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Maritime Boundary disputes and its impact among the neighboring states

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Introduction

Maritime boundary is a conceptual division using geopolitical or physiographic criteria of the water surface. The main aim of the division is to bound the areas of exclusive natural rights over mineral and biological resources. The maritime boundary helps to identify the outside limit of international waters. The delimitation of the maritime boundaries is given under the United Nations Conference on Law of the Sea (UNCLOS). Maritime delimitation of boundary, is an important thing because of the sensitive questions of State sovereignty, sovereign rights, and jurisdiction of available of valuable natural Resources are all put into question. The zones of boundaries in detail given under the convention¹ are, Inland Waters are the waters on the landward side of the baselines, Territorial Sea extends up to twelve nautical miles from the state baselines, Contiguous Zone are adjacent or beyond the territorial sea as claimed by the state and it extends up to twenty four nautical miles from the baselines, Exclusive Economic Zone is the zone beyond and adjacent to the territorial zone as claimed by the state which extends up to two hundred nautical miles from the baselines. Continental shelf is comprised of the subsoil and seabed of the submarine areas that extend beyond the states territorial sea throughout the natural prolongation of its territory to the outer edge of the continental margin, or to a length of two hundred nautical miles from the baseline which the outer edge of the continental margin does not extend up to the length.

Maritime Boundary Dispute is an issue between the states. The states are becoming more concerned about their marine resources in the recent years and the boundaries provided under the convention of the law of sea is not enough for the state and wants to always extend their boundaries. The state has the sovereignty rights within the exclusive economic zone, it can explore, exhibit, conserve, and manage natural resources. It also has rights to other activities for the economic exploitation and exploration like production of energy from the water, wind and the current. The state needs marine resources because the world economy has turned into ocean based resources. So every coastal state is aware of the importance of the maritime boundary, and all the coastal states wants to explore and exploit the resources in the marine waters such as minerals and food resources. Hence there will be marine boundary dispute between the states. Marine boundary dispute

The importance of the maritime boundaries has grown over the past few decades. The maritime dispute between the states can occur over the rights or the jurisdiction which has overlapping rights. As the exclusive economic zone is given a two hundred nautical miles extension under

¹ United Nations Convention on Law of the sea, Dec. 10, 1982, 1833 U.N.T.S. 397

the convention of the law of sea. There are high chances that there can be overlapping claim between the adjacent states or opposite states. These states are not satisfied with the delimitation of the maritime boundary and want more than that, twelve nautical miles territorial seas, Exclusive Economic Zone of two hundred nautical miles and continental shelf beyond two hundred nautical miles. And the states also claim sovereignty over the same island or the same area of mainland. Example: - Bakassi Peninsula, in the case of Cameroon v. Nigeria².

In the recent decades there has been a lot of technological developments taking place and there are highly likelihood that the areas which were inaccessible in the past is now accessible so the states can exploit the fishing stock, and natural resources in the seas. One major purpose of the United Nations Convention of the Law of Sea (UNCLOS) which entered into force in 1994, was to provide guidance for the delimitation of maritime boundaries.³ But due to the inability of negotiations to arrive at a common understanding of governing rules and principles, however provisions of United Nations Conventions of the Law of Sea relevant to maritime boundary delimitation are general, imprecise and sometimes conflicting, leaving much room for disagreement and providing little guidance for negotiation.⁴

Settlement of Disputes

Article 287 of UNCLOS provides that every state is free to choose, by written declaration one or more of means of settlement or of dispute concerning the interpretation or application of the convention. There are two types of dispute settlement procedure in UNCLOS. Non-compulsory and compulsory procedures of settlement. Section 1 of part XV states the non-compulsory procedure which are negotiation, mediation and conciliation. Section 2 of part XV deals with compulsory settlement procedures which includes:

1. The International Tribunal for law of the sea (ITLOS)
2. The International court of justice (ICJ)
3. Arbitral Tribunal
4. Special Arbitral Tribunal

Negotiation: It is one of the most important and peaceful means to settle the maritime boundary dispute. Here the parties of the dispute are free to make the conditions of the negotiations as per their needs. If the states are not forced to enter into negotiation they have the right to accept and reject. In negotiation there is no third party interference so the parties are able to come to a conclusion about the disputes. More than ninety percent of maritime boundary disputes are settled through bilateral negotiations.⁵

Mediation: It is listed in Article 33 of the charter of the United Nations (UN Charter 1945) as alternative means of international dispute settlement. Mediation is also a very effective method to resolve the dispute related to maritime boundary between the states. Many maritime boundary dispute are not resolved by the mediation. In the OAS Mediation of Belize Guatemala Border Dispute has not been resolved, the dispute has led the parties to take the matter before

² ICJ (1994)

³ Supra Note 1.

⁴ Martin A. Rogoff, An Overview of Existing Maritime Boundary Disputes and recommendations for their Settlement, 15 ocean and coastal L.J. (2010).

⁵ A Asgeirsdottir, M.C. Steinwand, Dispute settlement mechanisms and maritime boundary settlement, Rev. Ind. Organ 10 (2015) 119-143

the International Court of Justice.⁶

Conciliation: It is another non-judicial procedure for peaceful settlement. Many state does not accept the conciliation because they have to give their control over the dispute to the third party. Because of the involvement of the third party, the parties to dispute may lose the fight.

Arbitration: It comes under the compulsory dispute settlement procedure. In maritime boundary dispute has been resolved by the arbitration tribunal but the one point is that arbitration cannot be called upon unless the parties of the dispute has been resolved.

International Tribunal for law of sea: ITLOS is a tribunal for resolving dispute of maritime. The office of ITLOS is situated in Hamburg, Germany. The tribunal has twenty one serving judges and one third are retired every year. ITLOS has jurisdiction over maritime boundary dispute.

International Court of Justice: ICJ is the head of the judicial body of the United Nations. ICJ has jurisdiction over all disputes of maritime law. So it has the authority to decide the maritime boundary dispute.

Recent cases of maritime boundary dispute

In the case between the Bangladesh and Myanmar in the Bay of Bengal⁷ the issue was in relation to the delimitation of the maritime boundary in the Bay of Bengal. A declaration was submitted to ITLOS. The proceeding was instituted in 2009. The hearing took place in Hamburg. The judgement was given in 2012, the tribunal considered continental shelf claims beyond 200 nautical miles. While both the countries argued that the other should not have jurisdiction beyond the Exclusive Economic Zone, the tribunal continued the natural 215 degree angle prolongation of the demarcation line beyond 200 nautical miles. Both Myanmar and Bangladesh accepted the ITLOS decision and both have proceeded with oil and gas exploration partnerships.

Another case was between Bangladesh and India⁸, Bangladesh went in for arbitration over the delimitation of maritime boundary under UNCLOS. The argument focused on issues including the location of the land boundary, delimitation of the territorial sea, exclusive economic zone, and the continental shelf within and beyond 200 nautical miles. The arbitration tribunal awarded Bangladesh 19,467 square kilometer of the 25,602 square kilometer sea area of the Bay of Bengal⁹

Recent case between Somalia V. Kenya¹⁰ in which ICJ made a judgement in 2021. In this case Somalia instituted proceedings against Kenya through an application to the ICJ in 2014, requesting for a single maritime boundary delimiting the territorial sea, EEZ, and continental shelf, including seawards of 200 nautical miles. In its judgement the court rejected the claim

⁶ Aceris Law, law of the sea dispute settlement mechanism, International Arbitration Attorney Network, (2015)

⁷ITLOS, 2012, Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal

⁸ PCA, 2014, The Bay of Bengal maritime boundary arbitration between People's Republic of Bangladesh and republic of India.

⁹ Haroon Habib, Bangladesh wins maritime dispute with India, The Hindu, July 9, 2014

¹⁰ ICJ, 2021, Maritime Delimitation in the Indian ocean, Somalia v. Kenya

made by Somalia, alleging that Kenya, by its international obligation.

In *Costa Rica V. Nicaragua*¹¹, Costa Rica instituted the proceedings against Nicaragua, with regard to a dispute concerning maritime delimitation in the Caribbean Sea and Pacific Ocean. It requested the ICJ to determine single maritime boundary. ICJ gave a judgement on 2018 and determined the maritime boundaries between Costa Rica and Nicaragua in the Caribbean Sea and Pacific Ocean.

Impact on the states

The maritime boundaries dispute cases always take a long time to settle. So the dispute goes on for a long period of time. Because there is always arguments between the state and not settle easily with agreements so when the International Court of Justice, or International Tribunal of law of sea, or Arbitral Tribunal comes into picture and it takes years together to give judgements. And it is also difficult to give judgement as all these should be inspected and specific conclusion should be made. This prolonged disputes while going on it impacts the states among the dispute is pending. It has a vital negative impact on the maintaining international relation between or among the states. The sovereignty of the disputed countries faces threat for a long time due to their conflicts. Those maritime environment faces problem due to this. They experience difficulties to use their coast and become deprived of utilization of marine resources because of this unsettled boundary dispute for an indefinite period of time¹². So it will also affect the economy of the country. As many coastal states depend on natural gas, oil, and other maritime resources for revenue.

Conclusion

Maritime Boundary Dispute are increasing and more importance which is given on the maritime boundary by the states. There are so many technological advancements which has come in the twenty-first century from which the states will be able to exploit more marine resources.

There are many disputes of maritime boundaries which are not resolved for decades. So, if there are many unresolved boundary dispute may affect the economic activity, such as exploitation and exploration work of the resources.

The states has a choice to choose the method of dispute settlement but if the states wants the problem to be settled fast and in less time it is better to get into the agreements and negotiate. It is the best method to resolve the maritime boundary dispute. Otherwise if the parties to dispute go for ITLOS, ICJ, or Arbitral Tribunal, it may take years together to solve the dispute. The dispute will not be settled for a prolonged period of time. Which in turn affects the parties only. So, to avoid the negative impacts the dispute should be solved as fast as possible. The parties to the maritime dispute should settle the dispute peacefully to live with each other with harmony.

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¹² Monjur Hasan, He Jian , Wahidul Alam, and K.M. Azam Chowdhury, Protracted Maritime Boundary Dispute and maritime laws, Journal of International Maritime safety, (2019)

4. www.icj-cij.org
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