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THE CONTINENTAL SHELF : A STUDY WITH REFERENCE TO THE BANGLADESH—INDIA SITUATION

Introduction

The present approach is to deal with the continental shelf in the Bay of Bengal adjoining Bangladesh and India. The continental shelf in the Bay of Bengal extends to a significant extent. So far it reaches near Sri Lanka and the Andaman and Nicobar Group of Islands (India). In the case of adjacent states each and every sea zone requires to be delimited from the end of the land boundary to the outer edge of the zone concerned. Still Bangladesh and India have not reached an agreement on the delimitation of maritime zones such as the territorial sea, the exclusive economic zone (EEZ) and the continental shelf¹. The study will discuss the problems of the delimitation of the continental shelf between the two

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1. The delimitation of maritime zones creates a conflict between Bangladesh and its neighbours. Disagreement arose mainly with India when the Bangladesh government in 1974 signed contracts to share production with six oil companies, granting them oil and natural gas exploration rights in its territorial waters in the Bay of Bengal. See *The Bangladesh Observer* (Dacca), 9 May 1977; *White Paper on the South Talpatty by the Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh* (Dhaka), 26 May 1981; M. Habibur Rahman, 'Delimitation of Maritime boundaries : A Survey of Problems in the Bangladesh Case', 24 (1984) December *Asian Survey* (University of California), p. 1308.

countries. Furthermore, it will aim at dealing with the problems arising out of the new-born islands in the continental shelf through the international customary law and the law of the sea conventions. In the discussion it will also review the enactments of the two countries on the regime of the continental shelf. Finally, an emphasis will be given on the necessity of the delimitation of the shelf between the two adjoining countries.

Conventional Aspect

The regime of the continental shelf internationally first came into being in the Geneva Convention on the Continental Shelf 1958². As time passed, states adopted the convention provisions in their enactments. In addition to the convention provisions some states substantiated the continental shelf as part of the territory³. Whatever it may be, the United Nations Convention on the Law of the Sea 1982 (LOS Convention)⁴ has given rise to a new regime on the continental shelf⁵. Within the 200-nautical mile (n.m) sea zone measured from the baselines from which the breadth of the territorial sea is measured, the continental shelf cannot have an entity to its entirety. The continental shelf in the 200 n.m sea zone is subsumed in the regime of the EEZ. If the continental shelf is assumed to have a separate entity it should then be considered beyond 200 n.m EEZ. In the presence of the EEZ, the regime of the continental shelf is applicable to the seabed and subsoil beyond 200 n.m. The regime of the continental shelf is then not applicable in the seas enclosed by 200 n.m zone measured from the baselines of the coastal states.

2. UNDoc.A/CONF. 13/L.55.

3. M. Habibur Rahman, "The Impact of the Law of the Sea Convention on the Regime for Islands : Problems for the Coastal State in Asserting Claims to "New-Born" Islands in Maritime Zones", 34 (1985) *International and Comparative Law Quarterly* (London) 373.

4. UNDoc.A/CONF.62/122 of 7 October 1982.

5. See Art 76, LoS Convention.

The LOS Convention seems not open-ended as to the outer edge of the continental shelf. In the case where the continental margin extends beyond 200 n.m the coastal state is not free to extend the seabed jurisdiction⁶. This state requires to extend the continental

6. In this case the coastal state is required to comply with paragraphs 4-8 of Art 76 of the LOS Convention. That is to say: "4(a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either : (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope. (b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined at the point of maximum change in the gradient at its base.

The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4 (a) (i) and (i), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 25,00 metre isobath, which is a line connecting the depth of 2,500 metres.

Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by co-ordinates of latitude and longitude.

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

margin subject to the delineation of the foot of the slope under paragraphs (a) and (b) of Article 75⁷. Where the continental slope extends more than 200 n.m from the baselines the outer edge of the shelf is to be effected subject to paragraph 8 of the article. Whatever it may be, the LOS Convention appears to have imposed some restrictions on the coastal state towards the extent of the continental shelf. However, it cannot be said that there is no opening for the coastal state to exercise unscrupulous attempts to extend the continental shelf.

If the provisions on the delineation of the foot of the continental slope are taken into account, the coastal state is very much free to apply the provisions. In other words, it is the coastal state which alone is entitled to delineate the foot of the slope with a view to fixing the outer edge of the continental margin. The LOS Convention does not forbid the coastal state to exercise sovereign rights for delineating the foot of the slope and the outer edge of the margin. Pursuant to this it may not be uncommon that the coastal state will usually prefer the continental shelf to its maximum limit. This state will not fall back to ignore the provisions applicable to the delineation of the foot of the slope if it cannot extend 350 n.m from the baselines or 100 n.m from the 2,500 metre isobath.

Unless restricted by geographical constraints the coastal state will usually adopt the 350 n.m or 2,500 metre isobath cum 100 n.m limit for the extent of the continental shelf. If this limit is made binding on the coastal state, questions arise as to the limit of the continental shelf in the seas where the shelf extends as far as 800 miles. Certainly, the coastal states bordering on these seas as per the LOS Convention provisions require to limit the shelf to 350 n.m or 100 n.m reckoning from 2,500 metre isobath or to the extent determined by the Commission on the Outer Limit of the Continental Shelf⁸. So far paragraph 8 of Article 76 of the LOS Convention

7. *Ibid.*

8. *Ibid.*

is concerned, equity has been taken into account for the delineation of the outer edge of the continental shelf beyond 200 n.m. To what extent equity is effective to limit the continental shelf, it would not be unreal if those states do not cut short the extent of the continental shelf. That means, the states which already have been following the continental shelf extending even to 800 n.m will not agree to cut it short. Practical application of the LOS provisions relating to the outer edge of the continental shelf will then be in question. So long the states will not ratify the LOS Convention there is no scope to take action against those states.

From this observation it is noticeable that the regime of the continental shelf cannot uniformly be applicable. Anyway, the very aspect of the LOS Convention is to make its provisions applicable to the states and in so doing the Convention aims at a regulated system on the regime of the continental shelf.

Acquaintances with the Continental Shelf in the Bay of Bengal

The continental shelf in the Bay of Bengal adjoining Bangladesh and India is quite extensive and, therefore warrants delimitation. The Bay of Bengal varies greatly. Its sediments, at 16.5 km are as thick as any in the world⁹. The entire territory of Bangladesh is a monsoon area—a low-lying plain- and monsoon rains can fragment soil components, which along with sediment-carrying mountain rivers and tidal surges, cause the enormous deposits in the Bay.

The Bay of Bengal has an area of about 879, 375 square miles, and its mean depth is 2,586 metres. The continental slope terminates at less than 3,000 metres depth. To the west of the Bay are the Indian states of West Bengal and Orissa, on its southern part is Sri Lanka, and to the east lies Burma. To the south of Burma and also in the Bay, are the Indian Andaman and Nicobar islands. Geologically, these rocky and hilly islands are regarded as the submerged

9. Francis P. Shepard, *Submarine Geology* (1973), third edition (New York : Harper & Row), pp 334, 418.

continuation of the outer fold ranges of the Arakan Yoma of Burma¹⁰. To the north and east lies Bangladesh.

The Ganges-Brahmaputra Delta of the Bengal located at the combined mouths of the Ganges and Brahmaputra rivers is a subject important to both Bangladesh and India in respect of the continental shelf. Huge quantities of sediments are brought in by rivers from the Himalayas and other high Mountain ranges to the north¹¹. The continental shelf/margin extends from the Bangladesh coast and ends near Sri Lanka and Andaman. Thus it is a matter of concern and importance not only to Bangladesh and India but also to Sri Lanka, and indeed Burma. As neighbouring states, they have an interest in the delimitation of the sea zones in the Bay, but this has been made extremely difficult by the peculiar topography of the Bay. In Shepard's words:¹²

There appears to be no place in the deep ocean where the topography has been so influenced by deposition coming from the adjacent land as in the Bay of Bengal. The gently sloping plain, extending for 2,000 km from the slope base off the great Ganges-Brahmaputra Delta to the 5,000-m contour far south of Ceylon, is unique.

Further, the Bay is neither a closed one nor a Bay that fits the semi-circle criteria¹³. It is not a historic Bay and therefore no coastal state can claim territorial rights to it¹⁴.

10. F.J. Monkhouse, *Principles of Physical Geography* (1972), fourth edition (London University Press) p. 342.
11. M. Habibur Rahman, "Assertion of claims by Bangladesh to Newly Formed Offshore Islands", (1985) *Lawasia* (New south Wales Institute of Technology Sydney), pp. 166, 167.
12. Shepard, *op. cit.*, p. 397.
13. According to Art 10 (2) of the LOS Convention: "a bay is well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation".
14. C. J. Colombos, *The International Law of the Sea* (1972), sixth edition (Longmans) p. 185.

As adjacent coastal states Bangladesh and India require to delimit the continental shelf extending from the end of their land boundary to the outer edge of the continental margin. The continental shelf/margin extending from the coast of these countries exceeds 200 n.m and as such it is necessary for them to delineate the outer edge of the continental shelf/margin.

The continental shelf prolongating from the Bangladesh coast in the Bay of Bengal is about 340 miles in length and its area about 2,02,000 square miles. The shelf is abundant in fish reserve, sea weeds and natural resources. It is assumed that the resources of the Bay of Bengal would meet the needs of the littoral states for centuries¹⁵. It is the resources of the Bay of Bengal on which is depending the future of these states. For survival it is Bangladesh which must run in quest of the resources wherever available. There is no alternative for Bangladesh but to aim at exploring and exploiting the sea resources.

Aspects of Statutory Provisions

Bangladesh and India participated actively in the proceedings of the Third United Nations Conference on the Law of the Sea. Both the countries have signed the LOS Convention. Still they have not ratified the Convention. They have enacted provisions for the regime of the seas mainly in the light of the LOS Convention. In addition, provisions have been made for the preservation of national interests. According to the Bangladesh enactment¹⁶ the continental shelf comprises:

- (a) the seabed and subsoil of the submarine areas adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor; and

15. Shepard, *op. cit.*, p. 168.

16. E. g. The Territorial Waters and Maritime Zones Act (No. XXVI) 1974. Section 7 of this enactment deals with the continental shelf.

(b) the seabed and subsoil of the analogous submarine areas adjacent to the coasts of any island, rock or any composite group thereof constituting part of the territory of Bangladesh.

The definition of the continental shelf is related with the continental margin from whose outer edge the abyssal floor begins. This points to the fact that the regime of the continental shelf for Bangladesh concerns with the seabed and subsoil amounting to the continental margin. It includes not only the geological shelf but also the slope and the rises as well¹⁷. The regime of the continental shelf is equally applicable to the mainland, island and the rock or any composite group thereof. In other words Bangladesh, as to its island, rock or any composite group thereof, is entitled to exercise the regime of the continental shelf, as entitled in the case of its mainland.

The Bangladesh enactment is not specific to the regime of the continental shelf in the sense that there is no reference of the EEZ.

17. According to the gradient the seabed having resemblance more or less to the land mass of the coastal state is divided into three folds. The first one is the continental shelf which geologically resembles very much to the land mass of the coastal state. The second one is the continental slope and the third, the continental rise. The continental margin consists of the continental shelf, slope and rise. Beyond the continental margin there exists the abyssal floor in the world oceans. See K. O. Mery, "Geological Aspects of Sea-Floor Sovereignty", in L. M. Alexander (ed), *The Law of the Sea : Offshore Boundaries and Zones* (Proceedings of the First Annual Conference of the Law of the Sea Institute, Rhode Island, 1966), 1967, 150.

The continental shelf of a coastal state is the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of continental margin, or to a distance of 200 n.m from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up that distance. The continental margin is the submerged prolongation of the seabed and subsoil of the land mass of the coastal state and consists of the seabed and subsoil of the shelf, the slope, and the rise; it does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

It is not said in the enactment about the continental shelf not extending up to 200 n.m from the baselines. As far as the LOS Convention is concerned, every coastal state is entitled to exercise the continental shelf up to 200 n.m where the shelf does not extend to this extent¹⁸. It may be argued that at the time while the enactment came into being there was no reference for providing provisions to that end. Because at that time the regime of the EEZ was not formulated as the present form. However, fairly long time has elapsed since the adoption of the enactment. The country by this time could provide provisions for the continental shelf out of the LOS Convention, state practices and judicial decisions. It may be mentioned that Bangladesh could maintain the trend of its predecessor-Pakistan which has been following the continental shelf as part of the territory. Though there is no provision in the LOS Convention enabling the coastal state to substantiate the continental shelf as part of the territory but there is no restriction for this state to enact provision to that end.

Sovereignty over the continental shelf has been claimed explicitly in some proclamations, such as those of Australia (1955), Bahamas (1948), Chile (1947), Costa Rica (1948), Honduras (1950) Jamaica (1948), Korea (1952), Mexico (1945), Nicaragua (1950), Pakistan (1950), and the then British Protected Arab Sheikdoms (1949).¹⁹ All those proclamations aimed to assert claims to the seabed and subsoil as part of the coastal state.

The least developed Bangladesh still lacks the required capital, technology and expertise for exploring the continental shelf and exploiting the mineral resources of the shelf. But as a coastal state Bangladesh cannot help complying with the LOS Convention in connection with the regime of the continental shelf. There is then no conflict of Bangladesh with the aims and objectives of the LOS

18. LOS Convention, Art 76 (1).

19. Abu Dhabi, Ajman, Bahrain, Dubai, Kuwait, Ras-el-Khaimah, Sharja and and Umm al Qaywayn.

Convention. Bangladesh is in problem as to the delimitation of sea zones with her neighbours. Islands are coming up in the Bay of Bengal particularly in the maritime zones of Bangladesh and its neighbours. There is a great scope in the days to come for islands to emerge in the Bay of Bengal adjoining these states. Because of having no agreed sea boundary between Bangladesh and India problems are arising on the ownership of "new-born" Islands in the maritime zones²⁰.

As regards the continental shelf the Indian enactment says: ²¹

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline... where the outer edge of the continental margin does not extend up to that distance.

This definition is at par with Article 76 of the LOS Convention. Basically, India regards the continental shelf as the prolongation of its land territory. Where the continental shelf does not extend to 200 n.m the country is entitled to consider it as extending up to 200 n.m limit. The definition of the continental shelf as provided in the Indian enactment is much more specific than that of as in the Bangladesh one. It is also followed that "India has and always had, full and exclusive rights in respect of its continental shelf"²². That means, there is no ambiguity as to the rights of the country arising out of the regime of the continental shelf. Conventionally, every

20. M. Habibur Rahman, "Bangladesh and India, Their Approaches to the Law of the Sea and the Issues of Conflict involved in the Delimitation of Sea Zones between Them", (Part A) XII (1984) *The Rajshahi University Studies* 107, 108.

21. E. g. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (No. 80 of 1276). Section of this enactment deals with continental shelf.

22. *Ibid*, para 2 of the section.

coastal state is entitled to the exploration of the continental shelf and the exploitation of its mineral resources. The Indian enactment is very much specific for the exercise of such rights. But it is a question whether the continental shelf is taken as part of the country. So far the enactment is concerned, the continental shelf cannot be regarded as part of the territory of India.

Whatever be the provisions the Bangladesh and the Indian enactments are practically aimed at complying with the LOS Convention provisions.

Problems for Prescribing the Continental Shelf

It is natural for every state to secure its own interests. The assumption is true to the states individually and collectively. As noted the concave configuration of the Bangladesh coast has put the country into problems for the delimitation of the sea zones against the convex configuration coastal state India. The underwater situation is also too much complicated. The complications are arising particularly out of the emergence of island and other formations in the Bay of Bengal.

The LOS Convention has provided provisions for the regime of islands in its Article 121. This article is practically applicable to islands which are already sovereign states or part of a sovereign state. According to this article an island is entitled to prescribe the sea zones such as the territorial sea, the contiguous zone, the EEZ and the continental shelf. In order to prescribe the EEZ or the continental shelf, rocks need sustaining human habitation or economic life of their own. Whatever it may be, the article cannot be applicable to the assertion of "new-born" islands. The regime for "new-born" islands is subject to international customary law.

If any formations rise in rivers or lakes or within the territorial sea, they are, according to the law of nations, considered to be the neighbouring land. No other state can overlap the claim of that

state. However, islands may be formed in the coastal sea out of alluvial deposits brought down by rivers flowing through the territory of the neighbouring coastal state. That coastal state may therefore have some interest in the substance of such a formation²³.

The basis of claims over islands in the territorial sea is the exercise of sovereignty in that sea. But, if the island emerge on the high seas outside the territorial sea, they belong to no state and may be acquired through occupation on the part of any state²⁴. However, there may be valid grounds for the adjoining coastal state to assert claims to the islands formed beyond the territorial sea but the claims cannot be unqualified if this state has no control over the island. The fact is that it is necessary for the adjoining coastal state to occupy the island effectively.²⁵

Whose is the island if it is formed in the EEZ or on the continental shelf? Neither the regime of the EEZ, nor of the continental shelf, nor of the islands can answer to this question. If the coastal state is only entitled to ownership of islands which emerge in the territorial sea, then islands emerging in the EEZ or on the continental shelf will be as if they were in the high seas. No state then can claim islands which have so emerged unless it can occupy them effectively. It signifies that the position of the coastal state concerned is equal to that of any other state.

The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional²⁶. But, if an island which has surfaced in the continental shelf were occupied by a foreign state, that state would have sovereign rights under the regime

23. See M. Habibur Rahman in the above notes at pp. 370, 371.

24. See *Legal Status of Western Greenland* (1933) P. C.I.J. Series A/B, No. 53; 3W.C.R. 151; L.C. Green, *International Law Through the Cases* (1959), edition (Stevens & Sons) 127-139; *The Island of Palmas Case* (1928) Permanent Court of Arbitration, No. XIX; 2 H.C.R. 83; L. C. Green at 349-363.

25. *Ibid*; Lauterpacht (ed), *Oppenheim's International Law—A Treatise* (1963), Vol. 1 (Longmans), p. 565.

26. LOS Convention, Art 77 (3).

of the continental shelf. The coastal state could not claim such rights unless the island was acquired by "occupation". For such islands, it seems that the "occupation" criterion is applicable in the regime of the continental shelf.

Where the ownership of "new-born" islands in the sea zone beyond the territorial sea is subject to "occupation", there is then little chance for a small and weak state to assert claims to such islands against a big and strong state. Under the circumstances, it is not feasible for the small and weak Bangladesh to assert claims to the "new-born" island "by occupation" against the big and strong India. If India is serious to the ownership of the "new-born" island in the sea zones beyond the territorial sea, it is nothing but a provocation for Bangladesh to face the challenge. Though already mentioned but at this stage it is appropriate to state again that the LOS Convention fails to deal with the proposition of establishing right by might.

How to Effect the Delimitation

The delimitation of the continental shelf between two adjacent states is to be effected from the end of their land boundary to the outer edge of the shelf. In the Bangladesh and India case, the sea boundary requires to extend from the end of their land boundary to the outer edge of the continental margin. The continental shelf extending from the coast of Bangladesh reaches near Sri Lanka and the Andaman Island (India) too. Where the continental shelf extending to 800 miles is still within the jurisdiction of the coastal state concerned, and if the LOS Convention cannot be made binding to such a state to limit the shelf to the conventional limit there is then little possibility to make the Convention binding on a state from whose coast the shelf extends exceeding 350 n.m or 100 n.m from the 2,500 metre isobath²⁷.

27. *Ib'd*, Art 76(5).

The distance between Bangladesh and the Andaman Island is nearly 500 miles. Almost in the entire region of this sea zone there is the existence of the continental shelf/margin. Though Bangladesh can recall this shelf/margin as the natural prolongation of its territory but this state cannot be the only claimant to it. Not only as an adjacent coastal state but also in consideration of the Andaman Island India is a sea neighbour opposite to Bangladesh. Practically speaking, it is Bangladesh which requires continental shelf to be delimited with India as adjacent and opposite coastal state. Because of the Andaman and Nicobar Islands India is a sea neighbour opposite to Burma, Indonesia and Sri Lanka as well. India is in a favourable position for such islands.

In the matter of the delimitation of the continental shelf Bangladesh has to face India as adjacent and opposite coastal state and Burma as an adjacent state. It seems that there are three sea neighbours which must be taken into account by Bangladesh in connection with the delimitation of the continental shelf.

So far the Bangladesh enactment is concerned, there are no provisions applicable to the delimitation of the continental shelf between states whose coasts lie adjacent or opposite to each other. But the Indian enactment is exhaustive in the sense that it embodies provisions applicable to the delimitation of maritime boundaries between opposite or adjacent states. According to this enactment²⁸.

The maritime boundaries between India and any State whose coast is opposite or adjacent to that of India in regard to their respective territorial waters, contiguous zones, continental shelves, exclusive economic zones and other maritime zones shall be as determined by agreement (whether entered into before or after the commencement of this section) between India and such State and pending such agreement between India and any such State, and unless any other provisional arrangements agreed to between them, the maritime boundaries

28. S. 9 (1).

between India and such State shall not extend beyond the line every point of which is equidistant from the nearest point from which the breadth of the territorial waters of India and of such State are measured.

It signifies that the delimitation of the sea zones between India and other states whose coasts are opposite or adjacent to each other is to be effected by agreement. There is no hard and fast rule for the application of the principle either the equidistance or the equitable principle in the delimitation of maritime boundaries²⁹. Whatever is enshrined in the agreement the text aims not to overrule it. However, there is to some extent specification of equidistance principle. But this principle is applicable only where there is no agreement between India and any state, and unless any other provisional arrangements are agreed to between them, the maritime boundaries between India and such state shall not extend beyond the line every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial waters of India and of such state are measured. It seems that where there is no agreement on the delimitation of maritime boundaries no state in the delimitation concerned is entitled to extend the boundary beyond the equidistance line. Until there is an agreement the delimitation of maritime boundaries requires to be effected by equidistance principle. This principle appears not only effective to India but also to the state which is a sea neighbour to and which has no agreement with India.

29. The boundary drawn by equidistance principle is the boundary every point on it is equidistant from the nearest points on the baselines from which the territorial sea is drawn. The boundary drawn by equitable principle does not mean like the equidistant boundary. In effect, this boundary should be the line other than the equidistance line. In order to be acquainted with the geometrical approach to the drawing of the equidistance line see, A.L. Shalowitz, *Shore and Sea Boundaries* (1962), Vol I at 233, 236 quoted in H. Gary Knight, *The Law of the Sea : Cases, Documents, and Readings* (1978), Clartor's Books & Publishing, Baton Rouge, Louisiana 248-258.

Pursuant to the above text Bangladesh is then required not to delimit the sea zones whose boundary line should not exist outside the equidistance line. In other words, Bangladesh needs then to delimit the sea boundary by equidistance principle. But the very fact is that an enactment of a state cannot be made applicable to another state. Therefore, Bangladesh cannot be treated to be liable to delimit the sea zones by the above text. Bangladesh, on the other hand, has the right to delimit the sea zones by its own enactment. It should be remembered that delimitation of maritime boundaries is a right for coastal states but it has an international aspect.

As much as the Indian enactment is concerned, it cannot be said adamant to the equidistance principle. Primarily, the enactment speaks of the sea zones to be delimited by agreement. There is no restriction to apply a principle other than the equidistance principle for the delimitation of sea zones. From this point of view, the enactment can be regarded as not built on the interests of India only. It is then noticeable that there is a scope of applying any principle i. e. equidistance or equitable for the delimitation of sea zones through agreement between India and other states.

As regards the delimitation of sea zones India is in a favourable position owing to its convex coastal position against that of Bangladesh. In this case the equidistance principle can enormously benefit India against Bangladesh. India has no reservation if Bangladesh delimit the sea zones by equidistance principle. Subject to the above text of the Indian enactment, this can be effected through or without agreement with India. Since the equidistance principle can give benefit as a result India has no objection against the delimitation of sea zones by this principle.

Questions arise as to having no provisions in the Bangladesh enactment on the delimitation of maritime boundaries with other states. Where the configuration of the coasts is identical the delimitation may be rationally effected by equidistance principle,

If the coasts of Bangladesh would be convex, the delimitation by equidistance principle would to some extent be reasonable and equitable. It can equally be said if the coasts of India would be concave against the concave coast counterpart Bangladesh. If the coast of India would be concave and of Bangladesh convex, questions arise whether India would refer the delimitation of maritime boundaries by equidistance principle.

As a matter of fact, the equidistance principle is specific whereas the equitable principle is abstract. This gives rise to various interpretations. Equity varies from man to man. It is therefore a problem for Bangladesh to provide provisions in its enactment for the delimitation of maritime boundaries with other states. Since the equidistance principle cannot benefit the country, it is in no way feasible for Bangladesh to enact delimitation provisions giving emphasis on the application of this principle until any other principle is effected by agreement with other states.

If the configuration of Bangladesh coast would be convex there would be no problem for the country to enact delimitation provisions specifying the equidistance principle to be effective until any other principle is enshrined by agreement between Bangladesh and any other state concerned. But at the present stage what to see is the fact that there is no alternative for Bangladesh but to prefer equitable principle for the delimitation.

LOS Convention Provisions on Delimitation

Article 83 of the LOS Convention deals with the delimitation of the continental shelf between states with opposite or adjacent coasts. According to this article :

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by an agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

The Bangladesh and the Indian enactments came into being before the emergence of the LOS Convention. Be that as it may, paragraph 1 of the above text gives stress on the delimitation of the continental shelf to be effected by agreement of the coastal states concerned. Article 38 of the Statute of the International Court of Justice of course is required to be taken into account. That is to say, the agreement is subject to: (a) international convention (b) international custom, (c) the general principles of law and (d) the judicial decisions. If the parties agree, the article in addition, accomplishes a case *ex aequo et bono* to be considered in the agreement.

Actually, the text of Article 38 specifies as to how the agreement would be performed. According to this text the agreement should be accomplished in the light of international convention, international custom, general principles of law, judicial decisions and the teachings of the most highly publicists. In the case of setting the delimitation dispute the parties if agree, the case *ex aequo et bono* would be applicable. Whatever it may be, paragraph 1 of Article 83 of the

LOS Convention does not enable to prescribe either the equidistance or the equitable principle for the delimitation.

Paragraph 2 of Article 83 is applicable where the coastal states cannot reach an agreement on the delimitation of the continental shelf. In this case the coastal states will have to settle the delimitation through the machineries provided in Part XV concerning the settlement of disputes. It does not enable to say that the coastal states have been enshrined to delimit the continental shelf by certain principle. There cannot in this paragraph be drawn a specific formula applicable for the delimitation.

Paragraph 3 is also applicable where no agreement on the delimitation of the continental shelf between the coastal states has reached. In this situation the text emphasises on the coastal states to be serious for mutual understanding and cooperation between each other with a view to entering into provisional arrangements for the delimitation. As a practical consideration this paragraph also fails to specify a principle to the effect of the delimitation.

Paragraph 4 is to some extent specific as to the delimitation of the continental shelf between states facing their coasts opposite or adjacent to each other. It takes account of the agreement already in effect for the delimitation of the continental shelf. Whatever be the principle followed in the agreement, the LOS Convention is not aimed at affecting it. The very theme of Article 83 is that the delimitation of the continental shelf between states whose coasts are opposite or adjacent to each other depends on the agreement of the states concerned. Since there is no agreement between Bangladesh and India, no principle in subsequence will be applicable to the delimitation of the continental shelf to these states. Though Bangladesh is in favour of the equitable principle and India of the equidistance-principle to the delimitation of the maritime boundaries between them, practically the principle will come into being while they enter into agreement. Both the countries should be serious to reach an agreement on the delimitation of the sea zones through mutual cooperation and respect to each other.

Reflections

Since there is a heavy deposit of sediments in the Bay of Bengal particularly in the coastal bay adjoining Bangladesh and India, it is not easy to delineate the foot of the continental slope subject to paragraph 4 of Article 76 of the LOS Convention. What will happen is that each state will delineate it with the preservation of its own interests. This will perhaps be practicable almost in every case where the continental shelf extends beyond 200 n.m.

There is no provision in the LOS Convention to restrict unscrupulous attempts of the coastal state to the delineation of the foot of the continental slope. The LOS Convention has to some extent imposed restrictions on the coastal state as to the delineation of the outer edge of the continental shelf beyond 200 n.m.³⁰. In any case, there should be an international body aimed at looking after the affairs of the coastal state for the delineation of the foot of the continental slope.

Since the continental shelf adjoining Bangladesh and India in the Bay of Bengal extends beyond 200 n.m, there is then the necessity of applying paragraph 8 of Article 83 of the LOS Convention for fixing the outer edge of the continental shelf. The Commission on the Outer Limit of the Continental Shelf will be destined for settling the outer edge. But the Commission will have no role in the delimitation of the continental shelf between states whose coasts are opposite or adjacent to each other. It is then Bangladesh and India which shall have to settle the issue of delimitation of the continental shelf by agreement.

As the "new-born" islands in the continental shelf beyond the territorial sea cannot be substantiated for the coastal state without asserting claims by occupation, it is then not feasible for the small and weak coastal state—Bangladesh to challenge against the big and strong counterpart—India for such islands.

30. See LOS Convention, Art 121.

If Bangladesh and India fail to settle the dispute, it may be required for the United Nations to take measures for the settlement of disputes in order to maintain regional peace and security. But questions arise whether the matter will come to the notice of the United Nations. According to India's notification, disputes arising out of the maritime territory will be treated as lying in the internal jurisdiction of the country³¹. It signifies that no third-party settlement can be made effective so long India does not consent to it or is compelled to do the same. Then question of the third-party settlement will arise when the situation results in the breach of international peace and security³². If so, the situation will be subjected to the purview of the United Nations.

As a small and weak country like Bangladesh it may be difficult to bring the matter to the notice of the United Nations against the big and strong counterpart like India. However, Because of the effective diplomacy it has been possible for Bangladesh to be the President in the General Assembly in 1986. Whatever it may be, it is necessary to overcome the difficulties for Bangladesh against India for settling the delimitation of maritime boundary dispute. But Bangladesh should not only be treated duty bound to proceed for settling such dispute. There is a moral obligation for every state to settle such disputes

31. That is to say, the disputes with India concerning or relating to : "(a) the status of its territory or the modification or delimitation of its frontiers or any other matter concerning boundaries; (b) the territorial sea, the continental shelf and the margins, the exclusive fishery zone, the exclusive economic zone, and other zones of national maritime jurisdiction including for regulation and control of marine pollution and the conduct of scientific research by foreign vessels; (c) the condition and status of its islands, bays and gulfs and that of the bays and gulfs that for historical reasons belong to it; (d) the airspace superjacent to its land and maritime territory and (e) the determination and delimitation of its maritime boundaries" will be subject to the internal jurisdiction of this country. See 30(1975-76) *ICJ Yearbook* 62.

32. See Articles 1 and 24 of the Charter of the United Nations.

Under any circumstances, if it is released that a proposal of joint survey is declined, the state declining such survey will be assumed as creating bar for the settlement of dispute³³. It seems that both Bangladesh and India should come together for the settlement of maritime dispute.

In any case, the delimitation of the sea zones between Bangladesh and India will dispel existing differences, for example over the "new-born" island of South Talpatty, and agreement with Burma over the maritime boundaries is also desirable. At present every coastal state is conscious of the resources of the sea and Bangladesh is no exception. This makes delimitation all the more important.

It is a question of survival for Bangladesh where the resources of the sea and emerging islands in the Bay of Bengal are concerned. Newly acquired territory (in the form of a "new-born" island) will be used for the rehabilitation of its population. For this reason alone, Bangladesh has an interest in asserting claims to islands which emerge in its maritime zones. Although Bangladesh may not be able to

33. Bangladesh and India is in dispute with the ownership of a "new-born" island known as South Talpatty/New Moore claimed to be within the territorial sea one against another. Ownership of the infant land mass has been in question for some time. However, when the Indian Prime Minister visited Bangladesh from 16 to 18 April 1979 the President of Bangladesh took up the matter with him. In the interest of good neighbourly relations Bangladesh proposed a joint survey to dispel any misgivings about the actual location and rightful ownership of the island and thus to peacefully settle this problem as between two neighbours. In demonstrating the friendly relations existing between the two countries and in a spirit of understanding the Indian Prime Minister in meeting with Bangladesh President agreed to the Bangladesh proposal for a joint survey to determine the location and ownership of the island. But still this proposal has not been fruitful owing to no favourable response and willingness from India. See *White Paper on the South Talpatty* as in the above note 1; *Keesing's Contemporary Archives-Record of World Events* (London), 18 September 1981, 31090; *The Financial Times* (London), 19 May 1981, 4; *The Times* (London), 12 April 1981, 5.

physically protect its claims, nonetheless such challenges will be met to the best of its ability. There may be a need for third parties to assist in a peaceful settlement of disputes in the region, but Bangladesh will depend in the first instance on the goodwill of her neighbours to settle their maritime boundary disputes peacefully.