Maritime Boundary Confirmation of Bangladesh: Potentialities of Sea Resources and Challenges Ahead

Abstract

Recently, by two verdicts, Bangladesh got confirmation of her maritime boundary. It goes without saying that the maritime boundary settlement has added a new impetus in the political and economic arena of Bangladesh. The areas we have gained under these verdicts are equivalent to winning a ‘New Bangladesh’. But the challenges of taking control over it and utilizing its sea-bed resources are the main concerning issues for Bangladesh. In fact, Bangladesh is located in the strategically important region of South Asia, Asia and the world as well. In the sphere of using maritime boundary, Bangladesh can influence the regional and international politics to some extent. This is because gradual influences of India and China on regional and global politics, democratic trends of Myanmar and increasing interest of United States of America (USA) in this region have changed the previous calculation on security measures specially for Bangladesh. Now Bangladesh is going to be a dialogue partner of ASEAN that will help the country to hold the legal stand in the cooperation among South and South East Asian countries. Recently through two verdicts on maritime boundary among Bangladesh, Myanmar and India, more than one third of the country’s earlier total territorial area was added up to it allowing Bangladesh to exclusively exercise its own sovereign rights on 118,813 sq km of waters extending up to 12 nautical miles of territorial sea and a further Exclusive Economic Zone (EEZ) of 200 nautical miles into the sea. It is obviously a vast area and commercial and economic interests together with environmental stakes there, warrant proper protection and security. We think this confirmation is the outstanding achievement for Bangladesh. Bangladesh can accelerate her economic development by extracting resources in this region.

Keywords: Maritime Boundary, Exclusive Economic Zones, Continental Shelf, High Sea, UNPCA, ITLOS, UNCLOS, Contagious Zone, Territorial Zone, etc.
Introduction

In global politics, geographical location of some countries bears strategic significance to the super and big powers of the world. For this reason, economic and strategic diplomacies are gaining growing importance in the world. Recently the judgment delivered by the United Nations Permanent Court of Arbitration (UNPCA) and 'International Tribunal of The Law on The Sea (ITLOS)' on the maritime demarcation between Bangladesh and India, and Bangladesh and Myanmar respectively has happily been hailed by those countries. Bangladesh has achieved absolute sovereignty on vast maritime area, on overall, approximately 111,631 square kilometres was assigned to Bangladesh of the relevant area with Myanmar, (approximately 171,832 square kilometres to Myanmar), and 19,467 sq kms to Bangladesh of 25,602 sq kms with India.

Bangladesh will no longer have to get worried over her easy access to the sea. The Government of Bangladesh needs to be conscious about the strategic importance of her geographical location and its use. The absolute authority of Bangladesh over her maritime boundary, increasing influences of India and China in the global politics, strategic location of Bangladesh in South Asian are the crucial factors in our foreign affairs. The absolute sovereignty on maritime boundary has brought a great possibility of maritime resources on the one side and the challenges on the other side. The fruitful use of this maritime space demands the foresightedness of the government and outstanding diplomatic performance. So, it is now high time to look into the possible ways to improve our foreign policy based on our geographical location.

Objective of the study

This article is an attempt to highlight the potentials of the maritime resources of Bangladesh and an overview of the measures to be taken on the confirmation of maritime boundary with two neighboring countries by two international verdicts.

Methodology of the study

This study is a desk research carried out by developing a synopsis of different disciplines and different issues on the confirmation of maritime boundary of Bangladesh.

Maritime Boundary and UNCLOS

Maritime boundary is the division of the water surface of the planet into maritime areas of contribution that are defined through surrounding physical geography or by human geography. It is also called the borders of a maritime nation and is recognized by the United Nations Convention on the Law of the Sea (UNCLOS). Maritime boundaries exist in the context of territorial waters; which indicates 12 nautical miles (22 kilometers; 14 miles) from the baseline, the coastal states are free to set laws, regulate and use any resource of Contiguous zones, Exclusive Economic Zones (EEZ), Continental Shelf and High Sea (UNCLOS: 1983). Let us now have a look at how maritime boundaries are delimited by UNCLOS. The following figure will present the legal law of UNCLOS according to articles 51-80.

![Image of Maritime Boundary Delimitation according to UNCLOS](image-url)

**Figure 1:** How to delimit Maritime boundary according to UNCLOS
Basically relations between Bangladesh and Myanmar became severely strained in October 2008 when survey ships subcontracted by Daewoo, acting under licence from Myanmar, began conducting survey work close to St. Martin’s Island, in a maritime area claimed by Bangladesh (Zamal, Fayaz., 2012). Bangladesh responded by dispatching three naval vessels leading to a stand-off between the two navies lasting over a week until the Daewoo vessels were withdrawn. This incidence focused attention on the maritime boundary dispute and arbitral proceedings were commenced by Bangladesh in October 2009.

On 8th October 2009, notice was issued for arbitration with Myanmar under Part XV of the UNCLOS for delimitation of territorial sea, the EEZ and the continental shelf in accordance with international law (UNCLOS:1982). Both parties thereafter accepted the jurisdiction of the ITLOS for resolution of the dispute and transferred the case to the ITLOS. On 14 December 2009, the case entered the docket of ITLOS as the 16th case. On 14th March 2012, the first verdict on disputed maritime boundary between Bangladesh and Myanmar where on overall, approximately 111,631 square kilometres of the relevant area was assigned to Bangladesh and approximately 171,832 square kilometres to Myanmar, which is closely in proportion to the total coastal lengths of the countries.

In 2008, India and Bangladesh held much anticipated maritime boundary discussions, which remained once again inconclusive as both parties maintained their earlier claims. The UNCLOS’s proposal to apply the equidistance principle for the purpose of maritime boundary demarcation is supported by India, but rejected by Bangladesh due to the magnitude of the associated loss (Pati, G: 2011:603). On 7 July 2014, United Nations Permanent Court of Arbitration (UNPCA) delivered a verdict on this long time standing maritime dispute of forty three (43) years between Bangladesh and India.
The foreign ministry of Bangladesh assured that the USA is interested to sign the proposed Acquisition and Cross-Servicing Agreement (ACSA) (The daily Prothom Alo:02/06/2012). According to this agreement United States will supply fuels, war weapons and other equipments for Bangladesh military forces. Antagonists of ACSA strongly argued that signing of this agreement will assure the inevitable deployment of US military in our country. The military relationship between Bangladesh and the United States of America is little more intimate than before. For this reason the news of stationing of the US 7th fleet in Chittagong sea port, though refused by Bangladesh government, is a psychological stroke over other Asian states.

Furthermore, China's "String of Pearls" which is related to the area from South China Ocean to Indian Ocean is ultimately a matter of concern for the USA. They claim that the main target of China is to ensure fuel supply, and to bring contiguous countries’ port and maritime ways her control. That’s why the proposed bilateral relationship between Bangladesh and China regarding the building of deep sea port in Chittagong is viewed with suspicion by both the USA and India. Bangladesh claims that it is only for economic purpose. As a small state Bangladesh has always tried to have collaborations with her neighbors. Getting the superpowers to appreciate our needs and priorities are indeed big challenges for us.

2. Geopolitically South Talpatty (although became submerged recently) island is a very important region. Bangladesh has unfortunately lost it through the verdict of PCA. The sovereignty of the Bay of Bengal will depend on its ownership of it (Tanaka: 2011). It is also well known that this region is full of fossil fuels, i.e., oil and gas. If South Talpatty re-emerges in the future, it will seriously affect the maritime boundaries of Bangladesh.

As mentioned above, Bangladesh has recently achieved full access to the high seas reaching out to 200 miles and it is now recognized and assured with our undisputed rights to the fish in our waters and the natural resources beneath our seabed. But Bangladesh has already shown the weakness about exploring the natural resources from the seabed area in the previous time. Bangladesh is normally dependent on foreign technologies for exploring the natural resources specially exploring the petroleum and natural gas in the Bay of Bengal. Because of technological inadequacies Bangladesh has signed a production
sharining contract with the Conoco Philips, International Oil Company (IOL), or a foreign company to explore oil and gas in the deep-sea areas. As local expertise is not available or adequate, the exploration and mining rights have to be leased to foreign companies in return for payment of adequate resources.

3. It must be mentioned here that although some local energy companies have, over the years, built up notable expertise in offshore drilling and related fields, lack of their proper utilisation and the lure of foreign employment have all seriously impacted on these companies.

4. Although the Tribunal can decide on the basis of the principles of UNCLOS, enforcing the verdict might not be easy. If a country decides not to obey the tribunal’s verdict, then, there is very little hope that the legal process can actually make it do that.

In recent years, as States have sought to use more creative techniques to seek resolution to their boundary disputes, other questions concerning the relationship between the continental shelf and EEZ have been raised. These questions are no longer academic, as there is state practice concerning areas where jurisdiction is shared, exercised cooperatively, or where the boundary of the continental shelf has been separated from that of the EEZ.

The Law of the Sea Convention gives little or no guidance as to how such practice can take place, or how jurisdiction is to be exercised where the continental shelf of one state overlaps with the EEZ of another. Such as, the resolution of direct inconsistency by abdicating EEZ rights over the seabed does not resolve other less direct problems. Coastal states, when exercising jurisdiction over the EEZ do not merely exercise jurisdiction over resource activities, but also exercise control over other events.

5. The importance of maritime boundary was out of our public concern before settling the dispute with Myanmar. There is lack of knowledge about the importance and use of marine resources that we have achieved in seabed areas. Basically, to explore the resources like oil, gas, biodiversity in EEZ or offshore areas and research in maritime sector we have to depend on foreign experts. Few experts are available, but their arguments are not taken into account by government parties. Scope for higher education on marine sector is rare in public or private universities. For instance, only some universities have introduced the Department of Marine Science, Marine Fishery or Oceanography. Government may also lack adequate logistics about the utilization of resources within the maritime boundary. That is why building domestic expertise on marine law, technology or resource extraction in comparison to the neighboring states is a major challenge for Bangladesh and an important step towards ensuring the proper usage of in seabed resources.

6. The country’s policies on maritime issues need to have proper continuity. It is important to give the international community a strong message about our national priorities with regard to maritime and related issues. Domestic policies and political changes should not impact upon our national position on this very vital issue.

7. As a result, any policy or foreign agreement adopted by a party running the government, as far implemented, is rejected by the next government usually. We see that the maritime dispute with Myanmar and India were continuing from 1974 and it has been settled now. Though we try to settle the disputes regarding land and maritime border, water, river sharing with India in several times (1974, 1982, and 1996), but for the instable situation we failed. Unstable political situation deter the development of Bangladesh. For this reason, it is a crucial challenge how we can ensure political stability to maintain, preserve, and safeguard the maritime areas, and proper utilization of maritime resources.

8. The USA observes our pulse staying too close. In the same time, the above three countries are in competitive situation to one another in terms of economy, technology, world politics, etc. On the other hand in South Asian region, India and China are playing win-win game to take control over this region. Bangladesh has to be conscious about this tri-sided influence and interactions, and for her sake most beneficial option must be taken during dealing with those countries.

9. While the impact from climate change is considered to be severe in the region, majority of other ongoing environmental degradations are also led by human activities. Land-based pollution, such as sewerage, agriculture/aquaculture run-offs, and industrial pollution have become major threats to the region’s environment. Many of that pollution are also trans-boundary, and can travel across the region through the atmosphere and international rivers.
Concluding Remarks and Recommendations

To sum up, we would like to term the verdict of maritime demarcation as the peaceful settlement of a long term dispute between Bangladesh and its neighboring countries, through outstanding performance of our foreign ministry. The outcome of these cases is a balanced one where neither party won or lost completely. We must praise our legal team on its coherent and well organized arguments. It is the success of both countries and the victory of international law, which provided a precisely defined maritime boundary between the two friendly neighbors and by doing so allowed the neighboring country to use the sea for the benefit of their people. It can also be taken as our geo-political victory because by this verdict we have got absolute sovereignty on 12 nm from the sea baseline which is strategically most important in South Asian region. Bangladesh is a mounting country; its growing population is being mostly depended on maritime resources for satisfying their internal setback. Whatever we have, we are not able to consume maximum of it because of our technological and strategic weaknesses. Proper utilization of our natural resources is the demand of the time. We think following aspects should take into consideration for further success:

- Bangladesh should establish Maritime Research Institute to perform effective research for our maritime resources which will help to serve our national interest. Besides we have got an undisputed right over an area almost equal to Bangladesh. It is quite tough to receive maximum benefit from this seabed area without proper plan and program. The government should immediately introduce a Ministry of Maritime Affairs, through which it will be easy, to take integrated program on maritime affairs. Although we have a Marine Academy and Marine Science departments in some universities, this is far from enough.

- Maritime matters and related topics need to receive more attention in our academic syllabus. Departments dealing with underwater sciences need to be started in universities across the country so that expertise can grow in these fields. It is indeed fortunate that there are no experts in this field to put forward our arguments at the international level.

- Bangladesh should increase manpower to check sea crimes and establish greater control in the Bay of Bengal, develop infrastructure and add modern vessels for the Coast Guard with necessary arsenals.

- Bangladesh should enrich its naval forces with modern equipments, manpower and funds to monitor and protect coastline islands, the EEZ and the CS. The country should conduct joint naval exercises with major powers and procure relevant military hardware to ward off any adverse situation.

- Bangladesh also needs to introduce new frigates, submarines, maritime petrol aircraft helicopters and other equipments.

- The policy makers of the country have to be conscious about the economic and the security measures when signing bilateral or multilateral treaties. Memorandum of Understandings (MOUs), etc. should be based on maritime priorities.

- The country should enact domestic laws incorporating the UNCLOS in order to establish a stronger claim in international legal regimes. It may have to redraw its 1974 baselines to ensure they are consistent with UNCLOS, 1982. It is now time to have our own domestic laws to prevent and punish infringements committed in various maritime zones of the country. This will help Bangladesh to enjoy the freedom and sovereign rights to conduct economic activities in own sea areas of jurisdiction. Capacity building of maritime forces, namely Bangladesh Navy and Bangladesh Coast Guard, is another prerequisite to ensure safer seas for the seafarers of tomorrow. Implementation of domestic laws in support of the judgment under the cover of "Law of the Sea Convention" will serve the purpose to a great extent. The country has miles to go in facing the challenges of the 21st century on the maritime front.

- In Bangladesh, political parties should consider maritime issues standing out of confrontational politics.

- Some measures for technology assessment, development, adaptation, adoption and diffusion in the country should be taken. Further measures to integrate a Science and Technology Plan with the Development Plans prepared by Planning Commission in order to ensure the exploration of natural resources should be taken.
• Effective institutional arrangements in the various organs of the Government to help, promote and monitor the implementation of the Science and Technology Plan should be initiated. Further adequate steps to popularize science and technology among people in general should be taken. Promotion of regional and international cooperation in science and technology on bilateral and multilateral basis should be attempted.

• This is the right time to combat maritime piracy. The policy of combating piracy must have two approaches: traditional and non-traditional. Otherwise, it would not work properly. What does the traditional and non-traditional approach mean? The traditional approach is the way of preventing crime through the use of military force. But, this is not the permanent solution. Suppose the law-enforcing agencies conducted operations, seized pirates and thus reduced the crime, but criminals were not provided job and earning facilities, and they would not subdue.

• Confirmation of maritime boundary will help Bangladesh to enjoy the freedom and sovereign rights to conduct economic activities in own sea areas of jurisdiction. Capacity building of maritime forces, namely Bangladesh Navy and Bangladesh Coast Guard, are other prerequisites to ensure safer seas for the seafarers of tomorrow. Implementation of domestic laws in support of the judgment under the cover of Law of the Sea Convention will serve the purpose to a great extent. We expect that the concerned authority would concentrate urgent attention in this area.

References:
Dhaka Courier, 20 April, 2012, (the Most Popular weekly magazine).

"International Tribunal for the Law of the Sea issues judgment in Bangladesh/Myanmar" Herbert Smith, Public International Law, e-bulletin.
"Abar Markin saptom noubhoro bitorko" by Mijanur Rahman Khan. The Daily Prothom Alo. 4th June 2012, p-12.
"USA want to sent 7th Fleet" (Saptom noubhoro pathate chai jukorastra). The Daily Prothom Alo, 2nd June 2012, p-1.
Ministry of Foreign Affairs (MOFA), http://www.mofa.gov.bd..
Kisei Tanaka- Indo-Bangladesh Maritime Border Dispute Conflicts over a disappeared island", ICE Case Studies, Number 270, December, 2011, p.45.
world.time.com/.../obama-in-bu.

"Efficiency is doing things right; Effectiveness is doing the right things." - Peter Drucker

"Management is doing things right; Leadership is doing the right things." - Peter Drucker