

## A tense hartal passes off

*What purpose did it serve?*

THE dawn-dusk countrywide hartal called by the BNP yesterday has passed off, but not without generating heat and tension. Several opposition activists were arrested including some top ranking BNP leaders in the capital city. There were sporadic clashes between the police and the pickets, but no major incident of violence was reported till the time of writing. The presence of the law enforcers in the Dhaka streets was huge and overwhelming and they used batons to prevent hartal supporters from taking control of the situation at different points. It was almost a repetition of that familiar police versus pickets skirmishes that we witnessed many times during hartals in the past.

Regrettably, after 40 months of hartal-free life, it has erupted once again, and one hopes not as a signal of any more recurrence of it with political parties behaving sensibly, wisely and pragmatically from here on in greater national interest.

This hartal after a long lull has actually brought to the fore the need for mending relations between the major political parties to a working level. They might have differences of opinion on and approach to national issues as they are only expected to. At the same time they must work to avoid getting into a breaking point through a hartal mode again which a lose-lose proposition for everybody. For it is the people who feel the brunt of it, their livelihood suffers and the economy takes a hit.

The political parties have to face up to the fact that hartal does not pay and is always counterproductive. People remain indoors-fearing vandalism and not out of sympathy for any party. So nothing can be more delusional than to think that a hartal, having no specific agenda catching people's imagination is observed spontaneously in any sense. To tell the truth, popularity rating of both the opposition and the ruling party goes down following a hartal because of the resulting confrontational and tense situation.

Let the political parties, therefore, put their egos aside and take bold step to come out of the hartal culture once and for all. That will be a signal contribution to the brightening of Bangladesh's future underpinned by the strengthening of democracy, the national economy and, above all, its image. This will lead to greater stability, investment in creative pursuits and sustainable prosperity.

## Idea of SAARC police mooted

*Why was our home minister absent at the meet?*

THE home ministers' meeting of SAARC, held recently in Islamabad, has agreed to set up a regional police force modeled on the INTERPOL, to tackle transnational crimes in the region. It is a good idea that has not emerged a day too soon.

That said, we cannot withhold our dismay, and indeed our frustration, at the fact that our home minister did not attend the meeting, which was attended by all the other home ministers of SAARC. We wonder why? We feel that the government and indeed the minister herself, owes it to the people to explain the reason for her preferring to stay home.

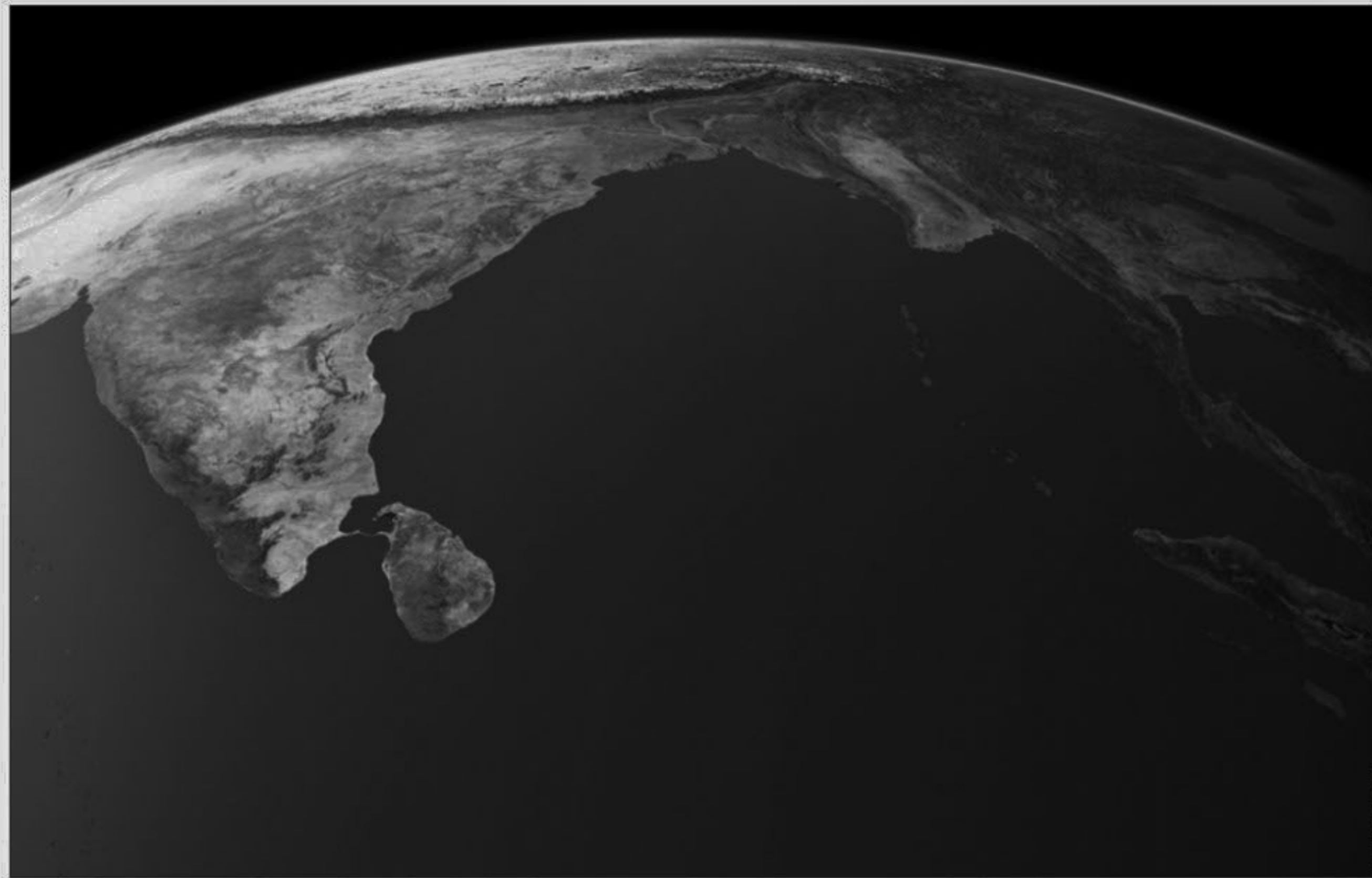
Given that the meeting agenda included many topical issues, particularly many which related to the region's security, it was essential that Bangladesh's position on these matters were expressed by the minister herself, the highest functionary of the government dealing with the issues. That would have given the weightage that the matters deserve. Can we be faulted for thinking that the government did not consider the conference important enough to be attended by the minister not even the state minister could be spared for this very important regional meeting?

It may be said that there were parallel two other meetings addressing the same issues at the levels of home secretary and the chief of police, which were appropriately represented.

Several other issues, which were mooted at the meeting, merit recognition. The growing threat of maritime piracy has come into reckoning as well as narco and human trafficking. Some of them fall within the realms of non-traditional security that calls for the application of non-traditional approach to address the challenges. We also commend the meeting for resuscitating the moribund anti-terrorism protocols by putting the existing mechanisms into operation. The countries can also benefit from each other's experiences regarding the battle against extremism, and it is just as well that they have decided to do so.

The proposal of a SAARC police force is certainly an acknowledgement of a very important reality on the part of the SAARC members; which is that the trans-border problems, and those relating to terrorism and crimes associated with it, are not for any one country to deal all by itself. The imperatives of a cooperative arrangement and the willingness to devise such an arrangement are clearly manifest in the proposal of a regional police force. Such an approach will help SAARC play the role it was intended to by the founding fathers. We would hope that the member countries would work to speedily bring the idea to fruition.

## Bangladesh goes to court



How much of the Bay does Bangladesh own?

The reference to the UNCLOS dispute machinery is a positive development in stark contrast to the stagnation of maritime talks between Bangladesh and its neighbours for more than two decades.

HARUN UR RASHID

SINCE Bangladesh's birth in 1971, the importance of the sea and its resources has been recognised. In 1974, Bangladesh was the only country in South Asia to enact a maritime law -- the Territorial Waters and Maritime Zones Act.

Under the law, Bangladesh has claimed 12 miles of territorial sea, another 188 miles of exclusive economic zone and the continental shelf to "the outer limits of the continental margin on the ocean basin or abyssal floor" (150 miles beyond exclusive economic zone). India and Myanmar enacted similar laws in 1976 and 1977, respectively.

Bangladesh's claim to maritime zones consist of two parallel lines extending southward on the meridians of the longitude from baselines corresponding to its coastline up to the outer limits of continental shelf.

The urgency in delimitation of maritime boundary for Bangladesh with India and Myanmar is partly because Bangladesh cannot explore and exploit off-shore areas due to overlapping claims of India and Myanmar, and partly because strong prospects for gas/oil in the off-shore areas exist, coupled with the rising domestic demand for oil/gas for generation of power.

Furthermore, the most remarkable progress in off-shore technologies during the last 15 years is the three-fold increase in the maximum operational depth of off-shore rigs, which has opened up thousands of square miles in the Bay of Bengal.

Bilateral negotiations commenced in 1974 with India and Myanmar. After a lapse of 26 years, bilateral negotiations were held

with India in September 2008 and March 2009. The impasse remained.

After a lapse of 22, years negotiations resumed with Myanmar in November 2008 and the last one took place in March 2010. The discussions did not yield any positive result.

Bangladesh, India and Myanmar ratified the 1982 UN Convention on the Law of the Sea (UNCLOS). Bangladesh ratified in July 2001, India in 1995 and Myanmar in 1996. They accept the rules of UNCLOS and laws of international law on the subject matter, including the dispute settlement mechanism.

Article 287 of UNCLOS provides, among others, two procedures for dispute settlement:

- International Tribunal for the Law of the Sea (ITLOS) established in accordance with Annex VI;
- Arbitral Tribunal constituted in accordance with Annex VII.

The structure and procedure of ITLOS differs from that of the arbitral tribunal. The tribunal consists of 21 independent elected judges, and the parties nominate one judge each.

The arbitration tribunal is composed of five arbitrators -- three appointed by the president of the Tribunal and one each by the parties. Furthermore, the procedure of ITLOS is likely to proceed more quickly than that of arbitration.

### Bangladesh-Myanmar

Given the impasse, Bangladesh had no other alternative but to refer the matter before the Tribunal on December 14, 2009, and both Bangladesh and Myanmar

accepted the jurisdiction of ITLOS.

It is noted that initially Myanmar opted for arbitration but later reversed its decision in favour of ITLOS, because the parties reportedly could not reach a consensus on nominating the arbitrators to Tribunal.

During consultations with the president of the tribunal on January 25 and 26 on the premises of the tribunal in Hamburg, Germany, the representatives of the parties agreed on the following time-limits for the filing of the written pleadings:

- July 1, 2010: Time-limit for the filing of the Memorial by Bangladesh;
- December 1, 2010: Time-limit for the filing of the Counter-Memorial by Myanmar.

They further agreed that the time-limits for the filing of pleadings should be as follows:

- March 15, 2011: Time-limit for the filing of the Reply by Bangladesh;
- July 1, 2011: Time-limit for the filing of the Rejoinder by Myanmar.

The proceedings will begin by the end of 2011. Ordinarily, it takes 2 to 3 years and the decision is final.

### Bangladesh-India

India did not accept the jurisdiction of International Tribunal as Myanmar did, and opted for arbitration tribunal under Annex VII.

On October 8, 2009, Bangladesh initiated arbitration proceedings against India. In February, the president of the tribunal appointed three arbitrators -- Tullio Treves of Italy, I.A. Shearer of Australia and Rudigar Wolfrum of Germany. (Tullio Treves and Ivan Anthony Shearer are ITLOS judges.)

Bangladesh nominated Alan Vaughan Lowe, QC, a former professor of Oxford University and India nominated P. Sreenivasa Rao, former legal adviser of the external affairs ministry.

In May this year, the president of the arbitral tribunal called India and Bangladesh to attend a meeting to fix a time-table of submission of their pleadings

and rejoinders. It was decided as follows:

- Bangladesh is to lodge its statement of claim by May 2011;
- India will respond by May 2012.

The decision of the proceedings may take five years.

The first issue is that the proceedings will address important equity and equidistance method in defining exclusive economic zone in the Bay of Bengal.

Given the concave coast of Bangladesh and also taking into account Bangladesh's position as lateral/adjacent state with India and Myanmar (as opposed to India and Sri Lanka), Bangladesh strongly argues that equidistance method is not suitable as a starting point in delimiting maritime boundary in the Bay of Bengal.

Much of the continental shelf claimed by Bangladesh can be argued to be the deposit of silt through the rivers through Bangladesh (1.8-2 billion tons of silt annually) forming the continental shelf, which is arguably a natural prolongation of the landmass of Bangladesh in the southward direction.

Bangladesh further argues that if India and Myanmar insist on equidistance method, Bangladesh will be affected by "cut-off" that will turn a coastal country into a "sea-locked" nation without any opening to high seas, and will not be able to claim additional 150 miles of continental shelf.

The interpretation of customary international law of maritime delimitation as embodied in the 1969 ICJ judgment and Articles 74 and 83 of UNCLOS provide strength, in my view, to Bangladesh's above argument, and that equity has emerged as an integral part of law in maritime delimitation. States may take recourse to various factors to achieve an equitable solution.

In 1969, the ICJ ordered the parties (Denmark, Germany and Netherlands) to negotiate the boundary by application of equitable principles so as to avoid the "cut-off" for Germany that would result from equidistance method.

The court stated: "Delimitation is to be effected by agreement taking into account all the relevant circumstances...including general configuration of the coast of the parties, physical and geological structure."

It is noted that the India's claim in the Bay of Bengal constitutes about 5-7% of their total maritime zone, and Myanmar's claim could be no more than 15% of its total claim while Bangladesh's stake is 100% in the Bay of Bengal.

A corollary issue before the tribunal is whether the baselines drawn by Bangladesh, India and Myanmar are consistent with the provisions of UNCLOS. While Bangladesh objects to India's and Myanmar's description of baselines, they also do not accept Bangladesh's baseline.

Meanwhile, judgment of proceedings with the international tribunal and arbitration does not preclude bilateral discussions with India and Myanmar.

The reference to the UNCLOS dispute machinery is a positive development in stark contrast to the stagnation of maritime talks between Bangladesh and its neighbours for more than two decades.

Barrister Harun ur Rashid is a former Bangladesh Ambassador to the UN, Geneva.

## Making the twain meet

Maybe the mistake being made is not in the level of dialogue, but in the level of expectations. Neighbours must talk; that is a no-brainer. But it takes more than words to convert a conversation into a love affair.

M.J. AKBAR

THE pessimistic definition of India-Pakistan relations is succinct. The two nations are walking on different pavements on either side of a street that has caved in and become an abyss. The two are always in each other's sights, but there is no meeting point; neither has the psychological or emotional resources to mark out a zebra crossing since the traffic lights cannot be trusted. Nor does the distant horizon bend towards a common focal point.

Over the last six decades, a narrow dividing pathway has become an eight-lane highway. The best you can do now, if you are bursting with the spirit of peace, is exchange pleasantries through officials; the worst is apparent in terrorist violence.

Dr. Manmohan Singh is attempting something audacious in an attempt to sweeten an arsenic-laced history. Aware of such lethal road rage, he is, inch by imperceptible inch, trying to build a bridge above the traffic. It is one of those Japanese projects, in which a skyscraper

hotel is built behind the walls of secure and hidden space, and then, when the moment is right, airlifted and planted from above on a clearing, an empty space that has served so far as a symbol of hope.

The people are permitted some vague knowledge about the grime and sweat that is going on behind the scenes, but the effort will mean something only if and when the finished product is visible.

A bridge, however commendable, must be more than it seems to be. It may float through the air, but it must be anchored in rock. The question is as old as 1947; how firm is the ground beneath your feet? Can it deal with sappers and saboteurs nursed by differing ideals of nationalism?

A sense of injustice and denial is so deeply embedded in the consciousness of Pakistani nationalism -- after all, the "K" in the acronym stands for Kashmir -- that it is difficult to see how Islamabad can reach a final settlement without taking that which Delhi cannot give, some part of the Muslim-majority valley. This is a classic impasse between an irresistible object and immovable force.

Since there are, wisely, no secrets anymore, India's Foreign Secretary Nirupama Rao has publicly outlined the contours of an interim arrangement, a crucial part of a longer process, around the Singh-Musharraf formula of soft borders, trade and travel.

Two questions arise. Is an interim agreement better than no agreement? Will it be a stage en route to a common destination, or will the two nations remain on separate pavements until either the immovable shifts in Delhi or resistance collapses in Islamabad?

The soft border options were, after all, in place when Mumbai was attacked; and organisations like the Lashkar-e-Taiba continue to receive patronage and encouragement from wide swathes of the Pak establishment.

During her visit to Islamabad, Nirupama Rao was far more considerate to her hosts than her counterpart was when he came to Delhi. She called terrorism unacceptable, but expanded it to a general principle, rather than specifically demanding that Pakistan do something about those who use the Kashmir dispute as an excuse for surrogate war.

Nor did she compare the manner in which Pakistan sentences terrorists accused of war against the United States within six months, with those facing far more serious charges vis-à-vis India.

On the day of Home Minister P. Chidambaram's visit to Islamabad for a

Saarc meeting, IB intercepts picked up conversations between terrorists operating in the Kashmir valley and their handlers across the border. If this is what happens when the border is officially hard, we need to worry a little about what will happen if the LOC goes soft.

Perhaps Delhi's tactic is to keep the left hand of foreign office as distant from the right hand of the home ministry as possible. This is a palliative, not a cure.

Maybe the mistake being made is not in the level of dialogue, but in the level of expectations. Neighbours must talk; that is a no-brainer. But it takes more than words to convert a conversation into a love affair.

The objective environment for peace will not emerge until there is a fundamental change in objectives. The fundamental flaw is easily identified. Before you can sign off on a soft or hard border, you have to first agree on a border. India has made up its mind.

If the Line of Control were turned into the international border, India would celebrate. Pakistan, for obvious reasons, would not. But as long as this basic question is not resolved, the only thing that Delhi and Islamabad can do is agree to disagree.

That, by any stretch of imagination, is not a description of peace.

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