

Urgency of demarcating maritime boundary with Myanmar

Looking at the pace our ministry has moved since 1974, it would be futile to appeal to those who hardly stay at the desk of the ministry for more than three years, and as a result none could be held responsible for willful neglect of such issues of great national importance for so long. We can only sound the national alarm bell to our political masters to come forward and see that the possession of our rightful sea resources is not wasted by a single day, and concrete measures are taken to solve the maritime boundary issue, as after 2011, we would be losing thousands of square kilometres of sea areas rich with minerals and fish in the Bay of Bengal.

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MY ATTENTION has been drawn to the article "Of Bangladesh-Myanmar sea boundary" published on July 7 in the DS. A very serious issue of great national importance has been dealt with superficially, and an unduly supportive attitude towards the discussion held at the secretary level, has been shown.

If mere discussion on a long standing dispute could be enough then we should have been able to solve all our problems with our neighbours. The demarcation of the maritime boundary between Bangladesh and Myanmar should have received the top urgency, both, at the bureaucratic level and in at the political level. Unfortunately, the issue has not received its due priority at any level although from the technical point of view, we are heading for more serious problem with Myanmar in comparison with India as far as maritime boundary is concerned.

It can hardly be understood how very important issues of such nature can be left totally unattended by our policy planners in the Ministry of Foreign Affairs. It appears from the published sources that the last time we had official level discussions with Myanmar was about a decade ago and we are now trying to reach a happy reading on the outcome of a courtesy visit.

Every time after the visit of some senior bureaucrats to the other

capital, such good words like "all outstanding issues will be resolved amicably through negotiations" keep appearing in the newspapers and we feel elated as if the outstanding issues have already been solved or something very different is going to happen towards a solution. But the reality on the ground and the result of 34 years of waiting in hope, dictate otherwise, as the unresolved core maritime issues bear crude testimony to our so called achievements.

However, we must accept that there is no alternative to across the table negotiations in settling such issues of maritime boundary. But definitely non-delineation of maritime boundary, either with India or with Myanmar, simply prevents us from drawing any solace that the issues are going to be solved, if not immediately, then in near future and more importantly in our favour.

If that be the case, it can be concluded that either we have not taken the initiative to negotiate the maritime boundary at all or even if we have negotiated, we will not have done it professionally as the issue did not fit into the scheme of bureaucratic performance, which will bring positional laurels, promotions and better postings.

Looking at the coastline of the two countries, we can see that Bangladesh and Myanmar are adjacent countries as per Geneva Convention of the Law of the Sea of 1958 (UNCLOS 1958) and the UNCLOS 1982. The coastline is in the North-South direction and the open sea areas to be delimited lies on the west side. According to

known sources, Myanmar and Bangladesh negotiated the delineation of boundary of the Territorial Sea of the two sides in December 1974. The median line was drawn from the terminus of the land boundary in the Naaf river to the midpoint of the closing line between Oyster Island (Myanmar) and St. Martin Island (Bangladesh). This agreement has not been ratified till today. Even though the median line boundary in between St Martin Island, and main land of Myanmar lying on the east of the St Martin Island, might have some justification, but definitely the boundary issue between St Martin and Oyster Island has not been negotiated in line with the Geneva Convention, or with judgments of the ICJ or other tribunals available for consultation at that time.

In the UNCLOS of 1958, islands constitute the smallest integral marine geographical feature and that the smallest rock which lies above High Water is geographically, and legally, an island. Their utility to the state and, in particular to the inhabitants of the state, (for it is for the people that the state has been established) creates their value. Size relates to value for surface area is necessary for habitation and for sustenance. Rocks, by these definitions constitute high tide elevations which, due to their small size, would be difficult/unfit for human habitation. The value of rocks, as a result, would be negligible or nonexistent and they might be conceivably used as sites for navigation. Depending on their

geographic relationships to other islands and to adjacent states, they may have full, or partial, effects on the breadth of the Territorial Sea.

It is not known under which rules we have negotiated, and drawn, the median line between Oyster Island and St Martin Island. Oyster Island is a rock with no human habitation and St Martin Island, having over 7,000 population, should have received more than half effects/value compared to the Oyster Island. If we had done our homework correctly, we would have the equidistance line shifted more towards Oyster Island, thus getting a better share of the Territorial water.

Moreover, the issue of special circumstances, and historic title/economic interests of Bangladesh, should have been the paramount factors for negotiation with Myanmar. We totally lost sight of these two very important issues while preparing our case, most probably not having enough theoretical and practical knowledge about our sea areas.

Now there are two other sets of maritime boundary demarcation which have to be settled with Myanmar -- Exclusive Economic Zone (EEZ) of 370 km and Continental Shelf of 650 km long towards the sea. Articles 74 and 83 of UNCLOS 1982 contain no reference to equidistance, which may now be applied only in so far as it leads to an equitable solution.

A boundary that might be equitable for EEZ purpose may not be equitable for Continental Shelf purposes because of the different considerations that are relevant to achieving an equitable solution in each case, for example, the location of fish stocks in the case of the EEZ, the geological characteristic of the sea bed and the location of sea bed mineral deposits in the case of Continental Shelf.

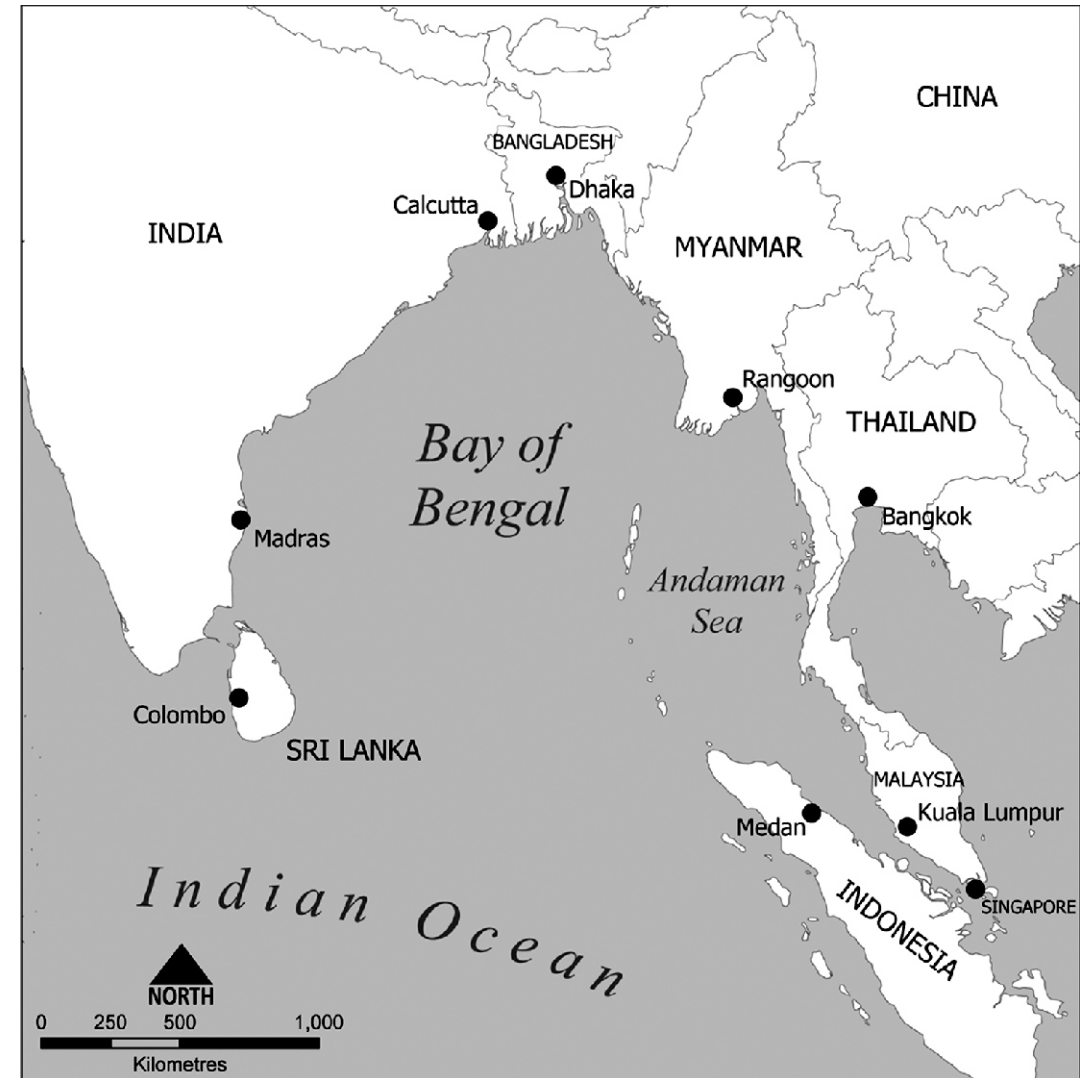
We could have solved the boundary issue (370 km long) based on the UNCLOS 1982, which both countries have ratified. The time is running out for Bangladesh

to carry out various seismic, gravity and magnetic surveys in the 650 km long Continental Shelf, based on which we can submit our claim to be approved by the Commission on the Limits of the Continental Shelf of the UN. We now have only 5 years to do all these, and before submitting the claim, we must solve the other boundary issues with Myanmar.

Having the equidistance line as the basis for delimitation of the EEZ and CS, as proposed by India and Myanmar, Bangladesh cannot have the declared EEZ, no Continental Shelf and can't avoid being zone locked. In 1993, because of objections of the Myanmar side, the routine hydrographic survey in the vicinity of the Naf river could not be conducted, and Myanmar did not agree to allow blocks for oil exploration in the vicinity of the Rakhine coast. Although our declared straight baselines does not in any way affected the delineation problem with Myanmar at all, still they, in together, with India, have strongly protested our baseline as having no basis of law.

How many of us know what Myanmar has done across the Gulf of Martaban while drawing straight baselines? The system violates Article 4 of Geneva Convention, 1958 and Article 7 of UNCLOS, 1982 most flagrantly across the Gulf of Martaban where the world's longest Straight Baseline claim has been established through drawing a 222.3 nautical miles long line and where the Baselines deviate radically from the coast to pick up non fringing islands. Some of its baseline segments deviate 38 degrees from the general direction of the coast. The water, thus improperly internalized, is correspondingly large in comparison with Bangladesh, and Myanmar has excessively gained in her CS/EEZ claim.

Rights to the Continental Shelf are inherent and this must be recognized in delimitation, and delimitation by agreement remains the primary rule of international law.



Any delimitation, whether agreed or determined by a third party, must result in an equitable solution and there is, in principle, no limit to the factors relevant to the determination of equitableness. In practice, geographical considerations are coming to predominate and the existence of a significant disproportion between the relative maritime areas attaching to the states, and the relative lengths of their coastlines, is likely to be taken as a sign of inequity. However, these will need to be supported by surveys on the exact locations of key features on the coastline in order to gain

international recognition, and more importantly to avoid serious disadvantage in bilateral delimitation negotiations. Events in the past do not promise for a good future so often claimed by the officials of the ministry. Looking at the pace our ministry has moved since 1974, it would be futile to appeal to those who hardly stay at the desk of the ministry for more than three years and as a result none could be held responsible for willful neglect of such issues of great national importance so long. We can only sound the national alarm bell, if

any, to our political masters to come forward and see that the possession of our rightful sea resources are not wasted by a single day and concrete measures are taken to solve the maritime boundary issue as after 2011, we would be losing thousands of square kilometres of sea areas rich with minerals and fish in the Bay of Bengal.

The paradox of development and prosperity

At this juncture of our national life we have to decide, what do we need -- prosperity or development? If we choose development then we have to endure a little bit of sacrifice on prosperity. We take away a little bit of prosperity from some and use it for the development of all. While in prosperity a few win, in development everybody wins (although half-baked illiterates of the world, and the governments that they form, do not understand the dynamics).

AM ZAKIR HUSSAIN

DEVELOPMENT and prosperity might mean the same. But had these been synonymous then the most prosperous countries should have been the most developed. When we see and meet a prosperous man does it dawn upon us that he is sufficiently developed commensurate to his riches? As laymen we can gauge the level of prosperity of a person, to a reasonable extent, from his explicit way of life. But what comes to mind, for example, when we try to understand development?

Is development a state of mind or a tangible entity? True, development needs prosperity but there is no close relationship between these. Let us take a very down to earth example. A prosperous father's son may not be prosperous, or may not remain

prosperous. Examples abound. A prosperous father cannot help his son to develop by the sheer force of prosperity. There are numerous such examples. On the other hand, a progressive mother, by definition, is likely to produce a progressive daughter. We can safely say that while prosperity is all about mundane possessions, development is not. Development is more akin to happiness, satisfaction, containment, knowledge, strength of the mind and the physique. Some of which cannot be ensured by prosperity.

Development is a way of life that gives an individual comfort, which however, has to come through the avenue of societal comfort. Prosperity does not improve the life style automatically, unless it has been used for a developed life style. Does every rich person draw our respect? Some of them have money but no education, no idea or

practice of living in a healthy way, do not know manners and are even devoid of civic sense. Can we vouch that they are developed? Comfortable life style of an individual is dependent on the environment that he lives in, on the life style of the people around, on the stage of development of the society, and on the governance system of the country. Which means that development cannot be individualistic but has to be pluralistic, unlike prosperity. Development would mean education and health to begin with, which may not be required for attaining prosperity. Prosperity, without development, means plenty of resources in the possession of some, but not used with vision. Vision is the progeny of development, not of prosperity.

Prosperity is uni-dimensional and development is multi-dimensional, e.g., it has individual, social and national dimensions. Within the individual dimension there are the spiritual, mental and physical dimensions. Earthly assets will make one prosperous, but to be developed one needs the fulfillment of all these dimensions, otherwise development remains incomplete. Many of these developmental dimensions may be achieved without prosperity, while prosperity alone does not bring forth development, as we have stated above.

Development is achieved when everybody prospers to some degree in contrast to a few prospering limitlessly. The latter scenario creates tension in the society and in the nation. Apparent gaudiness of a few can fire hatred in the minds of many, especially when this pomp comes through the blood and sweat of the onlookers. This is prosperity for some and development for none. For real bliss all out prosperity, i.e., development, is unconditional. Prosperity may ensure a nice house, even a nice family; but the moment one steps out of one's home, one will be in the sea of chaos. How can one term this sort of a life a developed life!

The sense of solidarity, camaraderie and patience is a sign of

development. It is a sign of maturity without which development cannot be attained. Development needs compassion; all that prosperity needs is greed. Development comes through a straight path; prosperity may come through dark alleys. Development would not come if a few are blindly selfish, and the rest leave everything to luck.

Development needs production while prosperity may come through trading alone. Both are, however, facilitated by infrastructure steered by governance. Building infrastructure needs prioritization since resources are not unlimited. These might be ordered as, the legal infrastructure (enforcement of law and governance system), education, health, housing, energy, transportation and communication and science and technology/research. These would be the basis of sustained production. Only sustained production can fetch prosperity, i.e., development for all, albeit to varying degrees. This would then create demand for improved living conditions, spiraling into demands for better education, better health, more comfort in individual and family life that, however, can only come through a

better social environment.

Education, if good, will expand the horizon of understanding that would enhance the level of patience and solidarity in the people. People will realize that individual greed does not bring social and national happiness, without which individual happiness will sound far fetched. This sense would strengthen a good governance system, creating a sense of justice in people's minds. If individuals are at peace with themselves peace will spread out in the society, and in the nation.

For development what we need, therefore, is judicious plans, prioritization of our developmental efforts and an effective governance system. Time has proved convincingly that even the apparent national prosperity, that hides individual agonies behind the rule of averages, does not stand high when it is appraised for development. Global development indicators are, by and large, social, e.g., some effects and impacts of education and health, that are the distal factors of one proximate indicator -- income. Income, in itself however, is not a measure of development.

It is in fact how the income has

been expended for development that reflects development, or lack of it. Are all those countries, whose per capita income is more than that of Bangladesh, on a higher rung with regard to development? Why then has Bangladesh fared better than some countries, which are more prosperous? Unfortunately we are forgetting this with time.

In the past Bangladesh prioritized social sector expenditures with some appreciable results, but infrastructures remained side tracked. This trend would slow the future pace of development, as development is an uphill task. The more we progress the more difficult it becomes to progress. The present national budgetary allocations, without taking care of infrastructures, will make the present achievements unsustainable. Our priority needs to be on agricultural prosperity for attaining development, and not other-wise.

At this juncture of our national life we have to decide, what do we need -- prosperity or development? If we choose development then we have to endure a little bit of sacrifice on prosperity. We take away a little bit of prosperity from some and use it for the development of all. While in prosperity a few win, in

development every body wins (although half baked illiterates of the world, and the governments that they form, do not understand the dynamics). The present national trend, unfortunately, is leading us towards seeking prosperity for a chosen few, hence the greed, deception, stealing and slaughter. We need to shun this path and strive for development, where everybody will have some basic subsistence to live a decent life, be content and not be a threat to others out of sheer jealousy.

We need to realize that "money can buy us food but cannot increase our appetite." With little money we can attain more development, penny for penny, but with a whole world of prosperity we cannot assure ourselves of contentment. After all what is money for? To fatten our egos and draw wrath and loathing of others? Does it really pay in the end? Has not the time come to think whether we want this sort of life of greed and sleaze for ourselves and our children?

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Growing business prospect of Islamic banking

Although the future of Islamic banking is extremely bright, the market players need to do more in designing, developing and implementing innovative products as well as marketing those. The government, on the other hand, can assist in providing the necessary impetus for the advancement of this sector by enacting a comprehensive Islamic banking law.

FIDA HASSAN RANA

IN the global banking industry, Islamic banking is considered one of the fastest growing segments, with multi-billion dollars worth of assets under management. However, the history of Islamic banking is not very old.

Misr Development Bank, known to be the first Islamic bank in the world, was established only in 1962. The bank did not explicitly claim to be Islamic, for fear of being antagonizing the ruling secular government. Instead, the bank started operation in the form of a savings bank based on profit-sharing.

By the year 1967, nine similar banks were established in Egypt.

These banks, which neither charged nor paid interest, invested mostly by engaging in trade and industry and shared the profits with their depositors. In 1971, The Nasir Social Bank was established in Egypt with the declaration of "interest-free commercial bank," although its charter made no reference to Islamic principles.

In the mid-seventies, Islamic banking industry received a big impetus with the establishment of two large Islamic banks, i.e. Islamic Development Bank (based in Saudi Arabia) and Dubai Islamic Bank (based in the UAE). Islamic Development Bank was established as a multilateral development bank to foster economic development in the OIC member countries. On the other hand, Dubai Islamic Bank was founded to

offer a full range of commercial banking services in line with Islamic principles.

Though Bangladesh can boast of being the third largest Muslim country in the world, Islamic banking practices in Bangladesh started only in the mid-eighties. The country delved into this industry with the debut of Islami Bank Bangladesh Ltd, The Oriental Bank Bangladesh Ltd, Al-Arafah Islami Bank Ltd, Social Investment Bank Ltd, Shahjalal Islami Bank Ltd, Export Import Bank of Bangladesh Ltd, and Bank Al-Falah Ltd.

Some other conventional banks are also offering Islamic financing services through special windows in order to capture a slice of the market. The operations of these special windows are maintained separately from the mainstream business of the parent banks in order to prevent commingling of Islamic and conventional funds. Taken together, as of September 2005, Islamic banks in Bangladesh held approximately 13% of total banking deposits and 15% of total investments.

Financial products and services currently available with Islamic banks are concentrated in *Murabaha* financing, which is also known as Islamic trade financing. These banks also offer *Ijara* and *Istisnaa* financing, for the purpose of machinery procurement and construction works respectively.

However, the essence of Islamic financing i.e. profit and loss sharing, manifested through *Musharakah* investment (similar to equity investment), is yet to emerge as a major mode of financing. Islamic banks also are neither very visible in areas such as Islamic insurance (known as *Takaful*), Islamic bonds (known as *Sukuk*) or Islamic fund management. Some bankers maintain that the dearth of product variety is due to lack of awareness among the customers. Mass people are acquainted with conventional banking terms and sometimes find Islamic banking products obscure to comprehend, which calls for the Islamic banks to assume a proactive role to popularize Islamic banking. They simply should not wait till the awareness and demand emerge.

In this context, Islamic securitization, a way to raise financing from the capital market in a way that is compatible with the *shariah*, can be of immediate interest to these banks. Since Islamic financial transactions are assets backed by nature, over years these transactions have resulted in culmination of assets on the balance sheet of Islamic banks. Through securitization, popularly known as *Sukuk* in the industry, these banks can raise and recycle their funds from the capital market.

One pertinent issue as regards the growth potential of Islamic bank is the overall regulatory framework. Until recently, there has not been any policy guidelines/law regarding Islamic banks. These banks are regulated under the general framework used for the conventional banks. Lately, the Central Bank published guidelines to streamline Islamic banking activities. The guidelines cover issues related to establishment of new Islamic banks, setting up Islamic windows by commercial banks or opening separate Islamic bank branches.

The guidelines also deal with issues related to converting conventional banks to Islamic banks. This is a commendable initiative by the Central Bank, which will certainly help the growth of Islamic banking. However, the Central Bank needs to do more in terms of regulating the industry.

Currently, Bangladesh Bank oversees the activities of Islamic banks in the same manner as it does for the conventional banks. Bangladesh Bank does not have any specialized body to deal with Islamic banks. Monitoring Islamic banking practices requires proper understanding of Islamic principles, especially shariah rulings on financial transactions, hence there is an urgent need to set up a specialized body within the Central Bank. Similar specialized bodies are present elsewhere. In countries such as Pakistan, Iran and Malaysia, there are Central Shariah Supervisory Boards/Councils to investigate and monitor the operations of the Islamic banks. Finally, misconception about

Islamic banking also acts as a bottleneck to this industry. Due to lack of proper understanding, many of us fail to distinguish Islamic banking from conventional banking. Profits charged by Islamic banks are considered similar to interest charged by the conventional banks, which is far from true. Anybody who has probed into the literature of Islamic finances will appreciate that Islamic mode of financing and the underlying principles are quite different from the practices of conventional banking.

Although the future of Islamic banking is extremely bright, the market players need to do more in designing, developing and implementing innovative products as well as marketing those. The government, on the other hand, can assist in providing the necessary impetus for the advancement of this sector by enacting a comprehensive Islamic banking law.

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