

JUDGMENT REVIEW



The ITLOS judgment implications

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THE International Tribunal for the Law of the Sea (ITLOS)'s award on the delimitation of maritime boundaries between Bangladesh and Myanmar was made public on 14 March 2012. The President of the Tribunal (Judge Jesus) read out the judgment. The matter has been a talk of the time both in Bangladesh and Myanmar. As to the interests of our homeland we all Bangladeshi have cheers to reiterate the award owing to its inclination expressed by our state authority in favor of Bangladesh. Bangladesh represented by a delegation of Mr. Khurshed Alam, Mr. Shamim Ahmed the Foreign Ministry Personnel headed by Hon'ble Foreign Minister Dr Dipu Moni had time to time look on it. Other delegates in the status of

to be disposed of in the Hague Permanent Court of Arbitration by 2014. Hon'ble Indian High Commissioner Pankaj Saran in Dhaka is expressing views to come forward to settle the dispute by agreement. Although there is in the Hague Arbitration Court the maritime boundary dispute, there is no bar to go ahead for agreement to settle it. In my interview of 18 October Prothom Alo it was said as such. From the Bangladesh Authority's point of view Hamburg award has been in favor of Bangladesh. This gives rise to various corners to be stick to the dispute to be settled in the arbitration court. A round table meeting held under the auspices of the Prothom Alo where it's Editor Mr Motiur Rahman, Foreign Ministry Personnel Mr. Khurshed Alam, Law Commission personnel and myself and some other elites and differ-

may be identical and some other may not be as such. There is then opening for other factors that may result to think the matter otherwise. Interests of the country in so situation need to be promoted.

There are a bunch of factors that cannot be avoided in delineating and delimiting maritime boundary between states whose coasts are opposite or adjacent to each other. It is deemed practically in saying that while a case is filed to be considered to have been filed by right hand, left hand is deemed not to know the case. Some secrets of the case are maintained not to be in public. It is done to secure interests of the concerned party to the case. The Bangladesh Myanmar maritime boundary ITLOS arbitration award at the present time has been a talk of the time persuaded by workshop, seminar and some other form of discourse in the country. The speakers seem to be too inquisitive to suggest steps to be taken in favor of the country in the ensuing Bangladesh and India maritime boundary dispute to be settled in the Hague Permanent Court of Arbitration.

While a concern of maritime boundary delimitation arises, there is the concern of delimitation of boundary of the sea zones within national jurisdiction. That is to say, internal waters landward of baselines, territorial sea (12 n.m), contiguous zone (24 n.m), exclusive economic zone (EEZ- 200 n.m) and continental shelf (200 350 n.m /2500-meter isobar cum 100 n.m) stands to be adjudicated. The award in the ITLOS Arbitration Court has dealt with the delimitation of sea zones within national jurisdiction and in so doing the court has considered the boundary of the continental shelf outside 200 n.m.

It is to specify that in the existence of 200 n.m EEZ (living and non-living resource zone) the regime of the continental shelf appears practically to concern with the shelf outside 200 n.m. Whatever be the extent of the continental shelf beyond 200 n.m limit the shelf shall be the concern of the Authority. Of the coastal States whose will be this continental shelf will not be the concern of the Continental Shelf Commission? But the matter will expose concern between the coastal State(s) and the Authority. It can also be noted as per Annex II regarding 'Statement of Understanding Concerning A Specific Method To Be Used in Establishing the Outer Edge of the Continental Margin' that requests of the LOS Conference has made the Commission set up pursuant to Annex

of the Convention, to be governed by the terms of this Statement when making its recommendations on matters related to the establishment of the outer edge of the continental margins of these States in the southern part of the Bay of Bengal.

It gives rise to reiterate that delimitation of maritime boundaries particularly such continental shelf results in the purview of ITLOS mechanism. There is then nothing to contradict jurisdiction of the ITLOS to dispose of such continental shelf matter too. Question may arise as to the interests of the Authority. The Authority has little care as to who is gained or who is lessened by the boundary the Arbitral Tribunal declared. Nothing has been mentioned about any sea except the Bay of Bengal by the LOS Conference. To all intents and purposes, the Bay Bengal attributes keen interests to be drawn for its littoral States. There are certain matters that come into account between Bangladesh and Myanmar as well. The LOS Convention in its Article 82 narrates how to consider exploration and exploitation of the continental shelf extending beyond 200 n.m. According to this article of the Convention coastal state is entitled to explore and exploit non-living resources for the first five years. Thereafter, the coastal State shall make 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain 7 per cent thereafter.

Production does not include resources used in connection with exploitation. The payments or contribution shall be made through the Authority (International Seabed Authority). From a practical point of view, there is a bit query as to the jurisdiction over the 200n.m - beyond the continental shelf. In this region there seems involvement of the concerned coastal state(s), the Commission on the Outer Limits of the Continental Shelf and the International Seabed Authority. The Commission needs chart of the outer edge of the continental shelf as provided by the coastal state to its satisfaction. The coastal State is limited to the continental shelf not extending 350 n.m from the baselines. It has also option to extend the shelf to 100 n.m from 2500 meter depth line. The Authority has some say not to squeeze it in the jurisdiction of the coastal State. There is an essence generally applicable for the coastal State to make payments and contributions annually with respect to all production at a site after the first five years of production at that site. In effect, this shelf and its resources appear to be the common heri-

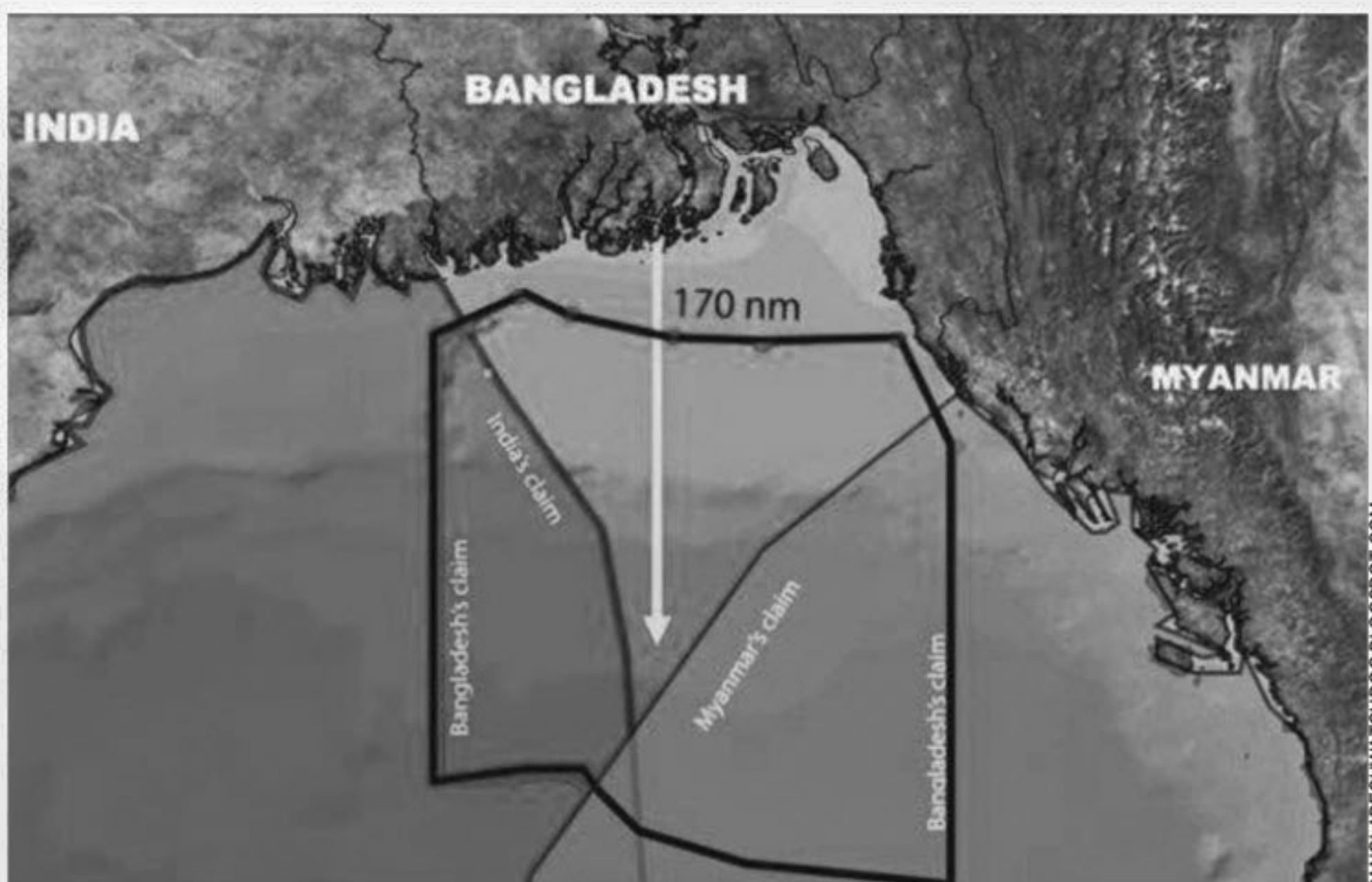
tage of mankind.

It is also to mention that 'a developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource. It is also provided that 'the payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them'.

The Continental Shelf Boundary dispute between Bangladesh and India in the Hague Permanent Court of Arbitration, it is submitted, will go into deep of the matter in order to give verdict. The main theme of the verdict will be to take an account of the party's viable and pertinent points and to do that it will aim to give away the award equitable to the parties. As generally seen in the disposition of disputes in the court no one forgets his stand to get the verdict in favor through geographical, geological, geomorphologic, oceanographic and stronger of the realm territorial interests sub-regionally, regionally and globally concerned as to promoting peace, stability and tranquility. Now -a -days is the say of global village to promote feeling to each other giving rise to global harmony for all through enriching LOS Convention peace oriented mechanism?

In honor of all this, there seems no need to march forward or make show-down enchanting Bangladesh and Myanmar ITLOS Hamburg Arbitration verdict favorable or against. There may be factors certain of which neither of the parties may take interests to make open-ended. There may be nothing if those factors are made known somewhere by some ones other than the personnel involved in the dispute. However, the dispute deal personnel may have limitations enabling the party's interests to some extent be procured. If so, they may go ahead with such vision for some positive view. Let the Bangladesh and India Hague Arbitration Tribunal to deal with their maritime boundary delimitation go ahead with the regime of dispute settlement through peaceful mechanism. In so doing, the parties to the dispute need to be blessed with the award equitable to them in fact and spirit.

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counselor and judge ad hoc had been involved on behalf of Bangladesh from abroad in the matter. Most of them seem to be in the position of university professor and in some other discipline too. It is not out of place to mention that we are not in dearth of the law of the sea matters dealing with the ongoing maritime boundaries.

The judgment in maritime boundary dispute between Bangladesh and Myanmar at the International Tribunal for the Law of the Sea (ITLOS) in Hamburg has given a settlement of the longstanding dispute. It has now been a fact that no one can assert claims to the Bay of Bengal alone. The matter in relation to the Bay of Bengal stands now to be a concern of its littoral states. Bangladesh and India maritime boundary dispute as seen is

ent media personnel participated in the discourse. Differences of opinion arose as to the Bangladesh and India maritime boundary dispute to be disposed of in the arbitration court or through discourse of agreement.

Be that as it may, the very theme of settling the dispute must be through peaceful means. The means if gone ahead through agreement or through the arbitration must be aimed to embrace peace. Specifically to speak, the Bangladesh-Myanmar maritime boundary award in ITLOS may result in considering Bangladesh position but it must not be considered to be the only citation. Bangladesh and India situation cannot be treated wholly parallel to the Bangladesh and Myanmar situation. Certain factors

LAW ANALYSIS



Graffiti Writing and Poster Sticking Control Act, 2012

Rise of Legal Mechanism on Visual Pollution

EMRAN AZAD

UNDOUBTEDLY a relaxed environment can foster creative ideas. But when this so-called creativity is applied against the shabby wall of the city, the situation turns into nuisance. Not a single person can deny the fact that nowadays Dhaka is getting a new look due to upcoming City Corporation election. It is a common scenario to find graffiti writing or posters advertising coaching centers, private tutors, beauty parlours, etc hanging on the walls of the city. To control this situation, the Parliament of Bangladesh passed an Act titled the "Graffiti Writing and Poster Sticking Control Act, 2012" which came into force on April 01, 2012.

Before exploring the various aspects of this Act in this write up, it would be worthwhile to understand some expressions used for the purpose of this Act. Under this Act, the expression "wall" includes the interior and exterior wall of any residence, office, court, educational institution, business centre, industrial factory, shop or any foundation or boundary demarcation fence and tree, electrical pillar or post, road island, road divider, bridge, culvert, upper portion of the road and roof of the house. "Graffiti writing" stands for any writing, printing, and dies, drawing or painting by any color or lime or chemical substance against the wall or vehicle for publicity or otherwise. The term "poster" means any publicity placard, picture, advertisement and any type of banner and billboard made of paper, cloth, or by electrical ways.

Local government authorities such as union parishad, upzilla parishad, zilla parishad, poura shava, city corporation by

administrative orders, shall specify the place for posters sticking and graffiti writing. Nevertheless, with the permission of the competent authorities these could be done beyond the fixed places by complying with the conditions and procedures prescribed by the Rules and then by paying fees. It is to be noted that till now no rules have been framed and published by the Government, although an eight-member committee convening additional secretary of Ministry of LGRD has been formed for enacting this.

Offence and Punishment: This Act has recognized unauthorized posters sticking and scrawling graffiti as an offence. If any person or institution violates the aforesaid procedure of posters sticking and graffiti writing, the punishment is estimated at minimum 5 but maximum 10 thousand taka fine and in default simple imprisonment of 15 days. Especially, in case of violation of this Act for any privilege-holder, the punishment is minimum 10 but maximum 50 thousand taka fine and in default simple imprisonment of 30 days. This Act has made applicable the provision of the Mobile Court Act, 2009. Moreover, in case of complaint against any privilege-holder, the summary trial procedure is to be maintained. The object of this provision is to shorten the lengthy course of trial. Here it is notable that S. 262 of the Code of Criminal Procedure, 1898 dealing with the summary trial procedure provides that in this kind of trial maximum punishment would be 2 years imprisonment.

This Act makes liable every director, manager, secretary, partner, officer and employee of a company collectively, if there is any evidence that the concerned company has



desecrated any provision of this law.

Election Commission and this Act: According to a special provision of the law, electoral laws will take precedence over this new legislation during the parliamentary polls or elections to any local government bodies. Moreover, in any other elections, the scrawling graffiti and posters sticking as part of election campaign shall be held with the prior approval of the concerned electoral authorities in approved places by paying fixed fees. But there is a 'provided that' clause, which spells out that within the termination of 15 days of the concerned election, all posters and scrawling graffiti shall be removed.

S. 5 of the Act state that the government can issue an order by gazette notification specifying a time frame for removal of posters and scrubbing away graffiti. In case of any non-compilation of this provision, the

concerned local government authorities shall, as soon as the deadline ends, take measures to undertake the removal of these and for this business the authority shall get the expenses of it from the concerned persons or institutions.

Power of the EC: On April 04, the Chief Election Commissioner Kazi Rakibuddin Ahmad urged DCC mayoral and councilor to remove their posters, billboards and banners from the city streets, immediately. It is true inadequate provisions in the electoral code of conduct are being advantageous to those sticking posters by disempowering the EC to take action against them right now. But once the election schedule is announced, the EC will have sweeping authority to stop such campaigns. There will be a ban on scrawling graffiti and pasting posters on the walls of

houses and establishments.

If anybody flouts the code of conduct, the election officials can take actions against them or can ask the law enforcement agencies to remove those. Besides, an offender may be sentenced to up to 6 months imprisonment term or fined 50 thousand taka or both. The candidates however will be allowed to hang their posters with ropes for a certain period.

Recently some leaders of the ruling party and several non-partisan hopefuls have already geared up their campaigns for the polls. They have been spending money on printing posters and digital banners and pasting and hanging those on the walls and streets. These cluttered and attitudinal aspects are not legally on the right track-the matter has been acknowledged when the Honorable High Court Division ordered for removing all of these within 10 days. Moreover, by calling it "visual pollution" a rule was issued as to why a direction should not be given to prevent and control this type of campaign using public and private properties. But it is a matter of great regret that till now no steps have been taken and these posters and wall writing are prevailing with their all nasty pride ignoring the order of the Court!

To conclude, it is obvious that in our country many laws are being enacted now and then with limited application. Again laws are not always sufficient to closely watch on all matters. Above all what we need is a sense of right and wrong. "Our country, our city" - we need to develop this thought to make it beautiful.

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