



# Maritime Security

## The Case of Bangladesh

### Conceptual background

Maritime security may be defined as those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations and other marine organizations or establishments to protect against seizure, sabotage, piracy, pilferage, theft, annoyance, surprise, or any hostile interference with lawful operations. It is a practical response to the six maritime security threats: pilferage and theft, stowaways, drug smuggling, piracy, sabotage and hijacking. That response includes physical security measures and procedures, combat tactics, crisis management, intelligence gathering, risk analyses, and risk management. It affects ships, port facilities, offshore installations, yachts, and even fishing vessels. Maritime security is, in reality, an interdisciplinary concept that includes elements of military science, police science, psychology, sociology, domestic and international law, geopolitics, and history.<sup>1</sup> The importance of maritime security can be measured in terms of economic prosperity, territorial integrity and human security and quality of life. Virtually most of the goods propelling the global economy moves by sea. Increasing energy demand, fisheries crisis, environmental degradation to the marine environment and tourism are important interests that impact maritime regions. The overlapping claims to explore new energy reserves has fostered competing maritime ambitions and focused attention on territorial and maritime boundary disputes. Bangladesh is an important maritime state. The issue of maritime security is very important for her because of trading through the sea lanes, have a large coastal area on which a lot of people livelihood depends and over all the new possibilities of exploring offshore hydrocarbon and mineral resources. Bangladesh's maritime security has not faced major incidents that cause insecurity like piracy, aggression by other states etc. But she has a lot of difficulties to delimit the maritime border with the neighboring country. The aspect of maritime security is quite broad but considering the present condition; the most important issue is to delimit the maritime boundaries to explore and exploit the offshore resources which can be very important for economic prosperity of Bangladesh. The purpose of this paper is to address the issues regarding demarcation of Bangladesh's maritime borders.

### Bangladesh: An Important Maritime State

Resources are the driving force of any country's development. Bangladesh is a small country with a huge population. Oceans have huge potentials of resources like food, mineral and energy which are yet to be explored and exploited. Bangladesh is an important maritime state with more than 700 km coastline and Sea Lanes of



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Communication. Bangladesh is not rich in the mineral resources. Her needs for energy resources compel her to look forward to the vast maritime area more than 2,07,000 sq.miles according to the United Nations Convention of Law of Sea (UNCLOS).<sup>2</sup> After the Second World War the law of sea gives the states more jurisdictions over its sea area. Sea has the commercial and strategic significance which can't be ignored. The sea is one of the major sources of protein, minerals resources and the sea lanes are the lifelines of all economies. Bangladesh's development will depend on the successful exploitation of the maritime resources in the near future for energy resources. Importance of sea has been increasing day by day because of the exploitation fishery resources and offshore mineral reserves.

Bangladesh's maritime interests include a coastline of 700 km extending deep into the Bay of Bengal and 166000 sq.km. of Exclusive Economic Zone (EEZ), augmented by numerous islands of 16 coastal districts. More than 32 million people live in these coastal districts and other 4 million directly involved with the sea fishing trawlers. 90 percent of our foreign trade is transported over the seas.<sup>3</sup> The biological, chemical and geological marine resources contribute a lot to a country's economy.

### Living Resources

In Bangladesh narrow coastal belts are the main source of sea fish. In recent years it has been discovered that about 1 million tons of fish can be achieved from Bangladesh's area of sea including the continental shelf.<sup>4</sup> Coastal Aquaculture includes artificial propagation of different organisms living in the sea, like oysters, crabs, shrimps and sea woods. It is very important sector in Bangladesh which is being practiced in the enclosed backwaters and estuarine areas of Bagerhat, Khulna, Satkhira, Faridpur, Barisal and Cox's Bazar. The EEZ can provide substantial contribution to the food supplies, specially the protein supply. Sea weeds



Source: [www.wikimedia.com](http://www.wikimedia.com) accessed on 2, December, 2008

Figure 1: The position of Bangladesh and the neighboring states in the Bay of Bengal

are exploited by man for food, animal feed, energy, fertilizers and for chemical and pharmaceutical purposes. It is one of the world's major living resources of which Bangladesh is not enough concerned.

### Non-living Resources

There is a possibility of exploring the following mineral resources-hornblende, tremolite /actinolite, opaque, zircon, pyroxene, garnet, epidote, monazite, kyanite, glauconite and the carbonate. Of the sixty elements present in sea water, only six are recovered commercially

sodium, chlorine, magnesium, bromine, calcium and sulphur.<sup>5</sup> There are possibilities to derive potassium, iodine, uranium and gold from the sea water in the future. At the 10th World Energy Conference, the delegates also forecast that 45 percent of the total world oil and gas reserves would come from offshore.<sup>6</sup> Heavy minerals were discovered in the beach sands of the coastal region of Bangladesh in 1961 which are yet to be extracted. The 1994 US Geological Survey reported There are abundant resources of beach sands along the country's coastline, and some 17 separate areas have been identified to contain ilmenite, zircon, rutile and magnetite. Recently an Australian survey said that some of the minerals like rutile and zircon are world class. At present the proven reserve of gas is about 11 tcf. According to USCG and joint Petrobangla report the possibility of getting 60/70 TCF in Bangladesh is only 5 per cent, possibility of 32 TCF is about 59 percent and there is 95 percent possibility of getting 8 TCF.<sup>7</sup> In that case it is very important to find new sources of energy resources. Manganese nodules are widespread in the ocean depths beyond the Continental Shelf. These are the most important resources of deep sea deposit. The nodules contain 40 different metals including copper, aluminum, nickel, iron, cobalt and manganese. The most important component is manganese (29%), iron (6.3%), nickel (1.28%), copper (1.07%) and cobalt (0.25%).<sup>8</sup> As there are huge potentials of having



hydrocarbon in the offshore areas of Bangladesh, exploration should be done in those areas as soon as possible to meet the energy crisis in the near future. There are every possibilities of presence of hydrocarbon in the sea areas of Bangladesh. Natural gas and oil, called "hydrocarbons," are basically the same, and can serve the same purposes. Wherever there is natural gas, there must also be oil in the lower stratum, provided some geological conditions prevail to allow accumulation. Because gas is lighter than oil, it floats in the upper stratum. The Daily Star reported in 2006 discovery of sedimentary rock oolite that promises oil and gas there. Geologists believe that the Bangladeshi territory in the Bay holds the biggest oil and gas prospect. There is a high probability that some other marine minerals such as copper cobalt, manganese, tin, zinc, silver and nickel can be found in the continental shelf.

There is scarcity of fresh drinking water in the world. So people have to find some other means. Fresh-water can be prepared by desalination of sea water. Out of freezing, humidification, distillation, absorption, electro-dialysis and reverse osmosis. Bangladesh can adopt a suitable method to convert the saline sea water to drinkable fresh water. It can minimize the health hazards specially after floods or cyclones in the affected areas, where because of lack of drinking water people suffer a lot and it also causes spread of epidemics. The population pressure can be decreased through seaward extension of urban system like building industries, floating cities, airstrips etc. The 710 km long coast of the Bay of Bengal supports about 587,380 hectares of natural and 24,120 hectares of planted mangroves.<sup>9</sup> Which decrease the intensity of the storm like SIDR as Cyclones hit very frequently in the coastal areas of Bangladesh.

Other potential marine resources:

- Energy from tides, waves and wind power;
- Hydrothermal power-the water temperature profile of the Bay of Bengal shows good prospect for generating power by establishing hydrothermal stations;
- Drugs for pharmaceutical use etc.

## UNCLOS and Maritime Claims of Bangladesh

During the post Second World War period a very significant aspect in the development of the Law of

Sea took place in case of expansion of maritime boundaries. The expansions are manifested in the accelerated exploration and exploitation of fisheries and seabed resources, the large extensions of judicial limits, the increase in submarine mobility and the intensification of marine pollution.<sup>10</sup> Article 56 of the UNCLOS(1982) allows the coastal states to explore, exploit, conserve and manage the natural resources both living and nonliving and other activities of exploitation like producing electricity by using the water, establishment of artificial islands, conduct marine scientific research and the protection and preservation of the marine environment.

Article 57 of the convention stipulates the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

It is noted that in 1974, among all the countries in South Asia, Bangladesh was the first country that had declared its jurisdictions in July on territorial waters, economic zones, and continental shelf through legislation in parliament, known as the Territorial and Maritime Zones Act 1974.<sup>11</sup>

Bangladesh has 12 nautical miles of maritime boundary and 200 nautical miles of exclusive economic zone (EEZ). Unfortunately, Bangladesh till date is not in a position to use its claimed EEZ as it has not fulfilled the provisions spelt out in the UN maritime charter. The Bay of Bengal is located to the south of the land territory of Bangladesh which is in a rectangular domain and that gives Bangladesh the right to claim marine areas in a rectangular orientation extending 200 nautical miles to the south in the Bay from the extremities of its land territory.

### Maritime claims of Bangladesh

Maritime claims (contiguous zone)	18 nm
Maritime claims (continental shelf) 350nm	(up to the outer limits of the continental margin)
Maritime claims (exclusive economic zone)	200nm
Maritime claims (territorial sea)	12nm

The jurisdiction over the territorial sea is three dimensional. The state will exercise full sovereignty on surface water, air and seabed, except the "innocent passage of ships." The jurisdiction over the EEZ and the Continental Shelf is mainly resource oriented.



## Dispute with India

India has been opposing Bangladesh's declared maritime claims from the very beginning. India enacted "The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976" (Act no 80 of 28 May, 1976).<sup>12</sup> Dispute with India over the maritime boundaries is two-fold. One is over overlapping maritime boundaries of the two countries and the second one is over the ownership of the South Talpatty Island.

### Overlapping Maritime boundaries

When Bangladesh declared the Territorial Water and Maritime Zone Act, India was first to protest saying that this base line intruded into their waters by about 20 nautical miles, which is about an area of 4000 sq. km.<sup>13</sup> India particularly became alert when Bangladesh signed contracts with the foreign companies to explore and exploit oil in her maritime waters. Bangladesh line of sea zone towards the south and India's line towards southeastwardly create an angle where both of the countries maritime claim overlap. While official sources quote a figure of 100 trillion cubic feet of gas reserves in the region, unofficial estimates peg the reserves at 200 trillion cubic feet of gas.<sup>14</sup> In 1974; offshore blocks were given by the government of Bangladesh. The block near the Sundarbans was given to Ashland but India wrote to Ashland head office saying that maritime boundary has not been settled therefore even if they get oil they will not be allowed to explore. Ashland left thereafter. Because of the delay in solving the maritime boundary issues India has declared D 22 and D 23 blocks on our declared area as theirs. They have already carried out physical survey there. These are inside our waters as per declaration of 1974. On 24, December, 2008 three Indian survey ships entered and stayed at 180 degrees from "Fairway Buoy" at 210 miles south in the Bay of Bengal from Mongla Port claiming the area as theirs. In response to Bangladesh's action the survey ships moved westwards close to Indian waters.<sup>15</sup>

Both of the countries are arguing over the different principles of the UNCLOS to demarcate their boundaries. Both Bangladesh and India is opposing each other's declaration of offshore blocks which are in the disputed areas. India is a convex country which proposed that after delimiting the maritime borders according to the equidistance method, equity could be ensured by some adjustments.

### Ownership of South Talpatty Island

Bangladesh claimed on a newly emerged island called south Talpatty which was also claimed by India (India calls it as New Moore/Purbasha island). This is a U-shaped emerged in the estuary of the border river Hariabhanga situated at Latitude 21 degrees 36.0 North and Longitude 89 degrees 09.10 East.<sup>16</sup> Bangladesh and India has dispute over the ownership of South Talpatty island which India calls Purbasha or New Moore. India sent one naval ship named "Sandhayak" and later a frigate named "INS Andaman" to establish their claim over the island. Bangladesh could prevent them from staying in the island. Bangladesh also built a light house in South Talpatty at that time and after 15 days it disappeared.<sup>17</sup> Indian warships also violated our territorial waters by crossing over to Raimangal estuary at that time. India's interest is here that if they can have the island; it can have its own territorial sea, EEZ and CS after the Island being inhabited which will limit our access to the sea.

In 1978 both the countries negotiated to solve the issue but could not agree on the flow of mid channel. Bangladesh claims that the main channel of the river flows to the west of the island whereas India claims that it flows to the east. As both border river Hariabhanga and Bangladesh's inland river Raimongal fall on the estuary, Bangladesh claimed that India confused the later one's flow with the earlier one. In 1974 a discussion was held between the two countries to resolve the issue where Bangladesh claimed that the flow of the river goes towards west and the island is a part of a natural prolongation of the Bangladesh's territory. The Bangladeshi government published a white paper on South Talpatty and submitted to the parliament on May 16, 1981 which argues the merits of Bangladesh case.<sup>18</sup> In 1982 Bangladesh suggested a joint survey by Bangladesh and India of South Talpatti but India rejected. It has been alleged that India place boulders in the western channel with a purpose to divert the flow towards east and make it deeper. India agreed that the island would remain "no man's land" until it was settled peacefully.<sup>19</sup> A three-day boundary talks between India and Bangladesh that took place during 15-17 September 2008 after a gap of 28 years were also inconclusive. Earlier meetings held in 1974 and 1980 did not yield definite results either.<sup>20</sup> Both sides seem to have once again reiterated their earlier positions, which make it imperative to



explore the concerns for an early resolution to the protracted conflict.

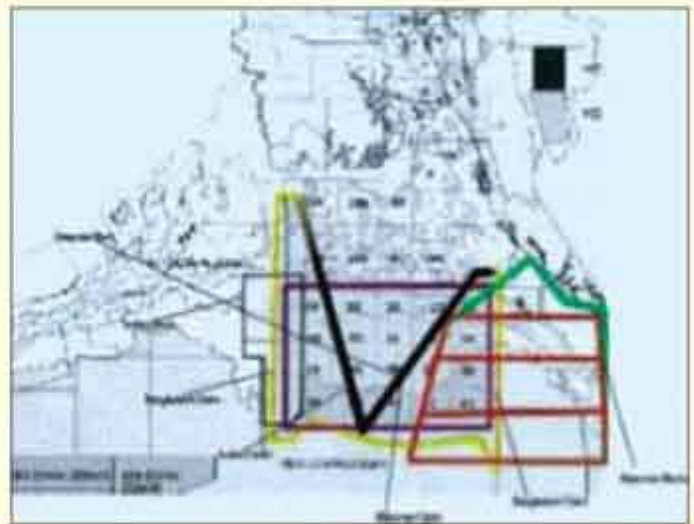
## Dispute with Myanmar about the delimiting the maritime border

Myanmar enacted Territorial Sea and Maritime Law in 1977 (Law no 3 on 9 April).<sup>21</sup> Bangladesh has dispute with Myanmar specially over the demarcation of maritime boundary. In fact, According to Myanmar's westward maritime claims, Bangladesh will lose half of her claimed marine areas in EEZ and CS. Bangladesh started negotiating with Myanmar about delimiting the maritime boundary after enacting the Maritime Zone act in 1974. During 1974 to 1979 five rounds of talks took place between Bangladesh and Myanmar.<sup>22</sup>

In eastern border Bangladesh had delimited her maritime boundary following the Naf River. In 1974, this line and this island were joined and a midpoint was found somewhere here. At that time 8 points had been determined and 8 point was near Oyster rock island of Myanmar. At that time they agreed but after concluding the UNCLOS Myanmar is no longer interested to maintain the 8 point. If they agree with the 8 point then the island will have its own territorial sea, as it was according to the agreement which will not justify claiming more area of territorial sea to westward. Myanmar proposed the equidistance line from St. Martin Island (Bangladesh) to Oyster Island (Myanmar). But Bangladesh is arguing that since St. Martin is an island with inhabitants whose livelihood depends on sea (fishing and others) and Oysters is a rock island only having a lighthouse, these two islands cannot have the same status. And from the midpoint, the Myanmar side proposed initially about 270 then 243 degrees based on equidistance.<sup>23</sup>

### Recent Bangladesh-Myanmar standoff over Oil Exploration Activities of Myanmar

Myanmar's autocratic military regime highly depends on oil and gas exports to Thailand and China to earn foreign currency. Gas export in 2006-07 fetched Myanmar over \$1 billion. A consortium of Korean and Indian companies led by Daewoo owns stakes in blocks that include the Shwe, Shwephyu and Mya fields off western Myanmar, also close to Bangladesh territory. Daewoo has 60 percent stakes in the consortium, South Korea Gas Corporation has 10 percent, ONGC 20 percent and GAIL 10 percent. The Shwe field holds a gas reserve



Source: The Daily Star, 2, August, 2008

Figure: Blocks declared by Bangladesh and red lines are Myanmar's declared blocks which overlaps Bangladesh's claims

of 4-6 TCF while Shwephyu 5 TCF and Mya 2 TCF with a combined reserve of 5.7-10 TCF estimated by experts. Statistics reveals that foreign investment in Myanmar's oil and gas sector has reached \$2.635 billion as of March since the country allowed foreign investment in late 1988.<sup>24</sup> In May 2008, Daewoo and CNPC signed a deal for joint exploration in Myanmar. Almost all the offshore gas discoveries are close to Bangladesh maritime territory. With three main large offshore oil and gas fields and 19 onshore ones, Myanmar has proven recoverable reserve of 18.012 TCF out of probable reserve of 89.722 TCF offshore and onshore gas. The country is also estimated to have 3.2 billion barrels of recoverable crude oil reserve, according to official statistics.<sup>25</sup>

On 3<sup>rd</sup> November it was reported in the media that Myanmar has deployed four ships accompanied by two naval ships started the oil and gas exploration 50 nautical miles southwest of St. Martin's Island, clearly into the Bangladesh' claimed territory. A South Korean company, Daewoo was awarded the oil and gas exploration contract there. Three naval ships of Bangladesh—BNS Abu Bakar, BNS Madhumati and BNS Nirvoy—were sent to the spot and they challenged the Myanmar's ships but the Myanmar Navy responded by alleging that the Bangladesh Navy ships were trespassing. Later one Bangladesh warship BNS Karnaphuli was also sent there where Myanmar sent one more warship, 55 km southwest at 227 degrees from St Martin's Island. Bangladesh also mobilised six ships, including a frigate and two missile launchers, at the spot. She was getting ready to face any situation using



whatever resources in its possession, Navy officers and staffs have been put on high alert. Two more frigates Khaled Bin Walid (previously Bangabandhu) and Osman had been kept standby.

Tension between Bangladesh and Myanmar was also intensified at the land borders of the two countries. This also prompted Bangladesh Rifles (BDR) to be on alert at strategic points in Bandarban and Cox's Bazar districts. Myanmar has mobilised troops to assist its border force Nasaka and dug bunkers along the borders. It also curbed cross border movement of people and transports by creating a 'curfew-like' situation. Trade between the two countries had been stalled.

Bangladesh Navy intelligence gathered information that Myanmar had begun mobilising ground troops near the Naf river but the mobilisation was not visible. Then the Navy alerted the BDR. Since Myanmar continued reinforcing troops along its border with Bangladesh, Bangladesh has also strengthened her military capacity by deploying more defense personnel.

Myanmar in 2005 awarded exploration rights in the area to Daewoo, with initial feasibility studies conducted in 2007. Bangladesh's protest came after Daewoo began formal exploration in the area in September, 2008. Myanmar also carried out survey in 2005 and possibly come back soon. They have given the block to the IOC in 2003.<sup>26</sup> This block clearly encroaches into Bangladeshi area. The Vice-Chairman of Myanmar's government (State peace and Development Council), General Maung Aye led a delegation of seven members to Dhaka in 2008.<sup>27</sup> Both of the countries talked about delimiting the maritime borders and agreed not to pursue any explore but only after a few months Myanmar's intruded in Bangladeshi water. But Myanmar is claiming that they were in their waters.

Bangladesh later on requested North Korean government to ask Daewoo, which is conducting the exploration for Myanmar, to stop its activities in the Bay. Bangladesh also requested Myanmar's closest ally China to ask Myanmar to quit Bangladeshi waters till the maritime boundary is marked as per the UN guideline. *Of course we have goodwill for Myanmar, a close neighbour, but critical national interests have to be protected*, the foreign adviser said.<sup>28</sup> At last Myanmar withdrew its warships, the oil and gas exploration rig and the fossil fuel exploration vessels from Bangladesh waters on

10<sup>th</sup> November. In 1993, Myanmar opposed Bangladesh's initiative of routine Hydrographic survey in the vicinity of the Rakhaine coast. Activities at the disputed sea areas.<sup>29</sup>

## Difficulties of demarcating the maritime borders

Delimitation of EEZ and continental shelves have therefore, become very important, especially after India's discovery of 100 trillion cubic feet (tcf) of gas in 2005-06 and Myanmar's discovery of 7tcf gas at about the same time.<sup>30</sup>

There are some difficulties of demarcating Bangladesh's maritime borders like,—

### 1. Bangladesh's depth-based baselines

Bangladesh formulated a claim to be established under the depth-based method following characteristics of coastal waters of the Bay as the estuary in such that no stable water line or the demarcation of landward and seaward areas exists. Bangladesh declared straight baselines selecting eight imaginary base points following the 10-fathom line or over 60 ft deep water except west of Elephant Point/St. Martins Island.



Source: www.bdix.net

Figure: The baselines of Bangladesh

At the Caracas meeting of the Law of Sea Conference in 1975, Bangladesh read a formulation which read as follows.

*In localities where no stable low water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to*



*the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points of the sea adjacent to the coast not exceeding the 10 fathom line.*<sup>31</sup>

Bangladesh proposed to accept the depth-based baselines method in the UNCLOS, 1982. Over this proposal some internationally accepted viewpoints were raised and discussed in the proceedings of the UNCLOS—

- a. Every instance of baselines has always been tied to a point on the land.
- b. Other countries may seek to adopt same method which will limit the high sea access.
- c. Drawing examples of Mississippi, Thames estuary etc many argued that our deltaic situation is not very unique.
- d. As shallowness of waters occurs many areas in the world so it cannot justify a depth-method baseline.
- e. 10-fathom (60 feet) line was argued as very deep since the great majority of ships could operate on drafts of less than 40 to 50 feet. The proposed baselines of Bangladesh extends 16 to 30 miles from the coastlines.<sup>32</sup>
- f. Any line of bathymetry cannot be permanent since the line can be unstable and continuous.

After discussing the proposals from Bangladesh and other countries finally UNCLOS added in the Article 7(2):<sup>33</sup>

Where because of a presence of delta or other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of low-water line; such baselines shall remain effective until changed by the coastal state in accordance with this convention.

## 2. Characteristics of Bangladesh's coastal waters

Being a concave country the unique characteristics of Bangladesh's coast and coastal waters are responsible for some difficulties in demarcating the maritime borders like,—

- a. The dynamic estuary of Bangladesh is such that no stable water line or demarcation of landward and seaward areas exists.
- b. The continual process of alluvion and sedimentation from many banks and the area is so shallow as to be non-navigable by other than small boats.
- c. The navigable channels of lands through aforesaid banks are continuously changing their courses and require sounding and other detailed geological analysis for boundary demarcation so that they pertain to the character of river mouths and inland waters.

## 3. Geographical position

Being adjacent states, Bangladesh and other littoral states India and Myanmar sometimes

overlap and encroach upon one others EEZ because of their geo-graphical and geomorphic nature of coasts in the Bay of Bengal. Configuration of the coast of Bangladesh is concave whereas that of India and Myanmar is convex. Natural prolongation of Bangladesh's land territory to continental shelf gives her rights to claim her sea areas in a rectangle shape.

## 4. Equidistance or Equity Principle

Article 15 of the UNCLOS stipulates that—

The median line shall delimit the Territorial Sea between states with opposite and adjacent coasts every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial states should be measured.

Article 76 and 82 of the 1982 UNCLOS laid down the methods of delimiting the sea boundary between adjacent states (distinct from opposite states like India and Sri Lanka). First the states should settle the boundary following negotiations. If negotiations fail, the principle of equity will be implied implying that justice and fairness must be the hallmark of settlement

Geographical position plays an important part in delimitation of sea boundary and equitable principles come into play in the case of adjacent states. The method of delimitation (equidistant method) between two opposite states does not apply between adjacent states because it grossly distorts the boundary, contrary to the principles of fairness and justice (equity).

Both India and Myanmar's stand is that the solution should be based on "equidistant principle" whereas Bangladesh's claim is that it should be resolved on "equity principle" meaning that the countries adjacent to the Bay of Bengal would get proportional areas in the zone.

The equity principle is difficult to define and there is no such practical definition of equity, equity does not mean equality all the time. On the other hand equidistance method is practical and based on technical data and given facts. Bangladesh drew the baselines "between the outermost points of national territory whether continental or insular."

The cumulative effects of floods, monsoon rainfall, cyclonic storms and tidal surges have contributed to a continuous process of erosion and shoaling. As a result Bangladesh's coast is highly shifting and unstable. The coastline is constantly fluctuating with new areas going under water and new islands emerging thus creating more shallow water even non navigable by country boats.



Bangladesh opposed the equidistance principle on the basis of following arguments—

**Zone-locked:** If equidistance principle is applied Bangladesh will be a zone locked country and will not have its declared EEZ and also will lose access to the CS. Barrister A K H Morshed said in a roundtable arranged by The Daily Star on 15 November, 2008 *As far as India is concerned its maritime dispute with Bangladesh involves between five and 15 percent of its maritime territory, and that is a very conservative estimate. For Myanmar, its dispute with Bangladesh involves between 10 and twenty five percent of its maritime territory. For Bangladesh, our stake is one hundred percent. If you don't get it, you are out.*<sup>34</sup>

**Alternative principle:** There is other alternative to delimit the maritime border which may favor Bangladeshi claim like the Equity principle. With regard to the delimitation of economic zone and the Continental Shelf, UNCLOS in its Article 74 and 83 does not provide equidistance method as the basis of agreement.



Source: The Daily Star, 15 November 2008.

Figure: Bangladesh, India and Myanmar's maritime claims

Sediment theory is also applicable to Bangladesh for CS but if Bangladesh follows 2500 meter isobar in the Bay of Bengal then go hundred miles towards south it will be more beneficial for Bangladesh than the equidistance method.<sup>35</sup>

**Acceptances of Equity principle:** Equity principle has been accepted by the International Court of Justice (ICJ) in Anglo-Norwegian Fisheries case of 1951 and North Sea Continental Shelf case in 1969.

In other cases (Denmark vs. FRG and FRG vs. Netherlands, the ICJ mentioned

*....that the delimitation in question was to be effected by agreements between the parties, in accordance with equitable principles and taking account of all the relevant circumstances.*<sup>36</sup>

**Deprivation of rights:** If equidistance principle is applied, even being a deltaic country Bangladesh will have a little access to sea and will be deprived from enjoying the resourceful EEZ and the CS. Along with the resource factor, 90% international trade is done by the Sea Lanes of Communication (SLOC) which will be also limited and increase dependency on the other states for the purpose. India has an area of 587,6000 sq. miles in her EEZ and 1.5 million sq.miles in her CS<sup>37</sup> while Myanmar has an area of 358,495 sq.miles of EEZ and 216,379 sq.miles of CS.<sup>38</sup> So both of the countries have more sea areas than Bangladesh. With a huge population and small territory Bangladesh's need for the sea area on the basis of equity principle is considerable.

**Dependency on other states:** More dependency on other states will affect Bangladesh politically also. Bangladesh is not a powerful state, in that case she may not be in an advantageous position in the regional politics and strong enough to safeguard her own national interests. Dependency on other states will impact politically, economically and strategically. Sea is important for every state for strategic and economic reasons. Limited access to sea will have a severe impact on our economy because many people living in the coastal area depend on the sea. International trade of Bangladesh will be hampered and with growing naval powers of India, Myanmar and China in the region, Bangladesh's national security will be at risk.

It was understood that the Myanmar side subsequently slightly fluctuate their line to give Bangladesh some access to continental shelf but if Both India and Myanmar imply the equidistance method to delimit then border Bangladesh cannot avoid from being zone locked.

## Internationalization of the issue

It has been widely argued that Bangladesh should go for International community specially to the International Court of Justice (ICJ). If two parties cannot decide over their disputes over the demarcation of Sea Border UNCLOS provides with four alternatives means of settling the disputes.

1. The International Tribunal for Law of Sea;
2. The International Court of Justice;
3. An arbitral tribunal constituted in accordance with Annex 7 to the Convention; and
4. A special arbitral tribunal constituted in accordance with Annex 8 to the Convention.



### Requirements of UNCLOS to delimit the Maritime Boundaries

As signatories to the UN Convention on the Law of the Sea (UNCLOS), India, Bangladesh and Myanmar need to resolve their maritime boundary issues, and file their claim by 29 June 2009, 27 July 2011 and 21 May 2009 respectively.<sup>39</sup>

1. Nautical charts showing the coastline with a reasonable part of the hinterland and the seawards area over which the delimitation is to be made.
2. Determination of the geodetic Datum of Bangladesh so that the positions of the coastlines of the country involved can be compared with that of other countries.
3. Surveys
  - Geodetic and Topographic surveys
  - Tidal and Oceanographic surveys
  - Bathymetric surveys
  - Geo-scientific surveys

The accurate positioning of the baselines is the fundamental to the delimitations of the boundaries.

Boundary delimitation includes some process like,—

1. Definition to specify the locus of boundary.
2. Delineation description of the boundaries in words, numbers and graphics and in case of CS demands it should have the recommendations and publications about the location of the limits of CS.
3. Demarcation-boundary should be marked on charts.
4. Delimitation- Previous boundary delimitation process like declaration, agreement, judicial settlements or application of the legal principles.

UNCLOS will also consider the issue of natural change, diversity, recent decisions of Courts and Tribunals and the general application in case of delimiting the maritime borders.<sup>40</sup>

Under this Convention the parties are allowed to posture one or more of these means through proper procedures which insist to submit a written declaration under article 287 of the Convention to the Secretary General of the United Nations.<sup>41</sup> It has to be accepted as an agenda of United Nations then it will be under process.

For continental shelf the UN has a separate body called Commission on the Limits of Continental Shelf. There each and every country has to submit their claim within 10 years of their ratification with relevant data of survey. But we shall have to submit a framework and some preliminary data by 2011. As for Continental Shelf seismic survey needs to be carried out to find relevant data. According to Rear Admiral Mujtaba, *The Bangladesh Navy was given the task of*

*preparing new charts. We have done our job one hundred percent and the documents have been handed over to the foreign ministry.*<sup>42</sup>

Neither India nor Myanmar believes in third party arbitration. Only Bangladesh believes in it. India has so far delimited maritime boundary with Maldives, Sri Lanka, Thailand, Myanmar, and Indonesia. Maritime boundary problems with Bangladesh and Pakistan have not yet been solved. India had signed "The Delimitation Maritime Boundary" with Myanmar in 1986.<sup>43</sup> India funded to rebuild the Sittwee port which is situated on the Kaladan river in Myanmar will open India's landlocked north-eastern states Assam, Manipur, Meghalaya, Mizoram, Tripura, Sikkim, Nagaland and Arunachal Pradesh to the inter-national trading routes through the Bay of Bengal. India is Myanmar's fourth largest trading partner and India is involved with South Korea's Daewoo in exploration and production in a gas field on the western Rakhine coast.<sup>44</sup> Following Bangladesh's refusal to give transit facilities to India, India's alternative is now to build land roads with her north east countries and Myanmar. India also needs Myanmar to protest the north eastern insurgents in the seven sisters.

As China is now considered as the closest ally of Myanmar, Bangladesh Foreign Adviser Iftakhar Ahmed Chowdhury at a meeting with Chinese Ambassador in Dhaka Zheng Qingdian requested him to ask Myanmar to retreat from Bangladesh territorial waters. China hoped that Bangladesh and Myanmar settle the dispute through friendly negotiations. *We hope the countries will settle it through equal and friendly negotiations and maintain a stable bilateral relationship. As their friend, China will contribute in an appropriate manner,* said Chinese foreign ministry spokesman Qin Gang at a press conference reported by Xinhua. China being a long term ally of Bangladesh did not practically stood beside Bangladesh on the issue. Myanmar's latest oil and gas explorations are being conducted by China National Petroleum Corp (CNPC) of China, Daewoo and South Korea Gas Corporation, ONGC Videsh Ltd, Gas Authority of India Ltd (GAIL) and Essar of India under various Production Sharing Contracts (PSC). In the past, US Company Unocal (now Chevron) discovered and developed a number of oil and gas fields.<sup>45</sup>

So, it is quite clear that both India and China have their own interests in Myanmar. China and



some other states of West, in spite of having economic sanctions from the USA, have investment interest in Myanmar. Myanmar is full of natural resources. Two growing powers India and China's consumption and needs for energy resources are increasing day by day, both of them are eyeing on Myanmar's energy resources which is quite easy to import for them because of geographical proximity. India proposed to establish a gas pipeline from Myanmar to India through Bangladesh which also got the same fate of transit issue between Bangladesh and India. Now considering these factors Myanmar can provide India many facilities that are very important for India. Here, about the issue of demarcating the maritime border, both India and Myanmar are arguing for equidistance principle which will give them more facilities to access to the sea specially from the Sittwe port, which is very important for Indian north east countries.



Source: [www.heritage.org](http://www.heritage.org)

Figure: Main ports and counties in the Bay of Bengal

## Policy Recommendations

Bangladesh is the first country of south Asia to take the legislative actions and claim her maritime area. But many new issues came up after the UNCLOS took place which also accelerated the disputes among the countries over their maritime claims. Bangladesh also took initiatives to talk with her neighbors after enacting the Maritime Zones Act in 1974. But most of the negotiations ended fruitless and there were no follow up negotiations for a long time. Bangladesh, like all other countries believes in peaceful solution of the disputes which can only

be achieved by negotiations. The concept of EEZ provides states opportunities to explore and explore a huge amount of resources. The issues of delimiting the maritime boundary among these states are quite complex because of the energy politics. To enjoy the opportunities provided by the UNCLOS we have to demarcate our maritime boundary. It has already taken many years.

The government of Bangladesh may take some steps at legislative, military and political level.

### 1. Military steps

The following steps to strengthen the Naval power can be taken to safeguard our claimed sea areas.

- It is essential to acquire Marine Petrol Aircraft (MPA) to guard our territorial sea.
- Strengthen the Navy with enough sophisticated equipments to surveillance and protection of coastline islands, EEZ and the CS.
- Joint naval exercises with great powers and the super powers.

### 2. Legislative steps

- Our 1974 baselines and base points are not consistent with the UNCLOS, 1982 and we may have to redraw our baselines.
- It took 19 years to ratify the UNCLOS in 2001 and not updated our act in the lines with UNCLOS. We have to enact our domestic laws incorporating with the UNCLOS for a stronger claim in the international legal regimes.
- The persons who work with the UNCLOS wing, which deals with maritime activities, are transferred to some other places even after having special training held in abroad. So continuation of a process is very difficult in absence of the experts. Related experts and institutions should be coordinated properly to maintain the continuation of a negotiating process.
- The coordination among the multiple organizations which are working about the sea like the research and survey institutions, UNCLOS cell, Bangladesh Navy, Petrobangla, Coast guard, Ministry of Foreign Affairs etc is must to run the process properly.

### 3. Political steps

- Negotiations with both Myanmar and Bangladesh at different level are must, because in our case of maritime border demarcation, solution through negotiation is suggested in the UNCLOS. And among the three states, only Bangladesh believes in third party intervention here. Moreover, it can be easily assumed being a weak country in terms of both economic and political power it will be very difficult to establish our claims at the international legal regimes.
- Consider the alliance relationship in this context to bring out a favorable solution for Bangladesh.
- In the recent Bangladesh-Myanmar standoff, Bangladesh's weak claims and delay response at political level was quite visible. Bangladesh should build strong claims at the negotiations with proper preparations.



- To bring out a favorable solution from the international legal regimes, specially based on equity principle basis, Bangladesh has to internationalise the issue to make her claims stronger and get international support.
- Joint management of resources, both renewable and non-renewable can also be beneficiary for all of these countries, but it needs friendly relations and many rounds of negotiations.

Along with the steps Government should consider the maritime issue as an important aspect of national security and economic prosperity and do technical developments for the maximum utilization of the marine resources. Public awareness about the resourceful sea is also important. To do that study and research about sea should be encouraged. Other issues like preventing piracy, drug and human trafficking by sea, protecting sea lanes of communication, port management etc should also taken under consideration to safeguard our marine areas.

## Conclusion

As a politically and economically weak country, Bangladesh has no other options except developing

the economy for which resources play the most important factor. She should take quick steps to demarcate the border and explore and exploit the marine resources. Bangladesh's geopolitical and geostrategic importance is making the whole situation complex. Regional politics is more responsible rather than the rationales in Bangladesh's problems of demarcating the border. Many argue that these three adjacent countries should go for a tripartite agreement to demarcate their border, which is practically not possible for Bangladesh. It can be easily assumed that with current regional political situation specially the current India-Myanmar and China-Myanmar relations around the Bay of Bengal, Bangladesh will be in a disadvantageous situation in such agreement. We can hope for the successful negotiations with India and Myanmar. If the negotiations become fruitless, Bangladesh should take proper preparation to submit and win her claims from the international legal regimes. For Bangladesh, now, preparation for every possible situation to establish her claims over the maritime boundaries should be taken without any delay.

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## End Notes

- 1 Maritime security: Requirements in the Nineties, Hawkes, KG, Maryland: Cornell Maritime Press, 1993. p.456-461
- 2 Challenges to Bangladesh's maritime Security by Commodore Khorshed Alam, ndc, psc, BN (Retd.), The Daily Star, 2<sup>nd</sup> March, 2007
- 3 Bangladesh's Maritime Challenges in the 21<sup>st</sup> Century by Alam, Khorshed Dhaka, 2004, p.135
- 4 Ibid, p.145
- 5 Ibid, p.146
- 6 Ibid, p.149
- 7 Ibid, p.191-192
- 8 Ibid, p.148
- 9 Ibid, p.153
- 10 Exclusive Economic Zone in the Bay of Bengal, Implications for Bangladesh and Other Littoral States by Huq, Journal of social science review, the Dhaka University, 1990, Md. Ramjul, p.1
- 11 Ibid, p.9
- 12 Ibid, p.16
- 13 The Daily Star, 15<sup>th</sup> December, 2008
- 14 www.shwe.org (accessed on 10<sup>th</sup> December)
- 15 The Daily Star, 26<sup>th</sup> December, 2008
- 16 The Daily Star, 1<sup>st</sup> October, 2003
- 17 Alam, Khorshed (Dhaka, 2004), p.263-265
- 18 The Daily Star, 1<sup>st</sup> October, 2003
- 19 The Daily Star, 15<sup>th</sup> December, 2008
- 20 Indo-Bangladesh Maritime Border Dispute: Problems and Prospects by Gupta, Alok Kumar, Institute of Peace and Conflict Studies, India, Article no 2699, 8<sup>th</sup> October, 2008, www.ipcs.org (accessed on 23<sup>rd</sup> November, 2008)
- 21 Huq, Md. Ramjul, p.19
- 22 Ibid, p.20
- 23 The Daily Star, 5<sup>th</sup> December, 2008
- 24 http://banglaclub.wordpress.com (accessed on 12<sup>th</sup> December, 2008)
- 25 Ibid.
- 26 The Daily Star, 15<sup>th</sup> December, 2008
- 27 www.shwe.org (accessed on 12<sup>th</sup> December)
- 28 The Daily Star, 7<sup>th</sup> November, 2008
- 29 The Daily Star, 28<sup>th</sup> August, 2006
- 30 The Daily Star, 3<sup>rd</sup> November, 2008
- 31 Alam, Khorshed (Dhaka, 2004), p.237
- 32 Huq, Md. Ramjul, p.9
- 33 www.unclos.com (accessed on 27<sup>th</sup> November, 2008)
- 34 The Daily Star, 5<sup>th</sup> December, 2008
- 35 Ibid
- 36 Huq, Md. Ramjul, p.16
- 37 Alam, Khorshed, p.248
- 38 http://earthtrends.wri.org (accessed on 3<sup>rd</sup> December, 2008)
- 39 The Daily Star, 5<sup>th</sup> December, 2008
- 40 Alam, Khorshed (Dhaka 2004), p.277
- 41 Dhaka Courier, 14<sup>th</sup> November, 2008
- 42 The Daily Star, 5<sup>th</sup> December, 2008
- 43 Indo-Myanmar Relations-A Review by C. S. Kuppaswamy, paper no. 2043 published on 30<sup>th</sup> November, South Asia Analysis
- 44 www.southasiananalysis.org (accessed on 29<sup>th</sup> November, 2008)
- 45 Indo-Myanmar Economic Relations and Northeast Insurgency by Anand Kumar, Institute of Peace and Conflict Studies, India, Article no: 1563, 21<sup>st</sup> November, 2004

While preparing the *Issue Brief*, the writer talked to maritime law experts including interview with Barrister Harun ur Rashid, former ambassador to UN, Professor Ramjul Huq, Department of International Relations, University of Dhaka, Brigadier General Abidus Samad, Director Operations, Armed Forces Division and Commodore H R Bhuiyan, Assistant Chief of Naval Staffs, Bangladesh Navy.