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Demarcation of the Maritime Boundary between Bangladesh and Myanmar: Politico-Security and Economic Implications

Introduction

In contemporary Asian oceanic space, several disputes over demarcation of maritime boundaries seem to constitute a serious threat to regional peace and stability as the parties to such disputes remain inflexible and intransigent towards any amicable solution of the problems. The dispute over maritime boundary between Bangladesh and Myanmar is one of such cases. Thanks to the arbitration of the International Tribunal of the Law of the Sea (ITLOS), the long simmering dispute over maritime boundary between the two countries has been resolved only recently. Henceforth, both Bangladesh and Myanmar are expected to reap the benefits of their maritime boundary demarcation politically and economically. A successful future cooperative interaction between the two countries would be a positive factor to contribute to peace and stability in two very important and vital geo-strategic segments of Asia, i.e., South Asia and South East Asia.

In effect, the delimitation of maritime boundary between Bangladesh and Myanmar is preceded by a background marked by tension, mistrust and misunderstandings in the bilateral relations between the two countries, albeit with occasional cooperation between them. Several factors explain the phenomenon. *First*, ever since Bangladesh emerged as a sovereign nation in 1971, she had to interact with Myanmar (erstwhile Burma), ruled by a military junta with an inward looking political outlook. While both the countries adopted non-alignment as the fundamental tenets of their respective foreign policies, for Myanmar such a policy meant complete isolation from the world politics. Under the circumstances, Bangladesh despite being a close neighbor of Myanmar could not succeed in establishing a pragmatic and constructive relationship with the later. *Second*, the military junta of Myanmar did never realize the potentials of Bangladesh in terms of economy and market nor were the people made aware about the gains they could accrue from Bangladesh. Likewise, in Bangladesh, little information existed regarding Myanmar and its people both at the government and public levels. As a result, little interaction took place between the two countries both at the government and non-government levels. *Third*, Myanmar took advantage of Bangladesh's geographical vulnerability to India and China while herself remaining under the protection of China more or less like a satellite. This resulted in overt Myanmar's stubbornness and reluctance in dealing with Bangladesh on any particular issue. In this connection, the issues that dominated the relations

between the two are the influx of Rohingya refugees, demarcation of land and maritime boundary, illegal drug trafficking and alleged cross border movement of insurgents.¹ *Fourth*, intransigence and obduracy of Myanmar's military rulers, from time to time, obfuscated any diplomatic or peaceful means for resolving contentious bilateral issues between the two countries. Being a police and isolationist state in nature, Myanmar paid little heed to the norms of normal diplomatic practice and international law. What the country wanted was to deal with all problems in line with typical 'Burmese indigenous beliefs and philosophy'. On several occasions, there was not even any hesitation on the part of Myanmar in applying force against Bangladesh to realize its goals through coercion and intimidation. *Lastly*, in Myanmar, extreme Buddhist chauvinism at home precluded the possibility of long lasting cordial and warm relations with a Muslim majority country like Bangladesh.

In above backdrop, the paper seeks to study how Bangladesh succeeded in resolving its maritime boundary dispute with Myanmar – a long simmering problem between the two countries involving highly complex political, legal and technical aspects. While it is true that the dispute got resolved through a judgment by the International Tribunal for the Law of the Sea (ITLOS), it has in its background a long litany of events reflecting Myanmar's obsession with its own method of resolving the issue at the cost of Bangladesh's rightful claims over its maritime jurisdiction. Towards this end, Bangladesh even had to witness utilization of force at one stage to acquiesce to Myanmar's demand. There were even efforts on the part of Myanmar to procrastinate the process of peaceful solution much to the chagrin of Bangladesh. Certain intervening factors also played a role to further exacerbate the problem. The paper, therefore, seeks to encapsulate all these issues by addressing the following questions: What is the nature of maritime boundary dispute between Bangladesh and Myanmar? Why could not the dispute be resolved bilaterally between the two countries? What are the salient points of the ITLOS verdict regarding the dispute and can they be implemented by the two parties? How is the agreement seen in both the countries and what politico-security and economic implications does the agreement bear for both Bangladesh and Myanmar respectively? These and some other issues relevant to the context would be dealt with in the paper.

¹ Recalibrating Bangladesh-Myanmar Relation, *The Daily Star*, December 17, 2011.

Structure of the Paper

To address the questions raised above, the corpus of the paper, barring introduction and conclusion would contain five consecutive sections. The first section entitled **‘The Maritime Boundary Dispute between Bangladesh and Myanmar: Understanding Its Nature and Content’** would delve into the nature of the problem and the issues involved in it. The second section is entitled **‘Delimitation of the Maritime Boundary between Bangladesh and Myanmar: Going Beyond Bilateralism’**. An attempt will be made in the section to show how Bangladesh’s constant efforts to resolve the problem through peaceful bilateral means failed due to Myanmar’s inflexible and recalcitrant position on the issue. That the issue had the potentials to create direct conflict between the two disputants would also be taken up for discussion in the section. The third section of the paper entitled **‘Internationalization of the Maritime Dispute between Bangladesh and Myanmar: A Way Towards a Solution’** would deal with how the International Tribunal on the Law of the Sea (ITLOS) through its verdict in 2012 managed to solve the issue between the two countries. Few salient points of the verdict and their implications for the concerned parties would be discussed in the section. The fourth section of the paper entitled **‘Resolution of the Maritime Dispute between Bangladesh and Myanmar: Politico-Security and Economic Implications’** would attempt to reflect on the possible future political, security and economic benefits that the resolution of maritime dispute may bring for both the countries. The final section of the paper is entitled **‘Resolution of the Maritime Dispute between Bangladesh and Myanmar: A Future Outlook’**. In this section, an attempt will be made to show if resolution of maritime dispute between Bangladesh and Myanmar through ITLOS carries any lesson or message for those littorals which remain mired in such disputes since long. Finally, the paper ends with a general conclusion.

Methodology

The methodology of the paper is analytical and descriptive in nature. Research materials from books, journals, newspapers, electronic media and publications of few international bodies constitute the research documents of the author.

Section I: The Maritime Boundary Dispute between Bangladesh and Myanmar: Understanding Its Nature and Content.

Bangladesh and Myanmar, situated in South Asia and South East Asia respectively, are the two littorals of the Indian Ocean touching the Bay of Bengal in two opposite and adjacent directions. It may be mentioned that the Bay of Bengal is the largest bay in the world that covers the northeastern part of the Indian Ocean. It is in these waters that one observes the conflicting claims of Bangladesh and Myanmar over their respective maritime zones.

Myanmar's opposition to Bangladesh's maritime claims dates back to 1974 when Bangladesh first pronounced its maritime claims through the Territorial Waters and Maritime Zones Act 1974 (Act no. XXVI of 1974).² The Act defined the baseline of Bangladesh on depth criteria (10 fathom/60 feet) and declared a straight baseline with a length of 222 nm as defined by eight points, all of which are located in the sea (see map 1). It is to be noted that the Act was passed much before the UNCLOS III was placed for signature in 1982. The main arguments for Bangladesh's establishment of a baseline on depth criteria are the following: (i) Bangladesh's coastline which is of deltaic origin is highly dynamic/unstable and fluctuates back and forth continuously; (ii) the coast of Bangladesh is indented, broken and unstable; (iii) the configuration of the coast is concave; and (iv) much of the area landward to the baseline (as set by the Act) cannot be navigated by even the shallow draft mechanized boats and as and when this line is brought back towards the coastline, it would pose a bigger problem for the law enforcement as required by the UNCLOS due to navigational hazards.

On the basis of the 10 fathom baseline as enunciated in 1974 Act, Bangladesh subsequently drew its maritime zones as follows:

- The territorial seas (TS): The TS of Bangladesh will extend 12 nm seaward from Bangladesh and forms part of its internal waters where its sovereignty will extend in the air space over and the seabed and subsoil of such waters. Foreign ships having the right to innocent passage through the TS shall, while exercising such right, observe the laws in Bangladesh.³
- The contiguous zone (CZ): The CZ will extend 18 nm from the baseline. The government of Bangladesh may exercise such powers in respect of the contiguous

² By Notification LT-1/3/7 of 13 April, 1974, Ministry of Foreign Affairs.

³ Shabbir Ahmed Chowdhury, "Delimitation of Maritime Boundaries of Bangladesh", *NDC Journal*, Volume 7, No. 1, June 2008.

zone to prevent and punish the contravention of any law in Bangladesh relating to (i) the security of the Republic and (ii) customs and other fiscal matters.⁴

- EEZ: It will extend to 200 nm from the baseline. All natural resources within the economic zone, both living and non-living, on or under the seabed and sub-soil or on the water surface or within the water column shall vest exclusively in the Republic. However, this restriction shall not affect fishing within the zone by a Bangladeshi who uses it for the purpose of vessels not mechanically propelled.⁵

Bangladesh's claim of maritime zones on a 10 fathom baseline was not accepted internationally. The objections were that no point of the 10 fathom line was fixed on the land and that an isobath cannot be the basis of the definition of a baseline. So Bangladesh was required to fix a new baseline by following Article 7 of the UNCLOS 82.⁶ Not only was there the opposition from the international community, both India and Myanmar, two adjacent and contiguous neighbors of Bangladesh, protested vehemently against the proclaimed baseline of Bangladesh. India claimed that the baseline as set by Bangladesh protruded 21 nm into Indian waters, whereas Myanmar held that Bangladesh's claims extending beyond 200 nm would amount to 'coveting my neighbor's territory'. Under the circumstances, Myanmar claimed maritime boundary demarcation with Bangladesh on the application of an equidistance line disclaiming any disadvantage that Bangladesh may suffer due to its geography. An impetus to Myanmar's claim was further given when India too wanted delimitation of her maritime boundary with Bangladesh on the principle of equidistance.

Bangladesh, while realizing it well that her proclaimed 10 fathom baseline would curry no favor in the international arena, in particular after the UNCLOS 82, could not, however, agree on Myanmar's position on the principle of equidistance. Due to irreversible geographical constraints, Bangladesh could well realize that the method of equidistance lines with Myanmar on the eastern side and with India on the western side would practically cut off Bangladesh's maritime area within 130 nm as against Bangladesh's claim for 200 nm EEZ (See map 2). In other words, if adopted by India and Myanmar respectively, the equidistance method would make Bangladesh zone-locked at a distance less than 200 nm from the low water mark. Bangladesh, therefore, sought to demarcate its maritime boundary both with India and Myanmar on the basis

⁴ Ibid.

⁵ Ibid.

⁶ Article 7:3 – The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

of equity principle as envisaged by Article 74 and Article 83 of the UNCLOS 82.⁷ Such a position was taken by Bangladesh to meet the peculiarities of its coast and as well to protect many of her off-shore contracted areas.

In brief, the crux of the maritime dispute between Bangladesh and Myanmar hovered around the question regarding the applicability of the equidistance method or of the equity method for demarcating their respective maritime boundaries. The issue eventually became an irritant in the bilateral relations between the two countries notwithstanding the fact that both the parties sought to keep negotiations open for resolving the issue bilaterally.

Section II: Delimitation of the Maritime Boundary between Bangladesh and Myanmar: Going Beyond Bilateralism

Despite the fact that the maritime boundary claims by India and Myanmar overlap Bangladesh's claim of 200 nm EEZ, solution of the problem was never sought through a tripartite agreement between the concerned countries. Bangladesh, rather, opted to initiate discussion on the issue with Myanmar on a bilateral basis in a spirit of good and friendly neighborliness. The same strategy was followed by Bangladesh with respect to India as well.

Bangladesh-Myanmar maritime boundary talks date back to 1974. In the second round of talks held in November 1974, agreement was reached for delimitation of 12 nm Territorial Waters. A median line was drawn from the terminus of the land boundary in the Naf River to the midpoint of the closing line between Oyster Island of Myanmar and St. Martin's Island of Bangladesh. This agreement was, however, conditional and somehow it was not followed and not ratified by any country. Myanmar had reservation for some agreed points and Bangladesh pointed out that the midpoint of St. Martine Island and Oyster Island was not done in accordance with article 121 of the UNCLOS. Dismayingly, no further talks were held between the two countries until 1986. In 1986, seven rounds of formal talks took place between Bangladesh and Myanmar, but all in vain. While Bangladesh's demand for equity principle to meet the peculiarities of its coast and Myanmar's inflexibility about the

⁷ Article 74 (1): The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an **equitable solution**.

Article 83 (1): The delimitation of the continental shelf between States with opposite and adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an **equitable solution**.

application of equidistance method go largely to explain the deadlock, there are the other probable factors as well to explain the failure of their bilateral initiatives to resolve the dispute. They are:

First, both Bangladesh and Myanmar seemed to lack political will for resolving the issue. It may be mentioned that in Bangladesh, the internal political period from the mid seventies to late eighties remained mired in instability, chaos and confusion due to frequent changes in government. As a result, no comprehensive and effective strategy to deal with marine affairs of the country could be placed in force. Moreover, Bangladesh's concern during the period remained more focused on India with whom a number of contentious bilateral problems needed resolution including the most critical one over sharing of the waters of common rivers, in particular the Ganges. Also to be noted during the period is the complete lack of awareness of the common masses about the ocean and its use. In case of Myanmar, the military junta, already in isolation from world politics, paid little heed to the maritime problem with its small neighbor Bangladesh as the regime was busy tackling the country's insurgency problem at several fronts. In the calculation of the Myanmar regime, any concession given to Bangladesh could cause damage to the country's image and hence to the legitimacy of the regime itself.

Second, as indicated earlier, India like Myanmar seeks a solution of its maritime boundary demarcation with Bangladesh on the basis of equidistance method principle. Whereas, by the application of the equidistance method between India and Bangladesh as well as between Bangladesh and Myanmar, Bangladesh will be unable to claim the full extent of its 200 nm EEZ and its access to the Continental Shelf (CS). Initially, both India and Bangladesh declared their intention of resolving the issue bilaterally. In this connection, several rounds of talks were held between the two parties, but to no effect. In particular, what created misgivings in Bangladesh circle is the arrival of Indian naval ships in the disputed area in 1981. This amounted to an Indian military operation on South Talpatty and its adjoining areas. Bangladesh vehemently protested against such an exercise of force by India. Since India's inflexible position in its maritime dispute with Bangladesh coincided with that of Myanmar, the latter opted for a 'watch and see policy' as to the actual course of Indian action vis-à-vis the issue.

Third, given the fact that the UNCLOS 82 remained non-ratified by Bangladesh and Myanmar, both the countries somehow showed benign indifference to their respective maritime domain. It should be mentioned that the UNCLOS is the constitution for ocean governance and once the parties ratify it, they remain under an obligation to abide by its technical, legal and management guidelines. It seems both Bangladesh and Myanmar, for some time, could do away with it as they lacked

marine expertise and technology. Also, there was the absence of any outside pressure on the parties for resolving the dispute amicably.

Fourth, Myanmar, from the beginning, seemed to take advantage of the geographical weakness of Bangladesh. Bangladesh being an India locked country with a 271 km land border with Myanmar has its only opening in the south via the Bay of Bengal. Myanmar, thus, probably did not want Bangladesh to enjoy any freedom or advantage in its southern water front. In view of the fact that Bangladesh faces many bilateral problems with India and that their solution gets impeded due to procrastinatory Indian policy vis-à-vis the problems, Myanmar too followed the Indian line of action towards its bilateral problems with Bangladesh.

Lastly, the most deleterious effect on Bangladesh-Myanmar relations has, perhaps, been due to the Rohingya issue since its eruption in 1978. As one scholar opines, “the Rohingya issue remains one of the main challenges for cooperation between Bangladesh and Myanmar. The stability and security between the two bordering cities of Bangladesh and Myanmar, namely Teknaf and Maungdaw between the Naf River, is affected by the influx of Rohingyas from Myanmar to Bangladesh. The security in the border areas is prerequisite for enhancing trade and connectivity between the countries. Since 1978, the Rohingya issues are hampering cooperation”.⁸

It is outside the scope of the paper to go into a detailed discussion on the issue on which volumes of literature and project works exist by now. To put it briefly, the problem arose when the Rohingyas, a Muslim minority group residing in the northwestern part of the Arakan (Rakhine) state of Myanmar fled *en mass* to Bangladesh twice by crossing the Naf River on the border – the first one in 1978 (numbering more than 250,000) and the second in 1991-92 (numbering more than 300,000) in order to escape persecution, torture, wanton killing, arson, rape, confiscation of property as unleashed by the military junta of Myanmar. The whole strategy of Myanmar, in this respect, is equated with what is called ‘ethnic cleansing of the Rohingyas’ who as per the ‘1982 Myanmar Citizen Law’ are considered as either foreigners or stateless in their own country.⁹ Since the persecution of the Rohingyas remains in force till to date, there are the daily trespassing of these people from Arakan (Myanmar) to Bangladesh. Eventually, the issue became a conflictive one between the two countries as Myanmar government, despite Bangladesh government’s repeated requests to take back the Rohingyas, has shown no sincere intention to do so. Needless to mention, the Rohingyas, ever since their arrival in

⁸ Syeda Naushin Parnini, “Non-Traditional Security and Problems of Rohingya across Bangladesh-Myanmar Borders”, *British Journal of Arts and Social Sciences*, Volume 5, No. 2, 2012.

⁹ Murtaza Ali, “Influx of Rohingya-Porous Border, *The Dhaka Courier*, November 19, 1999.

Bangladesh, have been exerting pressure on Bangladesh economically, politically, socially and culturally. The issue also remains as a security concern for Bangladesh as many undocumented Rohingyas are engaged in unlawful activities like smuggling, arms trafficking, drug trafficking etc.¹⁰ What, perhaps, creates a psychological fear in Bangladesh is the fact that there is no guarantee that another exodus will not happen in the future as in June 2012, a large number of Rohingyas tried to enter Bangladesh during severe riots in which the local Buddhists in collaboration with the security forces unleashed a reign of terror against the Rohingyas.

Thus, throughout the eighties and the nineties, the relations between Bangladesh and Myanmar remained thorny, in particular due to the Rohingya issue. Although Myanmar took back almost all the Rohingyas who migrated to Bangladesh during 1978-79, but problem arose with respect to the refugees who fled to Bangladesh in 1991-92 to escape persecution at home. Bangladesh took initiative to repatriate the Rohingya refugees, and towards this end signed an agreement with Myanmar in 1992 for the 'safe and voluntary' return of Rohingya refugees. Help and assistance was also sought from the international community to resolve the issue. Although repatriation of Rohingyas from Bangladesh to Myanmar started by the end of 1995, many of the refugees returned to Bangladesh between 1996 to 1998 with thousands of new arriving Rohingyas for reasons of security. Despite Bangladesh's repeated requests to Myanmar government for creating a congenial and secure atmosphere for the safe repatriation of the Rohingyas, the latter remained rigid and stubborn on the issue. Meanwhile, the relations between the two countries further deteriorated due to frequent encroachment on Bangladesh territory by Myanmar's border guards (NASAKA). Even the Myanmar's army did not hesitate to desist itself from such act. It may mentioned that in 1991 Myanmar armed forces launched a surprised attack and ransacked the then Bangladesh Rifle's border outpost at Rejupara in Cox's Bazar district of Bangladesh. Myanmar forces killed three members of Bangladesh Rifles and looted their arms and ammunitions. A major regional conflict was, however, averted due to show of restraint by Bangladesh. Amidst this tense situation, one notices frequent entry of illegal drugs and insurgents from Myanmar territory to that of Bangladesh.

In brief, there was a trust deficit in the bilateral relations between Bangladesh and Myanmar. With Rohingya issue becoming a predominant one in their bilateral relations, the maritime issue practically received little or no priority in Myanmar official circle for a considerable period of time. Bangladesh's plea that the North Sea case or the Sino-Vietnam Agreement be followed in case of her maritime boundary

¹⁰ Bangladesh Enterprise Institute, Mitra and Associates and Saferworld, "Safety and Security in the South-East Border Area of Bangladesh: A Public Perceptions Survey", February, 2013.

demarcation failed to curry any favor in Myanmar. Disillusioned with Myanmar's rigid stance on the equidistance principle and the failure of bilateral talks, Bangladesh started pinning its hope on the below mentioned international bodies as set by the UNLOS 82 (Article 287) for resolving the maritime dispute between herself and Myanmar. They are:

- The International Tribunal for the Law of the Sea established in accordance with Annex VI.
- The International Court of Justice
- An arbitral tribunal constituted in accordance with Annex VIII
- A special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

However, before such a move could be taken, it was necessary for Bangladesh to ratify the UNCLOS 82 which India and Myanmar did in 1994. The realization that the UNCLOS 82 would provide the technical and legal guideline for maritime dispute resolution soon led Bangladesh to ratify it in 2001. Since then, the strategy of Bangladesh no longer focused on bilateral talks with Myanmar as few events leading almost to a conflict between the two countries merited an earliest solution of the problem through means other than the bilateral ones.

Section III: Internationalization of the Maritime Dispute between Bangladesh and Myanmar: A Way Towards a Solution

Transforming a bilateral issue into an international one was not an easy task for Bangladesh until few incidents subsequently led her to veer towards the move. That an internationalization of a bilateral issue antagonizes the concerned party is fresh in Bangladesh's memory from its own experience of internationalizing the water issue with India in the late seventies much to the chagrin of the latter. Thus, before such a move could be taken, Bangladesh sought to revive its bilateral talks with Myanmar in 2007 and 2008, after a hiatus of over two decades. But the Myanmar government did not prioritize the issue the way Bangladesh wanted. As a result, the overall delimitation of TS, EEZ and CS between the two countries remained unresolved as Bangladesh's legal argument, like before, used the principle of equity, whereas Myanmar employed the principle of equidistance.

While talks around the table remained stalled, one notices, during this period, a tremendous progress in marine science and technology in both the countries, in particular in Myanmar. Soon Myanmar succeeded in collecting relevant hydrographic, geological and geophysical data (as per Article 76 of the UNCLOS) and submitted its claim on the CS in December 2008, encompassing the CS of Bangladesh, to the Commission on the Limits of the Continental Shelf. Bangladesh too started preparing for such a submission to be given by July 2011. During this particular period, a more important and visible factor to act as the key catalyst of the marine boundary dispute between the two countries is, perhaps, their scramble for access to undiscovered natural gas reserves worth billions of dollars in the Bay of Bengal. Thanks to their newly acquired technology and foreign assistance, both Bangladesh and Myanmar carried out extensive seismic surveys in the Bay of Bengal for exploration of natural oil and gas almost in a competitive manner. They openly declared their respective deep-sea oil and gas blocks in jurisdictional areas and as well in the disputed and overlapping areas. The claims over oil and gas discoveries in the disputed and overlapping areas led to frequent protests and counter-protests by both the countries.

Amidst such a situation of charges and counter-charges by one against the other, Maung Aye, Myanmar's Vice General, visited Bangladesh to assure about no further Myanmar's survey or oil related activities in the overlapping and disputed areas until the boundary issue was settled.¹¹ However, his promise soon foundered when on 1 November 2008, two naval ships of Myanmar directly encroached on Bangladesh's sovereign maritime waters in order to assist a Korean Company (Daewoo) in its oil and gas drilling activities. As reported, four drilling ships from Myanmar were used by the company to work in an area.¹²

The Myanmar naval incursion into the territorial waters of Bangladesh evoked instant reaction in Bangladesh as such an act was considered a threat to the country's sovereignty and independence. In consequence, Bangladesh took no time to deploy its three naval ships near the scene of incident so as to challenge the provocative act of Myanmar. Both the countries seemed to remain almost on the brink of a direct confrontation for some time. However, a direct conflict could be avoided due to intense diplomatic parleys involving Bangladesh, Myanmar and South Korea. Few circles in Dhaka reported that there was probably a Chinese intervention to diffuse tension between the two countries considered as China's close and friendly neighbors. However, there is no official confirmation of such report.

The naval incident, perhaps, transmitted three important messages for Bangladesh. *First*, Myanmar, henceforth, would pay no respect to any peaceful method for

¹¹ *Indo-Burma News*, July 31, 2009.

¹² *The Daily Star*, 03 November 2008.

resolving the maritime issue with Bangladesh. If necessary, the former would not hesitate to recourse to force in the future as a bargaining tactic to obtain Bangladesh's acquiescence to Myanmar's demand. *Second*, given the fact that the maritime dispute essentially involves a **conflict over resources**, such conflict could not be left unresolved for long as conflict over resources invites acquisition, possession and ownership of wealth and resources through means more conflictive than peaceful in nature. *Third*, a future conflict or confrontation, if it goes beyond control, may heighten tension in the region with the possibility of extra-regional involvement. This would ultimately cause damage with regard to the promotion of peace, security and stability in the ocean.

In view of the above, Bangladesh, therefore, took the decision for an early resolution of its maritime dispute with Myanmar through a third party intervention. A notice of arbitration was issued against Myanmar on 8 October 2009 under Part XV of the UNCLOS 82 for delimitation of TS, EEZ and CS in accordance with international law. After initiation of arbitration upon proposal of Myanmar and agreement of Bangladesh, the case between the two countries was referred to the International Tribunal for the Law of the Sea (ITLOS is a permanent judicial body created by the UNCLOS and is based in Hamburg, Germany) on 14 December 2009. In this case, after submission of written pleadings (Memorial and Reply by Bangladesh and Counter Memorial and Rejoinder by Myanmar), comprehensive and lengthy oral hearing took place from 8-24 September 2011. The arguments of Bangladesh mainly focused on the extreme concavity of its coast, the length of the coast, the large population, the nature of dependency of the people, Gross National Product among others. All these conditions, as Bangladesh argued, deserve alternative treatment other than the geometric equidistance principle adhered to by Myanmar. Multiple decisions of the international adjudicating bodies, i.e., North Sea Continental Shelf case, the Gulf of Maine case, St. Pierre and Miquelon case etc. where states with much smaller coasts were awarded large maritime areas to ensure equity were also given relevance.

After about six months of deliberation, on 14 March 2012, the ITLOS delivered its judgment in the dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal. The cardinal points of the judgment are the following:

- The Tribunal awarded Bangladesh a full 12 nm territorial sea around St. Martin's Island, overruling Myanmar's argument that the Island be cut into half.
- The ITLOS sustained Bangladesh's claim to a full 200 nm Exclusive Economic Zone following the concave nature of Bangladesh's coast.

- The ITLOS also awarded Bangladesh a substantial share of the Outer Continental Shelf (OCS) beyond 200 nm.¹³

In the judgment, the tribunal after drawing a provisional equidistance line checked whether it provides any cut-off effect. After that while deciding on the relevant circumstances, the Tribunal accepted Bangladesh's argument on concavity of its coast that produces cut-off effect. Then it decided to modify the equidistance line by drawing a geodetic line starting at an azimuth of 215 degree, the azimuth proposed by Bangladesh was an angle bisector method, the point where Bangladesh's 200nm from St. Martin's island terminates and that is a point of 270 nm from Chittagong, 250 nm from Bhola and 240 nm from Cox's Bazar. The tribunal decided on an adjusted equidistance line as the boundary between the two countries (see maps 3 & 4).

The ITLOS verdict demonstrates unprecedented judicial efficiency in a maritime boundary case. The judgment of the Tribunal is final and it cannot be appealed against. James Morrison (International Law Observer) remarks, "The judgment is important in a number of respects. Firstly, it is the first dispute concerning maritime boundary delimitation decided by the ITLOS. It therefore gives an indication of the approach of the Tribunal to maritime boundary delimitation compared to other international courts and tribunals. Secondly, it is the first judgment of an international court or tribunal which directly addresses the delimitation of the continental shelf beyond 200 nm. The tribunal therefore had to deal with some novel legal issues in its judgment. The judgment will also be an important point of reference in the on-going dispute between Bangladesh and India concerning their maritime boundaries on the other side of the Bay of Bengal. The tribunal dealt with the delimitation of the maritime boundary in three different parts: the territorial sea, the exclusive economic zone and continental shelf within 200 nm, and the continental shelf beyond 200 nm".¹⁴

Section IV: Resolution of the Maritime Dispute between Bangladesh and Myanmar: Politico-Security and Economic Implications

The politico-security and economic implications of the ITLOS verdict are immense. Given the fact that the timing of the verdict coincides with the current military controlled transition to democracy in concert with Aung San Suu Kyi in Myanmar,

¹³ Document on ITLOS judgment on Bangladesh-Myanmar Issue.

¹⁴ James Harrison, Judgment in Bangladesh-Myanmar Boundary Dispute, available online <http://www.internationallawobserver.eu/2012/03/15/judgment-in-bangladesh-myanmar-maritime-boundary-dispute/>, date accessed 23 May 2013.

the hopes and aspirations of Bangladesh for a more warm and cordial relations with Myanmar are running high. In particular, in the security circle of Bangladesh, one notices few new perceptions regarding Myanmar.

Many are of the opinion that the current Myanmar regime, unlike the ancient regimes, is likely to be less aggressive and intransigent towards Bangladesh. As a result, the earlier Bangladesh's conventional security perception that a threat in the country's east may emanate from Myanmar is undergoing change. There is now less likelihood of Myanmar's show of force either in the land or in the waters. In this connection, it may be mentioned that Myanmar's unbridled armament program with blessing from China has always been a constant source of anxiety in Bangladesh. As some security experts opine, "Bangladesh-Myanmar relations are marked by a set of contentious issues such as land and maritime border disputes, arms trafficking, acts of insurgency and the outstanding Rohingya problem. In the shadow of isolation, Myanmar has been modernizing her military capabilities continuously. It is alleged in the international arena that Myanmar is acquiring chemical weapons to strengthen its hard power capability. Therefore, given the low level of mutual trust, spill-over effects of the ethnic and religious conflicts and the magnitude of disputes, it can be concluded that the weapons proliferation among the immediate and distant neighbors present considerable challenges for national security of Bangladesh".¹⁵

The security circle in Bangladesh also believes that the ITLOS verdict would, to a great extent, help Bangladesh enhance its maritime security in the Bay of Bengal currently riddled with numerous crimes like illegal fishing and poaching, acts of piracy, marine theft, armed robbery, gun-drug-human trafficking, different forms of smuggling etc. In many of the mentioned crimes, Myanmar's participation in the past has been rampant. It may be mentioned that marine fishing sector in Bangladesh has since long been under threat due to the intrusion of foreign fishermen into Bangladesh's territorial and EEZ waters mostly from countries like India, Sri Lanka and Myanmar to catch fish with mechanized trawlers and boats.¹⁶ Alongside, Myanmar is also responsible for trafficking of small arms, drugs, contraband goods across Bangladesh maritime waters. There are also reports of piracy and small theft being carried out by the citizens of Myanmar in Bangladesh's maritime waters. With demarcation of maritime boundary, each country will now be responsible to protect its own oceanic sphere. As a result, crimes of different types are likely to be less in the

¹⁵ Kazi Fakhruddin Ahmed, Abu Taher Salahuddin Ahmed and M Aynul Islam, 'Traditional Security of Bangladesh' in Mufleh R. Osmnay, *Whither National Security Bangladesh 2007*, Bangladesh Institute of International and Strategic Studies and the University Press Limited, Dhaka, 2008, p. 67.

¹⁶ *National News* – News from Bangladesh, available online <http://bangladesh-web.com/news/jan01/n01012003.htm>, date accessed 27 March 2008.

future. In this connection, what is needed is to strengthen guard and surveillance in the ocean. As Admiral Khurshed Alam, Additional Foreign Secretary remarked, “No foreign country can come for fishing within 200 nm in Bangladesh’s waters ... what is important is that we will have to increase the strength of the navy to intensify the guard within our maritime boundary”.¹⁷

Apart from the security concern of Bangladesh, it is the overall geo-strategic scenario of the region that enters the scene. There is no gainsaying that many observers and analysts in Bangladesh still remain skeptical about Myanmar’s unpredictable behavior in case of Bangladesh’s future exploration of off-shore oil and gas in the areas allotted to it as per the ITLOS verdict. However, the majority holds the view that in any eventuality like this, Myanmar is not expected to get herself entangled in any further conflict in the region. In view of the fact that both Bangladesh and Myanmar have China and India as their neighbors, any conflict in the Bay would ultimately invite not only the intervention of India and China, but as well of other powers present in the Indian Ocean, in particular, the US. Such a situation would, in all likelihood, destabilize peace and security in and around the Indian Ocean region. Also because of immense Chinese and Indian oil and gas interests in the region, both the powers would like to see the Bay of Bengal region free from tension and conflict.

To what extent would Myanmar be ready to honor the ITLOS verdict will depend much on success of its present reform program at home. Currently, for Myanmar, it is the question of setting a new image for the country that for long remained as a pariah in the international arena. Setting a positive image for the country entails (i) a functional democratic process; (ii) a free and liberal economy and (iii) breakthrough in relations with the outside powers. Once the country steps into a democratic process, Bangladesh would be able to get easy access in the policy making levels of Myanmar. Economically, Myanmar, a resource endowed country, is making brave moves by opening up its trade, encouraging foreign investment and making the critical decision to achieve its medium and long term goals.¹⁸ Myanmar is strategically planning its economic transition to take advantage of the growing power of emerging market economies, particularly the rise of Asia, including China, India and ASEAN. This move can be seen as a part of its desired goal to grow at 7% - 8% per year for a decade or more and raise its per capita income to \$2000 - \$3000 by 2030.¹⁹ This economic ambition necessitates Myanmar’s opening to the outside world, in other

¹⁷ *The Daily Star*, 17 March 2012.

¹⁸ Asian Development Bank, “Myanmar in Transition: Challenges and Opportunities”, August 2012, Manila, Philippines.

¹⁹ Asian Development Bank, op.cit.

words, having constructive relations with both the outside powers and the neighbors. Once Myanmar settles on it, Bangladesh can venture to develop long and sustainable relations with the former. “New economic reforms indicate that Myanmar is keen to open and share its natural resources with other countries. Being a neighboring country, Bangladesh can work with Myanmar to gain benefit from the natural resources of Myanmar... Myanmar can also help Bangladesh to be connected with South East Asia. In this respect, an effective relation between the countries can open up opportunities for both the countries”.²⁰

Once an economic *entente* is attained between Bangladesh and Myanmar in the terrestrial domain, this can be transposed in the ocean domain also. After all, as mentioned earlier, the long drawn dispute between the two countries centered on their respective quest for resources in the Bay of Bengal. As one analyst remarks, “It was the strong likelihood of newly accessible gas and oil heightening demand in both countries that eventually motivated Bangladesh and Myanmar to pursue a solution in the international court; the demand for natural gas in Bangladesh is immense and the country’s power crisis has also emerged as a burning political issue. For Myanmar, demand for gas in the export market has motivated the government to export more gas in order to gain greater foreign reserves”.²¹ It may be mentioned that Bangladesh is currently in desperate need of cheap and reliable source of energy to power its developing industrialization. While on the other hand, the motivation of Myanmar, which is to sell gas and oil outside in order to earn foreign currency, is quite different.²² Besides oil and gas, Bangladesh and Myanmar can also exploit mineral resources in the Bay of Bengal like copper, cobalt, manganese, nickel, sulfite etc. If needed, they can also go for joint exploitation and management of resources in the Bay of Bengal.

Section V: Resolution of the Maritime Dispute between Bangladesh and Myanmar – A Future Outlook

The maritime boundary delimitation judgment between Bangladesh and Myanmar has been a victory for both the countries as it has paved the way for friendly and good neighborly relations between the two. Soon after the judgment, it has been assured by

²⁰ ‘Bangladesh-Myanmar Relations: The Context of Political and Economic Reforms in Myanmar’, Paper presented by Abu Saleh Md. Yousuf and Md. Muhibur Rahman at BISS Seminar, 21 March 2013

²¹ Pranab Kumar Pandey, Bangladesh and Myanmar resolve long standing maritime dispute, available online www.eastasiaforum.org/2012/04/20. date accessed 18 May 2013.

²² <http://www.narinjara.com/Article/Maritime%20dispute%20between%20Bangladesh%20and%20Myanmar1872010.html>

the Myanmar authority that it would cooperate with Bangladesh on all maritime related matters in the future. For Bangladesh, the judgment of ITLOS acts as moral boost for delimiting its maritime boundary with India too. As indicated earlier, India has been insisting like Myanmar on the principle of equidistance instead of equity in demarcating its maritime boundary with Bangladesh. Bangladesh has invoked Annex VII under Article 3 of the dispute resolution clause of UNCLOS 82 and appealed to the Hague based Permanent Court of Arbitration in 2009 to settle the dispute. The court is expected to deliver its verdict on the case against India in 2014. To get a favorable verdict, Bangladesh has carried out relevant diplomatic, political and legal works by now.

As has been observed, maritime disputes can jeopardize the peace and stability in a region as it directly involves the question of sovereignty claim. It may be mentioned that although UNCLOS 82 clearly determines the precise limits of various maritime zones, it fails to agree on any single universal set of principles by which these boundaries are to be delimited. Consequently, the process of delimitation, and subsequent demarcation of maritime boundaries continues to remain in dispute.²³ If left to fester, these conflicts are likely to further heighten tensions and could even result in military confrontation. Regional crisis could as well emanate from such conflicts with the possibility of an extra-regional linkage. These conflicts are, indeed, unpredictable and would certainly damage efforts to promote peace and security in the oceans.²⁴

It should be borne in mind that maritime dispute essentially involves conflict over resources. Being a vast terrain of resources, much of which is unknown to mankind till to date, the importance of the oceans as potential supplier of goods (food, fibre, genetic resources, metals) services (trade routes, tourism, energy and as a repository of national, regional and global security cannot be overstated.²⁵ Although it is true that the fundamental land based concept of ownership in Roman sense does not exist in the oceans nor does there exist the concept of sovereignty in Westphalian sense, nonetheless, conflicts over the oceanic resources are likely to generate for a number

²³ Rahul-Roy Chowdhury, "Trends in the Delimitation of India's Maritime Boundaries", available online file:///c:/My Document Issues\indo-bdmritimetan.htm, cited in Abul Kalalm Azad, 'Maritime Security of Bangladesh' in Mufleh R Osmany and Muzzaffer Ahmad (ed.), *Security in the Twenty First Century; A Bangladesh Perspective*, Academic Press and Publications Limited in association with Bangladesh Institute of International and Strategic Studies, Dhaka, 2003, p. 171.

²⁴ Maria Soares, *The Ocean: Our Future*, The Report of the Independent World Commission on the Oceans, Cambridge, 1998.

²⁵ See Chapter 3, 'Ocean Perspectives: Economic' in Elisabeth Mann Borgese, *The Oceanic Circle: Governing the Seas as a Global Resource*, United Nations University Press, New York, 1998, pp.59-108.

of reasons. Human conflict, at the core of which lies the struggle for control and influence over resources is not unlikely to find its manifestation in the ocean medium too. With the growth of world population and the resulting pressure on terrestrial resources, there is the speculation that pressure on marine and coastal resources would be mounting in the coming decades. While as per the UNCLOS 82, the maritime jurisdiction is well defined for a coastal state, the fact is that the sovereignty as prescribed for the EEZ is not absolutist or territorial in nature. It is what as Harold Laski termed 'shared or pluralistic sovereignty'.²⁶ Hence the sovereignty in the EEZ moves from a territorial one to a functional one where all states enjoy navigation and over-flight rights plus the adjacent coastal states, land-locked and geographically disadvantaged states enjoying exclusive rights with respect to certain resources and economic activities, such as the exploitation of living and non-living resources in the zone.²⁷ In the circumstances, conflict over the resources would, in all likelihood, be an inevitable phenomenon in the future.

In view of the fact that the disputed boundaries and claims to offshore territories constitute a continuing source of possible conflict and uncertainty in international relations, the disputants can go for a joint management of resources in the oceans. This has its dispensation in the UNCLOS 82 as well where Articles 74 and 83 explicitly state that "pending agreement (on the final settlement of the boundary dispute), the states concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional agreements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation". To put it simply, in such cases, it would be particularly desirable for all the concerned parties to freeze some or all sovereign claims for an indefinite period or at least for a number of years. The freezing of claims and hence the establishment of joint development or joint management zones would be through an intergovernmental approach and recourse to procedures that are based on negotiation and dialogue.²⁸

While the idea of joint management may not, in all likelihood, be palatable to the hard core security thinkers, nonetheless, there should be the space for its actual materialization for a number of reasons. In the first place, one should take note of the fact that disputes in the seas and oceans are not always over space or territory, it is more a question of access to resources for their exploitation, preservation and conservation. As a result, 'disputes which do not involve territorial claims, but are

²⁶ Ibid.

²⁷ See Articles 62, 69 and 70 of the UNCLOS 82.

²⁸ Mario Soares, *op.cit.*

resource based appear to have better changes of being managed'.²⁹ Next, it is the nature of the ocean medium that comes into attention. In the seas and oceans, As Elisabeth Mann Borgese remarks, "where everything flows, everything interacts with everything else, and resources are straddling, the notion of hard and fast boundaries is rather meaningless to start with. It is impossible to manage resources or to protect the environment even within the largest Exclusive Economic Zone, if there is no management beyond the boundary. Ecological space and political space do not coincide".³⁰ It is in this light that the UNCLOS 82 advocates a kind of pluralistic sovereignty where a compromise is made between territoriality and functionality or a combination of both. Thus setting boundaries between the coastal states' different maritime zones causes more problems than it solves with respect to management of the seas, whether they be living (fisheries), non-living (oil and gas) or environmental (eco-tourism). Finally, empiricism would show that joint management is nor a mere wishful thinking of a kind of romanticism in the oceans. It has been operationalized in many regions. At present, there are nearly 17 joint development schemes in operation around the world. More important, maritime dispute in the Spartley Islands, considered to be the most critical one in terms of its nature and the parties involved, is likely to be resolved in the future if the disputants adopt joint management.

Conclusion

As indicated earlier, the demarcation of maritime boundary between Bangladesh and Myanmar has been welcomed in both the countries. However, much remains to be seen once the parties start exploring Bay of Bengal resources (both living and non-living) after the verdict of ITLOS. Both the countries should come forward out of their past hang-over, in particular over the Rohingya issue. The issue needs immediate resolution in order to generate a spirit of cooperation, mutual trust and understanding between Bangladesh and Myanmar. Once this is achieved, their move for cooperation in the marine domain will not be a farfetched one.

Both Bangladesh and Myanmar should approach their oceanic space from a much broader perspective. Oceanic management requires cooperation of holistic nature. It is an arena where peace is to be maintained in perpetuity so that the oceanic resources can be harnessed in cooperative rather than conflictive manner. This realization should prevail upon both Bangladesh and Myanmar soon.

²⁹ S P Jagota, "Maritime Boundary and Joint Development Zones: Emerging Trends", in *Ocean Year Book* 10, 1993.

³⁰ Elisabeth Mann Borgese, *op. cit.*