

Resolution of the Maritime Boundaries Dispute Between Bangladesh and its Neighbouring Countries in the Context of UNCLOS: A Case Study

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2010-2011**



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Abstract

Bangladesh is a developing country, which borders the sea Bay of Bengal, which is an integral part of the Indian Ocean. Bangladesh is a party to the United Nations Convention on the Law of the Sea, 1982. The configuration of its coast is concave whereas that of the adjoining neighbours (Myanmar and India) is convex. In view of the fact that certain sea zones such as the Exclusive Economic Zone and the Continental Shelf extend to 200 nautical miles from the baselines, Bangladeshi zones overlap in part with the zones of the neighbouring States.

The research will consider the "Resolution of the Maritime Boundaries Dispute Between Bangladesh and its Neighbouring Countries in the Context of UNCLOS: A Case Study". It will also critically consider the problems of deciding on the sovereignty over the South Talpatty, a new born island within the maritime zone of Bangladesh.

The following matters are to be discussed within the research:

- the system for the peaceful settlement of disputes established by the UNCLOS;
- the applicable provisions of international law taking also in consideration the relevant jurisprudence of the International Court of Justice and International Tribunals (equidistance, equitable criteria, relevant circumstances in practical matters);
- update and improvement, if appropriate, of the Bangladeshi legislation on maritime zones ;
- consider, as a case study, the pending dispute of maritime boundaries delimitation between Bangladesh and its neighbouring countries (India and Myanmar); and
- consider the procedural aspects of the pending disputes between Bangladesh and its neighbouring countries and how future decision by the International Tribunal for the Law of the Sea is to be implemented.

In a developing State like Bangladesh the importance of implementation of the Law of the Sea and the Maritime Zones Law* is immense. The research will consider the merit of peaceful settlement of maritime boundaries disputes and the relevant decisions which can be implemented at the domestic level through legislative and regulatory instruments. Perhaps the research also will influence future policy making and will contribute effectively to the development of Bangladesh's maritime sector.

* The Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974).

Disclaimer

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Dedication

To my father late Mir Wahab Ali, mother Mrs. Noor Jahan Begum, elder brothers, Dr. Mir Jamal Uddin, Advocate M. M. Joynal Abedin, and Mir Md. Ruhul Amin, son Mahir Faisal Monan, daughter Medha Mahjabin and above all to my beloved wife Mrs. Mustari Sultana (Mita): without her support my fellowship wouldn't have been come into view.

Acknowledgements

I wish to express my thanks and gratitude to the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, United Nations and The Nippon Foundation of Japan for giving me the opportunity to receive the valuable experience and knowledge in the field of the Law of the Sea. This study would not have been feasible without the support of the United Nations and the University of Milan-Bicocca, Italy, funding from The Nippon Foundation of Japan.

I would like to express my heartfelt thanks and gratitude to my Supervisor Dr. Tullio Scovazzi, Professor, Department of National and European Institutions, University of Milan-Bicocca, Italy, for his constant support and advice to prepare the research paper on "**Resolution of the Maritime Boundaries Dispute Between Bangladesh and its Neighbouring Countries in the Context of UNCLOS: A Case Study**".

I sincerely express my deep thanks and appreciation to my Co- Supervisor Dr. Francois N. Bailet, Programme Advisor, United Nations-The Nippon Foundation of Japan Fellowship Programme, for his assistance and kind support, and to other staff of the United Nations for facilitating monthly financial support.

I would like to acknowledge the tremendous influence of my brothers, Dr. Mir. Jamal Uddin, Professor (Cardiology), National Institute of Cardiovascular Diseases and Hospital, Dhaka, Bangladesh, and Mr. M. M. Joynal Abedin, Advocate, Bangladesh Supreme Court, without whom the journey of my legal education would have been a mirage.

I am highly obliged to my employer, the Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs, Government of the

People's Republic of Bangladesh for giving me the opportunity to attend such a prestigious fellowship program. I would also like to thank to my family, friends and well wishers for their patience, understanding and encouragement.

I wish to extend my heartfelt thanks to the staff of the Department of National and European Institutions and staff of central library of University of Milan-Bicocca, Italy for their constant support. I also like to extend my thanks to the Director and staff of the library of IMO-International Maritime Law Institute, Malta for their kind support.

During my placement in Italy and New York, I had so many friends who made my life more pleasant and comfortable. I like to use this opportunity to thank all of them for their kind-heartedness.

In the end, I acknowledge everybody whose name cannot be mentioned one by one in this acknowledgment.

Mohammad Mohiuddin
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2010-2011

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AJIL	American Journal of International Law
Bcf	Billion cubic feet

BOBLME	Bay of Bengal Large Marine Ecosystem
CS	Continental Shelf
CLCS	Commission on the Limit of the Continental Shelf
CZ	Contiguous Zone
ECOWAS	Economic Community of West African States
EEZ	Exclusive Economic Zone
Equidistance Line	A line composed of relatively short segments connecting points that are equidistance from the normal baselines, or from claimed (or assumed) baselines from which the breadth of the territorial sea is measured. This is some times called a median line
Erga omnes	Opposable to, valid against, 'the entire world', i.e. all other legal persons, irrespective of consent on the part of those thus effected
Erosion	The gradual and imperceptible washing away of the land along the sea by nature
FAO	Food and Agricultural Organization
Force majeure	Under the influence of duress
FRG	Federal Republic of Germany
FY	Financial Year
GEF	Global Environment Facility
HS	High Sea
ILC	(United Nations) International Law Commission
ILM	International Legal Materials
IOC	International Oil Company
Ipsa jur	By the Law itself; by the mere operation of law
ITLOS	International Tribunal for the Law of the Sea
ICJ	International Court of Justice

IMO	(United Nations) International Maritime Organization
Jus cogens	Per-emptory norms of general international law
LMEs	Large Marine Ecosystems
LNG	Liquefied natural gas
Mare Clausum	The sea under the jurisdiction of a particular country
Mare Liberum	The sea open to all nations
Mmcf	Million cubic feet of gas
OAU	Organization of African Unity
PICJ	Permanent International Court of Justice
Prima facie	In principle; presumptively
PSC	Production Sharing Contract
Res judicata	The principle that an issue decided by a court should not be reopened
Res nullius	An asset susceptible of acquisition but presently under the ownership or sovereignty of no legal person
RIAA	United Nations Reports of International Arbitral Awards
RGDIP	Revue generale de droit international public
SBDC	Sea-Bed Dispute Chamber
tcf	Trillion cubic feet
TS	Territorial Sea
TS and CZ Convention	Convention on the Territorial Sea and the Contiguous Zone, 1958
Ultra vires	Unauthorised by legal authority
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea,1982
UNCLOS I	First United Nations Conference on the Law of the Sea,1958
UNCLOS II	Second United Nations Conference on the Law of the Sea, 1960

UNCLOS III Third United Nations Conference on the Law of the Sea, 1982
USGS United States Geological Survey

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Introduction

Every State in the world has economic, political, strategic and social interests in the oceans. These interests are manifested through a variety of maritime activities – including fishing, shipping, hydrocarbon and mineral extraction and marine scientific research. The uses of the oceans have significantly expanded since those times when maritime areas were solely regarded as trading routes and considered as a common space fraught with inexhaustible resources. The changes that took place over the last century have led to the development of a complex pattern of ownership of maritime spaces and control of maritime activities in turn.

As other States do, Bangladesh also needs to exercise a lawful claim to gain access to the resources of the sea, in this specific case that of the Bay of Bengal, in order to accelerate its economic development. However, a long-standing dispute over maritime boundary delimitation between Bangladesh and its neighboring countries might pose a major obstacle on the way to such development.¹ The United Nations Convention on the Law of the Sea (hereinafter UNCLOS or Convention)² is one of the more far reaching and full encompassing conventional instruments in international law. Not only does this treaty regulate the uses of the world's oceans, but it also contains a mandatory dispute settlement system in case disputes arise among States in matters pertaining the oceans and their resources. As a result, it can be affirmed that the significance of UNCLOS is not only found

¹ Shah Alam and Faruque, "The Problem of Delimitation of Bangladesh's Maritime Boundaries with India and Myanmar: Prospects for a Solution", *International Journal of Marine and Coastal Law*, Leiden, 2010, p. 405.

² UNCLOS was adopted on 30 April 1982 as the result of the long nine years of tireless negotiation took place at the Third United Nations Conference on the Law of the Sea. The UNCLOS came into force on 16 November 1994 and currently 161 countries are parties to the LOS Convention (source: http://www.un.org/depts/los/reference_files/status2011.pdf).

in its numerous provisions relating to human activities in all maritime zones, but also in the procedures it provides for States to resolve their differences in respect of competing claims. In this later respect, the creation of a dispute resolution system entailing compulsory procedures has been hailed by Governments and scholars as one of the most significant developments relating to dispute settlement in international law.³

Charney, among others, considered that the Convention contains “the most significant regime for the settlement of disputes, in general, found in modern multilateral agreements.”⁴ It is worth recalling that at the conclusion of the third United Nations Conference on the Law of the Sea (hereinafter UNCLOS III), the appointed President proclaimed, “the world community’s interest in the peaceful settlement of disputes and the prevention of use of force in the settlement of disputes between States have been advanced by the mandatory system of dispute settlement in the Convention.”⁵

Regardless of these observations, some skepticism on the settlement of disputes system envisaged by UNCLOS has been expressed. Oda, for instance, argued that the exceptions and ambiguities render the mechanism comparable to traditional consent-based methods of dispute settlement.⁶ Doubts have also been expressed about how inclusive the available procedures truly are. It is interesting

³ See: e.g., Alan, “Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction,” *International and Comparative Law Quarterly*, 1997, p. 37; Louis, “Settlement of Law of the Sea Disputes,” *International Journal of Marine and Coastal Law*, 1995, p.205; and Kindt, “Dispute Settlement in International Environmental Issues: The Model Provided by the 1982 Convention on the Law of the Sea,” *Vand. Journal of Transnational Law*, 1989, pp. 1097-99.

⁴ Charney, “Entry into Force of the 1982 Convention on the Law of the Sea,” *Vand. Journal of International Law*, 1995, pp. 389-90.

⁵ Statement by the President, in *Third United Nations Conference on the Law of the Sea: Official Records* at 13, p. 48, UN Sales No. E. 84.V. 3, 1984.

⁶ Oda, “Some Reflections on the Dispute Settlement Clauses in the United Nations Convention on the Law of the Sea,” in Jerzy Makarczyk (ed.), *Essays in International Law in Honour of Judge Manfred Lachs*, 1984, pp. 645, 655; See also: Gamble, “The Law of the Sea Conference: Dispute

to note that in the *Southern Blue fin Tuna* case the established tribunal analyzed the dispute settlement system under UNCLOS when noting that the tendency of States is to claim more sovereignty over the oceans rather than relinquish that sovereignty to third-party dispute settlement.⁷ Be that as it may, UNCLOS certainly reflects a new era in international relations, including with respect to dispute resolution.

Among the issues that can trigger disputes to arise among States, there is the application of the provisions in UNCLOS relating to the delimitation of maritime boundaries. As it is known, UNCLOS has recognized the concept of the Exclusive Economic Zone (hereinafter EEZ) within which the coastal States enjoy exclusive sovereign right in relation to the exploration and exploitation, conservation and management of the natural resources and related jurisdictional rights⁸ up to 200 nautical miles (hereinafter M) from their coasts. Under UNCLOS States are also recognized rights over their continental shelves up to 200 M and beyond, if they extend the limits of their continental shelf in accordance with relevant provisions of the Convention. It is incidentally worth pointing out that the EEZ and the continental shelf endows the coastal State with the power to explore and exploit the natural resources found therein.

In the case of Bangladesh, the issue of extended maritime boundaries, and its consequential interest in the exploitation of natural resources, has caused international frictions with Myanmar and India. Bangladesh, which has arguably

Settlement in Perspective," *Vand. Journal of International Law*, 1976, pp. 323-341; and Guillaume, "The Future of International Judicial Institutions," *International and Comparative Law Quarterly*, 1995, p. 848.

⁷ *Southern Blue fin Tuna* cases, *Australia and New Zealand -Japan*, Award on Jurisdiction and Admissibility, (*Australia - Japan; New Zealand - Japan*) (Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea, August 4, 2000), 39 ILM 1359 (2000), par. 62. ("It thus appears to the Tribunal that UNCLOS falls significantly short of establishing a truly comprehensive regime of compulsory jurisdiction entailing binding decisions.")

⁸ UNCLOS, arts. 56-7.

no other natural resources besides gas, has a great interest in the exploitation of what the sea has to offer.

However, the effort by Bangladesh to turn to the exploitation of those resources potentially found therein is being complicated by the moves of neighboring countries which have been laying entitlement on the Large Marine Ecosystem of the Bay of Bengal. In fact, both Myanmar and India apparently disregarded a claim by Bangladesh dated 1974.⁹ Although it is understandable that both the said countries will try to explore the areas under their sovereignty in the search for oil and gas,¹⁰ when extending their search they would expected to take into account the competing rights of other States, including those of Bangladesh. Under the Territorial Waters and Maritime Zones Act (1974)¹¹ (hereinafter the Bangladesh's 1974), Bangladesh asserted the limits of its territorial seas up to 12 M and then went on to claim other zones (continental shelf and EEZ) up to 200 M measured from the baselines.¹²

Bangladesh's claim to maritime zones consists of two parallel lines extending southward on the meridians of the longitude from baselines corresponding to its coastline up to the outer limits of the continental shelf. Due to the overlapping claims of India and Myanmar, Bangladesh has eventually resolved to protect its interests in gas and oil which could be found in the maritime zones identified by the 1974 Act.¹³ This is because, Bangladesh being a coastal State in the hinterland of the Bay of Bengal, delimitation of each and every zone with India and Myanmar is necessary. In light of the fact that there are no agreed delimitations with

⁹ Khurshed Alam, "Maritime boundary dispute and oil and gas exploration in the Bay of the Bengal", *The Daily Star*, August 2, 2008.

¹⁰ Harunur Rashid, "Demarcating maritime zones in the Bay of Bengal", *The Daily Star*, September 25, 2007.

¹¹ Act No. XXVI of 1974.

¹² India and Myanmar followed suit and enacted similar laws in 1976 and 1977, respectively.

¹³ Harunur Rashid, "Bangladesh goes to court", *The Daily Star*, June 28, 2010.

Myanmar and India however, any such move made on a unilateral basis inevitably gives rise to misunderstanding and conflict.

Disagreement with India first arose in 1974¹⁴ when it is founded that the Bangladeshi Government signed agreements with six foreign oil companies whereby Bangladesh granted oil and natural gas exploration rights in its territorial waters.¹⁵ Whereas the Bangladeshi sea lane moved toward the south from the edge of its land boundary, that of India subsequently took south easterly direction creating an angle within which thousands of square miles of the Bay of Bengal were encompassed; over this very area both parties claimed their EEZs. Although negotiations have been on going since then, Bangladesh and India have not yet been able to settle the delimitation problem, mainly because of the concave nature of the Bangladeshi coast.

To shed further light on this quarrel, the issue of the South Talpatty Island should be examined. The boundary between Bangladesh and India is the midstream of the main channel of the river Haribhanga. The island, formed in the estuary of the border river Haribhanga and the Bangladesh internal river Raimangal, is new terrain which initially arose as a low tide elevation.¹⁶ The island is known in Bangladesh as South Talpatty whilst in India it is known as New Moore or Purbasha. Bangladeshi claims to this island have been based on the assumption that the midstream of the border river Haribhanga flows to the west of the island, while India claims acquisition on the assumption that the midstream flows to the

¹⁴ Khurshed Alam, *Bangladesh's Maritime Challenges in the 21st Century*, Dhaka, Bangladesh, 2004, p. 250.

¹⁵ Harunur Rashid, "Demarcating maritime zones in the Bay of Bengal", *The Daily Star*, September 25, 2007.

¹⁶ Mohiuddin, *Settlement of Maritime Delimitation Dispute in the context of UNCLOS: The Sea Bay of Bengal and the South Talpatty Island Perspective*, dissertation submitted to the International Tribunal for the Law of the Sea (ITLOS), in partial fulfilment of the requirements for the *Legal Internship with the ITLOS*, Hamburg, Germany, October, 2009, p. 23.

east of the island. Clearly, any claim on the island by the two countries needs to be settled in order to permit peaceful exploration and exploitation of natural resources within the Bay of Bengal.

Maritime boundary disputes between Bangladesh and Myanmar on the other hand have become very serious to the extent that they turned out to be among the more diplomatically intense in Asia. These disputes represent a noteworthy challenge that, from a legal point of view, will involve India and could also involve China.¹⁷ At present, these two countries are actively pursuing maritime boundary agreements through bilateral negotiations and the International Tribunal for the Law of the Sea (hereinafter ITLOS or the Tribunal).¹⁸

This research paper will begin with a discussion on the potential resolution of the maritime boundaries dispute between Bangladesh and its neighboring countries against the background of UNCLOS. It will then critically consider the problems of deciding on the sovereignty over the South Talpatty island. In this respect, the paper will examine the relevant provisions of existing International Law of the Sea, as well as relevant domestic law, in order to investigate options for the satisfactory management of the present and future problems concerning the resources found in the overlapping areas of the Bay of Bengal. In the conclusions, a strategic approach for policy building and specific recommendations to resolve the crisis will be proposed.

Part I

Chapter I

¹⁷ Bissinger, "The Maritime Boundary Dispute between Bangladesh and Myanmar: Motivation, Potential solution, and Implications", *Asia Policy*, July, 2010, p. 105.

¹⁸ Both venues will likely address important legal principles, such as maritime baselines and equity and equidistance principles, which are used in defining EEZ and continental shelf claims.

Bangladesh and the Sea Bay of Bengal

1.1. Bangladesh and its Historical Background

Bangladesh is a country with its population of about 150 million living in a land territory of 55,598 square miles (147,570 sq. km).¹⁹ On 16 December 1971,²⁰ after a nine month war of independence, it became an independent and sovereign republic and is officially called the People's Republic of Bangladesh.²¹



Figure 1: Geographical map of Bangladesh.

Source: www.greenwichmeantime.com/bangladesh/map.htm.

Prior to the creation of Pakistan in 1947, Bangladesh was part of India. Since independence, the Government has experienced periods of democratic and

¹⁹ Harunur Rashid, "Sea boundary of Bangladesh: A Legal view", *The Daily Star*, February 29, 2004, p. 1.

²⁰ Mintu, *Bangladesh: Sketch map of Change*, Dhaka, Bangladesh, 2004, pp. 13-14.

²¹ See: Figure 1.

military dictatorship. The founding leader of the country and its first president was Sheikh Mujibur Rahman. His daughter Sheikh Hasina Wazed is currently the elected Prime Minister of Bangladesh, in the capacity of leader of the Awami League. Though it is a modern State, the history of Bangladesh can be traced back to about 100BC. The country had been under Muslim monarchy for five and half centuries before it became a British colony in 1757.²² During the British period, it was part of the Indian Provinces of Bengal and Assam.²³

1.2. Mineral Resources in Bangladesh

Bangladesh occupies a greater part of the Bengal basin and the country is covered by tertiary folded sedimentary rocks (12%) in the north, north eastern and eastern parts; uplifted Pleistocene residuum (8%) in the north western, mid northern and eastern parts; and Holocene deposits (80%) consisting of unconsolidated sand, silt and clay. The oldest exposed rock is the Tura Sandstone of Palaeocene age but older rocks like Mesozoic, Palaeozoic and Precambrian basement have been encountered in the drill holes in the north western part of the country.²⁴

Because of a different geological environment, important mineral deposits of Bangladesh include natural gas, limestone, hard rock, gravel, boulder, glass sand, construction sand, white clay, brick clay, peat, and beach sand heavy minerals. Tertiary Barail shales occurring within the oil and gas windows have generated natural gas and oil found in Bangladesh. After generation, gas and oil have migrated upward through multi-kilometre rock layers above, to reach and accumulate in suitable sand stone reservoirs in the Neogene Bhuban and Bokabil rock units. Gravel, glass sand, construction sand, peat, and beach sand are found

²² Halim, *The Legal System of Bangladesh, Dhaka, Bangladesh*, 3rd edition, 2008, p. 37; See also: Habibur Rahman, *Delimitation of Maritime Boundaries*, Rajshahi, Bangladesh, 1991, p. 273.

²³ Akas, *Economy of Bangladesh: Past Present and Future*, Dhaka, Bangladesh, February, 2004, pp. 215-233.

²⁴ Khurshed Alam, *Bangladesh's Maritime Challenges in the 21st Century*, *op. cit.*, pp. 176-81.

in the Holocene sediments, and white clay (kaolin) is found in the late Pleistocene sediments in the small hills mainly in the northern part of the country.²⁵

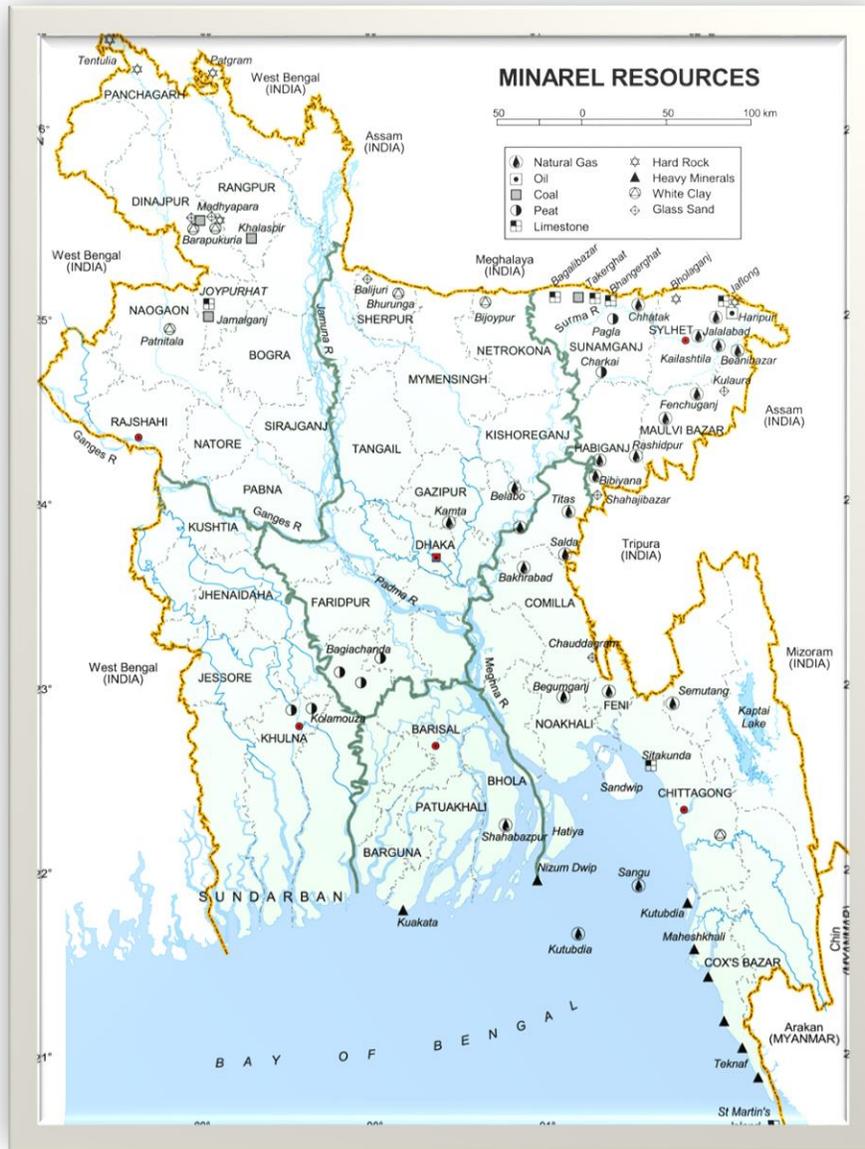


Figure 2: Mineral resources in Bangladesh.
Source: www. banglapedia.org.

White clay and glass sand deposits have also been discovered in the north-western part below the surface. Exploitation of the deposits of limestone, construction

²⁵ Ibid.

sand, gravel, glass sand, white clay and beach sand occur through small scale quarrying. The subsurface white clay and glass sand deposits have not been mined yet. Developments of subsurface coal and hard rock mines are on going.²⁶

Till date, there are 23 discovered gas fields in Bangladesh of various sizes. The gas initial in place (hereinafter GIIP) was estimated as 29.235 trillion cubic feet (hereinafter tcf) out of which estimated proven recoverable reserve (P1) was estimated as 15.584 tcf. As of June 2009 as much as 8.376 tcf gas has already been produced leaving only 7.208 tcf of recoverable gas. Moreover, 23 gas fields have reserves of 5.471 tcf under 'Probable' (P2) and 7.691 tcf under 'Possible' (P3) categories. Presently, 79 wells located in 17 gas fields are in production. A total of 526.72 billion cubic feet (hereinafter bcf) gas was produced in the Fiscal Year (hereinafter FY) 2005-2006, while in the FY 2006-2007 total gas production was 562.13 bcf, in FY 2007-2008 total gas production was 600.86 bcf and in FY 2008-2009 it was 653.89 bcf. The production growth rate varied from 6.7% to 8.8%.²⁷

If the future demand of gas rises at this rate, we can continue up to 2011 with the remaining proven reserve and from then onwards, there will be a growing mismatch between supply and demand. If we can bring the provable category into reserve then we can continue up to 2015 and if possible category can be turned into reserve, the shortfall would start from 2019.²⁸

At present, natural gas accounts for more than 70% of the total commercial energy consumption and the major part of the future energy demand would be met from it. Power sector ranks the highest (44%); fertiliser sector ranks the second (28%);

²⁶ National Encyclopedia of Bangladesh: www.banglapedia.org.

²⁷ Annual Report 2008, PETROBANGLA, Bangladesh Oil Gas and Mineral Corporation, pp. 8-10.

²⁸ Ibid.

and industry, domestic, commercial and other sectors together rank third (22%) in gas consumption.²⁹

In Bangladesh, oil and gas are an economic resource and are vital for the survival of a huge amount of people of the country.³⁰ Gas is a major source of revenue and employment for expanding industrial growth. Bangladesh has recently been facing shortages of gas; although it currently produces 1750 million cubic feet of gas (hereinafter mmcf) a day, the country faces shortage of nearly 200mmcf in its domestic consumption. This situation exists despite the existence of hydrocarbon in Bangladesh.³¹

1.3. Geography of the Bay of Bengal

The Bay of Bengal is a wing of the Indian Ocean, 1,300 miles (2,090 km) long and 1,000 miles (1,610 km) wide. The floor of the Bay of Bengal is characterized by a number of topographical features, namely the Ninety East Ridge, the Bengal Deep Sea Fan, the Nicobar Fan, the Swatch of No Ground and the Myanmar trench.³² The Andaman and Nicobar Islands separate the Bay from the Andaman Sea,³³ its eastern arm.³⁴ It is surrounded by eight countries, Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, Sri Lanka and Thailand. The southern part of the Bay merges into the Indian Ocean.³⁵ About one quarter of the world's population

²⁹ Ibid.

³⁰ Shoaib Choudhury, "Bangladesh Starts Reacting to Maritime Dispute", *ITSSD Journal on the UN Law of the Sea Convention*, October 9, 2009.

³¹ Ibid.

³² McKenzie and Selater, "The evolution of the Indian Ocean since the Late Cretaceous", *Geophys. Journal*, 1971, pp. 437-528.

³³ The Andaman Sea is the eastern extension of the Bay of Bengal bounded by the Andaman and Nicobar Islands, Myanmar, the Malay Peninsula, and the Strait of Malacca and Sumatra, it covers some 308,000 sq miles (798,000 sq km).

³⁴ See: Columbia electronic encyclopedia, 6th edition: <http://www.factmonster.com/encyclopedia/ce6staff.html>.

³⁵ See: FAO, Bay of Bengal large eco system website: www.fao.org/fi/oldsite/BOBLME/website/prospectus.htm.

resides in the littoral countries of the Bay of Bengal, with approximately 400 million living in the bay's catchments areas.³⁶

The Bay of Bengal's surface hydrology is basically determined by the monsoon winds and to some extent by the hydrological characteristics of the open part of the Indian Ocean. Fresh water from the rivers largely influences the coastal northern part of the Bay. The rivers of Bangladesh discharge a vast amount of fresh water into the Bay (1,222 million cubic meters). The temperature, salinity and density of the water of the southern part of the Bay of Bengal are almost the same as in the open part of the ocean. The waves and ripples entering from the southern part of the Bay provide the energy for mixing the water and consequently bring uniformity in its chemical and physical properties.³⁷ The bay has been identified as one of the world's sixty-four Large Marine Ecosystems (LMEs),³⁸ located in the monsoon belt. It is also home to the world's largest pristine mangrove forests and pristine coral reefs.

The salient features of tectonics and geological history of the Bay of Bengal and adjacent parts of the northeastern Indian Ocean are:

- (i) Intra-continental rifting of eastern Gondwanaland formation of rifted young passive continental margin and ocean basins;
- (ii) Sea floor spreading - closing of the Tethys Sea;

³⁶ Ibid.

³⁷ Thandar, *Oil Pollution and solutions in the Bay of Bengal from a Myanmar Perspective*, dissertation submitted to the IMO-International Maritime Law Institute, Malta, Europe, in partial fulfilment of the requirements for the award of the degree of Master of Laws (LL.M) in International Maritime Law, May, 2007, p. 4.

³⁸ LMEs: Large Marine Ecosystems are regions of ocean space encompassing coastal areas from river basins and estuaries to the seaward boundaries of continental shelves and the outer margins of the major current systems. They are relatively large regions on the order of 200,000 km² or greater, characterized by distinct: (1) bathymetry, (2) hydrography, (3) productivity, and (4) tropically dependent populations. On a global scale, 64 LMEs produce 95 percent of the world's annual marine fishery biomass yields. Within their waters, most of the global ocean pollution, overexploitation, and coastal habitat alteration occur. Large Marine Ecosystems, Information portal.

- (iii) Collision of the Indian and Asian Plates;
- (iv) Uplift of the Himalayas;
- (v) Erosion, transport and deposition of sediments filling the newly formed Bengal geosyncline (Bengal Basin, Bay of Bengal and adjacent areas); and
- (vi) Subduction at plate edge on the eastern margin of the Bengal Geosyncline.³⁹

Large rivers including the Ayeyarwady (Irrawaddy), Ganges-Brahmaputra, Mahanadi, Godavari, Krishna, and Kaveri, flow through the littoral states of the Bay of Bengal, and in the process form fertile and heavily populated deltas. Sediments from these rivers have made the Bay a shallow sea and the river waters have reduced the salinity of the Bay's surface waters along the shore.⁴⁰ The Bay is highly rich in sediments and economically viable oil and gas reserves, some, already being economically exploited.⁴¹

1.4. The Sea Bay of Bengal, its Position in the Law of the Sea

The Bay of Bengal⁴² has been identified as one of the world's sixty-four Large Marine Ecosystems.⁴³ Recognizing the need for integrated and coordinated management of their coastal and near-shore living marine resources, the eight countries bordering the Bay of Bengal supported the development and submission by the Food and Agricultural Organization (FAO) to the Global Environment Facility (GEF)⁴⁴ under the International Waters portfolio of a proposal for a project to pursue an LME approach.

³⁹ Curray, *Structure, tectonics and geological history of the northeastern Indian Ocean, The Ocean basins and margins*, Vol. VI, New York, 1982, p. 776.

⁴⁰ Bay of Bengal Large Marine Ecosystem website: <http://www.boblme.org/>.

⁴¹ Thandar, "Oil Pollution and solutions in the Bay of Bengal from a Myanmar Perspective" *op. cit.*, p. 5.

⁴² See: Figure 3.

⁴³ See Bay of Bengal Large Marine Ecosystem website: <http://www.boblme.org/>.

⁴⁴ See: FAO website: <http://www.fao.org/>

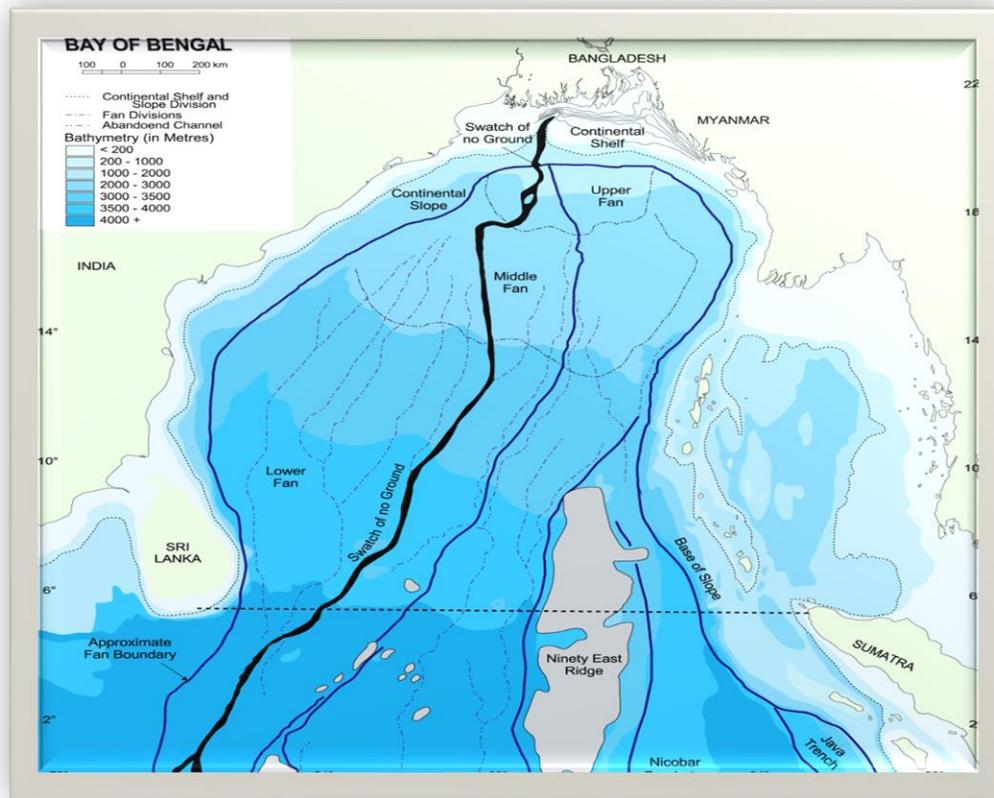


Figure 3: Map of the Bay of Bengal with adjacent land masses.
Source: www.banglapedia.org.

The depth of the Bay of Bengal is about 2,586 meters.⁴⁵ The continental slope terminates at less than 3,000 meters depth.⁴⁶ To the west of the Bay are the Indian States-West Bengal and Orissa. In its southern part are Sri Lanka and Nicobar and the Andaman group of islands (India) while in the east lies Myanmar. Bangladesh lies to the north and east. The rocky and hilly Andaman and Nicobar Group of Islands are regarded to be the submerged continuation of the outer fold ranges of the Arakan Yomma (Myanmar).⁴⁷ Andaman and Nicobar Group of Islands have made India and its maritime neighbours opposite to Myanmar, Thailand, Indonesia and Sri Lanka. Geographically, the Andaman group of islands lie

⁴⁵ Rhods (ed.), *The Encyclopedia of Oceanography* 3, New York, 1968.

⁴⁶ Ibid.

⁴⁷ Monkhouse, *Principles of Physical Geography*, 4th edition, London, 1972, p. 342.

opposite to Bangladesh as well. It seems that India is in advantaged position as to the delimitations of sea zones with these States.

When considering the Andaman Group of Islands, the delimitation of sea zones (including the 200 M EEZ) may not be a concern between Bangladesh and India solely: the distance of the sea zones between Bangladesh and Andaman group of islands exceed 400nm; however, it does not result equally in the regime of seabed. As a matter of fact, the continental margin starting from the coast of Bangladesh extends near to Sri Lanka. According to J.P Morgan and W.G. McIntire:

[The Ganges] plain is subject to excessive flooding by storm surges, causing great loss of life to the fishing population living on the highest sand bars. The tides scour out deep channels and produce much overlapping of sediment on the inside. Huge quantities of sediments are brought in by rivers from the Himalayas and other high mountain ranges to the north. Many of the braided channels in the flood plain have been abandoned, leaving large masses of sands. [...] old channels should be ideal places for oil reservoirs if such deposit has been preserved in ancient rocks. The Ganges plain is subject to tectonic activity and small recent faults are found, some of them producing basins.⁴⁸

The Bay of Bengal is not a Bay for the purposes of article 10 of UNCLOS since it is not a closed bay as it is regarded as a semi-enclosed bay. Though no nation can assert claims to it, the States adjoining the Bay are required to co-operate with each other for the exploration of mineral resources.⁴⁹ Article 123 of UNCLOS states that,

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;

⁴⁸ Quoted in Shepard's Submarine Geology, 3rd edition, New York, 1975, p. 168.

⁴⁹ UNCLOS, art. 123.

- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

As time passes, the Bay of Bengal is facing peculiar situations. New islands are coming into being in different parts, particularly in the maritime zones of Bangladesh and India. The Bay of Bengal is the only gateway to Bangladesh. Were it not for the Bay, Bangladesh would not be a coastal State. On the other hand, India's geographical position has pushed the Indian Government to proceed for a lion share in the Bay of Bengal. In this scenario it is questionable whether Bangladesh will benefit from the delimitation of sea boundaries with its neighbours. As a matter of fact:

The Ganges though has a seaward continuation for almost 200 km down the Bay of Bengal in the form of fan valleys with levees. This can be detected even south of Sri Lanka. The fan valleys wind across the great fan with many distributaries, and in some places have a braided pattern. The huge fill in the Bay is apparently derived primarily from the Ganges and Brahmaputra.⁵⁰

It is to be assumed that the sediment deposit is derived from lands and streams, wave erosion of coasts and winds have further contributed to it. Moreover, it may not be ignored that the formation of shells and skeletons of marine animals and plants, and chemical precipitation together have caused the deposit of sediment in the Bay.⁵¹

⁵⁰ See: Shepard, *op. cit.*, p. 33.

⁵¹ Mohiuddin Mohammad, "Delimitation of Maritime Boundaries: Bangladeshi Perspective," dissertation submitted to the IMO-International Maritime Law Institute, Malta, Europe, in partial fulfilment of the requirements for the award of the degree of Master of Laws (LL.M.) in International Maritime Law, May, 2007, p. 22.

In terms of article 76 of UNCLOS, a coastal State such as Bangladesh adjoining the Bay of Bengal is required to set the outer limits of the continental shelf. In fact, paragraph 8 of this article appears to be applicable to matters pertaining to the definition of the outer limit of the shelf. This provides,

information on these limits of the continental shelf beyond 200 nm from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the continental shelf set up under Annex II on the basis of equitable geographical representation. The commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.⁵²

Recently, the Commission on the Outer Limits of the Continental Shelf (hereinafter CLCS) has started to work on the establishment of the outer limit of the continental margin for the States in the southern part of the Bay.⁵³ The topography of the Bay is not uniform. As such, application of article 76 of UNCLOS to in its entirety is inevitable.

The Bay of Bengal is rich in fish and other mineral resources. Bangladesh's trade and commerce solely depend on the sea routes through the Bay. Bangladesh is surrounded by the sea Bay of Bengal. The people of the coastal area of the country live by fishing. Bangladesh also produces salt from the bay waters. Thus the importance of the Bay of Bengal to Bangladesh is established.⁵⁴

1.5. Conflict Arising Out of Maritime Related Matters

1.5.1. Sea Boundary

⁵² UNCLOS, article 76, par. 8.

⁵³ See: *Draft Final Act A/CONF.62/121*, 21 October, 1983, p. 35.

⁵⁴ Habibur Rahman, *Delimitation of Maritime Boundaries*, *op. cit.*, pp. 274-75.

As Bangladesh is a coastal State, delimitation of each and every zone with its neighbouring countries, India and Myanmar, is necessary. There are no agreed sea boundaries between Bangladesh and its neighbours. The absence of an agreed sea boundary would delay exploration for hydrocarbon reserves throughout a considerable area in and around the disputed maritime zones.⁵⁵ In light of the fact that Bangladesh forms part of the Ganges–Brahmaputra plain, it sustains excessive flooding by storm surges. Moreover, the plain is subject to tectonic activity as a result of which small faults have recently been formed. Some of these faults have produced basins in the coastal bay. The swelling effect of monsoon rainfall, cyclonic storms and tidal surges have contributed to a continuous process of erosion and shoaling.

Bangladesh, as a geographically disadvantaged country, is heavily dependent on the sea. Bangladesh is virtually the mid point of two inverted funnels. One inverse funnel drains millions of tons of silt through the rivers on the mainland from the top, and the other funnel pushes all the cyclones from the Bay of Bengal on to the deeply indented, concave coast of Bangladesh. All these features have made Bangladesh a geographically disadvantaged country.⁵⁶

1.5.2. Sources of Fishery

The Bay of Bengal is the main source of fishery in Bangladesh. Although fishes remain scattered in the Bay, in some places they are concentrated and form important fishing grounds. Four fishing grounds have been identified so far: south patches, south of south patches, middle ground and Swatch of no Ground. All these fishing grounds are potential reserves for fish and shrimp. Most of the known commercial species of shrimp and fish are harvested from these areas by trawlers or mechanized fishing boats.⁵⁷

⁵⁵ Blake and Swarbrick, *Hydrocarbons and International Boundaries: A Global Overview*, London, 1998, pp. 3-28.

⁵⁶ Shah Alam and Faruque, *op. cit.*, *supra* note 1, p. 407.

⁵⁷ See: Figure 4.

Extensive fishing grounds exist in the northern region of the Bay of Bengal.⁵⁸ Bangladesh is not self-sufficient in fish production. Hilsa is the only species which is consumed throughout the Bangladesh.⁵⁹ From the coastal bay hilsa fish migrate to the rivers and there-from to other inland waters for breeding.⁶⁰ As regards the foreign exchange Bangladesh has to depend on the fishery resources.

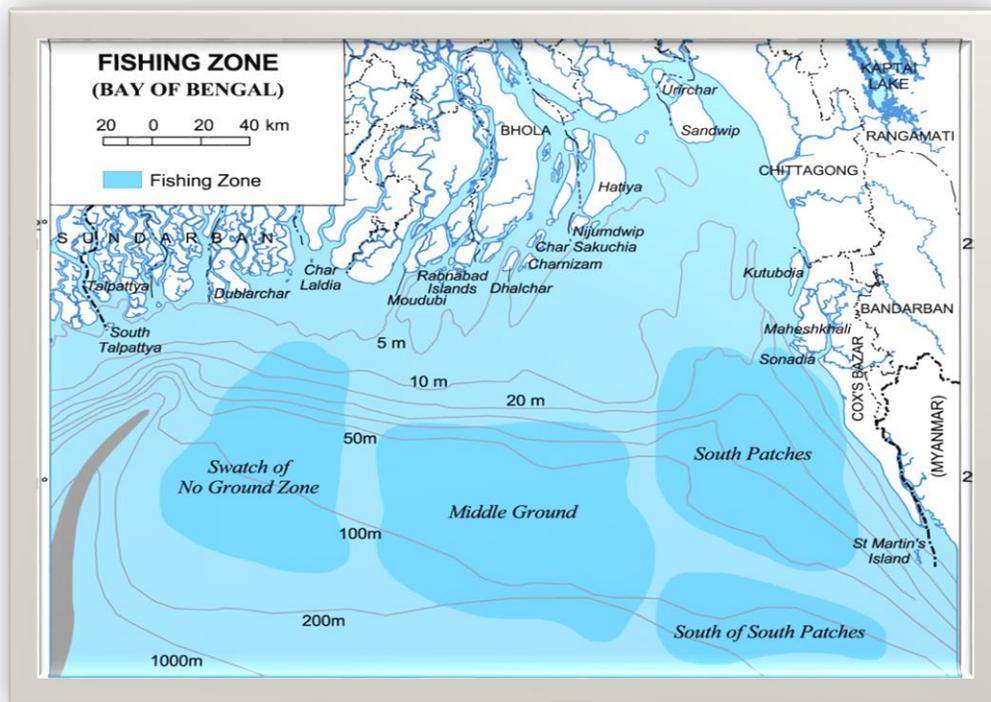


Figure 4: Fishing zone in the Bay of Bengal.

Source: www.banglapedia.org.

The Bay of Bengal Large Marine Ecosystem (BOBLME) has recently become the subject of the development of an ecosystem approach focused on sustainable management of biomass yields.⁶¹ On the other hand, the country has few mineral

⁵⁸ Virabhadra Rao, "Trawl Fishing in India", Food and Agricultural Organization of the United Nations (FAO), 1957-58, p. 3.

⁵⁹ Khurshid Alam, *Bangladesh's Maritime Challenges in the 21st Century*, op. cit., p. 169.

⁶⁰ Ghosh and Nangpal, "On the winter Breeding of Hilsa (ham) in the Ganga River System", 1970, p. 135.

⁶¹ See: International Waters: Review of Legal and Institutional Frameworks website: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

resources,⁶² although some natural gas has been produced whilst the exploration of steel and oil resources has commenced.

In Bangladesh, seafood consists largely of capture fisheries and for these the intensively exploited areas are found in the narrow coastal belt. The per capita consumption of fish should increase from 34 grams of fish protein and 26 grams of animals' protein to over 100 grams of animal protein per day per person.⁶³ Estimates in recent years have revealed that the production of fish of about one million tonnes' should be achievable from the whole of the Bay of Bengal, bringing continental shelf's around up to a depth of 200 meters. Increased production is not the only solution to the food problem, with regard to fisheries there is a need to emphasize this point in particular.⁶⁴

1.5.3. Routes of Trade and Navigation

By the first century, trading ships from India sailed across the bay transporting Buddhist missionaries and textiles, ivory, sandalwood, and spices.⁶⁵ The first colonialists to the shores of the Bay of Bengal were the Portuguese around the 1520's,⁶⁶ later to be followed by the Dutch, the British and the French. In the first centuries of the Christian era, traders from India and Ceylon (at present Sri Lanka) sailed across the Bay of Bengal to visit Indonesia for gold and medicinal herbs, an activity later pursued by the Arabs and the Persians.⁶⁷

⁶² See Figure 2.

⁶³ Khurshid Alam , *Bangladesh's Maritime Challenges in the 21st Century*, *op. cit.*, p.145.

⁶⁴ Ibid.

⁶⁵ Thandar, *op. cit.*, p. 5.

⁶⁶ The Portugese in the Bay of Bengal by Marco Ramerini, Dutch and Portugese Colonial History Website: www.colonialvoyage.com/.

⁶⁷ Singh's *In the Sea of Influence - a world system perspective of the Nicobar Islands*, *Lund Studies in Human Ecology*, Sweden, 2003, pp. 131-54.

Today, the Bay forms part of a major shipping route between the west and the east. The Andaman Sea (the eastern arm of the Bay) links the Indian Ocean to the Malacca Straits. Major oil shipments, destined to the oriental market constantly pass through the Bay, it is estimated that "3.23 million barrels of crude oil are shipped daily via the Malacca Straits to the East Asian region".⁶⁸ Therefore the bay which forms part of this major shipping route is also highly vulnerable to oil pollution risks.⁶⁹ Just about all of Bangladesh's foreign trade, 90% in volume approximately, is transported over the sea and she earns substantial amount of foreign exchange through marine fisheries.⁷⁰

1.6. Resources and Prospects in the Bay of Bengal

Energy resources in the Bay of Bengal, namely natural oil, gas and other mineral resources is the key factor behind the boundary dispute between Bangladesh and its neighbouring countries. Statements by all the countries concerned demonstrate the centrality of these resources in the dispute. In particular, Bangladeshi officials have spoken about their motivations for an agreement. Foreign Minister of Bangladesh Dr. Dipu Moni recently stated that the main aspect for boundary delimitation is to "explore and exploit oil, gas and other natural resources in the Bay to meet our challenges."⁷¹ The Bay of Bengal becomes very important, especially after India's discovery of 100 tcf of gas in 2005-2006 and Myanmar's discovery of 7 tcf gas at the same time.⁷² Recently the Government of Bangladesh constituted a high powered expert committee to settle the dispute with her neighbours.⁷³

⁶⁸ Thandar , *op. cit.* , p. 5.

⁶⁹ Ibid.

⁷⁰ Khurshid Alam, *Bangladesh's Maritime Challenges in the 21st Century*, *op. cit.*, p. 46.

⁷¹ Siddiqui Islam, "Dhaka goes to UN Tribunal on Maritime Boundary Dispute" *Mizzima*, October 9, 2009.

⁷² Report on, "Sea border talks start today after 28 years: Energy-rich Bay of Bengal Makes Dhaka-Delhi Talks Crucial", *The Daily Star*, 15 September 2008, p. 1.

⁷³ Shah Alam and Faruque , *op. cit.*, *supra note 1*, p. 409.

Nonetheless, the Bay of Bengal remains one of the least explored regions in the world. Bangladesh undertook limited offshore exploration in the mid-1974s; on the other hand India and Myanmar have only recently begun significant resource exploration and exploitation in the Bay of Bengal. It would seem though that recent gas discoveries have led Governments and corporations to speculate that large reserves could lie in the area. In Indians waters, the closest gas discoveries to the overlapping claims of Bangladesh and Myanmar are fields in the NEC-25 block of the Bengal Basin. This discovery lies just over 100 km to the west of Bangladeshi's claimed EEZ or about 300 km from the overlapping claims of Bangladesh and Myanmar.

The NEC-25 discoveries are estimated to hold between 3-5 tcf.⁷⁴ The discovery closest to the overlapping claims is the Shwe fields, which lie off of Myanmar's Rakhine coast. Discovered in 2006, the fields are estimated to contain between 4-7.73 tcf of natural gas, though recent and presumably accurate estimates have placed the number closer to 7 tcf.⁷⁵ Survey work is on going, but high-end estimates have placed reserves to be between 14-20 tcf. The Shwe fields have likely engendered especially strong optimism because they lie in such close proximity (under 50 km) from the overlapping claims.⁷⁶ Other large discoveries in Indian waters in the Bay of Bengal include the massive Dhirubhai fields in the Krishna Godavari basin off the coast of Andhra Pradesh, which could arguably produce almost half of India's natural gas by 2011.⁷⁷

⁷⁴ RIL, Orissa Offshore Block put on Fast Track, *Business Standard*, January 4, 2007.

⁷⁵ Report on, "Southeast Asia's Disputed areas", *Asian Oil and Gas*, November 2008, pp. 1-2; "China to Start Building Shwe Gas Pipe line in September Despite Concerns over rights Abuses," *Shwe Gas Bulletin*, June-July 2009; and "Burma Refuses to Retract from Gas Exploration in Bay of Bengal," *Mizzima*, November 7, 2008.

⁷⁶ Khurshed Alam, "Maritime Boundary Dispute and oil and Gas Exploration in the Bay of Bengal," *The Daily Star*, August 2, 2008.

⁷⁷ Maqbul-e -Elahi, "Oil and Gas Exploration in Offshore Bangladesh", presentation, slide 23, and Wood Mackenzie, Beyond Dhirubhai.

The Sea areas of Bangladesh are reportedly rich in mineral resources, including hydrocarbon.⁷⁸ Both the Shwe and NEC-25 fields lie in proximity to river outlets from the Ganges Delta and are characterized by vast basins of sediment that are geologically similar to the overlapping claims. The Dhirubhai discoveries also share geological similarities with the overlapping claim between Bangladesh and its neighbouring countries. At the end, commercially viable gas discoveries, including the Sangu and Kutubdia fields, have already been found in Bangladeshi shallow offshore.

Conversely, the sea resource has been economic connotation implying in this context that the world production of marine resources, such as, biological, chemical and geological, amounted to billions of dollars. All the marine, chemical and geological resources and about 90% of all biological resources have come from the near shore areas of the oceans. Potential marine resources of the sea are being, or might be, utilized in future are as follows:

- (i) Food (fishery, seaweed etc);
- (ii) Fresh water/desalination;
- (iii) Chemicals;
- (iv) Drugs for pharmaceuticals use;
- (v) Minerals including oil and gas;
- (vi) Energy;
- (vii) Seaward extension of urban systems; and
- (viii) Weather forecast.⁷⁹

Because of the vast resources within the sea as well as within the Bay of Bengal, it is necessary to settle promptly the maritime boundary dispute between

⁷⁸ Shah Alam and Faruque, *op. cit.*, *supra* note 1, p. 405.

⁷⁹ Sharma and Sinha, *Indian Ocean Policy*, New Delhi, 1994. pp. 31-51.

Bangladesh and its neighbouring countries for the proper utilization of the maritime natural resources.

Chapter II

Practice of Bangladesh and its Neighbouring Countries on Sea Matters

2.1. Existing Laws Relating to Maritime Zones in Bangladesh

Clause (2) of Article 143 of the Constitution of the People's Republic of Bangladesh provides that Parliament may, from time to time, by law provide for the

determination of the territorial waters and continental shelf of Bangladesh. According to this provision, the Government of Bangladesh has promulgated the Territorial Waters and Maritime Zones Act (1974)⁸⁰ which was enacted long before UNCLOS. Bangladesh was the first South Asian country to enact a maritime law. India and Myanmar enacted similar laws in 1976 and 1977, respectively.⁸¹ The Bangladesh's 1974 Act is not enough to serve all purposes of maritime matters of Bangladesh. There are many other laws and regulations which have been formulated for different purposes, but those laws partially served the purposes of maritime management. Maritime legislation in Bangladesh does not cover all aspects of UNCLOS.

The provisions of the Bangladesh's 1974 Act are not adequate to safeguard the interests of Bangladesh. For the interest of the country and to resolve the above mentioned problem it is required to enact a new legislation or to amend the Bangladesh's 1974 Act in line with UNCLOS.

2.2. Practices of Bangladesh on Sea Matters

Bangladesh participated in all the sessions of the 3rd United Nations Conference on the Law of the Sea, 1982 (hereinafter UNCLOS-III) but could not participate in the 1st and 2nd United Nations Conference on the Law of the Sea in the year 1958 and 1960 respectively, as Bangladesh did not exist at that time as an independent State. It was the part of Pakistan then known as East Pakistan. At the time, a number of States enacted laws which regulate their rights over the seas in the light of their needs and the progress achieved in UNCLOS. Bangladeshi legislation during this period laid down the provisions that established the various regimes.⁸²

⁸⁰ See: Annex II.

⁸¹ Harunur Rashid, "Bangladesh goes to court," *The Daily Star*, June 28, 2010.

⁸² See: Annex-III

By the time the country adopted various provisions which are today found in UNCLOS through various enactments.

2.2.1. Baselines

The normal baseline from which the breadth of the territorial sea is measured is the low water line along the coast. This follows from the concept of maritime belt and appurtenance, and corresponds with State practice.⁸³ There is no uniform standard by which States determine this line actually. Article 5 of UNCLOS defines the lines “as marked on large scale charts officially recognized by coastal States”.⁸⁴ According to article 7 of UNCLOS, a straight baseline can be drawn in two situations:

- (i) where the coast is deeply indented or if there is a fringe of islands along the coast in its immediate vicinity, and
- (ii) where because of the presence of delta and other natural condition, the coastline is highly unstable.

In both the cases, the appropriate points may be selected along the further seaward extent of the low water line for the purpose of drawing the straight baseline.

Baselines are imaginary lines drawn along the entire coast of the State from which the outer limits of the territorial sea, contiguous zone, continental shelf and EEZ are measured⁸⁵ all waters on the landward side of the baselines are internal waters. However in accordance to UNCLOS, archipelagic States may draw baselines along the coast of the outermost point of islands to determine the extent of archipelagic waters. Baselines are also called the internal limit of the territorial sea.⁸⁶

⁸³ Brownlie, *Principles of Public International Law*, 6th edition, Oxford, 2003, p. 176.

⁸⁴ Ibid.p. 177.

⁸⁵ United Nations, *The Law of the Sea, Baselines: An examination of the relevant Provisions of the UN Convention of the Law of the Sea*, New York, 1989, p. 12.

⁸⁶ Scovazzi, *Baselines*, Max Plank Encyclopedia of Public International Law, 2009.

Baselines were first considered in 1930 during the Hague Codification Conference. In the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone (hereinafter TS and CZ Convention), the concept of baselines was followed in articles 3 to 11 and 13. UNCLOS adopted verbatim all the articles of the TS and CZ Convention.⁸⁷ UNCLOS defines five different kinds of baselines: normal, straight, archipelagic baselines and other types of baselines such as for the mouth of a river.⁸⁸

In respect of a Bangladeshi proposal,⁸⁹ new provision on baselines were adopted in UNCLOS as article 7(2),⁹⁰ even if neighbouring countries India and Myanmar opposed to the Bangladeshi proposal in the UNCLOS III.⁹¹ These provisions are believed to have crystallized into customary law *inter alia*, for the following reasons:

- (i) the TS and CZ Convention's provisions were incorporated in *toto* and unchanged into UNCLOS with little discussion and no opposition at the conference.
- (ii) the TS and CZ Convention's rules on baselines have been incorporated by reference into other treaties; the parties to which include States which are not parties to the same convention.
- (iii) various States had enacted legislation which was congruent with such principles notwithstanding the fact that they were not bound by either the TS and CZ Convention or UNCLOS.⁹²

⁸⁷ See: Articles 5 to 14 and 16 of UNCLOS.

⁸⁸ See: Figure 5.

⁸⁹ Renate Platzoder, *Third United Nations Conference on the Law of the Sea: Documents III*, p. 213.

⁹⁰ Churchill and Lowe, *The Law of the Sea*, 3rd edition, Manchester, 1999, pp. 37-8.

⁹¹ See: UN Document A/CONF.62/L.148, XVI Official Records, pp. 254-55.

⁹² Churchill and Lowe, *op. cit.*, p. 54.

Bangladesh is the country of river.⁹³ The total rivers including tributaries and distributaries are about 700 under three main river systems: Ganges-Padma River System, Brahmaputra-Jamuna River System, and Surma-Meghna River System. Rivers of the southeastern hilly region are considered as the Chittagong Region River System.

Bangladesh is surrounded by India in the north and west and shares the eastern border with India and Myanmar. To the south lie a deeply indented coastline and the Bay of Bengal. To the west of the Bay lie the two Indian Provinces of West Bengal and Orissa. Sri Lanka and the Andaman and Nicobar group of islands which belong to India lie further south. The rocky and hilly Andaman and Nicobar islands are regarded as the sub-merged continuation of the outer ranges of the Arakanyoma in Myanmar.⁹⁴ Bangladesh lies in the north eastern part of the Bay of Bengal and it is into this Bay that is Brahmaputra and Ganges River, which is shared with India flow. Within this area, the coastline is constantly fluctuating because of massive impact of different natural phenomena, such as sedimentation, river flood monsoon rainfall, cyclone storms and tidal surges.⁹⁵

⁹³ See: Figure 5

⁹⁴ Monkhouse, *op. cit.*, p. 342.

⁹⁵ Francalanci and Scovazzi (eds.), *Lines in the Sea*, The Netherlands, 1994, p. 66.



Figure 5: Rivers of Bangladesh.
Source:www.banglapedia.org

As a result, Bangladesh and its neighbouring countries are vaunting claims against each other. Disputes arose between Bangladesh and India in 1974 on the ownership of an island formed in the estuary of the border-river Hariana.⁹⁶ In view of the shoaling in the coastal bay, the necessity of drawing baselines comes into question.

⁹⁶ Habibur Rahman, "Delimitation of Maritime Boundaries: A Survey of Problems in the Bangladesh Case," *Asian Survey*, December 1985, pp. 1308, 1310-11.

Clause 2 of Article 143 of the Constitution of Bangladesh⁹⁷ confers the law-making authority regarding determination of boundaries of the territorial waters and the continental shelf of Bangladesh to the Parliament. In 1974 it enacted the Territorial Waters and Maritime Zones Act (1974)⁹⁸ under that clause of the Constitution.⁹⁹ The Bangladesh's 1974 Act allowed the Government to declare its maritime zones through gazette notification. Section 3 of the Bangladesh's 1974 Act deals with territorial waters of Bangladesh, and provides:

3. (1) The Government may, by notification in the official Gazette, declare the limits of the sea beyond the land territory and internal waters of Bangladesh which shall be the territorial waters of Bangladesh specifying in the notification the baseline:

- (a) from which such limits shall be measured; and
- (b) the waters on the land ward side of which shall form part of the internal waters of Bangladesh.

(2) Where a single island, rock or a composite group thereof constituting the part of the territory of Bangladesh is situated seawards from the main coast of baseline, territorial water shall extend to the limits declared by notification under sub-section (1) measured from the low waterline along the coast of such island, rock or composite group.

Under the power conferred by sub-section (1) of section 3 of the Bangladesh's 1974 Act, the Ministry of Foreign Affairs of Bangladesh issued a gazette notification¹⁰⁰ to declare the limit of its territorial waters and economic zone. By this notification, the Government of Bangladesh declared its baselines¹⁰¹ as straight through

⁹⁷ Article 143, Part XI, Miscellaneous, Constitution of the People's Republic of Bangladesh.

⁹⁸ Act No. XXVI of 1974.

⁹⁹ See: Annex II

¹⁰⁰ Notification No. LT -1/3/74 of the Ministry of Foreign Affairs, Dacca, of 13 April 1974, See: Annex V.

¹⁰¹ See: Figure 6.

specifying eight baseline points which are to be connected successively.¹⁰² The base points are located in the sea, while in an area of very shallow waters.¹⁰³

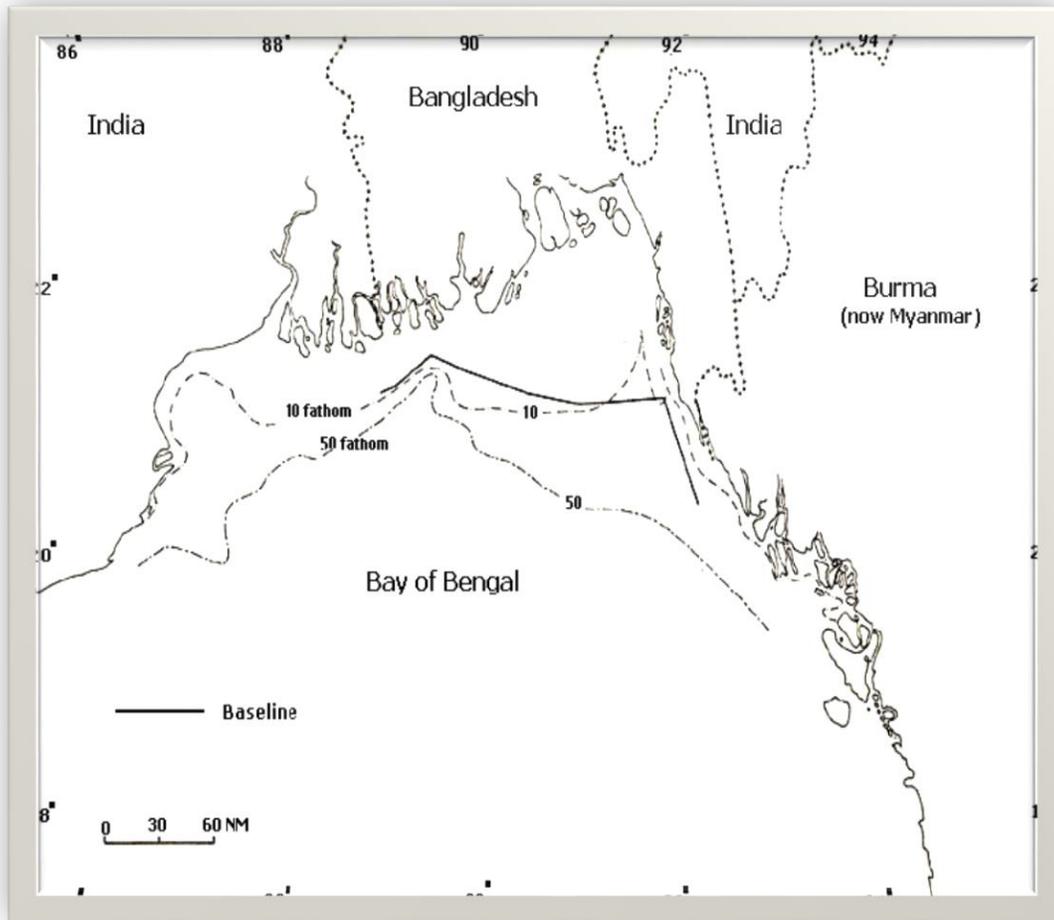


Figure 6: Baselines of Bangladesh.

Source: Lines in the Sea.¹⁰⁴

In view of the above mentioned particular circumstances, Bangladesh has delineated straight baselines according to the depth of waters. Bangladesh, as deltaic State with an unstable coastline, adopted this method of drawing the

¹⁰² Nazmul Hoque , *The Legal and Scientific Assessment of Bangladesh's Baseline in the Context of Article 76 of the United Nations Convention on the Law of the Sea*, research paper submitted to the United Nations in partial fulfilment of the requirements for the United Nations-Nippon Foundation Fellowship, 2005-2006,pp. 57-58.

¹⁰³ UN, *Baselines*, p. 62, USDD, Claims, p. 2-45.

¹⁰⁴ Francalanci and Scovazzi (eds.), *Lines in the Sea*, *op .cit.* p. 67.

baseline from the straight lines drawn by joining certain outer points at a depth of 60 feet (10 fathoms). The distance of these lines varies from 10 to 16 miles from the coast. Because of the deltaic and unstable nature of the coast, the application of the normal baseline seems to be most disadvantageous for Bangladesh. The drawing of straight baselines of Bangladesh from sea point to sea point has been opposed by her neighbouring countries, i.e., by Burma¹⁰⁵ (now Myanmar¹⁰⁶) and India¹⁰⁷ at the very beginning of its declaration.

Myanmar has delineated its baselines¹⁰⁸ under the Territorial Sea and Maritime Zones Law (1977)¹⁰⁹ (hereinafter the Myanmar's 1977 Law)¹¹⁰ using a series of rocks, islands, reefs, and other points along the Rakhine coast. Length of these straight baselines is about 222 M. In July 2009, under Rule 46 and Annex 1 of UNCLOS, Bangladesh protested about the conformity with international law of the baselines of Myanmar.¹¹¹

¹⁰⁵ Letter by Burma of 30 April 1982 (UN, Third United Nations Conference on the Law of the Sea, Official Records, XVI, p. 255).

¹⁰⁶ The name of the country Burma has officially been changed into Myanmar in 1989.

¹⁰⁷ Letter by India of 30 April 1982 (UN, Third United Nations Conference on the Law of the Sea, Official Records, XVI, p. 254).

¹⁰⁸ Myanmar drew its straight baseline in 1968 (longest single segment of straight baseline in the world at 222 miles) and amended it to include West Canister Island in 1977, for details see, Burma (Myanmar)-India, Report Number 6-3, Charney and Alexander (eds.), *International Maritime Boundaries*, Vol. II, Dordrecht/Boston/London, 1993, P. 1333.

¹⁰⁹ See: Annex IV.

¹¹⁰ The Myanmar's 1977 Law has already been amended by the Law Amending the Territorial Sea and Maritime Zones Law, which has enacted on 5 December 2008 (The State and Peace Development Council Law No. 8/2008).

¹¹¹ Note Verbal No. PMBNY-UNCLOS/2009, Dated, July 23, 2009.

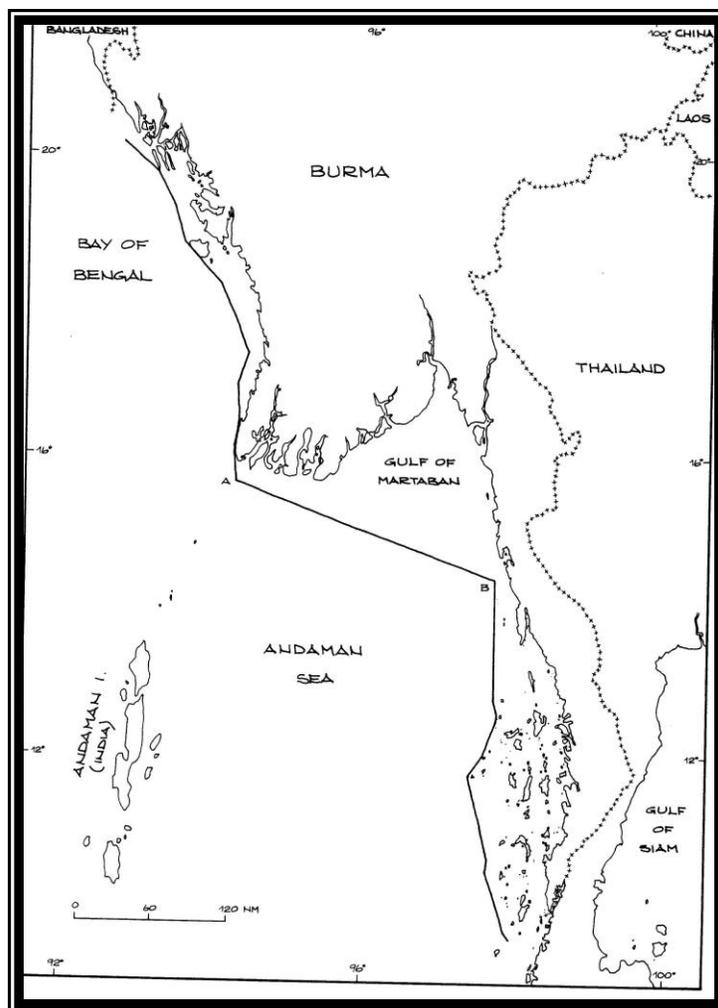


Figure 7: Baselines of Burma (now Myanmar).

Source: Atlas of the Straight Baselines.¹¹²

Recently by a gazette notification India has delineated its baselines under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act (1976)¹¹³ (hereinafter the Indian 1976 Act). Indian baseline system consists of normal and straight baselines that join the outermost points to the coast, low-water line, low water reefs and islands.¹¹⁴ In October 2009, under

¹¹² Scovazzi, Francalanci, Romano and Mongardini (eds.), *Atlas of the Straight Baselines*, Milano-Dott. A. Giuffreditore, p. 89.

¹¹³ See: Annex III.

¹¹⁴ Ministry of External Affairs of India, Gazette Notification No. S.O.1197(E) of New Delhi, the 11th May, 2009.

Rule 46 and Annex 1 of UNCLOS, Bangladesh protested about the conformity with international law of the baselines of India.¹¹⁵

2.2.2. Territorial Sea

The territorial sea consists of a belt of offshore waters measured seaward from the baselines up to a limit not exceeding 12 M.¹¹⁶ This maritime zone forms a continuous belt along the coast which will encircle an island or archipelagic State. Most of the States today claim a territorial sea of 12 M. Though there are few States which have a wider claim which is not recognized on the international plane, except in respect of States making or otherwise recognizing such claim.¹¹⁷

The 1958 Geneva Convention on the Territorial Sea and Contiguous Zone made no provisions as to how far from the baselines the breadth of territorial sea is measured because of disagreements among the States, while the 1960 Geneva Conference on the Law of the Sea (UNCLOS II) failed to accept a United States-Canadian proposal for a 6 M territorial sea coupled with an exclusive fisheries zone for a further 6 M, this by only one vote.¹¹⁸

Conversely, article 3 of UNCLOS defined that every State has the right to establish the breadth of its territorial sea up to the limit not exceeding 12 M, measured from baseline determined in accordance with the Convention, and that the outer limit of the territorial sea is the line every point of which is at the distance from the nearest point of the baseline equal to the breadth of the territorial sea. The

¹¹⁵ Note Verbal No. PMBNY-UNCLOS/2009, Dated, October 29, 2009. For full text see: http://www.un.org/depts/los/clcs_new/submissions_files/ind48_09/bgd_re_ind_clcs48_2009e.pdf.

¹¹⁶ UNCLOS, art. 3.

¹¹⁷ Mohiuddin, *Delimitation of Maritime Boundaries: Bangladeshi Perspective*, *op cit.*, p. 29.

¹¹⁸ O'Connell, *The International Law of the Sea*, Vol. I, Oxford, Clarendon, 1982, pp. 163-64.

territorial sea could, nevertheless, be less than 12 M in the situation of the two States have opposite or adjacent coasts.¹¹⁹

According to article 12 of UNCLOS, the territorial sea can be extended beyond 12 M. "Roadsteads, which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in territorial sea."¹²⁰ Articles 1 and 2 of the TS and CZ Convention and article 2 of UNCLOS provide that the coastal State's sovereignty extends over its territorial sea and to the airspace and seabed and subsoil thereof, subject to the provisions of the Convention and of international law. The consequence of being a coastal State is that it possesses a territorial sea:

To every State whose land territory is at any place washed by the sea, international law attaches a corresponding portion of maritime territory consisting of what the calls territorial waters[.....]International law does not say to State: 'you are entitled to claim territorial waters if you want them.' No maritime States can refuse them. International law imposes upon a maritime State certain obligations and confers upon it certain rights arising out of the sovereignty, which it exercises over its maritime territory. The possession of this territory is not optional, not dependent upon the will of the State, but compulsory.¹²¹

The territorial sea forms an undeniable part of the land territory to which it is bound, so that a cession of land will automatically include any band of territorial waters.¹²²

¹¹⁹ Ravin, *Maritime Boundaries and Dispute Settlement Mechanisms*, research paper submitted to the United Nations in partial fulfilment of the requirements for the United Nations-Nippon Foundation Fellowship, 2005-2006, p. 9; See also: Churchill and Lowe , *op. cit.*, pp. 128-9.

¹²⁰ UNCLOS, art.12.

¹²¹ McNair (dissenting opinion), *Anglo-Norwegian Fisheries* case, ICJ Reports,1951, 116 at 160.

¹²² See: the *Grisbadarnu* case, 11 RIAA, p. 147 (1909) and the *Beagle Channel* case, HMSO, 1977; 52 ILR, p. 93. See also: Judge McNair, *Anglo-Norwegian Fisheries* case, ICJ Reports, 1951, pp. 116, 160; 18 ILR, pp. 86, 113.

The right of innocent passage has been recognized by customary and conventional international law. In this connection Jessup, a distinguished international law expert, says:

As a general principle, the right of innocent passage requires no supporting argument or citation of authority; it is firmly established in international law.¹²³

According to customary international law, the extent of the coastal State's jurisdiction in waters adjacent to their coast has been recognized, on the condition that it may not hamper the innocent passage of vessels through their territorial seas in peace time.¹²⁴

In 1949 *Corfu Channel* case,¹²⁵ it was recognized that no State would use its territory in such a method which may harmfully affect the right of innocent passage. The Court in a much-quoted passage emphasised that:

States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorisation of a coastal State, provided that the passage is innocent.¹²⁶

However, the precise extent of the doctrine is indistinct and open to contrary interpretation, particularly with respect to the requirement that the passage must be innocent. Where a ship in passage through the territorial sea is not engaged in any of the activities laid down in article 19(2), it is in innocent passage since that

¹²³ Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, New York, 1927, p. 120 and quoted in: Anand, *Origin and Development of the Law of the Sea*, The Hague, 1983, p. 150.

¹²⁴ Ahmed, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf*, The Hague, 1997, p. 38.

¹²⁵ ICJ Reports, 1949, p. 4.

¹²⁶ Ibid, par. 28.

provision is exhaustive.¹²⁷ Ships in passage are also under an obligation to comply with the laws and regulations of the coastal State adopted in conformity with articles 21, 22, 23 and 25 of UNCLOS.¹²⁸

From the above mentioned articles it is clear that UNCLOS especially article 21(1) requires the coastal States to adopt laws and regulations which comply with the international rules in the purpose of ensuring the innocent passage of foreign vessels, with respect the following:

- (i) safety of navigation;
- (ii) the protection of navigation and facilities;
- (iii) the regulation of the maritime traffic;
- (iv) the protection of cables and pipelines;
- (v) the conservation of living resources;
- (vi) the prevention of infringement of fisheries law and regulation of coastal State;
- (vii) the maritime scientific research and hydrographic survey; and
- (viii) the prevention of infringement of the customs, fiscal, immigration, or sanitary law.

UNCLOS makes provision for delimitation of the territorial sea. According to the article 15 of UNCLOS, where the coasts of the two States are opposite or adjacent to each other, neither of two States is entitled to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points of the baseline of both the States. However, a departure can be made from the provision of the median line if it is necessary by reason of historic title or other special circumstances.

¹²⁷ UNCLOS, art. 19(2).

¹²⁸ Shaw, *International Law*, 5th edition, Cambridge, 1995, p. 510.

The Government of Bangladesh declared its territorial sea by a gazette notification¹²⁹ up to 12 M (22 km) from its baselines under section 3 of the Bangladesh's 1974 Act. Because of the claimed baseline of Bangladesh difficulty lies with its territorial sea with the neighbouring countries.

According to the sub-section (2) of the section 3 of the Indian 1976 Act, this State declared its territorial sea up to 12 M (22 km) from the nearest point of its appropriate baseline.

Myanmar also declared its territorial sea up to 12 M (22 km) from its baselines in accordance with the section 3 of the Myanmar's 1977 Law.

2.2.3. Contiguous Zone

The contiguous zone is a zone of sea contiguous to and seaward of the territorial sea in which States have limited powers for the enforcement of customs, fiscal, sanitary and immigration law.¹³⁰ Under the TS and CZ Convention the contiguous zone could not extend more than 12 M from the baselines,¹³¹ or, unless there was agreement to the contrary between the States concerned, farther than the median line equidistance from the nearest points on the baselines where two States lay opposite or adjacent to each other.¹³²

During First United Nations Conference on the Law of the Sea, 1958 no agreement on the breadth of the territorial sea was reached, and the practice of States concerning contiguous zone claims in the years immediately following consequently varied, some claiming a 3 mile territorial sea and 9 mile contiguous

¹²⁹ Notification No. LT -1/3/74 of the Ministry of Foreign Affairs, Dacca, of 13 April 1974, see Annex V.

¹³⁰ UNCLOS, art. 33. See also: Churchill, and Lowe, *op. cit.*, p. 132.

¹³¹ TS and CZ Convention, art. 24(2).

¹³² TS and CZ Convention, art. 24(3).

zone, others a 9 mile territorial sea and 3 mile contiguous zone, and so on. These claims, modeled on the wording of article 24 of the TS and CZ Convention, were overtaken by the move towards 12 M territorial sea claims. In the light of those claims, as UNCLOS III decided to move the contiguous zone seaward, setting the outer limit at 24 M from the baselines,¹³³ so allowing a 12 M contiguous zone beyond the 12 M territorial sea.¹³⁴ One crucial difference is that while under the TS and CZ Convention, the contiguous zone was part of the high seas, under UNCLOS it would form part of the EEZ complex.¹³⁵

Under article 33 of UNCLOS, a coastal State may claim a contiguous zone (for the same purpose as the TS and CZ Convention provisions) up to 24 M from the baselines.¹³⁶ The establishment of contiguous zone aimed at preventing violation of laws and regulations relating to the custom, fiscal, immigration, sanitary and archaeological within its territory.¹³⁷ Based on the spirit of the above article, a coastal State has its rights in a contiguous zone to defend its interests by stopping foreign ship supposed to be an offender in order to search, inspect or punish the offenders against its laws and regulations. This maritime zone overlaps to that part of the EEZ closest to the shore. The equality of States, including those without a sea-coast (some 40 States), on the high seas is enshrined in art. 3 of the 1958 Geneva Convention on the High Seas, which provides, States having no sea-coast should have access to the sea.¹³⁸

¹³³ UNCLOS, art. 33.

¹³⁴ Churchill and Lowe, *op. cit.*, p. 136.

¹³⁵ See: Article 55, which states that the exclusive economic zone is 'an area beyond and adjacent to the territorial seas: The notice issued by the Hydrographic Department of the Royal Navy on 1 January 2002 shows that seventy-two states or territories claim a contiguous zone, see: UKMIL, 72 BYIL, 2001, pp. 634-39.

¹³⁶ Shaw, *op. cit.*, p. 517.

¹³⁷ UNCLOS, art. 33. See also: Ravin, *op. cit.*, p. 12.

¹³⁸ UNCLOS, art. 90. See also: Wallace and Martin, *International Law*, 6th edition. 2009, p. 167.

Notwithstanding the law on this zone, the contiguous zone of Bangladesh spreads up to 6 M (11 km) beyond the outer limit of territorial sea (that means 12 + 6= 18 M (33 km) from the baselines).¹³⁹ According to the section 5(1) of the Indian 1976 Act the contiguous zone of India is an area beyond and adjacent to the territorial waters, and the limit of the contiguous zone is the line every point of which is at a distance of 24 M from the nearest point of its baseline. Myanmar also declared its contiguous zone as an area beyond and adjacent to the territorial sea and extends to a distance of 24 M from its baselines in accordance with the section 10 of the Myanmar's 1977 Law.

2.2.4. Continental Shelf

The continental shelf is a geological expression referring to the ledges that project from the continental landmass into the seas and which are covered with only a relatively shallow layer of water (some 150-200 meters) and which eventually fall away into the ocean depths (some thousands of meters deep).¹⁴⁰ These ledges or shelves take up some 7 to 8 per cent of the total area of ocean and their extent varies considerably from place to place. Off the western coast of the United States, for instance, it is less than 5 M wide, while, on the other hand, the whole of the underwater area of the North Sea and Persian Gulf consists of shelf.¹⁴¹

The continental shelf consists of that part of the seabed adjacent to the coast as far as the outer edge of the continental margin which marks the line at which the deep abyssal plan begins and international control over mining replaces national control.¹⁴² The inner or landward limit of the continental shelf is the outer limit of the territorial sea. According to UNCLOS, the outer limit of the continental shelf is the outer edge of the continental margin, or a distance of up to 200 M from the

¹³⁹ Sec. 4 of the Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974).

¹⁴⁰ Shaw, *op. cit.*, p. 521.

¹⁴¹ Ibid.

¹⁴² See: Figure 8.

baselines from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to the said distance.¹⁴³

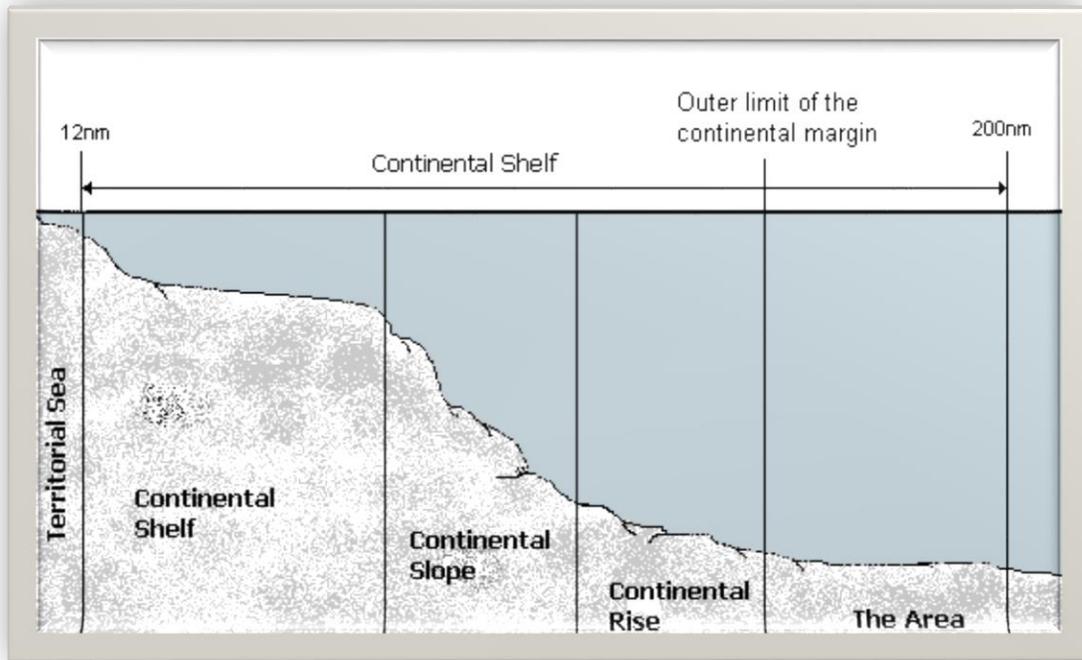


Figure 8: Legal continental shelf of a coastal State according to article 76 (1) when the outer edge of the Continental margin does not extend beyond 200 M from the baseline.

Source: Nazmul Hoque, *op. cit.*, p. 80.

Where the continental margin extends to beyond the said 200 M then in addition to this, another 150 M is regarded as the extension of the continental margin. So in total, according to article 76 (6) and (7) of UNCLOS, there may be a maximum 350 M of the extension of the continental shelf and the method of delimitation to be followed where the continental shelf exceeds 200 M.

¹⁴³ UNCLOS, art. 76. See also: Prescott, *The Maritime Political Boundaries of the World*, London and New York, 1985, p. 62.

Under UNCLOS, the coastal State exercises exclusive rights over the continental shelf in the exploration and exploitation of its natural resources.¹⁴⁴ The coastal State has exclusive rights in the sense that the other States may not explore or exploit in the continental shelf unless there is express consent of the coastal State. In addition, the right of coastal State over the continental shelf does not depend on occupation, effective or notional, or any express proclamation.¹⁴⁵

However, this provision indicates that the exercise of rights of the coastal State over the continental shelf shall not infringe on freedom of navigation, or on other rights and freedom of foreign States.¹⁴⁶ UNCLOS allows the coastal State to process exclusive rights to permit and regulate all types of drilling on its continental shelf, and to take some measures to prevent, reduce and control marine pollution.¹⁴⁷ The continental shelf is rich in natural resources. Most important are the extensive oil and gas reserves, which represent something like ninety percent of the total value of minerals, taken from the sea bed.¹⁴⁸ By the 1940s, States possessed the technology to exploit such resources. Furthermore, economically, exploration had become a viable proposition. President Truman's Proclamation of September 28, 1945, whereby the United States regarded:

the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control¹⁴⁹

but that "the character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way affected",

¹⁴⁴ UNCLOS, art. 77.

¹⁴⁵ UNCLOS, art. 77.

¹⁴⁶ UNCLOS, art. 78.

¹⁴⁷ UNCLOS, art. 81.

¹⁴⁸ Churchill and Lowe, *op. cit.*, p. 141.

¹⁴⁹ Hollick, "US Oceans Policy: the Truman Proclamation", *Vand. Journal of International Law*, 1976-77, pp. 23-35.

precipitated numerous assertions of coastal States' right over the continental shelf and marked the beginning of the change in the legal status of the continental shelf.¹⁵⁰

The Truman Proclamation was not the first instance of claim over the continental shelf. It had been preceded by a treaty signed on 26 February 1942 by the United Kingdom and Venezuela,¹⁵¹ by which the Parties, without mentioning the continental shelf, made provision for and defined as between themselves, their respective interest in the submarine area of the Gulf of Paria. However the Truman Proclamation was the first precedent which had an overt normative character.¹⁵²

UNCLOS also contains articles on the settlement of disputes over the delimitation of continental shelf between States with opposite or adjacent coastlines. Article 83 of UNCLOS provides that the delimitation of the continental shelf between States with opposite or adjacent coastlines shall be effected by a agreement on the basis of international law as referred to the article 38 of the statute of International Court of Justice, in order to achieve an equitable solution. In case there is no agreement can be reached within a reasonable period of time, the States concerned to resort to the procedures provided for in Part XV of the Convention.¹⁵³

The continental shelf of Bangladesh is the sea bed and subsoil of the submarine area adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin and abyssal floor.¹⁵⁴

¹⁵⁰ Wallance and Martin, *op. cit.*, p. 183.

¹⁵¹ UN, Laws and Regulations, Vol.1, 1951, p. 44.

¹⁵² Scovazzi, *The Evolution of International Law: New Issues, New Challenges*, Hague Academy of International Law, *Recueil des cours*, 2001, pp. 95-6.

¹⁵³ Ravin, *op. cit.*, pp. 15 -16.

¹⁵⁴ Sec. 7 of the Territorial Waters and Maritime Zones Act, 1974.

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 M from the baseline.¹⁵⁵

The continental shelf of Myanmar is the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 M from the baselines where the outer edge of the continental margin does not extend up to that distance.¹⁵⁶

The regime of the continental shelf within 200 M (370 km) sea zone merges in the EEZ. From the juridical point of view, the regime of the continental shelf is considered to deal with the seabed and subsoil between the outer boundary of the EEZ and the boundary between the continental margin and the abyssal floor.¹⁵⁷

2.2.5. Exclusive Economic Zone

The exclusive economic zone is resources related zone adjacent to the coast and extending beyond the territorial sea.¹⁵⁸ It has developed out of earlier, more tentative claims, particularly relating to fishing zone, and as a result of developments in the negotiating processes leading to UNCLOS. It marks a compromise between those States seeking a 200 M territorial sea and those wishing a more restricted system of coastal State power.¹⁵⁹ The EEZ is a concept of recent origin. While its historical roots lie in the trend since 1945 to extend the limits of

¹⁵⁵ Sec. 6(1) of the Indian Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

¹⁵⁶ Sec. 12 of the Myanmar's Territorial Sea and Maritime Zones Law, 1977.

¹⁵⁷ Mohiuddin Mohammad, *Delimitation of Maritime Boundaries: Bangladeshi Perspective*, *op. cit.*, p. 30.

¹⁵⁸ Khurshed Alam, *Bangladesh's Maritime Challenges in the 21st Century*, *op. cit.*, p.217.

¹⁵⁹ Shaw, *op. cit.*, p. 517.

coastal State jurisdiction ever seawards, its more direct and immediate origins lie in the preparations for UNCLOS III.

The concept of the EEZ was put forward for the first time by Kenya to the Asian-African Legal Consultative Committee in January 1971 and to the UN Sea Bed Committee in the following year.¹⁶⁰ Many Asian and African States supported the Kenya's proposal.¹⁶¹ At the same time many of the Latin American States began to develop the similar concept of the patrimonial sea.¹⁶² The two lines of approach had successfully merged by the time UNCLOS began, and the concept of the EEZ had attracted the support of most developing States and some developed coastal States such as Canada and Norway.¹⁶³

The 200 M zone concept was widely discredited until the early 1970s, but then gained rapid acceptance once it appeared in the negotiating text of UNCLOS III in the mid 1970s.¹⁶⁴ Throughout the negotiations for UNCLOS the trend towards a 200 M maritime zone, called the exclusive economic zone, gained extensive support and became suitable, under certain conditions, also for the developed countries and the key naval powers. UNCLOS codifies the EEZ, as a *sui generis* zone, where the coastal State enjoys certain sovereign rights and jurisdiction and the other States retain certain high seas freedom.¹⁶⁵

¹⁶⁰ Churchill, and Lowe, *op. cit.*, p. 160

¹⁶¹ See: the Conclusion in General Report of the African States regional Seminar on the Law of the Sea, held in Yaounde, June 1972. UN Leg. Ser. B/16, p. 601

¹⁶² Declaration of Santo Domingo, June 1972, UN Leg. Ser. B/16, p. 599.

¹⁶³ Churchill, and Lowe, *op. cit.*, p. 160.

¹⁶⁴ Colson David, "The Legal Regime of Maritime Boundary Agreement", in Charney and Alexander, *International Maritime Boundaries*, Vol. I, Dordrecht/Boston/London, 1993, pp. 41-73.

¹⁶⁵ UNCLOS, arts. 56 and 58. See also: Scovazzi, "The Evolution of International Law: New Issues, New Challenges", *op. cit.*, p. 116.

The EEZ is a zone extending up to 200 M from the baselines, within which the coastal States enjoy exclusive sovereign right in relation to the exploration and exploitation, conservation and management of the natural resources and related jurisdictional rights.¹⁶⁶ Third States however enjoy the freedom of navigation, over flight by air craft and have the right to lay submarine cables and pipelines.¹⁶⁷ The specific rights and duties of the coastal States on this include the exploration and exploitation, conservation and management of living and non-living natural resources of the seabed and subsoil and of the superjacent waters, economic exploitation and exploration of the zone such as the production of energy from the waters, currents and winds, construction of artificial islands and other installations and structures, marine scientific research and the protection and preservation of marine environment.¹⁶⁸

UNCLOS also gives the rights to the land locked States and geographically disadvantaged States to participate, on an equitable basis, in the exploration of an appropriate part of surplus of the living resources in conformity with the regulations and management laws designed by the coastal State. They also have the rights to over flight, lay submarines cables and pipelines and other internationally lawful uses of the sea zone.¹⁶⁹ The concept of sovereign rights¹⁷⁰ for the purpose of exploring the shelf and exploiting its natural resources was incorporated in the 1958 Convention on the Continental Shelf¹⁷¹ and recognized by the International Courts as part of customary law.¹⁷² Such zone (EEZ) has been established by the great majority of coastal States.¹⁷³

¹⁶⁶ UNCLOS, arts. 56-57.

¹⁶⁷ UNCLOS, art. 58.

¹⁶⁸ UNCLOS, arts. 55-68.

¹⁶⁹ UNCLOS, art. 58.

¹⁷⁰ Attard, *The Exclusive Economic Zone in International Law*, Oxford, 1987, p. 47.

¹⁷¹ Article 2(1) of the Convention on the Continental Shelf, 1958.

¹⁷² ICJ Reports, 1969, p. 38.

¹⁷³ See: for example, the Reagan Proclamation concerning the exclusive economic zone of the United States of 10 March 1983 in *International Legal Materials*, 1983, p. 465.

In analysis the list of the rights established to the coastal State, the input of the United States' practice regarding sovereign rights for the purpose of exploiting the non-living resources of the seabed, the Latin American practice regarding sovereign rights for the purpose of exploiting the living resources of the waters, and the Canadian practice regarding jurisdiction with regard to the protection and preservation of the marine environment, can easily be acknowledged. However, as it clearly results from the relevant provisions of UNCLOS, the EEZ is something different from a territorial sea and the rights granted to the coastal State do not in principle encroach upon the traditional freedom of navigation.

The EEZ of Bangladesh stretches out to 200 M (370 km) from the baselines, thus to 188 M beyond the territorial sea.¹⁷⁴ All natural resources within the EEZ, both living and non-living, on or under the seabed and sub-soil or on the water surface or within the water column shall vest exclusively in the Republic of Bangladesh.¹⁷⁵ The country follows UNCLOS regime on the EEZ. India declared her EEZ up to 200 M (370 km) from her baselines.¹⁷⁶ Myanmar also declared her EEZ up to 200 M (370 km) from the baselines.¹⁷⁷

Next part (Part-II) of the research paper will be examined the procedure of settlement of dispute under UNCLOS, Maritime boundaries problem and major maritime issues facing Bangladesh with its neighbouring Countries, i.e., Myanmar and India, an overview of the possible resolution of such disputes found in UNCLOS and in international law will also be provided.

¹⁷⁴ Ministry of Foreign Affairs of Bangladesh, Circular No. LT-1/3/74. (See: Annex -V).

¹⁷⁵ Sec. 5(2) of the Bangladesh's Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974).

¹⁷⁶ Sec. 7(1) of the Indian Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

¹⁷⁷ Sec. 17 of the Myanmar's Territorial Sea and Maritime Zones Law, 1977.

2.3. Concluding Remarks of Part I

Part I consists of two Chapters. Chapter 1 provides a brief discussion on Bangladesh and its historical background, mineral resources, geography and its legal position with respect to the Bay of Bengal, conflicts between Bangladesh and its neighbouring countries arising out of maritime related matters, and resource prospects in the Bay of Bengal. In this chapter it is discussed that Bangladesh is an over populated country with little mineral resources within its land territory, while on the other hand, it has huge mineral resources within its maritime zones. Therefore, the country has great interest in the exploitation of mineral resources of the sea but because of conflicting claims within the maritime zones of Bangladesh with her neighbours she can not move forward without settlement of these claims. Recently, Bangladesh has faced shortages of gas in her domestic consumption. The people of the coastal areas of Bangladesh live by fishing. The country also produces salt from the bay waters. On the other hand, India and Myanmar have more natural resources than Bangladesh out of the conflicting maritime zones. Thus, the settlement of maritime disputes between Bangladesh and its neighbours is vital for the proper utilization of the mineral resources of the Bay of Bengal.

Chapter 2 follows with an overview of the existing laws of Bangladesh relating to the maritime zones, practice of Bangladesh and its neighbouring countries on maritime matters. Maritime zones of Bangladesh include a 12 M territorial sea, 18 M contiguous zone, 200 M EEZ and 200 M continental shelf, along with 150 M extended continental shelf claim. Maritime zones of India and Myanmar include 12 M territorial sea, 24 M contiguous zone, 200 M EEZ and about 200 M continental shelf along with 150 M extended continental shelf claim. This chapter also focuses on the practice on sea matters and rights and duties of the coastal states within their maritime zones.

Part-II

Chapter I

Settlement of Dispute Under UNCLOS

1.1. General Obligation Under Section 1

A detailed and complex provision regarding the resolution of law of the sea disputes is maintained in Part XV of the United Nations Convention on the Law of the Sea.¹⁷⁸ For the settlement of disputes the procedure laid down in Part XV might arise with respect to the interpretation and application of UNCLOS.¹⁷⁹ This Part is composed of three sections:

- (i) Section 1: lays down voluntary procedures;
- (ii) Section 2: lays down compulsory procedures entailing binding decisions; and
- (iii) Section 3: contains “limitations and exceptions” to the applicability of section 2 and compulsory conciliation.¹⁸⁰

However, it is important to recognize that those compulsory procedures are of the secondary importance.

Under Part XV of UNCLOS, primary obligation of the parties is to resolve their maritime disputes by peaceful means.¹⁸¹ States are free to choose whatever means

¹⁷⁸ Shaw, *op. cit.*, p. 568.

¹⁷⁹ Anne Sheehan, “Dispute Settlement under UNCLOS: The Exclusion of Maritime Delimitation Disputes”, *University of Queensland Law Journal*, Vol. XXIV, 2005, pp.165-90.

¹⁸⁰ Chandrasekhara Rao, “Delimitation Disputes Under the United Nations Convention on the Law of the Sea”, in Ndiaye and Wolfrum (eds.), *Law of the Sea, Environmental Law and Settlement of Disputes*, Laiden/Boston, 2007, p. 878.

¹⁸¹ UNCLOS, art. 279. Not only is the requirement of peaceful dispute settlement the first provision of Part XV, but art. 279 also refer to the obligation of peaceful dispute settlement set forth in the UN Charter. UN Charter, art. 2, par. 3; art. 33. See also: Koroma, "The Peaceful Settlement of International Disputes", *Netherlands International Law Review*, 1996, pp. 227-236; and Brownlie, “The Peaceful Settlement of International Disputes” *Chinese Journal of International Law*, 2009, pp. 267-283.

they wish to resolve disputes arising under UNCLOS.¹⁸² Only after they are unable to resolve a conflict by their own means it is necessary to invoke the compulsory and binding machinery of section 2 of Part XV.¹⁸³

However, if parties to a dispute fail to reach a settlement by peaceful means of their own choice, they are obliged to resort to the compulsory dispute settlement procedures entailing binding decisions, subject to certain limitations and exceptions.¹⁸⁴ Similarly, where State parties have agreed in a separate agreement to submit a dispute to a binding procedure, that procedure will apply in lieu of Part XV, unless the parties agree otherwise.¹⁸⁵ Such procedure establishes compulsory jurisdiction evocable at the instance of any party to the dispute. It is thus open to State Parties to submit their disputes, by agreement, to any binding dispute settlement procedure, including any procedure provided for in section 2 of UNCLOS.¹⁸⁶ As for example, Bangladesh and Myanmar agreed to settle their maritime dispute regarding zones within the Bay of Bengal through the International Tribunal for the Law of the Sea and the matter is thus pending to the Tribunal.¹⁸⁷

When a dispute arises the parties are under an obligation to “proceed expeditiously to an exchange of views” as to the means of settlement to be adopted.¹⁸⁸ This important provision is clearly considered to emphasize consultation and afford the obligation to use peaceful means with a procedural

¹⁸² UNCLOS, art. 280.

¹⁸³ UNCLOS, art. 281.

¹⁸⁴ Anne Sheehan, *op. cit.*

¹⁸⁵ UNCLOS, art. 282.

¹⁸⁶ Chandrasekhara Rao, “Delimitation Disputes Under the United Nations Convention on the Law of the Sea”, *op. cit.*, p. 878.

¹⁸⁷ Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (ITLOS case no.16) (pending).

¹⁸⁸ UNCLOS, art. 283(1).

structure.¹⁸⁹ However, the obligation to consult also arises when a settlement has been reached and “the situation require consultation regarding the manner of implementing the settlement” and also when a procedure has been used in vain.¹⁹⁰ A State Party to a dispute may also invite the other party to submit the dispute to conciliation and “if the invitation is not accepted or the parties do not agree upon the procedure”, the conciliation proceedings are deemed to be terminated.¹⁹¹

Thus, Section 1 of Part XV of UNCLOS lays down the principle of peaceful settlement with free choice of means. But if the parties fail to settle the dispute by means of the procedure laid down by the Section 1, in that circumstances after the exchange of views required by article 283 has taken place, compulsory procedures entailing bindings decisions under Section 2 comes into play.

1.2. The Principle of Compulsory Settlement

One of the innovations of UNCLOS is its provisions for binding dispute settlement for the peaceful resolution of maritime disputes between and among States. Section 2 of Part XV of UNCLOS establishes these important provisions.¹⁹² Where States are unable to resolve disputes by methods of their own choosing, any party to the dispute that is a party to UNCLOS may submit the matter to a court or tribunal having jurisdiction under Section 2.¹⁹³ Thus, Section 2 introduces binding dispute settlement procedures endowed with compulsory jurisdiction.¹⁹⁴

¹⁸⁹ Merrills, *International Dispute Settlement*, 4th edition, Cambridge, 1995, p. 184.

¹⁹⁰ UNCLOS, art. 283(2).

¹⁹¹ UNCLOS, art. 284.

¹⁹² UNCLOS, Part XV, Section 2. entitled “Compulsory Procedures Entailing Binding Decisions,” consists of articles 286-296. Article 296 provides that “[a]ny decision rendered by a court or tribunal having jurisdiction under this section shall be final and complied with by all the parties to the dispute”. *See also*: Churchill and Lowe, *op. cit.*, pp. 335-37.

¹⁹³ UNCLOS, art. 286.

¹⁹⁴ Chandrasekhara Rao, “Delimitation Disputes Under the United Nations Convention on the Law of the Sea”, *op .cit.*, p. 879.

The compulsory settlement of dispute under UNCLOS is becoming more commonly accepted. It has been followed in a number of multiparty conventions.¹⁹⁵ Such as, regarding the very subject of the law of the sea, the agreement of 5 December, 1995 on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks declares the mechanism for the settlement of disputes set out in UNCLOS applicable not only to disputes concerning its interpretation and application, but also to those arising between States Parties to the Agreement concerning the interpretation and application of sub-regional, regional and global agreements relating to straddling or highly migratory fish stocks.¹⁹⁶

The applicability of the rules on the settlement of dispute of UNCLOS does not depend upon whether the parties to the dispute are parties to the Convention. Compulsory jurisdiction clauses have been incorporated also in Conventions concerning the protection of the environment, such as the London Convention on Dumping of 1972, as amended in 1978,¹⁹⁷ and the London Convention of 1973/1978 on Pollution by ships (MARPOL)¹⁹⁸ as well as, the 1996 Protocol to the Dumping Convention¹⁹⁹ and the Madrid Protocol of 1991 on the Protection of the Environment in Antarctica.²⁰⁰

A court or tribunal listed in Section 2 has jurisdiction over any dispute concerning the interpretation or application of the Convention properly submitted to it.²⁰¹ Correspondingly, such court or tribunal has jurisdiction over any dispute

¹⁹⁵ Treves, "New Trends in the Settlement of Disputes and the Law of the Sea Convention", in Scheiber (ed.), *The Law of the Sea*, The Netherlands, 2000, pp. 64-65.

¹⁹⁶ UNCLOS, arts. 286 and 288.

¹⁹⁷ United Nations Treaty Series, 1046:120.

¹⁹⁸ United Nations Treaty Series, 1340:61,184.

¹⁹⁹ London, 8 November, 1996.

²⁰⁰ 4 October, 1991.

²⁰¹ UNCLOS, art. 288 (1).

concerning the interpretation or application of an international agreement related to the purposes of UNCLOS, which is referred to it.²⁰²

According to the article 287 of UNCLOS, States are free to choose by written declaration one or more methods of dispute settlement enumerated in Section 2, when signing, ratifying or acceding to the Convention, or at any time thereafter.²⁰³

The choices are:

- (i) the International Tribunal for the Law of the Sea established in accordance with Annex VI;²⁰⁴
- (ii) the International Court of Justice(ICJ);²⁰⁵
- (iii) an arbitral tribunal constituted in accordance with Annex VII;²⁰⁶ and
- (iv) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories specified therein.²⁰⁷

Wherever the parties to a dispute have accepted the same procedure, it must be utilized unless they agree otherwise.²⁰⁸ If no choice is designated by written declaration, that State is deemed to have accepted arbitration in accordance with Annex VII.²⁰⁹ Thus, arbitration is considered as the “default” dispute settlement procedure. This is often referred to as “compulsory” arbitration, which is somewhat of a misnomer given the consensual nature of the arbitral process.

²⁰² UNCLOS, art. 288 (2).

²⁰³ UNCLOS, art. 287 (1).

²⁰⁴ UNCLOS, art. 287 (1)(a). The structure and function of the International Tribunal for the Law of the Sea is established in Annex VI. The seat of the Tribunal is in the Free and Hanseatic City of Hamburg in Germany.

²⁰⁵ UNCLOS, art. 287(1)(b). The acceptance of the jurisdiction of the International Court of Justice under Part XV would qualify as a jurisdictional (compromissory) clause under article 36(1) of the Statute of the ICJ. Significantly, both parties to the dispute must accept the jurisdiction of the ICJ under Art. 287 (1)(b) for the dispute to be referred to the Court independently under Part XV.

²⁰⁶ UNCLOS, art. 287 (1)(c).

²⁰⁷ UNCLOS, art. 287 (1)(d).

²⁰⁸ UNCLOS, art.287 (4).

²⁰⁹ UNCLOS, art.287, pars. 3 and 5.

Similar choices are set out in other modern conventions, such as, in the Madrid Protocol of 4 October, 1991 on the Protection of the Environment in Antarctica which provides for a choice similar to that of article 287 of UNCLOS, but limited to arbitration and the International Court of Justice,²¹⁰ similar provisions are found in the Vienna Convention of 22 March, 1985 on the Protection of Ozone Layer²¹¹ and in the 1992 Convention on Climate Change²¹² and on Bio-diversity.²¹³

The power of a tribunal to exercise provisional measures pending the final decision of a dispute is common in the international settlement of disputes.²¹⁴ The primary difference between arbitration and “special arbitration” is in the technical character of the disputes and the qualifications of the potential arbitrators. Annex VIII of UNCLOS defines the categories of disputes that may be referred to “special arbitration” as relating to:

- (i) fisheries;
- (ii) protection and preservation of the marine environment;
- (iii) marine scientific research; and
- (iv) navigation, including pollution from vessels and by dumping.

The special arbitral tribunal is comprised of recognized experts in those fields. In fact, one of the key purposes of “special arbitration” is to submit those disputes involving technical and scientific issues to designated arbitrators who have formerly been classified as experts in those categories of disputes. In large extent, the powers granted to the special arbitral tribunal to decide environmentally

²¹⁰ Treves, "Compulsory Settlement of Dispute: A New Element in the Antarctic System", in Francioni and Scovazzi (eds.), *International Law of Antarctica*, 1996, p. 603.

²¹¹ 26 ILM.1520 (1987), Art.11, pars. 3 and 4.

²¹² UN Framework Convention on Climate Change opened to signature at Rio de Janeiro on 5 June, 1992, art. 14, pars. 2-5.

²¹³ Convention on Biological Diversity opened to signature at Rio de Janeiro on June 5, 1995, art. 27, pars. 3 and 4.

²¹⁴ The International Court of Justice, for example, may exercise provisional measures under art. 41 of the Statute of the International Court of Justice.

related disputes are taken away by limitations on compulsory and binding dispute settlement. This is the case where a coastal State wishes to avoid a binding settlement.²¹⁵ In the event of dispute over the jurisdiction of a court or tribunal, under article 287, that court or tribunal, exercising its competence *de la competence*, settles the matter by its decision.²¹⁶

Regarding maritime delimitation dispute between Bangladesh and Myanmar a series of extensive negotiation meetings were held over about the past 36 years but did not succeed to conclude any agreement.²¹⁷ Throughout the negotiations, both the parties exchanged views regarding the settlement of disputes, as requisite under article 283 of UNCLOS. Consequently, to settle dispute with Myanmar on the maritime boundary in the Bay of Bengal, Bangladesh initiates proceeding under Section 2 of Part XV of UNCLOS.²¹⁸

1.3. Exceptions to the Principle of Compulsory Settlement

Section 3 of Part XV of UNCLOS defines the limitations and exceptions to the binding procedures of Section 2. Even if the provisions of Section 2 establishing compulsory and binding methods were fashioned to afford State parties maximum flexibility, not all disputes were deemed to be appropriate for binding settlement.²¹⁹ A system of exceptions and limitations had to be allowed since article 309 prohibits States from entering reservations to the terms of UNCLOS. The limitations on the application of the compulsory dispute settlement system

²¹⁵ Schiffman, "The Dispute Settlement Mechanism of UNCLOS: A Potentially Important Apparatus for Marine Wildlife Management," *Journal of International Wildlife Law and Policy*, 1998, pp. 293-306.

²¹⁶ Chandrasekhara Rao, "Delimitation Disputes Under the United Nations Convention on the Law of the Sea", *op. cit.*, p. 880.

²¹⁷ Notification of 8 October 2009, in the Dispute concerning the maritime boundary between Bangladesh and Myanmar under article 287 and annex VII, article 1 of UNCLOS (ITLOS case no.16), par. 6.

²¹⁸ *Ibid*, par. 7.

²¹⁹ UNCLOS, Part XV, Section 3.

are thus incorporated in UNCLOS.²²⁰ Consequently if the principle of Section 2 is that disputes which the parties have failed to settle by means of their own choice are, as a general rule, to be submitted to some form of legal tribunal, Section 3 proceeds on the assumption that certain disputes ought not to be subject to obligatory settlement at all, while other call for a procedure not involving adjudication.²²¹

The exceptions and limitations primarily relate to the exercise of the traditional freedom of high seas in the EEZ and on the continental shelf. Article 297(1) provides that, disputes concerning the exercise by a coastal State of its sovereign rights or jurisdiction in the EEZ may only be subject to the compulsory settlement procedure in particular cases.²²² Article 297(2) provides that, while disputes concerning marine scientific research shall be settled in accordance with Section 2 of UNCLOS, the coastal State is not obliged to accept the submission to such compulsory settlement of any dispute arising out of the exercise by the coastal State of a right or discretion to regulate, authorize and conduct marine scientific research in its economic zone or on its continental shelf or a decision to order suspension or cessation of such research. Article 297(3) provides similarly, while generally disputes with regard to fisheries shall be settled in accordance with Section 2, the coastal State shall not be obliged to accept the submission to compulsory settlement of any dispute relating to its sovereign rights with respect to the living resources in the EEZ or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulation.²²³

²²⁰ Klein, *Dispute Settlement in the UN Convention on the Law of the Sea*, Cambridge, 2005, pp. 121-23.

²²¹ Merrills, *op. cit.*, p. 187.

²²² UNCLOS, art. 297 (1)(a) and (b).

²²³ In such a case, the dispute in certain cases is to be submitted to the compulsory conciliation provisions under Annex V, section 2: See further, UNCLOS, art. 297(3)(b).

Article 298 provides that, States may, by written declaration, optionally exempt from the binding procedures of Section 2, disputes regarding maritime boundaries,²²⁴ military activities²²⁵ and disputes where the United Nations Security Council is exercising its functions.²²⁶ In the case of sea-boundary delimitations and other disputes in the first category, UNCLOS provides that a dispute which arises after UNCLOS has entered into force may be subject to compulsory conciliation and then, if it does not result in an agreement, to the procedures laid down in Section 2. However, this elaborate arrangement has no application to such a dispute if it also involves sovereignty or other rights over land territory, and there is no corresponding provision concerning disputes in the second and third categories. It should also be noted that declarations can be made or withdrawn at any time and are expressly stated to be reciprocal in their effect.

Consequently, not only can the coastal State limit compulsory settlement in its EEZ, but it can also exempt review of its law enforcement activities for the enforcement of those policies. It should be noted that article 298 applies to all State parties and not just to coastal States. Hence, a State may be powerless to pursue an action under UNCLOS where a coastal State is not living up to its obligations to ensure proper conservation and management and to prevent over-exploitation.²²⁷ Alternatively, a State with a stricter scheme would also be exempt from an action contending that it was not fulfilling its obligation to promote the objective of “optimum utilization” of the living resources in its EEZ.²²⁸ Thus, a coastal State not engaging in law enforcement operations to curtail over-fishing, for example, would likely be exempt from compulsory settlement if it files the appropriate

²²⁴ UNCLOS, art. 298 (1)(a).

²²⁵ UNCLOS, art. 298 (1)(b).

²²⁶ UNCLOS, art. 298 (1)(c).

²²⁷ UNCLOS, art. 61(2).

²²⁸ UNCLOS, art. 62(1).

declaration under article 298.²²⁹ Conversely, a State engaging in aggressive law enforcement operations for the same purpose would likewise be exempt, subject to the requirements of article 298.

Even if the effect of Section 3 is clearly to cut down the scope for compulsory settlement of disputes under UNCLOS, two further points about these provisions should be noted which, in a non-technical sense, qualify these limitations. The first one is whether a State can rely on articles 297 or 298 in a particular case is not a matter to be decided by the State unilaterally, but as UNCLOS makes plain, is an issue for the court or tribunal whose jurisdiction is in question. This is another example of UNCLOS incorporating a recognized principle of international law and does not of course prevent the previous limitations and exceptions from being utilized in an appropriate case. The other point is while the intention behind Section 3 is to prevent certain disputes from falling under UNCLOS's compulsory procedures automatically permit the parties to use these procedures, even for a dispute in an excluded category, so long as they agree to do so. Therefore, this is a further example of UNCLOS's fundamental principle of freedom of choice.²³⁰

In sum it is clear that limitations on compulsory procedures entailing binding decisions are set out in Section 3 of Part XV, indicating that not every dispute can be submitted to mandatory process resulting in binding decisions. Articles 297 and 298 stipulate which disputes may be exempted from procedures in Section 2. These articles illustrate the anticipated role of compulsory dispute settlement in regulating the uses of oceans under UNCLOS.

1.4. Conciliation

²²⁹ UNCLOS, art. 298(1).

²³⁰ Merrills, *op. cit.*, p. 190.

Conciliation has been defined as “a method for the settlement of international disputes of any nature according to which a Commission set up by the Parties, either on a permanent basis or an ad-hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them or of affording the Parties, with a view to its settlement, such aid as they may have requested”.²³¹

In theory, conciliation serves a large variety of useful purposes. As Lauterpacht has enumerated them, “it brings the parties together; through a moratorium on their actions it prevents sudden breaches of the peace; it replaces rigid law with reasonable discourse about the controversy; it is marked by simplicity; it may have the advantages of the services of experts; and, as its findings are not bindings in any case, it eases the conclusion of treaties on the pacific settlement of disputes.”²³²

The only means of settlement of international disputes specifically mentioned in Section 1 of Part XV of UNCLOS is conciliation. It is specifically mentioned as a means of settlement that at any time any party to a dispute concerning the interpretation or application of UNCLOS may invite the other party or parties to submit such dispute to conciliation.²³³ This provision deals with voluntary conciliation. In fact, if the other party refuses to submit the dispute to conciliation, the proceedings ends there. The procedure to be followed in voluntary conciliation is that set out in Annex V, Section 1 of UNCLOS or any other conciliation procedure agreed upon by the parties. Moreover, conciliation is obligatory for certain disputes excluded from adjudication in Section 3 of Part XV. Therefore Conciliation is an important means of settling disputes in UNCLOS.

²³¹ Article 1 of the Regulations on the Procedure of International Conciliation adopted by the Institute of International Law in 1961.

²³² Hugh, Jean-Gabriel, William, Linda, Donald, Armand, Ivan and Sharon(eds.), *International Law Chiefly as Interpreted and Applied in Canada*, 5th edition, Montgomery, Canada, 1993, p. 239.

²³³ UNCLOS, art. 284 (1).

According to Article 1 of Annex V of UNCLOS any party may institute proceedings by written notification addressed to the other party or parties to the dispute. However such proceedings can only be instituted after the parties have agreed, in accordance with article 284 of Part XV, that conciliation is the most suitable means for the settlement of the maritime dispute in question. UNCLOS provides for the submission of dispute to a conciliation commission. Unless the parties agree otherwise, a commission is established by each party appointing two members,²³⁴ who then appoint an additional member as chairman. Thus, a commission will normally be composed of five members.²³⁵ In case of disagreement, the chair may be appointed by the Secretary-General of the United Nations. In the event of two or more parties having the same interest, the conciliators can be appointed jointly.²³⁶

If the parties have different interest or if they are unable to agree whether they have the same interests, each party can appoint the conciliators separately. To facilitate the composition of such a commission, every party to UNCLOS may nominate four conciliators and such persons nominated will constitute the permanent list of conciliators. The duty to constitute and maintain the list is given to the Secretary-General of the United Nations. The name of each conciliator nominated will remain on the list until withdrawn by the State which nominated him.

The conciliation commission shall determine its own procedure, unless the parties agree otherwise. It can also invite any State party to UNCLOS to submit its views,

²³⁴ Only one conciliator may be a national of the appointing party.

²³⁵ Merrills, *op. cit.*, p. 190.

²³⁶ UNCLOS, Annex V, Article 3.

whether verbally or in writing.²³⁷ Decisions of the conciliation commission dealing with procedural matters, its recommendations and report are taken by a majority vote of its members.

The functions of the conciliation commission are laid out in Article 6 of Annex V of UNCLOS. Article 6 provides that, “the commission shall hear the parties, examine their claims and objections and make proposals to the parties with a view to reaching an amicable settlement”. Therefore the commission has a dual function. It hears the parties and examines their claims and objections. It also makes proposals to help the parties reach an amicable solution.

The commission has twelve months, from when it is set up, to report any agreements reached. Where no agreement has been reached, the commission’s report shall record “its conclusions on all questions of fact or law relevant to the matter in dispute”.²³⁸ This provision emphasizes the judicial elements in the commission’s work by requiring it to present its conclusions.

The commission’s conclusions are only to be presented when the parties, despite the commission’s assistance, have failed to reach an agreement. Thus, an important function of the commission is to attempt to secure a settlement of the dispute while the proceedings are in progress. Moreover, any conclusions in its report must be accompanied by “such recommendations as the commission may deem appropriate for an amicable settlement”.²³⁹ The commission’s report, including its conclusions and recommendations, is not binding to the parties.²⁴⁰

²³⁷ These two rules of procedure are in line with par. 3 of the Annex of the 1969 Vienna Convention on the Law of Treaties.

²³⁸ UNCLOS, Annex V, Article 7.

²³⁹ UNCLOS, Annex V, Article 7(1).

²⁴⁰ Merrills, *op. cit.*, p. 192.

The function of conciliation to examine and clarify the facts of the dispute and to try and find a solution that will satisfy all parties concerned is specifically mentioned in treaties such as the 1969 Vienna Convention on the Law of the Treaties and the 1982 United Nations Convention on the Law of the Sea. Some treaties provide that conciliation is to be resorted to when negotiation or consultation have failed as a means of settling the dispute.

The 1985 Vienna Convention for the Protection of the Ozone Layer provides that, in case of a dispute relating to the interpretation or application of the Convention, the parties must first attempt to settle the dispute by negotiation. If negotiation is unsuccessful, they may jointly request the mediation of a third party. If the parties have each accepted a different procedure or if they have accepted no procedure, they are obliged to submit the dispute to conciliation, unless they come to an agreement as to some other means of settling the dispute. Other treaties, such as the 1962 Optional Protocol Concerning the Compulsory Settlement of Disputes, provide that a dispute is to be submitted to conciliation before it can be submitted to any of the adjudicatory procedures.²⁴¹

Conciliation can be terminated by

- (i) a settlement reached by the parties themselves,
- (ii) a settlement based on proposals made by the conciliation commission,
- (iii) acceptance by the parties of the recommendations contained in the report of the commission,
- (iv) rejection of the report by one of the parties, or
- (v) the expiration of three months from the date of transmission of the commission's report to the parties.²⁴²

²⁴¹ Article III of the 1962 Optional Protocol Concerning the Compulsory Settlement of Disputes.

²⁴² UNCLOS, Annex V, Article 8.

The above provisions also apply to Section 2 of Annex V, which deals with the compulsory submission to conciliation procedure, with a few differences. A party to a dispute which, in accordance with Part XV, Section 3, may be submitted to conciliation may institute proceedings by written notification. This is the same procedure as that adopted for voluntary conciliation. The difference is that the State notified is obliged to submit to such proceedings and cannot avoid them by not replying to the notification of institution of proceedings. Any divergence as to whether the conciliation commission has competence is to be decided by the commission.

Conciliation is textually significant in the zones of fisheries and the conservation and management of living species. In disputes involving the conservation, management, determination and allocation of living resources in an EEZ, article 297(3)(b) requires conciliation upon the demand of any party to the dispute, where no settlement has been reached under Section 1.²⁴³ Some disputes involving marine scientific research may also be submitted to conciliation, at the request of either party, subject to certain rights of the coastal State.²⁴⁴ Moreover, some disputes concerning maritime boundary delimitation, and historic bays or titles may optionally be exempted from compulsory settlement and submitted to conciliation.²⁴⁵ However, no known cases of this type have been undertaken to date. In contrast, non-binding conciliation has been used, even if only very occasionally. Iceland and Norway appointed a Conciliation Commission in August 1980 to make unanimous recommendation on the question of the continental shelf boundary between Iceland and Norwegian island of Jan Mayen. The parties accepted the unanimous recommendations to establish a maritime

²⁴³ UNCLOS, art. 297 (3)(b)(i-iii).

²⁴⁴ UNCLOS, art. 297 (2)(b).

²⁴⁵ UNCLOS, art. 298 (1)(a)(i-iii).

joint development zone, in 1981.²⁴⁶ However, if either Party had not agreed with the recommendations, they would not have been binding on either State.

1.5. Arbitration

Arbitration is a means of adjudication that is a process of decision making according to law. However, along with control over the variety and method of the tribunal, and the questions presented to it, the parties may also determine what law, national or international, shall be applied to their dispute. In fact, they may also direct the tribunal to temper law with equitable considerations. In a matter wholly new to international law, the parties might go so far as to invite the tribunal to decide *ex aequo et bono*, in effect to legislate a solution for them.²⁴⁷

Maritime disputes may be referred to arbitration in three different ways. The parties may agree to choose any peaceful means to settle the dispute.²⁴⁸ This therefore includes an arbitration tribunal. Under article 287(1), the parties may declare that arbitration is their preferred means of settlement. If there is no common declaration, the State party shall be deemed to have accepted arbitration in accordance with Annex VII. A list of arbitrators is to be drawn up by the Secretary-General and each party to UNCLOS may make four nominations. The persons nominated are to be “experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity”.²⁴⁹ So as to proceed under Annex VII, an arbitral tribunal is to be set up. This tribunal is to be composed of five members, unless a dispute involves more than two parties or the parties agree otherwise. Each party is to nominate one member, preferably from the list of arbitrators drawn up and nominated by the Secretary-General of the

²⁴⁶ Charney and Alexander, *International Maritime Boundaries*, Vol. II, Dordrecht/ Boston/ London, 1993, pp. 1755-1765.

²⁴⁷ Hugh, Jean-Gabriel, William, Linda, Donald, Armand, Ivan and Sharon (eds.), *op. cit.*, p. 242.

²⁴⁸ UNCLOS, Section I of Part XV.

²⁴⁹ UNCLOS, Annex VII, Article 2(1), therefore stipulates two qualifications, one professional in nature, the other of a moral nature.

United Nations. The remaining three members, including the president, are to be appointed by agreement.

UNCLOS provides that vacant places on the tribunal, and disagreement over the choice of president, shall be resolved either by a person or third State chosen by the parties, or by the President of the ITLOS.²⁵⁰ As for example the President of ITLOS appointed the three non-party arbitrators in the Land Reclamation by Singapore in and around the Straits of Johor case in consultation with both the parties.²⁵¹ All such appointments are to be made from the list of the Secretary - General and in discussion with the parties. In an obvious endeavor to ensure impartiality, UNCLOS lays down that members of the tribunal appointed in this way must also be of diverse nationalities and may not be "in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute".²⁵² The tribunal generally decides its own procedure, giving each party a full chance to be heard and to present its case,²⁵³ and it takes decisions by majority of vote. The absence or abstention of less than half the members shall not prevent the tribunal from reaching a decision.²⁵⁴ Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties.²⁵⁵

²⁵⁰ Initially, appointment by the President of the ITLOS was not generally accepted. Some were of the opinion that the Secretary General of the United Nations would have been a better choice.

²⁵¹ Nelson, "The Jurisprudence of the International Tribunal for the Law of the Sea: Some Observations", in Ndiaye and Wolfrum (eds.), *Law of the Sea, Environmental Law and Settlement of Disputes*, Laiden/Boston, 2007, pp. 992-93.

²⁵² UNCLOS, Annex VII, Article 3.

²⁵³ UNCLOS, Annex VII, Article 5.

²⁵⁴ UNCLOS, Annex VII, Article 8.

²⁵⁵ UNCLOS, Annex VII, Article 7.

The parties to the dispute are also bound to facilitate the work of the arbitral tribunal by providing it with documents, facilities and information, access to witness and experts, and the means to visit the localities concerned. However this is restricted by the provision that such assistance shall be “in accordance with their law and using all means at their disposal”.²⁵⁶ Failing to appear or to defend a case by the parties cannot prevent a decision.²⁵⁷ Conversely, in such a case, before making an award the tribunal must be satisfied that it has jurisdiction and that the claim is well founded in fact and law.²⁵⁸ The award which is binding on the parties must be reasoned and limited to the subject matter of the dispute and may include separate and dissenting opinions.²⁵⁹ The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure.²⁶⁰

However, according to Article 12, disagreements relating to the interpretation or manner of implementation of an award may apparently be submitted by either party to the original tribunal at any time or to another court or tribunal by agreement.²⁶¹ As for example the *MV Saiga No. 2* (Saint Vincent and the Grenadines v. Guinea) case was initially referred to the tribunal, under Annex VII, by St. Vincent and the Grenadines, thereafter, following an agreement with the respondent, Guinea, was transferred to the ITLOS. The case was decided in the year 1999.²⁶²

²⁵⁶ UNCLOS, Annex VII, art. 6. A similar version, with slight modifications, was found in all version of this Informal working group would have enabled the arbitral.

²⁵⁷ This provision is a similar, although more detailed, version of article 53 of the Statute of the ICJ.

²⁵⁸ UNCLOS, Annex VII, Article 9.

²⁵⁹ UNCLOS, Annex VII, Article 10.

²⁶⁰ UNCLOS, Annex VII, Article 11.

²⁶¹ UNCLOS, Annex VII, Article 12.

²⁶² *MV Saiga* (No.2) case (Saint Vincent and the Grenadines v. Guinea), Judgment (1999), reprinted in (1999) 38 ILM, p. 1323.

Likewise, in the *Swordfish case* between Chile and the European Community (EC), there was first a reference to the tribunal, under Annex VII, by Chile. Then, after consultation between the parties, the case was transferred to a Special Chamber of ITLOS, appointed under Article 17(2) of the Statute of the Tribunal.²⁶³ Similarly, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*²⁶⁴ was initially referred to the tribunal, under Annex VII, by Bangladesh and Myanmar, thereafter, both parties agreed to transfer the case to ITLOS.²⁶⁵ The case is now pending to the ITLOS.

The Delimitation of maritime boundary dispute case between Bangladesh and India is going to be settled through Arbitral Tribunal constituted in accordance with the Annex VII of UNCLOS. On 12 February, 2010, the President of ITLOS appointed three arbitrators: Mr. Tullio Treves of Italy, Mr. Ivan Anthony Shearer of Australia and Mr. Rudiger Wolfrum of Germany (as President), among them first two arbitrators are judges of ITLOS, Mr. Rudiger Wolfrum was also judge and President. Bangladesh nominated Mr. Alan Vaughn Lowe, QC, a former professor of Oxford University and India nominated P. Sreenivasa Rao, former legal adviser of the Ministry of External Affairs of India.²⁶⁶ In May 2010 the President of the arbitral tribunal called Bangladesh and India to attend a meeting to fix a time table of submission of their pleadings and rejoinders. After discussion it was decided that Bangladesh is to lodge its Statement of claim by May 2011 and India will respond by May 2012.²⁶⁷

1.6. Special Arbitration

²⁶³ See the ITLOS's Order of 20 December 2000.

²⁶⁴ ITLOS case no 16.

²⁶⁵ ITLOS/Press 140 (16 December 2009).

²⁶⁶ Harunur Rashid, "Bangladesh goes to court," *The Daily Star*, June 28, 2010.

²⁶⁷ Ibid.

State's marine activities often are so complex that disputes often involve technical issues which arbitrators who are not experts in the subject matter of the law of the sea may find difficult to solve. An attempt to solve this problem was made in the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas which provided for the appointment of experts to decide disputes relating to fishing and conservation.²⁶⁸ This convention established a special commission of five members named by agreement between the parties. Decisions of this special commission were to be made by following scientific and technical criteria and such decisions would be binding.²⁶⁹ This procedure was elaborated in Annex VIII of UNCLOS which deals with special arbitration.²⁷⁰

It is one of the binding methods of settlement which a party to the convention can admit in advance by a declaration under section 2 of Part XV of UNCLOS. Special arbitration, like conciliation and arbitration, is instituted by a written notification together with a statement of the claims and the grounds on which it is based. However, it differs from arbitration and conciliation in that it deals with disputes relating to the interpretation or application of the articles of UNCLOS concerning: fisheries; protection and preservation of the marine environment; marine scientific research; and navigation, together with pollution from vessels and by dumping. The process may be started unilaterally whenever a dispute relating to these issues arises and both parties have deposited a declaration in appropriate terms.

Similar to arbitration under Annex VII, Article 2, a list of experts is to be maintained also in the case of special arbitration.²⁷¹ However, in the case of special arbitration there are four lists, one for each category of dispute. A list of experts is

²⁶⁸ 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, art. 9. See also: Merrills, *op. cit.*, p. 196.

²⁶⁹ *Ibid*, arts. 10 and 11.

²⁷⁰ Merrills, *op. cit.*, p. 196.

²⁷¹ UNCLOS, Annex VIII, Article 2.

to be kept respectively by the Food and Agricultural Organization in the field of fisheries, by the UN Environmental Programme in the field of protection and preservation of the marine environment, the Intergovernmental Oceanographic Commission in the field of marine scientific research, and the International Maritime Organization in the field of navigation. Two experts may be nominated by each State party for each list. The expert's "competence in the legal, scientific or technical aspects of such field" must be established and he must "enjoy the highest reputation for fairness and integrity".²⁷² Therefore, in special arbitration the lists are not maintained by the Secretary-General of the United Nations, as in the case of arbitration, but by an appropriate body as Stated above. Also, the persons nominated under Annex VIII are experts and not arbitrators. The special arbitration tribunal is composed of five members.²⁷³ Each party appoints two members; they can be a national of each appointing State. These persons should preferably be appointed from the appropriate list. The President of the special arbitration tribunal is appointed by the parties of the dispute. If there is disagreement amongst the parties as to who is to be appointed, the Secretary-General of the United Nations shall appoint the President.²⁷⁴ However, the parties might agree that a person or third State chosen by them is to make such appointment. The parties to dispute falling within the scope of Annex VIII may request the special arbitration tribunal to carry out an inquiry and establish the facts giving rise to the dispute. The findings of the special arbitral tribunal shall, unless the parties agree otherwise, be conclusive. The tribunal may also "formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute".²⁷⁵ This provision is quite outstanding in that it gives the special

²⁷² UNCLOS, Annex VIII, Article 3.

²⁷³ UNCLOS, Annex VIII, Article 3(a).

²⁷⁴ In special arbitration it is the Secretary-General of the United Nations who is the appointing authority unlike arbitration where appointments of members are made by the President of the ITLOS.

²⁷⁵ UNCLOS, Annex VIII, Article 5.

arbitration tribunal this double function of fact- finding and making non-binding recommendations and, as opposed to inquiry under general international law, inquiry under Annex VIII is binding.

1.7. International Tribunal for the Law of the Sea

Specifically for the settlement of maritime disputes and in compliance with article 287 of UNCLOS the International Tribunal for the Law of the Sea, was established.²⁷⁶ The seat of the ITLOS is in Hamburg, Germany but it can sit and exercise its functions elsewhere, whenever it considers this desirable.²⁷⁷ The ITLOS was inaugurated on 18 October 1996 as a permanent international judicial organ.²⁷⁸

The ITLOS is composed of 21 independent members,²⁷⁹ elected by secret ballot ²⁸⁰ by the State Parties to UNCLOS. Each State Party may nominate up to two candidates from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.²⁸¹ The persons elected to the ITLOS are those nominees who obtain the largest number of votes and a two thirds majority of the State Parties present and voting. The two-thirds majority must also be an absolute majority of all State Parties.²⁸²

No two members may be nationals of the same State and in the ITLOS as a whole it is necessary to assure the representative of the principal legal systems of the world and equitable geographical distribution; there shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations (African States, Asian States, Eastern European States, Latin

²⁷⁶ UNCLOS, Annex VI, Article 1.

²⁷⁷ This provision corresponds to article 22 of the Statute of the International Court of Justice.

²⁷⁸ Hand book on the Delimitation of Maritime Boundaries, Division for Ocean Affairs and the Law of the Sea, United Nations, 2000, p. 93.

²⁷⁹ Article 2, par. 1 of the Statute of ITLOS.

²⁸⁰ Article 4, par. 4 of the Statute of ITLOS.

²⁸¹ Article 2, par. 1 of the Statute of ITLOS.

²⁸² Article 4, par. 4 of the Statute of ITLOS.

American States and Caribbean States and Western European and other States).²⁸³ The geographical distribution within the ITLOS was decided at the fifth meeting of States Parties in 1996.²⁸⁴ Members of the ITLOS are elected for nine years and may be re-elected, the term of one third of the members expiring every three years.²⁸⁵ However, in the case of members elected at the first election (in 1996), the terms of seven members expired after three years and the term of seven others expired three years later.²⁸⁶ “No member of the ITLOS may exercise any political or administrative function, or associate activity with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the sea-bed or other commercial use of the sea-bed.”²⁸⁷

This provision is based on Article 17 of the Statute of the ICJ. This provision expands the earlier Statute’s prohibition on political and administrative functions to include active association or financial interest “in any of the operations of any enterprise concerned with the exploration for or the exploitation of the resources of the sea or the sea-bed or other commercial use of the sea or the sea-bed”. These restrictions emphasize the fact that the ITLOS is being established to deal with all uses of the sea and the sea-bed. Most uses are of a commercial nature and the incompatibility between being a member of the ITLOS and being involved in the use of the sea or the sea-bed is obvious.

A member of the ITLOS is not disqualified by being a national of one of the parties to a dispute and an ad-hoc member may be appointed by a party or parties

²⁸³ See: e.g., Yearbook of the International Tribunal for the Law of the Sea, Vol. II, 2007, Laiden/Boston, August, 2008, p. 3.

²⁸⁴ See: SPLOS/L.3/Rev.1.

²⁸⁵ Article 5, par. 1 of the Statute of ITLOS.

²⁸⁶ President Amerasinghe’s initial text included the requirement “*high moral character*” but in the Revised Single Negotiating Text, Part IV, this was changed to “*the highest reputation for fairness and integrity.*”

²⁸⁷ UNCLOS, Annex VI, Article 7(1).

currently unrepresented. Similarly to the statute of the ICJ, the members of the ITLOS, before taking up their duties, shall declare that they will exercise their powers “impartially and conscientiously”.²⁸⁸ Members of the ITLOS, like those of the ICJ, shall enjoy diplomatic privileges and immunities. Chambers of three or more members may be formed for dealing with particular categories of cases. A five member chamber of summary procedure is to be formed for the “speedy dispatch of business” and a chamber may be formed to deal with a particular dispute if the parties so request.²⁸⁹

The Jurisdiction of the ITLOS *rationemateriae* extends to the general law of the sea, practically all of which is regulated in greater or lesser detail in UNCLOS. Cases could concern issues such as baselines, rights of passage, maritime boundaries and fisheries jurisdiction, all of which have come before the International Court of Justice or *ad hoc* arbitral tribunals in recent years. As a body created by UNCLOS, the Tribunal will in practice concentrate upon the true interpretation and application of its terms. However, article 293 provides that courts and Tribunals with jurisdiction under the convention are to apply both in terms “and other rules of international law not incompatible with” the convention.

One example of such other rules is provided by article 295 which imports into the procedures the well known *local remedies* rule, according to which an available local remedy has to be sought before recourse is had to an international body. Article 293 means, in practice, that the Tribunal will have to consider not only the law of the sea, including customary law on certain matters, but also a wide range of other legal issues. These include: the law of treaties (for instance, the interpretation or application of the convention as a treaty subject to the Vienna

²⁸⁸ Ad hoc judges need to fulfill the condition of members, as set out in articles 2, 28 and 11 of the Statute of the ITLOS.

²⁸⁹ The composition of the chamber is to be determined by the ITLOS with the approval of the parties.

Convention on the Law of Treaties; or the effects of national declarations); the effect of previous judicial decisions (as in the case decided by a Chamber of International Court of Justice about the *Gulf of Fonseca*²⁹⁰); and the law on State responsibility, of which the local remedies rule forms part. Necessarily, the Tribunal will apply the law of its own procedure.²⁹¹

A dispute may be referred to the ITLOS when both parties have made a declaration accepting its jurisdiction.²⁹² It will have jurisdiction when any agreement so provides, or when all the parties to any treaty concerning the law of the sea already in force agree that disputes may be so referred to it. The ITLOS, like other courts and tribunals founding part of UNCLOS system, also has the power to propose provisional methods at the request of a party to a dispute, provided a prima facie case for jurisdiction can be made out.²⁹³

Unlike the Court, the ITLOS can give advisory opinions only with respect to specific seabed disputes referred to it by the International Seabed Authority, which was also established by UNCLOS.²⁹⁴ Under Article 20 of the Statute of the Tribunal “the Tribunal shall be open to State Parties”. Moreover, according to para 2 of Article 20, the tribunal is open to entities other than State Parties in the cases expressly provided for in Part XI.²⁹⁵ Proceedings before the ITLOS are instituted when a dispute is submitted to it either by notification of a special agreement or by written application. If the dispute concerns interpretation or application of UNCLOS, the Registrar notifies all States parties. If an international agreement is in question, he notifies all parties to the agreement.

²⁹⁰ *Land, Island and Maritime Frontier* case, ICJ Reports, 1992, p. 351.

²⁹¹ Anderson, *Modern Law of the Sea*, Leiden/Boston, 2008, p. 509.

²⁹² Merrills, *op. cit.*, p. 199.

²⁹³ Article 25 of the Statute of ITLOS.

²⁹⁴ UNCLOS, art. 159, par. 10.

²⁹⁵ Treves, “The Jurisdiction of the International Tribunal for the Law of the Sea”, in Rao and Khan (eds.), *The International Tribunal for the Law of the Sea; Law and Practice*, Indian Society of International Law, Great Britain, 2001, pp. 111-31.

The ITLOS itself is responsible for laying down rules of procedure; UNCLOS provides that the hearings are to be public and under the control of the President of the ITLOS.²⁹⁶ The ITLOS may prescribe provisional measures and is to make orders for the conduct of the case.²⁹⁷ The decision of the tribunal and the consultation of the parties is made a requirement for making the pleadings accessible before the beginning of the oral proceedings, while such accessibility at the beginning of the oral proceedings is automatic.²⁹⁸ If one of the parties does not appear or refuses to participate, the other party may ask for the continuation of proceedings.²⁹⁹ Every State which has a legal interest in a decision may submit an intervention request.³⁰⁰

Decisions of the ITLOS are made by majority vote³⁰¹ and the reasons on which the judgment is based must be given;³⁰² the judgment must be read in open court.³⁰³ Decision other than in provisional matters are final and binding only as between the parties of the dispute³⁰⁴ and for an intervening State in so far as the decision relates to matter in respect of which that State intervened. However, in the event of a dispute as to the meaning or scope of the decision of the tribunal, the Tribunal shall construe it upon the request of any party.³⁰⁵ Till today (as of May 2011) 18 cases, including Bangladesh delimitation case, have been submitted to the ITLOS.³⁰⁶

²⁹⁶ Article 26 of the Statute of ITLOS.

²⁹⁷ Article 27 of the Statute of ITLOS.

²⁹⁸ Treves, "The Rules of the International Tribunal for the Law of the Sea", in Rao and Khan (eds.), *The International Tribunal for the Law of the Sea; Law and Practice*, Indian Society of International Law, Great Britain, 2001, pp. 135-159.

²⁹⁹ Article 28 of the Statute of ITLOS.

³⁰⁰ Article 31 of the Statute of ITLOS.

³⁰¹ Article 29 of the Statute of ITLOS.

³⁰² Article 30(1) of the Statute of ITLOS.

³⁰³ Article 30(4) of the Statute of ITLOS.

³⁰⁴ Article 33(1) of the Statute of ITLOS.

³⁰⁵ Article 33(3) of the Statute of ITLOS.

³⁰⁶ ITLOS Website: http://www.itlos.org/start2_en.html.

The tribunal decided its first case in December 1997³⁰⁷ and the second in March 1998.³⁰⁸ Both the cases involved a St. Vincent and the Grenadines oil tanker, the *Saiga*, which was seized by Guinea in the offshore waters of Guinea in October 1997, for allegedly smuggling.³⁰⁹ Although this case involves the same vessel, by practice in international litigation, it is handled as two separate cases, namely, the prompt release of the vessel and its crew, the prescription of provisional measures, and the merits of the case itself.³¹⁰ Though charged with a custom offence, in respect of which UNCLOS does not impose a 'prompt release' case obligation, the majority of the judges in the Tribunal decided that the case should be treated as a fisheries offence, and ordered the release of the vessel.³¹¹

Regarding the maritime boundaries delimitation dispute between Bangladesh and its neighbouring countries, pursuant to Annex VII of UNCLOS, on 8 October 2009, the Government of Bangladesh instituted arbitral proceedings against Myanmar and India by submitting Notifications and Statements of Claim to the diplomatic representatives of both States in Dhaka, the capital of Bangladesh.³¹² The purpose of the statements of claim is to secure the full and satisfactory delimitation of Bangladesh's maritime boundaries with India and Myanmar in the territorial sea, the exclusive economic zone and the continental shelf in accordance with international law. Bangladesh appointed Professor Vaughan Lowe as its arbitrator in both cases. According to Article 3(c) of Annex VII, Myanmar and India

³⁰⁷ See: *St. Vincent and the Grenadines-Guinea* (The M/V "Saiga" case), 37 I.L.M. 360 (ITLOS, 4 Dec, 1997).

³⁰⁸ See: *St. Vincent and the Grenadines - Guinea* (The M/V "Saiga" case), 37 I.L.M. 1202 (ITLOS, 11 Mar, 1998).

³⁰⁹ See: *St. Vincent* 1, 37 I.L.M. at 367.

³¹⁰ For the texts of the judgment on the *Prompt Release* case, See: 1998 Yearbook of the Tribunal.

³¹¹ Collier and Lowe (eds.), *The Settlement of Disputes in International Law*, Oxford, 1999, pp. 89-90.

³¹² Notification of Foreign Minister of Bangladesh to the President of ITLOS on 13 December, 2009.

appointed Judge P. Chandrasekhara Rao and Dr. P Sreenivasa Rao as their arbitrators.³¹³

Furthermore, on 4 November 2009 Myanmar proposed to Bangladesh to submit the matter between it and Bangladesh to the ITLOS accepting the tribunal's jurisdiction over the case.³¹⁴ Replying to the Myanmar's declaration, on 12 December 2009 Bangladesh transmitted its declaration to the ITLOS.³¹⁵ Consequently, a case has been filed in the ITLOS on 14 December 2009, and has entered into the lists of cases being No.16. In accordance with the Tribunal's Statute and Article 19 of the Rules Bangladesh also notified to the ITLOS of its intention to select Professor Vaughan Lowe QC as judge *ad hoc*.³¹⁶

Bangladesh has appointed H.E. Dr. Dipu Moni, MP, Minister for Foreign Affairs as Agent and Mr. khurshid Alam, Additional Secretary, Ministry of Foreign Affairs as Deputy Agent; and whereas Myanmar has appointed H.E. Tun Shin as agent, and Ms. Daw Hla Myo Nwe and U Nyan Naing Win as Deputy Agent.³¹⁷ On 28 January 2010 the President of ITLOS by his order no. 01 of 2010 taking into account the agreement of the parties i.e., Bangladesh and Myanmar, fixed 1 July 2010 as the time limit for the submission of the Memorial of Bangladesh and 1 December 2010 as the time limit for the submission of the Counter-Memorial of Myanmar.³¹⁸ On 17 March 2010 the President of ITLOS by his order no. 02 of 2010 taking into account of the agreement of the parties i.e., Bangladesh and Myanmar,

³¹³ Ibid.

³¹⁴ Note Verbale No. MOFA/UNCLOS/320/2/158, of 8 October 2009 of the Embassy of the Union of Myanmar, Dhaka, Bangladesh.

³¹⁵ Declaration of 12 December 2009 made by the Government of the People's Republic of Bangladesh under article 287(1) of the UNCLOS accepting the Jurisdiction of the International Tribunal for the Law of the Sea, made by the Government of the People's Republic of Bangladesh.

³¹⁶ For more details, see the case "*Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*" (ITLOS case no.16).

³¹⁷ Order 2010/01 of 28 January 2010 of ITLOS.

³¹⁸ ITLOS/Press 142, 29 January 2010.

fixed 15 March 2011 as the time limit for the Reply of Bangladesh and 1 July 2011 as the time limit for the submission of the Rejoinder of Myanmar.³¹⁹ Furthermore, Both Bangladesh and Myanmar have already submitted their Memorial and Counter-Memorial, respectively.³²⁰

Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal case is the first case to the ITLOS regarding maritime boundary delimitation issues. The problem of delimitation of maritime boundary of Bangladesh with its the neighbouring countries requires an effective and equitable solution to explore natural resources, including oil and gas within the Bay of Bengal for the sustainable development of the country. Important legal principles, such as drawing of maritime baselines, application of the principles of equity and equidistance principles are expected to be the key legal issue in settling the dispute between Bangladesh and Myanmar.

Chapter II

Maritime Boundaries Problems and Major Maritime Issues Facing Bangladesh with its Neighbouring Countries

2.1. Recurrence of the Maritime Boundary Dispute

The sea areas of Bangladesh are rich in hydrocarbons and mineral deposits but because of disputes between Bangladesh and its neighbouring countries regarding

³¹⁹ Order 2010/02 of 17 March 2010 of ITLOS.

³²⁰ Information from the Deputy Agent of Bangladesh in ITLOS case no.16.

delimitation of the sea boundary she can't utilize those resources. The abundance of sea resources and growing importance of the sea economy has led to the plenty of discord between the countries.³²¹ Bangladesh being a coastal State should protect its legitimate claim within its maritime boundary.³²²

It is a firm principle of international law that coastal States have inherent rights to the continental shelf. However, the inherency doctrine notwithstanding, the obligation is on the coastal States to submit relevant information to the Commission on the Limits of the Continental Shelf (hereinafter CLCS) for the delineation of extended 150 M beyond 200 M from the baselines.³²³ The CLCS is scientific and technical somewhat than legal. Its duty is to ensure that the outer limit to the continental shelf, as submitted by States, is consistent with the complex criteria prescribed in UNCLOS.³²⁴ The CLCS shall make recommendations to coastal States on matter related to the establishment of the outer limit of their continental shelf.³²⁵ Only delineations that are based on the recommendations of CLCS are final and binding.³²⁶ The strong political and economic incentives for Bangladesh, India and Myanmar to agree on a maritime boundary are compounded by their legal obligations under UNCLOS to submit continental shelf claims.

Recently on 25 February, 2011 Bangladesh has submitted its continental shelf claim to the CLCS for the delineation of extended 150 M beyond 200 M from the

³²¹ Masum Billah, "Delimiting sea boundary by applying equitable principles," *The Daily Star*, October 17, 2009, Law and Our Rights, Issue No.140.

³²² Ferdousour Rahman, "International Law of the Sea: Bangladesh perspective," *The Daily Star*, May 27, 2006.

³²³ UNCLOS, art. 76 (7) and (8).

³²⁴ Bateman, "Bay of Bengal: A New Sea of Troubles?," *S. Rajaratnam School of International Studies*, Singapore (RSIS) Commentaries. Available at: www.rsis.edu.sg.

³²⁵ UNCLOS, art. 76 (8).

³²⁶ Kunoy, "The Admissibility of a Plea to an International Adjudicative Forum to Delimit the Outer Continental Shelf Prior to the Adoption of Final Recommendations by the Commission on the Limits of the Continental Shelf", *International Journal of Marine and Coastal Law*, 2010.p. 270.

baselines.³²⁷ Pursuant to UNCLOS, Myanmar and India have also submitted their claims with the CLCS in 2008 and 2009 respectively.³²⁸ UNCLOS defines the rights and responsibilities of coastal States³²⁹ and helps delineate boundaries so that countries can exercise their rights and responsibilities in clearly defined maritime zones. Victor Prescott and Clive Schofield, maritime experts, summarized the impetus for these boundaries well when they stated that "the need for maritime boundaries has generally been resource induced."³³⁰

Bangladesh, which has scarcely any other natural resources besides gas, has no alternative than to maximize the resources within the sea. Natural gas is a major source of revenue and employment for Bangladesh's expanding industrial growth. The follow-on growth in electricity demand has basically been met by natural gas, which produces almost 85% of the country's electricity. The demand for natural gas from the electricity sector is compounded by enlarged demand from industries such as fertilizer production that use gas as a key input. Considering hypothetical growth rate, the approximate gas demand by various sectors till 2011 is given below.³³¹ However the gas dependant sectors would sustain till the year 2035 if the country is fortunate to have an average of 32 tcf of undiscovered gas as estimated by a joint study of Patrobangla and United States Geological Survey (USGS).³³²

Table
Average Gas Demand Projection-By Sector
(In billion cubic feet)

Sector	2008-2009	2009-2010	2010-2011
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³²⁷ Bangladesh submitted on 25 February, 2011, Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/clcs55_2011_feb_2011.pdf.

³²⁸ Myanmar submitted on 16 December, 2008 and India submitted on 11 May 2009, Available at: http://www.un.org/Depts/los/clcs_new/commission_documents.htm.

³²⁹ UNCLOS, arts. 77 and 81.

³³⁰ Prscott and Schofield, *Maritime Political Boundaries of the World*, 2nd edition, Laiden/Boston, 2005, p. 217.

³³¹ *Annual Report 2008*, PETROBANGLA, Bangladesh Oil, Gas and Mineral Corporationp. p. 35.

³³² Khurshid Alam, *Bangladesh's Maritime Challenges in the 21st Century*, op. cit., p. 192.

Power	257.60	278.20	300.50
Captive	102.40	120.90	142.60
Fertilizer	94.00	94.00	94.00
Industry	111.60	133.90	160.70
Commercial	6.40	6.80	7.30
Brick Field(Seasonal)	0.00	0.00	0.00
Domestic	79.30	88.90	99.50
Tea-Estate	1.00	1.00	1.00
CNG	34.70	58.90	88.40
System Loss (Including own use)	20.00	20.5	20.00
Total	707.00	802.5	913.9

Source: Annual Report 2008, PETROBANGLA, Bangladesh Oil, Gas and Mineral Corporation, p.35.

Electricity demands as well as economic growth have brought on a solemn crisis in Bangladesh's gas sector, because domestic production can not keep up with the demand. A September 2009 estimate by the Minister for Power and Energy³³³ indicated a shortage of "approximately 400 mmcf", with demand of 2,200 mmcf outpacing supply of 1,800 mmcf.³³⁴ This ongoing deficit has led to wandering blackouts, idling of fertilizer production facilities, and reductions in energy use by the Government of Bangladesh.

The economy of Bangladesh continues to grow, natural gas usage is expected to increase more than triple by 2025 to between 5,606 and 7,441 mmcf.³³⁵ This swift growth is to some extent due to the huge pent up demand that is unfulfilled by

³³³ Brigadier General (retired) Enamul Haque.

³³⁴ Report on, "Bangladesh Has Been Facing Shortage of Nearly 400mmcfpd," *Alexander's Gas & Oil Connections*, November 19, 2009.

³³⁵ DU Correspondent, "Plea to explore gas to meet increasing local demand", *The Daily Star*, October 8, 2009.

commercial energy sources, given that only 18% of the population currently has access to electricity. To provide the benefit of electricity to all of the people of the country it must have recoverable gas reserve to the tune of 15 tcf for immediate electricity generation.³³⁶ The gas requirement for power generation is also projected at 8.26 tcf, 11.3 tcf and 12.72 tcf for the periods of 2021-2031, 231-240 and 2041-2050 respectively, constituting a total gas demand of 39.79 tcf from the 2021 through 2050.³³⁷ However, pressure is on the Government to find a solution to the power crisis, and the Bay of Bengal could play a vital role in this issue. From the above mentioned discussion it is clear that, the exploration of oil and gas within the Bay of Bengal is imperative for safeguarding the country's economic security as well as its overall development.

To meet up the present gas demand recently Bangladesh has taken steps to import liquefied natural gas (LNG). Gas sector crisis is compounded by the continual need to substitute older fields as resources are exhausted. At present Bangladesh could face a peak in natural gas output from presently proven and producing reserves as early as 2011.³³⁸ Bringing probable and possible reserves into production will extend this peak considerably. Conversely, this necessitates ongoing pursuit and development of new reserves. As the most easily developed resources are exhausted, the incentives to exploit more technically challenging resources increase.³³⁹ Right now, in 2009-10 Financial Year (FY) the average daily gas demand is planned to be 2,000 MMCFD and it is expected to increase this daily average gas demand up to 4,500 MMCFD in 2019-20 FY, as a result, it has become

³³⁶ Khurshid Alam, *Bangladesh's Maritime Challenges in the 21st Century*, *op. cit.*, p. 193.

³³⁷ *Ibid.*

³³⁸ DU Correspondent, "Plea to explore gas to meet increasing local demand", *The Daily Star*, October 8, 2009.

³³⁹ Bissinger, "The Maritime Boundary dispute between Bangladesh and Myanmar: Motives, Potential Solutions, and Implications," *Asia Policy*, July 2010, pp. 117-18.

tremendously important to explore and develop new gas fields to meet up the rapidly increasing demand of gas.³⁴⁰

As a consequence, the maritime boundary issue between Bangladesh and its neighbouring countries becomes important in the context of exploiting hydrocarbons within the Bay of Bengal. To resolve the present gas crisis in Bangladesh it is essential to conduct her own exploration work, with or without foreign companies on the basis of priority. It is obvious that the power supply for industrial use, fertilizer production and electricity generation will encourage economic growth of Bangladesh.

2.2. Relevant Circumstances of the Maritime Boundary Dispute

Relevant circumstances have a significant effect upon delimitation of maritime boundaries and "it is virtually impossible to achieve an equitable solution in any delimitation without taking into consideration the particular relevant circumstances of the area".³⁴¹ The ICJ found that there is no single obligatory method of delimitation of the continental shelf, and "delimitation is to be effected by agreement in accordance with equitable principles, and taking into account of all the relevant circumstances".³⁴² Circumstances which the ICJ stated should be taken into account are:

- (i) general configuration of the coast of the parties;
- (ii) physical and geological features of the coasts;
- (iii) unity of mineral deposits; and
- (iv) length of the coast of each State in proportion to the extent of continental shelf areas.³⁴³

³⁴⁰ Monsur Hossain Md. Prof. Dr., "Petrobangla and the indigenous natural gas and coal resources of Bangladesh", *The Financial Express*, April 13, 2010.

³⁴¹ *Tunisia-Libya Continental Shelf* case, ICJ Reports, 1982, p. 18, pars. 71-72.

³⁴² *North Sea Continental Shelf* cases, ICJ Reports, 1969, p. 3, par. 53.

³⁴³ *Ibid*, par. 54.

In light of the above mentioned discussion, the relevant circumstances of the maritime boundaries dispute between Bangladesh and its neighbours will be analyzed.

The configuration of Bangladesh's coast is concave and that of India and Myanmar is convex, as discussed above. Because of the presence of delta and other natural conditions the coastline of Bangladesh is highly unstable. The Sea Bay of Bengal is reportedly rich in straddling fish stocks and mineral resources, including hydrocarbons. As Bangladesh's dependence on hydrocarbons and marine fisheries for energy and food security will further increase in the future, sovereignty over maritime zones should clearly be established for protection, conservation and rational exploitation of these marine resources.³⁴⁴ According to the provision of UNCLOS, Bangladesh received a unique opportunity to exploit a vast sea area beyond its coastal waters. Bangladesh declared its maritime zones under the Bangladesh's 1974 Act as discussed above, which overlap with those of its neighbouring countries India and Myanmar.

³⁴⁴ Blake, Pratt, Schofield and Brown (eds.), *Boundaries and Energy: Problems and Prospects*, London, 1998, pp. 123-25.

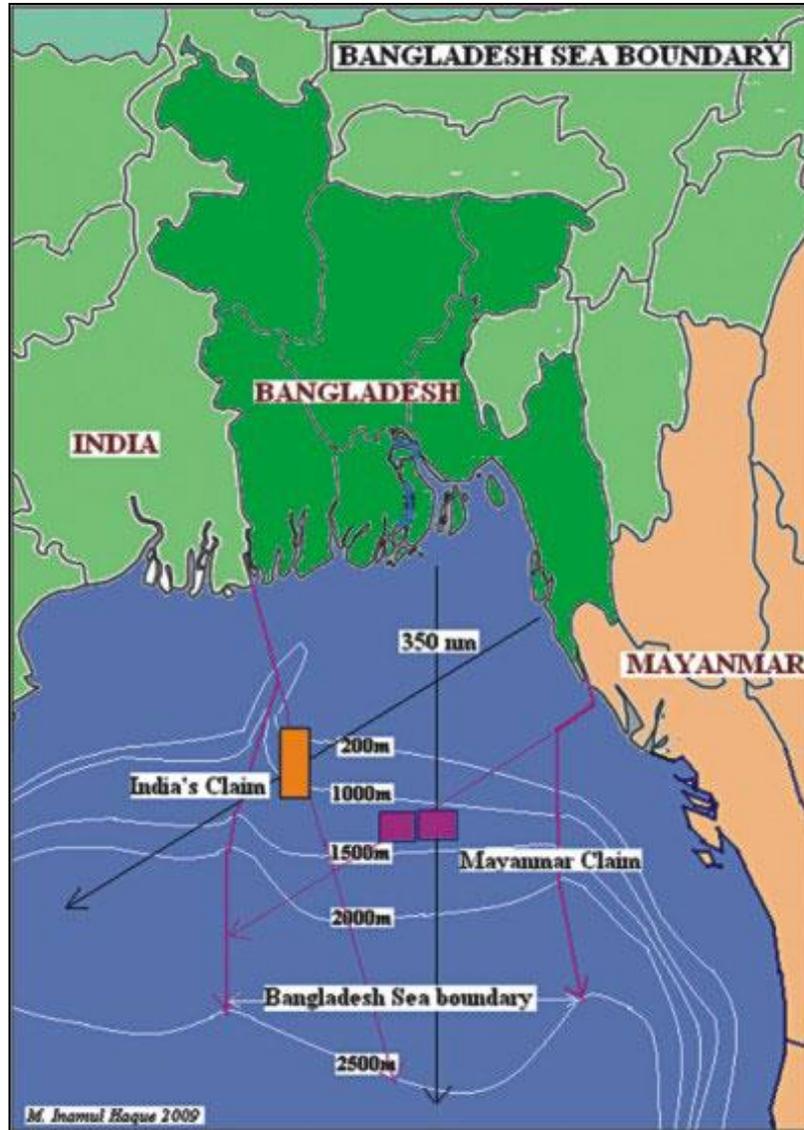


Figure 9: Overlapped Sea Boundary of Bangladesh.
Source: <http://www.narinjara.com>.

According to the claim of Bangladesh, her total sea area would be approximately 207,000 square km. This sea area is about 1.4 times greater than the total land area of Bangladesh.³⁴⁵ Bangladesh, India and Myanmar are States with adjacent coasts

³⁴⁵ Khurshed Alam, "Delimitation of outer limits of the continental shelf", *The Daily Star*, September 15, 2006. See also: Tabassum Mokhduma, "Resolve maritime disputes with neighbours", *The Daily Star*, October 10, 2009.

in the Bay of Bengal. All of them have baselines and claimed EEZ and continental shelf up to 200 M which overlaps.³⁴⁶

Within the Bay of Bengal, Bangladesh claimed an area covering a "square" whose lateral limits were the meridians of longitude projected from the termini of the land boundaries. The award of offshore blocks was made on the basis of that claim. As of 1971, 22 (twenty two) exploration wells were drilled in the then East Pakistan (at present Bangladesh), of which 8 (eight) gas fields were discovered, but all of those were on-shore. In 1989, the entire country was again divided into 23 (twenty three) blocks, of which, 19 (nineteen) blocks including 5 (five) off-shore blocks were offered to the International Oil Companies (IOC) for competitive bidding. With the passage of time, 1988 model Production Sharing Contract (PSC) of Bangladesh was followed and out of 23 (twenty three) blocks 8 (eight) blocks in the first round of bidding were given to the IOC's in 1994 and some of the rest most prospective blocks were leased out during 2000-2001 in the second round of bidding.³⁴⁷

During 1991-1996, 5 (five) blocks and during 1996-2001, 6 (six) blocks were given to IOC's and PSC was signed.³⁴⁸ Although re-evaluation of the seismic, drilling and geo-chemical data of the offshore areas of Bangladesh indicates that there is a considerable possibility of finding several economic gas accumulations, not much of exploration works on the 5 (five) offshore blocks such as block 7, 18, 19, 20 and 21 and 3 (three) other blocks (block 15, 16 and 17) which are situated partially at sea and in coastal waters have so far been undertaken by Bangladesh.

³⁴⁶ See: Figure 9.

³⁴⁷ Muid Khan, "Protecting the rights of Bangladesh," *The New Nation*, November 12, 2008. See also: Muid Khan, "Maritime dispute With Myanmar," *The New Nation*, July 4, 2009.

³⁴⁸ See: Figure 10.

In 2008, Bangladesh marked 10 (ten) shallow and 20 (twenty) deep sea blocks in her offshore area and invited IOC's to bid for oil and gas exploration. Out of the 20 (twenty) deep-sea blocks, some IOC's have only submitted bids for 8 (eight) deep-sea blocks which are not at all disputed by the neighbours.

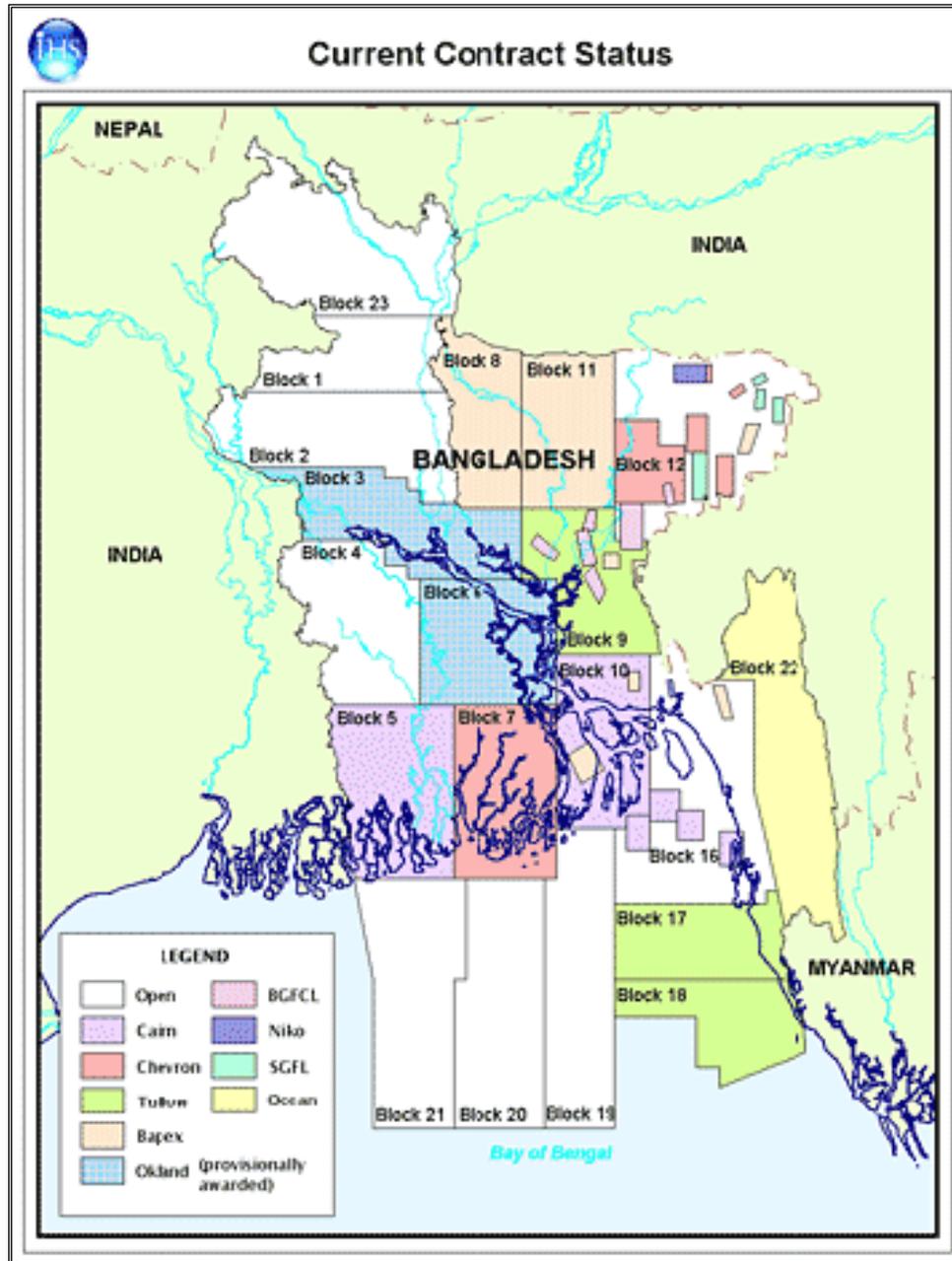


Figure 10: Present license holding in Bangladesh.

Source: <http://energy.ihs.com/News/published-articles/articles/bangladesh-natural-gasperspective.htm>.

The deep sea blocks of Bangladesh are numbered from 9 to 28. On the other hand, Myanmar declared 10 deep sea blocks marked as AD-1 to AD-10 of her Arakan coast. ³⁴⁹ It is clear within the figure that Myanmar blocks AD-7 to AD-10 (four blocks) enter within Bangladesh deep sea area and which overlap with block 13, 17, 18, 22, 23, 27 and 28 of Bangladesh. ³⁵⁰

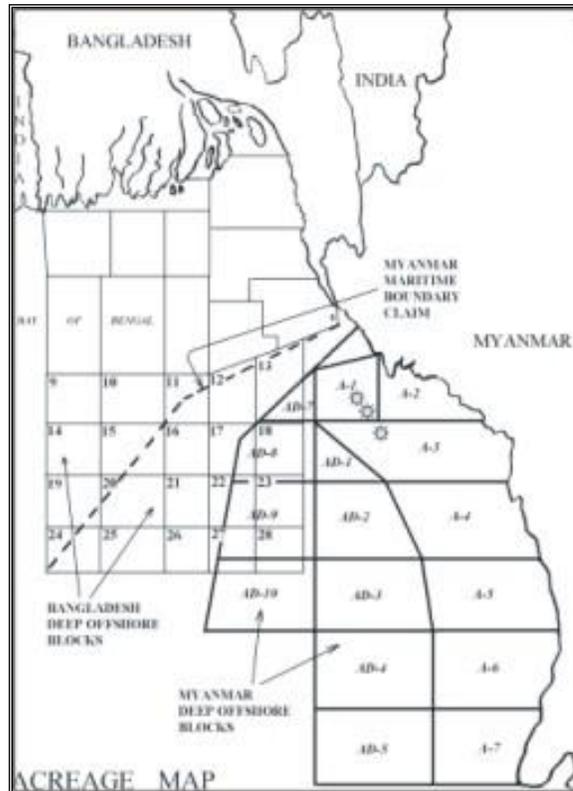


Figure 11: Overlapped deep sea blocks between Bangladesh and Myanmar

Source: The Daily Star, October 28, 2009

Myanmar has influenced major oil companies not to participate in the bidding and issued letters to a number of prospective bidders asking them not to sign PSC in the disputed blocks. ³⁵¹

³⁴⁹ Badrul Imam, "Why Bangladesh should win the arbitration," *The Daily Star*, October 28, 2009.

³⁵⁰ See: Figure 11.

³⁵¹ Khurshed Alam, "Maritime boundary dispute and oil and gas exploration in the Bay of the Bengal," *The Daily Star*, August 2, 2008.

India, warning IOC's about the consequence of their investments, has also protested not to award the offshore blocks without resolving the issue of boundaries. It is important to note that there was hardly any reasonable bid for disputed blocks showing total regard to the Indian and Myanmar claims by the IOC's and this is going to strengthen the position of India and Myanmar as they have been successful in totally disregarding Bangladesh's EEZ claim of 1974.³⁵²

In Bangladesh, probable deposits of mineral resources are divided by the division line of the zones of the EEZ and continental shelf. The part of the deposit which is located on one of the sides of the division line is fully or partially exploitable by Indian and Myanmar installations which are located on the other side of the line. In such cases, Bangladesh cannot maintain her own rights to the mineral resources of the subsurface of her claimed EEZ and continental shelf as they can simply siphon off Bangladesh's oil and gas and other resources.

For settling the maritime boundaries dispute between Bangladesh and its neighbouring countries, above mentioned circumstances may be taken into consideration in light of the provisions of UNCLOS and the decisions of the ICJ, as discussed in the next chapter.

2.3. Dispute Between Bangladesh and Myanmar

Bangladesh and Myanmar are States with adjacent coast in the sea Bay of Bengal.³⁵³ Claim of both the States overlap throughout the EEZ and continental shelf.³⁵⁴ The coast of Myanmar is convex, whereas Bangladesh's coast is concave. Myanmar has delineated its baselines under its 1977 Law using a series of rocks,

³⁵² Ibid.

³⁵³ Notification of 8 October 2009, in the Dispute concerning the Maritime Boundary between Bangladesh and Myanmar under article 287 and annex VII, article 1 of UNCLOS (ITLOS case no.16), par. 13.

³⁵⁴ Ibid, par. 14.

islands, reefs, and other points along the Rakhine coast. Bangladesh protested the legality of the baselines of Myanmar in July 2009 on the basis that, "the line, in combination with Bangladesh's concave coastline at the northern end of the Bay of Bengal, severely cut off and reduced Bangladesh's maritime entitlement."³⁵⁵

On the other hand, after the declaration of Bangladesh's baselines under its 1974 Act, Myanmar also protested the legality of Bangladesh's baselines.³⁵⁶ To resolve the maritime boundaries dispute Bangladesh started negotiation with Myanmar after the promulgation of the Bangladesh's 1974 Act.³⁵⁷ Bangladesh proposed the application of the equitable principle, while Myanmar proposed the application of the equidistance line. Because of this different of opinion, as of today there is no agreement on the delimitation of maritime boundaries between Bangladesh and Myanmar.

In December 2008, Myanmar submitted its extended continental shelf claim to the Commission on the Limits of the Continental Shelf.³⁵⁸ In order to better clarify some parts of Myanmar's submission, it is important to mention that four States such as, Sri Lanka on 2 March 2009, India on 26 March 2009, Kenya on 30 April and Bangladesh on 23 July 2009, sent their note verbal's to the CLCS in respect to Myanmar's submission.³⁵⁹ Myanmar's claim might limit Bangladesh's access to resources and could cut off Bangladesh from the continental shelf.³⁶⁰ The Naff river of Myanmar follows into the sea between Shahpuri Island and cypress sands,

³⁵⁵ Ibid, par. 16.

³⁵⁶ Letter by Burma of 30 April 1982 (UN, Third United Nations Conference on the Law of the Sea, Official records, XVI, p. 255).

³⁵⁷ Details information regarding negotiation between Bangladesh and Myanmar is to be given in next chapter of this research paper.

³⁵⁸ Myanmar submitted on 16 December 2008, Available at: http://www.un.org/Depts/los/clcs_new/commission_documents.htm.

³⁵⁹ The notes verbal's sent by the four states in response to the submission of Myanmar are available at: http://www.un.org/Depts/los/clcs_new/submission_files/submission_mmr.htm.

³⁶⁰ Bissinger, *op. cit.*, pp. 128-29.

whereas St. Martin's Island surrounded by shallow water which creates confuses maritime boundaries delimitation between two countries. For the delimitation of the EEZ, Myanmar proposes the equidistance method, applying this method which deprives Bangladesh half of her EEZ.³⁶¹

Whereas in 1979, in the context of bilateral negotiations, Bangladesh proposed a more equitable line of delimitation in the EEZ and continental shelf to Myanmar but no formal agreement was reached. Conduct of Myanmar was in accordance with the proposed boundary which is referred to as the "Friendship Line". However, from 2005 onwards, Myanmar altered her long-standing practice and offered a number of concession blocks for oil and gas exploration in an area between the so called "Friendship Line" and the equidistance line as defined by Myanmar.³⁶² Licensees of Myanmar have engaged in drilling and other exploratory activities in disputed areas without prior notice to Bangladesh,³⁶³ which prejudiced Bangladesh's right to equitable delimitation and its sovereign rights for the purpose of exploring and exploiting natural resources in the EEZ and continental shelf under UNCLOS.³⁶⁴

Myanmar made significant gas discoveries in A1 and A3 gas fields/block, along the Rakhaine coast that lies in the Bay of Bengal, offshore from the Myanmar town of Sittwe and is only about 100 km from Teknaf coast of Bangladesh. Daewoo of Korea, which is the operator of A1 and A3 gas fields with gas reserves of around five to six tcf, owns a 40% stake whereas two Indian Companies (Gas Authority India Ltd. and a subsidiary of Oil and Natural Gas Corporation) hold 30%, the

³⁶¹ Shah Alam and Faruque, *op. cit.*, supra note 1, p. 417.

³⁶² Notification of 8 October 2009, in the Dispute concerning the Maritime Boundary between Bangladesh and Myanmar under article 287 and annex VII, article 1 of UNCLOS (ITLOS case no.16), par. 17.

³⁶³ Ibid, par. 18.

³⁶⁴ Ibid, par. 19.

remaining 30% is held by Myanmar.³⁶⁵ It has already agreed to export gas to China and India. It is very important to note that Bangladesh came to know that Myanmar had already declared blocks overlapping her blocks in the EEZ areas which she has claimed in 1974. Myanmar also stopped Bangladesh's survey vessel to work in her EEZ areas. Finally, the Foreign Ministry of Bangladesh called the Myanmar Ambassador drawing to the attention of his Government the news items published regarding the allocation of un-demarcated areas to conduct surveys for the exploration of oil and gas in the Bay of Bengal.³⁶⁶

The issue of maritime boundaries gained momentum on 1 November 2008, when Myanmar sent four offshore exploration vessels (two Bahamas registered and one registered in Belize and another in India) escorted by two naval ships to facilitate the Korean Daewoo Company to explore the oil and gas resources within 50 M southwest of the St. Martin Island in Bangladesh.³⁶⁷ The situation became complicated when the Bangladesh Navy also positioned three naval ships (BNS Abu Baker, BNS Madhumati and BNS Nirvoy)³⁶⁸ in the area after Myanmar reportedly began oil and gas exploration in that area.

Despite protests by Bangladesh, citing sovereignty issues, the Myanmar Government said that it would continue exploration in the Bay of Bengal. It stopped the oil and gas exploration in deep-sea blocks in disputed waters, a day after Bangladesh asked China to mediate the issue. Myanmar however has claimed that withdrawal was not because of the Bangladesh request; apparently the Korean company had completed its seismic survey in Block AD-7.³⁶⁹ Without

³⁶⁵ Khurshed Alam, "Maritime boundary dispute and oil and gas exploration in the Bay of the Bengal," *The Daily Star*, August 2, 2008.

³⁶⁶ Ibid.

³⁶⁷ Comment on "Bangladesh, Burma in maritime dispute", *The Daily Star*, November 3, 2008.

³⁶⁸ Ibid.

³⁶⁹ Rabinathan, "Demarcating Bangladesh's Maritime Boundary: Issues and Challenges," *South Asia Monitor*, June 17, 2009.

having any bilateral agreement, Myanmar's unilateral step to go ahead with the exploration of gas and oil in the disputed deep sea blocks within the Bangladeshi territorial waters, appears to diverge from the provisions of UNCLOS.³⁷⁰ Previously, in 2006, Bangladesh raised objection when India and Myanmar floated international tender for searching oil and gas in offshore accusing them of overlapping territorial waters of Bangladesh.³⁷¹

All of these issues complicate the settlement of the maritime boundary dispute between two countries. Even though there are many legal issues according to UNCLOS and international law for settling such types of dispute.

In the definition of maritime customary international law principles on delimitation of fundamental importance is the judgment of ICJ in the *North Sea Continental Shelf* cases³⁷² which dealt with the demarcation of maritime boundaries between adjacent States. The oft-quoted dictum of the court which enshrines the basic principle to be applied is as follows:

Delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea without encroachment on the natural prolongation of the land territory of the other.³⁷³

The ICJ suggested in the *North Sea Continental Shelf* cases that the adoption of the median line was (leaving aside special circumstances) itself demanded by equity

³⁷⁰ Muid Khan, "Protecting the sovereign rights of Bangladesh," *The New Nation*, November 12, 2008.

³⁷¹ Tabassum Mokhduma, "Resolve maritime disputes with neighbours," *The Daily Star*, October 10, 2009.

³⁷² ICJ Reports 1969, p. 3.

³⁷³ ICJ Reports 1969, par. 53.

where States were opposite to one another.³⁷⁴ Conversely, where States were adjacent to each other, the appropriateness of a pure median line is more suspicious. In such a situation, a coastline may be undulating or indented or have a concave shape: the State which has such a coastline may be disadvantaged by the application of a median line vis-a vis a State whose coastline protrudes into the adjacent maritime space. Accordingly, principle of equity, taking account of the geomorphological feature of natural prolongation, require that lines of demarcation be used to accommodate the interests of that State whose area of continental shelf would otherwise be 'squeezed'.

The decisions of international courts and tribunals, as discussed in detail in the next chapter, State practice and UNCLOS establish that there has been a swing from equidistance principle to equitable principle of delimitation and strongly indicate that the equitable principle is the perfect principle of delimitation. Bangladesh being adjacent (not opposite) to Myanmar, the application of equidistance method for delimitation of EEZ and continental shelf does not achieve an equitable solution.³⁷⁵

To achieve an equitable solution, Bangladesh should get a fair share of the resources of the Bay of Bengal and must not be relegated to "a sea- locked State" by squeezing of Bangladesh's area from west and east by both India and Myanmar through employing the method of equidistance. This can be considered as unjust and unfair.³⁷⁶

2.4. Dispute Between Bangladesh and India

³⁷⁴ ICJ Reports 1969, par. 36.

³⁷⁵ Harunur Rashid, "Law of Maritime Boundary in the Bay of Bengal," *The Daily Star*, October 28, 2009.

³⁷⁶ *Ibid.*

Between the two neighbouring countries Bangladesh and India there are two major causes of disagreement: (a) maritime boundaries dispute, and (b) entitlement of sovereignty over South Talpatty Island. The maritime boundaries dispute will be examined first, afterward the entitlement of sovereignty over South Talpatty Island will be addressed.

a) **Maritime Boundaries Dispute**

Bangladesh is surrounded by the sea Bay of Bengal. The Bay is the only channel linking Bangladesh with other countries, and Bangladeshi trade and commerce depend solely on these routes.³⁷⁷ In view of the fact that Bangladesh has no agreed sea boundaries with its neighbouring countries, the delimitation of maritime boundaries gives rise to misunderstanding and conflict. Disagreement with India arose in 1974 when the Bangladeshi Government signed agreements with six foreign oil companies within her territorial waters.³⁷⁸

However, recent discovery of huge hydrocarbon reserves in the continental shelf of India in Orissa and Myanmar in Rakhaine States has also created the disputes over territorial claims.³⁷⁹ Under the New Exploration Licensing Policy, India offered 55 blocks (24 deep water blocks beyond 400 km bathymetry) for exploration to the IOCs in the Bay of Bengal in 2006. The figure³⁸⁰ clearly showed that blocks D-23 (8,706 sq km) and D-22 (7,790 sq km) have overlapped Bangladesh's block 21 declared in 1991.³⁸¹

³⁷⁷ Mohiuddin, *Settlement of Maritime Delimitation Dispute in the Context of UNCLOS: The Sea Bay of Bengal and the South Talpatty Island Perspective*, dissertation submitted to the International Tribunal for the Law of the Sea, Hamburg, Germany, in partial fulfilment of the requirements of the Legal Internship, September, 2009, pp. 17-8.

³⁷⁸ See: Harunur Rashid, *op. cit.*. See also: Habibur Rahman, *Delimitation of Maritime Boundaries*, *op. cit.*, pp. 277-78.

³⁷⁹ Inamul Haque, "Bangladesh sea boundary examined through UNCLOS III," *The Daily Star*, November 14, 2009.

³⁸⁰ See Figure 12.

³⁸¹ Khurshed Alam, "Maritime boundary dispute and oil and gas exploration in the Bay of the Bengal," *The Daily Star*, August 2, 2008.

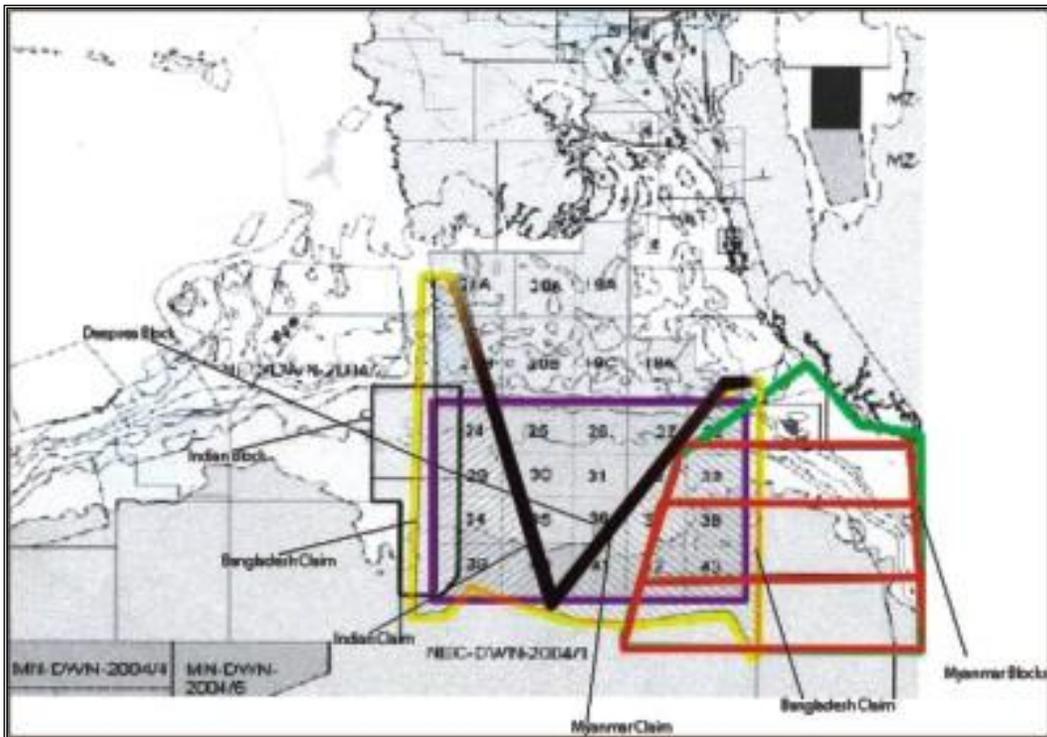


Figure 12: Overlapping deep sea blocks of Bangladesh with its neighbouring countries

Source: The Daily Star, February 28, 2008.

Visually it is found that the Indian blocks appear to have overlapped Bangladeshi block 21. Due to strong pressure from the media about such floating of international tenders by India encompassing Bangladesh's blocks of EEZ, finally Bangladesh lodged official protest against the 'encroachment' through the High Commissioner of India in Bangladesh. It is necessary to pursue the case with India with the aim of stopping exploration legally in D-22 and 23 and showed strongest protest of Bangladesh with the concerned IOC as India had done in 1974 and again in 2008.³⁸²

It is to say that India and Myanmar have deliberately intruded into the Bangladeshi EEZ and exploring oil and gas there by demanding an equidistant line, which is not supportable by UNCLOS and Geneva Convention. India has

³⁸² Ibid.

mapped out a line up to Andaman incorporating the Bangladeshi EEZ and continental shelf. Similarly, the Myanmar line enters Bangladesh's sea area beside block 18 and allows her to grab vast offshore areas of Bangladesh. But this has not been done today or yesterday, rather it happened in the '1980s. Regarding the claim, India has argued that the course of the natural prolongation of the continental shelf is from east to west. This position is rejected by Bangladesh who views it from north to south. For delimitation of maritime boundary both Bangladesh and India have some overlapping claims on baselines also.

Thus, the issue of delimitation of maritime boundaries is a crucial matter for Bangladesh and India. Bangladesh is yet to delimit its maritime boundary with its neighbours in the Bay of Bengal, which is Myanmar on eastern side and India on its western side. According to both, the equitable and equidistance method India has settled her maritime boundaries with Myanmar at the Andaman and Nicobar Islands but they need to solve the maritime boundary issues with Bangladesh.³⁸³

Like Myanmar, India also wants to delimit maritime boundary with Bangladesh according to the equidistance method, whereas Bangladesh wants to delimit the maritime boundary on the basis of the equitable principle. It is predicted that the delimitation of the maritime boundary on the basis of the equidistance principle will result in the appropriation of much of the sea area of the Bangladesh by Myanmar and India.³⁸⁴ The method by which these boundaries are determined in concentrate situations will always have a *sui generis* character. As such, in their search for an appropriation solution, States are not obliged to reach their outcome by subjecting them to harmlessly legal considerations.³⁸⁵

³⁸³ Agreement between the Socialist Republic of the Union of Burma and the Republic of India on the Delimitation of the Maritime Boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal, 23 December 1986. See: Annex VI.

³⁸⁴ Shah Alam and Faruque, *op.cit.*, supra note 1, pp. 406-7.

³⁸⁵ Tanja, *The Legal Determination of International Maritime Boundaries*, Deventer, Boston, 1990, p. 306.

b) Entitlement of Sovereignty Over South Talpatty Island

Disagreement between Bangladesh and India has risen on the issue of sovereignty over a new born island in the estuary of the Hariabhanga river on the border between the two countries.³⁸⁶ The boundary between Bangladesh and India is the midstream of the main channel of the river Hariabhanga. The island, formed in the estuary of the border river Haribhanga and the Bangladesh internal river Raimangal, most probably supposed to have emerged after the cyclone and tidal bore of 1970. This is new terrain, rising initially as a low tide elevation.³⁸⁷ The island was first shown on the Admiralty chart no 859 on information provided by India in 1971.³⁸⁸

The island is a U-shaped formation with the eastern arm elongated toward the north. Its approximate area is around 5 squares km.³⁸⁹ The Island is known in Bangladesh as **South Talpatty**³⁹⁰ whilst in India it is known as **New Moore** or **Purbasha**.³⁹¹ The island forms the terminus of the land boundary between Bangladesh and India which have complicated maritime delimitation between them.³⁹² Bangladeshi claims to this island have been based on the assumption that the midstream of the border river Haribhanga flows to the west of the island, while

³⁸⁶ Mohiuddin, *Settlement of Maritime Delimitation Dispute in the Context of UNCLOS: The Sea Bay of Bengal and the South Talpatty Island Perspective*, *op. cit.*, pp. 23-5.

³⁸⁷ Habibur Rahman, "Delimitation of Maritime Boundaries. A Survey of Problems in the Bangladesh Case," *Asian Survey*, December 1985, vol. XXIV, p. 1308.

³⁸⁸ Habibur Rahman, *Delimitation of Maritime Boundaries*, *op.cit.*, pp.278-81. See also: Khurshed Alam, *Maritime Security of Bangladesh: Traditional Issues Impinging on Maritime Boundary Delimitation*, Paper Presented at the Seminar on Maritime Security of Bangladesh, organized by the Bangladesh Institute of International and Strategic Studies (BIISS), Dhaka, on February 12, 2009.

³⁸⁹ Shah Alam and Faruque, *op.cit.*, *supra note 1*, pp. 415-6.

³⁹⁰ See: Figure 12.

³⁹¹ *Supra note 313*.

³⁹² Prescott and Schofield, *op. cit.*, p. 282.

India claims acquisition on the assumption that the midstream flows to the east of the island.³⁹³

The deeper channel of the river Haribhanga creates a boundary between Bangladesh and India. South Talpatty Island is located on the eastern side of the deeper channel. This means that the island is located within Bangladeshi territorial sea. Bangladesh can legitimately claim sovereignty over the Island, as the island has formed within the estuary of the Raimangal river, which is an internal river of Bangladesh.

The formation of the island is a natural process and the formed land is a part of the natural ecosystem. But manmade boundaries made the island's natural position disputed, causing a socio-environmental thorn. Since the island is now under socio-political dispute, both India and Bangladesh should have followed the social and international norms. Neither Bangladesh, nor India should physically own this land before the dispute is resolved.³⁹⁴

The actual geographical position of the island is shown in the figure no.13.³⁹⁵ The figure shows that bordering river Hariabhanga comes down obliquely towards southeast. It is clearly seen that the river channel on the east of the island is mainly that of Raymangal and Jamuna rivers having only the eastern branch from Hariabhanga river. So the eastern wider channel is contributed mainly by two decidedly Bangladeshi rivers and partly by bordering Hariabhanga having, only about one fifth. The island under formation is a big one having an underwater

³⁹³ Mohiuddin, *Settlement of Maritime Delimitation Dispute in the context of UNCLOS: The Sea Bay of Bengal and the South Talpatty Island Perspective*, op. cit., p. 23. See also: Habibur Rahman, *Delimitation of Maritime Boundaries*, op. cit., p. 179.

³⁹⁴ Sattar Molla, "South Talpatti-New Moore dispute," *The Daily Star*, October 25, 2008.

³⁹⁵ See: Figure 13.

extension towards the northwest. This means that possession of the island is rather lucrative.³⁹⁶

The dispute regarding entitlement of sovereignty over South Talpatty Island came to the fore front in May 1981, when Bangladeshi patrol boats reportedly threatened an Indian survey ship working near the island, leading to the deployment of an Indian navy frigate to the area.³⁹⁷



Figure 13: Location of South Talpatty Island.

Source: www.banglapedia.org.

An unsuccessful round of negotiations was held to settle the ownership issue between Bangladesh and India. Both countries are claiming that the island lies within their territorial sea. In fact, the claim in respect of the island cannot be settled unless the location of the flow of the midstream (the boundary of the

³⁹⁶ Supra note 394.

³⁹⁷ Prescott and Schofield, *op. cit.*, pp. 282-83.

territorial sea) is settled. It is therefore implicit that the conflict between Bangladesh and India over the newly emerged island centres on points of fact rather than of law.³⁹⁸

The ownership of the island depends on the direction the mid-flow which passes by the island. If the mid-flow goes west of the island, it will belong to Bangladesh.³⁹⁹ The direction of the mid-flow of the Hariabhangra river can be easily determined if a joint survey is conducted. Bangladesh proposed a joint survey in 1974, but no positive response came from India, although it agreed in principle in 1979.

Soon after, Bangladesh provided to India data including satellite imageries of the flow of the river. Since 1974, regrettably India has not accorded any priority to implement Bangladesh's proposal to resolve the issue.⁴⁰⁰ The conflicting claims of sovereignty over the island should be determined by the 'thalweg' principle (deepest navigable channel).⁴⁰¹ Given sovereignty over the island, India may claim an equidistance line claiming more EEZ and additional areas of continental shelf. For Bangladesh, the sovereignty over the island, will enable to draw the maritime boundary line west of the South Talpatty in the north-south natural prolongation of her land mass, it's adjacent historic fishing areas, its territorial sea and ensure safe entry to the Mongla, major sea port of Bangladesh.⁴⁰²

Sovereignty over the disputed island has the potential to significantly influence on the course of the maritime boundary delimitation line proceeding offshore into the

³⁹⁸ Habibur Rahman, *Delimitation of Maritime Boundaries*, *op. cit.*, p. 281.

³⁹⁹ Harunur Rashid, "Resolving the Bangladesh-India sea boundary issue," *The Daily Star*, October 10, 2008.

⁴⁰⁰ Harun ur Rashid, "Undemarcated Sea-boundary, Is India taking advantage?," *The Daily Star*, May 17, 2006.

⁴⁰¹ Tanja, *op. cit.*, p. 19.

⁴⁰² Khurshid Alam, "The issue of South Talpatty," *The Daily Star*, May 12, 2006.

potentially oil rich areas of the Ganges-Brahmaputra delta in the Bay of Bengal. To secure the greater interest of Bangladesh, it is obligatory to delimit its maritime boundary with its neighbours in the Bay of Bengal, which is Myanmar on eastern side and India on its western side.

Chapter III

Resolution of the Maritime Boundaries Dispute Between Bangladesh and its Neighbouring Countries

Negotiation between Bangladesh and its neighbouring countries started in 1974 for the resolution of maritime boundaries dispute but as of date there is no agreement between the countries.⁴⁰³ The only progress in the series of negotiation meetings between the countries is the *Agreed Minutes of 1974 Between the Bangladesh Delegation and the Burmese Delegation Regarding the Delimitation of maritime Boundary between Two Countries*,⁴⁰⁴ and a proposed *Friendship Line* between Bangladesh and Myanmar,⁴⁰⁵ which is neither ratified not fully, complied with by either States. In this regard, we may recall the countenance of the Foreign Minister of Bangladesh Dr. Dipu Moni, who expressed to media on October 8, 2009 that, “Dhaka has decided to go to the United Nations Arbitration as negotiation with India and Myanmar in past 35 years failed to resolve the issue.”⁴⁰⁶ Despite the Bangladeshi move to seek UN involvement, on June 13, 2010 the Foreign Minister again said at a press conference that, “We have kept open the option of amicable settlement through bilateral discussions.”⁴⁰⁷ By way of background, the previous negotiations between Bangladesh and its neighbouring countries are as follows:

3.1. Negotiations Between Bangladesh and India

⁴⁰³ Harunur Rashid, “Demarcating maritime zones in the Bay of Bengal,” *The Daily Star*, September 25, 2007. See also: Khurshid Alam, “Maritime boundary dispute and oil and gas exploration in the Bay of Bengal,” *The Daily Star*, February 8, 2008.

⁴⁰⁴ Notification of 8 October 2009, in the Dispute concerning the Maritime Boundary between Bangladesh and Myanmar under article 287 and annex VII, Article 1 of UNCLOS (ITLOS case o.16), par. 17.

⁴⁰⁵ Ibid, par. 25.

⁴⁰⁶ Shoaib Choudhury, “Bangladesh Starts Reacting to Maritime Dispute”, *ITSSD Journal on the UN Law of the Sea Convention*, October 9, 2009.

⁴⁰⁷ Reazul Karim, “Dhaka readies for long legal battle,” *The Daily Star*, June 26, 2010.

In 1974 Bangladesh and India commenced official negotiations on the delimitation of the maritime boundary in Dhaka, Bangladesh.⁴⁰⁸ After that, several meetings took place at the Foreign Secretary level. When the Foreign Secretaries failed to resolve the matter, the talks were elevated to the Foreign Ministers level in 1975 and the Ministers from both sides considerably narrowed down the disputes.⁴⁰⁹ In 1978, another session took place, but India did not wish to go back to decisions taken by the Ministers in 1975, which disappointed Bangladesh. In 1982 another session took place which was inconclusive and it ended without any consensus about the dispute.⁴¹⁰

In September and November 2008 under the previous caretaker Government of Bangladesh, the talks resumed⁴¹¹ at the technical level between India and Bangladesh, but the dispute could not be settled because India's proposed line was contrary to international law as decided by the ICJ in 1969 in the *North Sea Continental Shelf* cases.⁴¹² The proposed boundary would leave little maritime areas for Bangladesh in the Bay of Bengal, turning Bangladesh into a "sea-locked" country.⁴¹³

Between 1974 and 2008, several meetings took place on the subject but India reportedly remained firm in its position that was not only contrary to international law but also ignored the special circumstances of the coasts (including the

⁴⁰⁸ Reazul Karim, "Maritime Dispute with India-Myanmar Dhaka readies for long legal battle," *The Daily Star*, June 22, 2010.

⁴⁰⁹ Harunur Rashid, "Resolving the Bangladesh-India sea boundary issue," *The Daily Star*, August 10, 2008.

⁴¹⁰ Ibid.

⁴¹¹ Mostafizur Rahman, "Technical level talks to settle sea boundary stepped up", *The Independent*, August 12, 2009. Available at: <http://theindependent-bd.com/details.php?nid=137036>.

⁴¹² *North Sea Continental Shelf* cases (Federal Republic of Germany - Denmark, Federal Republic of Germany - Netherlands) ICJ Reports, 1969, 4 at 42.

⁴¹³ Harunur Rashid, "Demarcating maritime zones in the Bay of Bengal," *The Daily Star*, September 25, 2007.

indented nature of coastal belt of Bangladesh and concavity of its coasts). Bangladesh's case is straightforward and simple. The coastal State is entitled to claim maritime areas beyond the land territory.

One of the positions Bangladesh presented to India was that since its land domain is rectangular in shape, it gives Bangladesh the right to claim marine areas in rectangular orientation extending 200 M to the south in the Bay of Bengal from the extremities of its land territory. That will give Bangladesh an open sea, instead of becoming a "sea-locked" country. The fact whether a country is located opposite or adjacent plays an important part in delimitation of sea boundary and equitable principles come into play in the case of adjacent States.

On February 12, 2009 the Foreign Minister of Bangladesh Dr. Dipu Moni said Bangladesh wants a peaceful resolution of the current problems over demarcation of maritime boundary protecting country's sovereignty and territorial waters at any cost.⁴¹⁴

By all canons of international law and legal precedents, it is strongly argued the areas in the Bay of Bengal that India has reportedly claimed fall within the Bangladesh territory. The marine areas adjoining the Bay of Bengal need to be resolved and demarcated between the two countries in order to avoid unnecessary tensions between the two neighbouring countries.

It is hoped that both countries may commence negotiations as soon as practicable on the important subject, and, until then, India may desist in exploring oil and gas

⁴¹⁴ Comments on "Maritime disputes with neighbors to be settled," *The New Nation*, February 13, 2009.

in the maritime areas that are claimed by Bangladesh for the sake of friendship and goodwill.⁴¹⁵

3.2. Negotiations Between Bangladesh and Myanmar

A series of high level meetings have taken place between Myanmar and Bangladesh, so far no amicable solution has been found. Myanmar is asking for eco-distance system for an east to west boundary; while Bangladesh is asking to delimit in equity basis north to south. As of 2008 five rounds of talks between Bangladesh and Myanmar were held.⁴¹⁶ These did not produce result and hovered around discussing boundary in South Talpatty, an island still in formation, in the Bay of Bengal.⁴¹⁷

At the beginning of 2008, Bangladesh divided its sea territory into 28 blocks and auctioned off the area to international oil companies as part of its stepped-up move to end chronic gas shortages. This decision of Bangladesh has not been particularly liked by Myanmar as this resource is a major source of income for the country, which had earlier entered into a deal with China to sell gas. It prompted Myanmar to start exploration in the area right away without waiting for the resolution of the dispute. The initial response of Bangladesh was to send naval ships. Three naval ships of Bangladesh went to the spot challenging Myanmar's ships, but the Myanmar Navy responded by alleging that the Bangladesh Navy ships are trespassing. They also informed the Bangladesh Navy that they were acting under instructions from their Government.

Hence, it also started multi-pronged diplomatic effort. Bangladesh raised the issued with China, a friend of both nations, and also urged Seoul to ask the South

⁴¹⁵ Ibid.

⁴¹⁶ The first in December, 1974 in Dhaka, the second in November 1985 in Yangon, the third in February 1986 in Dhaka and the fourth in May 1986 in Yangon and the fifth in January 2008.

⁴¹⁷ Anand, "Bangladesh disputes Myanmar Explorations in Bay of Bengal" *Guest Column*, Paper No. 2931, November, 2008.

Korean-based company hired by Myanmar to stop activities in the disputed waters. The Foreign Advisor of Bangladesh (former caretaker government), Mr. Iftekhar Ahmed Chowdhury met Chinese ambassador Mr. Zheng Qingdian in Dhaka. After the meeting he hoped that Myanmar would stop activities on the disputed waters. In Beijing, Chinese Foreign Ministry Spokesman Mr. Qin Gang said "We hope the countries will settle it through equal and friendly negotiations and maintain a stable bilateral relationship." China also promised to contribute in an appropriate manner as their friend.⁴¹⁸ Both Bangladesh and Myanmar share a 320 km (about 200 M) border, partly demarcated by the Naf river.⁴¹⁹

In June 2009, Bangladesh's Foreign Minister Dr. Dipu Moni said "boundary between Bangladesh and Myanmar could only be delimited by applying principles of "equity" as practiced in other parts of the world." As member States of UNCLOS, both States are supposed to delimit their maritime boundaries in accordance with article 15, 74 and 83 of UNCLOS. "We are continuing our discussion and hope to resolve the issue based on the internationally accepted rules, norms and practices," she told a function.⁴²⁰

A technical level meeting between Myanmar and Bangladesh held in Yangon during the first week of August 2009 ended on a "positive note"; senior Government official said.⁴²¹ Earlier, Myanmar outright rejected the Bangladesh proposal for delimiting the boundary on the basis of the "equity" formula and pressed for the equidistance method. But this time they agreed to study the proposal of delimiting the boundary on equity method, he said adding that it is seen as a positive development. He pointed out that usually such technical level negotiations require

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

⁴²⁰ Comment on "Bangladesh to take maritime dispute with Myanmar to UN," June 26, 2009. Available at: <http://aseanaffairs.com>.

⁴²¹ Mostafizur Rahman, "Technical level talks to settle sea boundary stepped up," *The Independent*, August 12, 2009.

a long time and one should not expect the problem to be resolved overnight. "Another point is that the dispute of such a nature is resolved at political level not at technical level," he added. The first week of August 2009 discussions were a follow-up of the talks between the two countries held in November 2008 in Dhaka. In both talks, Bangladesh argued for equity as the basis to resolve the dispute while Yangon insisted that equidistance should be the guiding principle-positions the two countries have stuck to since the negotiation began back in 1974. During the talks in Myanmar which was the fifth since January 2008, Bangladesh expressed opposition to the equidistance method proposed by Myanmar, a method that would deprive Bangladesh of its legitimate share in the Bay.

A two-day high level meeting was held on January 8-9, 2010 in Chittagong, Bangladesh. Additional Foreign Secretary to the Ministry of Foreign Affairs Mr. Md. Khurshid Alam led the Bangladesh delegation and Deputy Foreign Minister Mr. U Maung Myint led the Myanmar delegation. Bangladesh Ambassador in Myanmar Mr. Maj Gen Anup Kumar Chakma and Myanmar Ambassador to Bangladesh Mr. U Phae Thann Oo were also present at the meeting.⁴²² In this meeting it was decided to delimit the maritime boundary of the two countries, accommodating the demands of both equidistance and equity of resources as the guiding principles. The meeting also decided to hold another round of talks by next April in Myanmar.⁴²³ After the meeting, Myanmar Ambassador to Bangladesh Mr. U Phae Thann Oo said, "We are very happy with the fruitful discussion. It was a very good discussion and it will continue."⁴²⁴

⁴²² After Bangladesh officially asked in October 2009 for arbitration to settle the issues on maritime boundaries with India and Myanmar the two day meeting was the first meeting.

⁴²³ Comments on, "Dhaka, Yangon narrow gap on sea boundary," *The Daily Star*, January 10, 2010.

⁴²⁴ Ibid.

In March 17-18, 2010 another high level meeting was held in Myanmar's new capital Nay Pyi Taw between Bangladesh and Myanmar, but the discussion did not yield any positive results to settle the maritime boundary dispute.⁴²⁵ In this meeting, Myanmar brought a new proposal for drawing a line near the "friendship line", which is an imaginary line down to St. Martin's Island in the north east part of the Bay. However, the Bangladeshi delegation agreed to consider Myanmar's new proposal but preparations are going on in full swing for the legal encounter at the ITLOS.⁴²⁶

About bilateral talks with both India and Myanmar, Additional Foreign Secretary Mr. Khurshid Alam recently said that, "Bangladesh is ready to sit with any of its neighbours to resolve the dispute."⁴²⁷ Bangladesh Foreign Secretary Mr. Mohamed Mijarul Quayes recently said in a press releases that, "We wish to conclude by reassuring our neighbours India and Myanmar of our commitment to friendship and the pursuit of mutual prosperity".⁴²⁸ Since 1974 a series of meetings with India and Myanmar were held but negotiations remained inconclusive as all three countries took different approaches to delimit their maritime boundaries. According to UNCLOS, any such dispute should be resolved on the basis of equity, and in light of relevant circumstances and that makes Bangladeshi request for equity based delimitation, which is the best choice.

3.3. Legal Principles Involved in Sea Boundary Delimitations

Jurisdiction on the sea emanates from the sovereignty over its land domain. If there is no land territory bordering the sea, no jurisdiction could be claimed on the sea. The length of the coast of a country which has a direct bearing on its

⁴²⁵ Harunur Rshid, "Bangladesh goes to court", *The Daily Star*, June 28, 2010.

⁴²⁶ Reazul Karim, "Maritime Dispute with India-Myanmar Dhaka readies for long legal battle", *The Daily Star*, June 22, 2010.

⁴²⁷ Supra note 425.

⁴²⁸ Moe, "Bangladesh Hires US Law Firm in Bay of Bengal Dispute", *The Irrawaddy*, October 14, 2009.

jurisdiction on the sea would argue specifically. The length of the coast of India is 2759 M, Myanmar is 1231 M and Bangladesh is 310 M.⁴²⁹ Thus, because of comparatively small coast of Bangladesh it has few claims on the sea than its neighbours. Therefore, the principle of proportionality with the assessment of relevant factors which lead to an equitable result⁴³⁰ is the best method for delimiting the maritime boundaries between Bangladesh and its neighbouring countries.

The boundary on the territorial waters is to be governed by article 15 of UNCLOS and the equidistant method can only be departed by reason of "historic title or special circumstances" on the seas. However delimitation of the EEZ and continental shelf of adjacent countries will be guided by the principles of equity in terms of articles 74 and 83 of UNCLOS. These articles provide that delimitation shall be effected by agreement, on the basis of international law, in order to achieve an equitable solution.⁴³¹

These articles of UNCLOS also emphasise that any agreement arrived at must achieve "an equitable solution". The principle of equity is ingrained in notions of fairness in the context of shape of the coastal land. This equitable principle found recognition by the ICJ in the *North Sea Continental Shelf* cases.⁴³² The decision of this case could also provide useful insights into the legal proceeding between Bangladesh and its neighbours. The physical and political geography of the North Sea is similar to the Bay of Bengal, with Germany surrounded on a convex coast by Denmark and the Netherlands, while that of the Germany is concave.

⁴²⁹ Attard, *The Exclusive Economic Zone in International Law*, *op. cit.*, pp. xxx-xxxi.

⁴³⁰ *Guinea- Guinea Bissau case*, RIAA, p.1352, par.118.

⁴³¹ Scovazzi, "Maritime Delimitation Cases before International Courts and Tribunals", *Max Plank Encyclopedia of Public International Law*, 2009.

⁴³² *North Sea Continental Shelf cases*, ICJ Reports, 1969, p. 3.

In such a case, the use of the median line left Germany a remarkably small portion of the North Sea continental shelf and the purpose of the delimitation process, to attain an equitable result would not be fulfilled.⁴³³ Denmark and the Netherlands, argued for delimitation based on equidistance. On the other hand, Germany argued that this would result in an inequitable settlement. Denmark and the Netherlands came to an agreement based on the principle of equidistance, to some extent similar to the agreement between India and Myanmar. However, Germany observed the agreement as injurious, similar to how Bangladesh could observe the India-Myanmar agreement.⁴³⁴

The ICJ declared its verdict on February 20, 1969, stating that, “the use of the equidistance method of delimitation was not obligatory,” the court also stated that, “delimitation is to be effected by agreement in accordance with the equitable principle, taking into account of all relevant circumstances [.....] including general configuration of the coast of the parties, physical and geological structure.”⁴³⁵ The ICJ ordered the parties to negotiate the delimitation by applying equitable principles so as to avoid the cut-off that would result from strict equidistance.

⁴³³ See: Figure 14.

⁴³⁴ Bissinger , *op. cit.*, pp. 134-5.

⁴³⁵ ICJ Reports, 1969, par. 101.

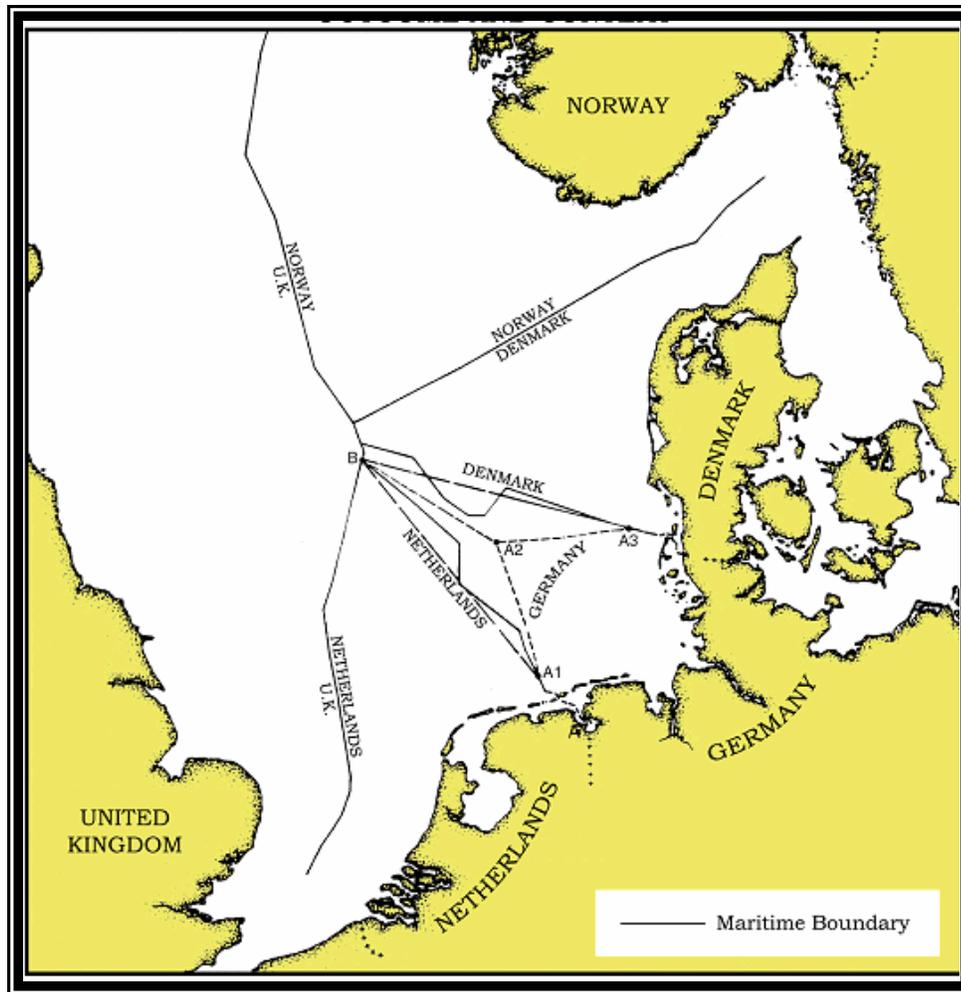


Figure 14: The North Sea Continental Shelf cases 1969.

Source: Nuno Marques Antunes. *Towards the conceptualisation of maritime delimitation*. p. 444.

The main trend in continental shelf delimitation was also the rules of equity even before the decision of the ICJ concerning the *North Sea Continental Shelf* cases.⁴³⁶ The Truman Proclamation regarding the continental shelf of the United States laid emphasis on the equitable principles for the delimitation of continental shelf between neighbours.⁴³⁷

⁴³⁶ ICJ Reports, 1969, p. 3.

⁴³⁷ Wallace and Martin, *op. cit.*, pp. 183-85.

Regarding the delimitation of maritime boundaries an observation by the Chamber of the ICJ in the *Gulf of Maine* case (12 October 1984),⁴³⁸ it may be useful to bear in mind

One preliminary remark is necessary before we come to the essence of the matter, since it seems above all essential to stress the distinction to be drawn between what are principles and rules of international law governing the matter and what could be better described as the various equitable criteria and practical methods that may be used to ensure in concerto that a particular situation is dealt with in accordance with the principles and rules in question.⁴³⁹

In the 1977 *Anglo-French Arbitration* case (30 June 1977),⁴⁴⁰ the United Kingdom based on the concept of natural prolongation, argued that the axis of Hurd Deed and the Hurd Deep Fault Zone be regarded as marking the limits of the continental shelf of two States, as an alternative to the median line.⁴⁴¹ The Court rejected the United Kingdom's view and stated that this axis can not be regarded as a significant factor in determining the method of delimitation⁴⁴² and added that:

The Court [.....] finds itself unable to accept the prolongation of the general directions of the channel coasts of the two countries as a relevant basis for determining the course of the boundary in the Atlantic region.⁴⁴³

⁴³⁸ *Delimitation of Maritime Boundary in the Gulf of Maine Area* (United States-Canada), Judgment, ICJ Reports, 1984, p. 290,

⁴³⁹ *Ibid*, par. 80.

⁴⁴⁰ Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf (Decision of 30 June 1977, Court of Arbitration established under the Agreement of 10 July 1975), 18 ILM, 1979, p. 398; For the English text of the Award see: ILM, 18, 1979, Vol. I, p. 397; 54 ILR, p. 66.

⁴⁴¹ *Ibid*, p.62, pars. 105-6.

⁴⁴² *Ibid*, p.63, par. 109.

⁴⁴³ *Ibid*, pp. 115-116, par. 247.

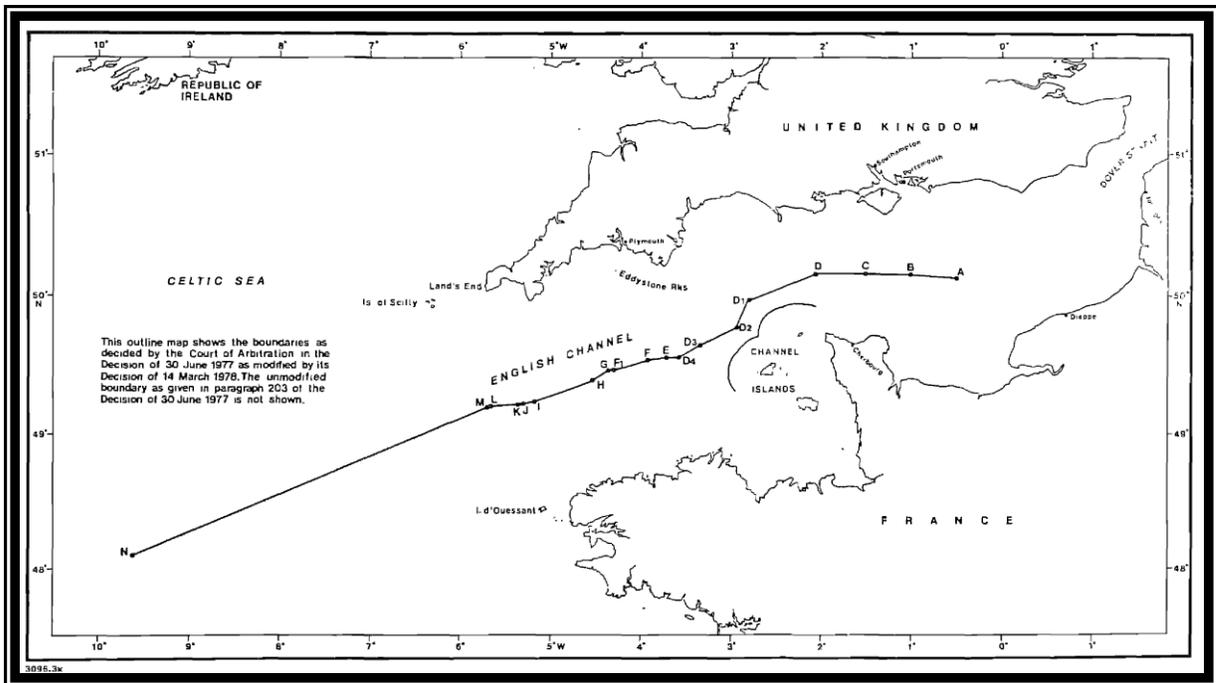


Figure 15: Anglo-French Arbitration case, 1977

Source: Reports of International arbitral Award, VOLUME XVIII, p. 338

Finally, the Court by taking into consideration the fact that the parties coastlines were approximately equal in length and taking into account other special circumstances, decided to delimit the continental shelf between them based on the median line.⁴⁴⁴ It is noteworthy that the median line was accepted according to the special circumstances of the area, in order to achieve an equitable effect.

In the 1982 *Tunisia- Libya* case (24 February 1982),⁴⁴⁵ both adjacent States, Tunisia and Libya demanded that the Court determine their appertaining continental shelf based on the equitable principle, by taking into account all of the relevant circumstances surrounding the case and new international trends regarding the continental shelf delimitation.⁴⁴⁶ Both parties in this case relied on the concept of

⁴⁴⁴ Ibid, p. 95, par. 201.

⁴⁴⁵ *Continental Shelf* case (Tunisia-Libyan Arab Jamahiriya), Judgment, ICJ Reports, 1982, p. 18.

⁴⁴⁶ Ibid, p. 32.

natural prolongation, but in different directions.⁴⁴⁷ The Court rejected the arguments based on natural prolongation, because the whole area relevant for the delimitation constituted a single continental shelf, which has to be divided based on the equitable principle. As a result, the Court expressly stated that:

The principle that the natural prolongation of the coastal State is a basis of its legal title to continental shelf rights does not in the present case,...necessarily provide criteria applicable to the delimitation of the areas appertaining to adjacent States.⁴⁴⁸

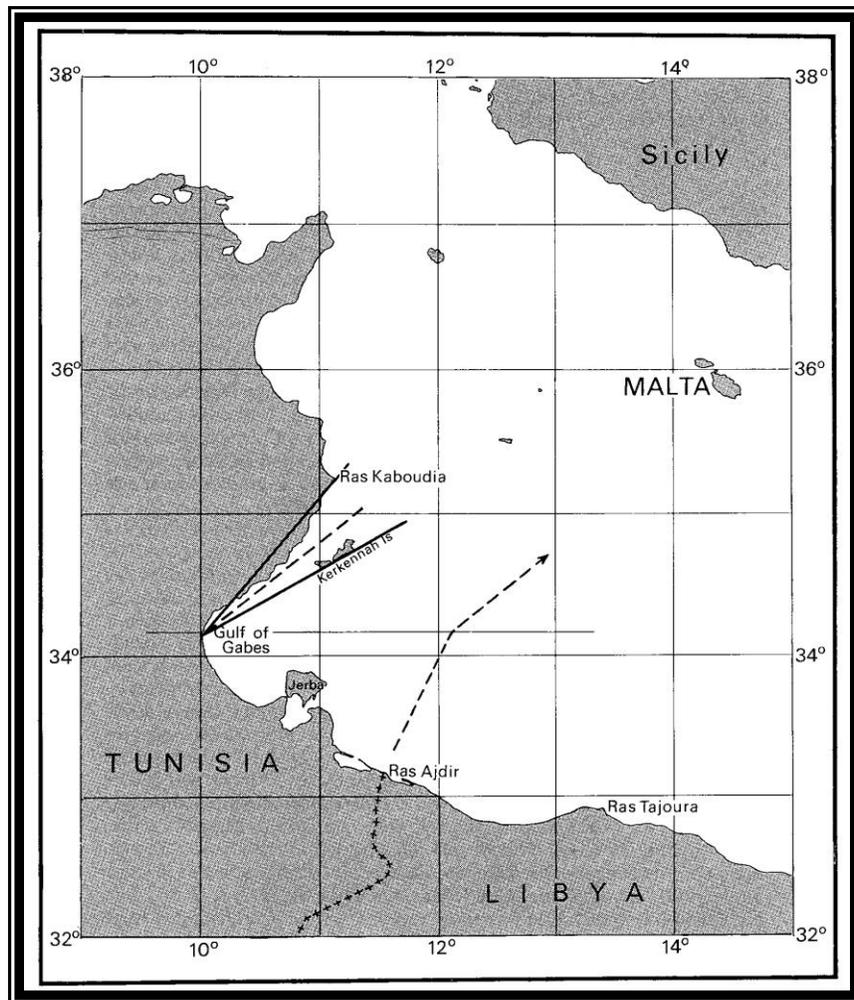


Figure 16: Tunisia-Libya case 1982.
Source: ICJ Reports 1982 (Map 3), p. 90.

⁴⁴⁷ Ibid, pars. 51-61.

⁴⁴⁸ Ibid, par. 48.

The Court, concerning delimitation, rejected the physical and geological factor constituting the legal title, but listed them among the several circumstances considered to achieve an equitable solution to the delimitation problems.⁴⁴⁹ The Court also took into account the historical circumstances, such as old agreements and oil concessions that were granted from 1955 onward by the parties, in order to achieve an equitable solution.

In the 1984 *Gulf of Maine* case (12 October 1984),⁴⁵⁰ the Court was requested to determine a single maritime boundary involving the continental shelf and the fisheries jurisdiction of Canada and the United States. The case was decided by the Chamber Court. The Chamber Court reviewed the existing law as expressed in article 6 of the 1958 Convention on the Continental Shelf and its own jurisprudence on delimitation of maritime boundaries. The Chamber then looked at the relevant provisions of UNCLOS, although it had not yet entered into force at that time, but found the relevant provisions as instructive. Accordingly, the Chamber looked in particular at articles 74(1) and 83(1) of UNCLOS relating to delimitation of the EEZ and the continental shelf. Both articles emphasise the use of agreement as the means for determining the delimitation of the EEZ or the continental shelf with the objective of such a settlement procedure being that of achieving an equitable solution.

The Chamber produced two principles reflecting the general international law prescribes in maritime boundary delimitation. First, there could be no unilateral delimitations. Delimitations had to be sought and effected by agreement between the parties, following negotiations conducted in good faith and with the genuine

⁴⁴⁹ Ibid, par. 68.

⁴⁵⁰ ICJ Reports, 1984, p. 246; 71 ILR, p. 74.

intention of achieving a positive result. Where, however such agreement can not be reached, delimitation should be effected by recourse to a third party possessing the necessary competence. Secondly, delimitation is to be effected by the application of the equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result. This was regarded as the fundamental norm of customary international law governing maritime boundary delimitation.⁴⁵¹

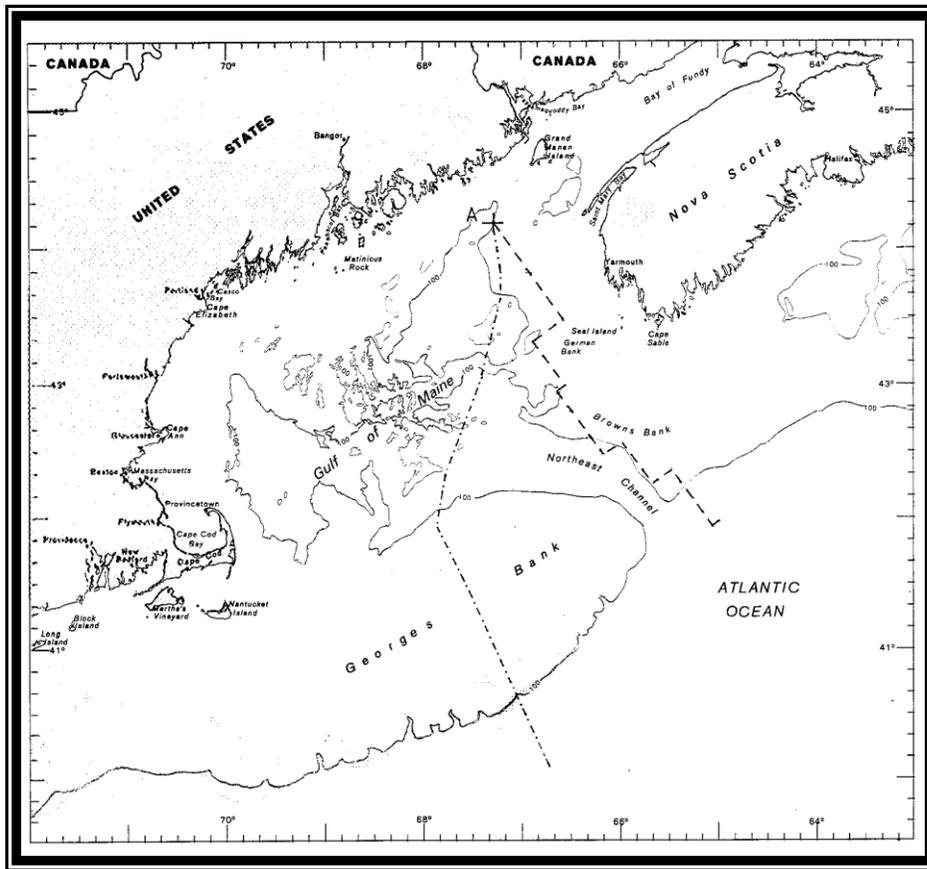
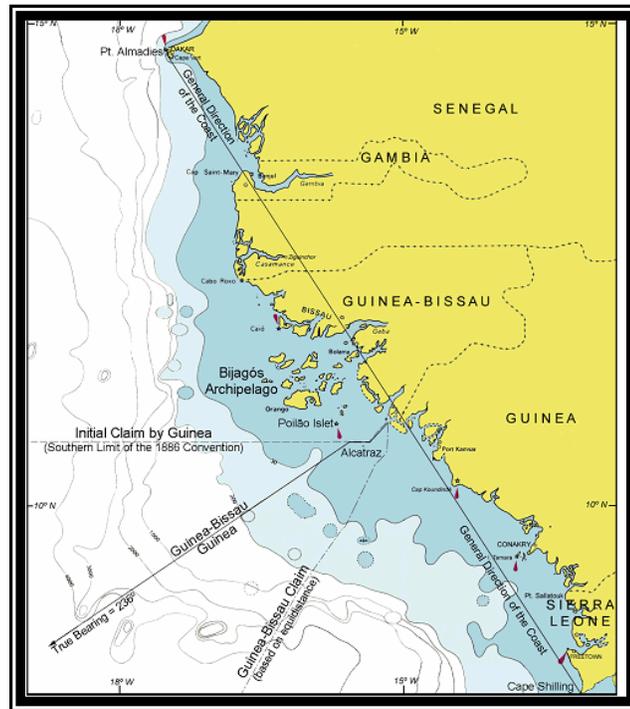


Figure 17: The Gulf of Maine case 1984.
Source: ICJ Reports 1984, (Map No.3) p. 91.

⁴⁵¹ Ibid, p. 299-300; 71 ILR, pp. 126-27.

In this case, the concept of natural prolongation did not provide criteria for the continental shelf delimitation and the Chamber considered the conflicting area as a single continental shelf to be divided between the parties based on the merits of the case.⁴⁵²

In the 1985 *Guinea - Guinea Bissau* case (14 February 1985),⁴⁵³ the Tribunal refused to take the arguments of the parties concerning the natural prolongation of their territory under the sea bed⁴⁵⁴ and referred to the principle of proportionality with assessment of involving factors which lead to an equitable result.⁴⁵⁵ The Tribunal went further to say that the extent of the land mass behind the coasts is not a determining factor, instead the delimitation depends on the length of the coasts bordering that sea and to the manner in which these coasts are located.⁴⁵⁶



⁴⁵² For the analysis of the *Gulf of Maine* case see: Schneider, Jan, "The Gulf of Main case: The Nature of an Equitable Result", *AJIL*, Vol. 79, 1985, pp. 539-77.

⁴⁵³ *International Boundary Cases: The Continental Shelf*, University of Cambridge, Grotius, 1992, p. 1301.

⁴⁵⁴ *Ibid*, p. 1352, par. 117.

⁴⁵⁵ *Ibid*, p. 1352, par. 118.

⁴⁵⁶ *Ibid*, p. 1352, par. 119.

Figure 18: Guinea- Guinea Bissau case1985

Source: Nuno Marques Antunes, *Towards the conceptualisation of maritime delimitation*, p. 449.

By taking into account the length of the islands the Tribunal reached a conclusion that the coastlines of the two States bordering the continental shelf have the same length.⁴⁵⁷ With this image in mind, the Tribunal decided the geographical considerations should play a vital role in the delimitation based on equitable principles.⁴⁵⁸

In the 1985 *Libya-Malta* case (3 June 1985),⁴⁵⁹ the parties had asked the Court to decide in accordance with equitable principles but they differed in opinion as to the application of methods leading to the equitable solution. Malta was of opinion that the relevant trend of the international community is in favour of the distance principle⁴⁶⁰ and as a result the median line should be applied in order to achieve an equitable solution. Malta, in this connection, cited article 76 of UNCLOS as the best evidence for the approval of its views. Libya, on the other hand, argued that UNCLOS had not yet come into force and is not binding upon them as treaty law⁴⁶¹ and the application of the concept of natural prolongation could provide an equitable solution to the problem. The Court rejected the concept of natural prolongation in this case on the basis that the opposing parties were less than 400 M apart⁴⁶² and took into account the distance principle put forward by Malta. In this connection the Court stated that:

the Court is thus unable to accept the Libyan contention that the distance from the coast is not a relevant element for the decision of the present case.⁴⁶³

⁴⁵⁷ Ibid, p. 1352, par. 120.

⁴⁵⁸ Ibid, p. 1350, par. 111.

⁴⁵⁹ *Continental Shelf* case (Libyan Arab Jamahiriya-Malta), Judgment, ICJ Reports, 1985, p. 13; 81 ILR, p. 239.

⁴⁶⁰ Ibid, par. 42.

⁴⁶¹ Ibid, par. 32.

⁴⁶² Ibid, par. 79 A(2).

⁴⁶³ Ibid, par. 34.

Finally, the Court by taking into account all of the special circumstances and factors such as: the general configuration of the coasts, length of relevant coasts in proportionality with the area of the continental shelf, decided that in this case the most equitable solution consists in the application of the median line, every point of which is equidistant from the low water mark of the coasts.⁴⁶⁴

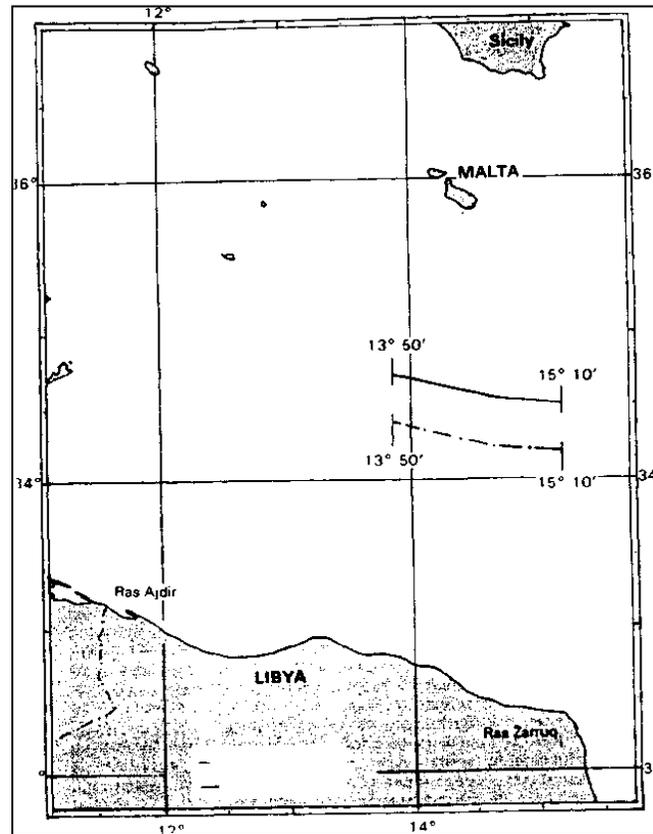


Figure 19: Libya -

case1985.

Malta

Source: ICJ Reports, 1985(Map No.2), p. 54.

In the 1993 *Jan Mayen* case (14 June 1993),⁴⁶⁵ the question of maritime delimitation arose between the islands of Greenland and Jan Mayen belonging to Denmark and Norway respectively. Denmark requested the Court to adjudicate that Greenland

⁴⁶⁴ Ibid, par. 79 (c).

⁴⁶⁵ *Maritime Delimitation in the Area between Greenland and Jan Mayen* case (Norway-Denmark), Judgment, ICJ Reports, 1993, p. 38; 99 ILR, p. 395.

be given full effect and is entitled to a full 200 M fishery zone and continental shelf. Denmark requested a single line separating Greenland's fishery zone and the continental shelf from that of Jan Mayen based on international law and in the light of the facts. On the other hand, Norway requested the Court to rule that two median lines constitute the boundary for the purpose of continental shelf and fishery zone between Greenland and Jan Mayen. Norway contended that, based on the bilateral agreement of 1965 and the 1958 Convention on the Continental Shelf a median line has been established between the two parties and in practice the parties have agreed that the same line constitutes the delimitation of the fishery zone.⁴⁶⁶

The Court after analysing the arguments of the parties concluded that for both the continental shelf and fishery zone in this case the drawing of a provisional median line is appropriate. Then this provisional median line is subject to adjustment based on the factors involved. The Court had mentioned that the law applicable to the delimitation of the continental shelf in this case was article 6 of the 1958 Convention on the Continental Shelf and the law applicable to the fishery zones is customary law, the court also found that the provisional median line should be employed as a starting point for both the delimitation of the continental shelf and fishery zones. Finally Court arrived at a conclusion that the delimitation line should be drawn some where between the median line proposed by Norway and the 200 M line proposed by Denmark from the baselines of the Eastern Greenland.⁴⁶⁷

For achieving an equitable solution, the Court divided the overlapping area into three zones. In zone 1, the Court with due regard to the presence of a rich fish stock in this area concluded that "the two parties should enjoy equitable access to the

⁴⁶⁶ Ibid, pars. 11-21.

⁴⁶⁷ Ibid, par. 91.

fishing resources of this zone."⁴⁶⁸ For this purpose zone 1 was divided into parts of equal area. The Court, by taking into account the relevant factors such as special circumstances arising out of the disparity in coastal length, divided zone 2 and 3 between the parties to such an extent that approximately 2/3 of zones 2 and 3 was ceded to Norway and 1/3 to Denmark. As a result, in this case, again the equitable result was achieved through the weighing of all relevant circumstances.

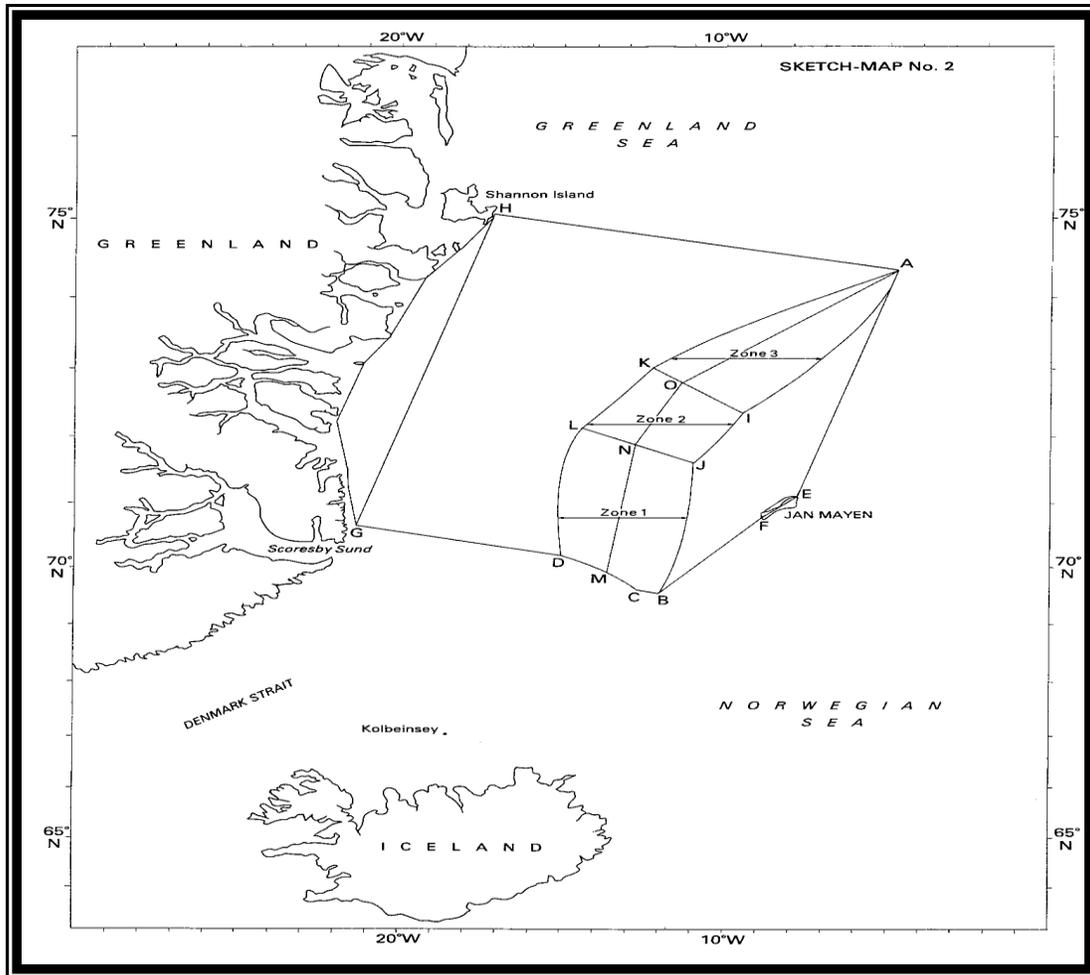


Figure 20: Jan Mayen case 1993.
Source: ICJ Reports, 1993, p. 38.

The 1999 *Eritrea-Yemen* case (17 December 1999),⁴⁶⁹ involved a dispute between Eritrea and Yemen States about sovereignty over the Red Sea area between them;

⁴⁶⁸ Ibid, par. 92.

⁴⁶⁹ *Eritrea-Yemen*, Award of the Arbitral Tribunal in the 1st Stage (Territorial Sovereignty and Scope of the Dispute), Award of 9 October 1998, 112 ILR (1999); Award of the Arbitral

and in a second phase it involved the maritime delimitation which took place after the tribunal had already allocated between them sovereignty over the four sets of contested mid-sea islands. The tribunal stated at the outset that it would approach the delimitation using the proposition that a median line fits the requirements of UNCLOS articles 15, 74 and 83. Both Parties in turn claimed that their proposed delimitation line was based on the median line.

The Tribunal decided that, in the delimitation between opposite States a median/equidistance line would provide an equitable maritime boundary. It also declared that a median line is not the end of the process. The Tribunal therefore applied the proportionality test to examine the equitableness of the median line. Both Eritrea and Yemen presented their median line but they differed enormously due to their difference as to base points.

Tribunal in the 2nd phase (Maritime Delimitation), Award of 17 December 1999, 40 ILM, p. 1005.

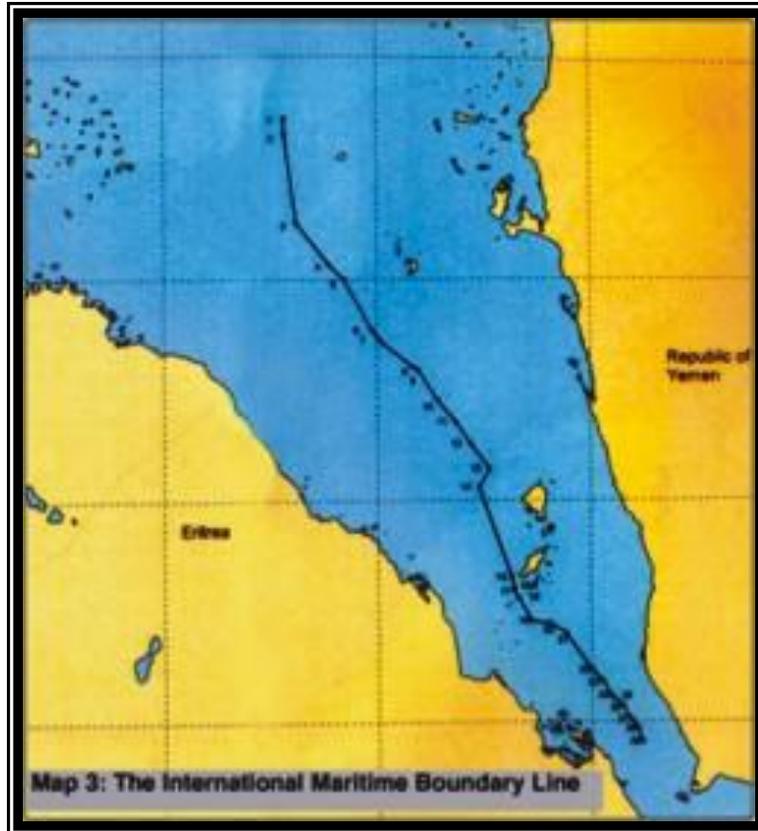


Figure 21: Eritrea-Yemen case 1999.

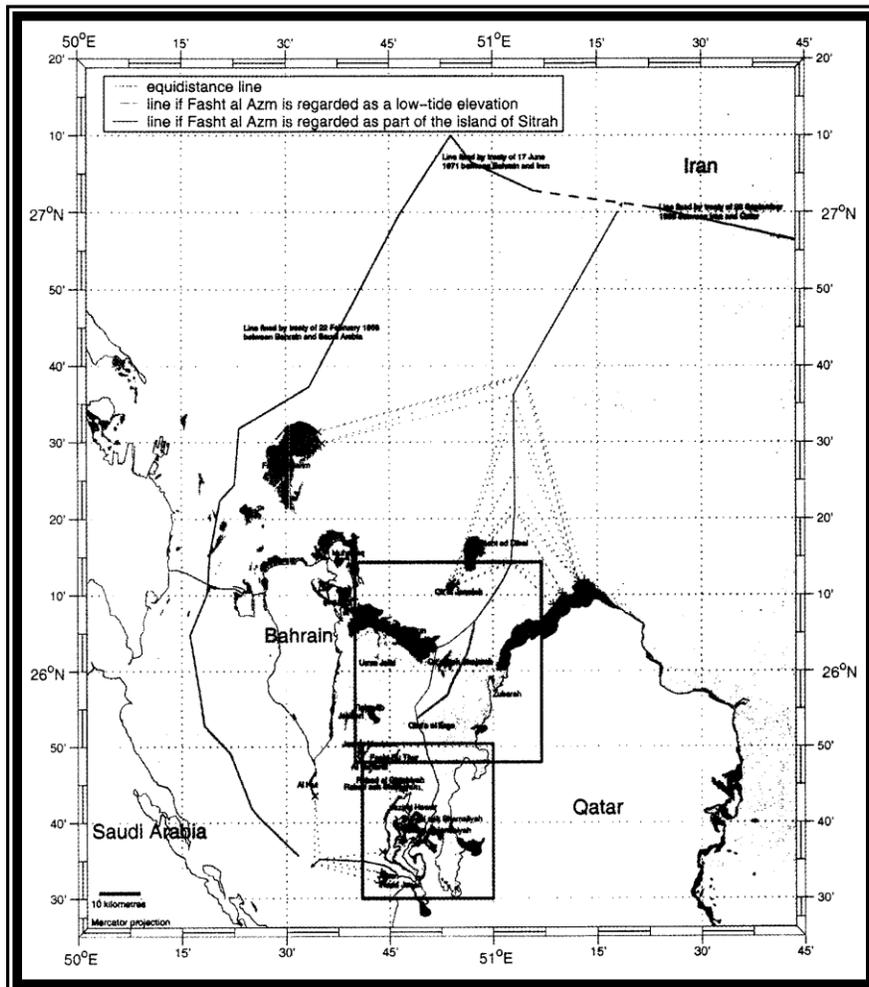
Source: [www.pca-cpa.org/chart 3](http://www.pca-cpa.org/chart3).

The relevant circumstances presented by the parties included fishing, traditional fishing regime, petroleum agreements, security, navigation and proportionality. Among all these factors court took into account only navigation and proportionality. The Tribunal discarded the median lines of the parties and drew its own line and verified the equitableness by applying proportionality test. The ratio of coastal lengths of each party was 1 (Yemen): 1.31 (Eritrea) and the ratio of water was 1 (Yemen): 1.09 (Eritrea).⁴⁷⁰ The awards of the case will undoubtedly continue to provide a valuable model for successful settlement of disputes in the two interlinked major areas of the acquisition of territorial sovereignty and maritime boundary delimitation in the future.⁴⁷¹

⁴⁷⁰ Ibid, pp. 1010-11, pars. 165-68

⁴⁷¹ Khurshed Alam, "Maritime Boundary Delimitation, Territorial Questions Between Eritrea and Yemen", *The Daily Star*, February 16, 2008.

In the 2001 *Qatar -Bahrain* case (16 March 2001),⁴⁷² that the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coasts in its immediate vicinity. Further, the court emphasised that the fact that a State consider itself a multiple island State or a de-facto archipelago does not allow it to deviate from the normal rules for the determination of baselines unless the relevant conditions are met. The Court rejected the Bahrain's claim that certain maritime features east to its main islands constituted a fringe of islands.⁴⁷³

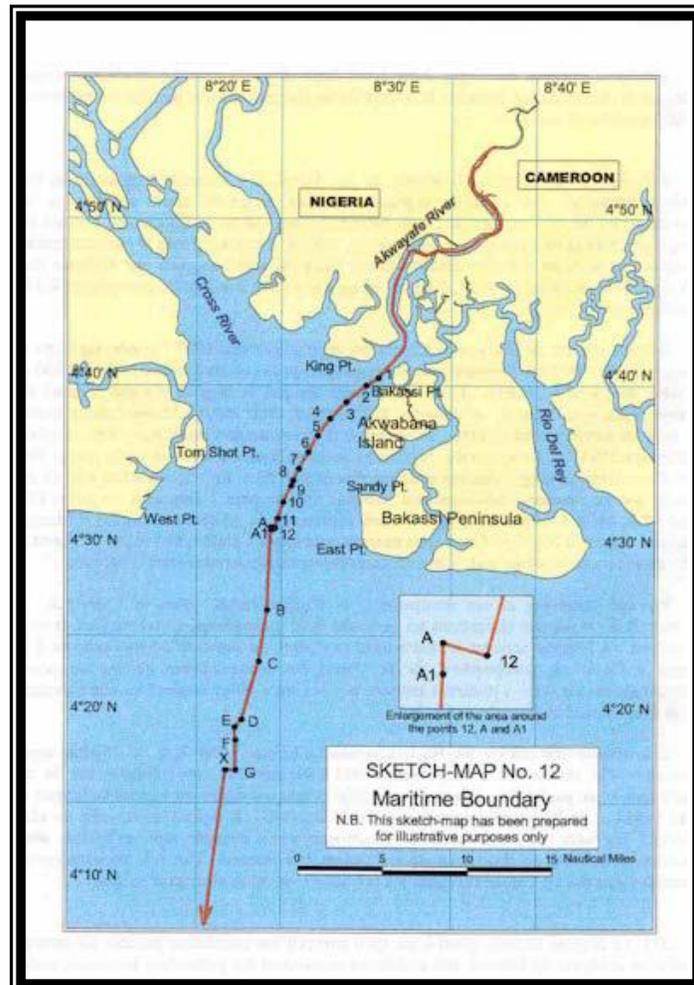


⁴⁷² *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* case (Qatar - Bahrain), Merit, Judgment, ICJ Reports, 2001, p. 40.

⁴⁷³ *Ibid*, pars. 212-14.

Figure 22: Qatar -Bahrain case 2001.
Source: ICJ Reports, 2001, p.40.

In the 2002 *Cameroon-Nigeria* case (10 October 2002),⁴⁷⁴ the ICJ held that territorial seas had already been delimited under prior valid international agreements between the States and between their colonial predecessors. The Court went on to delimit the EEZ and continental shelf by applying articles 74 and 83 of UNCLOS, while ensuring that neighbouring third parties rights were not adversely affected. Factors calling for the adjustment or shifting of equidistance line in order to achieve an equitable solution, as envisaged by articles 74 and 83 were found to be present in this instant case.



⁴⁷⁴ *Land and Maritime Boundary* case (Cameroon-Nigeria: Equatorial Guinea intervening), Judgment, ICJ Reports, 2002, p. 303.

Figure 23: Cameroon-Nigeria case 2002.

Source: ICJ Reports 2002, p. 303.

In the 1984 *Gulf of Maine* case (12 October 1984),⁴⁷⁵ geography and geographical circumstances were undoubtedly leading considerations and were implicitly regarded as having a preferential status. The ICJ considered geographical criteria as excellent examples of neutral circumstances, suitable for a multi-purpose delimitation. It mentioned that first the geographical configuration of the area and then other relevant circumstances.⁴⁷⁶

In practice relevant circumstance and the equitable principle go hand in hand. Without the help of equitable principles, relevant circumstance would be powerless to produce any assessment of the equity of a situation.⁴⁷⁷ As judge Jiemenez de Arechaga indicated:

Equity is nothing other than the taking into account of a complex of historical and geographical circumstances the consideration of which does not diminish justice but, on the contrary, enrich it.⁴⁷⁸

From above discussion it is clear that for an equitable delimitation the geographical configuration of coasts and all the relevant circumstances of the case are to be taken into consideration. As the ICJ has commented, "the delimitation line to be drawn in a given area will depend upon the coastal configuration".⁴⁷⁹

It is apparent from the above discussion and case decisions that the practical approach towards delimitation of maritime boundaries takes into account factors like configuration of coasts, the presence of deltas or islands, the existence of

⁴⁷⁵ ICJ Reports, 1984, p. 246.

⁴⁷⁶ Ibid, par. 112.

⁴⁷⁷ Weil, *The law of maritime delimitation-reflection* (Translated from French by Maureen Mac Glashan), Cambridge, 1989, pp. 211-12.

⁴⁷⁸ ICJ Reports, 1982, par. 24 (Separate opinion of Jiemenez de Arechaga).

⁴⁷⁹ ICJ Reports, 1984, p.330, par. 205.

continental shelf, the existence of fish stock, socio-economic and geophysical impact etc. given the geomorphologic, geological and geographical characteristics of the sea.

If the equidistance method is applied in case of Bangladesh, the boundary between adjacent countries will be unfair, distorted and inequitable. Therefore, the sea boundary of Bangladesh with its adjacent neighbours requires to be drawn in terms of the provisions of UNCLOS so as to achieve "an equitable solution."⁴⁸⁰ The interpretation of customary international law of maritime delimitation as embodied in the Judgment of the 1969 *North Sea Continental Shelf* cases and articles 74 and 83 of UNCLOS provide strength to the above argument that equity has emerged as integral part of law in maritime delimitation.⁴⁸¹

3.4. How to Effect an Equitable Solution

Bangladesh is a density populated country which is often termed as an India-locked country,⁴⁸² it shares 4,094 km of land border on three sides, the fourth side opening to the Bay of Bengal.⁴⁸³ Bangladesh, India and Myanmar have many variations in their coastal configuration, in addition to geographical and topographical situations. The coastline of Bangladesh has the characteristics of deltaic coastline, which is deeply indented, erosion and sedimentation continuously affect adjacent coastal waters, a highly unstable coastline is evident at low tide, and the navigable channel in the coastline change continuously, requiring frequent survey and demarcation. The coastline is also deeply indented and concave fringed by islands. All of these features have made Bangladesh geographically disadvantaged. To resolve the maritime boundaries dispute

⁴⁸⁰ Harunur Rashid, "Sea boundary of Bangladesh: A Legal view," *The Daily Star*, February 29, 2004.

⁴⁸¹ Harunur Rashid, "Law of Maritime delimitation", *The Daily Star*, May 10, 2008.

⁴⁸² Hussain, *Geo-politics and Bangladesh Foreign Policy*, June 1989, pp. 99-100.

⁴⁸³ Of this 4,094 kilometers of border, West Bengal shares 2,216 km, Tripura shares 856 km, Meghalaya shares 443 km, Mizoram shares 318 km and Assam shares 262 km.

between Bangladesh and its neighbours the following recommendations are proposed:

a) Regarding the Baselines

In view of the deltaic and unstable nature of the coast, in 1974 through a gazette notification,⁴⁸⁴ the Government of Bangladesh declared its baselines defined through the use of the depth method.⁴⁸⁵ Because of the geographical configuration of the coast, the application of the normal baseline seems to be most disadvantageous for Bangladesh.⁴⁸⁶ This depth method of measuring the baseline is consistent with the provision of article 7 of UNCLOS, because this article makes an exception of a normal baseline (low water mark) where the coastline is highly unstable because of the presence of delta and "other natural conditions".⁴⁸⁷

The adoption of straight baseline has also been established in the famous *Anglo-Norwegian Fisheries* case.⁴⁸⁸ In this case, the ICJ's decision was mostly influenced by the geographical circumstances. In the judgment, the Court viewed that "the method of straight baselines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast."⁴⁸⁹ This judgment has given international recognition to a new concept of drawing baselines, which is relevant to Bangladesh. It is a matter of fact that today about 80 coastal States has established straight baselines.⁴⁹⁰

The coastline of Bangladesh has the following characteristics:

⁴⁸⁴ Notification No. LT -1/3/74 of the Ministry of Foreign Affairs, Dacca, of 13 April 1974, See: Annex III.

⁴⁸⁵ See: Figure 6.

⁴⁸⁶ Shah Alam and Faruque , *op. cit.*, *supra note 1*, p. 411.

⁴⁸⁷ UNCLOS, article 7(2). See also: Churchill and Lowe, *op. cit.*, pp. 37-8.

⁴⁸⁸ ICJ Reports, 1951, p. 116.

⁴⁸⁹ ICJ Reports, 1951,116 at 139.

⁴⁹⁰ Scovazzi, "Baselines", *Max Plank Encyclopedia of Public International Law*, 2009.

- (i) The estuary of Bangladesh is such that no stable water line or demarcation of landward and seaward are exists.
- (ii) The continual process of alluvion and sedimentation forms mud banks and the area is so shallow as to be non-navigable by other than small boats.
- (iii) The navigable channels of land through the aforesaid banks are continuously changing their courses and require soundings and demarcation so that they pertain to the character of the river mouths and inland waters.

All of these basic geo-morphological peculiarities seek to justify the depth method baseline of Bangladesh from which the territorial water is to be measured is expressed by means of straight line linking geographical coordinates which lay on a certain depth of the coastal waters.⁴⁹¹

The 'depth method' (as from the depth of 10 fathoms, i.e. 60 feet) adopted by Bangladesh conforms to the expression, other natural conditions. International law also does not prohibit delimitation of a sea by taking into account the local requirements. Bangladeshi depth method is neither 'normal' nor 'straight', but it is somewhat an isomer of the straight baseline method which is not prohibited by international law, even if it is not mentioned in article 7(2) of UNCLOS.⁴⁹²

Regarding article 7(2) of UNCLOS, there arise questions on whether it permits the delineation of baselines by the depth method. It can not be concluded that the article does not permit the depth method. In real meaning, it is to be pointed out that Bangladesh has adopted the depth method as to its peculiar geographical,

⁴⁹¹ Scovazi, *La Linea di Base del Mare Territoriale*, Milano-Dott. A. Giuffre Editore-1986, pp. 121-22.

⁴⁹² Masum Billah, "Delimiting Sea Boundary by Applying Equitable Principles", *The Daily Star*, October 17, 2009, Law and Our Right, Issue No.14.

geological and geomorphologic situations. From the practical point of view, the formula as incorporated in UNCLOS does not meet the demand of the situation of Bangladesh though it appears to have taken into account certain attributes of a deltaic country like Bangladesh.⁴⁹³

The present law of the sea as regards coastline (or the baseline) does not relate to Bangladesh as it has no rocky or permanent coast which can be used to define its baseline. Old chars disappear, new chars rise in the delta basin every year and also the rivers running into the Bay of Bengal change their courses frequently.⁴⁹⁴ So how Bangladesh can put its claim for a baseline to the United Nations (UN) where the definition of the baseline does not fit its case. It must also be remembered that it is the baseline which is all important from which the EEZ and continental shelf zone etc. are measured. Bangladesh therefore must approach the UN body to inform them of this scarcity in the present law of the sea as regards to Bangladesh's unique geography and have some other reasonable definition of baselines such as say, 6 fathom depth line on the seabed, or a baseline simply defined by latitudes and longitudes at various points.⁴⁹⁵

Another recommendation to such a potential situation may be for negotiating States to come to an agreement to maintain the position of baselines as they are drawn prior to shifting of baselines landward as a result of a rise in sea level.⁴⁹⁶ What must be ascertained is whether such a negotiation position has a legitimate basis in international law.⁴⁹⁷ Article 7 (2) of UNCLOS states:

⁴⁹³ It is to be mentioned that in the eleventh session of the UNCLOS III Bangladesh expressed that article 7 of the UNCLOS can not preclude founding of its baseline on the depth criteria and bathymetric factors (UNCLOSIII Doc.A/CONF.62/L.140, 28 April 1982). It was communicated by the President as an official document of the Conference.

⁴⁹⁴ Francalanci and Scovazzi (eds.), *Lines in the Sea*, The Netherlands, 1994, pp. 66-67.

⁴⁹⁵ Shafi Ahmed, "Our maritime boundary," *The Daily Star*, August 3, 2009.

⁴⁹⁶ Munavvar, *Ocean States, Archipelagic Regimes in the Law of the Sea*, The Hague, 1995, p. 112.

⁴⁹⁷ Turnquest, *Delimitation of The Maritime Boundary Between the Commonwealth of The Bahamas and The United States of America: A Case Study*, research paper submitted to the United Nations

Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

From this provision it appears that the original baseline system remains valid and it is up to the negotiating States to initiate changes in the positioning of baselines. Subsequently, it would be prudent for Bangladesh to attempt to include in its maritime delimitation agreements with its neighbouring States, a provision that calls for baseline co-ordinates to be maintained even in the event of a rise in sea level.

b) Regarding the Territorial Sea

According to the Bangladesh's 1974 Act, Bangladesh declared the limit of its territorial sea as 12 M, as discussed above, from the straight baselines as drawn considering its concave coastline. Article 3 of UNCLOS defines the breadth of the territorial sea as a limit not exceeding 12 M from the baselines.

The delimitation of the territorial sea is governed by article 15 of UNCLOS⁴⁹⁸ which repeats almost verbatim, the text of the 1958 Convention on the Territorial Sea and Contiguous Zone.⁴⁹⁹ According to UNCLOS any dispute between two countries regarding delimitation of territorial sea should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the

in partial fulfilment of the requirements for the United Nations-Nippon Foundation Fellowship, 2005-2006, pp. 26-7.

⁴⁹⁸ UNCLOS, art. 15. See also: Harunur Rashid, "Sea boundary of Bangladesh: A legal view", *The Daily Star*, February 29, 2004.

⁴⁹⁹ TS & CZ, art. 12(1). See also: Prescott and Schofield, *op. cit.*, p. 219.

international community as a whole. Article 15 states delimitation of the territorial sea between States with opposite or adjacent coasts are:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.⁵⁰⁰

The ICJ, in the *Tunisia-Libya* case emphasized in clear terms that "land dominates the sea".⁵⁰¹ This is a good case study as the land of Bangladesh also dominates the seabed under the Bay of Bengal and fishermen of the country from all the coastal districts in a large number rely on fishing. Without which their very survival would be at stake and there are ample facts and figures in support of this.⁵⁰²

The 12 M territorial sea claim of Bangladesh is consistent with the provision of UNCLOS but the difficulty remains in establishing the claimed baselines as valid. Because of the claimed baselines of Bangladesh if any dispute arise relating to the territorial sea of Bangladesh that might be resolved on the basis of the provision of UNCLOS, taking into consideration of the geographical, geological and other circumstances of the country as to achieve an equitable solution.

c) Regarding the Exclusive Economic Zone and the Continental Shelf

⁵⁰⁰ UNCLOS, art. 15. See also: Rabinathan, "Demarcating Bangladesh's Maritime Boundary: Issues and Challenges", *South Asia Monitor*, June 17, 2009.

⁵⁰¹ ICJ Reports, 1982, par. 73. The ICJ in its judgment on the *Aegean Sea Continental Shelf* case, which in fact did not get into the merits of the case referred to the same principles, ICJ Reports, 1978, par. 86.

⁵⁰² Khurshed Alam, "Maritime Boundary Delimitation, Territorial Questions Between Eritrea and Yemen", *The Daily Star*, February 16, 2008.

According to the Bangladesh's 1974 Act, Bangladesh declared the limit of its exclusive economic zone as 200 M as discussed above. In terms of articles 74 and 83 of UNCLOS, delimitation of the EEZ and the continental shelf of adjacent countries will be guided by the principles of equity. These articles of UNCLOS emphasise that any agreement arrived at must achieve "an equitable solution". The principle of equity is embedded in notions of fairness in the context of shape of the coastal land. This equitable principle found recognition by the ICJ in the *North Sea Continental Shelf* cases.⁵⁰³

The continental shelf of Bangladesh comprises the seabed and subsoil of the submarine areas adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor.⁵⁰⁴

Article 76 of UNCLOS defines the continental shelf as:

the sea bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.⁵⁰⁵

Therefore, UNCLOS recognizes both geographical criteria (natural prolongation) and distance criteria in the definition of continental shelf. According to the first part of the definition of the continental shelf, the natural prolongation of the land territory is the main criterion. In the second part of the paragraph, the distance of 200 M is in certain circumstances the basis of delimitation of continental shelf. The

⁵⁰³ ICJ Reports, 1969: ICJ: general list: nos. 51 and 52.

⁵⁰⁴ Khurshed Alam, *Maritime Security of Bangladesh: Traditional Issues Impinging on Maritime Boundary Delimitation*, Paper Presented at the Seminar on Maritime Security of Bangladesh, organized by the Bangladesh Institute of International and Strategic Studies (BISS), Dhaka, on February 12, 2009.

⁵⁰⁵ UNCLOS, art.76, par. (1).

criteria of natural prolongation have been endorsed by the ICJ and an arbitral tribunal in the *North Sea Continental Shelf* cases,⁵⁰⁶ *Anglo-French Continental Shelf* case, 1977⁵⁰⁷ and the *Gulf of Maine* case.⁵⁰⁸

In maritime delimitation, geographical circumstances play a predominant role. As a consequence of the principle that the land dominates the sea, maritime jurisdictional zones are legally considered as accessories to *sovereignty* on land, and the configuration of its coast is the factual source of the rights that a State can exercise over the adjacent areas of waters or seabed.⁵⁰⁹ As remarked in the *North Sea Continental Shelf* cases and *Qatar-Bahrain* case by the ICJ:

the principle is applied that the land dominates the sea; it is consequently necessary to examine closely the geographical configuration of the coastlines of the countries whose continental shelves are to be delimited. This is one of the reasons why the Court does not consider that markedly pronounced configurations can be ignored; for, since the land is the legal source of the power which a State may exercise over territorial extensions to seaward, it must first be clearly established what features do in fact constitute such extensions.⁵¹⁰

Maximum of the continental shelf of Bangladesh is the result of silt deposits from the rivers running through her. The continental shelf is not steep but runs in a steady and gradual slope from the coast of Bangladesh. Therefore, the continental shelf is arguably a natural prolongation of the landmass of Bangladesh in the southeast direction.⁵¹¹ However, Bangladesh has claimed a continental shelf up to the last point of the continental margin, which exceeds 200 M.

⁵⁰⁶ ICJ Reports, 1969, p. 3.

⁵⁰⁷ 18 ILM, 1979, p. 397.

⁵⁰⁸ ICJ Reports, 1984, p. 246.

⁵⁰⁹ Scovazzi, "Maritime Delimitation Cases before International Courts and Tribunals", *Max Planck Encyclopedia of Public International Law*, 2009.

⁵¹⁰ ICJ Reports, 1969, par. 96. See also: ICJ Reports, 2001, par. 185.

⁵¹¹ Harunur Rashid, "Law of maritime delimitation", *The Daily Star*, 10 May, 2008.

India and Myanmar have already submitted their claim to the Commission on the Limits of the Continental Shelf. Therefore, it is recommended, to protect the interest of Bangladesh it has to submit sufficient evidence in favour of her claim by 27 August 2011, to the CLCS. Furthermore, very recently on 25 February, 2011 Bangladesh has submitted its claim to the CLCS.⁵¹²

In the case of Bangladesh, India and Myanmar, the problem arose when they took different approaches to delimit their maritime boundary. India and Bangladesh bilateral talks in this regard have been inconclusive. India offers the equidistant principle as the basis for delimiting the maritime boundary, where Bangladesh favours a principle based on equity. The application of these two approaches results in an area of overlap between the two claims. The same difference in arguments rendered Bangladesh and Myanmar talks inconclusive as well. But India and Myanmar (opposite States) agreed upon on equidistant boundary among themselves on 23 December 1986 through an agreement, which came into force on 14 September 1987.⁵¹³ Both India and Myanmar insist upon using the equidistance line as the method for maritime boundary delimitation with Bangladesh. But in both cases Bangladesh's coastline does not lie exactly adjacent to the other coast as in case of other countries.

The geographical configuration of countries is very important in drawing a sea boundary as discussed above. This means whether a country is opposite or adjacent to the other country. For example, Sri Lanka is opposite to India while Bangladesh is adjacent to it and to Myanmar. The equidistance method that is applicable between the opposite countries in respect to the delimitation of the EEZ

⁵¹² Bangladesh submitted on 25 February, 2011. Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/clcs55_2011_feb_2011.pdf.

⁵¹³ For details see: Burma (Myanmar)-India, Report Number 6-3, in Charney and Alexander (eds.), *International Maritime Boundaries*, Vol. II, Dordrecht/Boston/London, 1993, pp. 1329-40.

and the continental shelf cannot be invoked to draw the sea boundary between adjacent countries as it disregards the physical features of coastal areas and does not achieve "an equitable solution" as stipulated by UNCLOS. In the cases that concerned the delimitation of both the EEZ and the continental shelf, the emphasis was given on the geography, as represented by circumstances that are common to both concepts.⁵¹⁴

The Chamber in the *Gulf of Maine* case⁵¹⁵ observed that it is "towards an application to the present case of criteria more specifically derived from geography that it feels bound to run".⁵¹⁶ In the *Jan Mayen* case, the court observed that the delimitation was to be based on the geographical context of the area.⁵¹⁷

It is usual that median line delimitation on the basis of the equidistance principle between opposite coasts results in an equitable resolution, particularly if the coasts in question are nearly parallel. Conversely, in the case of adjacent coast like Bangladesh and India, the application of the equitable approach is generally employed for the delimitation thus ensuring an equitable solution.⁵¹⁸ Equitable principle is stipulated by UNCLOS and present judicial decisions. Existing State practice and judicial decisions recommend while applying the equitable principle of delimitation all the time take relevant circumstances into consideration.

⁵¹⁴ Acer Yucel, *The Aegean Maritime Disputes and International Law*, Ashgate, England, 2003, p. 163.

⁵¹⁵ The Chamber was assigned to produce a single line not only for the continental shelf but for both the continental shelf and the superjacent water. See: ICJ Reports, 1984, par.119, p. 301.

⁵¹⁶ To clarify the content, it said that "what is here understood by geography is of course mainly the geography of coasts, which has primarily a physical aspect, to which may be added, in the second phase, a political aspect", par. 195. See also: Schneider (1985), p. 571.

⁵¹⁷ In the *Jan Mayen* case, the ICJ was requested to delimit the continental shelf and fisheries zone in the superjacent waters but was not specifically requested to indicate a single line for them. The delimitation was mainly dependent on the geography of the area. See: pars. 51-53 and 59.

⁵¹⁸ Jagota, *Maritime Boundaries*, Dordrecht, 1985, p. 208.

Following conclusion can be drawn from the practice of international courts which have been called to give a concrete content to the abstract rule providing for the achievement of an equitable solution:

- (i) geographic circumstances are the main factors in the determination of a maritime boundary line;
- (ii) the equidistance line plays the role of a logical starting point, as a reference to evaluate whether a delimitation effected on the basis of equidistance leads to an equitable solution;
- (iii) islands, which in principle enjoy the same status as continental territories, have been treated in different ways, depending on their location, size and number;
- (iv) circumstances different from the geographical ones, such as those relating to geology, geomorphology, unity of deposits, history, security or fishing, can also play a certain role, although to a lesser extent and depending on the peculiar context; and
- (v) the cases decided hitherto by international courts do not exhaust all the instances which may be found in the world's political geography (for example, no specific precedent exists for the instance of a continuous chain of islands of considerable size, located on the wrong side of the median line, but closely interlinked with the State to which the chain belongs).⁵¹⁹

From the above discussion, it is recommended that, based on the geographical, geological, geomorphologic and other related circumstances the sea boundary of

⁵¹⁹ Scovazzi, "Maritime delimitation in the Mediterranean Sea", *Cursos Euromediterraneos Bancaja de Derecho International*, Vols. VIII/IX, 2004/2005, p. 403.

Bangladesh with its adjacent neighbours requires to be drawn in terms of the provisions of UNCLOS and equitable principles.⁵²⁰

d) Updating Maritime Zones Law of Bangladesh

Bangladesh through an act of Parliament enacted the Territorial Waters and Maritime Zones Act (1974) almost simultaneously when the discussion on the law of the sea was going on and much before UNCLOS was placed for signature the 1982. In 1974, Bangladesh declared a straight baseline with a length of 222 M defined by eight points, all of which are located in the sea. Bangladesh justifies this unique straight baseline by the special nature of the offshore areas of the Ganges delta.

The Government also declared the limits of the sea beyond the land territory and internal waters of Bangladesh which shall be the territorial waters of Bangladesh specifying 12 M from the baseline. The zone of the high seas contiguous to the territorial waters and extending seawards to a line 6 M measured from the outer limits of the territorial waters is declared to be the contiguous zone of Bangladesh. The Government also declared zone of the high seas adjacent to the territorial water to be the EEZ of Bangladesh specifying therein the limits of 200 M. The continental shelf of Bangladesh comprises the seabed and subsoil of the submarine areas adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor.⁵²¹

⁵²⁰ Harunur Rashid, "Sea boundary of Bangladesh: A legal view", *The Daily Star*, February 29, 2004; See also: Habibur Rahman, *Delimitation of Maritime Boundaries*, *op. cit.*, p. 304.

⁵²¹ Khurshed Alam, *Maritime Security of Bangladesh: Traditional Issues Impinging on Maritime Boundary Delimitation*, Paper Presented at the Seminar on Maritime Security of Bangladesh, organized by the Bangladesh Institute of International and Strategic Studies (BISS), Dhaka, on February 12, 2009.

It is by now manifested that the 1974 line is incompatible with UNCLOS. The provisions of the Bangladesh's 1974 Act is not adequate to safeguard the interests of the country. The shortcoming of this Act is more acute than its defect.

Bangladesh ratified UNCLOS on 27 July, 2001. Implication of ratification of UNCLOS by Bangladesh actually mean revising, amending and updating existing laws in force as well as those under revision in order to make those consistent with UNCLOS. A number of legal provisions should be identified as requiring amendment specially the Customs Act, 1969 in order to bring it in line with the provision of UNCLOS. Similarly, the Bangladesh's 1974 Act should also be amended so that the breadth of the contiguous zone can be declared as 24 M in place of present 18 M.

e) Joint Survey to Settle the Dispute of South Talpatty Island

To dispel any misgivings about the rightful ownership of the South Talpatty island Government of Bangladesh requested the Government of India to conduct a joint survey immediately in a spirit of understanding, cooperation and good neighbourliness in accordance with its commitments.⁵²² During the subsequent discussion, it was agreed that after study of additional information exchanged between the two Governments, further discussion would take place with a view to settling it peacefully at an early date. While Bangladesh supplied the Indian side with data including satellite imageries clearly establishing Bangladesh's claim to this island, the promised joint survey is still being awaited.

There is no question of disputing the sovereign rights of Bangladesh over the South Talpatty as it has formed in the estuary of Raimangal river, being the

⁵²² Khurshid Alam, *Bangladesh's Maritime Challenges in the 21st Century*, *op. cit.*, pp. 262-68. See also: Habibur Rahman, *Delimitation of Maritime Boundaries*, *op. cit.*, p. 179.

internal river of Bangladesh. India's contention of deeper channel passing east of South Talpatty does not merit attention at all as the streams of Raimangal and Jamuna river when they meet with the remaining flow of Hariabhanga in the estuary will no doubt create a deeper channel than the channel flowing west of South Talpatty. The legitimacy of the conflicting claim over the island can only be determined by a joint survey and negotiation. At this stage, it is to be said that flexibility and pragmatic approach will be needed to settle the conflicts created by the newly formed island.

3.5. Critical Analysis of the Various Means of Settlement of Disputes

Now the various means of settlement of dispute will be analyzed to settle the long pending maritime boundary dispute of Bangladesh with India and Myanmar. To settle the problem it may recommend to take following measures:

a) Settlement in the Course of Negotiation

Negotiation is the principal means of handling all international disputes. It has a vital part in international disputes.⁵²³ As General Assembly Resolution of 1970 proclaims:

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement or other peaceful means of their choice.⁵²⁴

In this provision the various methods of peaceful settlement are not set out in any order of priority, but the first mentioned is negotiation. In fact in practice, negotiation is employed more frequently than all other methods put together. Once a dispute arises on the international plane, it is normal to first seek a

⁵²³ Merrills, *op. cit.*, p. 2.

⁵²⁴ General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, GA Res.2625(XXXV),24 October 1970. The resolution was adopted by General Assembly without a vote.

settlement by negotiation.⁵²⁵ If the parties fail to settle the dispute through negotiation, then other methods come into view. Therefore, for the peaceful settlement of disputes it is obvious to continue negotiation process between Bangladesh and its neighbours which started in the year 1974.

Article 283 paragraph 1 of UNCLOS states:

When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

In contrast to other methods, negotiations may be regarded as a universally accepted means of dispute settlement.⁵²⁶ Exploratory negotiations, often termed “consultation”, can be employed in order to pre-empt disputes and prevent them from arising.⁵²⁷ This negotiation method is regarded as by far the most effective means of dispute settlement.

At present, the dispute regarding the delimitation of the maritime boundary between Bangladesh and its neighbours is pending to the ITLOS⁵²⁸ and Arbitral Tribunal. Bangladesh and India are going to be settled through the Arbitral Tribunal constituted in accordance with Annex VII of UNCLOS, whereas the dispute between Bangladesh and Myanmar is being settled through ITLOS established in accordance with Annex VI of UNCLOS. At the moment, the question may arise whether it is possible to settle the matter out of the ITLOS and Arbitration through negotiation. Reply to this question is that lodgement of proceedings with the ITLOS and Arbitration does not preclude ongoing discussion.

⁵²⁵ Churchill, and Lowe, *op. cit.*, pp. 249-50.

⁵²⁶ Eyffinger, *The International Court of Justice, 1946-1996*, The Hague, 1996, p. 21.

⁵²⁷ Merrills, *op. cit.*, p. 3.

⁵²⁸ ITLOS case no.16.

Successful settlement of disputes depends on the good will of the parties. If the parties themselves manage to settle a dispute in a peaceful manner, there will be no scope to question the validity of the procedures and the machineries used. It is generally accepted that the rationale underlying an attempt for a settlement of a dispute should essentially be the interest of the parties to effectively settle the dispute. In this regard, it would be beneficial for Bangladesh and its neighbours to settle the maritime boundaries dispute pending between them in a bilateral way and at an earliest possible convenient time.⁵²⁹

Practice shows that the matter cannot be resolved legally or technically since, at the political level, Government leaders look at the problem from a broader view of bilateral relations, not at mere legal and technical niceties.⁵³⁰ Therefore, it is needed to transform the legal concept into a strong political will to resolve the long pending maritime delimitation issues between Bangladesh and its neighbours peacefully. According to the Prescott Victor and Schofield Clive,

political considerations are fundamental to the maritime boundary delimitation, as this process deals with the highly sensitive issues of sovereignty and sovereign rights which touch on core national concerns of security, vital economic interest and, ultimately, integrity and legitimacy for the States concerned.⁵³¹

Indian's and Myanmar's leaders must decide whether Bangladesh would get an equitable share of the EEZ and continental shelf of the Bay of Bengal, given the unique characteristics of the coastline including-

- (i) Its concavity and indentation.

⁵²⁹ Mohiuddin, *Delimitation of Maritime Boundaries: Bangladeshi Perspective*, *op. cit.*, p. 46.

⁵³⁰ Harunur Rashid, "Resolving the Bangladesh-India sea boundary issue", *The Daily Star*, October 10, 2008.

⁵³¹ Prscott and Schofield, *op. cit.*, p. 246.

- (ii) Unstable waters of the coastal zones because of flows of the river Ganges, Brahmaputra and Meghna, carrying 2.4 billion tons of silt to the Bay of Bengal every year, particularly during monsoon season.
- (iii) Scanty natural resources in proportion to the huge population.
- (iv) The general orientation of Bangladesh's topography facing the Bay of Bengal.

Foreign ministers of the three countries may meet and take the thread from the discussions of 1974 forward. Once a decision is taken at the political level, technical and official level discussions may take place to prepare the nitty-gritty of the agreement.⁵³² Therefore, in analysis of Bangladesh's concavity and heavily indented coastline, natural prolongation of its land territory to the continental shelf, its scanty natural resources in proportion of the huge population and the general orientation of Bangladesh's topography, it is to be considered by both the neighbouring countries in determining the maritime boundary of Bangladesh to achieve an equitable solution as contemplated by UNCLOS and ICJ.⁵³³

b) Multiparty Survey

According to the map of the South Talpatty island it is clear that the river channel on the east of the island is mainly that of Raymangal and Jamuna rivers of Bangladesh having only the eastern branch from Haribhanga. Hence the eastern wider channel is contributed mainly by two decidedly Bangladeshi rivers and partly by the bordering Hariabanga river.⁵³⁴ That means that the island is located within the territorial sea of Bangladesh. As the island has formed in the estuary of the Raimangal river, therefore Bangladesh can legitimately claim sovereignty over South Talpatty island.

⁵³² Harunur Rashid, "Resolving the Bangladesh-India sea boundary issue", *The Daily Star*, October 10, 2008.

⁵³³ Ibid.

⁵³⁴ Sattar Molla, "South Talpatti-New Moore dispute", *The Daily Star*, October 25, 2008.

As India is also claiming sovereignty over the island then there should be a multiparty Bangladesh-India marine survey on the river Haribhanga to determine the exact position of the deep-water navigable channel or the main channel of the river. A multiparty survey will mitigate many of the disputed claims and counter-claims over the entire issue.⁵³⁵

c) Joint Development Agreement

In general, the delimitation of maritime boundaries takes a long time, and if there are over-lapping maritime areas that are disputed and unresolved, there could be a provisional agreement for joint development and exploration of resources in offshore areas. The idea of joint development of offshore oil and gas dates back to the judgment of the ICJ in the 1969 *North Sea Continental Shelf* cases.⁵³⁶ The ICJ referred to the possibility of parties to decide on "a regime of joint jurisdiction, use, or exploitation for the zones of overlap or any part of them."⁵³⁷ UNCLOS, in its articles 74 and 83, also reiterate "to enter into provisional arrangements of a practical nature" during the transitional period.

The method of joint development is not an alternative to maritime boundary delimitation. Nonetheless, if interested States once feel the need to explore for or exploit a resource the deposit of which lies in overlapping claim areas, theoretically they have only two options: one is to determine a definite boundary to identify the location of the deposit in one side of it or the other, and to other to share the resource in agreed proportions when it is found to straddle the

⁵³⁵ Gupta, "Indo-Bangladesh maritime Border Dispute: Problems and Prospects", Article published in *Institute of Peace & Conflict Studies*, Article No= 2699.

⁵³⁶ Miyoshi Masahiro, *The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation*, Vol. 2, No. 5, International Boundary Research Unit, University of Durham, UK, 1999.p. 1.

⁵³⁷ ICJ Reports, 1969, par.101.

hypothetical boundary.⁵³⁸ Joint development might help to defuse tensions of outstanding maritime boundary disputes.⁵³⁹

According to Thomas A. Mensah,

joint development zones are established either because the parties find it difficult or impossible to agree on a single boundary between them or because the resources straddle the agreed boundary in such a way that it is not feasible for the resources to be exploited effectively and equitably by the individual States acting alone.⁵⁴⁰

The following remarks by Zou Keyuan add further,

A joint development is a most feasible mechanism to shelve disputes and pave the way for cooperation pending settlement of territorial and/or maritime disputes over a certain sea area due to overlapping claims.⁵⁴¹

Therefore, it is recommended that the most effective temporary solution can be found in joint development arrangements, i.e., joint development and exploration of the disputed maritime zones by agreement and all revenues to be shared among the parties, which is a recent trend. This final initiative may be taken under the auspices of South Asian Association of Regional Co-operation (SAARC) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Co-operation (BIMSTEC), in which Bangladesh, Myanmar and India are parties.

⁵³⁸ Supra note 534, p. 6.

⁵³⁹ Ibid, p. 48.

⁵⁴⁰ Thomas, "Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation", in *Maritime Delimitation*, (ed.) Rainer and Daniel, Leiden/Boston, 2006, p. 147.

⁵⁴¹ Zou Keyuan, "A New Model of Joint Development for the South China Sea", in *Recent Developments in the Law of the Sea and China*, Myron H. Nordquist and others (eds.), Leiden/Boston: Martinus Nijhoff Publishers, 2006, p. 157. See also: Biang, *The Joint Development Zone Between Nigeria and Saotoma and Principe : A Case of Joint Development in the Gulf of Guinea*, research paper submitted to the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, New York in partial fulfilment of the requirements for the United Nations-Nippon Foundation Fellowship, 2009-2010. p. 71.

Since 1958, many countries have concluded provisional agreements for joint development. Examples of joint development agreements are as follows:

- (i) Saudi Arabia-Bahrain Agreement of 1958;
- (ii) Kuwait-Saudi Arabia Agreement of 1965;
- (iii) Iran-Sharjah Agreement of 1971;
- (iv) Japan-South Korea Agreement of 1974;
- (v) France-Spain Agreement of 1974;
- (vi) Iceland-Norway Agreement of 1974;
- (vii) Saudi Arabia-Sudan Agreement of 1974;
- (viii) Australia-Papua New Guinea Agreement of 1978;
- (ix) Timor Gap Treaty of 1989 between Australia and Indonesia;
- (x) Malaysia-Thailand Agreement of 1990;
- (xi) Thailand-Vietnam Agreement of 1992;
- (xii) China and Vietnam agreement of 2006; and
- (xiii) Recently on 18 June, 2008, Japan and China struck a landmark deal to jointly develop gas fields in the East China Sea, resolving a spat that had been a thorn in ties between the two major energy importers.

At the time of joint development agreements both parties put aside their contested positions, meaning that status-quo of the area is preserved or uninterrupted. Both sides generally make concessions on a mutual basis concerning the most difficult question of the principles and rules to be applied as its basis for delimitation of territorial waters, EEZ and continental shelf. Such mutual concessions are made without prejudice to the official position of the particular parties on the question of maritime boundary delimitation.⁵⁴² Problem solving through joint development agreement method with the stress firmly placed on promoting inter-State

⁵⁴² Harunur Rashid, "Law of Maritime delimitation", *The Daily Star*, May 10, 2008.

cooperation and active ocean resource development and management must be considered welcome and is likely to increase significance in future.⁵⁴³ Joint development might also be conducive to confidence-building in the overall relations between Bangladesh and her neighbouring countries.

d) Settlement Through the Principle of Equity

From the 1945 Truman Proclamation, concerning the delimitation of the continental shelf between the United States and adjacent States, the principle of equity is at the heart of the delimitation of the continental shelf and entered into the delimitation process. The Truman Proclamation leads to the 1958 Continental Shelf Convention, extended fisheries zones of the 1970s and the EEZ of UNCLOS.⁵⁴⁴ This Proclamation also inspired the ICJ during the 1969 *North Sea Continental Shelf* cases, when the ICJ stated that "delimitation is to be effected by agreement in accordance with equitable principle and taking into account all relevant circumstances."⁵⁴⁵

According to Charney,

International law does not require that maritime boundaries be delimited in accordance with any particular method, rather it requires that they be delimited in accordance with equitable principle, taking into account all of the circumstances of the case so as to produce an equitable result.⁵⁴⁶

The general principle of equity should be applied in the delimitation of EEZ and continental shelf at the time of boundary agreements. The application of equitable principle should produce a division that is deemed appropriate and fair by all parties. Articles 74 and 83 of UNCLOS concerning the delimitation of the EEZ and

⁵⁴³ Prescott and Schofield, *op. cit.*, p. 264.

⁵⁴⁴ Prescott and Schofield, *op. cit.*, p. 217.

⁵⁴⁵ ICJ Reports, 1969, par. 101.

⁵⁴⁶ Prescott and Schofield, *op. cit.*, p. 223.

continental shelf provides for effecting the delimitation by agreement in accordance with international law and in order to achieve an equitable result.

In most cases, the parties may be in agreement regarding the application of equitable principles, but the acceptance of these principles would not necessarily mean an easy agreement on the delimitation of a maritime boundary, since there is no exact definition of equity acceptable to each other. The methods of application in order to achieve an equitable solution are a potential source of controversy. In this connection, the main question arises as to whether the concept of natural prolongation could bring an equitable solution to the problem of maritime boundary delimitation? The answer is positive in cases where the maritime boundary of a country is stretched beyond 200 M without encroaching upon the maritime boundary of other countries.

The concept of natural prolongation would establish the sovereign rights of a State over its continuation of land mass under the sea, but in cases where the maritime boundary of a State encroaches over the maritime boundary of another State, this concept of natural prolongation may not be appropriate to consider as a determining factor to the problem of delimitation. A decision or agreement based on the equitable principle requires that some particular rules or methods should be adopted and these applicable rules and methods vary from case to case basis depending on the special circumstances governing the same.

However, concerning the maritime boundary delimitation, due to the complexity of cases, finding a solution based on equitable principles necessitates a careful consideration of all the circumstances. In these cases, "the law needs to be interpreted by equity in order to achieve a just result-a result the law giver would

presumably have sought if he had foreseen the exceptional case.”⁵⁴⁷ The concept of equity is a “resort to general principles of fairness and justice whenever existing law is inadequate”.⁵⁴⁸ In the application of equitable principles in the delimitation of maritime boundaries attention may be given to the-

- (i) configuration to the respective coastlines,
- (ii) existence of islands,
- (iii) geological structure of the seabed,
- (iv) disparity of the coastal length in the relevant area,
- (v) security considerations,
- (vi) navigational interest of the parties in dispute,
- (vii) equitable access to the natural resources of the disputed area,
- (viii) conduct of the parties such as oil concessions,
- (ix) consistency with the general direction of the land boundary etc.

All of the above are pertinent factors to arrive at an equitable solution for a maritime boundary dispute, as held in various judicial pronouncements in the past.

The ICJ and arbitral tribunals dealing with the delimitation of maritime boundaries have consistently held the equidistance principle is not mandatory rule of international law and that it does not enjoy any priority or preferential status. In fact, the principle of equidistance has been unable to attract a consensus among members of the international community due to its rigidity.⁵⁴⁹

Regarding delimitation of maritime boundaries there is no agreement between Bangladesh and its neighbouring countries. Hence, it is requisite to conclude

⁵⁴⁷ Encyclopaedia of International Law, Vol.7, p. 74.

⁵⁴⁸ Webster’s New World Dictionary of the American Language, the World Publishing Company, New York, 1957, p. 491.

⁵⁴⁹ Shah Alam and Faruque, *op. cit.*, supra note 1.

whether the equidistance principle or the principle of equity should be applicable to them. In general, it is suggested that the delimitation of maritime boundaries should be effected by the equidistance principle. That means where there are no special circumstances then the delimitation of maritime boundaries should be effected by the equidistance principle. The basis of applying this principle is that the apportionment of the sea zones so delimited would be equitable. In a general situation, the equidistance principle can lead to equity in the apportionment of the sea zones.⁵⁵⁰

By looking at the map, it is clear that Bangladesh's claim being compatible with need for the natural prolongation of its land territory. Furthermore, the land underneath Bangladesh's sea is the same as India's and Myanmar's. Hence, because of the natural prolongation of the continental shelf there is enough ground to adopt a principle of equity basis from north to south and not equidistance from east to west.⁵⁵¹

By taking into consideration of the-

- (i) concavity and convexity of the configuration of the coastlines of Bangladesh and its neighbours,
- (ii) the presence of islands, and
- (iii) geophysical and socioeconomic inequities between the countries,

the Bangladesh, India and Myanmar situation can't regarded as constituting a normal or general situation. That means, the equidistance principle can't lead to equity in the apportionment of the maritime zones between them. Therefore, it is recommended that the delimitation of maritime boundaries between Bangladesh

⁵⁵⁰ Habibur Rahman, *Delimitation of Maritime Boundaries, op. cit.*, pp. 292-3.

⁵⁵¹ Umran, Will Bangladesh get what it wants?, *Dhaka Courier*, issue 14.

and its neighbours should be effected by special circumstances and equitable principles.⁵⁵²

3.6. Concluding Remarks of Part II

Part II consists of three Chapters. Chapter I provides a detailed analysis of the settlement of maritime disputes prescribed by Part XV of UNCLOS, including conciliation, arbitration, special arbitration and ITLOS. It also reviews the maritime boundary dispute case between Bangladesh and India, currently being considered by Arbitral Tribunal and the case between Bangladesh and Myanmar before ITLOS, the first maritime boundary delimitation case before this instance.

Chapter II provides a brief discussion of the maritime boundaries problems and major maritime issues facing Bangladesh with its neighbours. Circumstances of the maritime boundaries dispute between Bangladesh, India and Myanmar are discussed in this chapter. It is noted that the claimed sea area of Bangladesh is about 1.4 times greater than total land area of Bangladesh. All of these three countries have baselines and claimed EEZs and continental shelves up to 200 M which all overlap. For the greater interest of all of these countries the dispute is to be settled according to UNCLOS and the decisions of the international courts.

Chapter III follows with an overview of the resolution of the maritime boundaries dispute between Bangladesh and its neighbouring countries. Negotiation between Bangladesh and its neighbours started in 1974. Series of discussion were held among the parties, but as of date no solution has been found. A legal principle involved in sea boundary delimitations is discussed in this chapter. According to the landmark judgment of the ICJ in the *North Sea Continental Shelf* cases, *Tunisia-Libyan Arab Jamahiriya* case, *Gulf of Maine* case, *Libyan Arab Jamahiriya-Malta* case,

⁵⁵² Ibid, p. 293.

Romania-Ukraine case, Qatar and Bahrain case, Nicaragua-Honduras case and article 74 and 83 of UNCLOS, equity has emerged as integral part of law in maritime delimitation. At the moment the maritime delimitation disputes are pending to the Arbitration Tribunal and ITLOS which may take long time to decide. Before the award and decision some proposal such as negotiation, multiparty survey and joint development is discussed in this chapter to protect the interest of the disputed parties and to settle the dispute out of court.

Conclusion

The law of the sea has undergone a remarkable transformation in the last sixty five years, yet more still needs to be done if the right balance between land and sea is to be achieved. Perhaps at the end of the day the main problem underlying the delimitation of maritime boundaries is the perception that 'the land dominates the sea' as the ICJ held in the *North Sea Continental shelf* cases.⁵⁵³ People are realising that it is the sea that dominates the land and, as they are projected seawards, our concept of sovereignty, rights and jurisdiction, no matter how subtle or sophisticated their application, seem increasingly cumbersome instruments for addressing the resulting issues.⁵⁵⁴

In a circumstance where overlapping claims are made but delimitation of the area of overlapping claims is not made, an obvious need arises to search for rules applicable between neighbouring coastal States pending the ultimate establishment of maritime boundaries which might never take place. Article 74 (3) and 83(3) of UNCLOS are the only provisions which manifestly deal with the legal problems pending the delimitation of the EEZ and the continental shelf. They

553 *North Sea Continental Shelf*, Judgment, ICJ Reports 1969, p. 3, par. 96.

554 Malcolm, *International Law*, 2nd edition, Oxford, 2006, p. 653.

provide, in identical terms, that "pending agreement provided for in paragraph 1,⁵⁵⁵ the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature".⁵⁵⁶

Each delimitation case has its own characteristics; therefore, there is not a specific set of rules which would regulate maritime delimitation. However, through the judgments of the ICJ in the *North Sea Continental Shelf* cases,⁵⁵⁷ *Tunisia- Libya* case,⁵⁵⁸ *Gulf of Maine* case,⁵⁵⁹ *Libya-Malta* case,⁵⁶⁰ *Land, Island and Maritime Frontier (Gulf of Fonseca)* case,⁵⁶¹ *Denmark-Norway* case,⁵⁶² *Qatar-Bahrain* case,⁵⁶³ *Nicaragua-Honduras* case⁵⁶⁴, *Romania – Ukraine* case ⁵⁶⁵ and arbitral tribunals awards in the *Anglo-French Arbitration*,⁵⁶⁶ *Guinea and Guinea Bissau*,⁵⁶⁷ *Guinea Bissau-Senegal*,⁵⁶⁸ and *Eritrea-Yemen*,⁵⁶⁹ a normative system sufficiently comprehensive to govern maritime delimitation in general was built up. However, where two States try to reach delimitation agreement they are free to accept whatever solutions seem to them appropriate.⁵⁷⁰

555 Par. 1 of article 74 of UNCLOS.

556 Kim, *Maritime Delimitation and Interim Arrangements in North East Asia*, Publications on Ocean Development, Vol-40, Martinus Nijhoff Publishers, pp. 315-316.

557 *North Sea Continental Shelf*, Judgment, ICJ Report, 1969, p. 3.

558 *Tunisia-Libya*, Judgment, ICJ Reports, 1982, p. 18.

559 *Gulf of Maine Area*, (United States-Canada), ICJ Reports, 1984, p. 246.

560 *Libya-Malta* case, Judgment, ICJ Reports, 1985, p. 3.

561 *Land, Islands and Maritime Frontier Dispute (Gulf of Fonseca)*, ICJ Reports, 1992, p. 596.

562 *Denmark -Norway*, Judgment, ICJ Reports, 1993, p. 38.

563 *Qatar-Bahrain*, Merits, Judgment, ICJ Reports 2001, p. 40.

564 *Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua-Honduras)*, Judgment, ICJ Reports 2007, p. 659.

565 *Maritime Delimitation in the Black Sea (Romania-Ukraine)*, Judgment, ICJ Reports 2009, p. 61.

566 *Anglo-French Arbitration* case (United Kingdom- Federal Republic of Germany), 1977, Reports of International Arbitral Award, VOLUME XVIII, p. 338.

567 *Guinea- Guinea-Bissau*, United Nations, Report of International Arbitral Awards, 1985, p. 149.

568 *Guinea- Bissau and Senegal*, 20 United Nations, Report of International Arbitral Awards, 1989, p.119, *Revue General de Droit International Public (R.G.D.I.P.)*, 1990, p. 204.

569 *Eritrea/Yemen*, Award of the Arbitral Tribunal in the First Stage (Territorial Sovereignty and Scope of the Dispute), Award 9 October 1998, 112 ILR (1999); Award of the Arbitral Tribunal in the Second Stage (Maritime Delimitation), Award 17 December 1999, See: [http://:www.pca-cpa.org](http://www.pca-cpa.org)

570 See note 488.

Referring to international law, coastal States, in common with other members of the international community, are bound to settle their disputes through peaceful means.⁵⁷¹ Article 2, paragraph 3 of the United Nations Charter requires that:

All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Bangladesh has a huge population of about one hundred and fifty million. The economy of this country is based on agriculture. To develop the overall condition of the present economy of Bangladesh, economic diversification is desired. Bangladesh has to reduce its dependency on agriculture. Whereas, the sea Bay of Bengal is rich with minerals, living and non-living resources.

Bangladesh should claim the resources which are contained within its maritime boundaries. She has already claimed her maritime zones measuring from her straight baselines; but she failed to reach any agreement with her neighbours on the issue of delimitation, as a result no delimitation lines are present. Since Bangladesh's proposed baselines are not accepted by its neighbours, it is also impractical to move forward with delimitation issues bypassing the baselines. As a result, Bangladesh cannot exploit the full potential of its maritime zones.

If delimitation is effected by the method of equidistance, India and Myanmar would get the bigger share and this would not be equitable for Bangladesh. As a result, Bangladesh and its neighbouring countries ought to find an equitable solution which is not based on the equidistance method. According to article 74(1) of UNCLOS

the delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of

⁵⁷¹ Prescott and Schofield, *op. cit.*, p. 255.

the International Court of Justice, in order to achieve an equitable solution.

Therefore, in light with the said provision it is clear that the equidistance principle is not applicable and the boundary lines in question are to be drawn by agreement between the parties on the basis of international law in order to achieve equitable solution taking into account the configuration of the coast, the length of the coast and other relevant factors.

The "principles of equity" that have been used in recent years to resolve boundary disputes include the following:

The equidistance approach can be used as an aid to analysis, but it is not to be used as a binding or mandatory principle. In the *Libya-Malta* case,⁵⁷² the *Gulf of Maine* case,⁵⁷³ and *Jan Mayen* case,⁵⁷⁴ the ICJ examined the equidistance line as an aid to its preliminary analysis, but then adjusted the line in light of the differences in the length of the coastlines of the parties. This preliminary equidistance line is drawn from the coastlines themselves, not from any straight baselines. The ICJ has made it clear in all these cases that the equidistance line is not mandatory or binding.

Equity is regarded as playing a more autonomous character. Equity also functions as an integral part of international law. ICJ in the *Tunisia-Libya* case has observed:

Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it. In the course of the history of legal systems the term "equity" has been used to define various concepts. It was often contrasted with the rigid rules of positive law, the severity of which had to be mitigated in order to do justice. In general, this contrast has

⁵⁷² ICJ Reports, 1985, p. 13.

⁵⁷³ ICJ Reports, 1984, p. 246.

⁵⁷⁴ ICJ Reports, 1993, p. 38.

no parallel in the development of international law; the legal concept of equity is a general principle directly applicable as law.⁵⁷⁵

In the *Gulf of Maine* case, the ICJ declared:

It is generally accepted that maritime boundaries must be determined by the application of equitable principles, taking into account of all the relevant circumstances so as to achieve an equitable result.⁵⁷⁶

Therefore, it is to be said that application of the principle of equidistance, which is formal and mechanical in nature does not always ensure justice. In such a case, the principle of equity would need to be resorted to.

The concavity and/or convexity of the coast is considered as an important example of special or relevant circumstances in equitable delimitation of maritime boundaries.⁵⁷⁷ Such as maritime agreements between Colombia and Panama (1976)⁵⁷⁸ (where convexities and concavities on the two coasts are different), France and Spain (1974)⁵⁷⁹, the Federal Republic of Germany and the Netherlands (1971)⁵⁸⁰, and Denmark and the German Democratic Republic (1988)⁵⁸¹ (where one coast is convex and another is concave), are based on the equitable principle.⁵⁸²

⁵⁷⁵ ICJ Reports, 1982, par. 71.

⁵⁷⁶ ICJ Reports, 1984, par. 99.

⁵⁷⁷ Jagota, *op. cit.*, p. 276.

⁵⁷⁸ For details see: Colombia-Panama, Report No. 2-5, in Charney and Alexander (eds.), *International Maritime Boundaries*, vol. I, Dordrecht/ Boston/ London, 1993, pp. 519-531.

⁵⁷⁹ For details see: France - Spain, Report No. 9-2, in Charney and Alexander (eds.), *International Maritime Boundaries*, vol. II, Dordrecht/Boston/London, 1993, pp. 1719-1726.

⁵⁸⁰ For details see: Federal Republic of Germany -The Netherlands, Report No. 9-11, in Charney and Alexander (eds.), *International Maritime Boundaries*, vol. II, Dordrecht/Boston/London, 1993, pp. 1835-1840.

⁵⁸¹ For details see: Denmark -German Democratic Republic, Report No. 10-11, in Charney and Alexander (eds.), *International Maritime Boundaries*, vol. II, Dordrecht/Boston/London, 1993, pp. 2087-2093.

⁵⁸² Weil, "Geographic Considerations in Maritime Delimitation", in: Charney and Alexander (eds.), *International Maritime Boundaries*, vol. I, Dordrecht/Boston/London, 1993, pp. 115-130.

Referring to the discussion of the previous chapter, it is vibrant that Bangladesh's delimitation case qualifies for the application of equity. The mostly adjacent rather than opposite location of Bangladesh's maritime borders with its neighbours; concave, unstable, and broken nature of her coastlines; her historical interest in the Bay of Bengal; and dependence of her coastal people on living and non-living resources of the sea provide Bangladesh with sufficient arguments to plead for the principle of equity.⁵⁸³

Thus, to prove the Bangladesh case, she needs to make geological and geomorphological surveys of the zones; show the impracticability of the application of the principle of equidistance in the region; accumulate facts to prove her historical title to the areas she claims; prove the dependence of her coastal people on the seas resources; and gather relevant case references which justify the application of the principle of equity from international adjudication and arbitration.⁵⁸⁴

South Talpatty or New Moore or Purbasha island is one of the important issues in the maritime delimitation between Bangladesh and India. Each of the two countries claims sovereignty over the island as it lies in its own maritime zone. The island remains a no man's land and is uninhabited. Resolution of the Talpatty issue is vital as this matter is the cornerstone upon which delimitation issues are based. This issue may be solved through a joint Bangladesh-India marine survey on the river Haribhanga to determine the exact position of deep-water navigable channel or the main channel of the river.

Where a coastal State intends to establish the outer limits of the continental shelf beyond 200 M in accordance with article 76 of UNCLOS, it shall submit particulars

⁵⁸³ Shah Alam, "Maritime border delimitation", *The Daily Star*, February 9, 2009.

⁵⁸⁴ Ibid.

of such limits to the Commission on the Limit of the Continental Shelf along with supporting scientific and technical data, as soon as possible, but in any case within 10 years of the entry into force of UNCLOS for that State.⁵⁸⁵ Bangladesh has great interest to establish the outer limits of the continental shelf beyond 200 M and recently on 25 February, 2011 Bangladesh has submitted its claim to the CLCS.⁵⁸⁶

Bangladesh as a maritime State must maintain access to capabilities of surveillance, monitoring and control through a modern navy and coast guard against challenges to marine resources, environmental protection, marine safety, illicit activity and, above all, maritime sovereignty. As the delimitation of maritime boundaries case between Bangladesh and Myanmar is pending to the ITLOS, therefore Bangladesh should argue her case efficiently and scientifically.⁵⁸⁷ Even though she needs to formulate a sophisticated proactive multi-pronged, long-term strategy to settle her maritime boundary problems with her neighbours, sovereignty issue over the South Talpatty, and her declared sea blocks.

To protect the interests of Bangladesh and its neighbours by settling the maritime dispute between the countries recommendations mainly made in this study can be summed up as follows:

- (i) arguing for the adoption of equity based methodology for delimitation of Bangladesh maritime boundaries with her neighbours because adoption of any equidistance-based

⁵⁸⁵ Kunoy, "The Admissibility of a Plea to an International Adjudicative Forum to Delimit the Outer Continental Shelf Prior to the Adoption of Final Recommendations by the Commission on the Limits of the Continental Shelf." *The International Journal of Marine and Coastal Law*, Vol.25, June 2010, p. 238

⁵⁸⁶ Bangladesh submitted her continental shelf claim to the CLCS on 25 February, 2011. Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/clcs55_2011_feb_2011.pdf

⁵⁸⁷ ITLOS case no.16.

- methodology would be inherently unsafe and inequitable for her, and therefore contrary to UNCLOS and customary international law;
- (ii) arguing for the prevention of "cut-off" of coastal projection onto the Bay of Bengal that would follow from an equidistance line boundary, because Bangladesh will be effected by "cut-off", that will turn a coastal country into a "sea locked" nation without any opening to high seas, and will not be able to claim additional 150 M of extended continental shelf in order to reach the maximum extent of 350 M as allowed by UNCLOS;
 - (iii) claiming for a territorial sea boundary with Myanmar on the basis of the 1974 "Agreed Minutes Between the Bangladesh Delegation and the Burmese Delegation Regarding the Delimitation of Maritime Boundary Between the Two Countries";
 - (iv) claiming for a EEZ and continental shelf boundary based upon the so called "Friendship Line" because until 2005 Myanmar's conduct was in accordance with the proposed EEZ and continental shelf boundary in the Bay of Bengal which it referred to as the "Friendship Line",⁵⁸⁸
 - (v) claiming a violation by Myanmar of its obligation to make every effort to reach a provisional arrangement pending delimitation of maritime boundaries;
 - (vi) amending the existing Territorial Waters and Maritime Zones Act (1974), or
 - (vii) enacting a new law on Maritime Zones;
 - (viii) amending the Customs Act (1969);
 - (ix) enacting provisions on the settlement of maritime dispute;

⁵⁸⁸ Notification of 8 October 2009, in the Dispute concerning the Maritime Boundary between Bangladesh and Myanmar under article 287 and annex VII, article 1 of UNCLOS (ITLOS case no.16), par. 17.

- (x) organizing a joint Bangladesh-India marine survey on the river Haribhanga to determine the exact position of deep-water navigable channel or the main channel of the river, and before settle the dispute;
- (xi) concluding the co-operative arrangements for the exploitation of the fishing resources straddling the boundary line;
- (xii) sharing resources with the neighbouring countries of the alleged overlapping or disputed areas on the sea;
- (xiii) joint development and exploration of the disputed maritime zones for oil and gas in the Bay of Bengal with neighbouring countries by agreement and all revenues from exploration to be shared among the parties, because the decision of the proceeding pending before the ITLOS and Arbitral Tribunal may take three to five years;
- (xiv) build up confidence and mutual relationship between Bangladesh and its neighbouring countries for joint development and exploration of the disputed maritime zones and settlement of existing maritime disputes, and
- (xv) efficiently argument before the ITLOS and Arbitral Tribunal that both of the neighbours of Bangladesh have extended their respective maritime boundaries into her offshore areas, depriving her of her legitimate right to the sea.

Obviously, there must be understanding and recognition in Bangladesh that the country has strong interests as well as obligations in all marine activities within its maritime zone. The effective management of the various spheres of work within the zones requires the involvement of a number of sectors including economical, technical, diplomatic, political and legal.

Though the issue involves technical and political difficulty, the marine areas adjoining the Bay of Bengal needs to be resolved and delimited under the relevant provisions of UNCLOS and in light with the judgment and award of the ICJ and Arbitral tribunal in order to avoid unnecessary anxiety between the neighboring countries, which may help them in cooperating in other fields also.

It has been more than 36 years since Bangladesh and India and Myanmar have started negotiating the maritime boundary. Unfortunately, the three States have not managed to reach an equitable solution, although the positions of the parties are not “so far away”, as they used to be.

Therefore, it seems that it would still be possible to reach an agreement on the delimitation, through negotiations in good faith. However, the parties should bear in mind that, in accordance with customary international law, as is embodied in UNCLOS, the goal of maritime delimitation is to achieve an equitable solution. Furthermore, the parties should take into account the unavoidable fact that every delimitation agreement is based on a political decision.

Finally, the delimitation of maritime boundaries between Bangladesh and its neighbouring countries is pending before the ITLOS and Arbitral Tribunal, even though to settle the matter out of the court negotiations between the parties are on going. It is the first maritime delimitation case before the ITLOS. Though the delineation of boundary that will result from the ITLOS proceeding is uncertain, but the principles to be decided by the ITLOS will certainly operate a judicial precedent on the similar issues in future. If a successful settlement is reached through the ITLOS proceedings, there could be implications for the international law as well, specially, in case where concave coast, highly unstable coastline and deltas play an important role. The settlement shall have impact on the future better affiliation between Bangladesh and her neighbours. The research is concluded

with a hope that the ITLOS proceeding would allow Bangladesh to fair share of resources of the sea in the Bay of Bengal.

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Annex I

Law of the Sea Conventions, 1958 and 1982:

Provisions Relating to Delimitation

1. Territorial Sea:

(a) Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958, Article 12, Paragraph 1:

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

(b) UN Convention on the Law of the Sea, 1982 Article 15:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

2. Contiguous Zone:

Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958, Article 24, Paragraph 3:

3. Where the coast of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistance from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

3. Continental Shelf:

(a) Geneva Convention on the Continental Shelf, 1958, Article 6:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

(b) UN Convention on the Law of the Sea, 1982, Article 83, Paragraph 1:

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international

law, as referred to in Article 38 of the statute of the International Court of Justice, in order to achieve an equitable solution.

4. Exclusive Economic Zone:

UN Convention on the Law of the Sea, 1982 Article 74, Paragraph 1:

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the statute of the International Court of Justice, in order to achieve an equitable solution.

Annex II

The Territorial Waters and Maritime Zones Act, 1974

Act No. XXVI of 1974⁵⁸⁹
(Legislation of Bangladesh)

**An Act to provide for the declaration of the territorial waters
and maritime zones.**

Whereas clause (2) of Article 143 of the Constitution provides that Parliament may, from time to time by law provide for the determination of the territorial waters and continental shelf of Bangladesh;

And whereas it is necessary to provide for the declaration of the territorial waters, continental shelf and other maritime zones and for matter ancillary thereto;

It is hereby enacted as follows:

1. **Short title.**- This Act may be called the Territorial Waters and Maritime Zones Act, 1974.

2. **Definitions.**- In this Act unless there is anything repugnant to the subject or context,-

- (a) **“conservative zone”** means a conservative zone established under section 6;
- (b) **“contiguous zone”** means the zone of the high seas declared by section 4 to be the contiguous zone of Bangladesh;
- (c) **“continental shelf”** means the continental shelf referred to in section 7;
- (d) **“economic zone”** means the zone of the high seas declared under section 5 to be the economic zone of Bangladesh;
- (e) **“territorial waters”** means the limits of sea declared under section 3 to be the territorial waters of Bangladesh.

⁵⁸⁹ Source: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=467§ions_id=11467.

3. Territorial waters.- (1) The Government may, by notification in the official Gazette, declare the limits of the sea beyond the land territory and internal waters of Bangladesh which shall be the territorial waters of Bangladesh specifying in the notification the baseline-

- (a) from which such limits shall be measured; and
- (b) the waters on the landward side of which shall form part of the internal waters of Bangladesh.

(2) where a single island, rock or a composite group thereof constituting the part of the territory of Bangladesh is situated seawards from the main coast or baseline, territorial waters shall extend to the limits declared by notification under sub-section(1) measured from the low waterline along the coast of such island, rock or composite group.

(3) The sovereignty of the Republic extends to the territorial waters as well as to the air space over and the bed and subsoil of, such waters.

(4) No foreign ship shall, unless it enjoys the right of the innocent passage, pass through the territorial waters.

(5) Foreign ship having the right of innocent passage through the territorial waters shall, while exercising such right, observe the laws and rules in force in Bangladesh.

(6) The Government may, by notification in the official Gazette, suspend, in the specified areas of the territorial waters, the innocent passage of any ship if it is of opinion that such suspension is necessary for the security of the Republic.

(7) No foreign warship shall pass through the territorial waters except with the previous permission of the Government.

- (8) The Government may take such steps as may be necessary -
- (a) to prevent the passage through the territorial waters of any foreign ship having no rights of innocent passage;

- (b) to prevent and punish contravention of any law or rule in force in Bangladesh by any foreign ship exercising the right of innocent passage;
- (c) to prevent the passage of any foreign warship without previous permission of the Government ; and
- (d) to prevent and punish any activity which is prejudicial to the security or interest of the Republic.

Explanation.- In this section “warship” includes any surface or sub-surface vessel or craft which is or may be used for the purpose of naval warfare.

4. Contiguous zone.- (1) The zone of the high seas contiguous to the territorial waters and extending seawards to a line six nautical miles measured from the outer limits of the territorial waters is hereby declared to be the contiguous zone of Bangladesh.

(2) The Government may exercise such powers and take such measures in or in respect of the contiguous zone as it may consider necessary to prevent and punish the contravention of, and attempt to contravene, any law or regulation in force in Bangladesh regulating to-

- (a) the security of the Republic;
- (b) the immigration and sanitation; and
- (c) customs and other fiscal matters.

5. Economic zone.- (1) The Government may, by notification in the official Gazette, declare any zone of the high seas adjacent to the territorial waters to be the economic zone of Bangladesh specifying therein the limits of such zone.

(2) All natural resources within the economic zone, both living and non-living, on or under the seabed and sub-soil or on the water surface or within the water column shall vest exclusively in the Republic.

(3) Nothing in sub-section (2) shall be deemed to affect fishing within the economic zone by a citizen of Bangladesh who uses for the purpose of vessels which are not mechanically propelled.

6. **Conservation zone.**- The Government may, with a view to the maintenance of the productivity of the living resources of the sea, by notification in the official Gazette, establish conservation zones in such areas of the sea adjacent to the territorial waters as may be specified in the notification and may take such conservation measures in any zone so established as it may deem appropriate for the purpose including measures to protect the living resources of the sea from indiscriminate exploitation, depletion or destruction.

7. **Continental shelf.**- (1) The continental shelf of Bangladesh comprises-

- (a) the seabed and subsoil of the submarine areas adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor; and
- (b) the seabed and subsoil of the analogous submarine areas adjacent to the coasts of any island, rock or any composite group thereof constituting part of the territory of Bangladesh.

(2) Subject to sub-section (1), the Government may, by notification in the official Gazette, specify the limits thereof.

(3) No person shall except under and in accordance with the terms of a licence or permission granted by Government explore or exploit any resources of the continental shelf or carry out any search or excavation or conduct any research within the limits of the continental shelf:

Provided that no such licence or permission shall be necessary for fishing by a citizen of Bangladesh who uses for the purpose vessels which are not mechanically propelled.

Explanation.- Resources of the continental shelf include mineral and other non-living resources together with living organisms belonging to sedentary species, that is to say, organism which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

(4) The Government may construct, maintain or operate within the continental shelf installation and other devices necessary for the exploration and exploitation of its resources.

8. Control of pollution. - The Government may, with a view to preventing and controlling marine pollution and preserving the quality and ecological balance in the high seas adjacent to the territorial waters, take such measures as it may deem appropriate for the purpose.

9. Power to make rules. - (1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rule may provide -

- (a) for the regulation of the conduct of any person in or upon the territorial waters, contiguous zone, economic zone, conservation zone and continental shelf ;
- (b) for measures to protect, use and exploit the resources of the economic zone;
- (c) for conservation measures to protect the living resources of the sea;
- (d) for measures regulating the exploration and exploitation of resources within the continental shelf;
- (e) for measures designed to prevent and control of marine pollution of the high seas.

(3) In making any rule under this section the Government may provide that a contravention of the rule shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand taka's.

Annex III

**The Territorial Waters, Continental Shelf, Exclusive Economic Zone
and other Maritime Zones Act, 1976, Act No. 80 of 28 May 1976⁵⁹⁰
(Legislation of India)**

Short title and commencement

1. (1) This Act may be called the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

(2) Sections 5 and 7 shall come into force on such date or on such different dates as the Central Government may, by notification in the Official Gazette, appoint; and the remaining provisions of this Act shall come into force at once.

Definition

2. In this Act, "limit" in relation to the territorial waters, ..., the exclusive economic zone or any other maritime zone of India, means the limit of such waters, shelf or zone with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the territory of India.

Sovereignty over, and limits of territorial waters

3. (1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the airspace over, such waters.

(2) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

⁵⁹⁰ Source: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IND_1976_Act.pdf.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, whenever it considers necessary so to do having regard to international law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

(4) No notification shall be issued under sub-section (3) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

Use of territorial waters by foreign ships

4. (1) Without prejudice to the provisions of any other law for the time being in force, all foreign ships (other than warships including submarines and other underwater vehicles) shall enjoy the right of innocent passage through the territorial waters.

Explanation

For the purposes of this section, passage is innocent so long as it is not prejudicial to the peace, good order or security of India.

(2) Foreign warships including submarines and other underwater vehicles may enter or pass through the territorial waters after giving prior notice to the Central Government:

Provided that submarines and other underwater vehicles shall navigate on the surface and show their flag while passing through such waters.

(3) The Central Government may, if satisfied that it is necessary so to do in the interests of the peace, good order or security of India or any part thereof, suspend, by notification in the Official Gazette, whether absolutely or subject to such exceptions and qualifications as may be specified in the notification, the entry of all or any class of foreign ships into such area of the territorial waters as may be specified in the notification.

Contiguous zone of India

5. (1) The contiguous zone of India (hereinafter referred to as the contiguous zone) is an area beyond and adjacent to the territorial waters, and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to international law and State practice, alter, by notification in the Official Gazette, the limit of the contiguous zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to,

- (a) The security of India, and
- (b) Immigration, sanitation, customs and other fiscal matters.

(5) The Central Government may, by notification in the Official Gazette:

- (a) Extend with such restrictions and modifications as it thinks fit, any enactment, relating to any matter referred to in clause (a) or clause (b) of sub-section (4), for the time being in force in India or any part thereof, to the contiguous zone, and
- (b) Make such provisions as it may consider necessary in such notification for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the contiguous zone is a part of the territory of India.

Continental shelf

6. (1) The continental shelf of India (hereinafter referred to as the continental shelf) comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline referred to in sub-section (2) of section 3 where the outer edge of the continental margin does not extend up to that distance.

(2) India has, and always had, full and exclusive sovereign rights in respect of its continental shelf.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Union has in the continental shelf, -

- (a) sovereign rights for the purposes of exploration, exploitation, conservation and management of all resources;
- (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the continental shelf or for the convenience of shipping or for any other purpose;
- (c) exclusive jurisdiction to authorise, regulate and control scientific research; and
- (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution.

(4) No person (including a foreign Government) shall, except under, and in accordance with the terms of a licence or a letter of authority granted by the Central Government, explore the continental shelf or exploit its resources or carry out any search or excavation or conduct any research within the continental shelf or drill therein or construct, maintain or operate any artificial island, off-shore

terminal, installation or other structure or device therein for any purpose whatsoever.

(5) The Central Government may, by notification in the Official Gazette,-

- (a) declare any area of the continental shelf and its superjacent waters to be a designated area; and
- (b) make such provisions as it may deem necessary with respect to,-
 - (i) the exploration, exploitation and protection of the resources of the continental shelf within such designated area; or
 - (ii) the safety and protection of artificial islands, off-shore terminals, installations and other structures and devices in such designated area; or
 - (iii) the protection of marine environment of such designated area; or
 - (iv) customs and other fiscal matters in relation to such designated area.

Explanation

A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sea-lanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

(6) The Central Government may, by notification in the Official Gazette,

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- (a) extend with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the continental shelf or any part [including any designated area under sub-section (5)] thereof; and

(b) make such provisions as it may consider necessary for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the continental shelf or the part [including, as the case may be, any designated area under sub-section (5)] thereof to which it has been extended is a part of the territory of India.

(7) Without prejudice to the provisions of sub-section (2) and subject to any measures that may be necessary for protecting the interests of India, the Central Government may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf by foreign States:

Provided that the consent of the Central Government shall be necessary for the delineation of the course for the laying of such cables or pipelines.

Exclusive economic zone

7. (1) The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the exclusive economic zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) In the exclusive economic zone, the Union has, -

(a) sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both

living and non-living as well as for producing energy from tides, winds and currents;

- (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the zone or for the convenience of shipping or for any other purpose;
- (c) exclusive jurisdiction to authorize, regulate and control scientific research;
- (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and
- (e) such other rights as are recognised by International Law.

(5) No person (including a foreign Government) shall, except under, and in accordance with, the terms of any agreement with the Central Government or of a licence or a letter of authority granted by the Central Government, explore or exploit any resources of the exclusive economic zone or carry out any research or excavation or conduct any research within the exclusive economic zone or drill therein or construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device therein for any purpose whatsoever:

Provided that nothing in this sub-section shall apply in relation to fishing by a citizen of India.

(6) The Central Government may, by notification in the Official Gazette,-

- (a) declare any area of the exclusive economic zone to be a designated area; and
- (b) make such provisions as it may deem necessary with respect to,-

- (i) the exploration, exploitation and protection of the resources of such designated area; or
- (ii) other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents;/or
- (iii) the safety and protection of artificial islands, off-shore terminals, installations and other structures and devices in such designated areas;
- (iv) the protection of marine environment of such designated area; or
- (v) customs and other fiscal matters in relation to such designated area.

Explanation

A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sea-lanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

(7) The Central Government may, by notification in the official Gazette,

- (a) extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the exclusive economic zone or any part thereof; and
- (b) make such provisions as it may consider necessary for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the exclusive

economic zone or the part thereof to which it has been extended is a part of the territory of India.

(8) The provisions of sub-section (7) of section 6 shall apply to the laying or maintenance of submarine cables or pipelines on the seabed of the exclusive economic zone as they apply in relation to the laying or maintenance of submarine cables or pipelines on the seabed of the continental shelf.

(9) In the exclusive economic zone and the air space over the zone, ships and aircraft of all States shall, subject to the exercise by India of its rights within the zone, enjoy freedom of navigation and over flight.

Historic waters

8. (1) The Central Government may, by notification in the Official Gazette, specify the limits of such waters adjacent to its land territory as are the historic waters of India.

(2) The sovereignty of India extends, and has always extended, to the historic waters of India and to the seabed and subsoil underlying, and the airspace over, such waters.

Maritime boundaries between India and States having coasts opposite or adjacent to those of India

9. (1) The maritime boundaries between India and any State whose coast is opposite or adjacent to that of India in regard to their respective territorial waters, contiguous zones, continental shelves, exclusive economic zones and other maritime zones shall be as determined by agreement (whether entered into before or after the commencement of this section) between India and such State and pending such agreement between India and any such State, and unless any other provisional arrangements are agreed to between them, the maritime boundaries

between India and such State 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 of such State are measured.

(2) Every agreement referred to in sub-section (1) shall, as soon as may be after it is entered into be, published in the Official Gazette.

(3) The provisions of sub-section (1) shall have effect notwithstanding anything contained in any other provision of this Act.

Publication of charts

10. The Central Government may cause the baseline referred to sub-section (2) of section 3, the limits of the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone and the historic waters of India and the maritime boundaries as settled by agreements referred to in section 9 to be published in charts.

Offences

11. Whoever contravenes any provision of this Act or of any notification there under shall (without prejudice to any other action which may be taken against such person under any other provision of this or of any other enactment) be punishable with imprisonment which may extend to three years, or with fine, or with both.

Offences by companies

12. (1) Where an offence under this Act or the rules made there under has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act or the rules made there under has been committed by a company and it is proved that the offence has been committed with the consent or the connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation

For the purposes of this section,- (a) "company" means any body corporate and includes a firm or other associations of individuals; and (b) "director", in relation to a firm, means a partner in the firm.

Place of trial

13. Any person committing an offence under this Act or any rules made there under or under any of the enactments extended under this Act or under the rules made there under may be tried for the offence in any place in which he may be found or in such other place as the Central Government may, by general or special order, published in the Official Gazette, direct in this behalf.

Previous sanction of the Central Government for prosecution

14. No prosecution shall be instituted against any person in respect of any offence under this Act or the rules made there under without the previous sanction

of the Central Government or such officer or authority as may be authorized by that Government by order in writing in this behalf.

Power to make rules

15. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) regulation of the conduct of any person in the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone or any other maritime zone of India;
- (b) regulation of the exploration and exploitation, conservation and management of the resources of the continental shelf;
- (c) regulation of the exploration, exploitation conservation and management of the resources of the exclusive economic zone;
- (d) regulation of the construction, maintenance and operation of artificial islands, off-shore terminals, installations and other structures and devices referred to in sections 6 and 7;
- (e) preservation and protection of the marine environment and prevention and control of marine pollution for the purposes of this Act;
- (f) authorisation, regulation and control of the conduct of scientific research for the purposes of this Act;
- (g) fees in relation to licences and letters of authority referred to in sub-section (4) of section 6 and sub-section (5) of section 7 or for any other purpose; or

(h) any matter incidental to any of the matters specified in clauses (a) to (g).

(3) In making any rule under this section, the Central Government may provide that a contravention thereof shall be punishable with imprisonment which may extend to three years, or with fine which may extend to any amount, or with both.

(4) Every rule made under this Act and every notification issued under sub-section (5) of section 6 or sub-section (5) of section 7 shall be laid, as soon as may be after it is made or issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive session aforesaid both Houses agree in making any modification in the rule or the notification or both Houses agree that the rule or notification should not be issued, the rule or notification shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Removal of difficulties

16. (1) If any difficulty arises in giving effect to the provisions of this Act or of any of the enactments extended under this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or, as the case may be, of such enactment, as may appear to it to be necessary or expedient for removing the difficulty: Provided that no order shall be made under this section -

(a) in the case of any difficulty arising in giving effect to any provision of this Act, after the expiry of three years from the commencement of such provision;

(b) in the case of any difficulty arising in giving effect to the provisions of any enactment extended under this Act, after the expiry of three years from the extension of such enactment.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Annex IV

Territorial Sea and Maritime Zones Law, 1977,

Pyithu Hluttaw Law No. 3 of 9 April 1977⁵⁹¹

(Legislation of Myanmar)

CHAPTER I

Title and definitions

1. This Law may be called the Territorial Sea and Maritime Zones Law.

⁵⁹¹ Source: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MMR_1977_Law.pdf

2. The following expressions contained in this Law shall have the following meanings:

- (a) "Burma" means the Socialist Republic of the Union of Burma;
- (b) "Council of Ministers" means the Council of Ministers of Burma;
- (c) "Baselines" means the baselines specified in the annex to this Law.

CHAPTER II

Territorial Sea

3. The territorial sea of Burma extends seaward to a distance of 12 nautical miles from the baselines.

4. The sovereignty of Burma extends to the territorial sea, to its bed and subsoil and to the airspace over the territorial sea.

5. Subject to the provisions of this Law, ships of all States other than warships shall enjoy the right of innocent passage through the territorial sea. Passage shall be deemed to be innocent so long as it is not prejudicial to the peace, good order or security of Burma.

6. During passage through the territorial sea:

- (a) A foreign ship shall observe the existing laws and rules of Burma;
- (b) A foreign fishing vessel shall keep its fishing gear and equipment in a secured position for sea. Such a vessel shall traverse the territorial sea by the shortest way without stopping or anchoring, except by reason of force majeure;
- (c) No foreign research ship shall undertake any research activity without the prior express permission of the Council of Ministers.

7. Proof of innocence of passage shall be furnished by the foreign ship exercising the right of innocent passage when called for by the competent authorities of Burma.

8. The Council of Ministers may suspend temporarily, in specified areas of the territorial sea, the innocent passage of foreign ships if it considers that such suspension is necessary to safeguard the peace, good order or security of Burma.
9. (a) No foreign warship shall pass through the territorial sea without the prior express permission of the Council of Ministers.
- (b) A foreign warship entering the territorial sea without the prior express permission of the Council of Ministers shall be required to leave the area immediately.
- (c) During passage through the territorial sea, foreign submarines and other underwater vehicles shall navigate on the surface of the sea and show their flag.

CHAPTER III

Contiguous Zone

10. The contiguous zone of Burma is an area beyond and adjacent to the territorial sea and extends to a distance of 24 nautical miles from the baselines.
11. In the contiguous zone Burma exercises such control as it may consider necessary to:
- (a) Safeguard the security of Burma;
- (b) Prevent and punish infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea.

CHAPTER IV

Continental shelf

12. The continental shelf of Burma comprises the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines where the outer edge of the continental margin does not extend up to that distance.

13. Burma exercises exclusive sovereign rights in respect of its continental shelf.
14. Without prejudice to the generality of the provisions of section 13, Burma has in the continental shelf -
 - (a) sovereign rights for the purposes of exploration, exploitation, conservation and management of its natural resources, both living and non-living;
 - (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, offshore terminals, installations and other structures and devices necessary for the exploration and exploitation of its natural resources, both living and non-living, or for the convenience of shipping or for any other purpose;
 - (c) exclusive jurisdiction to authorize, regulate and control scientific research;
 - (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and
 - (e) such other rights as are recognized from time to time by international law.
15.
 - (a) The natural resources of the continental shelf include vegetable organisms and living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.
 - (b) Where the Council of Ministers considers that a marine organism of any kind is part of the living natural resources of the continental shelf, it may, by notification in the official Gazette, declare that organism to be part of the living natural resources of the continental shelf.

16. No one shall, without the prior express permission of the Council of Ministers, carry out in the continental shelf, any of the following:

- (a) exploration;
- (b) exploitation of the natural resources, both living and non-living;
- (c) research;
- (d) search, excavation, drilling; or
- (e) construction, maintenance or operation of any artificial island, offshore terminal, installation or other structure or device.

CHAPTER V

Exclusive economic zone

17. The exclusive economic zone of Burma is an area beyond and adjacent to the territorial sea and extends to a distance of 200 nautical miles from the baselines.

18. Burma has in the exclusive economic zone -

- (a) sovereign rights for the purposes of exploration, exploitation, conservation and management of its natural resources, both living and non-living, as well as for producing energy from water and winds;
- (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, offshore terminals, installations and other structures and devices necessary for the exploration and exploitation of its natural resources, both living and non-living, or for the convenience of shipping or for any other purpose;
- (c) exclusive jurisdiction to authorize, regulate and control scientific research;
- (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and

- (e) such other rights as are recognized from time to time by international law.
19. Subject to the exercise by Burma of its rights -
- (a) ships of all States shall enjoy the right of freedom of navigation within the exclusive economic zone;
- (b) aircraft of all States shall enjoy freedom of over-flight within the air space over the zone.
20. No one shall conduct any activity in the exclusive economic zone in relation to exploration, exploitation or research, without the prior express permission of the Council of Ministers:
- Provided that, nothing in this section shall apply to fishing in accordance with law by a citizen of Burma.

CHAPTER VI

Offences and penalties

21. Whoever contravenes or attempts to contravene or abets the contravention of any provision of this Law or of any rule made there under shall be punishable with imprisonment which may extend to 10 years or with fine, or with both.
- Provided, that, the provisions of this section shall not preclude the right to take action under any other existing law.
22. Any ship other than a warship which is involved in the contravention of any provision of this Law punishable under section 21 shall be liable to confiscation, together with its equipment and instruments as well as everything aboard that ship.
23. There shall be no prosecution under this Law without the prior sanction of the Council of Ministers.

CHAPTER VII

Miscellaneous

24. For the purpose of successfully implementing the provisions of this Law, the Council of Ministers may promulgate such regulations, by-laws, orders, directives and procedures as may be necessary.

25. Nothing in this Law shall affect the right of hot pursuit that may be exercised by Burma against any offender for any offence committed in the territorial sea, the contiguous zone, the continental shelf or the exclusive economic zone.

ANNEX

For the purpose of this Law, the low-water lines as marked on the large-scale charts officially recognized by Burma shall be the baselines for measuring the breadth of the territorial sea, the contiguous zone, the continental shelf and the exclusive economic zone of Burma:

Provided that, where by reason of the geographical conditions prevailing on the coasts of Burma or of the economic requirements of the coastal regions straight baselines have been drawn between fixed points on the mainland, on islands or rocks, measurement shall be made from such baselines. The fixed points between which such straight baselines shall be drawn are indicated in detail in the following schedule:

SCHEDULE

1. **Arakan coast**

- | | |
|-----------------------------------|---|
| (a) Southern Point of MAYU ISLAND | Lat. 20° 11'49" N
Long. 92° 32'19" E |
| (b) BORONGA POINT | Lat. 19° 48'30" N
Long. 93° 01'42" E |
| (c) SOUTH TERRIBLES | Lat. 19° 22'56" N
Long. 93° 16'20" E |
| (d) Western Point of HENRY ROCKS | Lat. 18° 51'48" N |

- Long. 93° 26'15" E
- (e) Western Point of NERBUDDA ISLAND Lat. 18° 20'50" N
 Long. 93° 56'25" E
- (f) ST. JOHN'S or CHURCH ROCKS Lat. 17° 27'39" N
 Long. 94° 19'46" E
- (g) NORTH-WEST GROUP Lat. 16° 55'28" N
 Long. 94° 12'45" E
- (h) KORONGE ISLAND Lat. 16° 31'20" N
 Long. 94° 14'21" E
- (i) SOUTH ROCK Lat. 16° 18'55" N
 Long. 94° 11'20" E
- (j) BLACK ROCK Lat. 16° 11'50" N
 Long. 94° 10'50" E
- (k) ALGUADA REEF (PATHEIN LIGHT) Lat. 15° 42'13" N
 Long. 94° 12'06" E
2. **Gulf of Martaban**
- (a) ALGUADA REEF (PATHEIN LIGHT)..... Lat. 15° 42'13" N
 Long. 94° 12'06" E
- (b) Western Point of LONG ISLAND..... Lat. 14° 24'15" N
 Long. 97° 46'02" E
3. **Tenasserim coast**
- (a) Western Point of LONG ISLAND..... Lat. 14° 24'15" N
 Long. 97° 46'02" E
- (b) NORTH ISLAND..... Lat. 14° 09'00" N
 Long. 97° 46'54" E
- (c) WEST CANISTER ISLAND..... Lat. 12° 41'30" N
 Long. 97° 43'40" E
- (d) Northern Point of SAURIM ISLAND.. Lat. 12° 30'30" N
 Long. 97° 47'42" E

- (e) Western Point of H. PRINCEP ISLAND Lat. 12° 03'03" N
 Long. 97° 38'00" E
- (f) GREAT WESTERN TORRES..... Lat. 11° 47'15" N
 Long. 97° 26'15" E
- (g) North-western Point of NORTH TWIN Lat. 10° 38'15" N
 Long. 97° 41'45" E
- (h) Western Point of SOUTH TWIN..... Lat. 10° 28'12" N
 Long. 97° 40'45" E
- (i) WESTERN ROCKY ISLAND..... Lat. 09° 51'24" N
 Long. 97° 52'18" E
- (j) HAYCOCK ISLAND..... Lat. 09° 40'45" N
 Long. 97° 54'30" E
- (k) Western Point of MURRAY ISLAND... Lat. 09° 35'54" N
 Long. 97° 58'12" E

Annex V

Notification No.LT-1/3/74 of the

Ministry of Foreign Affairs, Dacca, of 13 April 1974⁵⁹²

No LT-1/3/74. In exercise of the powers conferred by sub-section (1) of section 3 of the Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974), and in supersession of any previous declaration on the subject, the Government is pleased to declare that the limits of the sea specified in paragraph 2 beyond the land territory and internal waters of Bangladesh.

⁵⁹² http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BGD_1974_Notification.pdf

2. The limits of the sea referred to in paragraph 1 shall be twelve nautical miles measured seaward and the baselines set out in paragraph 3 so that each point of the outer limit of the sea to the nearest point inward on the baselines is twelve nautical miles.

3. The baselines from which territorial waters shall be measured seaward are the straight lines linking successively the baseline points set out below:

TABLE
Depth-method Baselines Drawn by Bangladesh

Baselines point	Geographical Latitude	Coordinate Longitude
No. 1	21°02'00"N	89°06'45"E
No. 2	21°05'00"N	89°16'00"E
No. 3	21°29'00"N	89°36'00"E
No. 4	21°21'00"	89°55'00"E
No. 5	21°11'00"	89°33'00"E
No. 6	21°07'30"N	91°06'00"E
No. 7	21°10'00"N	91°56'00"E
No. 8	20°21'45"N	92°17'30"E

No LT-1/3/74. In exercise of the powers conferred by sub-section (1) of section 5 of the Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974), the Government is pleased to declare that the zone of the high seas extending to 200 nautical miles measured from the baselines shall be the economic zone of Bangladesh.

Annex VI

**Agreement between the Socialist Republic of the Union of Burma* and the
Republic of India on the Delimitation of the Maritime Boundary in the
Andaman Sea, in the Coco Channel and in the Bay of Bengal,
23 December 1986⁵⁹³**

THE SOCIALIST REPUBLIC OF THE UNION OF BURMA AND THE REPUBLIC
OF INDIA,

DESIRING to strengthen the existing historical bonds of friendship between
the two countries,

* Source: DOALOS/OLA - UNITED NATIONS.

⁵⁹³ The Agreement signed on 23 December 1986 and entered into force on 14 September 1987.

DESIRING to delimit by mutual agreement the maritime boundary between the two countries in the Andaman Sea, in the Coco Channel and in the Bay of Bengal,

HAVE AGREED as follows:

Article 1

The maritime boundary between Burma and India in the Andaman Sea and in the Coco Channel is the straight lines connecting points 1 to 14, the geographical coordinates of which are in the sequence given below:

Points	Latitude north	Longitude east
1	09° 38' 00"	95° 35' 25"
2	09° 53' 14"	95° 28' 00"
3	10° 18' 42"	95° 16' 02"
4	10° 28' 00"	95° 15' 58"
5	10° 44' 53"	95° 22' 00"
6	11° 43' 17"	95° 26' 00"
7	12° 19' 43"	95° 30' 00"
8	12° 54' 07"	95° 41' 00"
9	13° 48' 00"	95° 02' 00"
10	13° 48' 00"	93° 50' 00"
11	13° 34' 18"	93° 40' 59"
12	13° 49' 11"	93° 08' 05"
13	13° 57' 29"	92° 54' 50"
14	14° 00' 59"	92° 50' 02"

The extension of the maritime boundary beyond point 1 up to the maritime boundary tri-junction point between Burma, India and Thailand will be done subsequently after the tri-junction point is established by agreement between the three countries.

Article 2

The Maritime Boundary between Burma and India in the Bay of Bengal is the straight lines connecting points 14 to 16, the geographical co-ordinates of which are in the sequence given below:

Points	Latitude north	Longitude east
14	14° 00' 59"	92° 50' 02"
15	14° 17' 42"	92° 24' 17"
16	15° 42' 50"	90° 14' 01"

The extension of the maritime boundary beyond point 16 in the Bay of Bengal will be done subsequently.

Article 3

The co-ordinates of the points specified in articles I and II are the geographical co-ordinates and the straight lines connecting them are as indicated in Indian Chart No. 41 of 1 December 1979 (Andaman Sea) and Indian Chart No. 31 of 1 November 1976 (Bay of Bengal) annexed hereto, which form an integral part of this Agreement and which have been signed by the competent authorities of the two Parties.

Article 4

The actual location at sea and on the sea-bed and on the continental shelf of the points specified in articles I and II shall be determined by a method to be mutually agreed upon by the Hydrographic Surveyors authorized for the purpose by the two Parties.

Article 5

Each Party has sovereignty over the existing islands and any islands that may emerge, falling on its side of the maritime boundary.

Article 6

Each Party has sovereignty, sovereign rights and jurisdictions in its respective maritime zones, falling on its side of the maritime boundary, in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea, 1982.

Article 7

Any dispute concerning the interpretation or implementation of this Agreement shall be settled peacefully by consultation or negotiation between the two Parties.

Article 8

This Agreement shall be ratified in accordance with the constitutional requirements of each Party. It shall enter into force on the date of the exchange of the instruments of ratification, which will take place at New Delhi as soon as possible.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Rangoon, this twenty-third day of December, one thousand nine hundred and eighty-six, in duplicate, each being drawn up in three authentic texts in the Burmese, Hindi and English languages. In the event of any conflict between the texts the English text shall prevail.

Annex VII

Agreement between Sri Lanka and India on the Maritime Boundary between the two Countries in the Gulf of Mannar and the Bay of Bengal and Related Matters 23 March 1976^{*594}

The Government of the Republic of Sri Lanka and the Government of the Republic of India,

Recalling that the boundary in the Palk Strait has been settled by the Agreement between the Republic of Sri Lanka and the Republic of India on the

* Source: DOALOS/OLA - UNITED NATIONS.

⁵⁹⁴ The Agreement signed on 23 March 1976 and entered into force on 10 May 1976.

Boundary in Historic Waters between the Two Countries and Related Matters,
signed on 26/28 June,1974,

And desiring to extend that boundary by determining the maritime
boundary between the two countries in the Gulf of Mannar and the Bay of Bengal,

Have agreed as follows:

Article 1

The maritime boundary between Sri Lanka and India in the Gulf of Mannar shall
be arcs of great circles between the following positions, in the sequence given
below, defined by latitude and longitude:

Position 1 m:	09° 06'.0 N	79° 32'.0 E
Position 2 m:	09° 00'.0 N	79° 31'.3 E
Position 3 m:	08° 53'.8 N	79° 29'.3 E
Position 4 m:	08° 40'.0 N	79° 18'.2 N
Position 5 m:	08° 37'.2 N	79° 13'.0 E
Position 6 m:	08° 31'.2 N	79° 04'.7 E
Position 7 m:	08° 22'.2 N	78° 55'.4 E
Position 8 m:	08° 12'.2 N	78° 53'.7 E
Position 9 m:	07° 35'.3 N	78° 45'.7 E
Position 10 m:	07° 21'.0 N	78° 38'.8 E
Position 11 m:	06° 30'.8 N	78° 12'.2 E
Position 12 m:	05° 53'.9 N	77° 50'.7 E
Position 13 m:	05° 00'.0 N	77° 10'.6 E

The extension of the boundary beyond position 13 m will be done subsequently.

Article 2

The maritime bondary between Sri Lanka and India in the Bay of Bengal shall be
arcs of great circles between the following positions, in the sequence given below,
defined by latitude and longitude:

Position 1 b:	10° 05'.0 N	80° 03'.0 E
Position 1 ba:	10° 05'.8 N	80° 05'.0 E
Position 1 bb:	10° 08'.4 N	80° 09'.5 E
Position 2 b:	10° 33' 0 N	80° 46'.0 E
Position 3 b:	10° 41'.7 N	81° 02'.5 E
Position 4 b:	11° 02'.7 N	81° 56'.0 E
Position 5 b:	11° 16'.0 N	82° 24'.4 E
Position 6 b:	11° 26'.6 N	83° 22'.0 E

Article 3

The coordinates of the positions specified in Articles I and II are geographical coordinates and the straight lines connecting them are indicated in the chart annexed hereto, which has been signed by the surveyors duly authorised by the two Governments respectively.

Article 4

The actual location at sea and on the sea-bed of the positions specified in Articles I and II shall be determined by a method to be mutually agreed upon by the surveyors authorised for the purpose by the two Governments, respectively.

Article 5

(1) Each Party shall have sovereignty over the historic waters and territorial sea, as well as over the islands, falling on its side of the aforesaid boundary.

(2) Each Party shall have sovereign rights and exclusive jurisdiction over the continental shelf and the exclusive economic zone as well as over their resources, whether living or non-living, falling on its side of the aforesaid boundary.

(3) Each Party shall respect rights of navigation through its territorial sea and exclusive economic zone in accordance with its laws and regulations and the rules of international law.

Article 6

If any single geological petroleum or natural gas structure or field, or any single geological structure or field of any mineral deposit, including sand or gravel, extends across the boundary referred to in Articles I and II and the part of such structure or field which is situated on one side of the boundary is exploited, in whole or in part, from the other side of the boundary, the two countries shall seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving there from shall be apportioned.

Article 7

The Agreement shall be subject to ratification. It shall enter into force on the date of exchange of instruments of ratification, which shall take place as soon as possible.

New Delhi, 23rd March 1976.
