BANGLADESH-MYANMAR MARITIME BOUNDARY DELIMITATION DISPUTE

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Abstract

The International Tribunal for the Law of the Sea (ITLOS) in the judgment of Bangladesh/Myanmar maritime boundary delimitation has opened up a new chapter in the history of maritime dispute settlement. It has been introduced as a competent body in delimiting maritime boundary and succeeded in overcoming the negativity attached to the proliferation of bodies by applying methods of delimitation and developed by ICJ. This Judgment was not only constrained within the domain of law of the sea, rather it touched many substantial issues of public international law including requirements for a document to be treaty under Vienna Convention on Law of Treaty (VCLT), tacit or de facto agreement and doctrine of estoppel. Moreover, it extended the limits of delimitation of maritime dispute settlement bodies beyond 200 nm of continental shelf. The Tribunal applied different methods of delimitation for each zone taking into consideration the geographical distinctiveness and natural prolongation of the disputed area. In delimiting the territorial sea, it dealt with many disputed crucial issues before applying the pertinent method of delimitation. It juxtaposed the EEZ and continental shelves of the parties and determined to apply a single method for both zones after scrutinizing germane judicial and arbitral decisions. The application of the three tier equidistance/relevant circumstance method, long professed by ICJ, in such an area has been considered to be an achievement of equitable result. Moreover, the assurance of protection of rights of third parties and functions of other bodies without interruption in the areas beyond 200 nm continental shelf has been a bold contribution of the Tribunal in this case. This paper will mainly focus on whether the purpose of delimitation i.e. "equitable result" has been achieved by this Judgment by explaining methods applied in territorial sea, EEZ, whole continental shelf and it will be an

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attempt to look at the contribution of ITLOS to the larger aspect of maritime delimitation.

Introduction

The maritime projections of states may meet and overlap,[1] due to their close geographical proximity.[2] This is not to deny that maritime delimitation disputes can be settled amicably and there have been many instances where states have been able to arrive at political solutions through provisional agreements, often ignoring the legal route of dispute settlement.[3] In such situations, a line of separation has to be drawn which is known as 'maritime delimitation'.[4] Today maritime delimitation is of a magnitude previously unknown,[5] and the problems in this regard are both qualitatively important and numerous in nature.[6] The question of exercising sovereign rights in this area renders states to delimit their maritime boundaries and in many situations, require them to appear before dispute settlement bodies for delimitation.[7] These bodies have contributed immensely and played a predominant role in the development of the law of maritime delimitation.[8] For these very

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1 Prosper Weil, *The Law of Maritime Delimitation-Reflections* (translated from French by Maureen MacGlashan), Cambridge: Grotius, 1989, p. 3.

2 R. R. Churchill and A. V. Lowe, *The Law of the Sea*, Manchester: Manchester University Press, 1999, p. 181.

3 See, Harun ur Rashid, "Bangladesh Myanmar Maritime Boundary", at <http://www.docstoc.com/docs/37104893/Bangladesh--Myanmar-maritime-boundary-By-Barrister-Harun-ur-Rashid> (accessed on May 2, 2013)

4 See, supra note 1, p. 3. Delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination *de novo* of such an area…The process of delimitation is essentially one of drawing a boundary line between areas which already appertain to one or other of the State affected. North Sea Continental Shelf Case, 1969 ICJ Rep. para 18 and 20, February 20.

5 Ibid.

6 Ibid, p. 4.

7 These include the International Court of Justice, Permanent Court of Arbitration, and International Tribunal for the Law of the Sea and other established bodies for the purpose of delimitation between and among states.

8 Many writers emphasized the importance of case law in this field. See, supra note 2, at p. 185. Yet this does not mean that state practice is meaningless and of no consequence in the field of maritime delimitation. There is a rich state practice in this domain and the analysis of this practice is of significant importance. For state practice relating to maritime delimitation, see, J. I. Charney et. al., *International*

reasons, it is said that the legal conquest of maritime delimitation is not the work of either treaty or custom, but of the courts which are regarded as subsidiary source, but here play the role of a primary and direct source of law.[9] There is probably no other chapter of international law which has been written so exclusively and rapidly by the international courts, tribunals and other dispute settlement bodies which have managed to build up a normative system sufficiently comprehensive to govern all maritime delimitations, whether of territorial sea, Exclusive Economic Zone (EEZ) and continental shelf, so much so, it is possible today to speak of a single law- a common law- and not of the laws of maritime delimitation.[10]

The International Tribunal for the Law of the Sea (hereinafter the Tribunal),[11] has been introduced in the list of these dispute settlement bodies as a competent and effective body, particularly after its successful verdict in the sixteenth Case concerning delimitation of maritime boundary between Bangladesh and Myanmar.[12] According to The United Nations Convention on the Law of the Sea (UNCLOS), the Tribunal has the competence and means to deal with a wide range of disputes, and is well equipped to discharge its functions speedily, efficiently and cost-effectively.[13] It is to the credit of the Tribunal that it

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Maritime Boundaries, 4 volumes, Dordrecht: Martinus Nijhoff Publishers, 2002. For a comparative analysis between the case law and state practice, see, Y. Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*, Oxford: Hart Publishers, 2006.

9 Supra note 1, p. 8.

10 Ibid.

11 The International Tribunal for the Law of the Sea is an independent judicial body established by the United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of the Convention. The Tribunal is composed of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. See, P. Chandrasekhara Rao and Rahmatullah Khan (eds), *The International Tribunal for the Law of the Sea, Law and Practice*, The Hague: Kluwer Law International, 2001.

12 D.H. Anderson, "Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar) - Case No. 16", *American Journal of International Law*, vol. 106, 2012, p. 817.

13 Helmut Tuerk, "The Contribution of the International Tribunal for the Law of the Sea to International Law", *Penn State International Law Review*, vol. 26, 2007-2008, p. 315.