

RESEARCH NOTE

The Maritime Boundary Dispute between Bangladesh and Myanmar: Motivations, Potential Solutions, and Implications

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NOTE ≈ The author would like to thank Jalal Alamgir, two anonymous reviewers, and the many others who provided comments on this article, as well as Peter Larkins for his assistance in constructing maps and the Henry Luce Foundation for its support. The data used to construct the maps for this article is available from the author.

KEYWORDS: SOUTH ASIAN GEOPOLITICS; ENERGY SECURITY; MARITIME BOUNDARY DISPUTES; BANGLADESH; MYANMAR

EXECUTIVE SUMMARY

This article examines the major catalysts of the surge in activity over the maritime boundary dispute between Myanmar and Bangladesh and explores both the likely avenues for resolution and the resulting implications for the two countries and the region at large.

MAIN ARGUMENT

The recent push to delimit the maritime boundary between Bangladesh and Myanmar stems from two factors. First, there are strong prospects for newly accessible gas in the overlapping claims. Speculation about gas prospects results from advances in offshore drilling technology that allow exploration in new swathes of the geologically promising but disputed ocean. Second, there is heightened demand for natural gas by the two countries. The growing demand for natural gas in Bangladesh, which has experienced power shortages, constitutes a major domestic political issue. Demand for gas has also grown rapidly in potential export markets, creating strong incentives for Myanmar to export gas in order to bring in foreign reserves and gain favor with countries such as China and India.

Bangladesh and Myanmar are actively pursuing a settlement through bilateral negotiations and the International Tribunal for the Law of the Sea (ITLOS). Both maritime baselines and the legal principles for defining exclusive economic zones will be key issues in the proceedings.

POLICY IMPLICATIONS

- A maritime boundary agreement would allow Bangladesh and Myanmar to begin exploiting potential resources, which could help alleviate Bangladesh's gas crisis and bring more foreign reserves to Myanmar.
- Gas discoveries in Myanmar's newly delineated maritime territory will likely rouse competition for gas exports between China and India similar to that over gas from the Shwe fields.
- Gas discoveries in the overlapping claims area offer the opportunity for Myanmar to create stronger economic, strategic, and political links with India.
- Development of energy infrastructure in northwestern Myanmar will disproportionately challenge the livelihood of the Rohingya.
- Some scope exists for regional multilateral organizations, especially BIMSTEC, to help engender cooperation in the Bay of Bengal region.
- If settled through the ITLOS, the dispute could provide legal precedent that affects future maritime boundary cases elsewhere.

Disputes over maritime boundaries litter the geopolitical landscape of Asia, constituting a serious challenge to regional stability and an often intransigent source of disagreement between countries. Arguably the most prominent of these disputes, over the South China Sea (SCS), has been a major foreign policy issue for the involved countries for decades. In recent years, another maritime boundary dispute, between Bangladesh and Myanmar/Burma (referred to as Myanmar hereafter), has risen significantly and unprecedentedly to become one of the more militarily and diplomatically active in Asia. The dispute represents a noteworthy strategic and diplomatic challenge in South Asia that, at least legally, will involve India and could bring in China, countries that are separately courting both Bangladesh and Myanmar.

Officials from Bangladesh and Myanmar have noted that the dispute is among the two states' most important bilateral issues, alongside historically intractable problems such as the status of the Rohingya, an ethnically Muslim people in northwestern Myanmar. Talks to delineate the boundary resumed in late 2007 after a hiatus of over two decades. Events since then, notably the November 2008 naval stand-off over Daewoo's exploration of disputed waters and Myanmar's continental shelf submission, have exacerbated what was a relatively nondescript border dispute. Both countries have dispatched envoys specifically to conduct negotiations on maritime delineation. The issue has also been raised at high-level meetings, such as Bangladeshi foreign minister Dipu Moni's visit to Myanmar in May 2009.

For an issue that was largely neglected for over two decades, the sudden and sharp increase in attention raises questions about why this boundary has recently become an important issue and what is being done to resolve it. This article seeks to address these questions by examining the interrelated and compounding catalysts of energy, economics, politics, and maritime law, as well as the current efforts through negotiations and the International Tribunal for the Law of the Sea (ITLOS) to settle the case.

Catalysts include advances in offshore drilling technology that now allow exploration in new swathes of potentially resource-rich disputed ocean. This supply-side catalyst coincides with rapidly increasing demand for energy in Bangladesh, Myanmar, and elsewhere in the region, notably China and India. Resources from the Bay of Bengal are especially attractive because of their strategic location, which could allow China and India to further diversify their energy imports.

Behind these demand catalysts lie important political considerations. In Bangladesh, the government has incentives to develop offshore resources because an acute power shortage and economic development—both of which

offshore gas development could help address—are important domestic political issues. In Myanmar, gas exports are the chief source of foreign reserves for the government and pay for both weapons and other pet projects of the regime while allowing well-connected elites to siphon off billions of dollars through a multi-tiered exchange rate system. Concurrent to both the supply and demand catalysts are requirements by the United Nations Convention on the Law of the Sea (UNCLOS) to file continental shelf claims, which have helped keep the issue at the fore of diplomatic and public debate.

Myanmar and Bangladesh are actively pursuing a maritime boundary agreement through bilateral negotiations and the ITLOS. Both venues will likely address important legal principles, such as maritime baselines and equity and equidistance principles, which are used in defining exclusive economic zone (EEZ) and continental shelf claims. These venues could also produce a quick outcome—though the ITLOS may lean toward a more strict legal decision, whereas negotiations would produce a compromise settlement.

This article is based on an extensive review of media reports, scholarly publications, and government statements and statistics, and is organized as follows:

- ≈ pp. 106–11 provide background on the maritime boundary dispute between Bangladesh and Myanmar
- ≈ pp. 111–29 investigate the interrelated and compounding catalysts of energy, economics, politics, and maritime law that are driving the dispute
- ≈ pp. 130–37 examine likely avenues of settlement and explore relevant principles and cases from international maritime law
- ≈ pp. 137–41 conclude with an exploration of possible implications and opportunities for interim confidence-building
- ≈ pp. 142 provides an appendix of the acronyms used in the article

THE RE-EMERGENCE OF THE MARITIME BOUNDARY DISPUTE

Approximately 150,000 square kilometers (sq km) of the Bay of Bengal are claimed by both Myanmar and Bangladesh, though this could increase significantly when Bangladesh files its continental shelf claims with the Commission on the Limits of the Continental Shelf (CLCS). The bay's concave coastline is a major contributor to the overlapping claims. Beyond 167 nautical miles (nm) south of Bangladesh's coastline, this concave

geography creates overlapping claims between three parties: Bangladesh, Myanmar, and India.¹ The convergence of Myanmar's and India's continental shelf claims makes Bangladesh a "zone-locked state."² Bangladesh's EEZ and continental shelf claim boundaries are, at present, poorly defined, with the clearest statement being that they "consist of two parallel lines extending southward on the meridians of longitude, from baselines corresponding to Bangladesh's coastline up to the outer limits of the continental margin."³ Myanmar's claimed EEZ boundary with Bangladesh consists of an equidistant line extending almost perpendicular to the Rakhine coast in a southwesterly direction, while its continental shelf claim stretches to the 350 nm limit in the central Bay of Bengal. **Figure 1** illustrates these claims, as well as the relevant claims of India.

The first talks on delineating the maritime boundary between Bangladesh and Myanmar were held in 1974, shortly after Bangladesh's independence. At this time, offshore energy prospects were severely constrained by the lack of energy investment and insufficient deepwater drilling technology. With few other incentives pushing either side to quickly resolve the boundary dispute, talks occurred only sporadically before ceasing altogether in 1986. After a hiatus of over two decades, talks finally resumed in November 2007 and continued throughout 2008, generally as an important but not central item in bilateral discussions. Progress was limited because neither side was willing to compromise on the fundamental principle of boundary delimitation. Bangladesh's legal argument used the principle of equity, whereas Myanmar employed the principle of equidistance.

In October 2008, Myanmar's vice senior general, Maung Aye, visited Bangladesh to discuss among other things the maritime boundary.⁴ According to reports, he assured Dhaka that Myanmar would refrain from exploration

¹ Trilateral agreement between India, Myanmar, and Bangladesh is necessary to produce a full set of maritime boundaries for the Bay of Bengal. Because legal proceedings are currently only bilateral and the emphasis seems to be on settling closer boundaries that are interfering with energy exploitation, this article largely sets aside the issue of delimitation in the Bay of Bengal as a whole to focus on the bilateral dimensions of the Bangladesh-Myanmar dispute.

² Sam Bateman in Simon Roughnead, "Burma, Bangladesh Border Build-Up," International Relations and Security Network (ISN), ISN Security Watch, October 21, 2009 \approx <http://www.globalpolicy.org/security-council/dark-side-of-natural-resources/oil-and-natural-gas-in-conflict/48422.html>.

³ "Re: Delimitation of the Maritime Boundaries among Bangladesh, India, and Myanmar in the Bay of Bengal," Government of the People's Republic of Bangladesh, December 13, 2009 \approx http://www.itlos.org/case_documents/2009/document_en_317.pdf.

⁴ "Dhaka Delegation in Naypyidaw for Border Talks," *Indo-Burma News*, July 31, 2009 \approx <http://www.indoburmanews.net/archives-1/2009/july-2009/dhaka-delegation-in-naypyidaw-for-border-talks>.