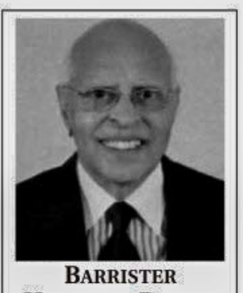
BOTTOM LINE

Maritime boundary with India: Arbitration or bilateral negotiations



BARRISTER HARUN UR RASHID

NOW that the maritime boundary has been settled amicably with Myanmar through International Tribunal for Law of the Sea (ITLOS), Bangladesh has to resolve the maritime boundary with India. The process started in the Arbitral Tribunal in 2009.

During bilateral negotiations starting from 1974, India proposed to squeeze Bangladesh maritime area from the west to a point that took away a large chunk of Bangladesh's maritime economic zones by drawing the boundary line on the basis of equidistance method without geographical and geo-morphological considerations. The equidistance method is application of mechanical geometric calculations in maritime boundary applicable in the case of states opposite to each other.

Bangladesh rejected India's position and instead proposed equable principles for fairness and justice given Bangladesh's geographical position as an adjacent /lateral state with India.

Sometime in April 1975, at the Jamaica meeting of Commonwealth heads, Bangladesh was understood to have proposed arbitration on the sea boundary to India but India rejected and insisted on bilateral negotiations.

Both India and Myanmar, during bilateral talks, insisted on application of equidistance method while Bangladesh has, since 1974, consistently advocated the equitable principles (fairness and justice) in drawing the maritime boundary primarily for three reasons among others; (a) Bangladesh is adjacent to both India and Myanmar as distinct from opposite (India and Sri Lanka), (b) the concavity of the coast of Bangladesh and (c) legal precedent set by the International Court of Justice in the 1969 North Sea Continental Shelf Case between Germany, the Netherlands and Denmark.

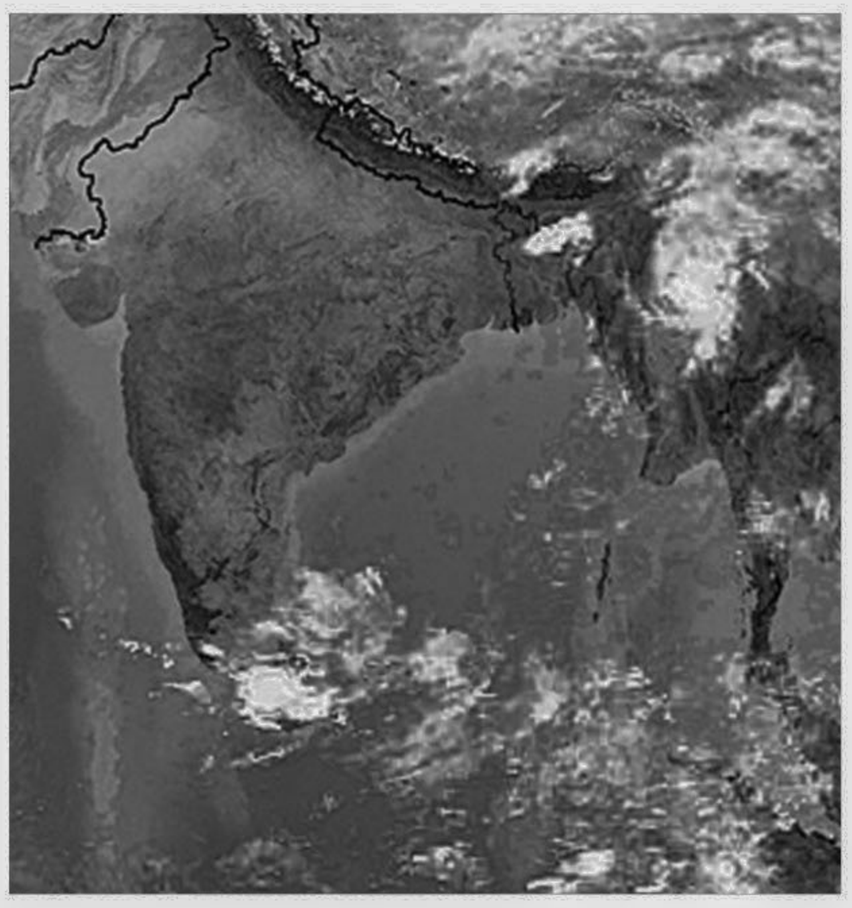
Bangladesh commenced bilateral talks in 1974 with India and after several rounds of negotiations, including the last one in 1982, it remained inconclusive because neither side budged from its preferred method (equidistance or equitable principles) of application in drawing the maritime boundary.

During the last 38 years, India was eager to see how Bangladesh settled the boundary with Myanmar through bilateral negotiation. At the same time, Myanmar also wanted to know under what principles Bangladesh resolved the boundary with India. Accordingly, bilateral negotiations with both countries stalled. None agreed to apply the equitable principles as proposed by Bangladesh, though there are ample legal precedents to support the Bangladesh position.

It is worthwhile to mention that Bangladesh ratified the 1982 UN Convention on the Law of the Sea (UNCLOS) in 2001, while India ratified it in 1995 and Myanmar in 1996. Accordingly all three countries are bound by the provisions of the UNCLOS.

The Sheikh Hasina government revived the boundary case in 2009 after several rounds of talks with Myanmar and India, and took a bold but risky decision to submit to the dispute settlement machinery under the 1982 Convention Law of the Sea.

India did not agree, while Myanmar did, to submit the case to ITLOS but agreed to refer the case to the Arbitral Tribunal. Both mechanisms are allowed under the Convention of the Law of the Sea for dispute settlement on maritime boundary.



The Bangladesh foreign minister was right when she said that bilateral discussions with India could be held on the basis of principles set by ITLOS. 38 years have passed and Bangladesh cannot afford to lose any more time in bilateral discussion.

On October 8, 2009, Bangladesh initiated arbitration proceedings against India. In February, 2010, the President of the Tribunal appointed three arbitrators -- Tullio Treves of Italy, I.A. Shearer of Australia and Rudigar Wolfrum of Germany. (Tullio Treves and Ivan Anthony Shearer are ITLOS judges.)

In May 2010, India and Bangladesh agreed to attend a meeting to fix a time table of submission of their pleadings and rejoinders. Bangladesh lodged its statement of claim in the scheduled time (by May) in 2011 and India will respond by May 2012.

On March 14, in a landmark judgment, the ITLOS accepted Bangladesh's argument that equitable principles would be applied in drawing the maritime boundary with Myanmar.

It is reported that, on March 19, Foreign Minister Dr. Dipu Moni ruled out any possibility of withdrawing Bangladesh's maritime boundary case against India, but said bilateral negotiations could take place alongside the arbitration on the basis of the principles set by the International Tribunal for the Law of the Sea (ITLOS).

"There is no scope to withdraw the case because we went for arbitration since we did not get any solution through discussions with India," she said replying to a question at a press conference at the foreign ministry.

"The door for discussions is open if they (India) want that but the discussions are to be based on the ITLOS principles ensuring Bangladesh's legitimate rights alongside pursuing the case," Dr. Dipu Moni said.

Talking to journalists after the hour-long talk with Foreign Minister Dr. Dipu Moni, the Indian High Commissioner expressed India's strong willingness to discuss and bilaterally resolve the maritime boundary issue with Bangladesh.

It is noted that in the joint communiqué of 2010, following the visit of the Bangladesh prime minister to India, Paragraph 21 states that "both prime ministers agreed on the need to amicably demarcate the maritime boundary between India and Bangladesh. They noted the initiation of proceedings under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) and, in this context, welcomed the visit of a delegation from Bangladesh to India."

In my view, the Bangladesh foreign minister was right when she said that bilateral discussions with India could be held on the basis of principles set by ITLOS. 38 years have passed and Bangladesh cannot afford to lose any more time in bilateral discussion. The Arbitral Tribunal is expected to deliver its ruling in 2014.

Given the energy shortfall and rising prices of oil and gas, exploration of maritime areas in the Bay of Bengal has become more urgent for Bangladesh than it was in the past. The most remarkable off-shore technology that has progressed in the 15 years is the three-fold increase in the maximum operational depth of off-shore rigs, which has opened up good prospects for exploration of oil and gas in the Bay of Bengal.

The writer is a former Bangladesh Ambassador to the UN, Geneva.

Safety of life and ship

MD. ALAMGIR

WHEN two running ships collide head to head, there is no doubt that severe structural damage will occur. Even after such collision the vessel should not have sunk and so many passengers should not have died if it had been designed to the required standard and appropriate safety rules were followed. I do not know how many life-jackets the vessel was carrying, when every passenger must have one.

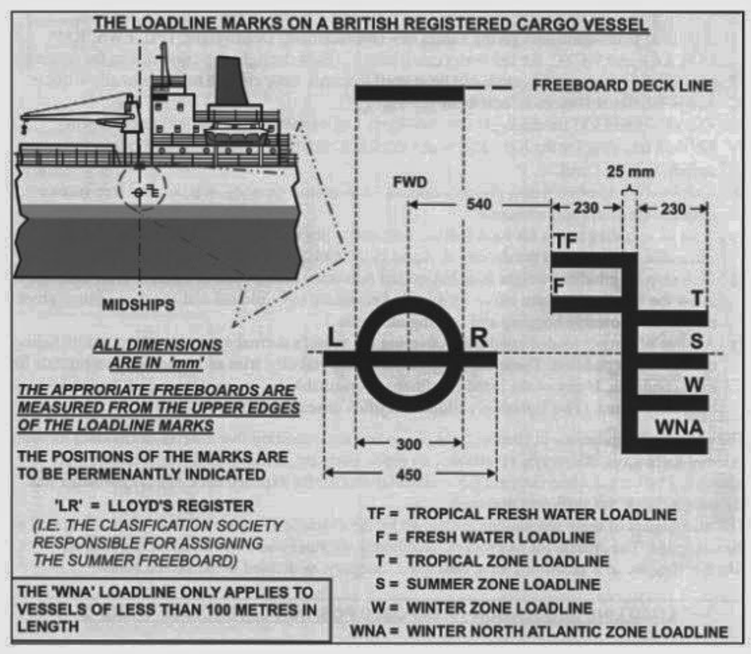
Compartmentalisation is a basic design criterion to prevent the ship from sinking in case of collision or grounding. In the event of an accident, the water-tight part is still available to provide buoyancy to keep the vessel afloat. Reserve buoyancy available will depend on how the hull (body) is divided into separate watertight compartments. It should be divided into many parts so that a single collision on one spot can't damage all the watertight compartments.

A floating football will not sink until it is pierced, allowing some water to ingress inside the ball. Similarly, a ship can be prevented from sinking if its watertight integrity is maintained. According to the law of Archimedes the ball will sink when the weight of the ball and the water inside it is greater than the weight of the water displaced by the football.

Watertight integrity of a ship may be broken when a ship collides with other vessel or any underwater object. A vigilant watch by well trained and certified navigators and electronic watch by the modern radars help prevent collision. Watertight integrity may also be broken if a ship's side or bottom develops a hole due to ageing or quality of steel. Periodical tank inspections and underwater survey give early indication of material failure. The thickness of the steel plates is measured by ultrasonic gauging, and reduction of thickness from the original thickness can be detected. This method is used by all the regulatory bodies to make the renewal of plates obligatory for the owners at about 20% to 30% reduction of the original thickness. Accordingly, the owners renew steel plates to protect a vessel from any possible damage due to worn-out steel structure.

A ship is not as watertight as a football. It has got many openings on its weather deck that are prone to water ingression in case of unsafe loading, rough weather, as well as in case of bad design. Due to violent external force a ship will roll and pitch and frequent immersion of the deck may occur. During this period, sweeping water will try to ingress through various openings on deck, such as doors of accommodation, machinery space openings, ventilators, port holes (accommodation windows), side scuttles, sounding pipes of fuel or ballast tanks, etc. If all openings are designed and maintained properly the ship will remain watertight, uphold its stability and will not sink even in bad weather .

However, to prevent water ingression through different openings on deck water has to be kept at a distance from the deck. This distance is called "Freeboard" and is well known in the maritime industry. The first seafarers who set to sea in wooden canoes thousands of years ago must have already -- perhaps by trial and error -- worked out the optimum freeboard for those vessels.



We may have to review our national standard of construction of vessels, supervision of operational load lines as well as the assignment of freeboards to the vessels, taking into account the seasons as well as the type of cargo -- passenger, oil, dry cargo, etc.

The minimum freeboard is designed to provide a standard of "reserve buoyancy" (the volume of the watertight hull above the load waterline), while the protection of openings in the hull and superstructures, such as hatches (opening of cargo spaces), ventilators, air-pipes, scuppers (drain pipes), and the access openings in accommodation, is an important consideration in the assignment of freeboard. Freeboard is assigned to every individual ship by the state administration.

Freeboard is measured from the top of the deck amidships to the top of the line through the centre of the load water-line disc (a circular ring painted on a ship's side). Forward of the disc is a grid composed of lines indicating the maximum loading -- at the level with the line in the disc for the summer and others further down for winter in the north Atlantic, and above for the tropical zones and for fresh water. Here is a picture to show the freeboard markings on a British cargo vessel:

The first 19th century loading recommendations were introduced by London-based Lloyd's Register of British and Foreign Shipping in 1835, following discussions between shipowners, shippers and underwriters. Lloyd's Register recommended freeboards as a function of the depth of the cargo hold (three inches per foot of depth) and these recommendations, used extensively until 1880, are known as "Lloyd's Rule". However, the Rule applied only to ships registered with Lloyd's.

In the year 1873-4, around the coastline of the United Kingdom, 411 ships sank, with the loss of 506 lives. But this figure only covers the United Kingdom coastline: between 1867 and 1882, loss of life in British vessels alone (excluding fishing vessels) totaled 33,427 seafarers and 5,987 passengers. Ships lost numbered 16,393.

In 1906, laws were passed requiring foreign ships visiting British ports to be marked with a load line, while a German law of 1903 also issued freeboard regulations, spreading the regulatory net further.

From the history of load line markings, we can see the significance of assigning the markings by the administration and maintaining the markings during operation. All assigned load lines must be marked amidships on each side of the ship, and must be clearly visible to the safety inspector.

We may have to review our national standard of construction of vessels, supervision of operational load lines as well as the assignment of freeboards to the vessels, taking into account the seasons as well as the type of cargo -- passenger, oil, dry cargo, etc.

Many incidents of sinking passenger vessels that cost thousands of innocent lives must have stirred the people's hearts, and they now demand corrective measures from the government. The root causes of the incidents have to also be found.

It is shocking to see lifeless bodies floating without any life-jacket, a safety gear that must not be ignored by the ship owners and ship inspectors anymore.

The writer is Engineer Surveyor, International Ship's Classification Society.

Does Asian humour exist?

ASIANS have no sense of humour. Their idea of comedy is slapstick. Irony doesn't exist in Asian discourse. There are no comedians in Asia.

That's a list of conventional beliefs about humour in Asia. I don't think any of them are true. But I don't blame anyone for thinking these things. The west is overflowing with stand-up comics and comedy movies and witty cartoons. But comedy -- well, intentional comedy -- is harder to find on the eastern side of the planet.

You need to know where to look. There's lots of wit in the Philippines. There, you'll find a bakery called Bread Pitt; a pipe-laying firm called Christopher Plumbing; a boutique called The Way We Wear; a burger shop called Mang Donald's; a hairdresser called Felix the Cut; a butcher called Meating Place; and so on.

Other parts of Asia also generate jokes. Here's one from South Asia: You Know You Are Asian If: (a) your dad is an engineer or a doctor; (b) everyone assumes you're good at math; (c) you have a 25-kilo sack of rice in your pantry; (d) you have rocks, sticks, leaves and mysterious strange-smelling substances in your medicine cabinet; (e) you refer to all adults as auntie and uncle.

Here's a joke I love in Indian English: Manager: "Raju! You was discharged from hospital yesterday only. Why you come office today itself?" Raju: "Doctor told me take rest for a month. That's why I come to office!"

Why is Asian humour tough to find? The media in Asia tends to be run by government officials and business people looking after their own interests (sorry, is that tautology?). Individuals like that just ain't funny. China once put out a government-approved pop song called When I Grow Up I Want to Be a Peasant. Without a trace of irony.

So instead, look to the Internet, student publications, theatre groups and so on: that's where the humour's hiding. The fact that you are reading this column makes you part of a large group of people in Asia who like a laugh -- so we are perfectly placed to "prove" Asia has a sense of humour. If you know any Asian jokes, send them in (no, don't post Joseph Estrada to me).

An Asian man goes into a night market food-stall and orders three rice dinners. He eats all three by himself. "Hungry?" asks the food stall man. "I am one of three brothers," the diner says. "One of my brothers has a restaurant in London and the other has one in New York. So we pledged to always eat like this, so we can remember each other at mealtimes." Every day the diner comes to the food stall. And every day he eats three rice dinners. This goes on for more than a year. And then one day he comes into the restaurant looking very sad. He orders only two rice dinners. The food stall boss approaches with his head bowed. "I would like to offer my condolences on the sad passing of one of your brothers," he says. "Oh, neither of my brothers is dead," says the diner. "It's just that I'm on the Atkins diet."

For more visit www.vittachi.com