whereby both countries were trying to shape the decision-making in their own interest (see pages 76-77 for details). For instance, while interpreting the language of negotiations between India and Bangladesh regarding border conflict management, when the discussion is postponed for '*further negotiation'* (see pages 76-77 for details), the interpretation of the language needs further explanation. Similarly, we cannot assume that when negotiators claim success that it cannot be questioned. That particular language of 'further negotiation',

of postponement, points to a less effective negotiation process at that point. Thus, in the evaluation of India-Bangladesh border dispute management, a critical theoretical approach takes account of the practice of diplomacy and the practice of its own research in a way that a positivist approach would generally not do. "For Critical Theory, explanation, critique and the potential practical relevance of the explanations and critiques it develops are of defining significance" (Strydom, 2011, p. 151). Moreover, the researcher needed to understand the political and legal vocabulary of conflict management and the hostile language of political exchanges and make sense of these; as Strydom maintains, "of particular importance is that language use and communication, but also action and practice" are understood together with their effects (Strydom, 2011, p. 150) (see page 76-77 for more details). Furthermore, in analysing the language of the document, the research employed McGregor's (2010) _critical analysis_ as set out in chapters 2 and 3 (for example see pages 108-109 and also 208-209). The reader should note that this is an account of the critical document analysis used throughout the thesis and is not the same as particular forms of 'critical discourse analysis', which the thesis does not use. Finally, the critical theory approach used here is able to link the more rigorous process of analysis which explores, analyses and explains as far as it can the nature of the negotiation process and the influence of politics on it, which India and Bangladesh have followed to reach the partial solution agreed upon as of 2015.

However, determining the influences of domestic political contexts in this dispute management process could not alone fulfil the requirements of a critical theoretical research because critical theory points to the importance of interests and contexts more broadly which influence knowledge production and reproduction (see chapter 2 for details). One of the most important tasks of critical theory is to reveal the effects of these conditionings. If we consider the negotiation process here as a process of knowledge production, then the critical approach raises the most vital questions: why and how has this knowledge production been influenced by domestic politics? To answer this question, it is essential to reveal the effects of the social conditioning of this knowledge production process (i.e. power, politics, contexts and interests). It defined the goal of the analysis as an uncovering of the underlying forces which manipulate the negotiation process, a dimension which requires a further stage of analysis (see pages 93-102 for more details). This part of the analysis has also been set out to fulfil the requirements of the second methodological phase (explained in chapter 3). However, this part of the analysis starts drawing on the critical theoretical argument that knowledge is always conditioned by historical and material context as demonstrated in chapter 2. Therefore, there are some prior factors or interests which shape the knowledge formation. In the analysing process, the research assumes that the India-Bangladesh border dispute negotiation is a process of knowledge formation/production. This process of knowledge formation is shaped by some prior factors or interests (employed

by critical theory). Employing critical theoretical insights, the research assumes that these prior factors and interests are power, politics, interests and contexts (see chapter 2 for details). In analysing the documents, the research was emphasising an exploration of the effect (positive/negative) of these prior factors and interests in the process of negotiation as well as in the outcome of the negotiation. This critical theoretical significance directs the researcher in doing the process of the analysis. For this purpose, the research collected documents for qualitative analysis (for more details, see pages 93-102). Please note that employing the same analysis process described in chapter 3, the research collected significant _quantitative data_ on India-Bangladesh economic relations to provide ancillary support to the qualitative analysis employed in this research; however, it does not use a quantitative methodology (see pages 85, 93 and 102 for details). These data have been reviewed and the causes for the 'political constraints' conditioning the actual economic relations between these two neighbours have been analysed as a part of this analysis, whereby same critical theoretical assumption and methodological tools have been employed as demonstrated here. However, while conducting the analysis of all collected documents, the research aimed to explicate the theoretical structure in chapter 2, where it is argued that context, law, politics, power and interests are specific issues on the ground that are always significant in dispute management. This potentially fulfils the critical theoretical assumption mentioned above. This explicitly enables the research to reveal the influences of prior facts and interests in the negotiations as well as the motivations of the negotiators. It is also significantly helps the research to explore the conditions (context, politics, power and interest) of the knowledge production (negotiation process).

The aim of this part of the analysis, of course, is to determine the causes and elements embedded in the actual problem situation as well as the discourses and self-understandings that shape those causes, in addition to revealing the obstacles or blocking forces which prevent the resolution of the problem. It also aims to uncover the causes of the unresolved disputing issues, which are leading to killing, torture and overall human rights violations in the conflicted border area – undermining the success of the dispute resolution. This aim is significantly derived from the critical theoretical assumption of 'reconstruction', methodologically termed as 'reconstructive explanatory critique', as demonstrated in chapters 2 and 3. It utilizes the different methodological tools discussed in chapter 3, moving from document selection to findings. They seek answers to questions that stress how social experience (in this context, negotiations) is created and given meaning through its interpretivist epistemology. The researcher analysed the collected documents while bearing these epistemological requirements in mind. Moreover, the researcher's employed interpretivist epistemology guides her not to observe the negotiations as a process of knowledge reproduction objectively, but rather to consider that this knowledge reproduction comes from, and is a result of, interactions between the key actors, namely India and

Bangladesh. Thus, this reproduced knowledge is socially constructed; other factors such as politics, contexts, law and power also played key roles in this knowledge reproduction. Interpreting the language of the collected documents is very significant in this context, as discussed above. In interpreting the documents, the analysis adheres to the following significant techniques, reflected from McGregor's (2010) _critical analysis_, as set out in chapters 2 and 3. It doesn't employ any 'critical discourse analysis', as mentioned above (see page 207).

- The analysis critically reads and interprets every sentence of the interviews and collected documents to reveal the information about power relations in the specific context. This is because, according to the McGregor's (2010) critical analysis, a sentence can also bear information about power relations. For example, while a sentence asserts that "India wanted to build an image of a responsible regional power, which significantly motivates it to resolve this dispute" (Madhav, 2013, p. 3), it speaks about the power political aspirations of the Indian authority in this context. By exploring this, the research fulfils an essential criterion of the critical theoretical assumption employed in this research, namely revealing the effect of power domination on this dispute and its management.

- The analysis interrogates the use of language as a form of political rhetoric which invokes, but often also seeks to conceal, power relations for specific purposes, which a careful analysis can explore. It can at the same time interpret the intended impression an agent seeks to create through their use of rhetoric in argument or public records.

- Nominalisation: this refers to a process where, while interpreting the documents, a verb converted into a noun reveals an underlying meaning more specifically. For example, convert 'dominating' to 'domination' to understand and interpret the term as a 'power' demonstration more specifically.

- Connotation, which implies to that a 'word' can bear a strong meaning. For example, while a sentence asserts that, "By displaying the nerve to implement the long drawn LBA agreement, Prime Minister Modi exhibited peerless political courage needed to make huge diplomatic gains" (Pusarla, 2015, no pagination); the word 'peerless' refers to an outstanding political 'effort' to resolve the situation. This effort is most often shaped by the domestic political context of Bangladesh as well as the changing international pollical context, especially in Asian politics.

- Insinuation, which implies a more indirect suggestion which, whatever the author/speaker's intention, can convey an opinion underpinning the text and which analysis can bring out and explain.

Moreover, to ground this approach of qualitative analysis, the research employed a critical realist ontology. That is to say, it adopted a view grounded in Archer's (2003) and Linklater's (2007) works that there is a knowable reality in the world, but that this reality is accessible only through a process of the evaluation of a range of evidence which reveals social practices and structures, unlike a simpler empiricist approach, which only relies on what evidence could be immediately observed by sense observation (sight, taste and so on, but also including evidence of sense observation in documents and news reports). One of the important characteristics of critical realist ontology is its predominance in knowledge production. At the initial stage of critical theory's knowledge production, the participant's perspective predominates, which is consistent with the critical ontological position where the research starts its investigation by presuming that the international law of conflict management is not doing its job properly. Critical theory leads to an analysis of an agenda or actions by taking into account that things exist 'out there', but as human beings our own presence as researchers influences what we are trying to analyse (Silver and Bulloch, 2016) (see page 72-73 for details discussion of critical realist ontology). In conducting the analysis process, the researcher considers the negotiation process (assessed through the content of the negotiation-related documents) as a 'nature of reality', and it is socially constructed, containing multiple realities comprising 'power', 'politics', 'context' and interests as well as perceptions. Another essential criterion of 'critical realist' ontology is to analyse and interpret the fact through the lens of a researcher's own understanding of interpretation; this again questions the risk of the negative effects of a researcher's positionality. Reflexivity, as already emphasised, has been employed in all stages of the research to mitigate the adverse possible effects of positionality (see pages 83-84 for details of reflexivity). The value of self-criticism has also been employed as an essential criterion of the employed normative axiology (see pages 77-78 for a detailed discussion of axiology). This element of self-criticism and dialogue in research, questioning the process undertaken but also the values engaged, is a critical part of CTIR (Patrascu and Wani, 2015). The ethical issues have also been considered at this stage of interpretation (see page 80 for a detailed discussion of ethical issues).

Please note that this research does not make specific emancipatory claims. Nothing in this thesis leads *directly* to emancipation. However, this explanatory critique leads to the *emancipatory potential* of its produced knowledge (see pages 59 and 82-83 for details). This is an element in the logic of the thesis; however, it is not a significant part of the claim to originality. Therefore, the critical theoretical concepts of 'emancipation' have not been reflected in the research, including in this analysis. Therefore, the analysis demonstrated in

chapter 3, the critical theoretical along with methodological significance demonstrated here, and the 'critical explanation' presented in this chapter accomplish the task of 'reconstructive explanatory critique' set out in the theory and methodology chapter. Finally, the critical theory approach used here is valuable to analyse the negotiation process of this border dispute because it throws light on both evident and less empirically observably causes of the failure to reach an agreement over a long period of time followed by a gradual thawing of relations and an effective implementation of the ideals expressed in their initial relationship when India helped an independent Bangladesh emerge in the early 1970s. Underlying structures of ideas, power relations, politics, context, political leadership and interests have been examined alongside both the effect of accidents and contingencies as well as the more empirically evident sources of behaviour.

7.1.3 Findings of the analysis

The findings of the comparing of codes employed in the qualitative content analysis, as demonstrated in chapter 3, are presented in a tabulated form below:

Table 7.1.1: Findings of the qualitative content analysis

(Outcome of the comparison of effectiveness and frequency of the negotiations)

Disputed Issue A: Implementation of Land Boundary Agreement, 1974								
Domestic Political Context of India.	Domestic Political Context of Bangladesh			Effectiveness of negotiations	Awami League	BNP	Others	Frequency of negotiations
	Awami League	BNP[67]	Others					
BJP [68]or BJP-led coalition government.	ME[69] – 0 L E[70]- 1 N E[71]– 0 N D[72]- 0	ME – 0 L E - 1 N E – 1 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0		Number of negotiations 1	Number of negotiations 2	Number of negotiations 0	
Congress or Congress-led coalition government.	ME – 0 L E - 3 N E – 0 N D – 0	ME – 0 L E - 1 N E – 1 N D - 0	ME – 0 L E - 1 N E – 0 N D - 0		Number of negotiations 3	Number of negotiations 2	Number of negotiations 1	
Others	ME – 0 L E - 0 N E – 0 N D – 0	ME – 0 L E - 0 N E – 0 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0		Number of negotiations 0	Number of negotiations 0	Number of negotiations 0	

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[67] Bangladesh Nationalist Party

[68] Bharatiya Janata Party

[69] Most Effective

[70] Less Effective

[71] Not Effective

[72] Not Discussed.

Disputed Issue B: Peaceful Border Management							
BJP or BJP-led coalition government.	ME – 0 L E - 1 N E – 2 N D – 0	ME – 0 L E - 0 N E – 1 N D - 1	ME – 0 L E - 0 N E – 0 N D - 0	Effectiveness of Negotiations	Number of negotiations 3	Number of negotiations 1	Number of negotiations 0
Congress or Congress-led coalition government.	ME – 1 L E - 4 N E – 2 N D – 0	ME – 0 L E - 1 N E – 1 N D - 0	ME – 0 L E - 0 N E – 0 N D - 1		Number of negotiations 7	Number of negotiations 2	Number of negotiations 0
Others	ME – 0 L E - 0 N E – 0 N D – 0	ME – 0 L E - 0 N E – 0 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0		Number of negotiations 0	Number of negotiations 0	Number of negotiations 0
Disputed Issue C: 2011' Protocol of Demarcation of Land Boundary between India and Bangladesh							
BJP or BJP-led coalition government.	ME – 1 L E - 1 N E – 0 N D – 0	ME – 0 L E - 0 N E – 0 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0	Effectiveness of Negotiations	Number of negotiations 2	Number of negotiations 0	Number of negotiations 0
Congress or Congress-led coalition government.	ME – 2 L E - 1 N E – 1 N D – 0	ME – 0 L E - 0 N E – 0 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0		Number of negotiations 4	Number of negotiations 0	Number of negotiations 0
Others	ME – 0 L E - 0 N E – 0 N D – 0	ME – 0 L E - 0 N E – 0 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0		Number of negotiations 0	Number of negotiations 0	Number of negotiations 0
Disputed Issue D: Joint River Boundary Issue.							
BJP or BJP-led coalition government.	ME – 0 L E - 0 N E – 0 N D – 3	ME – 0 L E - 0 N E – 0 N D - 2	ME – 0 L E - 0 N E – 0 N D - 0	Effectiveness of Negotiations	Number of negotiations 0	Number of negotiations 0	Number of negotiations 0
Congress or Congress-led coalition government.	ME – 0 L E - 0 N E – 0 N D – 7	ME – 0 L E - 0 N E – 1 N D - 1	ME – 0 L E - 0 N E – 0 N D - 1		Number of negotiations 0	Number of negotiations 1	Number of negotiations 0
Others	ME – 0 L E - 0 N E – 0 N D – 0	ME – 0 L E - 0 N E – 0 N D - 0	ME – 0 L E - 0 N E – 0 N D - 0		Number of negotiations 0	Number of negotiations 0	Number of negotiations 0

Source: Authors self-calculated table based on the documents on the websites of the Ministry of External Affairs, India, and Ministry of Foreign Affairs, Bangladesh.

Table 7.1.1 shows the findings of the content analysis. The aim of producing this table is to compare the number of effective negotiations and their frequency between the domestic political regimes of India and Bangladesh, which have already been summarised. The documents of negotiations have been analysed in relation to their effectiveness and

frequency. Furthermore, the negotiations have been grouped according to the domestic political context of India and Bangladesh, and they have been grouped according to the selected disputed issue, as discussed in chapter 3. The second and third rows of the table indicate the domestic political context of Bangladesh at the time of the negotiation, while the first column indicates the domestic political context of India. The table uses some code words, such as ME (Most Effective), LE (Less Effective), NE (Not Effective) and ND (Not Discussed) to demonstrate the effectiveness of the negotiation. The last four columns of the table show the frequency of the negotiations. For example, the fourth row of this table indicates that three negotiations took place between the Congress/Congress-led (coalition) Indian government and the Awami League-led Bangladeshi government, which effectively discussed 'Implementation of Land Boundary Agreement, 1974'. Among those negotiations, all three of them ended up with a less effective decision, so they have been coded as LE (less effective). It further indicates that 2 negotiations took place between the BNP-led Bangladeshi government and Congress/Congress-led (coalition) Indian government on the 'Implementation of Land Boundary Agreement, 1974', which ended up with 1 less effective and 1 not effective decision, whereas the other one followed the same process. The entirety of the rows and columns demonstrates the result following the same analysis process.

From the findings presented above, the study found that during the Awami League led government (Bangladesh) negotiations with the Congress/Congress-led coalition government (India), 3 less effective decisions emerged regarding the 'Implementation of the Land Boundary Agreement, 1974'; 1 most effective, 4 less effective and 2 not effective decisions emerged regarding the 'Peaceful Border Management'; and 2 most effective, 1 less effective and 1 not effective decisions were identified regarding the '2011 Protocol of Demarcation of Land Boundary between India and Bangladesh'. It also detects that no discussions happened regarding the 'Joint River Boundary Issue' during this period. Compared with this the (Begum Khaleda Zia-led) BNP government (Bangladesh) and Congress/Congress-led coalition government (India) could achieve 1 less effective and 1 not effective decision regarding the 'Implementation of Land Boundary Agreement, 1974'; 1 less effective and 1 not effective decision emerged regarding 'Peaceful Border Management'; and 1 not effective decision emerged regarding the 'Joint River Boundary Issue'. It should also be noted that no discussion happened regarding the '2011 Protocol of Demarcation of Land Boundary between India and Bangladesh'.
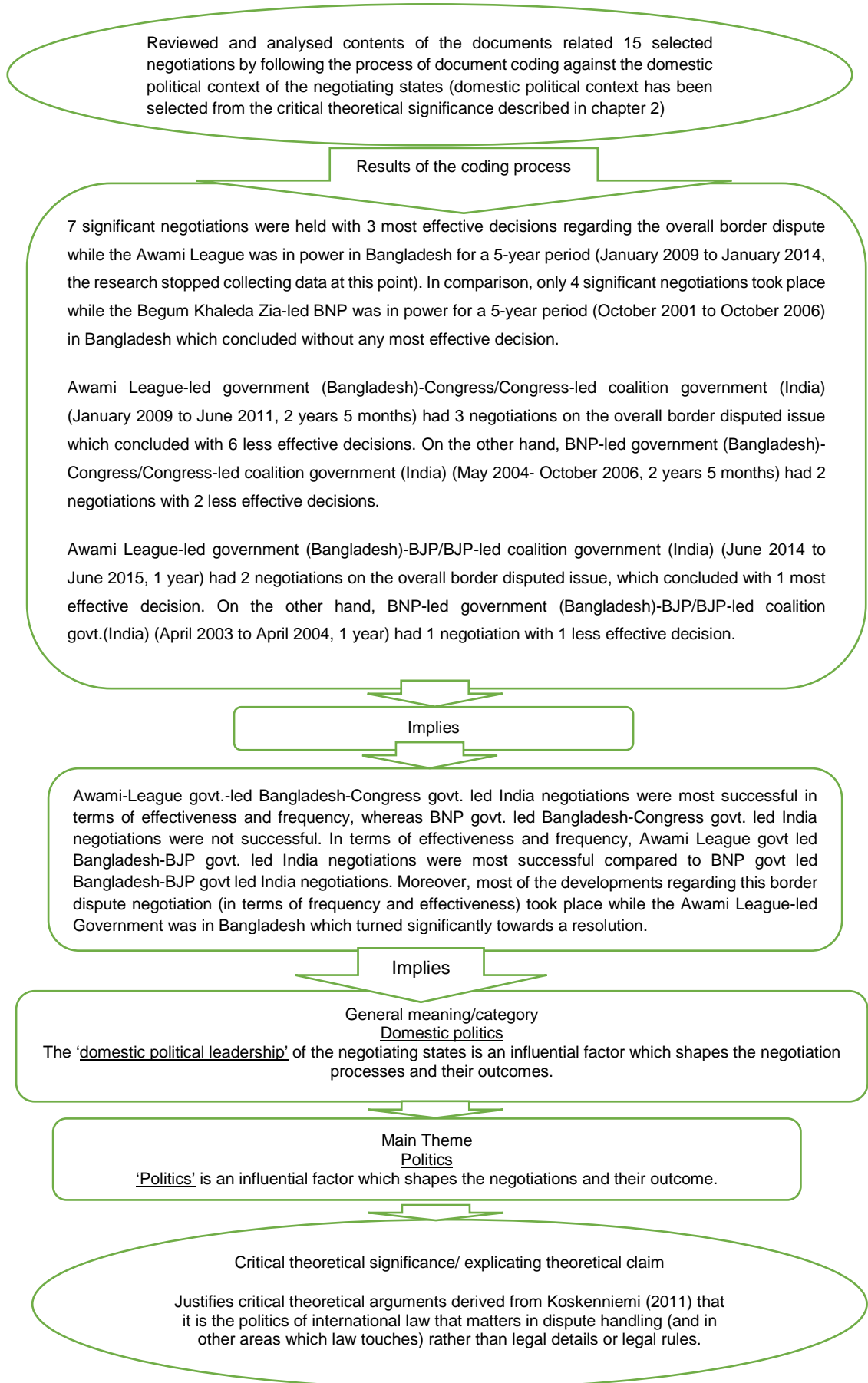
On the other hand, negotiations between the Sheikh Hasina-led Awami League government in Bangladesh and the BJP/BJP-led coalition government in India were able to conclude 1 less effective decision regarding the 'Implementation of Land Boundary Agreement, 1974'; 1 less effective and 2 not effective decisions emerged regarding 'Peaceful Border

Management'; and 1 most effective and 1 less effective decision emerged regarding the '2011 Protocol of Demarcation of Land Boundary between India and Bangladesh'. No discussion was held regarding the 'Joint River Boundary Issue'. Compared with these, negotiations between the Begum Khaleda Zia-led BNP government in Bangladesh and the BJP/BJP-led coalition government in India were able to achieve 1 less effective and 1 not effective decision regarding the 'Implementation of the Land Boundary Agreement, 1974' and 1 not effective decision emerged regarding 'Peaceful Border Management'. The analysis also found that there was no discussion held regarding the '2011' Protocol of Demarcation of Land Boundary between India and Bangladesh' and the 'Joint River Boundary Issue' between the BNP and BJP/BJP-led coalition governments in Bangladesh and India, respectively.

From the findings presented here, the analysis found that there were 15 significant bilateral negotiations that took place between India and Bangladesh between 2001 and 2015. Among these negotiations, 10 negotiations took place while the Sheikh Hasina-led Awami League government was in power in Bangladesh, of which 4 were most effective. Compared with this, 4 negotiations took place while the Begum Khaleda Zia-led BNP was in power in Bangladesh which concluded without any effective decisions on this issue. One negotiation took place with 1 less effective decision while the other government was in Bangladesh. The analysis sets out to compare the frequency of the negotiations and the effectiveness of the outcome of those negotiations between these two domestic political regimes in the context of Bangladesh. But it was found that in these 15 years (2001-2015) the BNP was in power for about 5 years 19 days (10 October 2001 to 29 October 2006), whereas the Awami League was in power for more than 6 years (January 2009 to June 2015; at this point research stop collecting data). Frequency or effectiveness could not be compared with such unequal amounts of time. To validate the result, if the analysis excludes 2 significant negotiations held after January 2014 and another 1 held before July 2001 while the Awami League was in power in Bangladesh, it can be seen from the above table that 7 significant negotiations were held with 3 most effective decisions regarding the overall border dispute while the Awami League was in power in Bangladesh for a 5-year period (January 2009 to January 2014). In comparison, only 4 significant negotiations took place while the Begum Khaleda Zia-led BNP was in power for a 5-year period (October 2001 to October 2006) in Bangladesh, which concluded without any most effective decision. So, by comparing frequency, it can be seen that the Awami League was able to achieve more negotiations with India that can be coded as 'More Frequent', as demonstrated in chapter 3. Compared with the Awami League, BNP's negotiations were not very frequent, which could be coded as 'Less Frequent'. Therefore, it can be concluded that most of the development regarding this border dispute resolution (in terms of frequency and effectiveness) took place while the Awami League-led government was in power in Bangladesh.

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On the other hand, the table also reveals that most of the negotiations took place between the Congress/Congress-led coalition government of India and the Bangladeshi government, numbering 10 in total (7 with the Awami League government, 1 with the other government and 2 with the BNP government of Bangladesh). In comparison, 5 significant negotiations took place under the BJP/ BJP-led coalition Indian government (3 with the Awami League and 2 with the BNP government). However, it is very hard to draw a direct conclusion from this as for two-thirds of these 15 years, a Congress/Congress-led government was in power in India. However, in order to develop the analysis, the research compares the effectiveness and frequency of the selected negotiations between the BNP-led Bangladeshi government and the Congress/Congress-led coalition government of India on the one hand, and the Awami League-led Bangladeshi government and the Congress/Congress-led coalition government of India on the other. It compares the number of negotiations and their outcomes between the BNP government in Bangladesh and the Congress/Congress-led coalition government in India (May 2004 to October 2006, 2 years 5 months) and the Awami League government in Bangladesh and the Congress/Congress-led coalition government in India (January 2009 to June 2011, 2 years 5 months). It was found that during this period, the Awami League-Congress had 3 negotiations on the overall border dispute issue which concluded with 6 less effective decisions. On the other hand, the BNP-Congress had 2 negotiations with 2 less effective decisions. Therefore, the Awami League-Congress negotiations were the most successful in terms of effectiveness and frequency, whereas the BNP-Congress negotiations were much less successful. Moreover, the research compares the effectiveness and frequency of the selected negotiations between the BNP-led Bangladeshi governments and the BJP/BJP-led coalition governments of India with the Awami League-led Bangladeshi governments' discussions with the BJP/BJP-led coalition governments in India. It compares the negotiations and their outcomes between the BNP government in Bangladesh and the BJP/BJP-led coalition government in India (April 2003 to April 2004, 1 year) with the Awami League government in Bangladesh negotiating with BJP/ BJP-led coalition government in India (June 2014 to June 2015, 1 year). It was found that in this period, the Awami League- BJP had 2 negotiations on the overall border disputed issue, which concluded with 1 most effective decision. On the other hand, the BNP-BJP had 1 negotiation with 1 less effective decision. In terms of effectiveness and frequency the Awami League-BJP negotiations were most successful compared with the BNP-BJP negotiations. However, this research primarily focuses on Bangladesh's response during these negotiations. Hence, it is evident here that the India-Bangladesh boundary management negotiation process has been continuously moulded by (but not solely determined by) the domestic political leadership of Bangladesh, which also shaped India's approach to negotiation. This chapter will return to this question below. The analysis of this finding is represented in a diagram below:

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Figure 7.1 2: Visualizing the findings of the qualitative content analysis

Reviewed and analysed contents of the documents related 15 selected negotiations by following the process of document coding against the domestic political context of the negotiating states (domestic political context has been selected from the critical theoretical significance described in chapter 2)

Results of the coding process

7 significant negotiations were held with 3 most effective decisions regarding the overall border dispute while the Awami League was in power in Bangladesh for a 5-year period (January 2009 to January 2014, the research stopped collecting data at this point). In comparison, only 4 significant negotiations took place while the Begum Khaleda Zia-led BNP was in power for a 5-year period (October 2001 to October 2006) in Bangladesh which concluded without any most effective decision.

Awami League-led government (Bangladesh)-Congress/Congress-led coalition government (India) (January 2009 to June 2011, 2 years 5 months) had 3 negotiations on the overall border disputed issue which concluded with 6 less effective decisions. On the other hand, BNP-led government (Bangladesh)-Congress/Congress-led coalition government (India) (May 2004- October 2006, 2 years 5 months) had 2 negotiations with 2 less effective decisions.

Awami League-led government (Bangladesh)-BJP/BJP-led coalition government (India) (June 2014 to June 2015, 1 year) had 2 negotiations on the overall border disputed issue, which concluded with 1 most effective decision. On the other hand, BNP-led government (Bangladesh)-BJP/BJP-led coalition govt.(India) (April 2003 to April 2004, 1 year) had 1 negotiation with 1 less effective decision.

Implies

Awami-League govt.-led Bangladesh-Congress govt. led India negotiations were most successful in terms of effectiveness and frequency, whereas BNP govt. led Bangladesh-Congress govt. led India negotiations were not successful. In terms of effectiveness and frequency, Awami League govt led Bangladesh-BJP govt. led India negotiations were most successful compared to BNP govt led Bangladesh-BJP govt led India negotiations. Moreover, most of the developments regarding this border dispute negotiation (in terms of frequency and effectiveness) took place while the Awami League-led Government was in Bangladesh which turned significantly towards a resolution.

Implies

General meaning/category
Domestic politics
The 'domestic political leadership' of the negotiating states is an influential factor which shapes the negotiation processes and their outcomes.

Main Theme
Politics
'Politics' is an influential factor which shapes the negotiations and their outcome.

Critical theoretical significance/ explicating theoretical claim

Justifies critical theoretical arguments derived from Koskenniemi (2011) that it is the politics of international law that matters in dispute handling (and in other areas which law touches) rather than legal details or legal rules.

Source: Author's self-produced diagram based on the analysis adapting Erlingsson and Bryseiwicz (2017), Elo and Kyngas, (2007), Hsieh and Shannon (2005) and Bengtsson's (2016) approach of doing content analysis.

Figure 7.1.2 demonstrates the issues which can be categorised as 'domestic political leadership' or overall domestic politics of the negotiating states, which implies that this is one of the most important influential factors determining the outcome of the negotiations. Finally, it leads the analysis to conclude that 'politics' (as domestic political leadership is considered to be under the category of the theme of 'politics' overall) is one of the influential determining factors of this negotiation process and its outcome. This conclusion explicates the critical theoretical argument in Koskenniemi's (2011) work. At the same time, one can see the constitutive nature of legal rules running through these discussion – defining what counts as negotiation and what counts as a provisional or final agreement. Hence, it is evident here that the India-Bangladesh boundary management negotiation process has been continuously moulded by (but not solely determined by) the politics, and more specifically the domestic political leadership of Bangladesh. This analysis also points to the importance of negotiations between the governments as states in shaping border negotiation outcomes (a point already identified above).

This critical exploration of the negative constraints of politics on negotiation and agreement also identifies when agreement has been possible. However, the employed 'reconstructive critical explanatory' methodological framework not only aims at determining the 'contingent constraints' but also developing a critical explanation thereof. Moreover, uncovering the influences of the domestic political contexts in this dispute management process could not alone fulfil the requirements of a critical theoretical research, because critical theory points to the importance of interests and contexts more broadly, which influences knowledge production and reproduction. According to critical theory, any knowledge is necessarily conditioned by social, cultural, ideological, and contextual influence (Devetak, 2013). If we consider the negotiation process here as a process of knowledge production, then the critical approach raises the most vital questions: why and how has this knowledge production been influenced by domestic politics or overall politics? To answer these questions, one must reveal the effects of 'politics' as a matter of 'social conditioning' on this knowledge production. At the same time, it must reveal other contingent matters of social conditioning of this knowledge production process (i.e. power, contexts and interests). Therefore, in this stage of analysis the causes found in the document review stages have been categorised as context, politics, power, and interests, respectively (see chapter 3 for a detailed analysis process, and the theoretical and methodological implications for this analysis see pages 204-210 of this chapter). However, the research follows the qualitative approach for analysing the 81 collected documents related to the negotiations set out above, as demonstrated in chapter 3. This has been set out according to the nature of the documents and the aims of the analysis. The findings from the coding and categorisation are presented in a tabulated form below.

Table 7.1.3
Causes of the success/failure of the border dispute management

Theme: Causes of the success/failure of the border dispute management.		
Key Question 1 **Causes of the mostly ineffective discussion between the BNP-led government of Bangladesh and the BJP/Congress-led government of India.** Why could the Begum Khaleda Zia-led BNP government of Bangladesh not solve the border dispute with India and had mostly failed negotiations with the Congress/ BJP-led government of India?		
Category		
Power	<u>Code A</u> Hegemonic regional power relations.	-India's power dominated relations with Bangladesh.
Context	<u>Code B and C</u> International and domestic context.	- The political context of Bangladesh, which implies that the Begum Khaleda Zia-led BNP has been a close ally with a major Islamic party, Jamaat-e-Islami.
Politics	<u>Code D and E</u> International politics and domestic politics.	- Begum Khaleda Zia-led BNP's 'right-wing' political ideology. - The Indian government's security concerns and allegation against the Begum Khaleda Zia-led Bangladeshi government regarding the ten-truck arms case, in which it has been believed by the Indian government that Bangladesh was patronising India's Northeast area's insurgency movement. -The BNP-led Bangladeshi government's foreign policy approach towards Pakistan, China and other Muslim countries. - India's distrustful relationship with the Begum Khaleda Zia-led Bangladeshi government. - India's suspicion about Bangladesh's involvement in the disruptive activities of Pakistan's ISI aimed at destabilizing India's Northeast. - Begum Khaleda Zia-led Bangladesh's negligence of India's concerns regarding security and territorial integrity. -India's suspicion about BNP's patronising of India's Northeast area's insurgency movements, specially the Assam separatist movement.
Interests	<u>Code F and G</u> Political interests and economic interests.	-India wants (political interest) Bangladesh to act against groups that have reportedly established bases on Bangladesh's soil; such as Harkat-ul-Jihad-al-Islami; this request was not met by the BNP government.

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<table>
<tr><td colspan="3" style="text-align:center">

Key Question 2:

Causes of the some mostly effective discussions between the Awami League-led Bangladesh and the BJP/Congress-led government of India.

Why could the Sheikh Hasina-led Awami League government of Bangladesh (partially) solve the border dispute with India and had some significant successful negotiations with the Congress /BJP-led Indian government?

</td></tr>
<tr><td>**Category**</td><td>**Code**</td><td rowspan="2">- India's power political intention to build an image of a responsible regional power.
- Bangladesh's increasing importance in the Indian foreign policy factor to keep its hegemonic power in South Asian politics.
- India-Bangladesh power relations.</td></tr>
<tr><td>Power</td><td>Code A
Hegemonic regional power relations.</td></tr>
<tr><td>Context</td><td>Code B and C
International and domestic context.</td><td>- Changing political context of Bangladesh by the formation of the Sheikh Hasina-led Awami League government in Bangladesh.</td></tr>
<tr><td>Politics</td><td>Code D and E
International politics
and
domestic politics.</td><td>- Awami League and Congress have had close historical links since 1971.
- The installation of the India-friendly Awami League government in Bangladesh.
- The positive influence on Awami League's election manifesto on India, which was party's commitment to friendly relations with Asian countries, whereby India was pointed out by name and Pakistan was left out.
-The Sheikh Hasina-led Awami League's positive approach of regional cooperation and forging good relationships, particularly with India.
- Assurance of powerful hegemonic neighbour India's support for the Sheikh Hasina-led Awami League.
-Narendra Modi led the NDA government's (India) concern about China's emerging role in Asia.
- Bangladesh government's domestic political identity as well as its changing foreign policy approach during the Awami League regime.
- The Awami-League led Bangladesh's defensive foreign policy approach towards India.</td></tr>
</table>

		- Bangladesh's importance in India's growing economy.
Interests	Code F and G Political interests and economic interests.	-India's need (economic interest) for transit through Bangladesh. - India's political and economic interest to have closer cooperation with Bangladesh so that Chinese influence in Bangladesh can be balanced. -Bangladesh's interest to have a closer cooperation with India so that all bilateral issues, including disputing issues with India, could be resolved. - India's interest to have transit facility across Bangladesh. - India's demand (political interest) to have a bilateral anti-terror pact with Bangladesh, which was only possible to achieve while the India-friendly government of the Awami League was in power, as perceived by India.

Source: Author's self-produced table, based on the analysis. The causes presented in this table are based primarily on an analysis of 81 documents which have been subject to detailed analysis, as outlined in chapter 3. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about the causes and processes of negotiations and their outcomes below are identified. The 81 documents are also identified in Appendix D.

Table 7.1.3 has demonstrated the findings of the 'causes' and the causes have been coded as demonstrated in chapter 3 and in addition have been categorised as power, politics, context and interests (see pages 101- 102 for details).

The analysis explicitly focused on negotiations which took place between 2001 and 2015 regarding border dispute resolution; however, in analysing the relevant documents, the research confronts a significant problem. It found that most of the documents discussing the issue did not explicitly focus on this specific period; rather, they discussed the causes in the context of the relations between these two disputing countries for the entire time since Bangladesh had won independence. Therefore, the research needed to uncover the causes of the success and failure of this dispute management, disentangling changes over time by critically evaluating and exploring the underlying meanings of the texts of the documents it analysed. However, this is where the main thrust of critical theory and critical theoretical methodological framework take their place. It has also justified the original contribution to knowledge of this research. The research further found that in order to demonstrate a complete 'critical explanation' of the 'causes' which conditioned the success or failure of this dispute management, it needed to recognise other relevant factors rooted in the longer-term context, which only implicitly – but significantly – shaped the negotiations held between 2001 and 2015 and so are significant for this research. The findings of the coding and categorisation are presented in a tabulated form below.

Table .7.1.4
Other Causes

Theme: Causes of the success/failure of the border dispute management.

Key question 3: Other Causes
What are the other relevant factors rooted in the longer-term context which only implicitly – but significantly – shaped the negotiations held between 2001 and 2015?

Category	Code	
Power	Code A Hegemonic regional power relations.	- Bangladesh's significant move to the USSR alliances by signing the India-Bangladesh Treaty of Friendship, Cooperation and Peace, 1972 in the Cold War period. -India's power political aspirations in the Cold War period. -Bangladesh's importance in emerging India's hegemonic position in South Asia. - India's security concerns about Bangladesh's cooperation with China. -Bangladesh's geopolitical position within the range of the Indian security system.
Context	Codes B and C International and domestic context.	-Contextual influence of Cold War politics.
Politics	Codes D and E International politics and domestic politics.	-India-Bangladesh positive political relations after Bangladesh won independence. - Newly independent Bangladesh's importance in Indian foreign policy. - The Congress-Awami League's close alliance. - India's significant bonds of friendship with Bangladesh and the Awami League. - Close ties between the Indian political elites and the Awami League since 1971. -India's inclination to maintain a good relationship with the Sheikh Hasina-led Awami League government. -India-Bangladesh's worsening bilateral relations after the assassination of Sheikh Mujibur Rahman. - Mrs. Indira Gandhi's harder line policy with Bangladesh. - Zia's close relation to China and other countries during the Cold War era. - India-Bangladesh's worst phase of relations in the time between Mrs Gandhi's return to power and Zia's assassination. - Hussain Mohammad Ershad's continuation with the main thrust and directions of the policy pursued by Ziaur Rahman. - Begum Khaleda Zia's persuaded conservative policies rather than secular policies. - The removal of the word 'secularism' from the Bangladeshi constitution by Ziaur Rahman, the founder of BNP, in the late 1970s and Begum Khaleda Zia's following of the same policy.

		- India's intention to secure its national interests by signing the India-Bangladesh Treaty of Friendship, Cooperation and Peace, 1972.
Interests	Codes F and G Political interests and economic interests.	- Bangladesh's economic dependency on India for huge reconstruction of Bangladesh after the liberation war. - India's lack of interest in making a positive relationship with Bangladesh because of Zia's aggressive response to the border clashes.

Source: Author's self-produced table, based on the analysis. The causes presented in this table are based primarily on an analysis of the 81 documents which have been subject to detailed analysis, as outlined in chapter 3. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about the causes and processes of negotiations and their outcomes below are identified. The 81 documents are also identified in Appendix D.

Finally, all of the categories explicate the theoretical structure given in chapter 2, where it has been argued that context, politics, power and interests are specific issues on the ground which are always significant in dispute management. Hence, it is evident from this analysis that the context of the India-Bangladesh border dispute resolution is grounded in law (in this case 'negotiation' as a process of dispute resolution determined by international law), interest, politics and power interwoven together in a complex web of strands. The core arguments along with the identified causes demonstrated below will be established through a 'critical explanation' to accomplish the 'reconstructive critical exaptation' outlined in the critical theoretical methodological framework (see chapter 3 for details).

This analysis addressed the partial management process of the India-Bangladesh border dispute, and there are still some issues to be resolved which are currently creating problems in the border area. These include firing on Bangladeshi people at the India-Bangladesh border and killing them, tension and gun firing between BGB and BSF, the 'push-in' and 'push-back' problem and the problems of the boundaries of common rivers. These issues have been described in chapter 6. The analysis found that these issues have been negotiated under the 'Peaceful Border Management' and 'Joint River Boundary' issue, as demonstrated in table 7.1.1. The findings of the analysis demonstrated in table 7.1.1 show that the 'Joint River Boundary' issue was frequently ignored in those negotiations, which demonstrates a certain amount negligence on the part of the disputing countries regarding this issue. The possible cause might that be neither disputing country gave sufficient importance to this issue, but the research did not find any strong reason to defend this argument. However, it also found that there was no significant improvement regarding other unresolved issues; the only exception is the 'Coordinated Border Management Plan' (see page 202). This also demonstrates that 10 negotiations were conducted while the Awami League was in power in Bangladesh regarding 'peaceful border management' issue, which resulted in one of the most effective decisions between 2001 and 2015, namely the signing of the 'co-ordinated border management plan'. India-Bangladesh had discussed this issue 3 other times while the BNP was in power in Bangladesh, which resulted no most effective

decision. The findings also demonstrate that in terms of 'effectiveness' and 'frequency', the negotiations of this issue have also been shaped by domestic politics and overall politics. However, as mentioned before, according to critical theory any knowledge is necessarily conditioned by social, cultural, ideological and contextual influence (Devetak, 2013). If we consider the negotiation process here as a process of knowledge production, then the critical approach raises the most vital questions: why and how has this knowledge production been influenced by domestic politics or overall politics? To answer these questions, one must reveal the effects of 'politics' as a matter of 'social conditioning' on this knowledge production. At the same time, it must reveal other contingent matters of social conditioning of this knowledge production process (i.e. power, contexts, interests and the deficiency of international law). The research further undertakes a qualitative analysis of the 34 interviews taken and the document analysis of 40 documents, analysing the unresolved issues which are currently creating problems in the conflicted border area (For more details of the analysis process and when and how critical theory and methodology have been employed for the analysis, see chapter 3 pages 106-110). Therefore, in this stage of the analysis, the causes found in the document review stages have been coded and categorised as demonstrated in chapter 3 (see pages 115-119 for details). The findings of the coding and categorisation are presented in a tabulated form below.

Table 7.1.5

Causes of the unresolved disputed issues.

Theme: Causes of the unresolved disputed issues which are undermining the management process.		
The causes of the current problems at the India-Bangladesh border as well as the reasons for these current disputed issues not being resolved.		
Category	**Code**	-India's power demonstration in its relations with Bangladesh (for instance, reportedly blocking streams of some major rivers flowing
Power	Code A Hegemonic regional power relations.	from India to Bangladesh, never considering discussing or consulting with Bangladesh on the blockage or diversion or consumptive use of water of these rivers). - India's self-image of hegemony. - BSF's aggressive attitudes. - India's power dominance in its relations with Bangladesh. - India's power demonstration by forcefully pushing people into Bangladesh without showing any evidence.
Context	Codes B and C International and domestic context.	Contextual interpretation of flawed and inadequate boundary lines drawn by the British colonial powers in 1947.

Politics	Codes D and E International politics and domestic politics.	- India-Bangladesh's continuous political argument over the 'push-in' 'push-back' problem and other disputing issues in negotiation.
Interests	Codes F and G Political interests and economic interests.	- India's interest to prevent illegal immigration.
Inherent deficiency of international law.	Code H Other reasons including contradictions inherent in the rules of international law, the rules and process of international law are too flexible and are manipulated by politics and power politics, non-existence of legislative mechanism, compulsory adjudication and enforcement procedures.	- Contradictions and lack of binding forces inherent in international law. - The complicated nature of delimiting the river boundaries designed by international law. - Contradictory rules and principles of international law. - Incapability of international law to stop border killing. - Indian government's violation of the 'United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials'. - Lack of enforcement system of international law to protect human rights from violation (as it doesn't have the same enforcement system as domestic law).

Source: Author's self-produced table, based on the analysis. Information presented in this table is based primarily on an analysis of 34 interviews and 40 other documents, which have been subject to detailed analysis as outlined in chapter 3. The material is analysed in detailed tables; referencing to key sources is identified when the sources related to specific claims about these causes of the current disputed issues (undermining the success of the resolution) in this chapter below are identified. The reference of the 34 interviews and 40 documents are also included in Appendix E and F.

Table 7.1.5 demonstrates the findings of the qualitative analysis of documents and the interview analysis. It describes the 'Causes' of current unresolved India-Bangladesh border disputed issues by answering the major question of 'what are the causes which are responsible for currently creating problems at the India-Bangladesh border as well as the reasons for not resolving these current disputing issues?' Then it interpreted and grouped the causes according to category, as described in chapter 3, namely power, context. politics, interests and other inherent deficiency of international law (see pages 118-119). Finally, all of the categories are used to explicate the theoretical structure given in chapter 2, where it has been argued that context, politics, power and interests are specific issues

on the ground that are always significant in dispute management. The inherent deficiency of international law is also a significant cause undermining the success of the dispute management.

Hence, it is evident from this analysis that the context of the India-Bangladesh border dispute resolution (in both resolved and unresolved issues) is grounded in law, interest, politics and power interwoven together in a complex web of strands. In the case of recent unresolved issues, the inherent deficiency of international law is also conditioning this dispute. The core arguments, along with the identified causes demonstrated below, will be established through a 'critical explanation' to accomplish the 'reconstructive critical exaptation' outlined in the employed critical theoretical methodological framework.

7.2 'Critical explanation' of identified causes reflecting critical theoretical significance

In the previous chapters and the section above, 'explanatory critique' focuses on the vague, incorrect or inadequate practice of the international law of conflict management and the pragmatic import of those vague or inadequate practices in the real context of India-Bangladesh border conflict negotiation. This dimension of 'reconstructive explanation' and 'explanatory critique' is a significant characteristic of critical theory according to Strydom (2011) (see chapter 2 and 3). The critical theoretical methodology sets out to provide a critical explanation of the forces or obstacles, such as politics and the underlying structural obstacles rooted in the problem situation, such as power, interests and context, as demonstrated in the research findings above. In this final step, the research turns to constructing a reconstructive explanatory critique, which is the defining aspect of the critical theoretical methodology, having the task of accounting for the identified causes of this problem which characterize the situation. It also provides an explanatory critique with these contingent yet powerful interfering and distorting mechanisms that give rise to the disturbing quality of the India-Bangladesh border dispute management. The causes presented here in the above direct the research to provide a critical explanation in two areas. They are, first, the 'powerful interventions' in the process of conflict management, and, second, the 'internal deficiency of the structure of international law,' and will be explored below.

7.2.1 Powerful intervention

In chapter 2, it was claimed by evaluating the critical theoretical approach that context, politics/power, interest, and specific issues on the ground are always hidden forces which are interacting in dispute management. At the same time, the law itself is a regulating force in any conflict management. It is evident from the research findings that particular factors, such as 'politics', 'power' 'context' and 'interests', powerfully shape the real practice of the India-Bangladesh border dispute management. These shape the diagnosed pathologies of

this specific problem. This section will critically explain these to demonstrate how far these grounding forces determine as well as undermine the constituting elements of the problem of the India and Bangladesh border dispute and the success of its management.

As discussed earlier, critical theory is a paradigm which structures the way we see the world with a critical framework on all levels. Critical theory provides an instrument for delegitimating the existing structure of power and politics. Critical theory argues that, "Power leads to distorted communication…We can understand the rationality of power as self-reflection and the branch of scholarship that deals with it is critical theory" (Seiler, 1992, p. 2) (see chapter 2 for details). In this anarchic international society (Bull, 1977), international conflicts have occurred and the conflicts of power are unavoidable. Thus, how states deal with their conflicts is of great importance. In the absence of a law enforcing agency (discussed earlier in chapter 2), how effectively can states peacefully settle their disputes as obligated by international law? Moreover, as there are no authorities to enforce this obligation, what is the basis of the obligation? In this system, "nations do not have the luxury of security and must strive for power or live at the mercy of their powerful neighbours" (Shimko, 2013, p. 59). States are not free to resolve their disputes equitably and peacefully without the influence of power and politics. Critical theory argues that this is unavoidable, providing a clear picture of the innate relations between politics and international legal rules, and Koskenniemi (2005) interprets international law as a contrary method (see chapter 2 for details). He calls it, "the politics of international law", suggesting that, "if the legal assessment happens to coincide with the speaker's known political views, the doubt must always remain that the assessment is simply a rationalisation, in legal language, of a political position" (Koskenniemi, 2011, p. 201).

In a negotiation process, the law cannot define what is negotiable between the parties, which is a political question. Higgins (1994) explains, "Policy considerations, although they differ from 'rules', are an integral part of that decision-making process which we call international law; ... A refusal to acknowledge political and social factors cannot keep law neutral ... There is no avoiding the essential relationship between law and politics" (Higgins, cited in Higgins, 1994, p. 5). For example, by interpreting the case study it could be argued that the India-Bangladesh Land Boundary Agreement, 1974 is considered as the grounds for further negotiations to resolve the dispute more substantially. It was not an agreement so much as a framework treaty that provided for future settlement. This agreement itself was an outcome of actual negotiations between India and Bangladesh; however, after analysing the related documents of the negotiation process regarding this agreement from a critical point of view, the research found that the determinants of this negotiation were primarily 'power', 'politics' and 'interest' and that the interactions between them stemmed from the context of Cold War politics and domestic political relations. Before moving on to

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a land border agreement, India secured its national interest by signing the Treaty of Friendship, Cooperation, and Peace, 1972 with Bangladesh. India, which was previously very reluctant to resolve the boundary dispute, suddenly agreed to settle the dispute after Bangladesh had become independent. The question is why? It can be explained from the domestic political relations between India and Bangladesh and also from the context of international politics of the Cold War as well as power and political process factors.

After Bangladesh's independence, three crucial bilateral issues arose with India. "They were i) sharing of the Ganges waters on a permanent basis; ii) the delimitation of the maritime boundary; and iii) re-making the land boundary between the two countries" (Rashid, 2010, p. 79). However, reflecting upon the findings, it could be argued that India was more inclined to reach a security agreement rather than sort out these urgent and more detailed issues. In other words, it was a precondition to resolving the urgent bilateral issues. As stated earlier, in a negotiation process, the law cannot define what is negotiable between the parties, which is, of course, a political question. In the power relations between India and newly independent Bangladesh, Bangladesh had nothing to do but accept the decisions of its larger neighbour. The reason also lies in the premise that Bangladesh was very much dependent on India economically for huge reconstructive efforts after the Liberation War. "In the first six months of the post-independence period, 36 percent of all aid committed and 67 percent of aid disbursed came from India" (Haider, 2006, p. 38) (the next part of this chapter will explain this further). Although the basic technique of negotiation is persuasion and compromise, inducements such as aid or threats of unpleasant action are also offered to resolve a dispute (Rashid, 2003). However, the analysis found that, as a result and following India's demand, on 19th March 1972, the India-Bangladesh Treaty of Friendship, Cooperation, and Peace was signed for 25 years between India and Bangladesh, following the example of Indo-Soviet Treaty of Peace, Friendship and Cooperation, 1971 (The Daily Star, 2015). It has been argued that because of East Pakistan's geographical location[73], Pakistan became anxious about its security in the Cold War era and joined the Southeast Asia Treaty Organisation (SEATO) (Shamim, n.d.; see also Hasan, 1992). As a result, Bangladesh (former East Pakistan) had a closer link with the US alliance inherited from its mother country Pakistan. However, to balance the power equation, in the 1970s, the former USSR formulated treaties with third world countries, including Iraq, India, Vietnam and Afghanistan (Buszynski, 1986). Consequently, "The signing of the Bangladesh-India Friendship Treaty in 1972 moved her away to the Soviet sphere of influence ... The Indo-Bangladesh Treaty can be seen as a sub-species of these Soviet treaties" (Shamim, n.d., p. 2). From the document analysis, the research reveals that this move potentially fulfils

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[73] Bangladesh (former East Pakistan) is located with its border surrounded by India on three sides.

India's aspirations in the power politics of the Cold War period (Madhav, 2013; Shamim, n.d.).

The motives of India could also be explained in part from international and regional power perspectives, as revealed by the analysis. According to international relations experts Madhav (2013) and Shamim (n.d.), India's intention was to become not only a regional power but also a superpower. Pakistan posed a security threat, particularly when it joined the US-led capitalist bloc. Pakistan's motivation was to gain a power balance advantage in the region. "In the early 1960s, Pakistan initiated an entente with China, which accelerated after the Sino-Indian war of 1962, further aggravating Indian military and security concerns" (Shamim, n.d., p. 5).

Map 8: India-Bangladesh-China geographical positions (Baffa, 2013).

The research found that, in order to establish its hegemonic position in South Asia, it was crucial for India to bring newly independent Bangladesh into its orbit. India was also anxious that a future Bangladesh-Pakistan deal could potentially reduce its leadership capability (Madhav, 2013; see also Hasan, 1992). Bangladesh was important for its geographic positioning (see map 8 above).

If Bangladesh were to enter a mutual collective security cooperation with China, this would be a significant security threat for India. However, to achieve its interests and its foreign policy goals, it was crucial for India to reach a security treaty with Bangladesh. The 1972 Treaty was a significant step in that regard. For instance, according to that Treaty, Article 8:

"*In accordance with the ties of friendship existing between the two countries, each of the high Contracting Parties solemnly declares that it shall not enter into or participate in any military alliance directed against the other party. Each of the high Contracting Parties shall refrain from any aggression against the other party and shall not allow the use of its territory for committing any act that may cause military damage to or constitute a threat to the security of the other high contracting party*" (Commonlii.org, 2016, no pagination).

Article 9 further assured that,

"*Each of the high Contracting Parties shall refrain from giving any assistance to any third party taking part in an armed conflict against the other party. In case either party is attacked or threatened with attack, the high Contracting Parties shall immediately enter into mutual consultations in order to take appropriate effective measures to eliminate the threat and thus ensure the peace and security of their countries*" (Commonlii.org, 2016, no pagination).

The critical analysis reveals that, in that context, by signing this treaty India ensured it would strengthen its hegemonic position in the South Asian region. Moreover, "India had built up significant bonds of friendship with the political elite, especially the ruling elite in Bangladesh … more narrowly to the Awami League regime" (Shamim, n.d., p. 5). The reason behind this could be explained on domestic political grounds, as the critical analysis has found. It argues that the interests of the Awami League and those of the Indian Government converged on several points; India had some principal objectives in mind within the overall strategic considerations, which could only be supported by the Awami League (Rashid, 2010; see also Bhardwaj, 2003). All of these factors provide the background to the negotiation on the India-Bangladesh border dispute in the early 1970s, which ended with the Land Boundary Agreement, 1974. India decided to solve the long-standing border dispute, not wanting to lose Bangladesh's cooperation. It has been argued by critical thinkers that "treaties are bargains between rational egoists seeking to resolve coordination or cooperation problems ... States do not comply because treaties have 'binding force' but, 'because they fear retaliation from the other state or some kind of reputational loss, or because they fear a failure of coordination" (Goldsmith and Posner, cited in Koskenniemi, 2011, p. 323). However, according to the research findings, the perception of the negotiation of the 1974 Agreement was of domestic political exigency on one side and power politics on the other. Unequal power relations between India and Bangladesh followed India's interests. Nonetheless, after ensuring its interest, India finally agreed to negotiate the bilateral disputed issues, which included the border dispute as well. Thus, there was not one single motive which led to the agreement but rather a cluster of shared interests; the same would prove to be the case in the gradual development of more recent agreements.

The critical analysis employed in this research explores how the changing domestic political context also played the most significant role in shaping the outcome of this dispute as well

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as shaped the negotiation process. As discussed in chapter 2, Koskenniemi argues that, "international law is not about operating an algorithm but about deciding between alternative types of action, each of which may, with some ingenuity, be brought within the conventions of plausible legal argument" (Koskennieme, 2011, p. vi). "Decisions turn on contextual interpretations about the facts and the law interpretation" (Koskenniemi, 2011, p. 47). 'Context' is crucial. For example, after the assassination of Sheikh Mujibur Rahman, as the ally came to an end, the negotiation process was put on hold because of the changed domestic political context of Bangladesh. Likewise, Bhardwaj (2003) and Hasan (1983) argue that India was not interested in proceeding with any deal with Bangladesh regarding border disputes as Ziaur Rahman was in power (for more details see pages 171-172). The causes of these constraints, as identified in the previous section of this chapter, can primarily be critically explained from the context of the international and domestic political points of view. It could be argued in the reflection of the findings that the political scene in South Asia changed quite dramatically, particularly because of recognition of Bangladesh by China, thus a new player emerged in its relations with Bangladesh. Zia's close relationship to India's arch-rival state China, which has a close relationship with Pakistan made India suspicious and it grew concerned about its national security in that Cold War epoch (Rashid, 2010; see also Hossain, 1988, Shamim, n.d.). These could be considered potential reasons for Mrs Gandhi taking a harder line policy with Bangladesh (Rashid, 2010). In the context of domestic political grounds, it could be argued that "India provided refuge to many Bangladeshi [Awami-League party] nationals who left Bangladesh after the assassination of Sheikh Mujib. It was alleged that India provided assistance to them" (Rashid, 2010, p. 79). All of these causes found in the analysis proved to be 'political' and 'changing political contextual' reasons for the unresolved border dispute in this phase.

The research further reveals that after the assassination of Sheikh Mujibur Rahman in 1975, aside from the corridor issue, the agreement was not implemented until 2015 because of the uncomfortable political relationship between the two states, as discussed in chapter 6. After conducting a critical analysis of collected documents, the research found further significant causes which argue that India perceived the later governments of Bangladesh, led by Hussain Mohammad Ershad and Begum Khaleda Zia, respectively, to continue with the main direction of policy pursued by Ziaur Rahman (Natunbarta Desk, 2013). They pursued conservative policies and rejected secular policies, which was not preferable for India (Nizam, 2013). Another important issue revealed here is that Begum Khaleda Zia, who led the BNP, was always opposed to extending the India-Bangladesh Treaty of Friendship, Cooperation, and Peace (1972). Bhardwaj (2003, p. 264) argues that, "Begum Khaleda Zia has always been opposing renewal of the treaty (Treaty of Friendship, Cooperation and Peace with India, that was concluded on March 19, 1972 for 25 years)". Moreover, she always opposes its extension by arguing that, "to free Bangladesh from the shackles of

Indian domination and the limitations of Bangladesh's sovereignty which the treaty imposes due to the lack of foresight of the late Prime Minister Sheikh Mujibur Rahman" (Muchkund, cited in Bhardwaj, 2003, p. 264). This anti-India sentiment was not comfortable for India. However, the decision to not extend this treaty was taken by Sheikh Hasina's government by mutual agreement with India. Begum Khaleda Zia couldn't obtain trust from India and relations worsened. Hussain (2000, p. 6) further establishes the strained relations with India during Begum Khaleda Zia's regime by arguing that, "During the period that BNP was in power (1991-96), Indo-Bangladesh relations failed to match the euphoric note that was expressed initially". Another significant cause revealed by the analysis is that Ziaur Rahman, the founder of the BNP, removed the word 'secularism' from the constitution in the late 1970s (Rashid, 2010. Haider, 2006 and Singh, 2007). Specifically, this implicit Islamisation of the constitution was not comfortable for India.

After critically analysing the collected documents, the research explores that the Tin Bigha Corridor Lease, 1992, which was the only achievement of the Begum Khaleda Zia-led BNP government, cannot be considered very significant and rather it is regarded as a diplomatic failure (see page 173 for details). The evaluation of the significant documents regarding this lease found further evidence to support this opinion, which argues that this lease could not pursue Bangladesh's national interests because it abandoned Bangladesh's claim of sovereignty over it and it has been agreed that "-the claiming that Indian sovereignty over this corridor would be remained same" (Whyte, 2002, p. 135). Secondly, this lease is based on the LBA, 1974, whereby it was decided that Bangladesh would get a permanent lease of the Tin Bigha Corridor, which means it would remain open forever (see Appendix G), but Bangladesh did not obtain it through this lease (Whyte, 2002), as explained in chapter 6. It initially opened for only a few hours per day. In reality, it posed some uncertainties and anxieties for the residents, such as problems of urgent medical care at night. Furthermore, India placed fences to secure the boundary of the corridor, which was not included in the 1974, agreement. Therefore, it is evident that this lease clearly established the Indian political decision and was not at all in the equal interests of Bangladesh. However, all of the causes described above can potentially be categorised as political causes, which represented constraints for resolving the border problem, as discussed previously, which justifies the presumption of the theoretical claim established in chapter 2.

This situation continued until the Sheikh Hasina-led Awami League came to power in 1996. After critically analysing and interpreting the collected documents, the research reveals that the leaders of the Indian government appeared to be more inclined to negotiate with them than they had with the previous Bangladesh governments since 1975 (Rashid, 2010, Haider, 2006). As a result, border cooperation did occur, as evidenced in late 1997 with an Indian delegation's visit regarding initial attempts at border demarcation (Whyte, 2002; Das,

2010) and, in 1998, India's prioritising an immediate resolution of the enclave problem (Whyte, 2002) (for more details see pages 173-174). Consequently, the decision to form two Joint Boundary Working Groups (JBWG) was confirmed in December 2000 (India. MEA, 2010a). It is also evidenced by both countries' commitment to implement the LBA, 1974, as emphasized by mutual arrangement during a negotiation held in June 2001 (see page 199 for details).

The process became slower again after Begum Khaleda Zia led the BNP to election victory in 2001 (see page 174 for details). The findings of the research further reveal the reason of this slowing down, namely the fact that the BNP formed a coalition which included Jamaat-e-Islami (originating from Pakistan before the Liberation War). It is believed that they reflected a strong anti-India sentiment. According to Das (2010, no pagination), "Unfortunately, the JBWGs were constituted towards the fag-end of Hasina's term as Prime Minister and therefore not much headway could be made before her term ended. Only two meetings of the JBWG took place, one in 2001 and the second in 2002. With relations becoming uneasy once again with the return of Begum Khaleda Zia as Prime Minister, the JBWGs did not meet subsequently."

The findings of the analysis show that Bangladesh was always keen to resolve the border dispute but didn't get much response from India during this phase. This is visible from the Bangladeshi Foreign Secretary's goodwill visit to India in February 2002 and discussions with Indian Foreign Secretary regarding this unresolved matter followed by another significant negotiation between the Indian Foreign Secretary and the Bangladeshi Foreign Secretary in Dhaka in April 2003, where Bangladesh raised this issue (see page 200 for details). However, both attempts were unsuccessful as no decision was made except for the agreement on further negotiation (India. MEA, 2002, 2003b). Moreover, rather than emphasising this issue India expressed "concerns regarding the activities of Indian insurgent groups in Bangladesh" (India. MEA, 2003b, no pagination) in that negotiation. Although Bangladesh assured that they would not allow any insurgent activities, India did not seem convinced (India. MEA, 2003b). As a result, in this situation, although the negotiation emphasised urgent bilateral issues, including trade and dispute resolution, it ended with the security issue. Therefore, it could be argued that the settlement of border disputes was strictly guided by the negotiation process of international law, but that process was quite flexible and open to manipulation by both conflicting parties' 'will' and 'interest' in this context.

The research found two further ineffective negotiations on this matter during the tenure of Begum Khaleda Zia, which were influenced by 'India's interest' and overall 'political matters.' The first negotiation was held through Foreign Office consultations in June 2005 in New Delhi (India. MEA, 2005b) (see page 200 for details). The Foreign Secretaries

discussed border disputes, illegal trade, resource allocation, and trade and investment, among other issues. Moreover, they discussed to complete the border demarcation process through the Joint Boundary Working Group (India. MEA, 2005b). However, disagreement arose when "The Indian side emphasized its requirement for border fencing within and up to 150 yards of the international border. The Bangladesh side stressed the need to conform to the 1975 border guidelines and avoid any action that may impact adversely on the peace and stability in the border areas" (India. MEA, 2005b no pagination). The discussion again ended without any effective decision, other than a hope for further negotiation. Further significant effort from Bangladesh to resolve the border dispute comprised Begum Khaleda Zia's visit to India in 2006. "Bangladesh was unhappy over India's reluctance to give its exports duty-free access. Further, given that it has to share the waters of many rivers with its big neighbour, the lower riparian State seemed jittery about Indian plans for interlinking rivers" (Subburaj 2007, p. xvii). In this negotiation, Dr Manmohan Singh emphasised preventing terrorism rather than solving other bilateral issues, including the border dispute. Subburaj (2007, p. xviii) argues that, "This was evident in Bangladesh agreeing to join hands with India to fight terrorism, which has been imposing a serious threat to stability and growth in the region. It is a different matter that Bangladesh continues to deny that it has been allowing anti-India terrorism outfits to have their bases in Dhaka." Although both parties discussed different matters, including border demarcation, border security and terrorism, no agreement was reached regarding border dispute resolution.

Now, the critical question is, although Bangladesh was quite enthusiastic to resolve the dispute during the tenure of Begum Khaleda Zia, why could they not finalise an agreement? Explanations could be argued from the context of 'interests' and, more importantly, the political point of view according to critical theory. As discussed in chapter 2, although negotiation is considered the most likely process of dispute resolution that could provide better resolution, it still depends on conflicting parties' 'will' to reach a conclusion, and if talks raise national security issues, it is harder to achieve cooperation. For example, as mentioned above, in 2003, during a foreign secretarial negotiation, "In response to Indian concerns regarding the activities of Indian insurgent groups in Bangladesh, the Bangladesh side reaffirmed the commitment not to allow its territory to be used for any activities inimical to the interests of India" (India. MEA, 2003b, no pagination). However, it could not satisfy its counterpart. As a result, no agreement was reached to resolve outstanding issues.

The findings of the analysis further explore the causes of India's reluctance to enter any further cooperation, including the dispute issue, with Bangladesh during Begum Khaleda Zia's tenure. First of all, "On April 2, 2004, the police seized 4,930 types of sophisticated firearms, 27,020 grenades, 840 rocket launchers, 300 rockets, 2,000 grenade-launching tubes, 6,392 magazines and 11,40,520 bullets when they were being loaded on to 10 trucks

from two boats at the jetty of the CUFL"[74] (Mahmud, 2014, no pagination). This incident made India more suspicious about Bangladesh's patronage of Northeastern India's insurgency movement. According to the Institute for Defence Studies and Analyses of India, "India's position stands vindicated. It had for long maintained that not only have insurgents from the north east found safe havens in Bangladeshi soil, but that they have enjoyed the backing of the Bangladeshi state as well" (Datta, 2009, no pagination). The BNP strictly refuted the claim but could not convince its counterpart. Moreover, Indian analysts (Dutta, 2010) believed that,

"-*during the BNP-led coalition government's tenure…. the Bangladeshi position was one of complete denial towards not only any of the security concerns that India had raised, but also with regards to the worrying domestic situation within Bangladesh, especially the sharp rise in extremism there. With the Jama'at-i-Islami in parliament for the first time, the question of Taliban-Al-Qaeda presence in Bangladesh kept cropping up ever so often*" (Dutta, 2010, no pagination).

Secondly, "on June 23, BSF crossed the river in boats and tried to occupy the farmland. BSF and BDR [now BGB] men also traded around 100 bullets that day" (The Daily Star, 2006, no pagination). The border conflict worsened further on 10 August 2006 when the BSF started firing on BDR at the Amalshid border in Sylhet district (Niaz, 2014). This issue created a bitter situation between India and Bangladesh, as the study found. The Daily Star (2006) further reported that another border clash happened there on 31st August 2006. All of these causes negatively influenced the border dispute management including the meeting of the India-Bangladesh Joint Boundary Working Group, which was held on 2006 and was unable to make any progress to solve this dispute. Their report contended that "the decision to resume JBWG talks had been taken during Begum Khaleda Zia's visit to India…... However, the meeting ended without resolving the issues of border demarcation, exchange of enclaves and construction of boundary pillars" (Singh, 2007, p. 8).

This circumstance raised questions over the effectiveness of the current process of territorial dispute management in international law considering political influences. As critical theorists argue, politics also play a vital role in any dispute, alongside the contexts in which it is played out. Koskenniemi (2005, p. 24) argues that, "International law, meanwhile, is a through-and-through practical discourse aiming to be objectively different from both the self-serving spin of power politics and the transcendental nonsense of the moral discourse". To make sense of both these conflicts and their resolution, research needs to set the issues in their wider context and explain the ways in which law and politics interplay in the management of the issue (as set out in the methodology chapter). In this case, the dispute management procedure entirely followed the negotiation process of

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[74] "Indian separatist group United Liberation Front of Assam (Ulfa) was the intended recipient of the illicit arms that landed at the jetty of state-owned Chittagong Urea Fertiliser Limited (CUFL) that night" (Mahmud, 2014, no pagination).

international law, but it was articulated through the spin of the 'politics', 'interests' and 'will' of the disputing parties.

The changing domestic political context also played the most significant role in determining the outcome of this dispute and shaped the negotiation process, as previously analysed. Dramatically, after Sheikh Hasina came into power, the negotiation proceeded more quickly. In Sheikh Hasina's Awami League government, India, especially the Congress government, received once more their trusted partner and agreed to proceed further on the issue. Sheikh Hasina won the general election in 2008 in Bangladesh, while in India, the Congress-led UPA returned to power in the 2009 general election after resolving the problem created by the Left Front Parties' withdrawal (Das, 2010). These two parties created a more constructive negotiation framework due to the historical links between the two parties since 1971 (Rashid, 2010). Consequently, the first negotiation took place in February 2009 during the Indian External Affairs Minister Pranab Mukherjee's (he was also in the role of the Finance Minister of India between 2009 and 2012) visit to Bangladesh (see page 201 for details). A new era of relations between India and Bangladesh began, according to India and Bangladesh spokesmen. During his visit, India and Bangladesh came up with different issues. The research reveals that Bangladesh's concern were urgent issues including border dispute issues and other trade issues, whereas India was interested about obtaining transit facilities through Bangladesh in that negotiation. Ahmed (2009, no pagination) argues that,

 "Bangladesh's contentious issues with India are sharing of waters, demarcating of 6.5 km borderland and maritime boundary dispute, tariff and non-tariff barriers and killing of Bangladeshi citizens by the Border Security Force of India ... India wants to have transit facility across Bangladesh from east to west, and also needs to use Chittagong port. India alleges that Bangladesh gives sanctuary to Indian separatists."

However, in this negotiation, it was agreed on the coordinated border management plan (India. MEA, 2009a).

Some leading media of Bangladesh discovered that "Delhi wanted a bilateral anti-terror pact with Dhaka" (The Daily Star, 2009, no pagination). The further negotiation between India and Bangladesh on September 2009 during a discussion between Bangladeshi Foreign Minister Dr Dipu Moni and Indian External Affairs Minister Shri S.M Krishna in Delhi revealed the truth. As discussed in chapter 2, the negotiation process often builds up with a 'give and take' commitment rather than following some substantive legal rule like domestic law. India fulfilled its desire by getting "an agreement for mutual legal assistance on criminal matters, agreement of transfer of sentenced persons, agreement on combatting international terrorism, organized crime and illegal drug trafficking" (India. MEA, 2009c, no pagination). On the other hand, Bangladesh got the assurance that the border dispute would be resolved

in a comprehensive manner. India also assured Bangladesh that the Tin Bigha Corridor issue would be considered as a humanitarian issue (Bangladesh. MOFA, 2013a). Following this, Bangladesh handed over the top ULFA[75] leaders, including Arabinda Rajkhowa, in early December 2009, which had been India's long-standing demand (Habib and Singh, 2015).

The analysis noted that the final stage of this dispute management took place between 2010 and 2015 through seven high-level bilateral negotiations, which took place during the Sheikh Hasina-led Awami League tenure (for more details of these negotiations see pages 201-204). The first negotiation took place between Bangladeshi Prime Minister Sheikh Hasina and Indian Prime Minister Dr Manmohan Singh in 2010 (see pages 201- 202 for details). This negotiation is significant because,

"*Security cooperation between the two countries received the first boost when Prime Minister Sheikh Hasina visited New Delhi in January 2010, during which time three agreements were signed, namely: Mutual Legal Assistance in Criminal Matters; Transfer of Sentenced Persons and Combating International Terrorism, Organized Crime, and Illicit Drug Trafficking. The cooperation currently rests on a three-tiered system, from official level to Secretary-level to Ministerial-level*" (Albd.org, 2016, no pagination).

Most importantly, they discussed the transit issue, which was a long-standing demand by India (see pages 201-202 and 239-240), and agreed upon the need for further development. Sheikh Hasina also agreed that Bangladesh would allow India to use its Mongla and Chittagong seaports as well as some rail and road networks for transporting goods (India. MEA, 2010c). This visit provided a solid groundwork for a further resolution of the border dispute, as the critical analysis has found here.

The most significant negotiation took place during Manmohan Singh's visit to Bangladesh in September 2011. Finally, India agreed to implement the LBA, 1974 and the 'Protocol to the Agreement Concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters' had been signed (Bangladesh, MOFA, 2015b). The 2011 Protocol is an integral development of LBA 1974 Agreement (see Appendixes G and H). This protocol formally resolves the exclave issues, the adversely possessed land issue and the issue of 6.1 km (out of 6.5 km) of un-demarcated border. According to this agreement, Bangladesh will hand over 51 enclaves to India and, in return, India will hand over 111 enclaves to Bangladesh (India. MEA, 2011a). The only different feature of this protocol with the LBA, 1974 is that "the residents, except for those who opted for moving to India, of Indian enclaves becoming Bangladesh territory would be given citizenship of Bangladesh. Similarly, residents of Bangladesh enclaves becoming Indian territory would be given Indian citizenship" (Bangladesh. MOFA 2015b, no pagination).

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[75] The United Liberation Front of Assam.

The research reveals that it was entirely possible because of Bangladesh's new foreign policy approach towards India. Chakma (2012, p. 11) describes Sheikh Hasina's recent India policy thus: "As prime minister, Sheikh Hasina moved quickly to reassess the country's foreign policy orientation, particularly its India policy … The Hasina government apparently chose to draw closer to India and bandwagoned with this rising power." However, the problem arose from Indian domestic political premises, and it encountered massive protest from the opposition party. An important fact, as the 2011 Protocol noted, is that,

"*No constitutional amendment is required for a resolution of the un-demarcated segments of the land boundary by an agreement as this is within the competence of the Executive wing of government; however, the issue of exchange of enclaves and redrawing of boundaries to maintain status quo in areas of adverse possessions involves the transfer of territories from one State to another and therefore requires a constitutional amendment*" (India. MEA, 2015j, p. 26).

As discussed in chapter 5, the 1958 Nehru-Noon Accord and the 1974 Land Boundary Agreement both faced the same domestic political protests; they also confronted legal issues for a constitutional amendment (see chapters 5 and 6). In 1992, when India decided to give the Tin Bigha Corridor as a lease to Bangladesh to connect with the Dahagram-Angorpota enclaves, the BJP vigorously protested. Moreover, in a parliamentary assembly, prominent leaders opposed it, saying,

"I regard lease in perpetuity as lapse of sovereignty. So, it is not a lease for the common man and citizens living here. We are subjecting our own people to the virtual sovereignty of Bangladesh. This is the hard reality" (Madhav, 2013, p. 16).

In the same way, the deal did not have a smooth path in India's. The ratification faced massive protests from the State Government of West Bengal. According to Pusarla (2015, no pagination), "when the 119th amendment [bill] was introduced in 2013 in Rajya Sabha, BJP stiffly opposed the bill as its unit in Assam expressed serious concerns of the local people. Finally, the bill was stalled by Mamata Banerjee." Nevertheless, Mamata Banerjee, Chief Minister of West Bengal, who offered her 'consent' to ratify the 2011 Protocol, was always opposed to its ratification. The critical point is that perhaps, surprisingly, Modi's political efforts convinced her. An important point to be noted here is that before coming to power, the BJP was against ratification of the Land Boundary Agreement. The display of political expediency on the foreign policy agenda of the National Democratic Alliance (NDA) (led by BJP) Government that assumed power in 2014 was clearly evident. Prime Minister Narendra Modi took the initiative to "reverse the BJP's position in the last years of the UPA, that the LBA was 'unconstitutional' and … [for] building a national political consensus in favour of the boundary settlement"" (Mohan, cited in Datta, 2016, no pagination). Consequently, both the BJP and Mamata Banerjee changed their stance on this issue due to the political approach, which lead the dispute to a partial resolution and provided hope

for a full conflict resolution. Thus, on 6th May 2015 (Lok Sabha approved it on 7th May), the Indian parliament passed the historic constitution (119th76 amendment) bill, 2013. Following this, both prime ministers agreed to an 'Exchange of Letters on Modalities' for the implementation of the 1974 Land Boundary Agreement and its 2011 Protocol (India. MEA 2015j). Following this, on 31st July 2015, the enclaves were formally exchanged.

Power relations continued to play significant roles in these relations. Not only were negotiations suspended, but a new dispute arose while the resolution of the border issues hung on the ownership of South Talpatti Island (known as New Moor in India) (BBC News, 2010) (see chapter 6). Instead of bilateral negotiations, India chose direct power demonstrations. Thus in 1981, India sent warships to the island. Bangladesh also sent naval units in return (Rashid, 2010, Mail Foreign Service, 2010). However, Bangladesh could only follow a defensive foreign policy with its larger neighbour. On the other hand, newspaper reports suggest that India adopted an attitude of 'let us teach a lesson' to Bangladesh (Rashid, 2010). Although the issue has been temporally solved by bilateral negotiation, it has been indicated that if Bangladesh had not restrained itself, there would have been an armed conflict between India and Bangladesh (Rashid, 2010). The island was crucial for both countries because of its natural resources, and the ownership thereof could have been solved by a joint Indo-Bangladesh survey at the Hariabhanga River. Bangladesh proposed joint surveys as early as 1974 to India, but there was no positive response. Another significant issue was Indian naval activity in Bangladesh's waters. "Was it to test the strength of Bangladesh Navy in protecting its coastal waters or to provoke Bangladesh to take action?" (Rashid, 2010, p. 179).

Another significant example of Indian 'power' demonstration in this conflict is in the border clash on 15th April 2001. According to the Director of Bangladesh Border Force, Major General Fazlur Rahman, the Border Security Force India started to build a link road from their Camp Padua to another camp through Bangladeshi territory considered as a 'no man's land.' An armed clash started straight away (Odhikar, 2008). After a few days, BSF troops entered Bangladesh, crossing international borderlines to attack Boroibari village. Some former BDR and BSF soldiers were killed or injured in that clash (Noor, 2004). The situation was resolved through both governments' intervention. It has been claimed by some media that the "subservient government (of Bangladesh) had regularly failed to counter frequent attacks on Bangladesh border troops and civilians" (Devraj, 2001, no pagination). BDR soldiers have since withdrawn from Padua Village. However, in a real world, the power equation between neighbours needs to be assessed objectively. The pertinent questions for Bangladesh about the settlement of any dispute with India appears to be: Are there any compelling reasons for India to settle any issue? Is there any country or a group of countries

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[76] Constitution 100th amendment act 2015.

capable of exerting influence on India? Do the big global powers accept or acquiesce to the status quo? What would be the exchange for India or what would India get in return? Is it reasonable to think that India, or any country, would come to the table and settle issues without getting anything in return? However, while one of the political realities is that relations between neighbouring countries are primarily based on a 'give and take' policy, the geopolitical contexts also shape those relations, as we shall see shortly.

The findings of the research indicate that, apart from power politics, the major shaping factors in recent developments in border and maritime disputes include the geographical positioning of Bangladesh. "India is trying to build an image of a responsible regional power by showing its willingness to cooperate with its neighbours and having cordial relationships with them" (Khan, 2010, no pagination). It is getting more important for India to keep its hegemonic power in South Asian politics and economy, as Pusarla (2015, no pagination) argues:

"By displaying the nerve to implement the long drawn LBA agreement, Prime Minister Modi exhibited peerless political courage needed to make huge diplomatic gains. The timing of this bill is far more significant as it comes days before Modi's departure to Beijing. With resolution of land boundaries with Bangladesh-India has emerged as a true leader in the region."

The economic interests include India's repeated demand for the transit of goods and gas through Bangladesh, which could benefit India (and also Bangladesh, which would earn fees from this).

Map 9: Bangladesh-India transit (Banerjee, 2010).

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With transit rights, transport doesn't have to go a long distance from West Bengal through the 'neck' of the Shiliguri corridor to the northeastern states. These areas will be the engine of economic growth, and Indian industrialists could establish industries in Bangladesh, based on the cheap supply of natural gas, for export to the northeastern Indian states (Rashid, n.d). Perishable goods would be easier to transport from the rest of India, and it would save millions of dollars in the transport of goods. Moreover, the stated purpose is that common issues in the eastern region of South Asia can be addressed appropriately and quickly in the vital areas of trade and investment. As these areas are land-locked, Bangladesh's port, Chittagong, could play a key role in development of that region. Narendra Modi led NDA government identified these potentials and also recognised that all of this depends on good relations with Sheikh Hasina's Awami League government. In 2010, the Awami League government agreed to let India use the Chittagong and Mongla ports for transporting goods (India. MEA, 2010c). India has sought this for a long time, but Bangladesh did not agree with it. It became a major political issue, with huge protests in Bangladesh as the research has found. During Sheikh Hasina's rule, there was a perception by the opposition BNP that the existing state of Indo-Bangladesh relations had strengthened Indian security and economic interests (Rashid, 2010). The research also explores an important fact, namely that Indian energy security is also important in this context as the Indian economy continues to grow. India has proposed a Myanmar-Bangladesh-India gas pipeline (Kalita, 2015). There is a possibility of gaining this from the India-friendly Awami League-led Bangladesh government (Khan, 2010). Generally, one can see that economic interests became more significant factors in the management and (partial) resolution of the border dispute over time, especially after 2000. These economic issues also formed part of the justice issues along with the violence at the border, of which researchers must take note.

Other political and strategic interests behind India's more recent moves can be explained, as the research reveals, in terms of the context of its power position in Asian politics. China's emerging power forms a potential threat for India's leading role in South Asian politics. China is still seen as a security threat to India, but her increasing trade and investment activism also represent a challenge for India. In the 1960s, during the China-India conflict, only Chinese restraint prevented a massive war between the two countries. Bangladesh's geographical positioning is also important in this context. If Bangladesh lets China use its territory against India in any future conflict, that could represent a significant threat to India's security. Khan (2010, no pagination) argues that "India wants to have closer cooperation with Bangladesh so that the growing Chinese influence in Bangladesh can be balanced".

However, as all of these 'interests' could potentially be ensured only by the Awami League being in power, India has decided to go for friendly relations with Bangladesh. As a result,

both governments took initiatives to resolve all outstanding disputes between the two countries, which explicitly includes border disputes. According to Indian international relations analysist Ram Madhav (2013, p. 16), "by ratifying this Agreement India would be strengthening Sheikh Hasina's hands and it would help her in winning the forthcoming elections … in Bangladesh"[77]. He further argued that, "'If we don't ratify now, Bangladesh can resort to retaliation', 'China will take advantage of the situation', 'Khalida Zia will come to power and she will negate everything' ... these are the fears expressed in the corridors in the South Block" (Madhav, 2013, p. 16). In return, Sheikh Hasina, leading the Awami League government, apparently received assurance to stay in power using people's sentiments and demonstrating the support of its powerful neighbour (Madhav, 2013).

These critical explanations demonstrate the reasons for what has been only a partial resolution of the border dispute. There are issues that have not been resolved which were not included in the LBA in 1974 or the 2011 Protocol. Issues currently causing problems include killings and massive human rights violations in the conflicted border area; these issues were explained in chapter 6. As a part of the methodological approach of reconstructive critique, related documents, texts, and interviews have been analysed using qualitative analysis by using the approach explained in chapter 3 (for more details see pages 102-119). This analysis reveals the 'causes' that are responsible for the current problems at the India-Bangladesh border as well as the reasons that these current disputing issues cannot be resolved, as demonstrated in table 7.1.5 (see pages 223-224for details). According to the findings, one of the main cause of the 'contingent constraints' conditioning the problem of killings by BSF is BSF's aggressive attitudes (Mahbubur Rahman, Interview: Dhaka, Bangladesh, 12 November 2008, Odhikar, 2008). A British newspaper, The Guardian (2011), reported that, "India's Border Security Force (BSF) has carried out a shoot-to-kill policy – even on unarmed local villagers. The toll has been huge. Over the past 10 years' Indian security forces have killed almost 1,000 people, mostly Bangladeshis, turning the border area into a South Asian killing field" (Adams, 2011, no pagination). It has also been described in the report that BSF's attacks on Bangladeshi people became regular. Often, they intentionally target civilians living near the border (Adams, 2011, BBC News, 2001). This action appears to have been supported by the Indian government, who have failed to provide an independent investigation or ensure prosecution (Vinay Sen, Interview: Dhaka, Bangladesh, 19 April 2014, The Daily Prothom Alo, 2014). India often argues that the BSF is doing this to prevent illegal immigration, but chapter 6 suggests that this allegation is baseless[78] (Confidential source, Interview: Rajshahi, Bangladesh, 16 April 2014, Odhikar, 2008). According to this counter allegation, the victims are innocent civilians, killed while working in their fields. Sometimes they mistakenly go closer to the zero line

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[77] 2014 election.
[78] To some extent but not completely.

while working in their fields and lost their lives (Md. Jamal Uddin Khan, Interview: Dhaka, Bangladesh, 5 April 2014, The Daily Prothom Alo, 2015). Whatever the reason, international law does not permit this killing; I will come back to this later. However, the research did not look specifically at illegal migration as mentioned in chapter 5 and 6. Therefore, the research primarily emphasising government measures to manage overall current disputing issues, which have been discussed under 'peaceful border management', but there was little progress (see pages 222-223 for details). These issues are still being negotiated between these two disputing countries.

Another dispute regarding the boundary of common rivers, which is also connected with the sharing of common rivers, including the Teesta River, is currently under negotiation between India and Bangladesh. As discussed in chapter 6, the thesis primarily emphasises the land boundary dispute and has not explored the water-sharing problem between India and Bangladesh (see chapter 6 pages 161-162 for details). However, this is a small but significant part of the issues existing between them, originating in the inadequate boundary line drawn by British colonial officials in 1947. The research found that India reportedly blocked the streams of some major rivers flowing from India to Bangladesh. Since these rivers are within the territory of India, it never cared to discuss or consult with Bangladesh regarding the blockage, diversion or consumption of water from these rivers, which apparently indicates India's power domination as well as its advantageous position (Charan Mir, Interview: Dhaka, Bangladesh, 19 April 2014, Rashid, 2009). However, in a negotiation between the Bangladeshi Foreign Minister and Indian External Affairs Minister in September 2009, "they agreed to mandate their respective Foreign Offices to meet and discuss the technical and other parameters of this issue. They agreed to immediately commence Joint Hydrological Observations on the river. They also agreed to undertake bank protection works, dredging of Ichhamati river and minor irrigation/drinking water schemes on Feni river" (India. MEA, 2009c, no pagination). It should be noted that the issue of boundaries of common rivers was not specifically discussed in that meeting, rather there was an emphasises on the sharing of water issue. However, it is very unfortunate that, due to protests from Mamata Banerjee, the West Bengal Chief Minister, India halted the Teesta water-sharing deal (The Indian Express, 2016). As a weaker counterpart, Bangladesh has no other option than to wait for India's will for further negotiation.

Another significant issue in the conflicted border area is the 'push-in, push-back' problem. Bangladeshis who overstay visas in India can be dealt with legally. The analysis determined that Indian authorities are not doing this; rather, they forcefully push people into Bangladesh without notice. Sometimes, they even kill them, which also indicates India's power domination and disrespect for the law (Noor, 2004). Likewise, in the fencing issue, a barbed wire fence is a psychological expression of the hegemony proposed by India. However,

according to the Institute for Defence Studies and Analyses, India, 2442 people have been pushed into Bangladesh before 2012, and another 42,338 people will be pushed in as they are considered foreigners (Pattanaik, 2014). The Home and Political Department, Government of Assam (2012) argues that "In the absence of bilateral agreement which lays down the procedure for deportation and given the position of the Bangladesh government on the issue, India has adopted the policy of push back" (Pattanaik, 2014, no pagination). In 1992, when India pushed 132 people into Bangladesh, claiming that they were illegally staying in India, former Foreign Secretary of Bangladesh Shamsher M Chowdhury commented that "India's attempts at unilateral pushback of illegal immigrants, amid fanfare and publicity, … had generated strong adverse reactions in Bangladesh" (Nandy, cited in Nandy, 2005, p. 142). Moreover, Bangladesh Prime Minister Sheikh Hasina denied this issue in 1999, saying that there is not a single illegal Bangladeshi migrant in India. In 2001, Bangladesh Prime Minister Begum Khaleda Zia again denied India's allegation. Following her statement, in 2003, Shamsher M Chowdhury said that, "there are no Bangladeshis residing illegally in India, nor had there been any in the past ... We have always denied that any Bangladeshi lives in India unlawfully and we will continue saying so unless they (the Indians) can prove their claim" (Nandy, 2005, p. 243). The research reveals that this claim and counterclaim leave this issue unresolved and raise concern over severe human rights violations at the border (see also chapter 6).

The analysis further found that Indian domestic political parties also used the Bangladeshi immigrant question. The Institute for Defence Studies and Analyses, India, did not deny this, saying that, "It is true that many illegal migrants from Bangladesh possess ration cards and other documents due to the nexus between the officials and the vested interest which want to win them over as vote banks" (Pattanaik, 2014, no pagination). However, the issue became a political concern between India and Bangladesh. India asserted that Bangladesh should accept these people returned as Bangladeshi without further proof (Md. Jamal Uddin Khan, Interview: Dhaka, Bangladesh, 5 April 2014, Noor, 2004). Both situations discussed above could be analysed by Koskenniemi's 'hegemonic technique.' According to Koskenniemi, (2011, p. 222), "However universal the terms in which international law is invoked, it never appears as an autonomous and stable set of demands over a political reality. Instead, it always appears through the positions of political actors, as a way of dressing political claims in a specialised technical idiom in the conditions of *hegemonic contestation."* He went on to define '*hegemonic contestation'* as "the process by which international actors routinely challenge each other by invoking legal rules and principles on which they have projected meanings that support their preferences and counteract those of their opponents" (Koskenniemi, 2011, p. 222). However, India and Bangladesh took this issue seriously after Sheikh Hasina came to power after the 2008 election and, following bilateral relations between officials and at foreign minister level, a Co-ordinated Border

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Management Plan was signed in 2011, resolving to settle the issue by negotiation. Kumar (2009, p. 77) argues that, "International law does not provide for unilateral deportation against the views of the origination of country. So, bilateral talks and agreement is required to solve this problem." It is undeniable that, like other disputed issues such as enclaves, adversely possessed land and un-demarcated borders, the major causes preventing the resolution of these issues was primarily 'politics', including the attitudes and values as well as the interests of key players as well as the attitudes of superiority of Indian decision makers. This relates very closely to Koskenniemi's understanding of the relative capacity of law and political issues and structures in dispute management (see chapter 2).

7.2.2 Internal deficiency of the structure of international law

In chapter 2 the research suggested internal deficiencies inherent in international law, employing a critical theoretical and critical legal studies approach based on Koskenniemi (2005, 2011). These include: contradictions inherent in rules of international law; the fact that rules and processes of international law are too flexible and open to manipulation by politics and power politics; that it is flexible because it is based on moralistic/unrealistic norms and rules; the non-existence of effective legislative mechanisms; and the absence of authoritative adjudication and enforcement procedures. These combine to undermine the law's effectiveness. The problem of contextual interpretation or contextual justice requires venturing into fields such as politics, social and economic causality for full understanding (Koskenniemi, 2011). By analysing this particular case study, the research found that these inherent deficiencies have been also identified as significant causes for undermining the success of conflict management. Furthermore, because of these inherent deficiencies, international law often becomes a mere tool of state interest. These conclusions can be justified through critical explanation. Koskenniemi (2011, p. 39) argues that, "legal rules whose content or application depends on the will of the legal subject for whom they are valid, are not proper legal rules at all but apologies for the legal subject's political interest". It is entirely possible to make a decision which is only political. "A choice which must ultimately defend itself in terms of a conception of justice – or then remain substantively unjustified. We accept it because that is what we do" (Koskenniemi, 2011, p. 40). Koskenniemi contends that this is not because there is a conflict between law and politics, but rather there is an incapability of law. He argues that, "international law as a process of articulating political preferences into legal claims … cannot be detached from the conditions of political contestation" (Koskenniemi, 2011, p. 221). Therefore, states' actions in the process of conflict management still represent their political interests, whereby international law is a premise on which they justify their action.

The procedure of ratification involves two stages, first the signature and then the actual ratification. The Land Boundary Agreement was made in 1974, but it took 41 years to get

India's ratification (1974-2015). However, ratification is executed through a state's internal procedures. If parliament needs to ratify a treaty, but does not accept its obligations, then it will not be valid. For example, the US Senate, which must ratify formal treaties, did not ratify the 1996 Comprehensive Nuclear Test Ban Treaty. In the case of the 1974 agreement, in South Asian countries, none, including India, require a normal procedure of ratification through parliament (Rashid, 2003). That implies that the governments alone have the right to consider whether a treaty is to be ratified or not. According to Article 5 of Land Boundary Agreement, 1974[79] (p. 4),

"This Agreement shall be subject to ratification by the Governments of Bangladesh and India and Instruments of Ratification shall be exchanged as early as possible. The Agreement shall take effect from the date of the exchange of Instruments of Ratification".

However, the paradox is that although Bangladesh ratified the treaty, India did not. Moreover, India often argues that it needs a constitutional amendment which requires parliamentary approval to ratify that agreement, a political process of constitutional requirement (see chapter 6 for more details). In this case, it took 41 years to ratify. This is one of the most significant causes undermining conflict management in this case. One could argue that the transfer of enclaves is a matter of territorial integrity for India and Bangladesh, and so requires a constitutional amendment, but this is dubious as law. Rashid (2010, p. 46) argues that,

 "In my view, the only issue which led to an agreement during the lifetime of Sheikh Mujib was on the demarcation of the land boundary issue. I believe the agreement was concluded because of the direct intervention of Mrs Gandhi due to her close personal relationship with Bangabandhu Sheikh Mujib."

However, during recent incidents on the border, whereby cross-border shooting and killing near the India-Bangladesh border took place, contradicts and undermines the principles of international law. The United Nations is equally concerned about this killing (UN News Service, 2011). Regrettably, perhaps, Bangladesh did not take this issue to the UN and preferred to solve it through bilateral negotiation. Unlike domestic law, international law does not work automatically. According to Koskenniemi (2011, p. 142), it could be argued to be a conflict of rights: conflict between "rights to security" and "right of life or right as freedom". Koskenniemi (2011, p. 142) contends that, "In every important social conflict, it is possible to describe the claims of both sides as claims for the honouring of rights". According to the Universal Declaration of Human Rights 1948,[80] Article 13 (both India and

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[79] Enclosed in Appendix G.
[80] India voted in favour of the Universal Declaration of Human Rights in 10 December 1948 and Bangladesh accepted it after it became a member of the United Nations.

Bangladesh accepted the declaration), "Everyone has the right to freedom of movement and residence within the border of each state" (UN.org, 2015, no pagination). Also, according to Article 2, "Everyone has the right to life, liberty, and security of person." (UN.org, 2015, no pagination). Therefore, it is reasonable to argue that it is the 'freedom-as-right' of people living near the border area to live their life peacefully and not to be killed. But, from an Indian standpoint, it can be excused for the sake of 'right to security.'

The Indian authority have said that they are doing this to prevent illegal migration and smuggling in a broad context to ensure the security of the nation and people (Pajekta Deshmukh, Interview: Dhaka, Bangladesh, 22 April 2014, The Hindu, 2003). Their argument is justified to some extent of their 'right to security' point. In discussing 'right to security,' Koskenniemi (2011, p. 142) argues, "If your use of your freedom creates harm of me, such use is prohibited". However, it is difficult to define 'harm.' "The formal principle of preventing 'harm to others' merely shifts focus to the concept of 'harm' and fails to indicate which of the competing conceptions of 'harm' should be preferred" (Koskenniemi, 2011, p. 143). Moreover, rape, kidnapping, and robbery by BSF have become everyday issues in that area, which completely violates the Universal Declaration of Human Rights (1948) Article 5, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (UN.org, n.d., no pagination). These killings also violate "The prohibition on the threat or use of force" (Lowe, 2007, p. 101). "First place is given in resolution 2625[81] to the principle that States shall refrain in their international relations from the threat of use of force.........it prohibits, for example, not only armed aggression against other State, but also the use of force to violate boundaries and armistice lines, the use of force in reprisals, and the organization or encouragement of irregular forces for incursion into another State" (Lowe, 2007, p. 101-102). Furthermore, according to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[82] (1990), Article 4, "Law enforcement officials, in carrying out their duty, shall as far as possible, apply non-violent means before resorting to the use of forces and firearms. They may use force and firearms only if other means remain ineffective" (OHCHR.org, n.d., no pagination). The special provisions further added that,

"*Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event,*

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[81] "It is the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, adopted by the UN General Assembly in 1970 as resolution 2625 (XXV)" (Lowe, 2007, p. 100). India and Bangladesh both accepted this resolution.

[82] These principles were adopted by UN General Assembly, 1990 and also by English UN Congress in the same year.

intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (OHCHR.org, n.d., no pagination).

There is no doubt that these issues give rise to contradictory claims. Nevertheless, both governments should take equal responsibly to stop these brutal killings. Meenakshi Ganguli, Director of South Asia Human Rights said that,

"... the central government is also responsible, ... Justice is the best deterrent against further violations ... While the Indian government claims that it holds its forces accountable, it produces no information to show that this is actually happening ... There appears to be complete impunity for BSF soldiers – even in the most egregious cases. Unless the government orders an independent investigation and ensures the prosecutions of those against whom credible evidence is found, such acts of brutality will continue." (Ganguli, interviewed in Human Rights Watch., 2012, p. 3).

According to a Human Right Watch Report (2012, p. 2),

"*Indian government need to do more to ensure compliance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Given the failure of the BSF's internal justice system to prosecute its members for human rights abuses, personnel of all ranks implicated in serious rights abuses should be investigated by civilian authorities and tried in civilian courts … Bangladeshi government should publicly demand that the Indian government end this scourge of violence along their border."*

However, both countries are using 'rights claims' as a norm of international law to play their political blame game. The contradictory interpretation of the principle of 'right' (Koskenniemi called it 'right' conflict) is also one of the primary causes of this long-standing border conflict. Koskenniemi (2011, p. 148) suggests that, "The main point is that rights not only determine and limit policies but that policies are needed to give meaning, applicability and limits to rights". Therefore, the principles of 'right' should be further clarified and applicable in the context of international law to overcome this indeterminacy problem of 'right.' Nor can the former colonial power's responsibility be ignored here (as chapter 5 shows). After failing to resolve this issue for a long time, the Bangladesh government recently raised its voice actively to protest the border killings. Subsequently, during Sheikh Hasina's visit to India in January 2010, Indian Prime Minister Manmohan Singh and Bangladeshi Prime Minister Sheikh Hasina discussed this issue and the negotiation is currently on going.

As discussed in chapter 6, as a part of the boundary and common river issues related with water sharing problem, India's proposed dam construction is also an issue. "The trans-boundary Barak river enters Bangladesh from India, and the river bifurcates into the Surma and Kushiara rivers" (Rashid, 2010 p. 184). India proposed the construction of the

Tipaimukh Dam on the Barak River, which provoked resistance both in India and in Bangladesh. The proposed dam on the Barak river will most likely lead to a drying up of the flow of the Surma and Kushiara rivers, which feed the Meghna river according to the experts. If there is no water in Meghna during the dry season, there will be an environmental and human disaster for many people (Rashid, 2010). Many experts have argued that the proposed dam goes against the ILO Convention 1989, Article 6, concerning indigenous and tribal people. "In applying the provisions of this Convention, governments will consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" (ILO.org, 2016, p. 5). It also goes against the UN Convention of the Law of Non-Navigational Uses of International Watercourses adopted by the UN in 1997 and the "Fourth preambles paragraph read with Article 9 of the Indo-Bangladesh 1996 Ganges Water Treaty" (Rashid, 2010, p. 185). Article 9 of the Ganges Water Treaty 1996 states that "Guided by principles of equity, fairness, and no harm to either party, both the Governments agree to conclude water-sharing Treaties/Agreements with regard to other common rivers" (Rashid, 2010, p. 184). Although India signed this treaty, it continuously diverts water from Bangladesh's share by violating the treaty (Islam, n.d.). Neither international law nor any regional organization could stop India from doing so. In the unequal power relations, it solely depends on India's 'will' to solve this matter.

Moreover, according to the United Nations International Law Commission, Article 7 declares that, "states shall utilize an international river in an equitable and reasonable manner and the riparian states shall exercise due diligence to utilize waters of an international river in such a way as not to cause significant harm to other co-riparian states" (Islam, n.d., p. 43). In this context, India, the stronger actor, acts as the stronger power and is inclined to violate the rules and norms of international law on the pretext of safeguarding national interests (Apura Kumar Das, Interview: Dhaka, Bangladesh, 8 April 2014, Ranjan, 2015). Moreover, India argues that the construction of a border fence does not violate international law or the Land Boundary Treaty 1974. But, arguably, by constructing border fences it is the violating human rights law. In building a border fence, India seized the agricultural lands of people living in the border area. According to the India-Bangladesh bilateral pact of 1975, India cannot make any construction within 150 meters of the border (Rashid, 2010). "According to international regulations, the fence cannot be closer than 150 meters to the actual border, so the actual fence falls behind rows of Indian crops ... Because the fence had to be built 150 meters within Indian territory, Rahim and more than 100,000 other Indians have found themselves on the wrong side of the barbed wire" (Sattar, 2011, p. 3). So, India followed the bilateral pact signed between India and Bangladesh in 1975, but in doing so India violates the Universal Declaration of Human Rights. According to the Universal Declaration
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of Human Rights, 1948[83] Article 13 (both India and Bangladesh accepted the declaration), "everyone has the right to freedom of movement and residence within the border of each state" (UN.org, 2015, no pagination). But, according to Koskenniemi (2011, p. 155), the Universal Declaration of Human Rights "provided no system of enforcement and was legally non-binding". As a result, "its adaptation had perversely provided states with an opportunity to publicly declare that they were not legally accountable for violating human rights – something they would normally have shunned from saying public" (Koskenniemi, 2011, p. 155).

The critical explanation provided here thus explicitly justifies the view that contradictions inherent in the rules of international law make these rules and processes too flexible and too open to manipulation by power politics in the case of India-Bangladesh border dispute management. The non-existence of legislative mechanisms, authoritative compulsory adjudication and enforcement procedures undermines its effectiveness in every case. These are also considered as significant causes conditioning the major constraints on dispute management and resolution.

7.3 States cannot but resort to law in their behaviour and tend to resolve disputes through law

It is clear from the critical explanation provided above that India-Bangladesh political relations explicitly determine their border dispute resolution process. Hence, it is reasonable to suggest that India's approach towards resolving this dispute has always been shaped by the Bangladesh's government's domestic political identity as well as their foreign policy approach. But, equally, the relationship between the two and the management of the boundary dispute, including its recent partial resolution, cannot be reduced to only power relations. At the same time, the context of this dispute, comprising their history, political and economic relations, power relations and, most importantly, domestic politics, are also unavoidable in shaping outcomes. Therefore, powerful interventions by particular factors, such as 'power', 'politics' 'interests' and 'context', are significant causes which can undermine the success of the conflict management process. But the law, including the deficiencies of law and legal process, also occupies an important place as a factor in the success or failure of negotiation. Law and its weaknesses condition the major constraints of India-Bangladesh border management. This suggests that a stronger explanation for the conflict outcomes needs to understand how politics and legal issues interact in a dialectic over time.

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[83] India voted in favour of Universal Declaration of Human Rights in 10 December 1948 and Bangladesh accepted it after it became a member of the United Nations.

One task of international law is to define the procedure of conflict management. In the context of India-Bangladesh border dispute management, the negotiation has been shaped by rules and definitions from the law of conflict management. States wanting to make progress in a dispute cannot but resort to law in their behaviour. For example, international law defines what counts as a treaty or agreement, what counts as a dispute, what counts as an 'enclave,' what counts as a border, and what counts as a citizen or non-citizen or either side of a border. According to critical theory, there is an inseparable relationship between (power) politics and law when states communicate with each other in the framework of the international law of dispute management. However, the maintenance of peace and security is of paramount importance to states and the orderly and peaceful conduct of relations (both in time of peace and conflict) requires some accepted norms of behaviour from states. The accepted norms are the result of customs, practices and precedents. With the passage of time, they attain clarity, precision and the status of general application. It is this usefulness to states which underpins the observance of international law (Henkin, 1979; Higgins, 1994). Although politics and law are not identical, they interact at various levels, and this inseparable relationship cannot be ignored. Koskenniemi (2005) provides a clear picture of the innate relations between politics and international legal rules. He also asserts the "unstable discursive boundary" (Bernstorff, 2006) between international law and politics. He also asserts that it is not possible to maintain an autonomous identity of an international lawyer as entirely separate from that of a politician. "There is no room for a neutral legal sphere outside politics and […] lawyers should integrate this basic insight in their professional identity" (Bernstorff, 2006, p. 1038). Moreover, power and context are also important in this premise. The case study evaluated in this research clearly justifies the approach that holds that context, politics, power, interest and specific issues on the ground are always hidden forces alongside the structure of ideologies and ideas, which are in interaction in dispute management. At the same time, the law itself is a regulating force in any conflict management.

Thus, the significance of critical theoretical and critical methodological implications of a 'reconstructive explanatory critique' achieves its goals by focusing on the causes or constituting elements of this specific 'problem' (not only the immediate causes of problems, but also the blocking forces or structures or other elements obstructing the success of management). This, in turn, allows one to fulfil the task of 'reconstruction' as mentioned by Strydom (see chapter 3) in pointing to the ways that assumptions and practices block the possibility of conflict resolution, and so also how they can potentially be overcome. This can only be achieved, CTIR and CLS suggest, when and if a border conflict can be freed from the influences and domination that challenge the effectiveness of dispute settlement. It could also free the people living in the conflicted border area from oppression, including the killing, torture and overall human rights violations which have continued to haunt the area.

7.4 Economic Factors

Alongside its other purposes, the research must also evaluate the economic relations and their management by the two protagonists in this study. The justification for using economic data lies in the premise that qualitative analysis has limitations which quantitative analysis, or at least some understanding of the basic figures, supplements. Moreover, critical theory signifies that any knowledge is necessarily conditioned by social, cultural, ideological and contextual influences, which must include material forces (Devetak, 2013). Therefore, without evaluating the economic context, the goal of improved knowledge production could not be achieved in this case. However, with India bordering it on three sides and representing one of its most important trading partners, from the Bangladeshi perspective, the primacy of India in its foreign affairs is reinforced by referring to trade and exchange. However, Bangladesh figures are getting increasingly larger on the Indian radar screen, as it is one of most important and largest trading partners and neighbours and with whom it shares the longest border, to say nothing of the fact that a significant portion of India lies closer to Dhaka than it does to Delhi or even Kolkata (Sobhan, 2005). Bangladesh is a huge market for Indian goods, and it is acknowledged that there are thousands of Bangladeshis working in India. More importantly, when it comes to issues such as water, energy and security, the interests of both countries are linked, and there can be no solution of these intractable problems that is not mutually determined. The destinies of the two countries are inextricably intertwined, not least with respect to economic agendas (Sobhan, 2005). Employing the same data collection process described in chapter 3, the research collected significant quantitative data on India-Bangladesh economic relations. These are evaluated here. The research further interpreted and illustrated the quantitative data into four charts, which are presented here. From these charts, it could be concluded that India-Bangladesh economic relations have been greatly shaped by their political relations but also that economic interests and economic structures have equally shaped the political issues identified and explored in this study.

During the initial period of the Mujib regime, India played an important role in the rebuilding of the Bangladesh economy. In the economic field, India emerged as the paramount aid donor for Bangladesh (Sobhan, 2005). "In January 1972, Bangladesh and India issued a joint communique during the visit of Bangladesh's foreign minister, Abdus Samad Azad, to India and India guaranteed for full cooperation to Bangladesh in the economic reconstruction of the country. In the first six months of the post-independence period, 36 percent of all aid committed and 67 percent of the aid disbursed came from India" (Haider, 2006, p. 38). Table 7.4.1 reveals that India's economic assistance to Bangladesh gradually slowed with the beginning of the Zia regime (see chart 7.4.1). Another major success in

economic cooperation for the Mujib regime was aid to Bangladesh in the post-liberation period through technical assistance.

Table 7.4.1
Promise and distribution of Indian aid to Bangladesh
(1971/1972 - 1981/1982)

(In million US$)

Year	Commitment	Disbursement
1971/1972	222.712	181.463
1972/1973	15.576	34.359
1973/1974	46.810	9.994
1974/1975	17.500	19.609
1975/1976	7.397	29.721
1976/1977	0.00	21.045
1977/1978	0.00	5.170
1978/1979	15.00	0.993
1979/1980	0.00	4.562
1980/1981	0.00	2.770

Source: Author's calculation, based on IBCCI.net (2016) and Haider (2006).
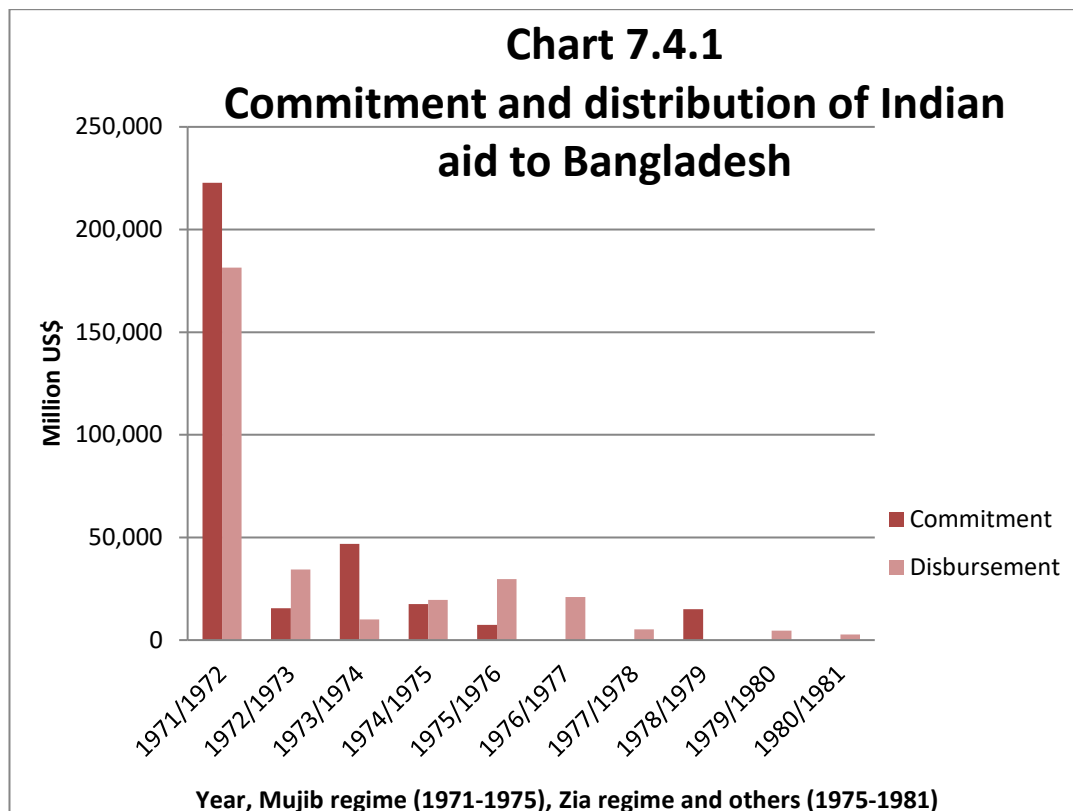
Source: Chart produced by author, based on table 7.4.1.

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Chart 7.4.1 demonstrates that there was a significant decrease in Indian aid to Bangladesh after Sheikh Mujibur Rahman's assassination in 1975 and it continued to drop under the Ziaur Rahman's regime. This decrease clearly suggests that political relations also articulate economic relations.

Table 7.4.2
Bangladesh-India Trade Data
(1971/1972 - 1980/1981)

(In million US$)

Year	Bangladesh's exports to India	Bangladesh's imports from India
1971/1972	0.7	93.9
1972/1973	23.3	174.0
1973/1974	0.4	82.0
1974/1975	5.3	93.3
1975/1976	7.1	58.3
1976/1977	0.6	46.6
1977/1978	2.3	43.6
1978/1979	12.1	40.0
1979/1980	8.0	55.6
1980/1981	20.2	64.0

Sources: Author's calculation, based on Direction of Trade Statistics, International Monetary Fund (IMF) Annual Report (1972-1982) and Haider (2006).

Chart: 7.4.2
India-Bangladesh Trade Chart
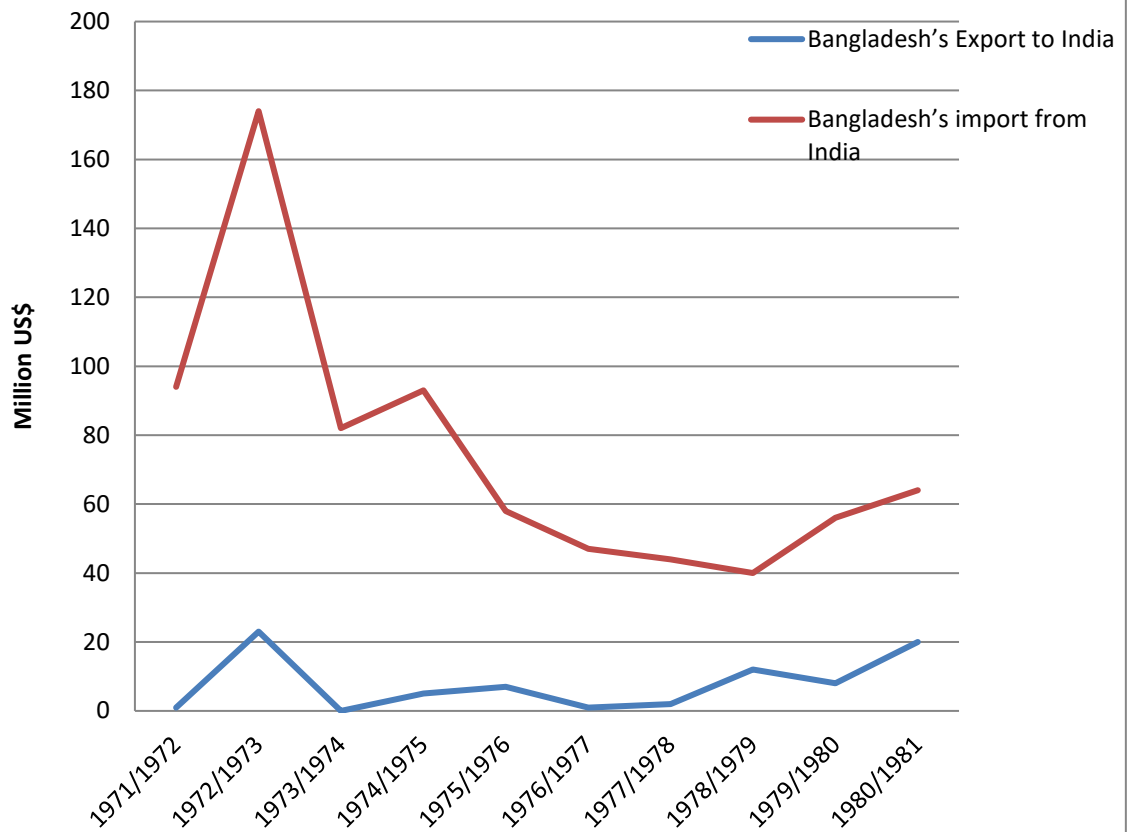
Year, Mujib regime (1971-1975) Zia regime and others (1975-1981).
Source: Author's calculation, based on table 7.4.2.

Another significant subject in the relationship between Bangladesh and India was trade relations. The first significant step to improve this relation was the signing of the Trade Agreement, 1972. But this agreement was terminated because it facilitated smuggling. It also faced strong public protest. A new agreement was signed between these two neighbours in July 1973. Although it went some ways towards the trade gap, it was still wide. In 1971/1972 the trade gap was $93.20 million, while in the last financial year of the Mujib regime, it reached $51.20 million in favour of India (Table 7.4.2).

After the Mujib regime and the commencement of the Zia government, although economic cooperation between the two neighbours became limited to some significant areas, Zia could substantially reduce the trade gap (Haider, 2006). However, the balance of trade was still in favour of India. In 1980/1981, the last financial year of the Zia regime, the trade imbalance between India and Bangladesh was $43.8 million.

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In the early 1970s there was much negotiation with respect to greater integration of the two markets, economic cooperation, and duty-free access to the Indian market for Bangladeshi goods. However, the altered political relationship between the countries after 1975 ensured that none of these contemplated measures came to fruition. Since then, the economic relations between the two countries have remained hostage to a less than ideal political relationship and, therefore, such a level of integration and cooperation is no longer contemplated (Sobhan, 2005). "India's economic assistance to Bangladesh reduced drastically, and the economic relations between the two countries reached low in ebb in the Zia regime, because of Bangladesh's rapid transformation from the Indo-Soviet bloc to its opposite, Western and Islamic bloc" (Haider, 2006, p. 19). Additionally, Zia's major success was a reduction of the trade gap. The possible reason behind this could be the defeat of Indira Gandhi and the Desai government coming to power, and thus a change of domestic political context in India. Another reason might be the trade agreement between India and Bangladesh signed by Mujib in 1973, whereby Bangladesh received the advantages of that treaty. Begum Khaleda Zia came into power in 1991 and continued until 1996 before resuming once more in 2001-2006. In comparison, Sheikh Hasina was in power from 1996 to 2001, then again in 2009; at the time of writing, she remains in power. In her terms, Begum Khaleda Zia could not improve economic relations with India, especially the trade gap, which became even larger.
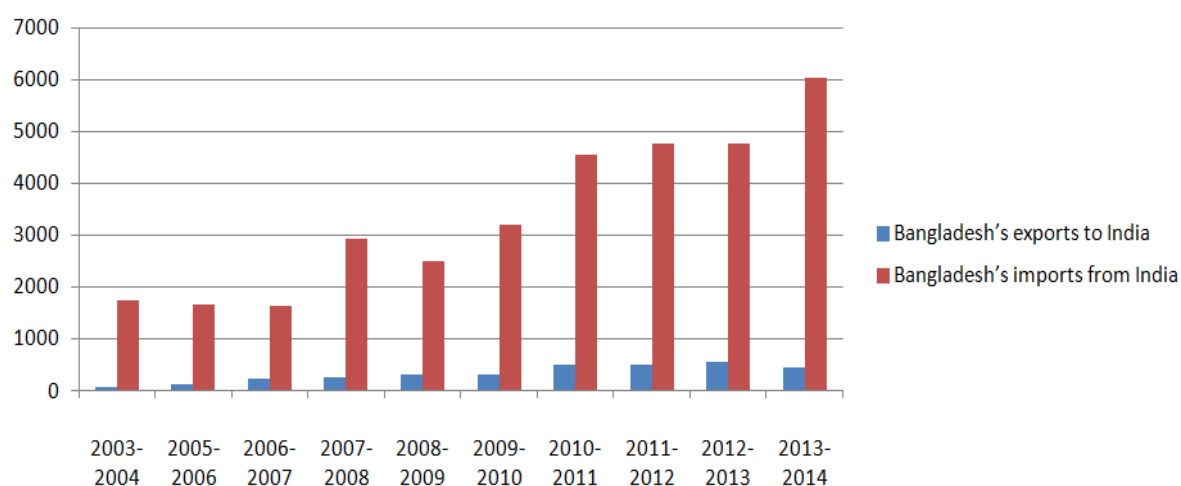
Table 7.4.3
Bangladesh-India Trade Data
(1982 - 2003)

(In million US$)

Year	Bangladesh's exports to India	Bangladesh's imports from India
1982	20.3	43.3
1983	6.9	37.9
1984	28.3	60.1
1985	29.6	64.9
1986	7.7	57.2
1987	11	74.4
1988	8.7	90
1989	10.7	120.7
1990	22	170
1991	23	189
1992	4	284
1993	13	380
1994	24	467
1995	36	994
1996	20	1138
1997	37.2	795.6
1998	55	1178.8
1999	49.5	1023
2000	50.1	945.5
2001	60.8	1195.5
2002	39.3	1145.8
2003	52.9	1488.7

Sources: Author's calculation, based on Director of Trade Statistics, IMF Trade Data (2005) and Sobhan and Zaman, (2004).

Tables 7.4.3 show trade figures from 1982 to 2003. The table clearly indicates that the trade gap between Bangladesh and India was wider in the 1980s and in the 1990s. In 2003, the trade deficit reached $1435.8 million, meaning Begum Khaleda Zia was unable to improve the situation. Table 7.4.3 shows the huge trade gap between India and Bangladesh. Although Sheikh Hasina was in power from 1996 to 2001, she was not able to improve the

trade gap significantly. It could be argued that these material issues were shaped by the political relations, as it has been contended that there are some significant political issues undermining the success of the border dispute (to some extent not entirely) as well as political relations between India and Bangladesh while the Sheikh Hasina-led Awami League was in power between 1996 and 2001 (see pages 174- 175 and 260 for details).

Chart 7.4.3
India-Bangladesh Trade
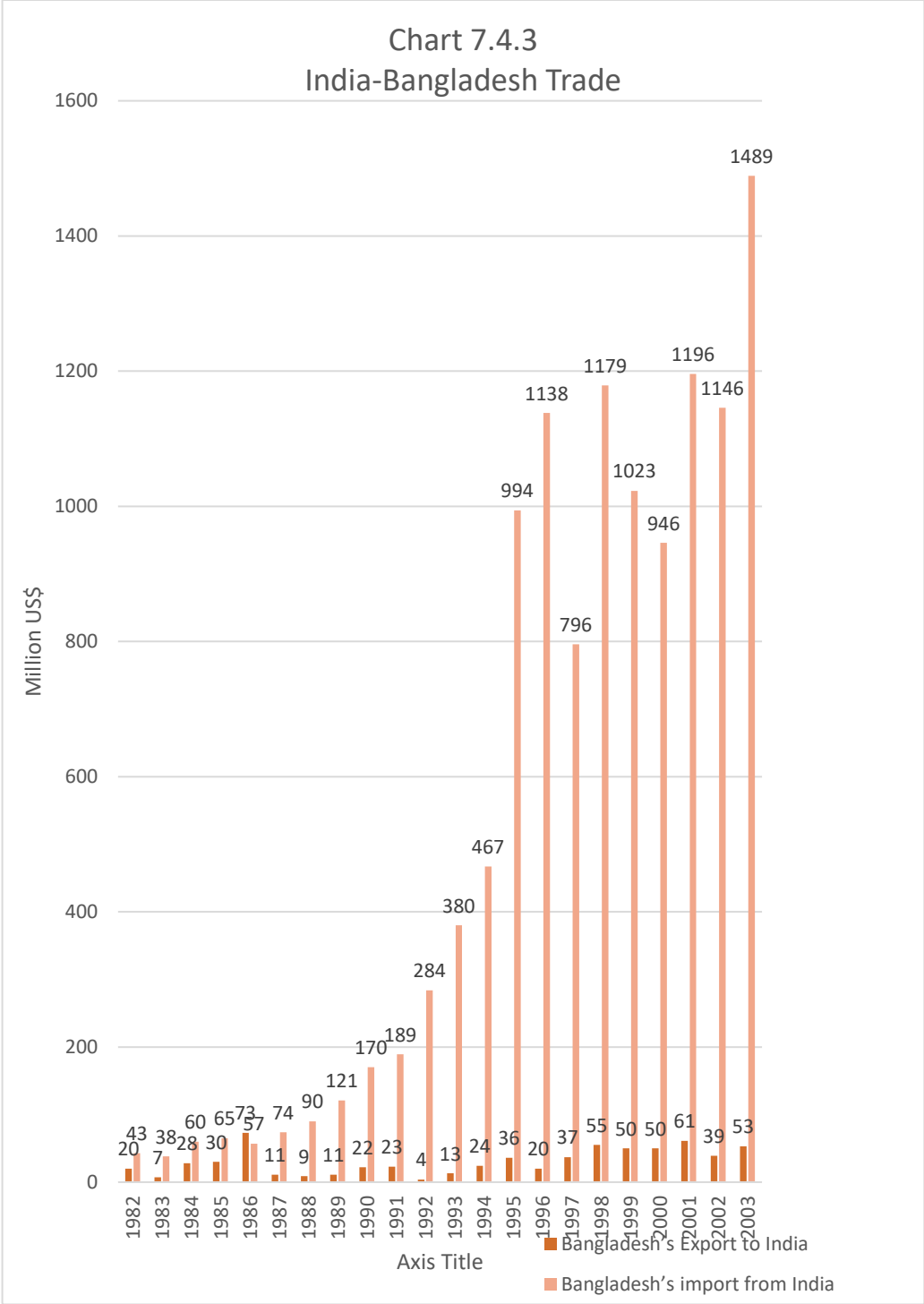
BNP and Others (1982-1996, 2001-2003[84])] Awami League (1996-2001).

Source: Author's calculation, based on table 7.4.3.

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[84]BNP was in power until 2006, but the full term hasn't been shown here in order to comply with the chart; the remaining trade data will be demonstrated in the next chart and table.

Table 7.4.4
Bangladesh-India Trade Data
(2003 - 2014)

(In million US$)

Year	Bangladesh's exports to India	Bangladesh's imports from India
2003-2004	77.63	1740.75
2005-2006	127.03	1664.36
2006-2007	228.0	1629.57
2007-2008	257.02	2923.72
2008-2009	313.11	2497.87
2009-2010	304.62	3202.10
2010-2011	512.50	4560.00
2011-2012	490.42	4758.89
2012-2013	563.96	4776.9
2013-2014	456.633	6035.5

Sources: Author's calculation, based on De and Bhattacharya (2007), Director of Trade Statistics. IMF (2012), IBCCI.net (2016).

Chart 7.4.4

Bangladesh-India Trade Chart

BNP (2003-2006), Awami-League (2009 continuing).

Source: Author's calculation, based on table 7.4.4.

Chart 7.4.3 also demonstrates a significant increase in both exports and imports in the Sheikh Hasina-led Awami League regime, especially between 1996 and 2001 (with some fluctuation in 2000). Although there is some fluctuation in the imports, these were still increasing although this couldn't improve the trade gap and stands in contrast to the previous example; it continues all through the BNP government. In chart 7.4.4 it is clearly

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evident that the Sheikh Hasina-led Awami League government was able to significantly improve imports and exports with India in the recent years.

As a subsequent part of the employed methodological implication of 'reconstructive explanatory critique', the research further analyses the relevant documents and texts of India-Bangladesh economic relations since 1971 and finds the causes for the 'political constraints' conditioning the actual economic relations of these two neighbours (see pages 204-210 for details on how they have been analysed by using critical theory and methodological tools). These causes will be explained critically below.

The study found that three of the primary constraints of the India-Bangladesh trade gap are tariff and non-tariff barriers and the complex transportation border system. These also include costly documentation, assessing duties, extra duties, costly mandatory certificates about health, technical standards and lack of branding (De, Khan and Chaturvedi, 2008). Border access is too complicated and time-consuming, and border check posts, especially in India, are too harassing. These factors also open doors to corruption at different stages of trade. Regarding the resolution of border disputes, these barriers could be removed. Moreover, Bangladeshi fish exporters are facings unfair restrictions while exporting their products to India. Another problem is, according to SAFTA (South Asian Free Trade Area)[85] Agreement, "contracting States may not apply the Trade Liberalisation Programme as in paragraph 1 above, to the tariff lines included in the Sensitive Lists which shall be negotiated by the contracting states (for LDCs and Non-LDCs) and incorporated in this Agreement as an integral part" (De, Khan and Chaturvedi, 2008, no pagination). This allows every member state to preserve its rights to protect its own industry by imposing barriers to some products. These products will also be excluded from tariff reduction facilities. Bangladesh's main export products, such as textiles, garments and knitwear products, are on this list. So, Bangladesh cannot export its major exporting products to India due to this negative list. After Sheikh Hasina's Awami League came to power, and when, on the other side, Congress returned in India, these two friendlier governments took a big step to reduce this. According to the India-Bangladesh Chamber of Commerce and Industry (2016),

"There were further reductions subsequently, the last two being of 47 items at the time of Sheikh Hasina's visit to India in 2010 and of 46 textile items during Prime Minister Manmohan Singh's visit to Dhaka in 2011. With this, practically all the items in which Bangladesh has export interest in the Indian market have been removed from the negative list. There is, therefore, little rationale for maintaining the negative list at all. The Prime Minister of India would have been well advised to declare during his visit in 2011 that there will be no negative list for Bangladesh and that henceforward Bangladeshi exporters should

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[85] As a member of South Asian Association of Regional Co-operation (SAARC), Bangladesh and India signed SAFTA agreement.

treat the entire Indian market as an extension of their domestic market" (Ibcci.net, 2016, no pagination).

This entire barrier needs to be removed to reduce the trade gap, which requires high-level political negotiations. In the 1980s and early 1990s, India was not in a position of a friendly nation and had chosen to conduct its trade relations with Bangladesh in an unfriendly manner (Sobhan, 2005). Moreover, there were some important initiatives taken by the Khaleda government, but India didn't cooperate, mainly because of political considerations.

The question is, to what level was economic cooperation between the two neighbours held hostage by political realities? The government on both sides of the border must be sensitive to public opinion tied to domestic political consideration. When Sheikh Hasina came to power in 1996 and tried to make a new start, the problem came when negotiation over transhipment reached a crucial stage in 1999, and the opposition party used it as a political issue against the Sheikh Hasina government, calling hartals[86]. As a result, they made the government remove it from the agenda (Sobhan, 2005). The issue of the sale of gas from Bangladesh to India would similarly come at a substantial political cost, despite the income it would create. Similarly, politics in Indian states neighbouring Bangladesh and the need to keep a diverse array of domestic industries happy severely constrains the Indian government in its dealings with Bangladesh. In 2009, the government of Sheikh Hasina made a good start by revitalising diplomatic initiatives with India, including transit facilities, bilateral trade, and investment. Bangladesh is negotiating a Free Trade Agreement with India, which could improve its exports to India, (Albd.org, 2016). According to The Hindu (2012), "A mention-worthy development during Mr Mukherjee's visit was New Delhi's friendly gesture of announcing $200 million as grant out of the $1 billion credit line that it has given Bangladesh. Also, India has promised to decrease the rate of interest on the remaining $800m and relax conditions on the procurement of machine parts, which had remained a contentious issue for a long time" (Habib, 2012, no pagination). Reducing the sensitive list is another government achievement. All of these efforts affect the exports of Bangladesh, which increased from $304.62 million (2009-2010) to $512.50 million (2010-2011) and by 2014, it reached $456.633 million with a little drop.

Now the question is, what made India change its stance? The answer seems to be a friendly government installed in Bangladesh which significantly pointed towards the improved political relations. Apart from this, it could be argued that India's 'interest' approach accommodated newly improved economic relations. Moreover, it could also be said that India's recent move of trade liberalisation was motivated by India's powerful hegemonic

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[86] Strikes.

aspirations in South Asian politics. According to the India-Bangladesh Chamber of Commerce and Industry (2016),

"During the period 1988-89 to 1992-93, whereas India's total exports increased by 164 percent, the increase in exports to Bangladesh was 293 per cent. In 1995, India jumped to the first position among exporters to Bangladesh, with China being a distant second. India maintained the first rank until 2005-06 after which it was overtaken by China. China has remained in that position until now … Thus, India's total earnings from trade with Bangladesh, both legal and illegal and in goods and services, may very well be in the range of 14 to 15 billion dollars per annum. This makes Bangladesh one of the most important export markets for India in the world" (IBCCI.net, 2016, no pagination).

It could be argued that the motive behind India's recent move is, firstly, that it does not want to lose its big market and, secondly, that this trade liberalization could potentially increase the trade and investment between these two countries (to India's advantage). There is a strong probability that India would replace or at least rival China as a major trade partner for Bangladesh. Therefore, it can be argued that bilateral economic relations between India and Bangladesh are much more dominated by the domestic political situation as well as power and political interest as a whole.

The research attempts to analyse both political and economic relations between India and Bangladesh to explore conflict management in its legal and political dimensions, and in this section its economic dimensions. Answering the research question above, it found that politics plays the most significant role in delineating the dispute resolution procedure. However, law is always crucial, not least in its role in defining or constituting political relations and political sovereignties as well as in its potential to define or constitute solutions to problems and its capacity to communicate potential solutions. The most important thing is that the conflict did not influence the political and economic relations between these two neighbouring countries alone, but that a complex of motives and forces shaped the interactions between a wider range of factors, including legal considerations, but in which economic, political, and geopolitical issues mattered significantly.

7.5 Conclusion

The research asked how India and Bangladesh managed the international legal regulation of their border dispute with respect to Bangladesh's frontier? How does it shape relations between India and Bangladesh? The case study evaluated in this research clearly evidences that context, politics, power, interest and specific issues on the ground include hidden forces – structures not obviously visible – which are in interaction in dispute management. At the same time, law itself is a regulating force in this conflict management.

It also explicitly justifies the claim that the rules and processes of international law are too flexible, too open to manipulation by politics and power politics in the case of the India-Bangladesh border management. Moreover, it found that the dispute resolution process, which is primarily defined by international law and the economic relations between them, was critically articulated by the spin of politics. Through the reconstructive explanation presented throughout the thesis, the research identifies the situation at issue. It defines it more specifically based on theoretical knowledge, which allows the 'situation' to be re-identified as a specific set of 'problems', including the role of law in the management of the border dispute over nearly 44 years (1971-2015 and onwards). It also identifies the possibility that international law still has the potential to function effectively if the powerful intervening factors could be removed. On the other hand, 'explanatory critique' focuses attention on the vague, incorrect or inadequate practices of international law, and the pragmatic import of those vague, incorrect or inadequate practices on India-Bangladesh border conflict negotiation, following Koskenniemi. This 'explanatory critique' identifies causes of the problem. It also provides an explanatory critique of the contingent yet powerful interfering, distorting mechanisms that give rise to problems in the India-Bangladesh border dispute management. Thus, the critical theoretical methodology provides a critical explanation of the forces or obstacles, such as domestic political context and invisible structural obstacles rooted in power, interest and context.

Finally, the significance of critical theoretical and critical methodological implication of 'reconstructive explanatory critique' achieves its goal by focusing on the causes or constitutive elements of this specific problem. The reconstruction takes the elements of analysis and from them creates a narrative. This points to the ways assumptions and practices in the relationship block the possibility of conflict resolution. It also suggests how they can potentially be overcome. This can only be achieved, CTIR and CLS suggest, when and if the border conflict can be freed from all influences and dominations that challenge the effectiveness of dispute settlement. It could also free the people living in the conflicted border area from oppression and injustice, including the killing, torture and overall human rights violations which have continued to haunt the area. If this purpose of CTIR and CLS is ultimately the identifying of injustices and of the means to overturn them, then this chapter has achieved that goal.

The research in this chapter has covered the significant bilateral negotiations to resolve the India-Bangladesh land border disputes from 1971 until 2015. By this time, the three major issues (i.e. enclaves, adversely possessed land, and the 6.1 km un-demarcated border) had been resolved through implementation of the Land Boundary Agreement of 1974 and its 2011 Protocol. Still, some crucial issues remain, as noted above, including the boundary of common rivers, border killings, push-in push-back problems, among other issues,

creating dispute and conflict between the two neighbours. The bilateral negotiations (not always very frequent or effective), partially resolved these issues through 2015, at which point the research ceased. Future research will have the opportunity to explore these later stages of negotiation.

Conclusion

These conclusions have three main purposes. The first is to draw together the threads of the research and to sum up the thesis as a whole. The second is to reflect on the process of the research, including the ways in which the researcher learned and developed as she completed her work. The third, and most important, is to sum up the original contribution to knowledge which the thesis makes and to remind the reader what the thesis _does not_ claim (something which has also been emphasised at various points throughout the work).

The research has focused on inter-state territorial conflict management in the India-Bangladesh border dispute, looking at specific aspects of land border disputes. The particular theoretical approach used in this research has been taken from critical theory. The major tasks of critical theory include exploring the "ideologically distorted subjective situation of some individual or group" (Sumner, 2003 p. 4), understanding the hidden forces which created that situation, and emancipation. Critical theory also works with the concept of 'reconstruction', which is one of the most important concepts in the methodological understanding of critical theory. This concept points towards a methodological direction of critical theory which Strydom and others characterised as 'reconstructive explanatory critique' (Strydom, 2011 p. 136) (see chapter 2 for details). This dimension of 'reconstructive explanatory critique' is a significant characteristic of critical theory according to Strydom (2011). This defines the specific CTIR approach used by this thesis.

The research begins by contexting the work as a whole in the literature review chapter. It develops this, problematising inter-state territorial conflict management and the impact of law, through its conceptual structure of language, process and policy as later demonstrated in chapter 4. This allows it to demonstrate an initial reconstructive explanation of the chosen topic. It is reconstructive in the way that, with this starting point, critical theory leads to a methodical investigation of the object domain (inter-state territorial conflict management) by opening up the actual lived experience of the border conflict to demonstrate the possibilities of reconstruction of that specific structure. Here, critical theory differs from other theories by providing a clearer focus on real-life problems involving "suffering, moral indignation, resistance or conflict as qualitatively felt and perceived manifestations of the state of a society" (Strydom, 2011, p. 146). The initial sign of 'sufferings' in this context is the life experience of peoples on the ground, noting that international law is not doing its job in managing or resolving territorial disputes properly. Important visible 'sufferings' which qualify this for critical theoretical research include the continuing killing of Bangladeshi people by BSF in the conflicted border area. It also includes gunfire between BSF and BGB, which leads to insecurity and suffering in the border area, as well as the 'push-in push-back' problem (explained in chapter 6). Moreover, in 1947, nearly 4,156 km of the border (Chowdhury, 2013) was drawn between India and East Pakistan (now Bangladesh) by the Boundary Commission. Over the last 44 years, almost the whole length of the border has

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been demarcated while 6.5 km remained un-demarcated in addition to the problem of enclaves and adversely possessed land. However, after 44 years (1971-2015) the issue has reached only a partial settlement, with some issues still pending. Critical theory signifies this as a 'problem' by identifying the question of why did dispute resolution take so long? What are the hidden facts and/or structures which undermine the effectiveness of the international law of conflict management in this case? As Strydom (2011, p. 152) says, this "regards genuine problems as objectively produced and as emerging from existential problems or practical troubles which are confusing, conflicting and disorienting, and thus call for an enquiry, clarification, transformation into a definite problem and the development of a practical meaningful solution". Moreover, the purpose of this 'reconstructive explanatory critique' is to explain the causes or constituting elements of this specific problem, not only the visible causes of the problem but also the blocking forces or structures or elements which obstruct the management process. The analysis can then outline the possibility of fulfilling the 'emancipatory' potential of critical theory to change the situation analysed. The claim here is not that full emancipation (whatever that means) must follow from a CTIR analysis, but that critical theory is able to identify the emancipatory potentials of the knowledge it produces. In this particular case, 'emancipatory potential' could be an understanding of those constituting elements and blocking forces which undermine the process of better India-Bangladesh border dispute management. This process elicits questions of international law as much as of political and economic interest, which is why a fusion of the overlapping approaches of CLS and CTIR is appropriate in this particular study. Better understanding, in turn, has the potential to make clear how the influences and dominations that create human rights violations, including torture and murder, can be challenged and changed. It could also free the people living in the conflicted border area from oppression, including the killing, torture and overall human rights violations which have continued to haunt the area.

The research explores the problem of the challenge of the international law of conflict management, suggesting that the current dispute settlement framework of international law needs rethinking. It also calls for further investigation and a reconstruction that leads to a revision of our knowledge. In doing so, the research has drawn on Martti Koskenniemi's (2005, 2011) account of the politics of international law. His work forms a significant contribution to the analysis of the law of conflict, and it meaningfully bears on the management of the India-Bangladesh border conflict and its resolution, although he does not directly address this conflict. Koskenniemi's (2011) argument is justified here because it assists in the unpacking of the complex structural ideological issues as well as negotiating practice; it relentlessly questions the relations between international law and politics. It signifies 'politics' as an often-hidden force responsible for shaping the rules and processes of international law. At the same time, he demonstrates contradictions inherent in the rules

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of international law, and that the rules and processes of international law are too flexible and open to manipulation by power politics. This undermines its effectiveness. Koskenniemi's (2011) work opens questions about territorial conflict (i.e. the Lake Lanoux case, 1957, the Eastern Greenland Case, 1933, etc.), including many post-colonial conflicts, but it has not so far been used in the specific analysis of border disputes. Moreover, Koskenniemi demonstrates a critical appraisal of arbitration and mediation in relevant cases but tends to neglect the process of 'negotiation' (see page 51 for details). To avoid this limitation, the study elaborates and qualifies his theory. The research builds an explanatory critical theoretical framework grounded on the question of how international law deals with specific international disputes. In building this theoretical framework, the research primarily relies on, but is not limited to, a critical reading of Koskenniemi (2005, 2011). It also draws on a critical reading of Higgins (1994) and Henkin (1979). This theoretical explanatory framework incorporates the critical theoretical 'reconstructive explanatory critique' (Strydom, 2011), which leads to a critical evaluation of the 'factuality' of the case study of 'India-Bangladesh border dispute management'. Therefore, it enables the research to analyse 'dialectical tension and contradiction' (Strydom, 2011 p. 138) at the interface between this presupposed or standard explanatory framework and the actual problem of the India-Bangladesh border dispute.

It took approximately 44 years, from 1971 to 2015, to arrive at the partial resolution of implementing the LBA including the 2011 Protocol. Some significant events, such as border killings, the boundaries of common rivers, push-in push-back problems, frequent firing between BGB and BSF forces, and human rights violations by border security forces, are still pending. What this study also does is show the human costs in misery, disrupted lives and sometimes lost lives inflicted by a failure to secure a settlement of the border dispute as well as the human as well as political and economic value of achieving a settlement (even if incomplete). Moreover, critical theory has led the researcher to collect empirical information through 34 interviews, which includes people from the disputed area (see pages 103-104 for details). These interviews reveal the current situation and the human rights violations caused by this conflict (discussed in chapters 5 and 6), and they provide original primary source material alongside the important use made of primary sources. They also demonstrate the compelling power of the human impact of the border conflict. Following the first methodological phase the research disclosed the problem of 'India-Bangladesh border dispute resolution'; international law was still operating as a generative regulating force in dispute resolution, but it could not fulfil its purpose, primarily because of complex politics but also due to other factors in this context, which are explored in chapters 6 and 7.

The second phase of the critical methodological framework engages the object domain (i.e. the problem of India-Bangladesh border conflict management) with its methodology. This

second phase involves diagnosis which is analytic and normative in nature, and which also includes reconstruction, and which "is presupposed by the subsequent explanation and, particularly, the kind of critique that is characteristic of Critical Theory. This means that Critical Theory's engagement with its object traverses a number of methodologically distinct yet closely interrelated dimensions" (Strydom, 2011 p. 156). This diagnosis starts with an analysis of the actual condition of the real problem via documentary and interview analysis. This 'actual condition' covers every aspect of the situation. This analysis requires relevant methodological tools. In this research, as already noted, the methodological tools are critical realist ontology, interpretivist epistemology, normative axiology, critique of the use of language, and qualitative methods (it also uses some *quantitative data* of the economic relations of these two countries to provide ancillary support to the qualitative analysis employed in this research, however, it does not used any quantitative methodology). The research also followed some significant techniques of critical analysis, drawing on McGregor's (2010) work in analysing the language of the documents and interviews used (see pages 108-109 and 208-209 for more details). The reader should note that this is an account of the critical document analysis used throughout the thesis and is not the same as particular forms of 'critical discourse analysis', which the thesis does not use. The researcher's positionality, reflexivity and relevant ethical considerations are explained in chapter 3 (see pages 83-84 and 80 for details).

Employing this critical theoretical and methodological framework, the research has made a qualitative content analysis of 63 primary documents derived from the Ministry of External Affairs, India, and the Ministry of Foreign Affairs, Bangladesh, websites related to 15 significant negotiations between 2001 and 2015, as explained in the discussion of the methods in chapter 3. The findings lead the research to conclude that 'politics' was one of the most significant influences shaping this negotiation process and its outcome (see pages 211-217 for detailed findings). This conclusion explicitly tests the critical theoretical argument in Koskenniemi's (2011) work (see pages 216-217 for details). However, the influences of domestic political contexts in this dispute management process could not alone fulfil the requirements of a critical theoretical research: critical theory invites the consideration of interests and contexts more broadly, including the knowledge production and reproduction processes by key actors on both sides of the dispute (see chapter 3 and 7 for details). Therefore, it must reveal the effects of the social conditioning of this knowledge production process (i.e. power, politics, contexts and interests). The research uses a qualitative approach to analyse 81 collected documents related to the negotiations to find the causes or constituting elements of this specific problem. This qualitative content analysis and qualitative approach of document analysis examine the discourses and exchanges of the protagonists, using the coding process explained in detail in chapter 3. To repeat, this is not technically 'discourse analysis' in a narrow sense but something

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parallel to it, following established methods (cited in the chapter 3). No originality is claimed for the methods, but they lead to fruitful and revealing conclusions.

The findings of the 'causes' derived from the document analysis has been demonstrated through a critical explanation, which concluded that before going to a Land Boundary Agreement, India secured its national interest by signing the India-Bangladesh Treaty of Friendship, Cooperation, and Peace 1972 with Bangladesh to maintain a hegemonic image in South Asian politics in the Cold War era. Moreover, India had built up significant bonds of friendship with the Awami League leadership, which was the ruling political party of Bangladesh at that time (Shamim, n.d.). All of these factors form the background of the negotiation between India and Bangladesh on the border disputes in the early 1970s, concluding with the Land Boundary Agreement, 1974 but this did not receive ratification from India. However, in this short time (from 1972 to 1975), the most significant development of the negotiation process since the emergence of the border dispute in 1947 was effected. The LBA, 1974 was the outcome of that event. However, following Sheikh Mujibur Rahman's assassination and the rise of Ziaur Rahman, India halted the talks, mainly because of the changed domestic political context in Bangladesh. The causes of these constraints as identified could primarily be critically explained from the context of the international and domestic political point of view. Zia's close relation to India's arch-rival state China, which has a close relationship with Pakistan, made India suspicious and concerned about its national security in the Cold War era (Rashid, 2010; see also Shamim, n. d). In the context of domestic political grounds, it could be argued that "India provided refuge to many Bangladeshi nationals who left Bangladesh after the assassination of Sheikh Mujib. It was alleged that India provided assistance to them" (Rashid, 2010, p. 79). All of these causes found in the analysis proved to be 'political', which the analysis has disaggregated into a complex mixture of factors including changing Cold War reasons, regional power politics and economic relations, and internal politics in both countries (see chapter 7 for details). Successive Bangladeshi governments followed the same policy directions and lost India's trust. As a result, the border dispute continued (see chapter 6). Hence, India's policy approach to solving its border dispute with Bangladesh was always coloured by international and domestic politics, and by the context of the Cold War era in particular, including the increasing significance of China's 'rise' in the regional balance of power. The dramatic shift away from the Cold War after 1990 did not immediately reset India-Bangladesh relations, but was clearly a factor in their greater capacity to solve the border issues they faced.

The research found that the changing domestic political context also played the most significant role in determining the outcome of the dispute and in shaping the negotiation process. Dramatically, once Sheikh Hasina had come to power (second tenure), the

negotiation moved very fast. In Sheikh Hasina led the Awami League government, India, especially the Congress Party-led government, re-found their trusted partner and agreed to forward the issue. However, the negotiation took place during Dr Manmohan Singh's visit to Bangladesh in September 2011, when the "Protocol to the Agreement Concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters" was signed (India. MEA, 2011a). However, the ratification faced massive protests from Indian domestic political grounds. Finally, the bill was delayed by Mamata Banerjee. Nevertheless, Mamata Banerjee, Chief Minister of West Bengal, who offered her 'consent' to ratify the 2011 Protocol, was always opposed to ratifying it. The critical point is that perhaps, surprisingly, the Narendra Modi-led BJP (NDA government) came into power in India in 2014, and Narendra Modi's political efforts convinced her. An important point to be noted here is that, before it came to power in 2014, the BJP was against the ratification of the boundary agreement with Bangladesh. The display of political expediency on the foreign policy agenda of the BJP-led National Democratic Alliance (NDA) Government that assumed power in 2014 was clearly evident. Consequently, both the BJP and Mamata Banerjee changed their stance on this issue due to the political approach, which lead the dispute to a partial resolution and provided hope for full conflict resolution. Thus, on 6th May 2015(Lok Sabha approved it on 7th May), the Indian parliament passed the historic constitution (119th[87] amendment) bill, 2013. Following this, both prime ministers agreed to an 'Exchange of Letters on Modalities' for the implementation of the 1974 Land Boundary Agreement and its 2011 Protocol (India. MEA 2015j). This finally (formally) resolved the exclaves issue, the adversely possessed land issue and the 6.1 km (out of 6.5 km) of undemarcated border.

Other political, economic and strategic interests of India's recent move could be explained by the context of its political power position in Asian politics. Critical theory argues this is an unavoidable factor: providing a clear picture of the relations between politics and international legal rules establishes how Koskenniemi's (2005) interpretation of international law as a contrary method is specifically relevant here (see chapter 2 for details). The research found that the influence of India's power political position is also unavoidable in this dispute management, which is visibly evident in resolving the 'South Talpatti Island dispute' and, more recently, India's power demonstration in the 2001 and 2006 border clash (see chapter 7 for details). However, the research found that in Asia, or more broadly in world politics, China is an emerging power which is considered a potential threat to India's hegemonic role in South Asian politics. China is also a security threat to India. Bangladesh's geographical positioning is also important in this context. If Bangladesh lets China use its territory against India in any future conflict, although unlikely, this could be a significant

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[87] Constitution 100th amendment act 2015.

threat to India's security. Moreover, India has repeatedly sought transit through Bangladesh, which could benefit India as the rest of the India can easily send their goods to the northeastern states. Narendra Modi's NDA government identified these potential issues, and also recognised that these aims could only be executed by Sheikh Hasina and the Awami League government. In 2010, Sheikh Hasina's Awami League government agreed to let India use Chittagong and Mongla ports for transporting goods (India, MEA, 2010c). India had sought this for a long time, and it was a political issue producing huge protests in Bangladesh, but it has now become possible. Indian energy security is also important in this context. As the Indian economy continues to grow, it needs more energy. India has proposed a Myanmar-Bangladesh-India gas pipeline (Kalita, 2015). Due to political and other complex issues, India could not achieve this. However, these interests could potentially be assured only with the Awami League in power, in Indian perceptions. As a result, both governments took initiatives to resolve all outstanding disputes, which explicitly included border disputes. This combination of changed international and domestic contexts, together with economic pressures, has reshaped negotiations on the border issues and also accelerated negotiations.

The analysis as well as the critical explanation mentioned above also addressed the partial management process of the India-Bangladesh border dispute. There remain some issues to be resolved which currently create problems in the border area, as discussed earlier. To explore them, the research used a qualitative approach to analyse 34 interviews taken by the researcher as well as 40 other collected documents. The critical theoretical concepts that 'reconstruction' employs in this research take the elements of this analysis and from them create a narrative to show the human cost in misery, disrupted lives and sometimes lost lives inflicted by a failure to a secure settlement of the border dispute and the human as well as political and economic value of achieving a settlement (even if, as in this case, it is incomplete) (see chapter 6 for details). These interviews and documents have also been analysed to determine the causes for the unresolved issues which are currently creating continuing problems. According to the findings, one of the main causes of the 'contingent constraints' conditioning the problem of killing by BSF is the BSF's aggressive attitudes (see chapter 7 for details). This action appears to have been supported by the Indian government, who has failed to provide independent investigation or ensure prosecution. India often argues that the BSF is doing this to prevent illegal immigration, but chapter 6 suggests that this allegation is baseless (to some extent but not completely) (see chapters 6 and 7 for details). The research also found that India reportedly demonstrates its power by blocking or diverting the streams of some major rivers flowing from India to Bangladesh. Furthermore, Indian authorities forcefully push people into Bangladesh without notice. Sometimes they even kill them, which also indicates India's power domination and disrespect for law. Likewise, in the fencing issue, a barbed wire fence is a psychological

expression of the hegemony proposed by India. The research reveals that this claim and its counterclaim leave this issue unresolved, raising concern over severe human rights violations at the border (see also chapter 7). It is undeniable that the major causes preventing the resolution of these issues have been primarily 'politics' and power politics, including the attitudes and values as well as the interests of key players and including the attitudes of superiority of Indian decision makers.

The research further demonstrates that internal deficiency of the structure of international law is also a significant cause of this dispute, as is evident from the complicated treaty ratification process. In this case, it took 41 (1974-2015) years to ratify. This is one of the most significant causes undermining conflict management in this case. However, recent dramatic events on the border, where cross-border shooting and killing took place near the India-Bangladesh border, this contradicts and undermines the principles of international law. According to Koskenniemi (2011, p. 142), it could be argued as a conflict of rights (see chapter 7 for details). It is also evident in other recent disputing issues, where India, the stronger actor, acts as the stronger power, one that is inclined to violate the rules and norms of international law because of its inherent deficiency, as demonstrated in chapter 7.

At the same time, as all these political issues are in play, the law itself is a regulating force in this as in any conflict management. It also explicitly justifies the claim that that rules and processes of international law are too flexible and too open to manipulation by politics and power politics in the case of the India-Bangladesh border management. Moreover, it found that the dispute resolution process, which is primarily defined by international law and the economic relations between these two countries, were critically articulated by the spin of politics. Through the reconstructive explanation presented throughout the thesis, the research identifies the situation at issue. It defines it more specifically based on theoretical knowledge, which allows the 'situation' to be re-identified as a specific set of 'problems', including the role of law in the management of the border dispute over nearly 44 years (1971-2015 and onwards). Thus, the critical analysis used in this thesis explicitly enables the research to conclude that the context of the India-Bangladesh border dispute resolution is grounded in law, politics and power interwoven together. It is reasonable to conclude that this dispute resolution has been significantly influenced and reshaped primarily by politics and power, particularly by domestic and international politics. In the context of the India-Bangladesh border dispute, the unequal power relations between India and Bangladesh are unavoidable factors. But, equally, the relationship between the two and the management of the boundary dispute, including its recent partial resolution, cannot be simply reduced to power relations. Leadership has continually been a factor. At the same time, the context of this dispute, comprising its history, political and economic relations, power relations and, most importantly, domestic politics, is also essential in understanding its resolution. Law

plays a role in the management of these issues, but understanding its role requires a more nuanced analysis than an insistence that 'law' and 'politics' go head to head against each other. They interact, shape each other, and jointly explain outcomes. That being said, however, international law has come second to the various political forces in the negotiations and the outcomes studied here. The entire process of India-Bangladesh boundary dispute resolution proved that it was mostly influenced by politics and remained more distant from the legal processes of international law.The final stage of its employed methodology is a validation of the knowledge produced by this research through a reconstructive explanatory framework. In the context of this research, as it is a PhD level work rather than a study by a policy influencer, the practical applications of the knowledge created will be open for application by future researchers, and possibly policymakers. The validation of its produced knowledge is an ongoing process already started by the researcher: she has presented it at several conferences for peer comment and review. Some significant parts of this research have been published in the *International Journal of Interdisciplinary Social Science Studies* and in a couple of conference proceedings (Mishu, 2017, Mishu, 2016, and Mishu, 2014).

Finally, the significance of the critical theoretical and critical methodological implications of 'reconstructive explanatory critique' achieves its goal by focusing on the causes or constitutive elements of this specific problem. The reconstruction takes the elements of the analysis and from them creates a narrative. It also identifies the possibility that international law still has the potential to function effectively if the powerful intervening factors could be removed. On the other hand, 'explanatory critique' focuses attention on the vague, incorrect or inadequate practices of international law and on the pragmatic import of those vague, incorrect or inadequate practices in India-Bangladesh border conflict negotiation, following Koskenniemi (2005,2011). This 'explanatory critique' identifies the causes of the problem. It also provides an explanatory critique of the contingent yet powerful interfering and distorting mechanisms that give rise to problems in India-Bangladesh border dispute management. Thus, the critical theoretical methodology provides a critical explanation of the forces or obstacles, such as the domestic political context and the invisible structural obstacles rooted in power, interest and context. This points to the ways in which assumptions and practices in the relationship block the possibility of conflict resolution. It also suggests how they can potentially be overcome. This can only be achieved, CTIR and CLS suggest, when and if the border conflict can be freed from all influences and dominations that challenge the effectiveness of dispute settlement. It could also free the people living in the conflicted border area from oppression and injustice, including the killing, torture and overall human rights violations which have continued to haunt the area. If this purpose of CTIR and CLS is ultimately the identifying of injustices and of the means to overturn them, then this thesis has achieved that goal.

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The Original Contribution to Knowledge

To summarise the claim to originality in this research, the author lists the main key points. At each stage, she also maps the claim to the relevant criteria from the Nottingham Trent University Quality Handbook with respect to doctoral examinations (NTU, 2017, pp.16-17), the citations for which appear below.

1. The research makes a critical evaluation of India-Bangladesh border management between 1971 and 2015, with special reference to negotiations taking place between 2001 and 2015, which is original in its focus and scholarship. As the literature review chapter establishes, there is not a large literature in this field from the point of view of conflict management or international negotiation and international law. Exceptions include Cons (2014, 2016), focusing on the history and origin of the enclaves and corridor issue; Mahur (2014), which seeks to theorise the conception of the dispute and finding the roots for this long-standing dispute from historical and political perspectives; and Afroz (2012), which discusses killings in the border area and the enclave problems. Whyte (2002) emphasises the *Tin Bigha* corridor issue. Schendel (2002), Jamwal (2004) and Hamburg (2013) make historical evaluations of the enclave and related border issues. All these sources provide the platform for this research, but none evaluate its more recent developments. The thesis thus bridges a significant gap in the available academic literature of international relations. Furthermore, none explores the challenge of the processes of international law of conflict management with respect to this conflict. This research is distinctive in analysing primary documents collected from the Ministry of External Affairs, India, the Ministry of Foreign Affairs, Bangladesh, and other secondary sources regarding the negotiations up to 2015 and their outcomes. The research is not, however, a study of international law as an academic field, but rather of the politics of international law as outlined by Koskenniemi (2005; 2011). In its approach to the literature in the field, the thesis demonstrates its capacity to show an "ability to evaluate and criticise received opinion" (NTU, 2017, p. 16, point f), and to relate that critique to the development of research aims, objectives and practice.

2. The thesis is, therefore, original also in its contribution to knowledge of the international relations of recent South Asian politics and diplomacy, analysing the practices of Bangladesh and its neighbour in settling this boundary dispute, how they complied with and were committed to the general principles and process of international law, such as negotiations as a process of peaceful settlement of disputes, and how they combined these principles with complex factors, including power, politics, context, interest and leadership. It also discloses some of the inherent deficiencies in international law. For example, the research reveals that although Sheikh Mujibur Rahman and Mrs Gandhi had strong political will to implement the Land Boundary Agreement of 1974, it could not be implemented,

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primarily because of complicated treaty ratification processes, legal difficulties and powerful domestic political obstacles. One cannot conclude that the dispute settlement was prevented by only a failure of political will (c.f. Wirsing and Das, 2016) or that delays in the dispute resolution were rooted only in Indian internal politics (c.f. Whyte, 2002). Rather, it was a complex interaction of factors, including those which shaped both the difficulties in resolving the dispute and its eventual partial resolution. Changing regional and global political factors also conditioned this history. This fulfils the original contribution to knowledge criterion in demonstrating "the systematic acquisition and understanding of a substantial body of knowledge which is at the forefront of an academic discipline" (NTU, 2017, p. 16).

3. The thesis provides a more developed understanding of interactions between law and politics; that is not in itself original, but here it is distinctive in its study of dispute management as well as in its application of Koskenniemi's work (2005, 2011) for that analysis. It provides strong evidence to establish the unavoidable relationship between international law and politics, but the originality lies in focusing that question on the recently resolved India-Bangladesh border dispute. This too seeks to meet the Nottingham Trent University's criterion cited in (2) above.

4. The thesis is not original in its developed application of critical theory as theory; it does develop a distinctive account of its subject through the building from that theory of a critical theory methodology. This is based largely on Strydom's account (2011). Often, in international relations, critical theory has been developed as a sophisticated theory with only moderately articulated methodology. One exception is Strydom, who, with other scholars' work, provides a more coherent research strategy, enabling one to make a critical evaluation of India-Bangladesh border dispute management. This provides a rigorous sense of cohesion to the relationship between theory, methodology, methods and research process. Thus, this thesis also claims to fulfil the NTU's requirement of PhD research originality in that it demonstrates an ability "to relate the results of such study to the general body of knowledge in the discipline" (NTU, 2017, p. 16). In its application of theory and methodology in this manner, it also demonstrates "a detailed understanding of applicable methodology and techniques for research" (NTU, 2017 p. 16), ideas which are clarified in detail in chapter 3 and applied in the case study chapters 5, 6 and 7.

5. The research explores a practical case study, making detailed comments on the process of negotiation which might potentially have application both to the further management of the India-Bangladesh border and perhaps to other similar disputes, particularly in South Asia. It claims to further advance knowledge by providing strategies or guidelines for how this particular framework and logical process could be used to evaluate similar types of territorial dispute which explicitly follow 'negotiation' as a process of dispute

management. This also accomplishes one of NTU's main criteria for a PhD thesis (criteria b and c).

6. The study contributes to knowledge by providing empirical information through its use of a wide range of sources, many of which are original (i.e. previously unused) primary sources. This includes a range of official documents, news reporting from a variety of sources, interviews which the author conducted herself and other primary sources, alongside a rich body of secondary literature. One of the main claims to originality in the work is the wide range of original material which other scholars have not yet been able to use. Moreover, the interviews taken by the researcher comprise original primary source material alongside the important use made of primary documentary sources. The critical understanding of the limitations of both the sources and the researcher's personal position are fully explained (fulfilling part of criterion g of the Nottingham Trent University's criteria). The critical theoretical concept of 'reconstruction' employed in this research takes the elements of analysis and from them creates a narrative. This contributes to knowledge by pointing to the ways assumptions and practices in the relationship can block the possibility of conflict resolution. It also suggests how they can potentially be overcome. They also demonstrate the compelling power of the human impact of the border conflict, which facilitates a better understanding of interstate border disputes involving any human rights and overall international law violations in the conflicted border area. Above all, the research has been conducted with rigour and with care to include all available sources and to use the sources only after a critical process of examination as well as a validation of sources. In this way, it claims to fulfil one of the main requirements for a doctoral thesis, namely "the systematic acquisition and understanding of a substantial body of knowledge which is at the forefront of an academic discipline" in the discipline of the international relations (NTU, 2017, p. 16, point b).

7. In developing and applying critical theory in the research, the author has been careful in the recognition of the limitations as well as the strengths of the theory, and of the limitations of this particular version of critical theory. It has sought to explain the causes or constituting elements of the specific problem of the India-Bangladesh border dispute. The thesis has dealt carefully with the question of whether and to what extent research of this kind can meet one usual criterion of work in critical theory, that of the challenge of emancipation. The claim here is not that full emancipation (whatever that means) must follow from a CTIR analysis, but that this application of critical theory is able to identify the emancipatory potential of knowledge it produces. It identifies the human cost of the border dispute (at many points, but especially in chapters 5, 6 and 7) and seeks to identify the blocking forces which have undermined successful dispute management in this case. That consideration involves questions of international law as much as of political and economic

interest, which is why a fusion of the overlapping approaches of CLS and CTIR is appropriate in this particular study. Better understanding, in turn, has the potential to make clear how the influences and dominations that create human rights violations, including torture and murder, can be challenged and changed.

8. The research employs a critical methodological model of 'reconstructive explanatory critique' adopted from Strydom (2011). This 'reconstructive explanatory critique' model has been employed to analyse a specific border dispute management for the first time. This contributes to knowledge by providing guidelines for how this model can be used by future critical researchers of international relations who are specifically interested in similar types of research. The model itself as used here is not claimed to be original. Moreover, the research employed qualitative content analysis to obtain concrete evidence of how domestic political leadership shapes the process and outcome of the negotiations by identifying the 'frequency' of the negotiations and the 'effectiveness' of the outcomes of the negotiations from primary documentary sources (derived from the Ministry of External Affairs, India, and the Ministry of Foreign Affairs, Bangladesh). This may also contribute to research practice, potentially helping other researchers of international relations by providing strategies in analysing primary data related to negotiations. This also achieves the requirements of NTU's PhD research criteria by providing "a detailed understanding of applicable methods and techniques for research and advanced academic enquiry" (NTU, 2017 p. 16).

9. One of the important requirements of NTU's PhD research criteria is publishablility. The research achieves it as some significant parts of this research have been published in the *International Journal of Interdisciplinary Social Science Studies* and in a couple of conference proceedings (Mishu, 2017; see also Mishu, 2016, and Mishu, 2014).

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Appendix A

An example Content Analysis

Ministry of External Affairs
Government of India

India-Bangladesh, Joint Statement

April 29, 2003

The Foreign Secretary of India Mr. Kanwal Sibal visited Dhaka, Bangladesh from 28-30 April 2003 at the invitation of the Bangladesh Foreign Secretary, Mr. Shamsher M. Chowdhury, BB for Foreign Office consultations. During his stay in Dhaka the Foreign Secretary of India called on H.E. Begum Khaleda Zia, Hon'ble Prime Minister of Bangladesh, Mr. M. Saifur Rahman, MP, the Finance Minister, Mr. M. Morshed Khan, MP, Minister for Foreign Affairs and Mr. Reaz Rahman, State Minister for Foreign Affairs. While receiving the Indian Foreign Secretary, the Bangladesh leaders reaffirmed the importance attached by the people and the Government of Bangladesh to close ties with India. They stressed their keen desire and commitment to continue to work with India and to further strengthen the bonds of friendship between the two countries.

During the consultations, the Indian Foreign Secretary was accompanied by H.E. Mr. Manilal Tripathi, High Commissioner of India to Bangladesh, Ms. Neelam Deo, Joint Secretary, Ministry of External Affairs of India and other officials of the Ministry of External Affairs of India and the High Commission of India in Dhaka. The Bangladesh Foreign Secretary was assisted by the Bangladesh High Commissioner to India, H.E. Mr. Tufail Karim Haider, Mr. Liaquat Ali Chowdhury, Director General (South Asia) and representatives of the Ministries of Foreign Affairs, Commerce and Land. The two sides extensively discussed all issues of common interest in a candid and frank manner covering the entire gamut of their bilateral relations and important regional issues including SAARC.

Issues relating to the completion of demarcation of the Indo-Bangladesh land boundary, exchange of enclaves and of territories in adverse possession, peaceful management of the borders, cross-border illegal movement of people and specific security concerns of both India and Bangladesh and the larger question of economic cooperation between the two countries were discussed by the two Foreign Secretaries.

It was agreed that the Joint Boundary Working Groups would be revived and would meet soon to work towards early resolution of border demarcation and related issues. It was also agreed to strengthen and fully implement the existing agreed procedures to stop cross border illegal movement of people.

In response to Indian concerns regarding the activities of Indian insurgent groups in Bangladesh, the Bangladesh side reaffirmed the commitment not to allow its territory to be used for any activities inimical to

Source: India. MEA, 2003a.

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the interests of India.

On the economic side, it was agreed to hold the sixth meeting of the Joint Economic Commission, co-chaired by the respective Foreign Ministers, in July 2003, where all areas of economic interest to the two countries would be comprehensively discussed. The two sides discussed issues relating to enhancement of rail and road connectivity. They expressed the hope that the Bilateral Investment Protection and Promotion Agreement and Agreement on Cooperation for preventing Illicit Trafficking in Narcotics and Psychotropic Substances, finalisation of which are at an advanced stage, will be signed soon marking a significant forward movement in the close relations between India and Bangladesh.

The Indian Foreign Secretary reiterated the importance of crafting innovative trading relationships such as a Free Trade Agreement in tune with global trends and which are working successfully in regional contexts.

The two Foreign Secretaries also welcomed the prospect of a visit by the Finance Minister of Bangladesh to India at a mutually agreed date in May 2003.

The Indian Foreign Secretary proposed cooperation in the IT sector through a project to provide Bangladesh with 650 computers for district schools and the training of 250 teachers in IT applications in India. He also proposed the commissioning of a Joint Storm Surge Disaster Reduction Project which can benefit both India and Bangladesh. The Bangladesh Foreign Secretary thanked the Indian Foreign Secretary for the offer.

The Indian Foreign Secretary invited the Bangladesh Foreign Secretary to visit New Delhi early next year for the next Foreign Office consultations which was accepted with thanks. The meeting concluded with an expression of desire by both the Foreign Secretaries to carry on constructive engagement and discussions at all levels to further enrich Indo-Bangladesh relations.

Source: India.MEA.,2003a.

<div align="center">Table-1</div>

<div align="center">An example of the content analysis</div>

Paragraph number	Content analysis
1 & 2	Emphasising their strong desire to work with India, Bangladeshi leaders reaffirmed the importance of the people and government of Bangladesh having close ties with India.
3	This paragraph stresses the major agendas of this discussion, comprising completion for the demarcation of the India-Bangladesh land boundary, exchange of enclaves, territories in adverse possession, peaceful management of the border, cross border illegal movement of people, specific security concerns, and economic cooperation. From this paragraph, the analysis has found some major issues of this border dispute which the research aims to analyse, namely India-Bangladesh land boundary demarcation, exchange of enclaves, the peaceful management of the borders and of territories in adverse possession, which have been grouped as disputed issue A and disputed issue B according to the prior designated issues (see chapter 3). The other two issues are 'not discussed' in this negotiation.
4	Indicates the outcome of the discussion. It has been decided that these issues will be resolved through further negotiation by Joint Boundary Working Groups. This clearly indicates that the outcome of this discussion cannot be considered as a 'most effective' one, rather it should be considered as a 'less effective' outcome because further negotiation has been agreed upon and given importance. It has not reached any agreement, announcement, declaration, treaty signing or similar kind of effective decision.
5	This stresses India's concern regarding the activities of Indian insurgent groups in Bangladesh. Bangladesh further reassured it, Bangladesh will not allow its territory to be used by any Indian insurgent group. This clearly indicates that India was more inclined to give prominence to its security concern rather than resolve the border problem and other economic issues.
6 ,7, 8 & 9	Stressing economic cooperation, trade and cooperation in the IT sector and agreeing to further negotiations. As this analysis does not emphasise economic and trading issues, these have been excluded from the analysis.
10	Invited the Bangladeshi foreign secretary to visit India.

<div align="center">Source: Author's self-produced table, based on the content analysis.</div>

Appendix-B

An example of qualitative analysis

India and Bangladesh: calculus of territorial dispute settlement

10th October, 2011

Author: Sourabh Gupta, Samuels International

On 7 September 2011 in Dacca, the prime ministers of India and Bangladesh signed a landmark protocol to their 1974 *Land Boundary Agreement*, providing for final settlement of their long-pending boundary issues.

Given that instances of territorial dispute settlement in this sovereignty-conscious region have been few and far between, this exercise in statesmanship is both commendable and long overdue. A review of the principles and processes underlying the compromises reveals useful insights into territorial dispute settlement at New Delhi's end.

The India-Bangladesh boundary is no ordinary one. Hastily constructed in the dying days of British colonialism, it was the longest international boundary created during the age of decolonisation. The border was intended to separate a contiguous majority area of Muslims from that of non-Muslims — but for only about a quarter of its length does it separate a Muslim-majority in Bangladesh from a Hindu-majority in India. As many as 162 tiny enclaves (111 Indian and 52 Bangladeshi) dot a section of the frontier: in the extreme an Indian enclave sits within a Bangladeshi enclave, itself situated within a larger Indian enclave, all surrounded by Bangladeshi territory!

Shifting rivers, mapping errors and 'adversely possessed lands' — that is, lands unwittingly encroached upon and (illegally) occupied by both countries — added to the maze of identity, loyalty and insecurity along the Bengal borderland. Sixteen Indian and three Bangladeshi border guards were killed in 2001 following a show of force in a disputed area along the border. Demarcating a boundary has unsurprisingly been a protracted affair.

According to the recent agreement [1], the Indian enclaves in Bangladesh and the Bangladeshi enclaves in India are to be swapped, enabling unbroken territorial continuity — with minor exceptions — for both states. New Delhi's claim to compensation for the additional acreage ceded to Bangladesh is waived. The bewildered 51,000 residents in these enclaves will presumably be offered the choice of either relocating or, more likely, having their citizenship switched — although this is not accounted for in the *Protocol*. The 'adversely possessed lands' are to be mutually vacated, something that will be done in conjunction with the swapping of enclaves. Finally, the remaining disputed points are to be marked and delimited, enabling India thereafter to share its first *fully* demarcated land boundary with a neighbour.

The *Protocol* lays down weighty precedents for New Delhi's territorial dispute settlement practices. Especially notable is admitting an uncompensated swap of territory — during the course of exchanging the enclaves — in effect *ceding land to which it holds undisputed title*. Minor exchange of disputed territory by New Delhi is not groundbreaking. In 1951, India and Pakistan agreed to exchange two disputed territories on the India-East Pakistan (now Bangladesh) border. And in 1959 the two countries prepared modalities for future exchange of territories pending boundary demarcation. Letting-out undisputed territory on a 'perpetual lease' is not groundbreaking either. In 1974, New Delhi leased a narrow strip of territory (Tin Bigha corridor) to the then newly-inaugurated independent government of Bangladesh. The Indian Supreme Court interpreted the lease as a form of 'undisturbed possession' for Dacca's use which did not divest India of its sovereign rights.

But uncompensated cession of undisputed territory along its land border is altogether unprecedented. It also sets a useful precedent for that significant patch of disputed territory that will necessarily have to be ceded to China in the context of a Sino-Indian boundary [2] arrangement in the foreseeable future. With New Delhi already having ceded a small, uninhabited island to Sri Lanka along their maritime boundary line in the mid-1970s, and with the Indian judiciary vesting treaty-making authority wholly to the executive, the swap of enclaves on the India-Bangladesh border should pass constitutional muster.

Two fundamental principles and processes that underlie New Delhi's calculus of territorial dispute settlement are particularly noteworthy. First, an imperative of good neighborliness [3] has been a fundamental pre-requisite for settlement — New Delhi was willing to meet the Bangladeshi Prime Minister mid-way, even beyond, but only after the latter had met India's security concerns and walked the extra mile to extend the hand of friendship. Significant credit for the settlement belongs at the Bangladeshi end.

Second, and more important, is a practice of Indian boundary diplomacy which has seen New Delhi admit to the exigencies of *'zamini haqeeqat'* (ground realities) in disputed border areas — formally seeking to resolve territorial disputes according to the status quo, with least disturbance to local inhabitants. 'Ground realities' is formally acknowledged in the India-Bangladesh Joint Statement [4]. Paired with the acceptance of a political parameters-based approach to dispute resolution, it has also unlocked potential for resolving the long-dormant Sino-Indian boundary dispute.

India and Bangladesh should use the goodwill generated through the settlement to resolve their

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long-pending maritime border dispute. That dispute consists of: (a) demarcation of the coastal boundary line around a tiny island at the point where a common boundary river meets the estuary on the Bay of Bengal, and (b) overlapping EEZ boundary and resource development claims emerging from the concave geography of the Bengal coastline.

For the former, international arbitration on the tried-and-tested lines of the 1968 settlement between India and Pakistan that divided a semi-submerged tract at the mouth of the Arabian Sea may provide a model for determining the coastal boundary. For the latter, New Delhi should desist from unilateral surveying of the overlapping maritime zones pending judgment of their respective claims at the Permanent Court of Arbitration (PCA) at The Hague [5]. Better still, submitting to settlement principles in the analogous Myanmar-Bangladesh maritime baseline claims case, currently under fast-track International Tribunal for the Law of the Sea (ITLOS) proceedings [6] would be an act of graciousness on New Delhi's part. Best of all would be joint survey and development of the overlapping India-Bangladesh maritime zone [7] without prejudice to the ITLOS or PCA verdicts. In doing so, New Delhi would also set a portentous precedent for claimants in the South China Sea [8].

Sourabh Gupta is a Senior Research Associate at Samuels International Associates Inc in Washington DC and a contributor to the East Asia Forum.

Article from the East Asia Forum: **http://www.eastasiaforum.org**

URL to article:
http://www.eastasiaforum.org/2011/10/10/india-and-bangladesh-calculus-of-territorial-dispute-settlement/

[1] agreement: **http://www.mea.gov.in/mystart.php?id=500418206**

[2] ceded to China in the context of a Sino-Indian boundary:
http://www.eastasiaforum.org/2010/02/05/chinas-growing-presence-in-indias-neighbourhood/

[3] imperative of good neighborliness:
http://www.eastasiaforum.org/2011/03/25/work-permits-to-strengthen-indo-bangladeshi-ties/

[4] India-Bangladesh Joint Statement:
http://www.mea.gov.in/mystart.php?id=100018210&pid=2290

[5] Permanent Court of Arbitration (PCA) at The Hague:
http://www.pca-cpa.org/showpage.asp?pag_id=1376

[6] fast-track International Tribunal for the Law of the Sea (ITLOS) proceedings:
http://www.nbr.org/publications/asia_policy/Preview/AP10_D_Maritime_preview.pdf

[7] overlapping India-Bangladesh maritime zone:

Source: Gupta (2011).

Table 2

An example of a qualitative analysis.

The justification for choosing this document is that this document provides a review of the principles and processes underlying the compromises, revealing useful insights into India-Bangladesh border dispute management.
The first paragraph of this document provides the time of the event and the outcome of the negotiation.
The second paragraph stresses the constituting elements of this dispute, which have been demonstrated as a hasty border demarcation process by the British colonial power and hostile Hindu-Muslim politics.
The third paragraph indicates the current situation of the India-Bangladesh border, which focuses on the killing of the people in the conflicted border area.
The fourth, fifth and sixth paragraphs highlight the implications and significance of the settlement.
The seventh and eighth paragraphs are very significant for this analysis because they discuss the author's own perception regarding the hidden causes of this border settlement. The research critically evaluates this perception and interprets the causes as the following. Firstly, although the author has described the cause of the border settlement as India's 'imperative of good neighbourliness', he also reveals that to achieve this settlement, Bangladesh needed to satisfy India's security concerns. This could be interpreted as a precondition to settling this dispute. Secondly, it could be further interpreted from the text that the settlement has been done according to the status quo rather than by strictly following the principles of the international law of conflict management. The author considers this settlement a political parameters-based approach of dispute resolution. However, these causes are interpreted as prior (power) political facts and interests which conditioned the negotiation process (as well as the outcome). The research goes further to analyse some other documents to support its revealed cause and its interpretation from this document.
The last two paragraphs provide further hope and a direction to settle the maritime dispute between India and Bangladesh.

Source: Author's self-produced table.

Appendix C

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Bangladesh.MOFA.,2011a. *Indian External Affairs Minister Ms. Sushma Swaraj would be visiting Bangladesh from 25-27 June 2014* [online] Ministry of Foreign Affairs. Available at: http://www.mofa.gov.bd/media/indian-external-affairs-minister-ms-sushma-swaraj-would-be-visiting-bangladesh-25-27-june-2014 [Accessed 13 Sep. 2013].

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Appendix-E

Interviews

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Atik Mia., Interview with the local villager, Dinajpur, Bangladesh, 20 August 2008.

Banu Hazra: Interview with the local villager, Lalmonirhat, Bangladesh, 23 August 2008.

Charan Mir., Interview with the Lecturer, Department of International Relations, Jahangirnagar University, Bangladesh, Dhaka, 19 April 2014.

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Jamir Uddin., Interview with the local villager, Gobindopur, Bangladesh, 20 November 2008.

Mahbubur Rahman., Interview with the Director, Bangladesh Manobadhikar Songsha, Dhaka, Bangladesh, 12 November 2008.

Maksudur Rahman., Interview with the News Reporter Odhikar, Bangladesh. Dhaka, 3 August 2008.

Md. Jamal Uddin Khan., Interview with the Research Officer, Bangladesh Secretariat, Home Affairs, Public Security Division, Dhaka, Bangladesh, 5 April 2014.

Moyin Islam., Interview with the local villager, Dinajpur, Bangladesh, 20 August 2008.

Moyna Begum: Interview with the local villager, Lalmonirhat, Bangladesh, 23 August 2008.

Pajekta Deshmukh., Interview with the Research Associate, Jawaharlal Nehru University, India, Dhaka, Bangladesh, 22 April 2014.

Priya Begum: Interview with the local villager, Lalmonirhat, Bangladesh, 23 August 2008.

Rahim Haque., Interview with the local villager, Lalmonirhat, Bangladesh, 23 August 2008.

Ramjan Ali., Interview with the local villager, Dinajpur, Bangladesh, 20 August 2008.

Riaz Ali: Interview with the local villager, Dinajpur, Bangladesh, 24 November 2008.

Romoj Mondol: Interview with the local villager, Lalmonirhat, Bangladesh, 23 August 2008.

Sadekul Islam: Interview with the local villager, Dinajpur, Bangladesh, 24 November 2008.

Shaheb Ali., Interview with the local villager, Jaipurhat, Bangladesh, 4 October 2008.

Shahid Mia., Interview with the local villager, Dinajpur, Bangladesh, 20 August 2008.

Sufia Begum, Interview with the local villager, Lalmonirhat, Bangladesh, 23 August 2008.

Taz Mia., Interview with the local villager: Lalmonirhat, Bangladesh, 23 August 2008.

Vinay Sen., Interview with the Co-ordinator, Institute of Democratic Right, Bangladesh, Dhaka, 19 April 2014.

Appendix F

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THURSDAY, NOVEMBER 28, 1974
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PART V – Acts, Bills, etc., of the Bangladesh Parliament

BANGLADESH PARLIAMENT

Dacca, the 28th November 1974

The following Act of Parliament received the assent of the President on the

27th November, 1974, and is hereby published for general information:-

ACT No. LXXIV OF 1974

An Act further to amend certain provision of the Constitution of the People's Republic of Bangladesh to give effect to the Agreement entered into between the Governments of the People's Republic of Bangladesh and the Republic of India

WHEREAS it is expedient further to amend certain provision of the Constitution of the People's Republic of Bangladesh to give effect to the Agreement entered into between the Governments of the People's Republic of Bangladesh and the Republic of India;

It is hereby enacted as follows:-

1. Short title and commencement. – (1) This Act may be called the Constitution (Third Amendment) Act, 1974.

(2) It shall come into force at once except section 3 which shall come into force on the date specified in a notification under section 4.

2. Definitions. – In this Act -

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(a) "Agreement" means the Agreement between the Governments of the People's Republic of Bangladesh and the Republic of India entered into on the 16th day of May, 1974, as set out in the Schedule;

(b) "excluded territories" means the territories which are excluded from the territory of Bangladesh in pursuance of the Agreement;

(c) "included territories" means the territories which are included in the territory of Bangladesh in pursuance of the Agreement.

3. **Amendment of article 2 of the Constitution.** – In the Constitution of the People's Republic of Bangladesh, in article 2, in clause (a), for the semicolon and word; "and " the words, brackets, commas, figures and semi-colon "and the territories referred to as included territories in the Constitution (Third Amendment) Act, 1974, but excluding the territories referred to as excluded territories in that Act; and" shall be substituted.

4. **Notifications for inclusion and exclusion of territories.** – Upon the completion of the demarcation of the land boundary between Bangladesh and India in pursuance of the Agreement such included territories shall, and such excluded territories shall not, form part of the territory of Bangladesh with effect from such date as the Government may, by notification in the official Gazette, specify.

SCHEDULE

[See section 2 (a)]

AGREEMENT

BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE GOVERNMENT OF THE REPUBLIC OF INDIA CONCERNING THE DEMARCATION OF THE LAND BOUNDARY BETWEEN BANGLADESH AND INDIA AND RELATED MATTERS.

The Government of the People's Republic of Bangladesh and the Government of the Republic of India, bearing in mind the friendly relations existing between the two countries, desiring to define more accurately at certain points and to complete the demarcation of the land boundary between Bangladesh and India.

Have agreed as follows: -

Article 1

The land boundary between Bangladesh and India in the areas mentioned below shall be demarcated in the following manner :

1. **Mizoram-Bangladesh Sector.** – Demarcation should be completed on the basis of the latest pre-partition notifications and records.

2. **Tripura-Sylhet Sector.** – Demarcation which is already in progress in this area on the agreed basis, should be completed as early as possible.

3. **Bhagalpur Railway Line.** – The boundary should be demarcated at a distance of 73 feet parallel to the toe of the railway embankment towards the east.

4. **Sibpur-Gaurangala Sector.** – The boundary should be demarcated in continuation of the process started in 1951-52 on the basis of the District Settlement Maps of 1915-1918.

5. **Muhuri River (Belonia) Sector. –** The boundary in this area should be demarcated along the mid-stream of the course of Muhuri River at the time of demarcation. This boundary will be a fixed boundary. The two Governments should raise embankments on their respective sides with a view to stabilising the river in its present course.

6. **Remaining portion of the Tripura-Noakhali / Comilla Sector.** – The demarcation in this sector should be completed on the basis of ChaklaRoshanabad Estate Maps of 1892-1894 and the District Settlement Maps of 1915-1918 for areas not covered by the Chakla-Roshanabad Maps.

7. **Fenny River.** – The boundary should be demarcated along the midstream of the course at the time of demarcation of that branch of the Fenny River indicated as the Fenny River on Survey of India Map sheet No. 79 $\underline{M}$, 1st

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Edition 1935, till it joins the stream shown as Asalong C on the said map. From that point on, downstream, the boundary should be demarcated along the midstream of the course of the Fenny River at the time of demarcation of the boundary. The boundary in this sector will be a fixed boundary.

8. **Rest of Tripura-Chittagong Hill Tracts Sector.** – The boundary will follow the mid-stream of that branch of the Fenny River, referred to in para 7 above, up to Grid reference 009779 (map sheet as in para 7 above) from where the boundary will follow the mid-stream of the eastern-most tributary. From the source of this tributary, the boundary will run along the shortest distance to the mid-stream of the stream marked Bayan Asalong, on the map referred to above, and thence will run generally northwards along the mid-stream of this river till it reaches its source on the ridge (indicated by grid reference 046810 on the map referred to above). From there it will run along the crest of this ridge up to Boghoban Trig Station. From Boghoban Trig Station up to the tri-junction of the Bangladesh-Assam-Tripura boundary (Khan Talang Trig Station), the boundary will run along the watershed of the river systems of the two countries. In case of any differences between the map and the ground, the ground shall prevail. The boundary will be a fixed boundary in this sector.

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9.   **Beanibazar-Karimganj Sector**. – The undemarcated portion of the boundary west of Umapati Village should be demarcated in accordance with the agreed basis of demarcation, leaving Umapati Village in India.

10.   **Hakar Khal**. – The boundary should be demarcated in accordance with the Nehru-Noon Agreement of September, 1958, treating Hakar Khal as a geographical feature distinct from the Ichhamati River. The boundary will be a fixed boundary.

11.   **Baikari Khal**. – In the Baikari Khal, the boundary should be demarcated on the agreed basis and principles, namely, that the ground shall prevail, i.e. as per the agreement reached between the Directors of Land Records and Surveys of West Bengal and erstwhile East Pakistan in 1949. The boundary will be a fixed boundary.

12.   **Enclaves**. – The Indian enclaves in Bangladesh and the Bangladesh enclaves in India should be exchanged expeditiously, excepting the enclaves mentioned in paragraph 14 without claim to compensation for the additional area going to Bangladesh.

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13.   **Hilli**. – The area will be demarcated in accordance with Redcliffe Award and the line drawn by him on the map.

14.   **Berubari**. – India will retain the southern half of South Berubari Union No. 12 and the adjacent enclaves, measuring an area of 2.64 square miles approximately, and in exchange Bangladesh will retain the Dahagram and Angarpota enclaves. India will lease in perpetuity to Bangladesh an area of 178 metres X 85 metres near 'Tin Bigha' to connect Dahagram with Panbari Mouza (P.S. Patgram) of Bangladesh.

15.   **Lathitilla-Dumabari**. – From point Y (the last demarcated boundary pillar position), the boundary shall run southwards along the Patheria Hills RF boundary up to the point where it meets the western boundary of Dumabari Mouza. Thence, along the same Mouza boundary up to the tri-junction of Mouzas Dumabari, Lathitilla and Bara Putnigaon through the junction of the two Mouzas Dumabari and Lathitilla. From this point it shall run along the shortest distance to meet the mid-stream of Putni Chara. Thence it shall run generally southwards along the mid-stream of the course of Putni Chara at the time of demarcation, till it meets the boundary between Sylhet (Bangladesh) and Tripura (India).

Article 2

The Governments of Bangladesh and India agree that territories in adverse possession in areas already demarcated in respect of which boundary strip maps are already prepared, shall be exchanged within six months of the signing of the boundary strip maps by the plenipotentiaries. They may sign the relevant maps as early as possible and in any case not later than the 31st December, 1974. Early measures may be taken to print maps in respect of other areas where demarcation has already taken place. These should be printed by 31st May, 1975 and signed by the plenipotentiaries thereafter in order that the exchange of adversely held possessions in these areas may take place by the 31st December, 1975. In sectors still to be demarcated transfer of territorial jurisdiction may take place within six months of the signature by plenipotentiaries on the concerned boundary strip maps.

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Article 3

The Governments of Bangladesh and India agree that when areas are transferred, the people in these areas shall be given the right of staying on where they are, as national of the State to which the areas are transferred. Pending demarcation of the boundary and exchange of territory by mutual agreement, there should be no disturbance of the status quo and peaceful conditions shall be maintained in the border regions. Necessary instructions in this regard shall be issued to the local authorities on the border by the two countries.

Article 4

The Government of Bangladesh and India agree that any dispute concerning the interpretation or implementation of this Agreement shall be settled peacefully through mutual consultations.

PART V] THE BANGLADESH GAZETTE, EXTRA., NOV. 28, 1974
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Article 5

This Agreement shall be subject to ratification by the Governments of Bangladesh and India and Instruments of Ratification shall be exchanged as early as possible. The Agreement shall take effect from the date of the exchange of the Instruments of Ratification.

Signed in New Delhi on May 16, 1974, in two originals each of which is equally authentic.

For the Government of Republic of Bangladesh	For the Government of the People's the Republic of India
(SHEIKH MUJIBUR RAHMAN) Prime Minister of Bangladesh	(INDIRA GANDHI) Prime Minister of India

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PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE's REPUBLIC OF BANGLADESH CONCERNING THE DEMARCATION OF THE LAND BOUNDARY BETWEEN INDIA AND BANGLADESH AND RELATED MATTERS

The Government of the Republic of India and the Government of the People's Republic of Bangladesh,

Bearing in mind the friendly relations existing between the two countries,

Desiring to define more accurately at certain points and to complete the demarcation of the land boundary between India and Bangladesh,

Having regard to the Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh concerning the demarcation of the land boundary between India and Bangladesh and related matters, May 16, 1974 and Exchange of Letters dated December 26, 1974; December 30, 1974; October 7, 1982; and March 26, 1992 (hereinafter referred to as the 1974 Agreement),

Have agreed as follows:

ARTICLE 1

The provisions of this Protocol shall form an integral part of the 1974 Agreement.

ARTICLE 2

(I)   **Article 1 Clause 5 of the 1974 Agreement shall be implemented as follows:**

Muhuri River (Belonia) sector

Boundary in this segment shall be drawn westwards from the existing Boundary Pillar No. 2159/48-S along the agreed line as depicted in the index map prepared jointly till it meets the southern limit of the Burning Ghat as shown in jointly surveyed map of Muhuri river area in 1977-78. Thereafter it shall follow the external limit of the Burning Ghat in South-West direction and then turn northwards along the external limit of the Burning Ghat till it meets the centre of the existing Muhuri River. Thereafter it shall run along the mid stream of the existing Muhuri River upto Boundary Pillar No. 2159/3-S. This boundary shall be the fixed boundary. The two Governments should raise embankments on their respective sides with a view to stabilising the river in its present course as stipulated in the 1974 Agreement. The Parties agree to fencing on 'zero line' in this area.

(II)   Article 1 Clause 12 of the 1974 Agreement shall be implemented as follows:

Enclaves

111 Indian Enclaves in Bangladesh and 51 Bangladesh Enclaves in India as per the jointly verified cadastral enclave maps and signed at the level of DGLR&S, Bangladesh and DLR&S, West Bengal (India) in April 1997, shall be exchanged without claim to compensation for the additional areas going to Bangladesh.

(III)   Article 1 Clause 15 of the 1974 Agreement shall be implemented as follows:

Lathitilla and Dumabari

Line drawn by Radcliffe from Boundary Pillar 1397(point Y) i.e. the last demarcated boundary pillar position, straight southward to the tri-junction of Mouzas Dumabari, Lathitilla and Bara Putnigaon i.e upto iron bridge, and thence it shall run generally southwards along the midstream of the course of Putni Chara as already demarcated on the ground, till it meets the boundary between Sylhet (Bangladesh) and Tripura (India) i.e. Boundary Pillar No. 1800.

(IV)   The land boundary in the area mentioned below shall be demarcated in the following manner:

Daikhata 56 (West Bengal-Jalpaiguri) / Panchagarh

Boundary in this segment shall be drawn as fixed boundary from existing Boundary Pillar 774/32-S in the strip sheet 444/6 along the mouza boundary of Daikhata-56 as surveyed in 1997-98 and thereafter will follow the southern boundary of Daikhata-56 (from east to west) upto Point No 18 and therefrom it will follow the western boundary of Daikhata-56 (from south to north) till it meets the center of River Sui at Point No 15 and thereafter, will run along the center of the River Sui upto Point No 1, the points as depicted in the sketch map jointly prepared and mutually agreed on August 3, 2011. Thereafter the International Boundary shall follow the already delineated boundary through Main Pillar (MP) 775.

ARTICLE 3

(I)   Article 2 of the 1974 Agreement shall be implemented as follows:

The Government of India and the Government of Bangladesh agree that the boundary shall be drawn as a fixed boundary for territories held in Adverse Possession as determined through joint survey and fully depicted in the respective adversely possessed land area index map (APL map) finalized by the

Page 2 of 6

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Land Records and Survey Departments of both the countries between December 2010 and August 2011, which are fully described in clause (a) to (d) below.

The relevant strip maps shall be printed and signed by the Plenipotentiaries and transfer of territorial jurisdiction shall be completed simultaneously with the exchange of the enclaves. The demarcation of the boundary, as depicted in the above-mentioned Index Maps, shall be as under:-

(a) West Bengal Sector

(i)   Bousmari – Madhugari (Kushtia-Nadia) area
The boundary shall be drawn from the existing Boundary Pillar Nos. 154/5-S to 157/1-S to follow the centre of old course of river Mathabanga, as depicted in consolidation map of 1962, as surveyed jointly and agreed in June 2011.

(ii)   Andharkota (Kushtia-Nadia) area
The boundary shall be drawn from existing Boundary Pillar No 152/5-S to Boundary Pillar No 153/1-S to follow the edge of existing River Mathabanga as jointly surveyed and agreed in June 2011.

(iii) Pakuria (Kushtia-Nadia) area

The boundary shall be drawn from existing Boundary Pillar No 151/1-S to Boundary Pillar No 152/2-S to follow the edge of River Mathabanga as jointly surveyed and agreed in June 2011.

(iv)   Char Mahishkundi (Kushtia-Nadia) area

The boundary shall be drawn from existing Boundary Pillar No 153/1-S to Boundary Pillar No 153/9-S to follow the edge of River Mathabanga as jointly surveyed and agreed in June 2011.

(v)   Haripal/ Khutadah/ Battoli/ Sapameri/ LNpur (Patari) (Naogaon-Malda) area

The boundary shall be drawn as line joining from existing Boundary Pillar No 242/S/13, to Boundary Pillar No 243/7-S/5 and as jointly surveyed and agreed in June 2011.

(vi)   Berubari (Panchagarh-Jalpaiguri area)

The boundary in the area Berubari (Panchagarh-Jalpaiguri) adversely held by Bangladesh, and Berubari and Singhapara-

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Khudipara (Panchagarh-Jalpaiguri), adversely held by India shall be drawn as jointly demarcated during 1996-1998.

(b) Meghalaya Sector

(i) Lobachera-Nuncherra

The boundary from existing Boundary Pillar No 1315/4-S to Boundary Pillar No 1315/15-S in Lailong - Balichera, Boundary Pillar No 1316/1-S to Boundary Pillar No 1316/11-S in Lailong-Noonchera, Boundary Pillar No 1317 to Boundary Pillar No 1317/13-S in Lailong- Lahiling and Boundary Pillar No 1318/1-S to Boundary Pillar No 1318/2-S in Lailong- Lubhachera shall be drawn to follow the edge of tea gardens as jointly surveyed and agreed in Dec 2010.

(ii) Pyrdiwah/ Padua Area

The boundary shall be drawn from existing Boundary Pillar No 1270/1-S as per jointly surveyed and mutually agreed line till Boundary Pillar No 1271/1-T. The Parties agree that the Indian Nationals from Pyrdiwah village shall be allowed to draw water from Piyang River near point No 6 of the agreed Map.

(iii) Lyngkhat Area

(aa) Lyngkhat-I / Kulumcherra & Lyngkhat-II/ Kulumcherra

The boundary shall be drawn from existing Boundary Pillar No. 1264/4-S to Boundary Pillar No 1265 and BP No 1265/6-S to 1265/9-S as per jointly surveyed and mutually agreed line.

(ab) Lyngkhat-III/ Sonarhat

The boundary shall be drawn from existing Boundary Pillar No 1266/13-S along the nallah southwards till it meets another nallah in the east-west direction, thereafter it shall run along the northern edge of the nallah in east till it meets the existing International Boundary north of Reference Pillar Nos.1267/4-R-B and 1267/3-R-I.

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(iv) Dawki/ Tamabil area

The boundary shall be drawn by a straight line joining existing Boundary Pillar Nos 1275/1-S to Boundary Pillar Nos 1275/7-S. The Parties agree to fencing on 'zero line' in this area.

(v) Naljuri/ Sreepur Area

(aa) Naljuri I

The boundary shall be a line from the existing Boundary Pillar No 1277/2-S in southern direction upto three plots as depicted in the strip Map No 166 till it meets the nallah flowing from Boundary Pillar No 1277/5-T, thereafter it will run along the western edge of the nallah in the southern direction upto 2 plots on the Bangladesh side, thereafter it shall run eastwards till it meets a line drawn in southern direction from Boundary Pillar No 1277/4-S.

(ab) Naljuri III

The boundary shall be drawn by a straight line from existing Boundary Pillar No 1278/2-S to Boundary Pillar No 1279/ 3-S.

(vi) Muktapur/ Dibir Hawor Area

The Parties agree that the Indian Nationals shall be allowed to visit Kali Mandir and shall also be allowed to draw water and exercise fishing rights in the water body in the Muktapur / Dibir Hawor area from the bank of Muktapur side.

(c) **Tripura Sector**

(i) Chandannagar-Champarai Tea Garden area in Tripura/ Moulvi Bazar sector

The boundary shall be drawn along Sonaraichhera river from existing Boundary Pillar No 1904 to Boundary Pillar No 1905 as surveyed jointly and agreed in July 2011.

(d) **Assam Sector**

(i) Kalabari (Boroibari) area in Assam sector

The boundary shall be drawn from existing Boundary Pillar No 1066/24-T to Boundary Pillar No 1067/16-T as surveyed jointly and agreed in August 2011.

(ii)   Pallathal area in Assam sector

The boundary shall be drawn from existing Boundary Pillar No. 1370/3-S to 1371/6-S to follow the outer edge of the tea garden and from Boundary Pillar No. 1372 to 1373/2-S along outer edge of the pan plantation.

ARTICLE 4

This Protocol shall be subject to ratification by the Government of the Republic of India and the Government of the People's Republic of Bangladesh and shall enter into force on the date of exchange of Instruments of Ratification.

Signed at Dhaka on the Sixth day of September, 2011, in two originals in the English language.

For the Government of the   For the Government of the
Republic of India   People's Republic of Bangladesh