Protracted maritime boundary disputes and maritime laws

Md. Monjur Hasan, He Jian, Md. Wahidul Alam & K M Azam Chowdhury


To link to this article: https://doi.org/10.1080/25725084.2018.1564184

© 2018 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

Published online: 28 Feb 2019.

Submit your article to this journal

Article views: 3580

View related articles

View Crossmark data
Protracted maritime boundary disputes and maritime laws

Md. Monjur Hasan, He Jian, Md. Wahidul Alam and K M Azam Chowdhury

School of Law, Laoshan Campus, Ocean University of China, 238 Songling Road, Laoshan District, Qingdao 266100, China

Department of Oceanography, University of Dhaka, Dhaka, Bangladesh

The Marine Development Studies Institute, Ocean University of China, Qingdao, China; Institute of Marine Sciences and Fisheries, University of Chittagong, Chittagong, Bangladesh; College of Oceanic and Atmospheric Sciences, Ocean University of China, Qingdao, China; Department of Oceanography, University of Dhaka, Dhaka, Bangladesh

ABSTRACT

This paper concentrates on the protracted maritime boundary dispute with concern maritime laws. Maritime boundary dispute is a much-talked issue in the international legal arena. The countries are now becoming very much concerned with their maritime boundary for exploring and exploiting both its mineral and its food resources. But maritime boundary disputes are the barrier to use marine resources for coastal countries. So, the defined maritime boundary is necessary for every coastal state to use their maritime zones. The disputes also destroy the political harmony in international relation. Hence, the rapid settlement of maritime boundary dispute is of key importance for a peaceful coexistence of coastal states. Unfortunately, most of the disputes are delayed to be settled. United Nations Convention on the Law of the Sea is the prime international instrument which deals with the procedures of maritime boundary delimitation. This paper attempts to discuss the protracted maritime boundary disputes and maritime laws. Many of the concepts discussed in this paper can serve as guidelines for other countries that share coastlines.

INTRODUCTION

Maritime boundary dispute is an alarming issue all over the world. The countries are now becoming very much concerned about their marine resources because the world economy has turned into ocean-based resources termed as Blue Economy. So, every coastal state is aware of their maritime boundary for exploring and exploiting both its mineral and its food resources. According to the Law of the Sea Convention, the length of territorial sea is 12 nautical miles, contiguous zone is 24 nautical miles, and exclusive economic zone (EEZ) is 200 nautical miles from the baseline (UNCLOS 1982, Art. 3, 33, and 57). But practices show that larger limit of the different maritime zones is existing among the states. Every state claims jurisdiction to its own interest. As a result, maritime disputes are emerging among different coastal states. When the dispute gets serious, they try to settle it according to different methods of the settlement, but in most of the cases, the parties of the dispute fail to reach an agreement on settlement. Many bilateral or multilateral talks are held among them which delay the settlement. United Nations Convention on the Law of the Sea refers the peaceful method of the settlement of maritime dispute but states must be in consensus at first to accept the jurisdiction of this Convention. Otherwise, they will not be entitled to get any advantages of the Convention. Therefore, the purpose of this paper is to deal with the protracted maritime boundary dispute and maritime laws in terms of finding out appropriate means and measures as well as drawing attention to address some concepts which as act as guidelines for the countries that are in dispute due to share coastlines.

Maritime boundary

Generally, a maritime boundary is a theoretical division of the Earth’s water surface areas using physiographic or geopolitical criteria. Thus, it usually bounds areas of exclusive national rights over marine resources, encompassing maritime features, limits, and zones. According to United Nations Convention on the Law of the Sea, maritime boundary represents the borders of a maritime nation which serve to identify the edge of international waters. Normally, a maritime boundary is demarcated at a particular distance from a jurisdiction’s coastline.

Maritime boundaries exist in the context of territorial waters, contiguous zones, and EEZ; they do not cover lake or river boundaries that are considered in respect of land boundaries. Some maritime boundaries have remained indeterminate despite efforts to clarify them. This is explained by an array of factors, some of which involve regional problems. The delineation of maritime boundaries has strategic, economic, and environmental implications.
Maritime boundary dispute

Maritime boundary dispute is a dispute relating to demarcation of the different maritime zones between or among states. It is a common scenario all over the world. Of the World’s 512 potential maritime boundaries, fewer than half have been agreed, creating uncertainty and room for disputes for the remainder (Newman, N.). In addition, maritime boundary disputes regularly occur over commercial, economic, and security interests and are a common but underrated investment risk in the energy sector (Newman, N.). Every coastal state is becoming very much concerned about the marine resources because the world economy is turning into the ocean-based resources which are being termed as Blue Economy. So, all the states claimed their different maritime zones according to their own interest. Maritime boundary dispute is occurs mostly due to the overlapping claims between adjacent or opposite states for 12 nautical miles territorial seas, 200 nautical miles EEZs, and continental shelves which may extend beyond 200 nautical miles and due to the contesting claim of sovereignty over the same island or the same area of mainland, e.g., Bakassi peninsula in ICJ Cameroon v. Nigeria (ICJ 1994). The maritime boundary disputes between Bangladesh, India, and Myanmar in the Bay of Bengal were long-standing disputes which have already been settled by the International Tribunal for the Law of the Sea (ITLOS) and Arbitral Tribunal peacefully under the Law of the Sea (LOS) Convention (ITLOS 2012; PCA 2014). The dispute between Bangladesh and Myanmar occurred due to the overlapping claim over their EEZ and continental shelf, and the dispute between Bangladesh and India occurred due to the overlapping claim over their EEZ and continental shelf and the contesting or controversial claim over South Talpatti/New Moore Island.

Protracted maritime boundary dispute

When a maritime dispute remains unresolved for a long time or when it takes a long time to be settled or when it cannot be settled within a reasonable period of time, it is considered as a protracted maritime dispute. Maritime boundary dispute settlement among states is an international phenomenon which is regulated by international laws. However, international law helps the parties to settle their dispute if they ask for advantage of it by their agreement. Otherwise, it is unable to do anything on a particular disputed issue spontaneously. In case of maritime affairs, the United Nations Convention on the Law of the Sea (UNCLOS 1982) is the Specific codification which was promulgated in 1982 and came into force in 1994.

A dispute is delayed to be settled when the countries fail to reach a permanent solution due to various national and international obstacles. Sometimes, the governments of the coastal states give priority to other bilateral issues with the adjacent coastal states other than maritime disputes. They suffer from lack of confidence to win in the dispute. So, they delay to take necessary steps to settle the issue. The government is afraid of the people of the country because the people are the source of state power in a democratic country. So, the government does not give an opportunity to the opposition party making any issue by which they can position against the government with the people of the country. In the same way, the people do not pressurize the government to settle the dispute due to their ignorance about the sea and the sea resources. Another reason for delayed settlement of a maritime dispute is less expertise about the law of the sea. Due to these domestic obstacles, the maritime boundary dispute between or among states is protracted.

When a maritime dispute occurs between or among states, the first and foremost step to settle the dispute is negotiation between them. Mostly, the parties of the dispute fail to negotiate to arrive at a solution. In most of the cases, the maritime boundary dispute occurs due to the overlapping claims in different maritime zones and the contesting claims of sovereignty over the islands. It can be settled by their joint survey, but most of the time, the parties of the dispute fail to reach an agreement to do this. On the other hand, the international law has nothing to do until the parties make an agreement to take the advantage of an international instrument by signing and ratifying it.

Article 287 of the United Nations Convention on the Law of the Sea states that when signing, ratifying, acceding, or at any time thereafter, a state shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

(a) the ITLOS established in accordance with Annex VI,
(b) the International Court of Justice (ICJ),
(c) an arbitral tribunal constituted in accordance with Annex VII,
(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein (UNCLOS 1982).

So, after the failure of all the efforts between disputed coastal states when they agree to settle their dispute in accordance with the Convention, they create another problem with regard to the selection of abovementioned means for the settlement. In most cases, they do not agree to accept the jurisdiction of the same organ. This is a common cause to delay the settlement. In Bangladesh-Myanmar maritime
boundary dispute in the Bay of Bengal, Bangladesh wanted to settle it by the ITLOS but Myanmar refused to accept the jurisdiction of the Tribunal. Later on, Myanmar agreed with Bangladesh and the 40 years long-standing maritime boundary dispute between these two nations was settled by the ITLOS (ITLOS 2012). In the same way, Bangladesh wanted to settle her maritime boundary dispute with India in the ITLOS but India wished to settle it in Arbitral Tribunal. Bangladesh accepted their claim and settled the dispute in 2014 by Arbitral Tribunal (PCA 2014). Another important reason for protracting maritime boundary dispute is the selection of the method of boundary delimitation. Almost in every case the coastal states fail to choose the method whether it be “equidistance or equitable principle.” In the maritime boundary delimitation case between Bangladesh and Myanmar as well as Bangladesh and India it was the most important question before the Tribunal. Bangladesh claimed the equitable principle due to the special circumstances of her coast, but India and Myanmar always claimed the equidistance principle.

**Codification of the maritime laws**

The first conference concerning the Law of the Sea was held in 1930 in Hague and named “The Hague Conference for the Codification of International Law 1930.” It was initiated by the League of Nations between 13 March and 12 April 1930 and was attended by 47 governments and an observer. The Conference was unable to adopt a convention concerning territorial waters as no agreement could be reached on the question of the breadth of territorial waters and the problem of the contiguous zone. There was, however, some measure of agreement regarding the legal status of territorial waters, the right of innocent passage, and the baseline for measuring the territorial waters.

The First UN Conference on the Law of the Sea was held in Geneva in 1958 in which 86 states participated. In this conference, the following four Conventions were adopted (UNCLOS I, 1958):

1. The Convention on the Territorial Sea and the Contiguous Zone,
2. The Convention on the Continental Shelf,
3. The Convention on the High Sea,

Through these Conventions, the Law of the Sea began to change from customary law in to codified international law and it mainly reflected the will of Western powers of the sea, ignoring the interests of the developing countries.

After that, the Second UN Conference on the Law of the Sea was held in Geneva in 1960. In this Conference, participants were trying to settle the question of the breadth of territorial sea, but failed because of the irreconcilable economic, political, and military conflicts among the states on the oceans.

So, this Conference failed to agree on the British 6 + 6 compromise (6 miles territorial sea + 6 miles contiguous zone) proposals.

Finally, the third UN Conference on the Law of the Sea was held from 1973 to 1982 in which 167 independent states and more than 50 independent territories participated; the Movement for the Liberation of National Liberation and international organizations were represented by observers. In this Conference, The United Nations Convention on the Law of the Sea was adopted by voting of 167 independent states. One hundred and thirty states voted in favor of this convention, four states (USA, Israel, Turkey, and Venezuela) were against this, and 17 states abstained.

The Convention provides the legal framework to be followed for the conduct of various maritime activities and it is the most important international legal instrument of the twentieth century following the Charter of the United Nations. To date, 167 countries and the European Community have joined in the Convention. However, it is now regarded as a codification of the customary international law on the issue.

**Subject matter of maritime boundary disputes and maritime laws**

Maritime boundary dispute mostly relates to the delineation of the baseline and delimitation of the territorial sea, the EEZ, and the continental shelf within or beyond 200 nm between or among the coastal states. Maritime boundary dispute is a result of overlapping claims over the abovementioned maritime zones by coastal states. The United Nations Convention on the Law of the Sea, 1982 is the core law of looking after the different maritime disputes. This instrument has few limitations in respect of implementation upon the states of the dispute. Unless and until the parties of the dispute seek solution under the Convention, the dispute cannot solved.

**Baseline**

The baseline is the line from which the outer limits of the territorial sea and other coastal zones are measured. So, it is the foundation for claiming subsequent maritime zones to the Sea. Article 7 of the LOS Convention states two types of baseline, such as normal baseline and straight baseline. According to this article, the normal baseline for measuring the breadth of the territorial sea is the low-tide waterline along the coast and the method of demarcation of a normal baseline is comparatively easy. In this case, the determination of
subsequent maritime zones from the baseline is also easier. The provisions on straight baselines contained in Article 4 of the 1958 Geneva Convention and, subsequently, Article 7 of UNCLOS were in large part motivated by the ruling of the ICJ in the *Anglo-Norwegian Fisheries case* (ICJ 1951). According to article 7 of LOS Convention, a straight baseline can be drawn in two circumstances: first situation is where the coastline is deeply indented or if there is a fringe of islands along the coast in its immediate vicinity; second is where because of the presence of a delta and other natural conditions, the coastline is highly unstable. In both cases, the appropriate points may be selected along the furthest seaward extent of the low waterline for the purpose of drawing the straight baseline. Demarcation of baseline is very important for delimitation of the subsequent maritime zones and the settlement of maritime boundary delimitation dispute with adjacent coastal states because according to the ruling of ICJ, “the delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act because of only the coastal State is competent to undertake it but the validity of the delimitation with regard to other States depends upon international law” (ICJ 1951).

In the Bay of Bengal, delineation of straight baseline following “depth method” by Bangladesh was opposed by India and Myanmar from the beginning although it was not inconsistent with the provision of Article 7 of LOS Convention. Article 7(2) of LOSC makes an exception from normal baseline (low watermark) where the coastline is highly unstable because of the presence of a delta and other natural conditions (UNCLOS 1982). So, Bangladesh’s claim was valid with this expression “other natural conditions” because the coastline of Bangladesh is highly unstable due to the cumulative effects of river floods, monsoon rainfall, cyclonic storms, and tidal surges which have contributed to a continuous process of erosion and shoaling (Platzoeder 1984). International Law also does not restrict delimitation of a sea area by taking into account the local requirements. But this rejection of India and Myanmar was the vital issue to delay the maritime boundary dispute settlement among Bangladesh, India, and Myanmar in the Bay of Bengal (ITLOS 2012; PCA 2014).

**Territorial sea**

Territorial sea, as defined by the United Nations Convention on the Law of the Sea (UNCLOS 1982), is a belt of coastal waters extending to almost 12 nautical miles from the baseline of a coastal state. Article 3 of the LOS Convention states the breadth of the territorial sea as a limit not exceeding 12 nm from the baseline. Article 15 of the Convention makes provision for the delimitation of the territorial sea. It specifies that where the coasts of the two states are opposite or adjacent to each other, neither of the two states is entitled to extend its territorial sea beyond the median line if it is necessary by reason of historic title or other special circumstances. Sometimes, this 12 nautical mile territorial sea faces the challenge of neighboring or adjacent coastal states because of establishing the claimed baseline as valid.

**Exclusive economic zone and continental shelf**

Generally, EEZ refers an area of coastal water and seabed within a certain distance of a country’s coastline, to which the country claims exclusive rights for fishing, drilling, and other economic activities. An EEZ is a concept adopted at the Third United Nations Conference on the Law of the Sea (UNCLOS 1982), whereby a coastal state assumes jurisdiction over the exploration and exploitation of marine resources in its adjacent section of the continental shelf, taken to be a band extending 200 miles from the shore.

Continental shelf refers the area of seabed around a large landmass where the sea is relatively shallow compared with the open ocean and it is a geologically part of the continental crust. Article 74 of the LOS Convention provides mechanisms for the delimitation of the EEZ and Article 83 provides the procedure for the delimitation of the continental shelf. In both cases, the respective provisions use the same language, in that delimitation EEZ and continental shelf with opposite or adjacent states should be effected by agreement on the basis of international law in order to achieve an equitable solution.

Article 76 of the UNCLOS defines the continental shelf as follows:

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance”. (UNCLOS 1982)

According to the first part of paragraph 1, the natural prolongation of the land territory is the main criterion. In the second part of that paragraph, the distance of 200 nm is in certain circumstances the basis of the delimitation of the continental shelf. The criteria of natural prolongation have been endorsed by the ICJ and an arbitral tribunal in the *Continental Shelf case* (ICJ 1969), the *Anglo-French case* (ICJ 1977), and the *Gulf of Maine case* (ICJ 1984). However, in its
landmark judgment in the Libya-Malta case, the ICJ decided to do away with geophysical arguments, at least in relation to those areas within 200 nm of the coast (Alam and Faruque, 2010).

**Settlement of the dispute under maritime laws**

Article 33 of the UN Charter directs the parties of the dispute for the peaceful settlement by means of their own choice (UNCLOS 1982), and subject to Article 287 of UNCLOS, every state has the right to choose one or more means to settle their dispute concerning the interpretation and application of this Convention (UNCLOS 1982).

The Law of the Sea Convention is the key international instrument which regulates virtually all aspects of the law of the seas and sets rules to Baselines and Internal waters and all the maritime zones like territorial sea, the contiguous zone, the EEZ, the continental shelf within or beyond 200 nm, the high seas, and the deep seabed area.

Although the United Nations Convention on the Law of Sea regulates all the segments of the sea-based issue, the provisions regarding maritime boundary delimitation are not well defined and clear. The Convention provided for the process of delimitation of different maritime zones between states is affected by agreement on the basis of international law in order to achieve an equitable solution. This provision directs the parties of the dispute to take initiative between them and make an agreement equitably first. It does not provide any definite delimitation procedure to be followed. If the party of the dispute fails to reach an agreement, they can move toward the dispute settlement procedure under the Law of Sea Convention stated in part XV of the Convention.

There are two types of dispute settlement procedure in LOS Convention. Section 1 of Part XV states the non-compulsory procedures which are the negotiation, the mediation, and the conciliation and Section 2 of Part XV deals with compulsory settlement procedure which includes ITLOS under Annex VI, the ICJ and Arbitral Tribunal created under Annex VII, and the creation of a special Arbitral Tribunal formed as a panel of experts.

**Negotiation**

Negotiation is the most important and peaceful means to settle any bilateral or multilateral dispute. Maritime boundary delimitation is not an exception to it. In case of boundary delimitation, there are some advantages in pursuing negotiation (Aceris Law 2015). The parties of the dispute are free to shape the negotiations in accordance with their own needs and no party is forced to participate in a negotiation. The parties are free to accept or reject the outcome of negotiations and can withdraw at any point during the process. All through negotiation, there is no third party who interferes between the parties. So, it is easy to reach a decision on the maritime boundary delimitation dispute. One thing is that the litigation always carries risks for the parties before the judicial body, and legal rules available to the tribunal are more restricted than the opportunities open to the negotiators. In the judicial settlement, the parties are stuck within a specific legal frame before the tribunal and the court which is rigid and opposed to considering the interest of all the parties. Nevertheless, during negotiations, the parties follow a process of joint progress in the maritime zones and are able to concentrate on realistic actions to safe each party’s core objective.

Statistics show that from 1994 to 2012, 16 negotiations took place, and some of them were successful, such as the 2003 Negotiation between Azerbaijan, Kazakhstan, and the Russian Federation; the 2004 Negotiation between Australia and New Zealand; the 2008 Mauritius-Seychelles EEZ Delimitation Treaty; etc. (Aceris Law 2015). Unfortunately, the parties of the dispute failed to negotiate between them due to various domestic and international obstructions which delayed the settlement.

**Mediation**

Mediation is listed in Article 33 of the Charter of the United Nations (UN Charter, 1945) as alternative means of international dispute settlement. Although mediation is a highly successful method to settle international conflicts, in case of maritime boundary delimitation dispute, states rarely resort to mediation or good offices. For example, the 2015 OAS Mediation of Belize-Guatemala Border Dispute has not resolved the dispute and has led the parties to take the matter before the ICJ (Aceris Law 2015).

**Conciliation**

Conciliation is another non-judicial procedure for peaceful settlement of the maritime boundary delimitation which is stated in article 284 (Part XV) of LOS Convention and the procedure of conciliation is discussed in Annex 5. The rate of the conciliation in regard to maritime boundary dispute is very few. Most of the states are not interested to conciliate their dispute. As a result, conciliation is almost never used by states. The 1981 Iceland/Norway Continental Shelf Dispute Regarding Jay Mayen Island is one of a few conciliations till now (UN 1981).

In conciliation, the parties of the dispute have to give up their control over dispute to the third party and allow the third party for a formal decision which
has the binding force upon the parties. So, the parties are afraid to settle their dispute through conciliation because nobody wants to lose in this process. Arbitration is more convenient for them to have grounds to set aside the award rather than lose conciliation and not have any legal basis to set the result aside.

Arbitration

Arbitration is the most popular and successful means to settle the maritime boundary dispute after the implementation of LOS Convention in 1994. The Arbitral Tribunal is composed of five arbitrators under Annex VII of the Law of the Sea Convention. Each party to the dispute appoints an arbitrator and both the parties jointly appoint the rest of the three. The President of ITLS acts as the appointing authority in this regard.

Arbitration is one of the compulsory methods of maritime boundary delimitation. When the parties of the dispute fail to resolve the dispute but need to solve it to explore marine resources, they then turn to compulsory dispute resolution. Through arbitration, many of coastal states settled their long-standing maritime boundary delimitation disputes. In 2014, Bangladesh and India resolved their 40 years of long-standing maritime boundary delimitation dispute. When the parties of the dispute fail to resolve the dispute but need to solve it to explore marine resources, they then turn to compulsory dispute resolution. Through arbitration, many of coastal states settled their long-standing maritime boundary delimitation disputes. In 2014, Bangladesh and India resolved their 40 years of long-standing maritime boundary delimitation dispute which commenced in 1974 (PCA 2014). Some examples can be mentioned here which have been settled through arbitration.

Australia and New Zealand v. Japan (Southern Bluefin Tuna Arbitration, 4 August, 2000); Ireland v. UK (Mox Plant Arbitration, 6 June, 2008); Malaysia v. Singapore (Land Reclamation Arbitration, 1 September, 2005); Barbados v. Trinidad and Tobago (Maritime Delimitation Arbitration, 11 April, 2006); Guyana v. Suriname (Maritime Delimitation Arbitration, 17 September, 2007); Bangladesh v. India (Bay of Bengal Maritime Boundary Arbitration, 7 July, 2014); Mauritius v. UK (Chagos Archipelago Arbitration, 18 march, 2015); Argentine v. Ghana (ARA Libertad Arbitration, 11 November, 2013); Philippines v. China (South China/West Philippines Sea Arbitration, 12 July, 2016); Denmark in respect of the Faroe Islands v. European Union (Atlanto-Scandian Herring Arbitration, 23 September, 2014), etc. (Aceris Law 2015). Although the Arbitral Tribunal has resolved the majority of disputes than other means of settlement procedure, it has no power to call upon any party of the dispute unless both the parties accept its jurisdiction and make an agreement to solve their problem through it. It does not have the power also to make any party bound to follow its decision. So, these limitations are liable for protracting maritime boundary delimitation.

International Tribunal for the Law of the Sea

ITLOS is one of the notable creations for resolving different types of the maritime dispute under the Law of the Sea convention. The office of the Tribunal is situated in Hamburg, Germany. It may hear all kinds of cases regarding maritime disputes whether contentious or non-contentious.

The Tribunal has a set of 21 serving judges who are elected for 9 years by the state parties. Each state party can nominate up to two candidates. There is a process to ensure equitable distribution among the judges and the term of one-third of them expires every three years. ITLOS is entitled to hear “prompt release” cases taking place on an expedited basis when a coastal state has seized a foreign vessel and its crew in its maritime zones.

The Jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention. It has jurisdiction over all disputes concerning the interpretation or application of the convention, subject to the provisions of article 297 and to the declaration made in accordance with article 298 of the Convention. But article 297 and declaration under article 298 do not prevent parties from agreeing to submit to the tribunal a dispute otherwise excluded from the tribunal’s jurisdiction under these provisions (UNCLOS 1982). The tribunal is entitled to give an advisory opinion by its Seabed Dispute chamber on legal questions arising within the scope of the activities of the Assembly or Council of the International Seabed Authority (UNCLOS 1982). The Tribunal may also give an advisory opinion on a legal question if this is provided by an international agreement related to the purposes of the convention (Rules of ITLOS 1997, Art. 138).

There are 25 cases registered before the ITLOS till now; among them, most of them are “prompt release”-related cases. Only two cases were about maritime boundary delimitation: one is Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Case no. 16, ITLOS) case which began in 14 December 2009 and ended in 14 March 2012 and another one is Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Case no. 23, ITLOS) which began in 3 December 2014 and ended in 23 September 2017. So, in case of maritime boundary delimitation dispute, the position of ITLOS is not within expectation.

International Court of Justice

ICJ is the head judicial body of the United Nations and is an integral part of the United Nations. It is evident
that the number one forum for states seeking judicial settlement regarding the Law of the Sea is the ICJ. It is the largest judicial organ in the world and is called the World Court. ICJ is not only limited to the Law of the Sea affairs but also may decide both maritime and sovereignty issues. ICJ is entitled to exercise its jurisdiction over any dispute concerning the interpretation or application of LOS Convention which is submitted to it under Article 287 and Article 288 (UNCLOS 1982). There are some judgments mentioned in the following relating to maritime boundary dispute mentioned here which have been declared by ICJ after enforcement of LOS Convention in 1994.


Presently, the following maritime boundary delimitation cases are in the pending list before the ICJ.

(1) Question of the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia) (Case no. 5, Pending case list, ICJ).

(2) Maritime delimitation in the Caribbean Sea and the Pacific Ocean (Costarica v. Nicaragua) (Case no. 7, Pending case list, ICJ).

(3) Maritime delimitation in the Indian Ocean (Somalia v. Kenya) (Case no. 8, Pending case list, ICJ).

Commission on the limits of the continental shelf (CLCS)

CLCS has been established under Annex 2 of the LOS Convention. The Commission consists of 21 members, experts in the field of geology and physics (UNCLOS 1982). Generally, every state claims continental shelf up to 200 nm but sometimes they claim their continental shelf beyond 200 nm which creates boundary dispute between coastal states. In this regard, the LOS Convention has created the commission of continental shelf to hear the arguments of the parties of the dispute in favor of their claim. The decision or recommendation of this commission is binding for all the parties to the Law of the Sea convention.

Seventy-seven states have already filed their submissions to seek recommendations before the Commission and 29 recommendations have been issued so far (UN, Division for Ocean Affairs and Law of the Sea).

Conclusion

Protracted maritime boundary dispute resolution has a vital negative impact in maintaining the international relation between or among states. Due to the dispute, countries suffer a lot since the commencement of the dispute in different sectors. The sovereignty of the disputed countries faces threat for a long time due to their conflicts. The marine environment becomes unstable from time to time. They experience difficulties to use their coast and become deprived of utilization of marine resources because of this unsettled boundary dispute for an indefinite period of time. As a result, the economy of those countries suffers a lot because a defined maritime boundary is almost a necessity for them. They need new sources of natural gas, oil, and other marine resources, but the undefined boundary blocks offshore exploration for them. The LOS Convention is called the constitution of the sea. It is the only international instrument which deals with all the legal issues relating to sea. It has some limitations in respect of its execution and applicability upon the states. The states which are not party or signatory to this Convention are not bound to follow this Convention and they are not also entitled to seek the advantages of this Convention. On the other hand, all the signatories of this convention are de jure bound to follow this convention in accordance with the principles of international law. They are entitled to get all the advantages of this convention as means of rights. Unfortunately, it does not have the de facto power of applicability upon the states that have signed and ratified it. As a result, the disputes emerged from maritime issues take a long time to be settled. Maritime boundary delimitation dispute is not an exception to it. At this moment, maritime boundary delimitation dispute between or among coastal states is a much-talked issue all over the world. Hundreds of disputes are pending in every corner of the world among which most of them are long-standing. The prevailing maritime laws or other international instruments have nothing to do unless and until the parties of the disputes seek its advantages. This is the limitation of maritime laws or international law as well. So, the state should be more aware of their sea resources and they should make an effort to find out their means and measure from the provisions of maritime law within a reasonable time. The parties of the dispute should settle their problems peacefully to live each other in harmony. This paper makes an effort to draw attention about protracted maritime dispute resolution with maritime laws briefly. So, a further study may be necessary to make a detailed account of the present topic.
Disclosure statement
No potential conflict of interest was reported by the authors.

Funding
This work was supported by the China Scholarship Council [2016GXYOSSS].

ORCID
Md. Monjur Hasan http://orcid.org/0000-0003-1367-6213

References
PCA. 2014. The Bay of Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and Republic of India.
United Nations Charter. 1945. (Done at San Francisco), 26 June 1945, in force 24 October 1945