

## **PRINCIPLES OF SETTLING DISPUTES ON DELIMITATION OF MARITIME BOUNDARIES: A REVIEW OF CASES RELEVANT TO THE BAY OF BENGAL AND BANGLADESH**

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### **ABSTRACT**

*Scientific research reveals that the Bay of Bengal holds a huge quantity of natural oil and gas. Bangladesh is willing to explore this offshore gas reserve to stimulate its economic growth. But neighboring coastal states India and Myanmar are reluctant to negotiate their claims with Bangladesh recognizing her special circumstances rather they are claiming the gas reserved area of the sea which is also claimed by Bangladesh. The main dispute over maritime boundary delimitation between Bangladesh, India and Myanmar centers around Bangladeshi views to demarcate on equity basis North to South while Myanmar and India want to apply an equidistance system in East to West and West to East boundary respectively. This study will examine the decisions of the International Courts and Arbitration systems in cases which concern the situation as prevailing at Bay of Bengal in order to search the justification of the Bangladeshi claim of equitable solution considering its special geographical features. This study will explore at the necessity of negotiation as an alternative to the time-consuming and expensive judicial process.*

### **INTRODUCTION**

Historically, States rarely delimited their maritime boundaries with other States. This situation changed in the second half of the last century. Ocean resource development has led States to define their maritime boundaries more exactly. One of the primary intentions behind the move to establish these boundaries has been the development of technology to recover highly valuable hydrocarbons and other non-living resources of

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the seabed and subsoil.<sup>1</sup> The commercial exploitation of these resources often requires that defined areas be allocated among operators.

The law on maritime boundary delimitation is one of the most complicated topics of maritime law which is crystallized in the United Nations Convention on the Law of the Sea, 1982 (hereinafter UNCLOS)<sup>2</sup>. UNCLOS, which marks the beginning of a new era in the law of the sea, regulates the principal aspects of international ocean affairs. UNCLOS establishes and fixes the limits of marine zones, provides for the rights and duties of States in these zones, establishes the law applicable in the international seabed area on the basis of the principle of common heritage of mankind, imposes obligations on States to protect the marine environment, and provides for the means of dispute settlement.<sup>3</sup>

UNCLOS was designed as a document that recognized that the problems of ocean space were closely related and demanded consideration as a whole.<sup>4</sup> The UNCLOS was said to have responded to the challenges of modern day oceans governance that is fraught with interdependent, interdisciplinary and trans-sectoral implications.<sup>5</sup> The issues in or beyond the Convention held plenty of potential for conflicts among nations.<sup>6</sup> Therefore states perceived the need for having robust

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<sup>1</sup> Charney, Jonathan I., and Alexander, Lewis M., "International Maritime Boundaries", *Vol. I*, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993, at p. xxiii.

<sup>2</sup> Adapted 10 December 1982, entry into force 16 November 1994, United Nations, *Treaty Series*, Vol. 1833, at p. 3.

<sup>3</sup> Suvarez, Suzette V., *The Outer limits of the Continental Shelf; Legal Aspects of Their Establishment*, Springer Publication, Berlin/Heidelberg/New York, 2008, at p. 1.

<sup>4</sup> See Pardo, Arvid., "Perspectives on Ocean Governance" in Jon M Van Dyke, Durwood Zaelke and Grant Hewison (eds) *Freedom for the Seas in the 21st Century: Ocean Governance and Environmental Harmony*, Island Press, Washington DC, 1993, at pp. 38-39.

<sup>5</sup> See Borgese, Elisabeth Mann., *Ocean Governance and the United Nations*, Centre for Foreign Policy Studies, Halifax, 1995, at p. 2 [*Ocean Governance and the United Nations*].

<sup>6</sup> Martin, Laurence., "The Role of Force in the Ocean" in *Perspectives on Ocean Policy: Conference on Conflict and Order in Ocean Relations October 21-24, 1974*, Airlie, Virginia, National Science Foundation, Washington DC, 1975 at p. 33, & p. 44.

dispute settlement provisions in the UNCLOS.<sup>7</sup> The dispute settlement provisions enshrined in Part XV, along with Annexes V – VIII of the UNCLOS, form the backbone of the dispute settlement system of the present law of the sea.<sup>8</sup>

The delimitation of maritime boundaries, in particular delimitation of the seabed and subsoil, in conformity with international law, as it is reflected in UNCLOS, may create overlapping claims requiring maritime boundary delimitation. These delimitations have not proceeded at a healthy pace in areas where natural resources, mainly petroleum developments, were underway or expected.

The Bay of Bengal is a hydrocarbon-rich basin and the sea areas of Bangladesh are reportedly rich in straddling fish stocks and mineral resources, including hydrocarbons.<sup>9</sup> Therefore maritime delimitation and delimitating the marine boundaries between the littoral States of the Bay of Bengal are necessary precondition for exploitation of these resources. But, the lack of defined boundaries, the presence of numerous deltas, islands and the existence of trans-boundary oil-gas deposits makes the delimitation process very complicated. The maritime boundaries of Bangladesh, as the only littoral State in the north of the Bay of Bengal facing with all the other two littoral States India and Myanmar, need to be delimited justly and equitably. But a long-standing dispute over maritime boundary delimitation of Bangladesh with India and Myanmar remains a major stumbling block in exploration of its offshore resources. The overlapping claims of these three countries over the maritime zones in the Bay of Bengal need to be settled for peaceful exploration of natural resources. While India and Myanmar want to delimit their maritime boundary on the basis of the equidistance principle, Bangladesh demands that delimitation should be based on the equitable method.

It is claimed that the total area of the sea under the resource jurisdiction of Bangladesh would be approximately 207,000 square km,

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<sup>7</sup> Sohn, Louis B., *Peaceful Settlement of Disputes in Ocean Conflicts: Does UNCLOS III Point the Way?* Law & Contemp Probs 195, 1983 at p. 46.

<sup>8</sup> “*Order for the Oceans at the Turn of the Century*”, Kluwer Law International, The Hague, 1999, at p. 95.

<sup>9</sup> Blake, G., M. Pratt, C. Schofield and J. Brown (eds.), *Boundaries and Energy: Problems and Prospects*, Kluwer Law International, London, 1998.