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## **Maritime Boundary of Bangladesh: Is Our Sea Lost?**

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### **Introduction**

The oceans are without doubt the most important resources on the planet and only maritime states can boast of their fortune, having economic, political, strategic and social advantages over other states in reaping benefit from those resources while their interests are manifest in a variety of activities including shipping of goods, fishing, hydrocarbon and mineral extraction, naval mission and scientific research. Bangladesh is, too, bestowed with the same geographic endowment with 720-kilometre coastline. However, questions remain whether the country has been successful in valurising the magnitude of its maritime interests so as to establish its rights as a maritime state in the Bay of Bengal and pursuing a process conducive to fruitful resolution of the wrangles with its neighbours. This paper attempts to articulate a focus upon the maritime issues of Bangladesh and critically examine its undertakings regarding the issue, demystifying the possible consequences for Bangladesh if the end-result is other wise.

### **The Legal Regime of Maritime Zones**

The sovereignty of a coastal state, as accorded by the United Nations Law of the Sea Convention 1982, Article 2(1), extends beyond its land territory and internal waters to an adjacent belt of Sea, which is typically referred as Territorial Sea, defined up to a limit of 12 nautical miles, subject to be measured from baseline, the low water line of a low -tide elevation. Under the convention, as per Article 55, the littoral countries are entitled to enjoy 200 nautical miles Exclusive Economic Zone (EEZ), from the base line from which the territorial sea is measured.

Beyond that, if the area of the continental shelf is more than the area of the economic zone, the coastal state can establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured [Article 76(1, 4)]. Thus, the whole area over which a maritime state should have jurisdiction in the sea include 12 nm. territorial sea plus 188 nm. of economic zone plus 150nm. of continental shelf=350 nautical miles.

The coastal state enjoys three-dimensional jurisdiction on the territorial sea, full sovereignty on surface water, air and seabed, apart from the “innocent passage” of ships. The jurisdiction on the EEZ that includes sea bed is resources-oriented. This delegates rights to the coastal state over all the living and non-living resources in the economic zone, with sovereign rights to manage and conserve the resources within this area. The jurisdiction on the continental shelf is also resources-oriented.

## **Bangladesh's Law for Maritime Zones**

In Pursuant to Article 143(3) of the Constitution, Bangladesh enacted laws, Territorial Waters & Maritime zones Act on 14 February, 1974<sup>i</sup>, with regard to the law of the sea in the Bay of Bengal while ratifying 1982 Convention on the Law of the Sea (UNCLOS-III) in 2001. The coastal marine areas of Bangladesh in the Bay of Bengal are divided into three zones under the (UNCLOS-III): territorial waters of 12 nautical miles, another 200nm of EEZ and 350 nm of sea bed, continental shelf from Bangladesh baseline. For the unique deltaic characteristics of its coast, Bangladesh determined the baseline in 1974 with a length of 222 nm which is 8 points fixed at 10 fathoms (60ft) extending to 10-30 miles from the coastline. However, the total sea area of Bangladesh in accordance with the UNCLOS-III is approximately 2, 07,000 square kilometers, 1.4 times greater than its total land area.

## **Maritime Differences with Neighbours**

The issues involved in the maritime boundary demarcation with India revolve around four interwoven questions. 1. The determination of the Hariabhangra river boundary along the border, especially the ownership of South Talpatty Island. 2. the determination of boundary of territorial waters up to 12 miles. 3. determination of the boundary of the EEZ of another 188 miles from the end of territorial waters.) 4. and boundary demarcation of the continental shelf up to another 150 miles from the edge of the EEZ (200 +150 miles=350 miles of continental shelf). Similarly, with regard to delimitation of maritime boundary with Myanmar, three issues require to be settled: 1. Territorial Sea. 2. EEZ and 3. Continental Shelf (sea bed). In September 1974, India had protested that Bangladesh's baseline extended beyond 21 nm into Indian waters and Myanmar also protested Bangladesh's baseline later on. The real problem lies in the complex configuration of Bangladesh's coastline. The nature of coastline is *concave*, similar to the shape of a semi-circular arch while two neighbours enjoy a *convex* shape of shore, inward to the sea.

The basic principle Bangladesh stuck with governing delimitation of the Maritime Boundary was reaching mutual agreement on the basis of 'equity' posing a rationale of stance based on the geomorphologic and geographical peculiarities and the concave nature of the coast. Bangladesh strives to determine the sea boundary from the North to the South whereas Myanmar and India seek to draw from the East to the West and from the West to the East respectively. Bangladesh argues that 'equidistant' method is applicable only to boundaries between states like India and Sri-Lanka and not between adjacent states like Bangladesh and India. Moreover, UNCLOS-III (article 15) stipulates the equidistant method for delimitation of the territorial sea, unless the states concerned agree otherwise whereas, with regard to the delimitation of economic zone and continental shelf, UNCLOS in its Articles 74 and 83 does not provide equidistant method as the basis of agreement. Both articles, instead, premised the delimitation agreement on economic zone and continental shelf upon 'equitable solution' on the basis of international law, the provisions of UNCLOS and customary international law.

In the equidistant method, it is claimed that, approximately 48,025 sq. kilometres area of Bangladesh will go to Myanmar and another 31,743 sq. kilometres to India resting Bangladesh upon a situation depriving it of a passage toward the high seas. However, India-Myanmar remains inflexible to 'equidistance method' while Bangladesh retains its stand 'equitable solution'.

## **India-Myanmar's Claim at the UN & Implication for Bangladesh**

Myanmar and India filed their claims to the Commission on the Limits of the Continental Shelf (CLCS) respectively on 16 December, and 11 May of last year. In submission of documents Myanmar stated that "the area of continental shelf that is the subject of this submission is not subject to any dispute between Myanmar and other states" and... "Delimitation negotiations between Myanmar and Bangladesh are ongoing and consistent with article 76, paragraph 10..."<sup>ii</sup>. On the other hand, India

stated that “delimitation of maritime zones of India’s adjacent or opposite countries shall not extend beyond the line every point of which is equidistant from the nearest point from which the breadth of the territorial waters of India and such state are measured unless there is any provisional agreement about maritime demarcation between India and other state”<sup>iii</sup>.

Their claims in fact encompassed undersea basins that fall within Bangladesh's EEZ. India’s claim in the Bay of Bengal constitutes about three per cent of its total economic zone and continental shelf while for Bangladesh its entire economic zone is at stake. It has been reported that, the claimed sea areas of Myanmar include 29,000 sq. nautical miles of Bangladesh and another 22,000 sq. nautical miles are claimed by India. The ‘diplomatic protest notes’<sup>iv</sup> to the United Nations against the claims of Myanmar and India have been issued recently over the extended 'continental shelf' in the Bay of Bengal. Bangladesh would have to lodge its claims to the UNCLCS over 150 nautical miles (277km) or more area of the extended continental shelf in the Bay of Bengal by July 27, 2011.

### Map: the Maritime Zones with Present Conflicting Claims

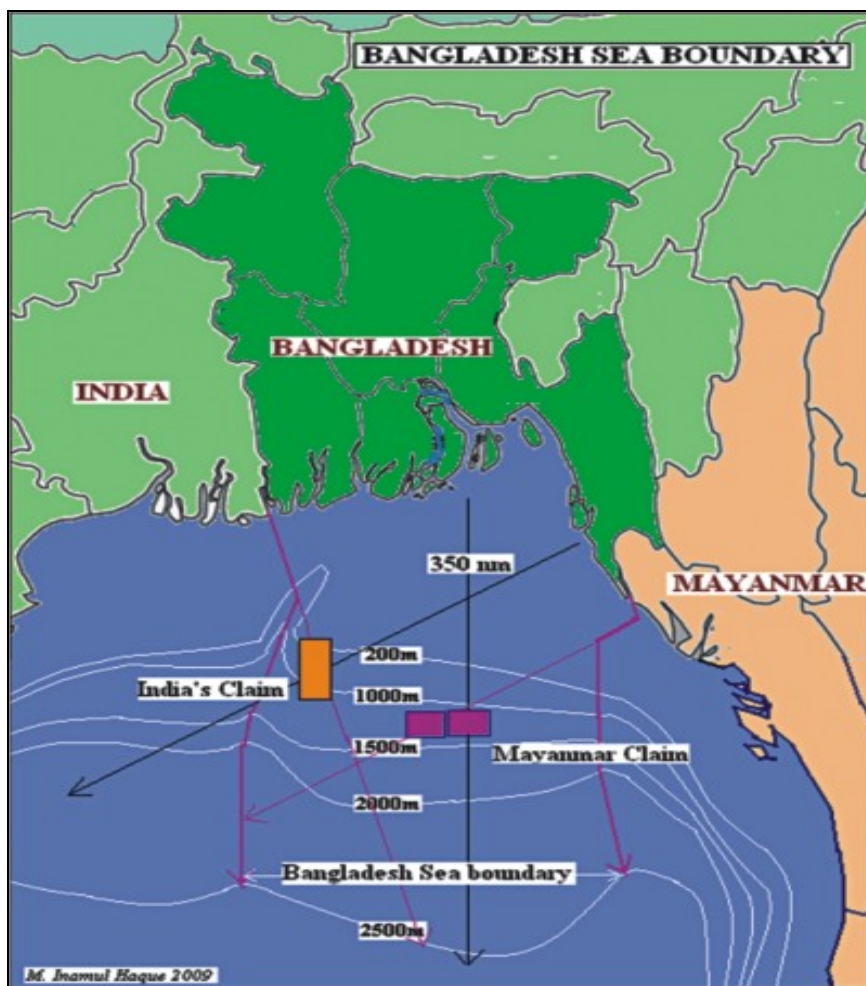


Figure: by Engr. M. Inamul Haque, Strategic Issues page, The Daily Star, November 14, 2009

### India-Myanmar’s Convergence of Interest

The coincidence of claims of Bangladesh’s Western and Eastern neighbour regarding maritime demarcation, even with Indian claims that “...Myanmar’s submission for an extended continental

shelf is without prejudice to the question of delimitation of the continental shelf between India and Myanmar...”<sup>v</sup>, a protest submitted to UNCLCS by India, awards them strategic advantage that stems from the shared analogous interest on the issue; the documents submitted to UNCLCS debunk such proposition. The ‘National Centre for Antarctic and Ocean Research (NCAOR), India’ extended hands of cooperation in quality control for both bathymetry and geophysical surveys and ‘National Geophysical Research Institute (NGRI), India’ – collaborated in Seismic Data Processing and interpretation of acquired geophysical data in preparation of submission of Myanmar with Myanmar Scientists<sup>vi</sup>. With abundant resources available to support their moves and the rapid submission of claims, both countries have already got an upper hand. Such circumstance requires a pragmatic, intelligent and timely endeavour from Bangladesh to sustain and establish its rights in the Bay of Bengal.

### **Arbitration Gamble for Bangladesh**

The UN charter urges the states to pursue settlement of disputes by means of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice<sup>vii</sup>. The adjustment of settlement with arbitration, which in fact comes in later stages, without an assiduous and exhaustive effort for negotiated settlement portends a complicated venture at least for the states with claims not placed by available scientific data and propped up by diplomatic might. According to UNCLOS, a panel of five arbitrators will institute the proceedings and in disputes involving more than two parties, they will appoint one arbitrator each and the remainder by agreement between the parties<sup>viii</sup>. At the same time, while Bangladesh has appointed a British national, both India and Myanmar appointed Indian nationals as arbitrators with one member in UNCLCS from India who assisted India in the preparation of the submission<sup>ix</sup>. In view of the fact that, India and Myanmar have outlined common strategy in preparing their claims and reportedly similar strategy in arbitration, things seem to be in shambles for Bangladesh and it has to move alone in this risky gamble. More over, arbitration in the hands of third party is too dicey as India has maneuvering skills and weights with international connection to sway the award of the arbitration or it at least can uphold Myanmar’s cause underneath of which lies its own cause. The entire process requires an adroit acumen from Bangladesh government; in other respect it will turn out to be a damp squib.

### **Potential Consequences for Bangladesh**

As already mentioned, according to the UNCLOS-III, the total sea area of Bangladesh is approximately 2, 07,000 square kilometers, 1.4 times greater than its total land area. If Myanmar and India’s claims are established, it has been reported that, the claim of Myanmar will likely to grab 29,000 sq. nautical miles of Bangladesh and another 22,000 sq. nautical miles will be seized by India<sup>x</sup>. Such a postulation carries a significant and profound implication for a weak and least-developed state like Bangladesh:

1. Bangladesh is a resource-deficit country with a small land territory, replete with burgeoning population, disproportionate to its land resources. The only resource prospect remains for this country is in the Bay of Bengal. But the failure in winning the case and retaining its maritime boundary will jeopardise the destiny of more than 162 million people<sup>xi</sup>. The vital fact about the continental shelves and the EEZ is that they are rich in oil and gas resources and most importantly, precious Poly-metallic nodules, which lie on the seabed at 4,000 to 6,000 metres deep and quite often, are host to abundant stock of mineral resources, fish, and renewable energies.
2. Having been choked up from three sides, Bangladesh gets hold only of a bit of strip in the Bay of Bengal for the passage to the rest of the world. By harnessing and advancing trade and investment, definitely, this sea line of communication (SLOC) pays enormous contribution to its struggling economy. However, the encroachment of its maritime borders

will certainly leave it zone-locked and perforce, it will be denied its recognition as a maritime state.

3. The politics in this uncertain world appears with different façades in different historical junctures. Today's ally is foe of tomorrow and vice versa. For that reason, the maritime areas and passages of Bangladesh bear both war and peace-time significance. A zone-locked Bangladesh will likely to be petrified and vulnerable should a crisis erupt.
4. It is not only her economic future but also her sovereignty that are being challenged. To survive as a sovereign state, an assertive mode for the state is crucial. Bangladesh will lose its 'position of strength' in relation to bargaining with regional and global powers and among international community.
5. As predicted by climate scientists, an imminent climate disaster will likely pose human catastrophe in Bangladesh that will displace millions of people across the country. To adapt to such a situation, the maritime areas of Bangladesh in the Bay of Bengal carry a potential in terms of deposition of land through the process of sediment gathering somewhere across Bangladesh coast and in terms of resources available to feed this huge human turnout.

## Conclusion

Clearly, a more pragmatic discussion on what Bangladesh should have done and what it should focus upon immediately deserves consideration. The move of Bangladesh to deal with maritime issues from the very inception has been insufficient to back its stand with available data with persistent insistence and engagement. Almost 35 years passed since it enacted 'Territorial Waters & Maritime zones Act' on 14 February, 1974, to define its maritime areas, but there has not yet been any maritime survey to demarcate its sea boundary and to check whether its current boundaries with India and Myanmar are accurate. While the Government of India has established an Indian Maritime University under an Act of Parliament, namely, the Indian Maritime University Act 2008 with existing seven maritime academic institutions<sup>xii</sup>, the overall state of Bangladesh still remains fumbling. It has, unlike its neighbours, no hydrographic and oceanographic study centre and vessels to contribute in research of maritime border. Any pretext, likely to be premised on the lack of resources of the country, conveys little relevance in this regard.

Moreover, Bangladesh's persistence on demarcation on the basis of 'equitable principle' is replete with ambiguities and lacks an agreed perspective on this among the stakeholders. In negotiating with Myanmar and India, it failed to have any meaningful negotiation and provide any acceptable framework to resolve the dispute and was inconsistent in concentrating on negotiation; and in effect, the neighbours resorted to unilateral move in delimitation as well as exploring natural resources. The Education and research on maritime delimitation is a prerequisite to a good appreciation of the technical aspects, related to this issue, for effective bargaining; for whatever reason, Bangladesh has been deficient in meeting those two requirements. Instead, it waits for the deadline of July 2011, to file its claims to the UNCLCS, whereas it could take a strategic leap forward by submitting earlier, an advantage obviously reaped by India and Myanmar. A strong and brave effort from Bangladesh side is required to win in the wrestling of arbitration. However, the choice of negotiation still remains as the best solution in parallel with arbitration process.

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## End Notes

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