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Resolution of Bangladesh-India Maritime Boundary: Model for South China Sea Disputes?

By Sam Bateman

Synopsis

In a rare 'good news' story for regional maritime security, an international court has established the maritime boundary between Bangladesh and India. Could this be a model for the South China Sea disputes?

Commentary

ON 7 JULY 2014, the Permanent Court of Arbitration ('the Tribunal') in The Hague delivered its judgment on the maritime boundary between Bangladesh and India in the Bay of Bengal. This helped settle a long-running dispute between the two parties and will help provide a solid basis for cooperative management of the bay and its resources.

It is significant because as well as the dependence of the littoral countries on the fish stocks of the bay, the area is believed to be rich in deep-water deposits of oil and natural gas.

'Win-win' or 'lose-lose' outcome?

After complex considerations regarding historical and cartographic evidence, the Tribunal determined the location of the terminus of the land boundary between the two countries, and then delimited the boundary between them of their territorial sea, exclusive economic zone (EEZ) and continental shelf within and beyond 200 nautical miles.

Bangladesh was awarded 19,467 sq.km of the 25,602 sq.kms of sea area in question, although India still has a large area of continental shelf further south in the bay.

The judgement has been variously described as a 'win-win' or a 'win-lose' outcome for the two parties. With Bangladesh gaining about four-fifths of the disputed area, some media reports have hailed Bangladesh as the 'winner', but both countries have seen it publicly as a 'win-win' outcome.

The foreign minister of Bangladesh called it 'a victory for friendship between Bangladesh and India', while India also welcomed the judgement. A statement from India's external affairs ministry says that the boundary settlement will 'enhance mutual understanding and goodwill between India and Bangladesh by bringing to closure a long-pending issue'. India's welcoming of the decision is a solid demonstration of new Prime Minister Modi's emphasis on building closer links with India's neighbours.

Key considerations

In their submissions to the Tribunal, India claimed a boundary based on the equidistance principle but Bangladesh claimed one based on equity. This meant that there was quite a large area in dispute where India's claim overlapped with that of Bangladesh.

The claim by Bangladesh was understandable. Bangladesh is what is referred to as a "zone-locked" state. Situated as it is at the head of the Bay of Bengal, it is locked in by the maritime zones of India and Myanmar. Without an equitable adjudication in its favour, it would only have a small EEZ and continental shelf.

Basically the Tribunal accepted the line of argument by Bangladesh. It recognised that the concavity of the Bay of Bengal created circumstances that were inequitable to Bangladesh. As a consequence, it adjusted the notional equidistance line to the west to give Bangladesh a larger area in order to produce an equitable result.

The Tribunal in determining the continental shelf boundary recognised that this boundary gave rise to an area that lies beyond 200 nautical miles from the coast of Bangladesh and within 200 miles from the coast of India, and yet lies to the east of the boundary line. Its judgement thus created a 'grey area' where Bangladesh has sovereign rights with respect to the continental shelf while India has rights to the EEZ and the resources of the water column.

This 'grey area' overlaps with an earlier one created when the International Tribunal on the Law of the Sea (ITLOS) delimited the maritime boundary between Bangladesh and Myanmar. While the underlying seabed and subsoil in this area belongs to Bangladesh, a water column boundary is now required between India and Myanmar.

A separate continental shelf and EEZ boundary is not unique but it remains to be seen how the parties will accommodate this part of the judgment. Subsidiary agreements are required between the three parties.

Unfinished business

In addition to this 'grey area' issue, there is other unfinished business with maritime boundaries in the Bay of Bengal. Bangladesh, India, Myanmar and Sri Lanka have all lodged submissions to the Commission on the Limits of the Continental Shelf (CLCS) relating to extended continental shelves in the bay that overlapped with areas claimed by another party. India's submission covered two segments – one extending eastwards from mainland India and the other westwards from the Andaman Islands.

By extending the continental shelf boundary between India and Bangladesh to the point where it intersected with the previously delimited continental shelf boundary between Bangladesh and Myanmar, the Tribunal effectively determined a tri-point in the boundaries between the three countries. This leaves a small section of continental shelf boundary between India and Myanmar still to be delimited in this area, as well as an area in the east between Myanmar and the Andaman islands.

Similarly, continental shelf boundaries are still to be delimited between India and Sri Lanka where the claimed extended shelf of Sri Lanka overlaps with that off mainland India and that off the Andaman Islands.

Regional implications

The judgement is a positive development for regional maritime security. It resolved a major source of tension in the Bay of Bengal and by paving the way for more effective cooperation in managing the bay and its resources, it amounts to a 'win-win' outcome for all parties.

Willingness to resolve the matter peacefully and preparedness to accept the Tribunal's decision has boosted India's moral authority as the major power in South Asia. This is an example that China could well emulate in East Asia. Rather than denying that sovereignty disputes exist, China might take these to arbitration even at the risk of an unfavourable outcome – or it might even win!

The judgement provides a valuable demonstration that with political will, maritime disputes can be settled peacefully. However, it may not provide a precedent for boundary disputes in the East and South China seas. The disputed islands in those seas markedly complicate the boundary situation. Settlement of these sovereignty disputes is a prerequisite of boundary negotiations.

It is also the case that no country can be compelled to enter into arbitration over a maritime boundary dispute; at this stage, there is little indication that East Asian countries are prepared to submit their disputed maritime boundaries to international arbitration.

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