

"We must build national consensus"

FROM PAGE 12

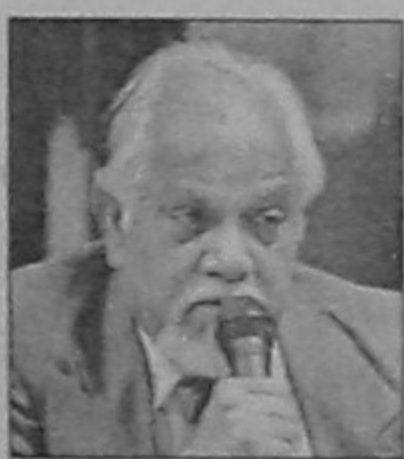
2006 - d-23, d-22. They have already carried out seismic survey here. Based on this line Myanmar also carried out survey here. This is where they were trying to have the drilling rig. Because of this problem most of our deep sea blocks are disputed. As a result, none of the IOCs actually submitted any bid for these disputed blocks. They submitted bids for only those very clearly area blocks, which they know will probably not on Bangladesh side. That is why without a delineated maritime boundary it will be futile to have these areas offered to the IOCs, because there will be no more participation.

This time Indian and Myanmar have been able to persuade all the IOCs not to bid in the disputed areas. I have been advocating all the time that we need a permanent body for UNCLOS. We have to redraw the maritime base line and claim the continental shelf, demarcate our maritime boundary, solve the sovereign issue of South Talpatti and we have to update our local laws and maritime zone act of 1974, explore the sea areas for gas and minerals, develop effective and modern maritime establishments in line with the law of the sea to support our diplomacy.

I shall now read out two paragraphs from articles I wrote in 2006. "We can only sound the national alarm bell for our political masters to come forward and see that the possession of our rightful sea resources are not wasted by a single day and take measures to solve the maritime boundary issues."

This one I wrote in 1993. "Effective and scientific extraction and preservation of sea resources could change our lot. But are we capable of doing so? To accept this challenge we have to delimit maritime boundary and consolidate our position in the Bay of Bengal more effectively to derive maximum benefit out of it."

Rear Admiral SIMujtaba



In India's map South Talpatti is known as New Moore Island. There is a satellite picture which indicates that the flow of Hariabhanga River is west of South Talpatti. Probably it came to the notice of the Bangladesh government that India has trained the river upstream to divert the flow of the Hariabhanga River west of South Talpatti. If they have trained the river flow it does not mean that that the land belongs to them. We can prove to the higher authorities or the UN that this river was originally flowing on the west of South Talpatti. Bangladesh at that time had set up a lighthouse on South Talpatti and within fifteen days it was not there anymore.

Brig Anam

What you are suggesting Admiral is India deliberately changed the course of the river to make it flow west of South Talpatti in order to lay the claim or reinforce the claim on the land.

Admiral Mujtaba

Yes. I think our foreign ministry is fully aware of this.

Ambassador Harun ur Rashid



The name South Talpatti was given by us. Because Talpatti is in the Sundarban area so it makes a link.

Low tide elevation under international law to my knowledge has no impact on delimitation. Delimitation has to be from the base line. Because everything we want to measure, like territorial waters, economic zone, continental shelf etc., what is the yard stick? Where do we measure? It is from the base line. So, whatever we call must be from the base line. That is the point that ordinary people understand. Now what is our base line? I will come to this later. Second thing,

we had suggested a joint survey by Bangladesh and India in 1974-75 to see where the deep channel goes. India argued that it touches their sovereignty. If they agreed to a joint survey that would mean there was a dispute on their claim. So they have not yet agreed, in spite of our proposal. The third element is the swatch of no ground, which is a river within the ocean, a submerged river. In Paris, a scientist told me that your swatch of no ground is alive. Therefore, it is taking all the silt towards Sri Lanka. This will never rise.

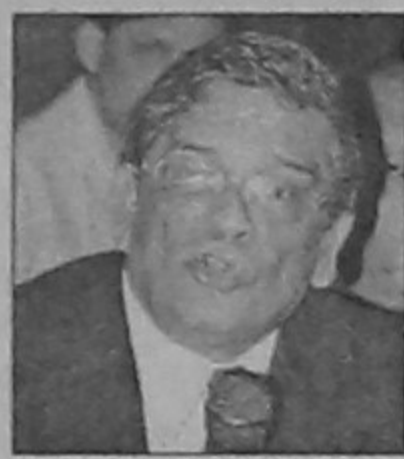
In 1968 when I was in foreign office, Peru was claiming 200 miles as territorial water. The Latin American countries were claiming 200 miles as territorial waters.

Ambassador Ashfaqur Rahman



As we all know, a new country is coming up so where would our base line be? This swatch of no ground could be one of our base lines. This is a point I would like to raise.

Ambassador Reaz Rahman



There are many elements here that need elaborate discussion to understand the complex issue. The first thing we have to look at are key

dates involving this whole picture. There was a slow down process regarding this issue of vital national interest. Why haven't we dealt with maritime boundary which is such a crucial matter?

Another point is territorial jurisdiction. Let me make it clear here that in 2011 we are not going to determine our maritime boundary. That is not the deadline. In 2011 we are going to put forward our claim for an extended continental shelf. What is the importance of this claim? Under the law of the sea the coastal state has automatic jurisdiction over areas that have been mentioned. That means each coastal state has 12 mile territorial sea, 12 mile contiguous zone, 200 mile exclusive economic zone in which they can lay claim over living and non-living resources. The only issue is continental shelf. In some cases you are allowed to claim up to 350 nautical miles. Now Bangladesh has got continental shelf position. That does allow us to put in a claim beyond 200 miles, up to 350 miles.

The third and crucial point is respective positions regarding maritime delimitation between India, Bangladesh and Myanmar. In so far as our territorial jurisdiction is concerned it overlaps with that of India and Myanmar. It is only through negotiations, only through an agreement with the neighbours that we can determine our maritime boundary. Nobody else has jurisdiction in this matter. If the two neighbours cannot reach an agreement then we can have recourse to an arbitral council, we can have recourse to the ICJ, but nobody else can impose or decide on this matter, neither can Indians do it nor Myanmar can do it. There is no unilateral position. Let me make it clear here that insofar as a small country like ours is concerned, our basic recourse must be dependent on law. It cannot be dependent on military might. We are not going to have our navy compete with the Indian navy, or Myanmar navy for that matter. Of course we must have a deterrent value of our armed forces. We need to have vigilance.

When we come to the issue of maritime boundary and delimitation, there are two vital elements here. It is the difference between those countries that claim that equidistance matters, and those countries that claim equity. Bangladesh claims equity as the basis of determining maritime boundary. Equidistance is a

method of drawing the line where every point is equidistant on the territorial base line that leads to the drawing of that line. We do not follow that policy. We do not say this is the principle of law. Equidistance is only a method and there are many, many ways of drawing the equidistance line. So, why that should be imposed on Bangladesh? One of the most important elements is our claim on an extended Continental Shelf.

In 1974, when we made the Territorial Waters and Maritime Zone Act, there was no law of the sea. We unilaterally declared our zones; as a matter of fact we declared 6 miles for contiguous zone and law of the sea declared 12 miles. The important point here is we drew a base line. The base line is the low water mark along the coast. Everybody in the world accepts that. But an exception was made to that when Norway and Sweden argued that because of a very deeply indented coast line and a fringe of islands, territorial waters should be more than 3 miles (in those days territorial waters was 3 miles). However, many of the countries argued that law of the sea should not conform to the maritime boundary only. Bangladesh came in with a totally different concept. Our concept was that we have a deeply indented coast line, that we have a delta, and that we have a coast line that is very unstable in nature, we have mud banks that appear and disappear. And the basic cut off point was that there is the limit of navigability.

We drew a more or less perpendicular orientation for our maritime boundary. Another vital point is the impact of South Talpatti. In 1982 we suggested a joint survey by Bangladesh and India of South Talpatti but India said it was not a disputed island.

The most important issue is our claim to an extended Continental Shelf. If we can establish our claim then we can have a much better deal on maritime boundary.

Brig Anam

One thing I would like to say is that 2011 is not the end of the world. It is when we have to submit our claim and suggest in the claim if there be any dispute and what are the mechanism that we would agree to resolve the dispute. I now request Barrister Morshed to comment on the legal aspects of the issue.

Barrister AKH Morshed



It is unique in Bangladesh that here everyone is talking about the dispute. We depend on the media to instill a feeling in public mind that this is not an issue of national debate but of national consensus.

The second point I would like to emphasise is that with India and Myanmar there are major disparities. The two countries depend on the method of equidistance while we are depending on the definition of the Continental Shelf. This is a matter of stated law and not of equity. International law entitles you to national boundaries not to your land territory. And this has been reaffirmed by the International Court of Justice.

There is another bigger disparity - which is in the stakes involved. As far as India is concerned its maritime dispute with Bangladesh involves between five and 15 percent of its maritime territory, and that is a very conservative estimate. For Myanmar, its dispute with Bangladesh involves between 10 and twentyfive percent of its maritime territory. For Bangladesh, our stake is one hundred percent. If you don't get it you are out.

It is said that there is provision for going to the International Court of Justice for arbitration but this is not mandatory. Neither India nor

Myanmar believes in third party arbitration. Only Bangladesh believes in it. About extended Continental Shelf I would like to say that it is a not a matter of equity but a matter of law.

Brig Anam

We would like to move on now to looking forward. Is there a need for a political direction? What do we envisage the role, if any, of the media, for public awareness if not for public debate. To do this I call upon Mr. Shafi Shami.

Ambassador Shafi Shami



I would like to suggest that in looking forward there is a need to ask whether there is a need for a political direction? Is there a role for the media in creating public awareness?

Bangladesh's position has to be based on the strength of law. Bilateral negotiation has to be the preferred way. Basically there are three issues between India and Bangladesh with regard to base line definition of 1974, South Talpatti and Hariabhanga river and equity and equidistance method. Equidistance is easier to apply between opposite states, whereas equity comes into play in reconciling conflicting interest of neighbouring states.

I find that after 28 years we have not gone much ahead in solving the issues. After the recent negotiation both the delegates said they have understood each other's position better. The same thing was said 28 years ago. It appears it will be very difficult to achieve an agreement at that level. However, we must continue negotiation. Negotiation is the best possible way to resolve this issue. And perhaps political direction will come and it will take lot of courage on the part of political leadership. I think political will has to be energised, both in India and in Bangladesh.

Barrister Harun

After 1975 the next negotiation was held in 1978. India took a very unusual position that they would not recognise what was agreed at two foreign ministers' level in 1975. So we had to go back to square one. Now I would urge the two foreign ministers to pick up the thread of 1975.

Ambassador Serajul Islam



From 1982 to 2008 there was a big gap. There was no sense of political direction as far as the law of the sea or demarcation of

maritime boundary is concerned. We need to be more focused and the media can clear the perception that 2011 is not the doomsday. There is no professional approach to such a crucial problem to the future of Bangladesh. We really do not know who should take the lead in these issues. Whether or not we will solve the problem with India or Myanmar will depend on the political will. The direction must come as a political solution. Therefore, professionals must build a case on the basis of the law and prepare a professional team. Today one recommendation that should be considered is that we must coordinate all our minds, we must have the best professionals in all the fields and bring them under one roof.

Reaz Rahman

I would like to address the two points raised by you.

First shall we keep on negotiating? What happens next if negotiations do not succeed? And exploration of resources. What do we do if we come into conflict?

Second, The Indians were supposed to submit claims for CLCS by 2004. There was blanket extension of five years. They are now supposed to submit it by 2009. I understand they are seeking further extension.

There is a traffic jam with regard to the submission of claims. So the whole issue of

timing has become skewed. Many countries have submitted their claim but others are biding for time. Myanmar was keen for negotiation because of the exploration but India was not pushing for negotiation on maritime boundary issue. The convention was signed in 1982 but it came into force only in 1994. A lot of activities took place during this period.

Barrister Harun

I do not approve of technical committees. I suggest the offer of India in 1975 should be picked up. Tell them that you have agreed at foreign minister level, you cannot go back, and let us see how far we can go.

Dr. A.K. Azad



The conflict is not for water or land it's for the resources. So, why don't we go for joint management of resources? It

is not only stipulated in article 83 but also in 74 UNCLOS you will find that there is provision for joint management of resources, both renewable and non-renewable. At the moment eight countries are trying to go for joint management of resources. Media can play important role in creating awareness about ocean governance, coastal management and maritime boundary.

Prof. Shahiduzzaman



My concern is about late reporting of the presence of the exploration rig. Why wasn't it identified earlier? Why we

didn't get intelligence report since we have our ambassador and military attaché in Rangoon? It shows lack of efficiency on the part of our government. I am also worried about gathering of troops across the land border. It is a military government that we are dealing with. We have to be very careful about what we can achieve through negotiations with them. Legally, our stand has not been as strong as it could have been. International pressure may apply to a certain extent but we will not have much chance of stopping either Myanmar or India from carrying out unilateral exploration. We will have to just watch and see. I think in a few months Myanmar will acquire naval ships and use force in order to ensure their work. We have never seriously contemplated alliance relationship in this context. We have to pursue alternative routes.

Dr Uttam Kumar Dev



To be successful in negotiations what is required is scientific understanding and scientific documentation, which we

have done. If we have to go for joint management of resources we must know what would be the economic outcome. Our current concentration is more on oil and gas resources but there other resources like fishes. We know fishermen from Myanmar and Thailand come to our waters to fish. In the future we shall see development of marine-culture here like it is now happening in other countries. Most importantly, continuity in negotiation is very important.

Ambassador Zamir



It would be useful for the parliament standing committee in charge of defence or foreign affairs to seriously consider keeping such important problems in their agenda so that they

can have a meaningful dialogue within the parliament.

My suggestion is keep the institutional memory alive because that is the way to move forward. Whatever has been written by experts in their notes should be scanned and put in CDs. The next generation will be able to use that as resource base. We should try to be integrated in our approach.

Cdre Khurshed

I want to give due credit to the media because for their reporting the issue has come to the limelight. If the people are aware, if the press is aware, this could be a good method for the negotiators to sound out that look we cannot simply barter away our rights in the sea. As far as joint exploration is concerned I think this is very premature because Myanmar is claiming our 8 block and India is claiming our 7 block. So how do you go for joint exploration when other countries are asking for our blocks?

Because of the delay in solving the maritime boundary issue India has declared D 22 and D 23 blocks on our declared area as theirs. They have already carried out physical survey there and probably next year they will bring in their rig here. These are inside our waters as per declaration of 1974. Myanmar also carried out survey in 2005 and possibly come back soon. They have given the block to the IOC in 2003. This block clearly encroaches into our area. We have hardly taken any action. So, by simply delaying maritime boundary delimitation whether we have done good for the country or not only future will tell. I personally feel we have done great harm by not taking right initiative at the right time to delimit our maritime boundary. About the continental shelf the question is how much preparation we have done in the last 8 years. If we have to submit claim in 2011 or even later, we have not carried out any physical survey.

Equidistance is a very simple method but that is the method that has been followed in case of over 59 delimitation cases so far all over the world. On the other hand, as for equity, we have been harping as per article 73 and 74 in 1983 but which factors of equity will give Bangladesh a better advantage compared to Myanmar or India have not been identified.

Ashfaqur Rahman

Survey of the sea bed and continental shelf is very vital factor which the media should highlight. I would like to say that the continental shelf should be surveyed physically for our case. We need a high tech survey ship to do this job. One of the priorities of the new government should be to acquire such a ship. Adequate financial allocation should be made by the new government.

Barrister Morshed

As far as the survey ship is concerned even the US doesn't have a survey ship. It is an expensive affair. They also hire ships for survey. Survey of our maritime zone has been done by a German company and also the Bangladesh Navy. But we do not have any results in hand from there.

Rear Admiral Mujtaba

The Bangladesh Navy was given the task of preparing new charts. We have done our job one hundred percent and the documents have been handed over to the foreign ministry.

Concluding Remarks Brig Anam

We have been put wise on what was a nebulous issue to us. I thank you all once again very much for your participation and rich contribution.