



Title	Maritime Boundary Dispute between Myanmar and Bangladesh
Author	Dr. Kyawt Kyawt Khine
Issue Date	2015

Maritime Boundary Dispute between Myanmar and Bangladesh

Kyawt Kyawt Khine¹

Abstract

Myanmar and Bangladesh are the two littorals of the Indian Ocean touching the Bay of Bengal in two opposite and adjacent directions. Since 1974 Myanmar and Bangladesh have tried to negotiate their overlapping maritime zone and continental shelf claims in the Bay of Bengal. Despite those talks, the two neighbours could not reach any accurate and acceptable agreement. During November, 2008, the maritime dispute between the two countries increased when Myanmar sent two warships as escort for Daewoo's vessels and rigs to work in the AD-7 block in the Bay of Bengal. By claiming that the area was within its maritime boundary, protests followed from Bangladesh along with sending its four warships to the disputed area. Most expected that the maritime boundary dispute between Myanmar and Bangladesh might escalate into an open war at any time soon. However, the maritime boundary dispute was settled at the International Tribunal for the Law of the Sea (ITLOS) in March 2012. Therefore, the objective of this paper is to explain how Myanmar and Bangladesh tried to resolve their dispute which might escalate into an open war by means of negotiation and why both countries decided to settle their dispute at the international organization level but not by bilateral negotiation.

Key Words: Myanmar-Bangladesh relations, maritime boundary dispute, ITLOS, Law of the Sea, dispute settlement

I. Introduction

Since the Myanmar-Bangladesh boundary measures approximately 168.547 miles including the Naaf River boundary and the land boundary north of the Naff River. The land and river boundary had been properly demarcated in 1966 and 1979 respectively. But until 2012, the problems remained in the delimitation of the maritime boundary between the two countries. Indeed, Myanmar-Bangladesh bilateral talks started since Bangladesh enacted Maritime Zones Act in 1974. For several years, Myanmar and Bangladesh have tried to negotiate their overlapping maritime zone and continental shelf claims in the Bay of Bengal. Despite those talks, the two neighbours could not reach any accurate and acceptable agreement. The Bay of Bengal has become very important to both countries, especially after Myanmar's discovery of 7 (tcf) gas in 2004. Things came to ahead on 1 November, 2008 between the two countries when Myanmar sent two warships as escort for Daewoo's vessels and rigs to work in the AD-7 block in the Bay of Bengal. By claiming that the area was within its maritime boundary, protests followed from Bangladesh along with sending its four warships to the disputed area. Bangladesh demanded an immediate halt to gas exploration activities by Myanmar. The tension between the two countries eased somewhat when, on 8 November, Daewoo removed its rigs from the AD-7 block and moved on to A-3. Most expected that the maritime boundary

¹ Associate Professor, Dr., Department of International Relations, University of Mandalay

dispute between Myanmar and Bangladesh might escalate into an open war at any time soon. However, the maritime boundary dispute was settled at the International Tribunal for the Law of the Sea (ITLOS) in 2012. Therefore, this paper explains how the two countries tried to resolve their dispute which might escalate into an open war by means of negotiation and why both countries decided to settle their dispute at the international organization level but not by bilateral negotiation.

II. Myanmar-Bangladesh Dispute over Maritime Boundary Demarcation:

Understanding its Nature

Myanmar and Bangladesh are the two littorals of the Indian Ocean touching the Bay of Bengal in two opposite and adjacent directions. According to the Law of the Sea provisions, every coastal state has sovereignty over an area of sea up to a limit of, but not exceeding, 12 nautical miles (one nm = 1.852 kilometer), and has sovereign rights over the exclusive economic zone (EEZ) not extending beyond 200 nautical miles from the baselines (the line from which coastal state's maritime zones are measured) (Ahmed, 2006, pp.1-2). On 15 November 1968, Myanmar claimed a system of straight baselines and declared that its territorial sea would henceforth extend 12 nautical miles seaward from these straight baselines (See-Map-1). The Myanmar government restated its claims on 9 April 1977 through the 1977 Territorial Sea and Maritime Zones Law (Pyithu Hluttaw Law No.3). Myanmar's 21 straight baselines segment extent for a total of 816.4 nautical miles, starting from the southern point of Oyster Island (known as Myau island) on the Rakhine Coast and terminating at the western point of Murray Island on the Thanintharyi Coast.

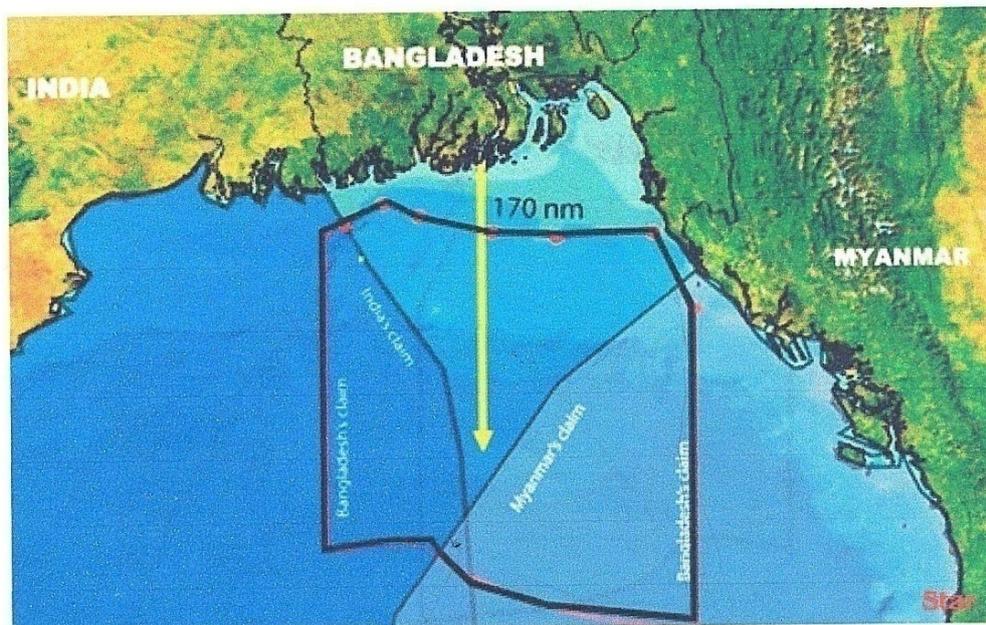
Bangladesh has also claimed its maritime zones measuring from its straight baselines, which were declared in April 1974 following the promulgation of the Territorial Water and Maritime Zones Act in February 1974 (*The Territorial Waters And Maritime Zones Act*, 1974). The Act defined the baseline of Bangladesh on depth criteria 10 fathom (60 feet) and declared a straight baseline with a length of 222 nm (See Map-2). On the basis of the 10 fathom (60 feet) baseline as enunciated in 1974 Act, Bangladesh subsequently drew its Territorial Seas, Contiguous Zone and Exclusive Economic Zone.

Both India and Myanmar, two adjacent and contiguous neighbors of Bangladesh, protested strongly against the proclaimed baseline of Bangladesh (Azad, 2013, p.5). India claimed that the baseline as set by Bangladesh protruded 21 nm into Indian waters, whereas Myanmar held that Bangladesh's claims extending beyond 200 nm would amount to 'coveting my neighbor's territory'.

Under the circumstances, Myanmar claimed maritime boundary demarcation with Bangladesh on the application of an equidistance line disclaiming any disadvantage that Bangladesh may suffer due to its geography (Azad, 2013, p.11).

Due to irreversible geographical constraints, Bangladesh could well realize that the method of equidistance lines with Myanmar on the eastern side and with India on the western side would practically cut off Bangladesh's maritime area within 130 nm as against Bangladesh's claim for 200 nm EEZ (See Map-3). Bangladesh, therefore, sought to demarcate its maritime boundary both with India and Myanmar on the basis of equity principle as envisaged by Article 74 and Article 83 of the 1982 UNCLOS III.

Map (3) Zone-Locked Bangladesh



Source: <http://www.kaladanpress.org>

III. Negotiation for the Demarcation of Maritime Boundary between Myanmar and Bangladesh: Going Beyond Bilateralism

Despite the fact that the maritime boundary claims by India and Myanmar overlap Bangladesh's claim of 200 nm EEZ, solution of the problem was never sought through a tripartite agreement between the parties concerned. Both Myanmar and Bangladesh rather chose to discuss the issue on the bilateral basis. (Azad, Dr: "Territorial Issues in Asia Drivers, Instruments, Ways Forward", p.11) Negotiations on the delimitation of the maritime boundary were held between Bangladesh and Myanmar from 1974 to 2010. Eight rounds of talks took place between 1974 and 1986 and six rounds of talks between 2008 and 2010.

During the second round of talks, held in Dhaka between 20 and 25 November 1974, the heads of the two delegations, Commodore Chit Hlaing and Ambassador K.M. Kaiser, on 23 November 1974, signed the “Agreed Minutes between the Myanmar Delegation and the Bangladesh Delegation regarding the Delimitation of the Maritime Boundary between the Two Countries”. According to the 1974 Agreed Minutes, both sides agreed for the delimitation of 12 nm Territorial Waters. This agreement was, however, conditional and somehow it was not followed and not ratified by any country. Under the 1974 Agreed Minutes, the free passage of Myanmar vessels in the water ways that extended into the Bangladesh side of the territorial boundary was also guaranteed.

Negotiations for the delimitation of the Exclusive Economic Zone (EEZ) and the Continental Shelf (CS) were held until 1986 and could not reach any agreement. During these negotiations, Bangladesh demanded for equity principle to meet the peculiarities of its coast while Myanmar demanded for the application of equidistance method for the delimitation of the Exclusive Economic Zone (EEZ) and the Continental Shelf (CS). Both sides rejected each other's proposals and, thus, there was no progress on the subject. In the third round of talk, Bangladesh delegation asked for a corridor towards the EEZ, as in the case of North Sea Continental Shelf where the equidistance or median line was modified to give Germany an access to the Continental Shelf. Myanmar was prepared to offer a modified equidistance line in delimiting the EEZ and the Continental Shelf, with a view to enabling Bangladesh to claim up to 200 nm of EEZ. Myanmar's position was in accordance with the existing Law of the Sea and state practices of the time.

However, beginning with the 4th rounds of talks in 1976, Bangladesh changed its position and argued that the maritime boundary should be based on the equitable principle and on friendship, rather than on the international legal procedures practiced by Western countries. It rejected the equidistance principle altogether, and even the modified one. Bangladesh then proposed a friendship line which Myanmar could not accept as it was not based on any principles of International Law. The proposed friendship line starts from the same midpoint but runs along 225 degrees for 80 nm and then turns to 190 degrees, which could allow Bangladesh to enjoy up to 350 nm as Continental Shelf. This would have taken away nearly 10,000 sq km from Myanmar's EEZ. Myanmar documents just mention the 225-80 nm-190 line as "the 1976 Bangladesh proposed line" and never referred to it as "the friendship line".

At the 6th round of talks in 1985, the Bangladesh delegation cited the applicability of the 1982 UNCLOS and stressed the principle of equality in delimitation of the maritime

boundary while completely rejecting a modified equidistance line. Both sides therefore could not find a common ground and the talks were suspended in 1986. (Iftexhar: “Bangladesh Fears Bitter Disputes with Burma and India over Maritime Boundary”) The bilateral negotiations failed due to the conflicting viewpoints between the two countries with Bangladesh wishing to resolve the issue on the basis of the “Equity principle” and Myanmar on the basis of “Equidistance principle”. Although Myanmar could sign the Maritime boundary agreement with India in 1986, it could not reach the agreement with Bangladesh until 2012.

The negotiations for the delimitation of the maritime boundary between the two countries were resumed in March 2008. The Delegations of Bangladesh and Myanmar held discussions on the delimitation of the maritime boundary between the two countries in Dhaka from 31 March to 1st April 2008. (Yusuf, Huma: “Bangladesh-Burma (Myanmar) maritime boundary dispute escalates”) On 1 April 2008, during the first round of the resumed discussions, the head of the Myanmar delegation, Commodore Maung Oo Lwin, and the head of the Bangladesh delegation, Mr M.A.K. Mahmood, Additional Foreign Secretary, signed the 2008 Agreed Minutes that reaffirmed the 1974 Agreed Minutes.

The second round of talks took place in Bagan, Myanmar, on 4 and 5 November 2008, after a naval stand-off between the two countries in early November. This was closely followed by a third meeting on 16-17 November, during Myanmar Deputy Foreign Minister U Maung Myint's visit to Dhaka. During the 16-17 November 2008 meeting, Bangladesh came up with a far more aggressive maritime claim. It drew a line running 180 degree from the most eastward point of the baseline, taking more than 18,000 sq km away from Myanmar. Myanmar argued that the 180 degree line does not conform to existing state practices and that it simply could not accept it. (Maung Shwe, Thomas: “Burma-Bangladesh border dispute set for UN hearing”) During the meeting, Bangladesh demanded Myanmar to restrict its survey and exploration activities to the east of the 180 degree line, which was claim by Bangladesh as its territorial waters and not to cross into Bangladesh territory until a maritime delimitation deal was signed. On the other hand, at this meeting, Myanmar proposed a sea corridor in the Bay. Bangladesh rejected the Myanmar’s offer and replied that equity principle should be the guiding method to settle the issue under the UN Convention on the 1982 Law of the Sea.(Haroon: “Bangladesh, Myanmar talk inconclusive”) Although both sides agreed to hold another round of technical meetings in January 2009, the fourth meeting actually took place only on 30 June 2009 in Nay Pyi Taw, between a Bangladesh delegation led by retired

Commodore Khurshed Alam and a Myanmar delegation led by Commodore Myo Myint Than.

While bilateral talks were taking place, Bangladesh on 8 October 2009, notified Myanmar that it sought to submit their maritime delimitation dispute to an Annex VII of the UNCLOS, Arbitral Tribunal, in order to secure the full and satisfactory delimitation of Bangladesh's maritime boundaries with [...] Myanmar in the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf in accordance with the international law". Myanmar government stated that the Bangladesh government proposed to the Myanmar government in October 2009 to settle the two countries' sea boundary dispute in accordance with the dispute settlement procedure under the United Nations Law of the Sea, which was agreed by the Myanmar government taking into account of the friendly relations between the two neighbors.

In order to deal with the proposal of Bangladesh, Special Work Leading Group inclusive of the Minister for Foreign Affairs as the chairman, the Minister for Transport as the vice-chairman and scholars, totaling 27 was formed according to Order No. 22/2009 of the government dated 29 October 2009 for settlement of Bangladesh-Myanmar maritime delimitation dispute. Also, a legal expert group led by the then Deputy Attorney-General Dr Tun Shin; a technical expert group led by Commodore Myo Myint Than of Panmawady Naval Region Command; and a management and supporting group led by Deputy Minister for Foreign Affairs U Maung Myint was formed. (*The New Light of Myanmar*, 4 October 2011, p.6) Instead of accepting Bangladesh's proposal to use Annex-VII of the UNCLOS, Arbitral Tribunal, to settle their dispute, Myanmar, On 4 November 2009, declared that it accepted the jurisdiction of the Annex-VI of the UNCLOS, International Tribunal for the Law of the Sea in relation to the dispute with Bangladesh. (Judgment of ITLOS, p.9)

A maritime delimitation case has been submitted to the International Tribunal for the Law of the Sea (ITLOS) for the first time. The dispute concerns the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal. The mechanism for determining most maritime delimitation disputes is set out in the United Nations Convention on the Law of the Sea (UNCLOS). Under Part XV of UNCLOS, States can agree upon one of three mechanisms for the determination of maritime delimitation disputes that cannot be settled through negotiation. Namely, they may choose to submit a dispute to (1) ITLOS, (2) the International Court of Justice (ICJ), or (3) arbitration under Annex VII of UNCLOS. ITLOS is an independent judicial body, based in Hamburg, established pursuant to Annex VI of UNCLOS as a specialized Tribunal to deal with disputes arising out of the

interpretation and application of UNCLOS. However, it is the first maritime delimitation case submitted to ITLOS. ITLOS has a standing body of 21 members to hear the case. Crucially, therefore, the parties will not have the opportunity to select an arbitral tribunal. However, because there is no currently serving member from either Bangladesh or Myanmar, each State would be entitled to choose a person to participate as an ad hoc judge for the purpose of hearing this case.

On 12 December 2009, Bangladesh also issued the declaration of its acceptance of the jurisdiction of ITLOS for the settlement of their dispute over the delimitation of maritime boundary between the two countries. Both sides decided that the ITLOS was only forum for the resolution of their dispute. On 13 December 2009, given their mutual consent to the jurisdiction of ITLOS, and in accordance with the provisions of UNCLOS Article 287(4), Bangladesh requested the ITLOS to exercise jurisdiction over their dispute. As Bangladesh submitted the proposal for the dispute to the International Tribunal for the Law of the Sea (ITLOS) on 13 December 2009, the ITLOS addressed it to Myanmar on 14 December 2009. Myanmar also agreed to appear at ITLOS.

Meanwhile, both sides continued holding bilateral talks on 8-9 January 2010, the fifth round of talk was held in Chittagong. Foreign Ministry additional Foreign Secretary M Khurshed Alam led a 13-member Bangladesh delegation and Deputy Foreign Minister U Maung Myint led a 12-member Myanmar delegation to the meeting. (“Bangladesh, Myanmar to resolve maritime dispute bilaterally”) Both sides agreed in principle to resolve their disputes on maritime boundary through bilateral negotiations, while maintaining balance between equidistance and equity methods. That means both methods would be applicable to demarcate the maritime boundary. (*The New Light of Myanmar*, 23 March 2012, p.1) Although the next round of talk was planned to be held in Myanmar in April 2010, the sixth round of talk at the technical level was held in Nay Pyi Taw on March 16-19, 2010. However, no agreement was reached between the two countries and bilateral negotiations on maritime boundary demarcation stopped since then. Therefore, the six rounds of talks held since early 2008 have failed to produce any mutually agreeable ground for delimitation. In the meantime, this oil and gas rich disputed maritime zone was a site of naval confrontation between the two countries in November 2008.

Besides claiming their demands through the official bilateral talks, Bangladesh used its media to persuade the political leaders of Myanmar to accept its demands. For example, Barrister Harun ur Rashid, Ambassador to the UN, Geneva, wrote several articles on the internet. In his article titled “Bangladesh-Myanmar maritime boundary”, while mentioning

“both the Articles 74 and 83 of the UNCLOS provide that the delimitation agreement on economic zone and continental shelf must achieve “equitable solution”, meaning justice and fairness must guide the negotiations leading to an equitable solution”, he urged the Myanmar political leaders to decide that “Bangladesh gets a fair and equitable share of the Economic Zone and Continental Shelf of the Bay of Bengal”. He urged:

“If the negotiations at the official level do not achieve agreement, I suggest negotiations may begin at a political level because at the political level, the government leaders look at the problem from a broader view of bilateral relations and are not confined to legal and technical niceties”. (Rashid, Barrister Harun ur: “Bangladesh-Myanmar maritime boundary”)

In another article titled “Bangladesh-Myanmar Maritime Boundary Talks: A Big Step Forward”, he also mentioned:

“In my view, Bangladesh’s concavity and heavily indented coastline, natural prolongation of its land territory to continental shelf, its scanty natural resources in proportion of the huge population, and the general orientation of the Bangladesh’s topography are some of the factors to be considered by Myanmar in determining the maritime boundary of Bangladesh to achieve an equitable solution, as contemplated by the UNCLOS”. ... “Another fact is to borne in mind that the claim in the areas in the Bay of Bengal constitutes about 10-12% of Myanmar’s but Bangladesh’s stake is 100% percent. Bangladesh should get a fair and just share of the continental shelf (sea bed) of the Bay of Bengal in terms of the UN Convention.” (Rashid, Barrister Harun ur: “Bangladesh-Myanmar Maritime Boundary Talks: A Big Step Forward”)

Bangladesh’s demand for equity principle to meet the peculiarities of its coast and Myanmar’s inflexibility about the application of equidistance method go largely to explain the deadlock. Beside the above mentioned factor, Dr Thura Oo explained why the Myanmar-Bangladesh bilateral negotiations failed. He said:

“Bangladesh demanded the water territory more than it deserves. If the demand has not been too much, Myanmar would not have made any complaint. But, Bangladesh demanded too much. That is the major reason why negotiations failed. At first, demarcation line claimed by Bangladesh went straight (180° line) to the South from near St. Martin Island. According to that line, Myanmar would lose most of its water territory. But, when Bangladesh submitted the case to ITLOS, the demarcation line it claimed was much interior than the said line and it gradually leans to the Southwest. Taking advantage of Myanmar’s political situation, Bangladesh claimed for unreasonable demarcation line, which offends Myanmar’s sovereignty.” (Interview with Dr. Thura Oo)

Apart from them, there are the other probable factors to explain the failure of their bilateral initiatives to resolve the dispute. They are:

First, both Bangladesh and Myanmar seemed to lack political will for resolving the issue. It may be mentioned that in Bangladesh, the country’s internal politics during the

period from the mid-70s to late 80s remained entangled in instability, chaos and confusion due to frequent changes in government. As a result, no comprehensive and effective strategy to deal with marine affairs of the country could be placed in force. Moreover, Bangladesh's concern during that period remained more focused on India with whom a number of contentious bilateral problems needed resolution including the most critical one over sharing of the waters of common rivers, in particular the Ganges. Also to be noted during the period is the complete lack of awareness of the common masses about the ocean and its use. In case of Myanmar, the BSPP, SLORC/SPDC governments, paid little heed to the maritime problem with its neighbor Bangladesh as the successive governments were busy with tackling the country's internal problems at several fronts. In the calculation of the SLORC/SPDC government, any concession given to Bangladesh could cause damage to the country's image and hence to the legitimacy of the government itself.

Secondly, the most serious effect on Bangladesh-Myanmar relations has been due to the Bengali illegal immigrant (Rohingya) issue since its eruption in 1978. There was a trust deficit in the bilateral relations between Bangladesh and Myanmar. With Bengali illegal immigrant (Rohingya) issue becoming a predominant one in their bilateral relations, the maritime issue practically received little or no priority in Myanmar official circle for a considerable period of time. According to the Bangladesh analysts, Bangladesh's plea that the North Sea case be followed in case of her maritime boundary demarcation failed to carry any favor in Myanmar government (Myanmar offered the sea corridor only in 16-17 November 2008 meeting). Disillusioned with Myanmar's rigid stance on the equidistance principle and that failure of bilateral talks, Bangladesh started pinning its hope on the international bodies as set by the UNCLOS III (Article 287) for resolving the maritime dispute between herself and Myanmar.

IV. The 2008 Naval Confrontation and Escalation of Tension in the Border Area

In terms of power generation, the three main sources of power in Bangladesh are coal, furnace oil and natural gas. Although Bangladesh has also excellent quality of coal, it is not enough. Indeed, Bangladesh had to import electricity from India and Bhutan. It hoped to be at least self-sufficient by 2015. Energy sufficiency would also require tapping offshore resources of natural gas in the Bay of Bengal. Petrobagla predicted that existing gas reserve would dry up by 2015 at the present rate of consumption unless new gas was discovered.

Bangladesh had raised objections when, in 2006, Myanmar floated an international tender for exploring offshore, accusing Myanmar of overlapping Bangladesh's territory.

When Bangladesh protested the Myanmar's exploration of gas in the Bay of Bengal in May 2006, Myanmar assured that it would never encroach into Bangladesh territorial water at any point of time. The Bay of Bengal has become very important to both countries, especially after Myanmar's discovery of 7 (tcf) gas in 2005-2006 (Alam, 2010, p.407). The disputed area could contain billions of dollars of undiscovered natural gas that these countries can finally access. Both countries have high hopes for natural gas in the disputed area (Shwe Gas, 2010, p.3).

As the country desperately required making new gas discoveries, in February 2008, Bangladesh divided its sea territory into 28 blocks and auctioned off the area to international oil companies as part of its efforts to end chronic gas shortages and to boost its economic growth (Yusuf, 2008, p.2). Bangladesh government awarded US oil company ConocoPhillips to explore deep sea block 10 and 11 and Irish company to explore deep sea block 5 for Gas and oil. Both India and Myanmar opposed the decision of Bangladesh to grant exploration rights to the two companies and claimed the three blocks overlapped their sea territories. Block AD-7 claimed by Myanmar is one of the three blocks granted by Bangladesh (Doza, 2009, p.3). However, Bangladesh could not sign Production Sharing Contracts (PSCs) with the bid winning two International Oil Companies (IOCs) even after three years of launching bidding round due to objections raised by India and Myanmar. For Bangladesh, maritime dispute with Myanmar was holding up its exploration in the sea.

On 2 November 2008, the Bangladesh government announced that on 1st November, its naval vessel, the Bangladesh Navy Ship (BNS) Nirvoy, detected the Myanmar navy escorting four drilling ships and a tug pulling the 100-metre-long drill rig Transocean legend in waters claimed by Bangladesh. The rig, owned and operated by the Swiss American offshore drilling firm Transocean was under contract to conduct exploratory drilling work for Korea's Daewoo International. Bangladesh accused of Myanmar had violating its sovereign maritime territory.

The next day, November 3, Bangladesh government in Dhaka summoned the Myanmar Ambassador U Phae Thann Oo to issue a strong protest and Bangladesh government, furious at the Myanmar government actions, responded by sending four of its own naval ships to the disputed area. The Bangladesh Navy had caught Transocean's rig and its Myanmar naval escorts in an area Myanmar had designated as the AD 7 offshore gas block. Immediately after the Bangladesh government went public with its complaints, forces from both sides mobilized along their shared land border (Maung Shwe, 2011, p.2). This escalated the maritime boundary dispute between Myanmar and Bangladesh. In return,

official from Myanmar Foreign Ministry said that Myanmar had formally lodged a complaint over an alleged intrusion of Bangladesh Navy boats. He said: “We will not stop our exploration activities, which are inside Myanmar waters. We have warned Bangladesh against the intrusion of their naval vessels into our territory”. The Burmese navy has also responded by alleging that the Bangladesh ships are trespassing in Burmese territory (Yusuf, 2008, p.3).

On November 5, Bangladesh’s Foreign Secretary (the Ministry of Foreign Affairs’ second-highest official) Md. Tohid Hossain led an official delegation to Yangon to try to resolve the maritime border dispute. Commodore (retired) Khurshed Alam, currently serving as an oceanography consultant to the Bangladesh Navy, the Commandore Habibur Rahman of the Bangladesh Navy accompanied the Foreign Secretary. The Bangladeshi delegation demanded the removal of the rig, while the Myanmar negotiators, led by Deputy Foreign Minister U Maung Myint, said emphatically the rig would remain in place at least until the 16-17 November 2008 talks. The delegation returned to Dhaka November 8 with little progress to report.

Myanmar government officially responded the Bangladeshi complaints in a defiant tone through the state-run newspaper, *the New Light of Myanmar* declaring that it would continue to operate in the disputed territory because Bangladeshi concerns were "mistaken and unlawful". The declaration in *New Light of Myanmar* dated on 7 November 2008, said : “Myanmar rejected the mistakenly made demand of Bangladesh”, and “With respect to its territories, the Government of the Union of Myanmar is taking measures in conformity with the international laws” (NLM, 2008, p.16). “In order to protect the interest of the country in line with the international laws, Myanmar will continue to do the work in Block No.AD-7 till its completion (Maung Shwe, 2011, p.3). However, on 8 November, 2008, Daewoo, Transocean and the Myanmar government withdrew their vessels. South Korean officials confirmed that the company was dismantling its operation. A statement issued by the Inter-Service Public Relations office of Bangladesh’s Defense Ministry, said: “Diplomatic endeavors and a strong presence by the Bangladesh navy resulted in the suspension of exploration by Myanmar in the disputed waters.

The Myanmar government intensified its military presence, particularly the artillery battalion in the border township of Maungdaw in Rakhine state and conducting extensive patrolling along bordering areas of Bangladesh by Myanmar Army. The Myanmar-Bangladesh border based journalists, at that time, at least 13 battalions of the Burmese Army have moved up to northern Rakhine state in Maungdaw Township. Bangladesh on November

8 placed its border guards on “red alert” in response to reports that Myanmar was bolstering its border forces. Forces from the Bangladesh Rifles (BDR) are on alert in the Bangladesh and Cox’s Bazar districts in Southeastern Bangladesh along the 300-kilometer hilly border with Myanmar (Shwe Gas, 2010, p.4). In 2009, Myanmar authority suddenly started erecting barbed wire fencing along Bangladesh and Myanmar border, mostly alongside the Naaf River. The Myanmar Authorities stated that the intention of undertaking of the project by their government was to contain terrorist activities, curb smuggling and drug trafficking etc. across the Myanmar-Bangladesh border area. Finally, through the bilateral meetings, the two countries in principle agreed that none of them would carry out any exploration work in the disputed waters until the issue was amicably settled at the UN level (Yusuf, 2008, p.3). Myanmar gave the reason why it decided to resolve the dispute at the UN level that it is a member of the UN and is obliged to settle the dispute peacefully. Therefore, it accepted the principle that the dispute between regional countries are to be settle in a peaceful way prescribed in chapter six of the UN Charter (NLM, 2011, p.9).

V. Resolution of the Dispute at the International Tribunal for the Law of the Sea

While bilateral talks were taking place, Bangladesh on 8 October 2009, notified Myanmar that it sought to submit their maritime delimitation dispute to an Annex VII of the UNCLOS, Arbitral Tribunal, in order to secure the full and satisfactory delimitation of Bangladesh’s maritime boundaries with [...] Myanmar in the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf in accordance with the international law” (Watkins, 2010, p.9). Myanmar government stated that the Bangladesh government proposed to the Myanmar government in October 2009 to settle the two countries’ sea boundary dispute in accordance with the dispute settlement procedure under the United Nations Law of the Sea, which was agreed by the Myanmar government taking into account of the friendly relations between the two neighbors (Wang, 2011, p.1).

In order to deal with the proposal of Bangladesh, Special Work Leading Group inclusive of the Minister for Foreign Affairs as the chairman, the Minister for Transport as the vice-chairman and scholars, totaling 27 was formed according to Order No. 22/2009 of the government dated 29 October 2009 for settlement of Bangladesh-Myanmar maritime delimitation dispute. Also, a legal expert group led by the then Deputy Attorney-General Dr Tun Shin; a technical expert group led by Commodore Myo Myint Than of Panmawady Naval Region Command; and a management and supporting group led by Deputy Minister for Foreign Affairs U Maung Myint was formed (NLM, 2011, p.6). Instead of accepting

Bangladesh's proposal to use Annex-VII of the UNCLOS, Arbitral Tribunal, to settle their dispute, Myanmar, On 4 November 2009, declared that it accepted the jurisdiction of the Annex-VI of the UNCLOS, International Tribunal for the Law of the Sea in relation to the dispute with Bangladesh (Judgment of ITLOS, 2012, p.10).

On 12 December 2009, Bangladesh also issued the declaration of its acceptance of the jurisdiction of ITLOS for the settlement of their dispute over the delimitation of maritime boundary between the two countries (Judgment of ITLOS, 2012, p.10). Both sides decided that the ITLOS was only forum for the resolution of their dispute. On 13 December 2009, given their mutual consent to the jurisdiction of ITLOS, and in accordance with the provisions of UNCLOS Article 287(4) (See Appendix-IX), Bangladesh requested the ITLOS to exercise jurisdiction over their dispute. As Bangladesh submitted the proposal for the dispute to the International Tribunal for the Law of the Sea (ITLOS) on 13 December 2009, the ITLOS addressed it to Myanmar on 14 December 2009. Myanmar also agreed to appear at ITLOS (Judgment of ITLOS, 2012, p.9).

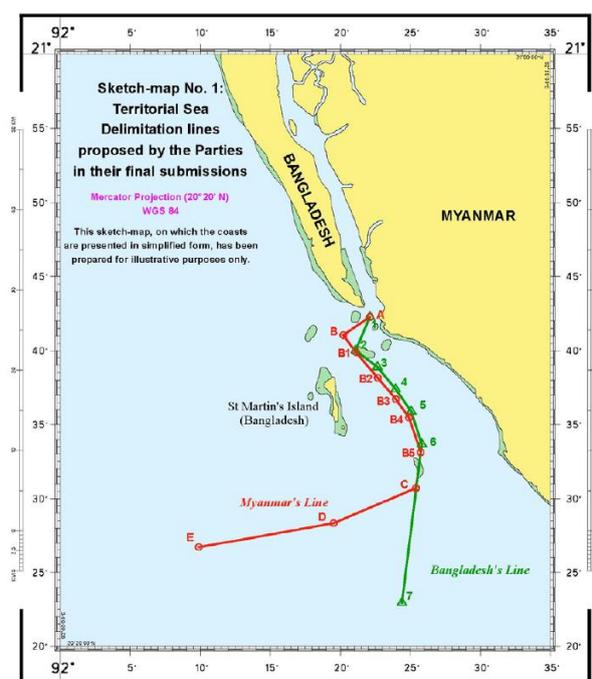
To resolve the dispute at the International Tribunal for the Law of the Sea (ITLOS), Myanmar sent the Union Attorney-General Dr Tun Shin as representative and Director-General Daw Hla Myo Nwe of Ministry of Foreign Affairs and Deputy-General U Kyaw San of Union Attorney-General Office as its representatives. On Bangladesh side, Minister for Foreign Affairs Ms Dipu Moni served as representative and Mr Md Khurshed Alam, Rear Admiral, Additional secretary, Ministry of Foreign Affairs as deputy representative. Both sides hired international legal experts and hydrographers. Myanmar hired experts, lawyers, counsel/advocate, law firm, hydrographers and cartography consultant.

The case involves two parts for hearing the case at the ITLOS. First part is the submission of Memorial and Counter Memorial. Bangladesh submitted its Memorial on 1 July 2010 and Myanmar submitted its Counter Memorial on 1 December 2010. Then, Bangladesh resubmitted its Reply on 15 March 2011 and Myanmar resubmitted its Rejoinder on 1 July 2011. Next, hearing the case started in the second part. Experts from both countries filed their petitions along with evidences, codes at the Tribunal from 8 September 2011 to 24 September 2011. The International Tribunal for the Law of the Sea delivers its judgment in the dispute concerning delimitation of the maritime boundary between Myanmar and Bangladesh in the Bay of Bengal, in Hamburg, on 14 March 2012 (NLM, 2012, p.1).

With regard to the delimitation of Territorial Sea, in its Memorial and its Reply, Bangladesh demanded the line stretching seven points as included in the agreed minutes of the 2nd Myanmar-Bangladesh Maritime Boundary Demarcation Meeting in 1974 and

reaffirmed in 2008. The line is from Point No.1 designated as Myanmar-East Pakistan (Bangladesh) regular Naaf River course boundary designated in 1966 stretching the middle points between Bangladesh's St. Martin Island and Myanmar coasts to Point No.7 between the 12th nautical mile arc to the southernmost of St. Martin Island and the 12th nautical mile arc from Myanmar's nearest coast (See Map-4) (NLM, 2012, p.4). Regarding the delimitation of Territorial Sea, in its Counter-Memorial and its Rejoinder, Myanmar requested the ITLOS to adjudge and declare that: the single maritime boundary between Myanmar and Bangladesh runs from Point A to Point G (See also Map-4) (Judgment of ITLOS, 2012, p.17).

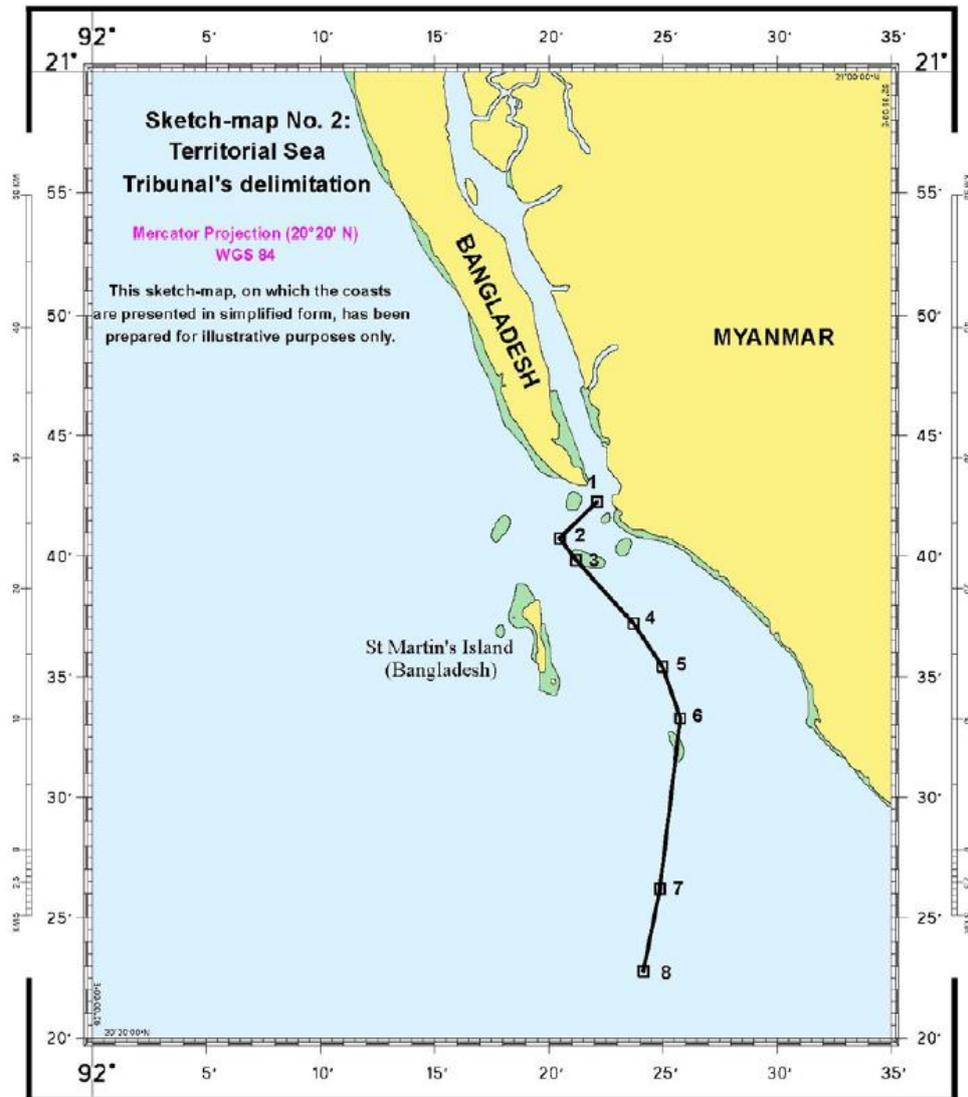
Map (4)



Source: International Tribunal for the Law of the Sea, 14 March 2012, p.54

For the delimitation of Territorial Sea, ITLOS drew the line starting from Point No .1 at the Naaf River mouth as included in Naaf River regular boundary agreement signed between Myanmar and East Pakistan (Now Bangladesh) in 1966. The continued line from Point No.1 was drawn as equidistance line or method between Bangladesh's St. Martin Island and the Myanmar coast. It is a continued line from Point No.2 to Point No.8, which meets the 12th mile arc of St. Martin Island and the 12th mile arc of the Myanmar coast (See Map-5) (NLM, 2012, p.5).

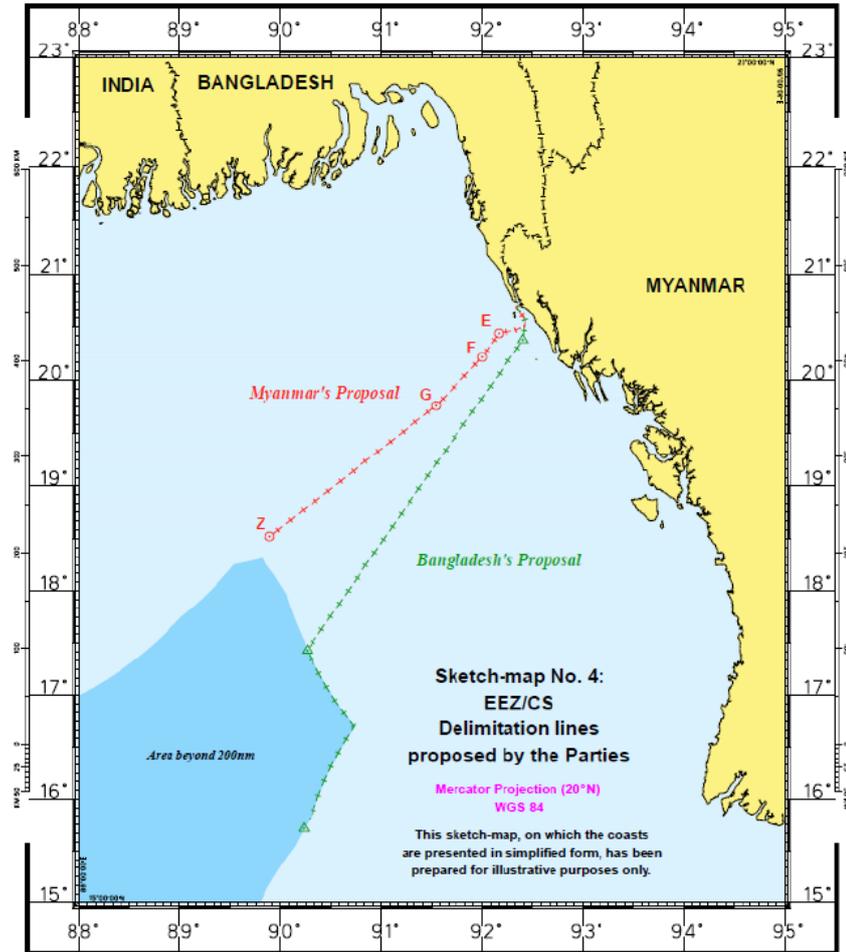
Map (5)



Source: International Tribunal for the Law of the Sea, 14 March 2012, p.57

In drawing EEZ and Continental Shelf boundary line, Bangladesh used the Angle bisector method. The 215° line obtained from bi-sectoring Haribhanga River middle point between India and Bangladesh and Naaf River middle point between Myanmar and Bangladesh and Bhiff Cape point in Rakhine Coast of Myanmar was shifted to point No.7 which is the end point of maritime boundary demanded by Bangladesh. The 215° line was changed into North Latitude 17° 25' 7" and East longitude 90° 15' 49.0". The line was marked along the 200 nautical mile coast of Myanmar and the end point was up to Point No.16 in Andaman Sea as agreed by Myanmar-India agreement (See Map-6) (NLM, 2012, p.4).

Map-6



Source: International Tribunal for the Law of the Sea, 14 March 2012, p.84

On the other hand, Myanmar argued that the ITLOS should use the Equidistance/Relevant Circumstances method. (See also Map-6) Bangladesh argument was rejected by the ITLOS which accepted that the equidistance/relevant circumstances method was appropriate in this case, as had been argued by Myanmar (Bahar, 2011, p.2). But, the ITLOS did not fully accept all of the arguments put forward by Myanmar on this point. The ITLOS stressed that it was not bound by the base points suggested by Myanmar in its proposed equidistance line and the ITLOS added its own base point to lead to a more equitable provisional equidistance line. Moreover, the ITLOS also rejected the argument of Myanmar that there were no relevant circumstances. Bangladesh had identified several possible relevant circumstances. The ITLOS accepted that it was necessary to adjust the equidistance line to take into account the concavity of the coast. But it denied the relevance of the other circumstances, put forward by Bangladesh, including the position of St. Martins

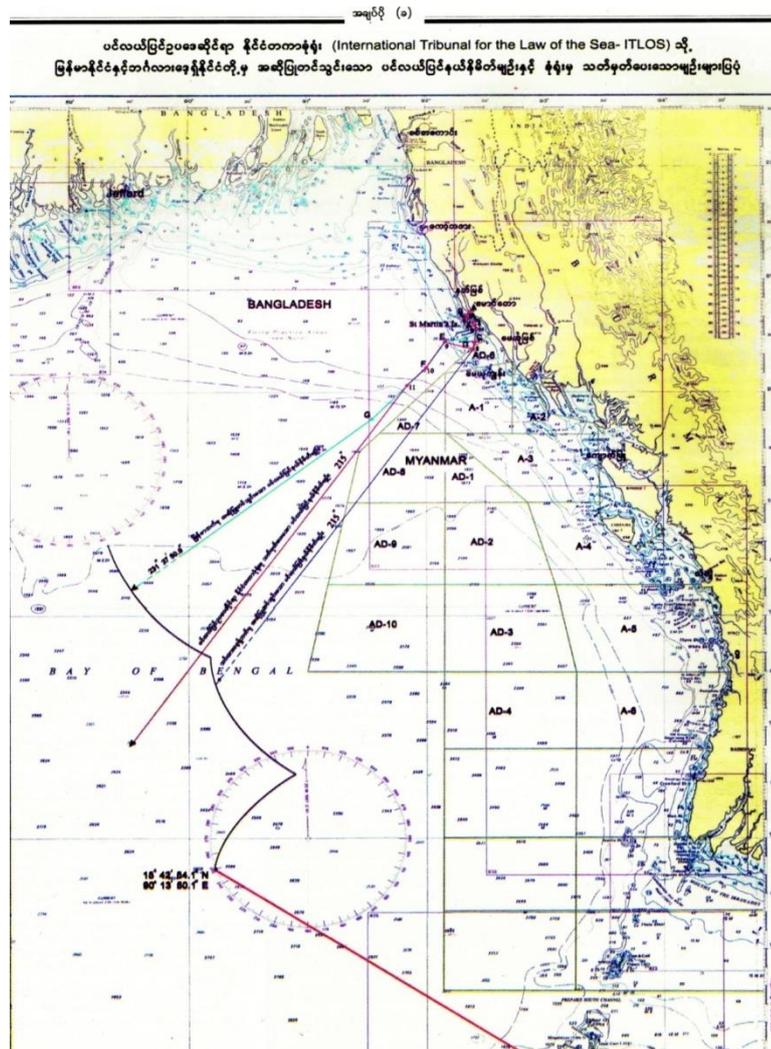
Island (subject to the sovereignty of Bangladesh) which was given no effect in the delimitation in relation to the single maritime boundary drawn for the Exclusive Economic Zone and Continental Shelf within 200 nautical miles.

As for Exclusive Economic Zone/ Continental Shelf boundary line, the equidistance line drawn by ITLOS is like the fundamental points submitted by Myanmar according to equidistance method. Point No.8 stretches to Point No.9 that touches 235° from Naaf River mouth drawn with equidistance method. ITLOS designated the maritime boundary line between St. Martin Island and Myanmar coast as the similar line claimed in Myanmar's rejoinder. It was drawn with a 12 mile circulate of the island (NLM, 2012, p.5). Point No.9 and Point No.10 are Point E and Point F of the line demanded in Myanmar's rejoinder. The ITLOS then chose the point No.11 to continue from point No.10. In order to find the equitable solution and to remedy the cut-off effect at No.11, the line was drawn with 215° line in considering that the middle one of the three parallel coastal countries(in this case, Bangladesh) can become land-locked if its coast is concave (See Map-7).

After maritime boundary lines had been fixed, the bilateral area ratio was analyzed in comparison with the coastal length ratio. Bangladesh claimed that its relevant coast is from Haribhanga River middle point between India and Bangladesh and Naaf River middle point between Myanmar and Bangladesh and that the line is 348.5kilometers long. It is stated that Myanmar's coastal length is from Naaf River mouth to Bhiff Cape which is only a half of Rakhine coastal length and that it is 369 kilometers long. The two lengths were proportioned and the ratio of Bangladesh's coastal length is 1:1.06. Bangladesh coastal area is 69717 square kilometers while Myanmar coastal area is 86931 square kilometers. The area ratio between Bangladesh and Myanmar is 1:1.25. As it is not much different from the coastal ratio 1:1.06, it is stated that the demanded line is fair and just according to the proportionality test (NLM, 2012, p.4).

In Myanmar's claim, the Bangladesh coastal line was demarcated in four sections. The two inner sections-the right and left coasts of the basin-which meet face to face were not taken into consideration as it did not affect the dividing of the maritime boundary. So, the total length is 364 kilometers. The Myanmar coastal length is 740 kilometers from the Naaf River mouth to Cape Negaris near Mawtinsoon. The coastal ratio between Bangladesh and Myanmar is 1:2.03. In the relevant area claimed by Myanmar, the area Bangladesh has received is 80406 square kilometers while the area Myanmar has received is 156133 square kilometers. The area ratio is 1:1.94 so it is not different from the length ratio. It was therefore decided the boundary line was not required to be adjusted (NLM, 2012, p.5).

Map-7



Source: The New Light of Myanmar, 16.3.2012

The ITLOS, in demarcating the coast for the two nations, has allowed 413 kilometers for Bangladesh and 587 kilometers for Myanmar. The coastal area ratio between Bangladesh and Myanmar fixed by the ITLOS is 1:1.42. Bangladesh gets 111631 square kilometers and Myanmar gets 171832 square kilometers according to the demarcation line in the area arbitrated by the ITLOS. The ITLOS demarcated Myanmar's coastal area to Cape Negrais in proportionality test as demanded by Myanmar. It did not agree the proposed demarcation of Bangladesh. According to the decision of the ITLOS, is the coastal length ratio between Bangladesh and Myanmar is 1:1.42 and the coastal area ratio allowed is 1:1.54 (NLM, 2012, p.6).

VI. Conclusion

Although the demarcation of land and river boundary was settled through the bilateral negotiation between the two countries, the maritime boundary demarcation was settled at the International Tribunal for the Law of the Sea. The maritime boundary delimitation in the Bay of Bengal is a long running dispute between Myanmar and Bangladesh. The motives behind the delimitation of the maritime boundary between Bangladesh and Myanmar stemmed from both countries' strong prospects for newly accessible gas in the overlapping claimed areas. The main difficulty on maritime boundary delimitation between Bangladesh and Myanmar centered on Bangladesh's view of using "equity principle" whereas the Myanmar government proposed the equidistance line in demarcating the sea boundary. Both sides tried to settle the issue through bilateral talks but could not reach any common agreement and the issue led to the brink of open war when the naval stand-off in the Bay of Bengal in November 2008. However, based on the principles of their foreign policy, the two countries agreed to resolve the issue peacefully at the UN level.

References

- "Agree on demarcation following both equidistance and equity of resources", *Dhaka, Yangon narrow gap on sea boundary*, 2010 <<http://www.thedailystar.net/newDesign/news-details.php?nid.121235>>,
- Ahmed, Iftkhar : "Narinjara News", 2006, <<http://www.indoburmanews.net/archives-1/archive06/archive06-apr/14>>
- Alam, Khurshed : "Commodore Md: Maritime Security of Bangladesh: Traditional Issues Impinging on Maritime Boundary Delimitation", 12 Feb, 2009, BISS, Dhaka,
- Alam, M.Shah : *The Delimitation of Bangladesh's Maritime Boundaries with India and Myanmar: Prospects for a Solution*, University of Chittagong, Nijhoff Publishers, Bangladesh, March 2010
- Alam, Shah : *The International Journal of Marine and Coastal Law*, 2010
- Azad, Abul Kalam, Dr. : "Territorial Issues in Asia Drivers, Instruments, Ways Forward", *7th Berlin Conference on Asian Security (BCAS)*, Bangladesh, Kornard Adenauer Stiftung,
- Bahar, Abid : "Who Won in Bay of Bengal? Hasina!", Apr 2, 2012, <<http://internationallawobserver.eu/2012/03/15/judgment-in-bangladesh-myanmar-maritime-boundary-dispute/>>
- "Bangladesh: Myanmar suspends gas exploration in disputed waters", 6 November 2008, <agonist.org/.../Myanmar>
- "Bangladesh-Burma Relations", *Foreign relations of Burma*, 22 Jun 2011 <en.wikipedia.org/wiki/Foreign-relations_of_Burma>
- Bateman, Sam : "Bay of Bengal: A New Sea of Troubles", Rajaratnam School of International Studies (RSIS) COMMENTARY

- TARIES, Singapore, 21 May 2010, <www.rsis.edu.sg/publications/Perspective/RSIS0502010pdf>,
 Belal, Abu Syed Muhammad : “Maritime Boundary of Bangladesh: Is Our Sea Lost?,” Bangladesh Institute of Peace and Security Studies Focus, 2011, Dhaka <www.bipss.org.bd/download/mb.bd.pdf>
 Chowdhury, Shahidul Islam : “Bangladesh Myanmar maritime Boundary”, Jan. 10, 2011 <www.balgnadesh-web.com/view.php?hidRecord-340135 Cached>
 Doza, A.B.M Shamsud : “Bangladesh’s Maritime Claim, 2011”, 2011 <saypp.org/ResearchCarnerUphold/4-maritime/20claim.doc>
 Latham & Watkins : “Bangladesh and Myanmar Submit the First Maritime Delimitation Case to be Heard by the International Tribunal for the Law of the Sea”, *Client Alert*, 20 January 2010, <www.lw.com/upload/pubContent/pdf/pub3344-1-pdf>
 “Maritime dispute between Bangladesh and Myanmar”, Shwe Gas Movement, July 18, 2010 <www.shwe.org/.../maritime-dispute-between-bangladesh-and-myanmar/>
 “Maritime Tensions between Bangladesh and Burma Continue”, Dhaka, <<http://wikileaks.org/cable/2008/11/08DHAKA1157.html>>, September 2011
 Maung Shwe, Thomas : “Burma-Bangladesh, border dispute set for UN hearing”, 29 August 2011, <www.mizzima.com>
 Michael : “Myanmar will never encroach on Bangladesh territorial waters”, *The News Today*, 22 May 2006
 Shah Alam, M and Al Faruque, A : “The Problem of Delimitation of Bangladesh’s Maritime Boundaries with India and Myanmar: Prospects for a solution”, *The International Journal of Marine and Coastal Law* 25 (2010), *Martinus Nijhoff, Bangladesh, 2010*
 Yusuf, Huma : “Bangladesh-Burma(Myanmar) maritime boundary dispute escalates”, 4 November 2008, <www.csmonitor.com/World/terrorism.../p99s01-duts.html>
 International Tribunal For The Law Of The Sea, Dispute Concerning Delimitation Of The Maritime Boundary Between Bangladesh And Myanmar In The Bay Of Bengal, Judgment, List of cases: No. 16, 14 March 2012
 Interview with Dr Thura Oo, 9 June 2013
 The Territorial Waters And Maritime Zones Act, 1974 (*ACT No. XXVI of 1974*), Bangladesh
The News Light of Myanmar, December 2002, March 2003, April 2004, October 2008, November 2008, May 2009, August 2011, September 2011, October 2011, December 2011, March 2012, July, 2012, August 2012, October 2012, Yangon, Ministry of Information, the News and Periodicals Enterprise
 The Law of the Sea : Burma-National Legislation with Illustrative Maps, 1989, The United Nations
<http://www.un.org/Depts/log/LEGISLATIONANDTREATIES/PDFFILES/BGD>
<http://www.kaladanpress.org>