

# Law of maritime delimitation

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NATURE is not uniform and human beings cannot refashion nature. The boundaries of coastal states are accidental or historical or arose out of colonial history. States have to live with neighbours that cannot be changed.

The jurisdiction on the sea originates from the land domain that borders sea. That is why landlocked states do not claim jurisdiction on the sea.

Bangladesh is fortunate to have the Bay of Bengal in the south. Access to the Bay of Bengal is a significant natural asset of the country because through the Bay of Bengal an easy access is available to the vast Indian Ocean and the major sea-lanes of international trade.

As land resources deplete, states are falling back on sea resources (mineral and living) which are, according to scientists, richer in content than those found in the land.

**Maritime Delimitation Law**  
Coastal states have to delimit their sea boundaries with neighbouring states. Maritime delimitation law is complex and is evolving.

The law can be regarded largely composed of the relevant provisions of the 1982 UN Convention on the Law of the Sea (UNCLOS), jurisprudence as gleaned from judgments of International Court of Justice (ICJ) and other international tribunals.

The UNCLOS accords top priority to conclusion of bilateral agreement on maritime delimitation.

The UNCLOS provides that states may agree on the basis of international law, as referred to Article 38 of the Statute of International Court of Justice in order to achieve an equitable solution.

Article 38 of the ICJ Statute consists of two paragraphs and they are as follows:

1. (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states

(b) International custom, as evidence of a general practice

accepted as law

(c) The general principles of law recognized by civilized nations

(d) Subject to provisions of Article 59, judicial decisions and the teaching of the most highly publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the court to decide a case ex aequo et bono, if the parties agree thereto.

It is argued that paragraph 2 of the above Article gives the flexibility of a court to decide a case on laws and principles outside the normative framework, if the parties agree.

## The Continental Shelf of the Bay of Bengal

The continental shelf of the Bay of Bengal constitutes a single continuous shelf. The rivers of the mighty Ganges, Brahmaputra and Meghna flow through Bangladesh and meet at the sea.

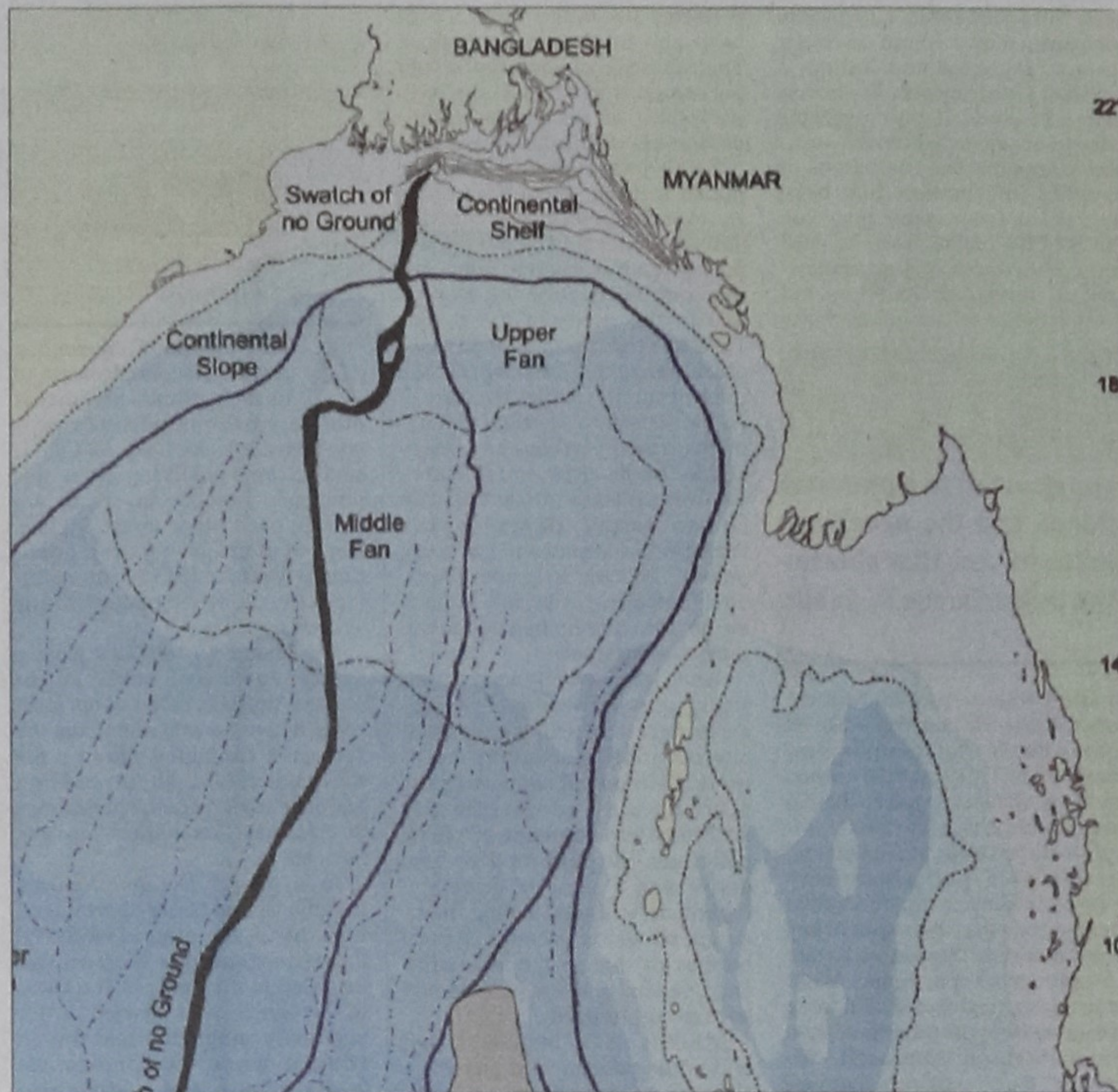
Much of the continental shelf can be argued to be the deposit of silt through the rivers through Bangladesh. The continental shelf is not steep but runs in a steady and gradual slope from the coast of Bangladesh. In other words, it can be argued had there been no large rivers flowing through Bangladesh carrying silt (2.4 tons of silt annually), the continental shelf would not have existed, as Sri Lanka has almost nil continental shelf.

The continental shelf is arguably a natural prolongation of the landmass of Bangladesh in the southward direction. Some experts say that it runs more than 350 miles from Bangladesh coast.

Law of delimitation of continental shelf.

The 1969 Judgment of the ICJ on the North Sea Continental Shelf Case, the 1977 Anglo-French Continental Shelf Case, the 1982 Tunisia-Libya Continental Shelf Case, the 1984 Gulf of Maine Case and the 1985 Libya-Malta case have arguably led to certain ambiguity in the law of delimitation. This is not uncommon because each situation is different from the other not only in geographical sense but also in other circumstances.

It is argued that each delimitation case has its unique factual



matrix. The "principle" of equidistance is discounted as a principle and is only a technique for achieving equitable solution in delimiting maritime boundaries between opposite states and has not attained the same normative status as the principle of equity.

The interpretation of customary international law of maritime delimitation as embodied in the 1969 ICJ judgment and Articles 74 and 83 of the UNCLOS, provide strength to the above argument that equity has emerged as integral part of law in maritime delimitation. States may take recourse to various factors to achieve an equi-

table solution.

There are generally two techniques or methods of delimitation: (a) equidistant method/special circumstances (b) natural prolongation of territory

It is argued that equidistant method that applies to opposite states (India-Sri Lanka) achieves equitable result while between adjacent states, it distorts outcome unless special circumstances/other factors are fully taken into account.

The factors among others are:

- whether the coast is concave or convex
- presence of islands or islets
- presence of navigational channels
- geo-morphological condition of the coast
- state of natural resources
- needs of economic development
- size of the population in context of the size of the territory
- easy and open access to the high sea and International Sea bed Area

In the past international jurisprudence used to "lionize" only geographical factors to the virtual exclusion of other factors and it is now outdated because all relevant factors must be taken into account to achieve equitable solution.

The natural prolongation principle is rooted in the 1969 ICJ judgment. For example Bangladesh's continental shelf consists of its natural prolongation of its landmass from its southernmost tips into the Bay of Bengal.

The natural prolongation principle is further concretized by taking into account and giving due weight to all relevant factors in a given delimitation area

## Interim period

Ordinarily, the delimitation of maritime boundary takes a long time and if there is an issue of overlapping maritime areas that remains disputed and unresolved, the experience and lessons of many states are one of cooperation to a provisional agreement of joint development and exploration.

For example, Japan-South Korea Agreement of 1974, Malaysia-Thailand Agreement of 1990 and Thailand-Vietnam Agreement of 1992 on Joint Development Zones are instances in point.

Both parties put aside their contested positions, meaning that status quo of the area is preserved or undisturbed. Both sides generally make concessions on a reciprocal basis concerning the most difficult question of the principles and rules to be applied as its basis for delimitation of territorial waters/exclusive economic zones/continental shelf. Such reciprocal concessions are made without prejudice to the official position of the respective parties on the question of maritime delimitation.

## Conclusion

Given the days of energy shortfall and rising prices of oil and gas, exploration of maritime areas in the Bay of Bengal has become more urgent than it was in the past. It is commendable that under the initiative of the caretaker government, discussion with Bangladesh's neighbours on the issue of delimitation of maritime boundary has started and hopefully equitable solution is achieved for benefit of both parties.

The author is former Bangladesh Ambassador to the UN, Geneva.

## Global connection

U.S. Marines in Fallujah, Iraq, looked at the digital displays of the Joint Automated Deep Operations Coordination System (JADOCs) and noticed that the maps were lit up almost entirely red to depict the sources of enemy fire.

JADOCs is just one of the evolving network tools that will be on display at this year's Coalition Warrior Interoperability Demonstration (CWID), a cross between a traditional industry trade show and a military exercise. The demonstration, first held in 1994, gives vendors a chance to demonstrate technologies that can aid the exchange of information among services, allied nations, governments and nongovernment agencies.

A senior management group draws up a set of objectives before each demonstration, based on advice from coalition combatant commanders. Vendors then try to show how they can meet at least one of those objectives. In essence, they are shooting for the CWID seal of approval.

CWID is conducted under the auspices of the Joint Chiefs of Staff and planned by U.S. Joint Forces Command. It is run by the Defense Information Systems Agency (DISA). Beyond that, it has a distinct international flavor.

This year's objectives include better sharing of intelligence, other information and logistical data, as well as improved planning capabilities. Each of those objectives emphasizes more efficient transfer of information not only among military services and across national boundaries, but also between homeland security and defense agencies. If nothing else, the demonstration highlights the hardest-to-solve problems.

## Mahindra, BAE propose artillery, armor deal

Britain's BAE Systems and Indian automobile major Mahindra and Mahindra may form the first joint venture in India's private defense sector with an overseas partner holding 49 percent.

While foreign partners' direct investments in defense projects here are limited to 26 percent, Mahindra and Mahindra has filed an application with the Indian authorities proposing a joint venture in which it will hold a 51 percent stake, with BAE holding a 49 percent stake.

The new venture would develop artillery, armored vehicles and anti-land mine vehicles for the Indian military. BAE also plans to produce RG-31 land mine-protected vehicles here with Mahindra and Mahindra.

Khushbhai, chief executive of Mahindra Defence Systems, said he is optimistic the project will be approved.

Hai noted there is a precedent in the state-owned defense sector, where Russia's Irkut and Hindustan Aeronautics have a 50-50 joint venture for the production of a fifth-generation aircraft. However, the Mahindra-BAE joint venture with a 51-49 would be a first for India's private defense sector.

## Indian navy leaders to discuss maritime security

The Indian Navy's top commanders will review maritime security needs at the Naval Commanders Conference being held May 7-9 in Mumbai.

The conference is the highest decision-making body of the Navy. It meets annually to deliberate upon major operational issues.

"Over the last decade, the maritime security environment in the Indian Ocean region has become more complex, fluid and significantly more volatile. Along with the nation's economic success and elevation in international stature, the nation's regional responsibilities have also increased. To discharge these, a strong and effective Navy is essential," says the official Defence Ministry release issued May 6.

Sources in the Indian Navy said the commanders will discuss the level of fleet strength needed to support India's growing maritime interests in the region. The commanders will also discuss how India will join international maritime cooperation efforts.

It is not known whether maritime cooperation would come in the form of India joining the U.S.-sponsored Proliferation Security Initiative, the Container Security Initiative, the Regional Maritime Security Initiative or the Thousand-Ship Navy concept.

Source: www.defensenews.com

# Tibet: a case of cultural and religious oppression or economic deprivation?

BILLY I AHMED

THE media and various protest groups have almost universally treated the unrest in Tibet as a case of cultural and religious oppression and ignored the underlying economic processes.

Penetrating market relations into Tibet has led to an explosion of business spurred by huge government subsidies for infrastructure, particularly under the Great Western Development ("Go West") Policy launched in 2000.

Opening Qinghai-Tibet railway in 2006 quickened the influx of investment. But most of ethnic Tibetans have not benefited at all.

Only a small layer of the Tibetan elite has reaped the rewards from Qinghai-Tibet railway. Up to 80 per cent of Tibetan youth are unemployed and more than a third of the population is living under the official poverty line.

Reporting from Lhasa, the Wall Street Journal wrote on March 27: "Yet even as the government insisted the violence had been instigated by a small group of monks, it was apparent from interviews that a vast number of people had joined and that other factors were at play. One government official said that many of the people joining in the looting were unemployed youth."

Other reports point to erupting frustration among the poorest layers of Tibetans in Lhasa, many of whom are former farmers and herders forced into the city amid the growing demand for land on the one hand, and cheap labour, on the other.

Business Week pointed to the frenetic pace of business in China has helped fan ethnic resentment aimed at the millions of Han Chinese who have migrated into the region and have taken skilled, higher-paying jobs building the new roads, airports and power stations.

The overall rural incomes of \$583 are less than one-third of urban ones, in the west (where city-country populations tend to split, with the Chinese urban and the minorities rural) it is more extreme. Tibet's rural income is \$393, or about one-quarter that of urban incomes, while in Xinjiang it is only slightly higher, at \$444.

The economic growth rate of China's western provinces was 14.5 per cent in 2007 and in Tibet 17.5 per cent much higher than the

national average.

The main reason for the high levels of unemployment among Tibetan youth is that state education is in the Chinese language.

The Dalai Lama has abandoned calls for an independent Tibetan

Neither the bourgeois nationalists of the Kuomintang (KMT) nor, after 1949, the Chinese Stalinists, were able to extend basic democratic rights to the country's minorities and integrate them into a unified nation state on that basis.

As for the Tibetan elites, the

supported by a landowning aristocracy.

Most Tibetans were "chabags" or serfs labouring for monasteries and landlords. Buddhism was extensively spread as the means for soothing the masses with the belief that their bitter lot was the

his authority.

Imperial Chinese patronage continued under the Ming and Manchu dynasties, right down to the 1911 revolution. The Chinese emperor was not just the secular ruler of Tibet, but part of the Buddhist pantheon the reincarnation of Manjushri, the "Great Buddha of Wisdom".

The so-called modern "independence" of Tibet stems from the decay and collapse of the Chinese imperial system. With the waning influence of Beijing, Tibet became part of the "Great Game" as Russia and Britain intrigued and fought for influence and domination in Central Asia.

In 1904, Britain dispatched an expeditionary force from colonial India to conquer Lhasa, slaughtering hundreds, if not thousands, of Tibetan soldiers.

The region was not formally annexed; British officials imposed a treaty that effectively transformed it into a British semi-colony. The weak Manchu court in Beijing had little choice but to accept British pre-eminence in Lhasa.

Sun Yat-sen, the leader of the 1911 revolution that toppled the Manchu dynasty, proclaimed a democratic republic based on the "unity of five races" the Han, Manchurians, Mongols, Muslims and Tibetans.

Sun Yat-sen was the first to propose a railway to integrate Tibet into a unified national market. His Kuomintang (KMT) was never able to realise the vision, however.

KMT's powerlessness reflected the weakness of the Chinese bourgeoisie, which was subservient to imperialism and tied to the parasitic landlord class. After the fall of the Manchu court, China broke up as feuding warlords carved out petty empires.

Tibet remained "independent" that is, under British tutelage by default. Britain divided Tibet into Outer and Inner Tibet, incorporating 9,000 square kilometres into northwestern India in 1914.

Successive Chinese governments rejected this border drawn in London, even though Britain recognised the balance of Tibet was part of China. The "McMahon Line", as it was known, set the stage for the 1962 border war between China and India.

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state let in recent years and called for talks with Beijing, as sections of the exiled elite have sought to re-enter booming China on the basis of capitalism and a degree of autonomy.

More radical groups, such as the Tibetan Youth Congress, have taken up the call for a "Free Tibet" and publicly disagreed with the Dalai Lama's "middle way".

None of the two approaches is a solution for the Tibetan masses that will continue to be exploited by one or other capitalist clique in Lhasa, whether the status quo remains or one of these alternatives happens.

The present crisis in Tibet is above all the product of the organic incapacity of the bourgeoisie to resolve the outstanding national democratic tasks in China.

history of the past century has repeatedly showed their venal role in prostrating themselves to various major powers.

Although China's national minorities account for less than 10 per cent of the population, they settle in more than half of its territory.

Tibetans have always been the poorest of China's major ethnic groups, living on the extremely isolated and harsh Qinghai-Tibet plateau.

For centuries, the social development in Tibet never superseded the level of a semi-nomadic economy, supplemented by subsistence farming. The region was ruled by a Buddhist theocracy headed by the Dalai Lama and

result of their misdeeds in previous lives.

Those who call today for a "Free Tibet" try to conjure up historical evidence of a Tibetan state. But the extreme economic backwardness of the region has always condemned the Tibetan ruling classes to political impotence.

Apart from the seventh to ninth centuries, when Tibet was unified under the Tubo dynasty, the plateau was always divided between rival lords and Buddhist schools.

The central authority of the Buddhist hierarchy stemmed from Kublai Khan, founder of the thirteenth century Mongol dynasty in China, who invaded Tibet and used the priesthood to legitimise

# Bypassing the Malacca Straits

JULIEN LEVESQUE

THE Straits of Malacca, the shortest sea route from East and Southeast Asia to the Indian subcontinent, the Middle East, Africa and Europe, has increasingly suffered from congestion as Asia's integration in international trade has deepened. Today, around 1,300-1,400 ships per day cross the Straits, while 600 dock at Singapore daily. Less than two miles wide at its narrowest, the straits can easily be locked during a conflict, thus interrupting the flow of trade and, more importantly, of vital resources such as oil. In addition, piracy and terrorism are a constant threat in the Straits. Therefore, in order to secure sea-lanes and facilitate east-west movement between the Indian Ocean and the South China Sea, concretizing alternatives to the Straits of Malacca - some of which had been thought of as early as the 18th century - has now become an imperative.

Although certainly the best option, the Kra Canal project has been abandoned following Thailand's refusal and despite China's readiness to provide funding. The several routes proposed to cut through the Isthmus of Kra - the strip of land separating mainland Southeast Asia from the Malay Peninsula and that, at a point, is only 44kms wide - would have, in Bangkok's mind, physically isolated the five Southern Muslim majority districts and thus fuelled secessionism, a perspective unacceptable to Thai authorities. The Kra Canal project presents numerous advantages: it would shorten the distance between the Indian Ocean and the Pacific Ocean by about 1,100kms, save two to five days and US\$300,000 in transportation costs per tanker. Moreover, it would equally allow both goods and energy to pass through, and could even be paralleled with

a pipeline. However, the Kra Canal is estimated to cost US\$20 billion over a construction period of 15 to 20 years - thus excluding it from short-term projections. Finally, the Kra Canal would certainly tighten China's relations with Indonesia, Malaysia, and Singapore - three countries that, sitting on the Malacca Straits, enjoy large revenues from maritime flows.

The second means of avoiding the Malacca Straits is the 312km-long trans-peninsular Yan-Bachok pipeline that China is presently developing in Malaysia. Agreed to by Malaysia in May 2007, the US\$23 billion project includes the construction of two refineries on the western coast, which will allow refined oil to be transported to the eastern coast and shipped to China. Hence, the project should carry 450,000 barrels of oil a day by 2010, but will not allow the transshipment of goods. In addition, it will have to face numerous challenges. Waters are generally shallow near the Malay Peninsula, making it difficult for large tankers to dock. Worse, monsoon rains degrade the sea condition along the Kelantan coast where Bachok is located. In addition, oil will have to be pumped up the 2,000m-high Titiwangsa Mountains, using a part of the transported oil to supply the necessary power for pumping.

Finally, as highlighted by Thai Prime Minister Samak Sundaravej during his recent visit to Yangon, Myanmar, the option chosen by Thailand is to develop a deep-sea port at Dawei (Tavoy), the capital of Myanmar's Tanintharyi Division. Less than 300kms from Bangkok and standing on one of the proposed routes for the Southern Corridor of the Trans-Asian Railway, Dawei could become Thailand's direct link with South Asia, West Asia, Africa and Europe. Dawei could be connected through the Amyar Pass on the

Myanmar-Thai border to Ratchaburi in Thailand, where the Yadana pipeline delivers natural gas to be transformed into electricity - and further on to Bangkok.

India had long ago noticed Dawei's potential to enhance its connectivity with mainland Southeast Asia and favor its Look East Policy. In 2003, the Ministry of External Affairs referred to a trilateral project to build a land bridge from Dawei to Kanchanaburi. In 2005, it was announced that India would conduct a feasibility study as part of the activities of the subregional organization BIMST-EC. However, now that New Delhi has concluded with Myanmar, the agreement for the Kaladan project - which comprises of the development of Sittoung port on the Rakhine Coast and its linking with Mizoram through waterways, Dawei seems to be less of a priority. However, as India and Thailand have set themselves the objective of reaching a total bilateral trade of US\$7 billion by 2010-11 (from about US\$4 billion today), India's present involvement in Dawei would ensure a safe conduct for the realization of this goal. Exchanges with Indochina would also be facilitated. In addition, as East Asia has now become India's first trade partner, diversification of commercial routes to avoid the Malacca Straits is a crucial step to keep up that trend. Therefore, India should not abandon its ambitions in Dawei but continue its collaboration with Thailand.

One of the world's major chokepoints, the Straits of Malacca is the object of wide-ranging strategic considerations. Alleviating the strain on the Straits will not only ease East Asia's access to oil resources but also favor pan-Asian integration.

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