

DELIMITATION OF MARITIME BOUNDARIES OF BANGLADESH

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INTRODUCTION

In contemporary ocean governance, delimitation of maritime boundary assumes special significance because the rights of littoral states need to be exercised within the oceanic space as enjoined by the provisions of United Nations Convention on the Law of the Sea, 1982 (UNCLOS 82). This law has emerged as the accepted Law of the Sea (LOS) to overcome the shortcomings of the previous laws. During the 20th century, many nations have expressed the need to extend national claims to include mineral resources, protect fish stocks and enforce pollution control. In 1930, the League of Nations held the first conference at The Hague on maritime issues, but could not reach any agreement. In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva and in 1958 signed several treaties. In 1960, UNCLOS II was convened in Geneva to settle certain limitations of UNCLOS I, but did not achieve much. Thereafter, through a series of negotiations, in 1982 UNCLOS 82 was ready to be signed. It finally came into existence on November 16, 1994.

The littoral countries that have claims in the Bay of Bengal are Bangladesh, India, Myanmar and Sri Lanka. All of them have ratified UNCLOS 82. The claim of each littoral state has to be submitted to the United Nations Commission on the Limitation of the Continental Shelf (CLCS). The deadline for submission of the claim for Bangladesh is July 2011, while claims of the other three countries are to be submitted by 2009. The coasts of these littoral countries are oriented in such a way that their claims overlap. It is likely, therefore, that disputes may arise and affect Bangladesh's relations with these states and also pose threat to its security. The resources of the Bay of Bengal play a significant role in the economy of the countries concerned. The media¹ have been reporting of encroachment by one state in the maritime zone of the other and of explorations of oil or gas. Since the maritime boundaries of these countries have not yet been demarcated, such news has been creating misgivings² among these countries.

1. "New Age" of 31 December 2005- Maritime Boundary Demarcation, Dhaka far from settling dispute with Delhi, Yangon.

2. The Daily Inquilab of January 3, 2006-Bangladesh is losing out Maritime area in the Bay of Bengal.

The Foreign Policy of Bangladesh emphasizes maintenance of friendly relations with all countries of the world. In spite of differences on certain areas, Bangladesh has friendly relations with India and Myanmar. The issue of maritime boundary delimitation may affect this relation in future. Hence this sensitive problem needs to be addressed with caution.

SIGNIFICANCE OF UNCLOS 82

The permissible maritime claims in the areas of jurisdictions, settlement of disputes and all such maritime matters have been described in UNCLOS 82. Technical and legal experts have interpreted the legal provisions with the help of illustrative figures and with mathematical and geological explanations to make the legal matters comprehensible.³ This chapter attempts to discuss some of the important clauses which coastal states have been employing to legitimize their maritime claims.

- (a) **Baseline**⁴ : In all maritime measurements, including bathymetric⁵ and seismic data⁶, the baseline is taken as a reference. So every coastal state must fix its baseline according to articles 5, 7 and 14 of UNCLOS82.
- (b) **Territorial sea**⁷ : Article 3 of UNCLOS 82 permits every coastal state TS which is 12M from the baseline.

3. Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, Doc.No. CLCS/11 Dated 13 May 1999, CLCS.

4. *Baseline*

- (a) *Normal baseline*: The normal baseline of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state.
- (b) *Straight baseline* : If the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

5. *Bathymetric data*: Bathymetry is the science of measuring the depth of the ocean floor which includes the continental shelf, slope and rise. The data obtained by bathymetry are used to create the profile of the seabed which acts as a determinant to maritime claims as per law.

6. *Seismic data*: The data that describes the thickness of the sediment of the sea floor is known as the seismic data. Such data is used to create the profile of the sediment thickness of the continental rise which acts as a determinant to maritime claims as per law.

7. *Territorial sea*: The sovereignty of a coastal State extends beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil. The sovereignty over the territorial sea is exercised subject to this convention and to other rules of international law. Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this convention.

- (c) **Contiguous zone**⁸ : Article 33 of UNCLOS 82 permits every coastal state a contiguous zone not exceeding 24M from the baseline.
- (d) **EEZ**⁹ : Article 55 of UNCLOS 82 permits coastal states EEZ not exceeding 200M from the baseline.
- (e) **Continental shelf**: Coastal states may submit claims to CLCS for the outer limits of the CS which extend beyond 200M. Then CLCS will make recommendations in accordance with the following approaches: (a) Application of Article 76, and (b) Application of the Statement of Understanding adopted on 29 August 1980 by the Third UN Conference on the Law of the Sea. The two approaches are described below:

APPLICATION OF ARTICLE 76

The applications of Article 76 of UNCLOS82 are as follows:

Natural Prolongation

As per article 76(1), the CS of a coastal state has been defined to consist of areas beyond its territorial sea throughout the natural prolongation of its land territory. However, the term “natural prolongation” of a state’s territory has not been defined. So the extent of the natural prolongation is based on the nature of the seafloor.

8. *Contiguous zone* : The contiguous zone is the zone contiguous to the territorial sea of the coastal State where the State may exercise the control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or the territorial sea;
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

9. *EEZ*: The exclusive economic zone is an area beyond and adjacent to the territorial sea under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this UNCLOS 82. In the exclusive economic zone, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

The Formula and Constraint Lines

(a) The Distance Formula

As per Article 76(4)(a)(ii) and article 76(7), points have to be fixed at a distance of 60M seaward from the FOS¹⁰. These should be so selected that two adjacent points cannot exceed 60M. The points so obtained are connected by straight lines. The resultant line thus found is one of the criteria utilized to delimit the CM.

(b) The Sediment Thickness Formula

This formula is also known as the Irish formula. It is derived from article 76(7). Points are fixed farthest seawards so that the thickness of the sediment is at least 1% of the shortest distance of the foot of the slope from this point. Again, such points should be so taken that the distance between two adjacent points does not exceed 60M. The points so obtained are joined. This is also known as Gardiner line and is one of the determinants of the CM limits.

(c) The Formula Line

The two lines obtained from (a) and (b) above are combined to construct the Formula Line as stated in article 76(4). Depending on the structure of the seabed and the thickness of the sedimentary rocks, it may so happen that any one of the two lines of (a) and (b) above are entirely inside the other or there may be intersections between these two lines. In that case, the segments of each of these two lines which are more seawards from the baseline are taken. Thus UNCLOS 82 provides coastal states the privilege to cover the maximum area in the maritime zone beyond 200M.

(d) The 350 M Constraint Line

This is the line which is 350M seaward from the baseline (Article 5).

(e) The 2500 m Isobath¹¹ +100 M

Article 5 guides the construction of this line. Every point of the continental slope that is 2500 metres deep from the sea level is called the 2500m isobath line. The line which is located 100M seaward from the 2500m isobath line is known as the 2500m+100M line considered to be one of the lines that delimit the CM.

¹⁰*Foot of the continental slope*: This is the point where the continental slope ends and continental rise begins. It is defined as the point where the change of the slope is maximum.

¹¹*Isobath* : Isobath is the surface in the sea where all the points of the surface are at the same depth from the sea-level. The Greek word iso means equal and bathos means depth. This surface is parallel to the sea-level. The intersecting line between the isobath surface and the submerged land (continental shelf, continental slope or rise) is known as the isobath line.

(f) The cutoff line

The two lines obtained from (d) and (e) above are combined to get the cutoff line as per Article 76(5). In that case, the segments of each of these two lines which are more seawards from the baseline are taken. It may so happen that any one of the two lines of (d) and (e) above are entirely inside the other or there may be intersections between these two lines. In that case, the segments of each of these two lines which are more seawards from the baseline are taken into consideration.

(g) The outer limits of Extended Continental Shelf (ECS)

The two lines from (c) and (f) above are combined to get the limit of the ECS. The segments of each of these two lines which are more towards the baseline are taken into consideration. If the formula line and the cutoff line intersect, the segments of each of these lines which are less in distance from the baseline are accepted to construct the composite line which is the outer limit of the ECS.

Application of Statement of Understanding (SoU)

Application of Article 76 may result in inequity for states having a narrow continental margin but a thick sedimentary rock. Article 3, Annex II of UNCLOS 82, i.e., SoU will be applicable to a coastal state having the following characteristics:

- (i) The average distance at which the 200 metre isobath occurs is not more than 20M.
- (ii) The average thickness of the sedimentary rock at the combined formula line is not less than 3.5 km.
- (iii) More than half of the continental margin will be excluded as a result of the application of Article 76.

Coastal states that fulfill the above criteria can claim the outer edge of their continental margin by connecting points where the sediment thickness is not less than 1 Km. Such points should be so selected that the distance between two adjacent points will not exceed 60M.

Need for Detailed Data

The above notes how a coastal state can apply UNCLOS 82 to establish its claims in the sea to the farthest possible distance from the baseline. It is obvious from UNCLOS 82 that different types of data such as, bathymetric or seismic data can offer variable claims. A coastal state would certainly wish to claim the maximum possible distance from its baseline. Such a position can be achieved only if the relevant maritime data are available. So before a state attempts to determine its maritime claims, it should procure all types of data.

Format of Data

Collecting and presenting maritime data in the appropriate way is essential for a coastal state that wants to make its claims internationally acceptable. A small error in data collection may result in a huge loss for a state¹². Coastal states should conduct the data collection process meticulously. The collected data need to be projected in charts, maps and in computers through appropriate soft-wares so that they confirm to internationally accepted formats.

Maritime data collection is a complex job since geological features do not remain static. Sea level changes during the seasons of the year vary due to high and low tides¹³. State coastlines change due to erosion, sedimentation and change of river courses. The thickness of the sea floor also changes due to sedimentation or tremors.

Types of Data

The following data are necessary to produce claims under UNCLOS 82 provisions:

- (i) **Baseline:** Data for baseline is required to define and fix the baseline. The TS of 12M, Contiguous zone of 24M and EEZ of 200M are all measured from the baseline.
- (ii) **Bathymetric data:** This data is needed to locate the (a) FOS (b) The 2500m isobath+100M line (c) The 200m isobath line for SoU.
- (iii) **Seismic data:** This data is needed to locate (a) the Gardiner line (1% sediment thickness line), (b) the FOS+60M line (c) the 1Km isopach¹⁴ line and 3.5Km sediment thickness line.

Data Collection for Bay of Bengal

The Bay of Bengal is the site of massive deposits of sediment from many rivers. Moreover, two Oceanic Ridges, the 85°E Ridge¹⁵ and the 90°E Ridge

12. Manual on the Technical Aspects of the United Nations Convention on the Law of the Sea- 1982 , Publication No. 51, 4th Edition-March 2006, Published by the International Hydrographic Organization, MONACO

13. F.J. Leahy, B.A. Murphy, P.A. Collier and D.J. Mitchell-Uncertainty Issues in the Geodetic Delimitation of Maritime Boundaries

14. *Isopach* : Isopach means equal thickness. The thickness of the ocean floor sediment in general goes on decreasing as one proceeds seaward. The points on the sea-floor where the thickness of the sediment is the same are known as the isopach points. The line that connects such isopach points is known as isopach line.

15. The Bay of Bengal and the Statement of Understanding Concerning the Establishment of the Outer Edge of the Continental Margin; Mridha, M, Marine Affairs Program, Dalhousie University, Canada; Varma, H., Bedford Institute of Oceanography, Canada; Macnab, R, Geological Survey of Canada ; http://www.agu.org/meetings/fm05/fm05-sessions/fm05_T12C.html.

constitute thick sediment in its ocean bed. It provides an opportunity for Bangladesh to claim a large area by utilizing both bathymetric and seismic data. The CS extends a long distance seaward from Bangladesh's coastline. So Bangladesh needs to procure both bathymetric and seismic data.

Unfortunately, Bangladesh cannot afford to procure the Bay of Bengal data due to lack of budget and technical expertise. Although collection and processing of maritime data is essential but require sophisticated technology and huge expenditure. Consequently, Bangladesh takes advantage of opportunity ships of developed countries which enter the Bay of Bengal for scientific expeditions of their own to collect and process the bathymetric and seismic data without any cost. Bangladesh has to seek such assistance of the developed states until all the required data are in.

METHODS OF DELIMITATION

Two or more states can be so located that there may be overlapping of their respective maritime claims. Such a situation can occur if the states are either opposite or adjacent to each other. If two opposite states are closely located, the CS or EEZ of one state may fall on that of the other depending on the distance of the two baselines. In case of adjacent states, the question of demarcation will arise. In such a case, UNCLOS 82 has prescribed two methods for settlement (a) mutual agreement and (b) arbitration.

Mutual Agreement

UNCLOS 82 prescribes two approaches to demarcate common areas of claims (i) Equidistance method, and (ii) Equity

(i) Equidistance method

Article 15¹⁶ of UNCLOS82 states that if two coastal countries are located adjacent or opposite to each other and the maritime claim of one country encroaches into that of the other, then the overlapped part may be divided by drawing a median line so that each point of this line is equidistant from the nearest point of the baseline of each of the coastal states. If the two coastal states are adjacent to each other, then obviously there must be an overlapping of claims. Mathematicians have determined several formulae to draw equidistant lines. All such methods show almost identical results and have been accepted by the relevant authorities.

16. Article 15: Delimitation of the territorial sea between states with opposite or adjacent coasts

Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance therewith.

(ii) Equity

There are instances where the application of equidistant method has led to an unjust situation for a coastal state like making it zone-blocked. The reasons behind such an unacceptable situation are many. It could be the disadvantageous position of the state (located between two states), the nature and length of its coastline (convex or concave, short or long), the position of the coastal state (adjacent or opposite) etc. Such states disagree to accept the equidistance principle and look for alternative arrangements through negotiations to demarcate the maritime boundary in a way that can offer more justice. This principle is known as 'equity'. Every individual case has a merit of its own in the application of this principle. Article 59¹⁷ and Article 83 of UNCLOS82 offer provisions for equity, but they do not provide any guideline or methodology that allows for the adoption of this principle. So in many cases, states failed to agree to demarcate either through the principle of equidistance or equity. In those cases, the only alternative is to refer the matter to international courts.

Arbitration

If disputing states fail to demarcate overlapped portions of their claims through the principle of equidistance or equity, they may follow Articles 83 and 287 of UNCLOS 82 and adopt any of the following means:

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

PRESENT STATUS OF BANGLADESH'S MARITIME CLAIMS

Bangladesh first posted its maritime claims through the Territorial Waters and Maritimes Zones Act 1974, Act No. XXVI of 1974 Annex I and Annex II (By Notification LT-1/3/7 of 13 April, 1974 the Ministry of Foreign Affairs) of this Act has fixed the baseline, the contiguous zone and the EEZ which are explained below:

17. Article 59: Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone. In cases where this Convention does not attribute rights or jurisdiction to the coastal state or to other states within the exclusive economic zone, and a conflict arises between the interests of the coastal state and any other state or states, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved for the parties as well as for the international community as a whole.

(a) Baseline.

The baseline from which territorial waters shall be measured seaward are the straight lines linking the successive eight points on the ten-fathom isobath. The latitude and longitude of these eight points are described in the above act.

(b) The territorial seas.

The TS of Bangladesh will extend to 12M seaward from the baseline 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.

(c) The contiguous zone.

The contiguous zone will extend to 18M from the baseline. GOB may exercise such powers in respect of the contiguous zone to prevent and punish the contravention of any law in Bangladesh relating to (i) the security of the Republic (ii) the immigration and sanitation and (iii) customs and other fiscal matters.

(d) EEZ.

It will extend to 200M 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.

The Legal Status of Bangladesh's Baseline

The baseline proposed by Bangladesh was opposed by the international community. 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 the baseline. During the final negotiating session of UNCLOS 82 in April 1982 in New York, Bangladesh sent a letter to the President of the Conference asking legality of the 10 fathom baseline¹⁸. India and Myanmar in separate letters to the President objected to Bangladesh's proposal and only Vietnam supported its claims. Eventually the proposed baseline was not accepted as per international law¹⁹. So Bangladesh has to fix a new baseline by following Article 7 of UNCLOS 82.

18. Commodore Mohammad Khurshed Alam(C) ndc, psc BN (Retd) : Bangladesh's Maritime Challenges in the 21st Century.

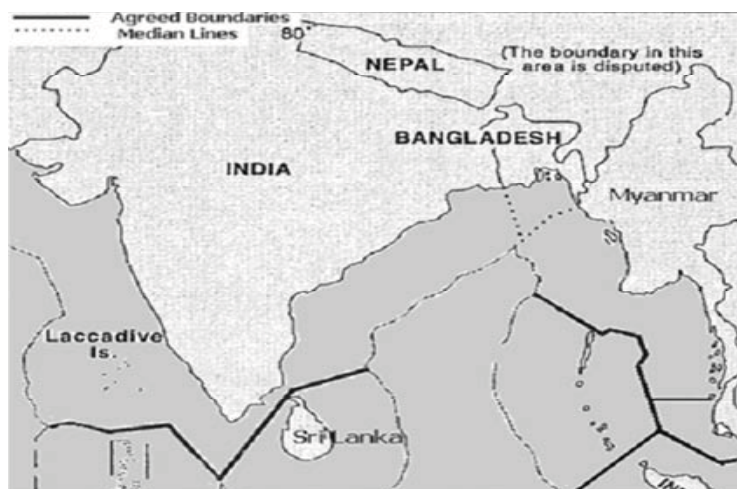
19. Muhammad Nazmul Haque- United Nations, The Nippon Foundation Fellow 2005-2006; The Legal and Scientific Assessment of Bangladesh's Baseline in the Context of Article 76 of United Nations Convention on the Law of the Sea .

DELIMITATION STATUS IN THE BAY OF BENGAL

In September 1974, India protested when Bangladesh awarded westernmost six blocks to Ashland Company for oil or gas exploration, claiming that they encroached into Indian waters. Through a gazette notification in 1974, Bangladesh claimed an area as EEZ and CS, based on a North-South projection through the termini of its land boundaries with India (Hariabhanga river) and Myanmar (NAAF river). India argued that any maritime boundary must be delimited on the equidistance method by taking into account low-tide elevation and by ignoring the peculiarities of Bangladesh's coastline. The Myanmar position, formally submitted in November 1985, was to draw a median line on the equidistant method to be deflected slightly to prevent Bangladesh from being zone-locked. Myanmar held rigidly to the position that Bangladesh's claims extending beyond 200 nautical miles would amount to "coveting my neighbor's territory" and rejected these claims. The maritime boundaries of Bangladesh with both India and Myanmar thus still remain to be delimited as negotiations with these countries ended in a stalemate. Bangladesh then negotiated to reach mutual agreement on the basis of equity because of the peculiarities of its coastline since the equidistance method would make it zone-locked at a distance less than 200M from the low-water mark line (Fig. 1). Finally, Bangladesh took a principled stand supporting Article 83 of UNCLOS 82 which stipulates that delimitation shall be effected by international law as per Article 38 of the Statutes of the International Court of Justice, in order to achieve an equitable solution.

EEZ shown for the littoral states in the Bay of Bengal

Figure-1



LIMITATIONS OF UNCLOS 82

The previous chapters show that there are cases where UNCLOS 82 cannot solve the demarcation problem either by equidistance or through the application of the equity principle. In such cases, states attempt to settle the matter by negotiation where knowledge of already settled cases may be useful. Even if the matter is referred to international courts, technical and legal experts would try to solve it with the help of their experience of already settled disputes. Though every case has its own merit, study of several cases could provide necessary legal and technical information to settle any new dispute. There are a good number of maritime disputes in the world which have been settled either by mutual agreement using the principles of equity or through the intervention of international courts. Two such cases are described below:

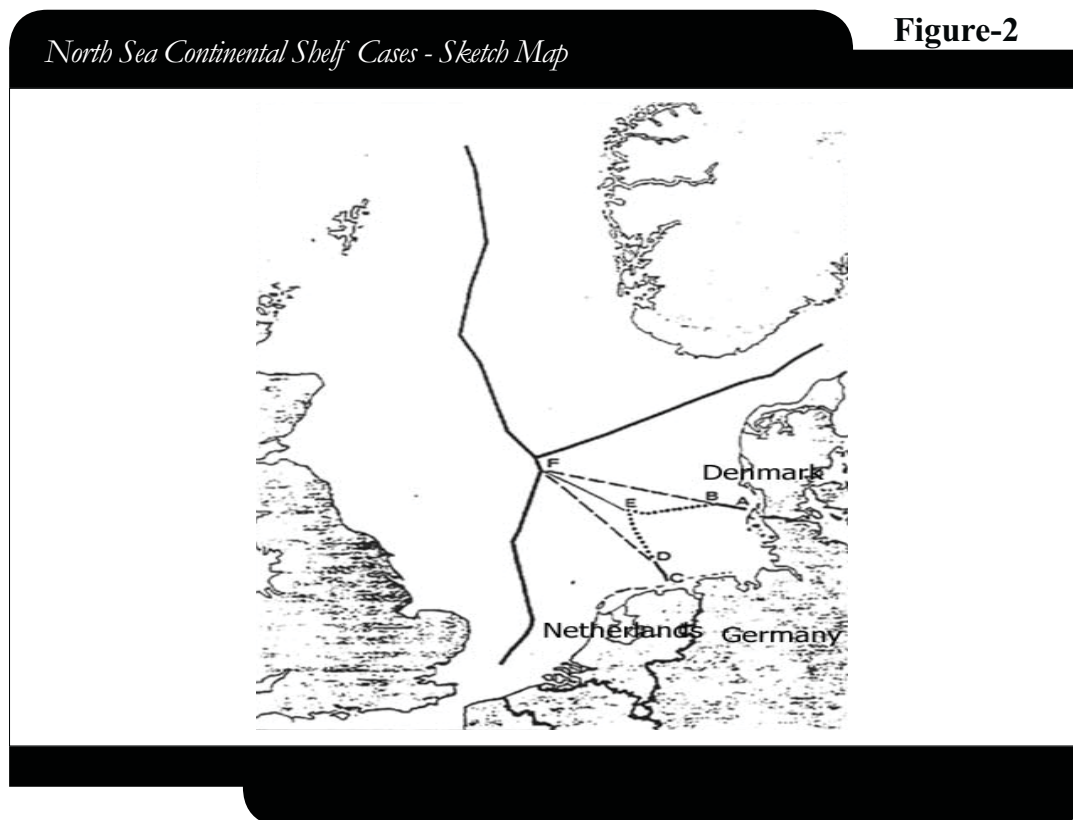
The North Sea Continental Shelf Case

Denmark, Germany and the Netherlands are three coastal states of the North Sea. Germany has common land borders both with Denmark and the Netherlands which extend up to the North Sea (Fig. 2) and the length of its coastline is longer than those of the other two states. After UNCLOS I was signed in 1964, disputes rose between Germany-Denmark and Germany-Netherlands. Denmark and the Netherlands advocated for the equidistance principle as per Article 6 of UNCLOS I, but Germany opposed it. Germany argued that it would become zone-blocked at North Sea (Fig. 2) if the equidistance method was applied. As may be seen from the figure, CDEBA is the composite demarcation line produced by the equidistance method. Germany thus argued that the CS should be demarcated proportionally as adjacent to the coastal lengths of the three states. This proposal, however, was rejected both by Denmark and the Netherlands. Thereafter the case was referred to the International Court of Justice (ICJ) in 1967 which rendered its judgment on 20 February 1969. The salient points of ICJ's decision are as follows:

- (a) The use of the equidistance method of delimitation was not obligatory.
- (b) There is no single method of delimitation the use of which is in all circumstances obligatory.
- (c) The rules of international law applicable to the delimitation between the parties of areas of the continental shelf in the North Sea which appertain to them are as follows:
 - (1) Delimitation is to be effected by agreement in accordance with equitable principles, and taking into account all the relevant circumstances, and in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other;

- (2) If in the application of the preceding sub-paragraph, the delimitation leaves to the parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a regime of joint jurisdiction, use, or exploitation for the zones of overlap or any part of them;
- (d) In course of negotiations, factors to be taken into account are to include:
 - (1) General configuration of the coasts of the parties, as well as the presence of any special or unusual features.
 - (2) So far as known or readily ascertainable, the physical and geological structure, and natural resources, of the continental shelf areas involved.
 - (3) The element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal state and the length of its coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent states in the same region.

Following the Court's decision, the equidistant line was modified to CDFBA (Fig.2) thus allowing Germany a larger portion of the North Sea.



Sino-Vietnam Agreement on Maritime Boundary Delimitation

China and Vietnam are two adjacent states having land borders that extend into the Gulf of Tonkin. In 1993, the two countries reached an agreement on settling the disputes relating to the Gulf. They signed the agreement in December 2000, following the principles of equity. The salient features of the agreement are as follows²⁰:

- (1) The delimitation allocated Vietnam 53.23% and China 47.77% of the Gulf following the proportion of their respective coast lengths.
- (2) If a single geographical structure of oil, gas or other mineral deposits straddles the demarcation line, the two states would agree to share the profits thereof equally.
- (3) They agreed to consult on matters regarding the management of living resources in the Gulf and in the EEZ of the two countries.

Relevance with Bangladesh's Case

- (1) The North Sea Case is in many ways similar to that of Bangladesh. The coastline of Bangladesh is concave like that of Germany. India and Myanmar are two adjacent states of Bangladesh just as Denmark and the Netherlands are adjacent to Germany. The equidistant lines between Bangladesh-India and Bangladesh-Myanmar converge and meet at a short distance (less than 200M) from Bangladesh's coastline exactly like the North Sea Case. ICJ rendered its judgment in favour of Germany in the dispute settlement based on equity. So the North Sea case can be a strong precedent for Bangladesh in justifying its claims on the principle of equity.
- (2) China and Vietnam are adjacent states and their CS was also demarcated on the principle of equity. Their agreement too addressed the management of marine living resources, sustainable growth and the joint management of subsoil oil and gas. These points can provide arguments for Bangladesh in arguing its case.

20.Zou Keyuan, East Asia Institute, National University of Singapore, Singapore- The Sino-Vietnam Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin .

DELIMITATION PROBLEMS AND PROSPECTS FOR BANGLADESH

The foregoing chapters reveal that the issue of Bangladesh's maritime boundary demarcation is a serious concern for the country. Unsettled issue may hamper bilateral relations with its neighbours; on the other hand, Bangladesh is under compulsion to make early arrangement for submission of the claims as there is a deadline it has to meet. We can, however, find reasons for optimism if the issue is dealt properly. The problems and prospects of the issue are outlined below:

Problems.

- (1) Maritimes Zones Act 1974 has fixed Bangladesh's baseline in a manner which is accepted neither by India nor by Myanmar; nor is it in conformity with UNCLOS 82. All maritime measurements have been conducted taking the baseline as a reference. So a legally acceptable baseline must be fixed by Bangladesh immediately.
- (2) Both India and Myanmar advocates the equidistance method of delimitation. Bangladesh disagrees with this method and advocates for the principle of equity. If the equidistance method is applied, Bangladesh will become zone blocked and suffer enormous losses.
- (3) The only alternative for Bangladesh is to go for an equitable sharing of the EEZ. But UNCLOS 82 does not mention the principles of equitable delimitation. So, Bangladesh need to provide reasons along with legal back-up to establish justification for its claims to the full portion of the 200M EEZ and CS beyond 200M.
- (4) If no settlement can be reached through negotiations, the options available would be to maintain status quo or to refer the matter to the ICJ. While the status quo may keep the problem in suspension for sometime, it could resurface anytime in future. If the matter is referred to the ICJ, such a move would disturb bilateral relations.
- (5) A detailed sea-bed profile near Bangladesh's coastline is needed to establish its maritime claims. However, Bangladesh is yet to obtain the necessary bathymetric and seismic data and process them using computer software programmes. Bangladesh has to make all such arrangements as soon as possible.

Prospects.

- (1) The North Sea Continental Shelf Case provides a good precedence for Bangladesh to help it deal with its problems. There are also a good number of littoral states which are facing similar problems. Study of the disputed cases settled, and working in cooperation with coastal states involved in the dispute will benefit all parties.
- (2) Apart from maritime issues, there are other areas of cooperation between Bangladesh and the littoral states that need to be taken into account. Considering national priorities, those factors may be brought into negotiations to come up with a deal that best serves the interests of Bangladesh.
- (3) The last option would be to refer the matter to the ICJ though this may aggravate bilateral relations. There are cases where ICJ's intervention has been successful. However, before taking the matter to the ICJ, a thorough study should be conducted to see how far there is likelihood to win the case through negotiations. In this regard, opinion of international legal experts may be sought in this regard.

RECOMMENDATIONS

- (1) A number of states have already demarcated their maritime boundaries. Study of those cases can assist Bangladesh substantively in settling its maritime boundary disputes. Since such study is demanding, a team of personnel may be earmarked now who will acquire technical and legal information and develop sufficient expertise to handle negotiations. This permanent team should work till the submission of Bangladesh's claim with CLCS and in subsequent negotiations.
- (2) Bangladesh may seek technical assistance from international expert groups for tasks like data collection. Bangladesh should develop expertise on all relevant matters like (a) comprehend raw data and prepare appropriate computer softwares; (b) acquire appropriate knowledge on hydrology and geology; (c) attain expertise on legal and technical matters and thereby curtail dependence on foreign experts.
- (3) Bangladesh should immediately fix its baseline according to UNCLOS 82. The relevant organizations of Bangladesh should collect the data, indicate them in maps and make them presentable using appropriate softwares.
- (4) The bathymetric and seismic data for locating the FOS, Gardiner line, FOS+60M line, 2500m isobath+100M line, 350M line, 200m isobath line, 20M line, 1Km isopach line, and 3.5Km sediment thickness line should be collected immediately with the help of international experts and opportunity ships.

- (5) All measures should be adopted to apply the equity method and thus save Bangladesh from being zone blocked.
- (6) The Bay of Bengal consists of living and non-living resources in water and sea-bed, sub-soil mineral resources, oil, gas etc. During negotiations, if one exclusive demarcation line for all types of resources cannot be agreed upon, the possibility of looking for different demarcation lines for one or more of these resources may also be considered.

CONCLUSION

Bangladesh must establish the equity method to delimit its maritime boundary with neighbouring states and thus save itself from being zone blocked. Unless the delimitation issue is settled, all other attempts to maximize Bangladesh's claims will be of no avail. This article, it should be stressed, is written on the basis of public domain data. Even if more precise data were available, that would not make any difference in its basic findings. Detailed and precise data would enable Bangladesh to claim more maritime area, but this would be possible only if the "zone block" problem is solved.

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