

The sea victory of Bangladesh: Establishment of rights in the Bay of Bengal

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Abstract

In this era of modernism the countries of the world are more conscious about their sovereignty over their own lands. Bangladesh, Myanmar and India are three neighboring countries which share the same shore of the Bay of Bengal and involved in conflict regarding their maritime border. So, to settle the conflict and maintain friendly relationship Bangladesh demanded for justice to the international tribunal and it goes through a long process and comes to an end with the victory of Bangladesh. This paper aims at figuring out the raw materials from the long history of this dispute of Bangladesh with Myanmar and India step by step with references and pointing to the way of solution which the three countries used including mutual discussion, using their geographical maps and lastly through the court or tribunal. This paper also gives a clear concept of the disputing zones with references and discusses the verdict of the court elaborately and its effect on the disputing countries, how the new area is fixed and its process of fixing, the economic benefit of the concerned area and the reaction of officials of different levels regarding the verdict and the new ownership of the maritime borders and are also linked up finally.

Keywords: Baseline; Sea Line Conflict; EEZ; PAC; ITLOS; UNCLOS.

1. Introduction

The Sea is a wonderful reservoir of limitless water. In spite of being limitless some parts of it are confined to sovereign boundary. Sometimes this border also creates dispute among the coastal countries. The dispute among Bangladesh-India-Myanmar regarding marine borders of the Bay of Bengal is such an example. With the verdict of ITLOS in 2012 and Permanent court of Arbitration (PAC) in 2014 the dispute among Bangladesh-India-Myanmar comes to an end. As a result Bangladesh gains a permanent marine border by terminating the ongoing conflict of 40 years in the issue of marine border of the Bay of Bengal which is 118813 square kilometer [2]. Bangladesh, Myanmar and India are three neighboring countries which share the same shore of Bay of Bengal. Bangladesh has conflict with the neighboring two countries regarding sea border. This dispute begins in 1974. In 1974, Bangladesh passed a law named 'The Territorial Water and Maritime Zones Act 1974'. With the third section of the law the government of Bangladesh gets the power to declare the Territorial Land then the Territorial Sea through *Gazette Notification*. According to notification Bangladesh then demands 12 nautical miles of *Territorial Sea* and 6 nautical miles of *Contiguous Zone*. Bangladesh also demands 200 nautical miles of *Exclusive Economic Zone* from baseline. But India and Myanmar opposed the declared baseline and coastal areas of Bangladesh. They demand that 20 nautical miles of Bangladesh's baseline has entered into their sea borders. This is the beginning of the dispute of Bangladesh with Myanmar and India regarding marine borders. Afterwards India and Myanmar demand in such a way that Bangladesh confined in a fictional sea border. From that time the dispute over sea borders become complex sometimes with these two neighboring countries [1, 2, 9].

2. Theoretical Discussion

2.1 Fixing the baseline of sea border

Baseline is that line from where a country starts to count its Territorial Sea. This is also called the low shoreline. According to the general idea of baseline, the low waterline of sea at the time of ebb should be considered as the baseline of a country [5].

2.2 Sea border or line

According to The International Law of Sea, sea is divided into six sections in accordance with possible available areas- Internal Water, Territorial Sea, Contiguous Zone, Exclusive Economic Zone, Continental Shelf and High Seas. According to The International Law of Sea, the available areas of coastal countries are mainly divided into three parts. This available area is 350 nautical miles or 650 km. These three parts are- 1. Territorial Sea, 2. Exclusive Economic Zone and 3. Continental Shelf. The International Law of Sea declares that this ownership will be practiced by the coastal countries using two conditions like:

- -Establishing contract among them through negotiation.
- -By taking the help of The International Law of Sea [5, 6].

2.3 Territorial sea

The area which is kept under the control of a coastal country is named as territorial sea. According to United Nations Convention on the Law of the Sea (UNCLOS) this area covers 12 nautical miles from baseline [10].

2.4 Contiguous area

12 nautical miles from the territorial sea is considered as contiguous area. So, 24 nautical miles from baseline is the area of contiguous area [6].

2.5 Exclusive Economic Zone (EEZ)

According to the Section 55, 56 and 57 of UNCLOS III, 200 nautical miles from the baseline of a country is the EEZ. The ownership of every wealth, use and development will be listed under the coastal country. So, the accumulation, management and maintenance along with construction, production of electricity from the current, maintenance of sea environment, controlling pollution and economic use of the water of this part, undernoted organic and inorganic wealth will be under the full sovereign authority of the coastal country [4].

2.6 Continental Shelf

According to UNCLOS III 150 nautical miles after the 200 nautical miles of sea is continental shelf. So the last line of it is 300 nautical miles from baseline. According to the Subsection 5 of Section 76 of UNCLOS III, the area of continental shelf of a country will be 2500 meter in depth to 100 nautical miles. By the Section 77, the country will also have sovereign right over the continental shelf like EEZ [4, 5].

2.7 High seas

High seas are the rest of the area excluding territorial sea, exclusive economic zone or internal water. Both coastal and non-coastal countries have equal rights over high seas [4, 10].

2.8 International Law of Sea

The international law of sea is known as UNCLOS III. The law was taken on December 10, 1982 and was activated on November 16, 1994. This law is called as 'Constitution of Sea'. Two UN summit was held regarding the imposition of the law of sea which were known as UNCLOS (1958) and UNCLOS II (1960). Bangladesh signed UNCLOS on December 10, 1982 and ratified it on July 27, 2001 [5, 6, 7].

3. Settling Procedure of Sea line Conflict

In the 15th chapter of the UN convention of 1982, various methods of resolving sea border dispute are mentioned. According to the 279th paragraph of the convention, the countries should settle the conflicts in a peaceful way if needed. The 283th paragraph says that the disputing groups will exchange words among themselves first. Paragraph number 284 says that, one group will invite another group to settle dispute through arbitration [4]. Hence arbitration commission will be formed according to the rules. Other steps can be taken to settle disputes if it is not possible through arbitration. Formed organizations under UNCLOS:

Three special organizations are formed under UNCLOS. They are:

- International Seabed Authority- ISA
- International Tribunal for the Law of the Sea- ITLOS
- Commission of Limits of the Continental Shelf- CLCS [4].

According to the 1st subsection of 278th section of International Law of Sea, one or more ways among the written four can be received by disputing countries to settle conflict over sea border. They are

- International Tribunal for the Law of the Sea (ITLOS)
- International Court of Justice (ICJ)
- Arbitration Tribunal
- Special Arbitration Tribunal [7, 8]

4. Sea border of Bangladesh

According to the section 3, 15 of UNCLOS III the sovereign sea line of Bangladesh will continue following the current of Hariavanga River of the west and the shoreline of India and Bangladesh keeping same distance. In reference to section no 33, this line will continue up to 24 nautical miles with adjacent areas but should not cross Swatch of No Ground. If it touch the bottomless sea, according to 76.3, 76.4 (A1, A2 and B) and 76.5 this line will continue to the deep sea through Swatch of No Ground and take a turn using the dividing line of silt of the two countries. The sovereign sea line of Bangladesh will advance keeping same distance by following the middle shoreline of Ceradip in the east of Bangladesh and the Westar island of Myanmar as it follows the section no 3, 15 of UNCLOS III. In reference to section no 33, this line will continue up to 24 nautical miles with adjacent areas but should not cross the dividing line of silt of the rivers of the two countries. So this line will continue to the deep sea using the south faced cove of Bay of Bengal maintaining 92°15' of longitude. The sea line of Bangladesh will lead to the west and east using the mentioned two lines to 350 nautical miles from the shoreline of Kuakata or Cox's Bazar, or 2500 meter in depth to the 100 nautical miles of the outer sea. But this line should not include naturally spreader seabed formed by the silt of the rivers of neighboring countries, or this line should not cross the dividing line [9, 10].

4.1 Sea line Conflict: Bangladesh-Myanmar

The main side of Bangladesh-Myanmar conflict regarding sea line was the 'Procedure of Settling Sea line'. The demand of Bangladesh was that the sea border would be settled in the base of 'Equity'. On the other hand Equidistance method was the demand of Myanmar. The pretensions of the two countries were different and it provoked methodological complexity regarding sea line. Such as

- **Myanmar's claim:** Bangladesh will receive 130 nautical miles of sea area. So there will be no EEZ. Even Bangladesh will not have any portion in the continental shelf area of the sea and the territorial sea area of Bangladesh will be 6 nautical miles.
- **Bangladesh's claim:** Bangladesh should have EEZ and will have full right over the continental shelf area of the sea. The territorial sea area of Bangladesh will be 12 nautical miles [11].
- **Reason behind case and its activity:** Bangladesh takes the case to the international court on October 8, 2009 since the dispute over sea line with Myanmar finds no solution through the bipartisan discussion in long 38 years. India and Myanmar were given notices of arbitration from Bangladesh. Both India and Myanmar replied to the notices for the settlement of sea line dispute but Myanmar rejected to have bipartisan discussion with Bangladesh and wanted to solve it by ITLOS [1]. Following the rules Myanmar and Bangladesh file cases in ITLOS on December 14, 2009. Then in July 1st, 2010 Bangladesh and in December 1st, 2010 Myanmar submit their documents explaining own stand. In the September of 2011 the hearings were taken in two rounds. In first round from September 8 to 13 the oral hearings of Bangladesh was recorded and from September 15 to 20 it was the turn for Myanmar. Bangladesh gave its statement

for the second round in 21 and 22 September before the tribunal. Myanmar did the same in September 24 and 25. Then the tribunal fixed the date of verdict on March 14, 2012 ^[2, 3].

- **Bangladesh Gets:** 200 nautical miles of EEZ, full authority over enlarged continental shelf after EEZ, the right to collect wealth's including oil and gas from the sea and right over the wealth of deep sea and sea bed ^[3].
- **Another Bangladesh in Sea:** It is said in the verdict of ITLOS that the seacoast of Bangladesh is 413 km long and 587 km of Myanmar, which is 1:1.42. According to that Bangladesh deserves 1, 11,631 Square-kilometers and Myanmar deserves 1, 71,832 Square-kilometers. The sea area that Bangladesh has got is seem to be another Bangladesh as the total Bangladesh is 1, 47,570. Square-kilometers
- **Ownership of 18 Blocks:** Bangladesh sets policy in quest of oil, gas up taking them from the 28 blocks of the sea but doesn't succeed since Myanmar and India claim that these blocks are under their ownership. They assert that 27 out of 28 blocks are of their own. For this verdict now Bangladesh owns at least 18 blocks.
- **Reaction of the Foreign Minister of Bangladesh:** It is a matter of pride and joy for Bangladesh as it has established sovereignty over the wealth and tide of the Bay of Bengal. The foreign minister Dr. Dipu Moni expressed her reaction to The Daily Prothom-Alo in this way that, "ETLOS has given the verdict in the scale of legality and Bangladesh has got what it demanded". She also said that the sovereignty of elaborated Continental Shelf is settled as it is verdicts. Now the dispute regarding the sea border of Bangladesh will be settled when CLCS will settle the border of outer areas and Bangladesh can start questing Oil, Gas and other wealth in the sea. Dr. Dip Moni was asked if this verdict will affect the relationship with Myanmar and she said that she didn't think so and this will be helpful for the two neighboring countries to work together in future. She added that this is not only the victory for Bangladesh but also Myanmar. Moreover through this verdict the two countries had settled the long ongoing conflict in a peaceful way ^[3].
- **A-Z study is needed for calculation:** To calculate how much benefited Bangladesh is by the verdict of ITLOS, a-z analysis is needed as the concerned personnel's and analyzers commented regarding the settlement of sea border dispute. Bangladesh has got 200 nautical miles of special economic zone from the coast and along with this the continental shelf area and more other areas with wealth are also under the authority of it according to the verdict. On the other hand the ambassador of Myanmar Uminluin of that time said in Dhaka that both of the countries had won the situation and this will not affect the relationships between themselves.
- According to researcher M Habibur Rahman of Max Plank Institute of International and Comparative Law of Germany through the verdict the legal right of Bangladesh has been established. Prof. M Habibur Rahman of the faculty of law of Rajshahi University said, 'United Nations Convention on the Law of the Sea 1982 gives the right over 12 nautical miles of marine area to all

the neighboring countries. We have established our right in the tribunal by the law. We should focus on it in the light of law and think that India, Bangladesh and Myanmar own the Bay of Bengal.

- **Victory of Logic and Legality:** According to former foreign secretary Faruk Chowdhury the verdict that is given by ITLOS regarding Bangladesh-Myanmar sea line conflict is a good news undoubtedly. The decision that Prime minister Sheikh Hasina had taken was risky but brave, timely and provident and this is a precious gift for the future generation. We start a bipartisan discussion in former Rengun with Myanmar. At that time I was working under the High Commission in London and was enjoying vacation in Dhaka. The Prime minister Bangabandhu Sheikh Mujibur Rahman then ordered me to cancel the vacation and to join the representative group of Bangladesh as a member. Ambassador Khaja Mohammad Kaiser was our group captain ^[2].

4.2 Sea line Conflict: Bangladesh-India

The settling case of sea line of Bangladesh-India was settled in Permanent Court of Arbitration (PAC). Bangladesh took the case to PAC in October 8, 2009. Bangladesh submitted memorial with its disclaimer in this court in May 31, 2011 under Anex-7 of UNCLOS-III. India submitted counter memorial within July 31, 2012. Bangladesh replied to this in January 2013 and India rejoined in July 2013. Then the court gave the verdict in July 7, 2014 after oral hearings ^[2, 4].

4.3 Why the Court of Arbitration not ITLOS

According to the subsection 1 of section 287 of UNCLOS a country can choose a way among four to resolve sea line conflict. Bangladesh submits the issue in the court and India supports it. On the other hand the issue regarding Bangladesh-Myanmar sea line conflict finds its way to ITLOS on scale of negotiation. India decides not to go to ITLOS and that's why the settlement of India-Bangladesh sea line conflict resolved in PAC.

- **Bangladesh-India Sea line Conflict:** The main reason of the conflict between India and Bangladesh was fixing the starting point of the waterline. The conflict was also in the process of drawing the sea line from the main point of the land line. Bangladesh asserts 180° straight line from the main point of land line to the sea. On the other hand the logic of India was, this line would be 162° considering shoreline ^[2].
- **Filing the Case:** The discussion of the settlement of the sea line conflict between Bangladesh and India started in 1974. Then it was stopped for two and half decades and started again in the beginning of 2008. But Bangladesh decided to go to PAC since there was no progress. Then Bangladesh applied in the PCA of The Hague, Netherlands without informing India. Though the history of resolving these types of conflict is old but after the activation of UNCLOS in 1994, the settlement of the conflict of Bangladesh and India was the 13th one.
- **Panel of Judiciary:** The 5 members who were in charge of running the court regarding Bangladesh-India issue are-President RuddyzerUlfram (Germany), Jean Pierre Kot (France), George Thomas A Mensha (Ghana), Professor Ivan Shiarar (Australia) and Dr. Premaraju

Sreenibasha Rao (India). Among them the one from Ghana was selected by Bangladesh and India selects Dr. Rao. The others are selected by the Secretary General of ITLOS. Hearing: Bangladesh presents its arguments before PCA in May 31, 2011. And India presents counter arguments in July 2012 in written form. Bangladesh submitted memorial with its disclaimer in this court in January 31, 2013. India submitted counter memorial within July 31, 2013. Then final hearing of the case was arranged within 9 to 18 December, 2013.

- **Publishing Verdict:** After the hearing is done the court says that the verdict will be given after 6 months according to the section 15 of the working procedure. In July 7, 2014 the PAC formally handed over the verdict to the countries and it was published the next day. The 181 pages of the verdict mentions the sea line of Bangladesh and India including the issue of starting point of sea border, identifying Territorial sea zone, exclusive economic zone and 200 nautical miles of the Continental Shelf. It is activated from the day of verdict ^[2].

Achievements of Bangladesh

Bangladesh has successfully established its sovereignty over a huge area because of this verdict. According to this verdict the conflicting 25, 60 square-kilometers 2, areas of Bay of Bengal will be divided between India and Bangladesh respectively in 613 square-kilometers 5 and 1 square-kilometers 9467. Bangladesh has established its sovereign rights over 1, 18, 813 of square-kilometers territorial sea, 200 nautical miles of economic zone and 354 nautical miles of continental shelf zone from Chittagong sea coast and its biological and mineral resources.

- **Most of the Gas blocks belong to Bangladesh:** Most of the blocks among 28 are now under the authority of Bangladesh which was divided by the Government of Bangladesh. Bangladesh gets 11 blocks of conflicted 17 blocks from Myanmar and gets all of 10 blocks from

India. One block was owned by Bangladesh from the beginning.

- **Bangladesh-India area settlement:** The Permanent Court of Arbitration settled Bangladesh-India sea border considering their demands. The sea border of the two countries will start from 21°38'40.2" Northern Latitude to 89°09'20" Eastern Longitude according to the map by Sir Siril Redcliff at the time of Partition period in 1947. Then this line will continue to the deep sea in South maintaining 21°26'43.6" Northern Latitude, 89°10'59.2" Eastern Longitude and 21°07'44.8" Northern Latitude, and 89°13'56.5" Eastern Longitude. This line will be connected with the sea line of Bangladesh-Myanmar from 89°13'56" Eastern Longitude to 177°30' Eastern Longitude ^[3].
- **South Talpatti of India:** The Island that was formed in the sea borders of Bangladesh and India named South Talpatti Island and after the devastating cyclone of 1970 demolished by the Urichor cyclone in 1985 in the sea. Though the island doesn't exist it is now under India because of the verdict. The following figure shows that's a 'Great Win' for Bangladesh.
- Foreign Minister AH Mahmood Ali disclosed the verdict of the case related to the maritime dispute between Bangladesh and India. He briefed the journalists over the verdict of the case at the Foreign Ministry on Tuesday afternoon. "According to the verdict, Bangladesh has finally won more than 1,18,813 square kilometers of waters comprising territorial sea, exclusive economic zone extending out to 200 nautical mile (NM) across sizable area," Ali said. He mentioned the verdict as a win for both the countries. "This is a victory of friendship between Bangladesh and India. The Maritime dispute between the two countries has come to an end following the verdict," said Mahmood Ali. The minister said the verdict would take the relationship between the two neighboring countries one step forward ^[3, 5].

The following figure shows that's a 'Great Win' for Bangladesh:

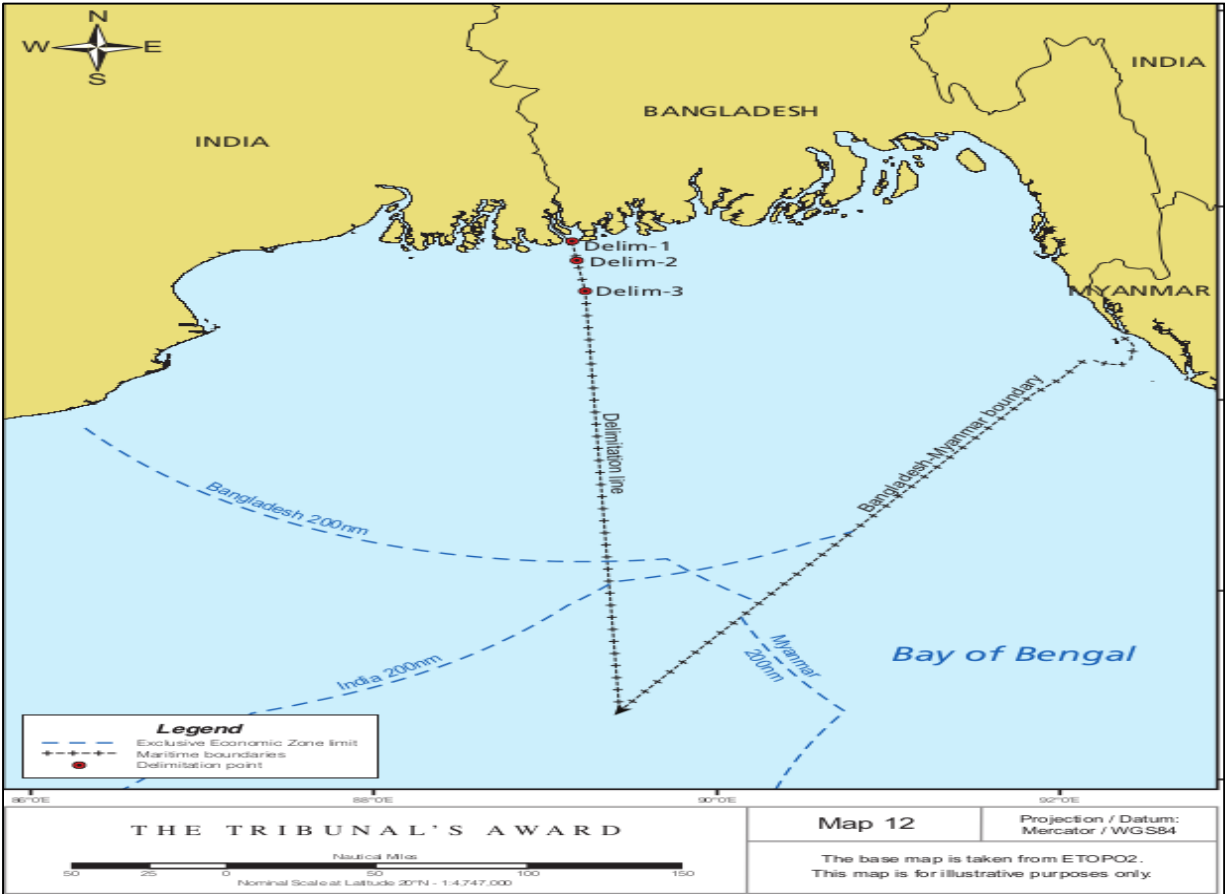


Fig: Bangladesh gets 19,467 square-kilometers in the Bay of Bengal

The Institute of Marine Science of Chittagong University has published the complete new map of the sea line of Bangladesh. The map was made in the context of Bangladesh-India case regarding sea line. This is the first complete Marina map of Bangladesh. The map named 'Sea State of Bangladesh' was submitted to the vice chancellor of the university Md. Anwarul Azim Arif by the researcher of the institute on July 16, 2014.

The map also shows the possible quantity of the wealth of different areas. The sea area of Bangladesh that is shown in the map is 121110. It is spreader 42700square- kilometers in the area of the depth of 10 to 200 meters. And it is 44383square- kilometers in the area which is 200 to 2100 or 2500 meter in depth. Among them the area of deeper sea is 10644 square- kilometers and depth is 2100 to 2500 meter. The deeper sea area covers 36.6% of the total sea. The map also gives the idea of possible wealth in certain areas. The researchers use some information of international organizations at the time of making the map. The notables were- the verdict of ITLOS in '2012, NOAH, GEBKO, Bay of Bengal Large Marine Eco-system project', UNCLOS. Apart from that experts took help from the organization *Natural Earth* and Ichnographical as well as Geological journals.

Conclusion

Paper clears that Bangladesh was eager to settle the dispute with the neighboring countries as it was certain of its authority over the area and had enough proof regarding this.

With this verdict Bangladesh has established its desired authority over the area of sea and finally able to create a new border with economic values. This victory is like a triumph of truth over falsehood, the victory of common people and of Bangladesh itself. The ending of the conflict among the countries creates a peaceful environment for business in the sea and Bangladesh is the pioneer in this issue and worthy of being saluted. This verdict will not only inspire other countries to take their problems to the tribunal but also assures them that this is the place where they can get proper justice.

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