

Bangladesh V Myanmar Maritime: Boundary Delimitation Case

Iffat Ara Haider

Bangladesh University of Professionals (BUP), Department of Law, Dhaka, Bangladesh

Abstract: This article describes technical difficulties of Bangladesh and Myanmar's maritime boundary dispute (the "Bay of Bengal case"). This was the first maritime delimitation case that the International Tribunal for the Law of the Sea (ITLOS) resolved. A maritime border for the seabed and subsoil of the Exclusive Economic Zone (EEZ) and the extended continental shelf (ECS) was decided by international adjudication for the first time in 2012. It was also the first time detailed technical quantification of seabed areas in the EEZ and ECS was needed for an international forum. After reviewing the ITLOS's delimitation principles, this article evaluates St. Martin's Island's legal status and delimitation effect. The ITLOS concluded that the EEZ and continental shelf legal regimes should not be distinguished in the present instance, but a different approach is proposed for future cases. This article discusses about how to make an equitable boundary and indicates a model for adjusting provisional equidistance lines to accommodate the complicated geophysical rules for the outer limits of the ECS set by the United Nations Law of the Sea Convention (LOSC).

Key words: Bay of Bengal, sea, delimitation, ITLOS, UNCLOS, etc.

Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), ITLOS Reports 2012, Case no.16

I. BACKGROUND OF THE STUDY

Since Bangladesh's independence in 1971, it has been in negotiation with Myanmar over their maritime boundary in the Bay of Bengal. International law establishes the international maritime boundary. But the process by which these boundaries are determined in concrete situations will always have a sui generis character. States aren't required to reach a settlement through simply legal means. Determining a maritime boundary should include numerous factors. Bilateral agreement or court settlement can delimit a maritime boundary. The Hamburg-based Law of the Sea Tribunal (ITLOS) delivered a historic judgment on Bangladesh/myanmar Myanmar's boundary on March 14, 2012 (*Bangladesh and Rosen, 2013*). Tribunal was asked to delimit three maritime boundaries between Bangladesh and Myanmar: the territorial sea boundary, the single maritime boundary between the EEZ and continental shelves of the two states, and the continental shelf boundary beyond 200 nautical miles from their baselines. This Bangladesh-Myanmar dispute was the ITLOS's first judgment has marked a distinctive and definitive legal achievement for Bangladesh. The Bay of Bengal conflict concerned Bangladesh and Myanmar's territorial seas, EEZs, and continental shelf. The ruling sets a precedent for future maritime boundary conflicts (*Bangladesh and Rosen, 2013*).

Also Bay of Bengal hydrocarbons are now more accessible due to deep water exploration. Despite multiple meetings to negotiate the maritime boundary, no final delimitation was established. Relations between Bangladesh and Myanmar, both parties to the United Nations Convention on the Law of the Sea (UNCLOS), became strained in October 2008 when survey ships subcontracted by Daewoo, acting under license from Myanmar, began survey operations near St Martin's Island and in a maritime territory claimed by Bangladesh (*Bangladesh and Rosen, 2013*). Bangladesh sent three navy warships in response, leading to a standoff between the two navies for nearly a week. This incident focused attention on the maritime boundary, leading to further talks (*Arbitration notes, 2012*).

In the absence of an agreement and rising tension in the region, Bangladesh initiated arbitration procedures under UNCLOS in October 2009. A few weeks later, Myanmar deposited a "Declaration" under UNCLOS recognizing International Tribunal for the Law of the Sea (ITLOS) jurisdiction. Bangladesh itself then lodged a similar Declaration on 12 December 2009, initiated proceedings before the ITLOS on the next day, and withdrew the separate arbitral proceedings. Myanmar withdrew its Declaration in January 2010 to avert further ITLOS proceedings. But this did not impair the ITLOS's jurisdiction over already-started procedures (*Arbitration notes, 2012*).

II. STATEMENT OF THIS PROBLEM

For this delimitation there are few issues between these two countries. These are:

The very **first** issue is Territorial sea, in dealing with the delimitation of the territorial sea; the Tribunal will first address the issue of:

- I. Whether the Parties have in fact delimited their territorial sea, either by signing the Agreed Minutes of 1974 and 2008 or by tacit agreement (*Bhuiyan, 2012*).
- II. The Tribunal will also examine whether the conduct of the Parties may be said to have created a situation of estoppel (*Bhuiyan, 2012*).

The **Secondly**, Exclusive economic zone and continental shelf within 200 nautical miles, the Tribunal will draw a single delimitation line for both the exclusive economic zone and the continental shelf (*Bhuiyan, 2012*).

Thirdly, Jurisdiction to delimit the extended continental shelf, While the Parties are in agreement that the Tribunal is requested to delimit the continental shelf between them in the Bay of

Bengal within 200 nm, they disagree as to whether the Tribunal has jurisdiction to delimit the continental shelf beyond 200 nm and whether the Tribunal, if it determines that it has jurisdiction to do so, should exercise such jurisdiction (*Bhuiyan, 2012*).

Lastly, Delimitation line of extended continental shelf, the Tribunal concludes that both Bangladesh and Myanmar have entitlements to a continental shelf extending beyond 200 nm. The submissions of Bangladesh and Myanmar to the Commission clearly indicate that their entitlements overlap in the area of dispute in this case (*Bhuiyan, 2012*).

The Tribunal therefore, decides that the adjusted equidistance line delimiting both the exclusive economic zone and the continental shelf within 200 nm between the Parties continues in the same direction beyond the 200 nm limit of Bangladesh until it reaches the area where the rights of third States may be affected (*Bhuiyan, 2012*).

Delimitation of the territorial sea:

Bangladesh said that the Agreed Minutes of talks between the two countries in 1974 and 2008 were a territorial sea boundary agreement, but Myanmar said there was no such agreement. ITLOS decided that those Minutes did not cover an agreement, so it went ahead and drew the line between the territorial sea and the international waters. In the end, the territorial sea boundary was drawn as a line that was the same distance from the bases of Bangladesh and Myanmar. In the same way, the border between St. Martin's Island and Myanmar was an equidistance line. However, where St. Martin's Island's territorial sea no longer overlapped with Myanmar's territorial sea, Bangladesh was allowed to extend the island's territorial sea to 12 nm (*Bhuiyan, 2012*).

Delimitation of the EEZ and the continental shelf:

Bangladesh stated that "equidistance" did not generate an equitable result for the EEZ and continental shelf. Bangladesh suggested that ITLOS should use the "angle-bisector method" to delimit its EEZ and continental shelf. "Angle-bisector method" is a less used alternative to equidistance. Myanmar used "equidistance/relevant circumstances" (*Bhuiyan, 2012*).

ITLOS used the "equidistance/relevant circumstances" method, establishing a provisional equidistance line and adjusting it based on "relevant circumstances." The ITLOS chose the base points to calculate the equidistance line whereas Bangladesh didn't designate base points because at first it opposed the equidistance formula. ITLOS used Myanmar's five base points and added a sixth. Using these six points, a provisional equidistance line was created (*Bhuiyan, 2012*).

The Tribunal considered the circumstances after drawing the provisional equidistance line. Bangladesh argued that three factors should be considered. These were Bangladesh's concave coastline, St Martin's Island, and the "Bengal depositional system," which connected Bangladesh to the Bay of Bengal. Myanmar said there was no "relevant circumstance" to change the provisional equidistance line (*Bhuiyan, 2012*).

The Tribunal found only the concavity of the coast to be important, neither St. Martin's Island or the depositional system. Due to the concavity of the coast, the Tribunal decided to revise the provisional equidistance line so that it does not cut off Bangladesh's EEZ and continental shelf. The Tribunal emphasized that any adjustment must be balanced to avoid altering Myanmar's seaward maritime zones. In the end, by 21 votes to 1, the Tribunal drew an adjusted equidistance line as the boundary in the EEZ and the continental shelf (*Bhuiyan, 2012*).

Delimitation of the continental shelf beyond 200 nautical miles:

Article 76 requires every state having a continental shelf exceeding 200 nm to limit its outer border. Example: 350 nm from the coast. Every state must provide information concerning the outer limit to the UNCLOS Commission on the Limits of the Continental Shelf (Commission). A coastal state must set the outer border of the shelf based on Commission recommendations (*Bhuiyan, 2012*).

Bangladesh and Myanmar may have trouble delimiting the lateral edge of the outer continental shelf. Bangladesh also submitted to ITLOS the delimitation of the outer continental shelf's lateral boundary. Myanmar contended that the Tribunal lacked jurisdiction or even if it did, should not exercise its authority over the lateral boundary until the outer boundaries of the shelf were defined based on Commission recommendations. The Tribunal determined that not having outer limits did not prevent it from adjudicating the matter (*Bhuiyan, 2012*).

Bangladesh claimed the outer continental shelf was a natural extension of their land borders. Myanmar maintained that "outer edge of the continental shelf" outweighed "natural prolongation." The Tribunal rejected Bangladesh's claim that Myanmar lacked a 200-nm continental shelf (*Bhuiyan, 2012*).

The Tribunal ruled that the amended equidistance line delimiting the EEZ and inner continental shelf would continue in the same direction delimiting the outer continental shelf of the two states until third State rights became affected (*Bhuiyan, 2012*).

III. FINDINGS

The legislation that is used in relation of maritime delimitation is spelled down in the United Nations Convention on the Law of Sea of 1982 (UNCLOS). According to UNCLOS Articles 3, 4 and 5, territorial sea extends 12 nm from the baseline. The coastal state enjoys full sovereignty over the territorial sea, similar to that of land (*Bhuiyan, 2012*).

According to Articles 55 and 57, the exclusive economic zone extends 200 nm from the baseline. In the EEZ, coastal states can explore, exploit, conserve, and manage natural resources (*Bhuiyan, 2012*).

Article 76 defines continental shelf as the seabed and subsoil from the coast to the land's natural extension. The outer limit of the continental shelf is either the continental margin or 200 nm

from the baseline. The continental shelf can extend much further than the EEZ, depending on where the continental margin stops. Article 77 gives coastal states sovereignty over the continental shelf's natural resources. These rights cover the seabed and subsoil, but not the surrounding waterways or airspace (*Bhuiyan, 2012*).

Under the rules of UNCLOS, when the coasts of two states are close to each other (like the coasts of Bangladesh and Myanmar), the territorial sea must be divided using the equidistance principle. The EEZ and continental shelf, on the other hand, must be divided in order to find an "equitable solution." Since the equidistance line is the middle line and every point on it is the same distance from the nearest points on the baselines of the neighboring states, it does not cause any problems when it is used to set the limits of the territorial sea. In delimiting the EEZ and continental shelf, this abstract concept must be concretized (*Bhuiyan, 2012*).

IV. JUDGMENT

The foreign minister led a strong legal team as Bangladesh's representative. The team includes Rear Admiral (ret) Md Khurshed Alam, UK solicitors James Crawford, Philippe Sands, and Alan Boyle, US attorneys Paul Reichler and Lawrence Martin, and Canadian Payam Akhavan (*The Lawyers & Jurists, n.d.*).

On the other hand, Attorney General Tun Shin was there to speak for Myanmar. It had French lawyers Alain Pellet and Mathias Forteau, British lawyers Sir Michael Wood and Coalter Lathrop, and an American lawyer named Alain Pellet (*The Lawyers & Jurists, n.d.*).

Bangladesh won a crucial dispute at the International Tribunal for the Law of the Sea, stripping Myanmar of 200 nautical miles of exclusive economic and territory rights in the Bay of Bengal. It exceeded Bangladesh's requests as the tribunal's decision handed Bangladesh land beyond 200 kilometers. This would allow oil and gas exploration from the Bay of Bengal. It also handed Bangladesh a 12 nm territorial sea around St. Martin's Island, despite Myanmar's plea to split the island in half. This decision is final and can't be changed in any way (*The Lawyers & Jurists, n.d.*).

Bangladesh favors a principle based on "equity" while India and Myanmar favors "equidistance" system to get larger maritime areas (*The Lawyers & Jurists, n.d.*).

The UN Convention on the Law of the Sea states such disputes should be decided fairly and considering all circumstances. Experts said that it shows that Bangladesh is right to want a fair way to divide the land (*The Lawyers & Jurists, n.d.*).

Last year, the oil company Conoco Philips Bangladesh signed a production sharing contract with the condition that the disputed areas were left out. But now, because of the decision, the oil company will be able to look for oil and gas for Bangladesh in deep-sea areas that were once marked as disputed (*The Lawyers & Jurists, n.d.*).

Myanmar wanted its maritime boundary with Bangladesh to go right through the Bangladeshi coastline. This would have cut Bangladesh's maritime jurisdiction down to a very small area of sea no bigger than 130 miles. Myanmar also said that the tribunal didn't have the power to give continental shelf rights farther than 200 miles from the coast of either state. However, the court didn't agree with either of these arguments (*The Lawyers & Jurists, n.d.*).

In the northern German city of Hamburg, at the International Tribunal for the Law of the Sea, the judge in charge, Jose Luis Jesus, drew a new maritime line that is widely seen as a compromise between the two competing cases. Both countries should have control over their own continental shelves. The court agreed with Myanmar's way of measuring the border, but gave Bangladesh more sea area. The 23 judges from all over the world unanimously agreed on the decision, though some of them had different ideas about certain parts of it (*The Lawyers & Jurists, n.d.*).

V. CONCLUSION

After establishing the maritime border line, the Tribunal evaluated whether it generated a major disproportion by comparing the two states' coastlines and maritime areas. Bangladesh's shoreline is 413 km long, while Myanmar's is 587 km. Myanmar's coasts were longer (1:1.42) The adjusted equidistance line allocated approximately 1,11,631 square kilometers of sea area to Bangladesh and approximately 1,71,832 square kilometers to Myanmar. Myanmar received 1:1.54 of the marine areas. The Tribunal concluded that this ratio did not lead to any significant disproportion in the allocation of maritime areas to Bangladesh and Myanmar relative to the respective lengths of their coasts.

Bangladesh has benefited economically from this judgment. These benefits are that the government can now drill 200 nautical miles offshore. The finding of fresh oil and gas may help the country meet its domestic power needs, and the government might earn funds by distributing blocks to multinational businesses for future exploration.

In addition to that, Bangladesh can now access fish and minerals, which could boost its economy. It is well known fact that the Bay of Bengal is full of resources and due to its 38-year territorial conflict with Myanmar, Bangladesh has not been able to use these resources. As predicted by marine Scientist the area that Bangladesh has been granted are rich in resources and minerals, such as Cobalt, manganese, copper, nickel, and sulfite.

Furthermore, this judgment will help increase the number of skilled workers capable of extracting much-needed resources from the sea. Bangladesh's foreign and education ministries have also agreed to create oceanography departments at Dhaka and Chittagong universities.

Last but not the least these changes benefited Bangladesh to resolve the maritime conflict with India in the Bay of Bangle in 2014.

The March 2012 judgment may have broader consequences for Bangladesh and Myanmar's relationship. It is hoped that the judgment will not have a harmful impact on their bilateral relationship and that it can be viewed as a success for both countries, considering that the verdict has put an end to a problem that has impeded both countries' economic development for more than three decades. Bangladesh should now endeavor to take advantage of the resources that have been made available to it; Bangladesh must not allow this opportunity pass up in order to capitalize on Myanmar's government's readiness to address this issue definitively through legal means.

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