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Bay of Bengal: A New Sea of Troubles?

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21 May 2010

The Bay of Bengal has emerged as a new “sea of troubles” in the Asia-Pacific. This is due to disputes over offshore oil and gas, and conflicting claims by littoral countries to extended continental shelves.

UNTIL RECENTLY, the Bay of Bengal attracted little strategic interest compared with other maritime areas in the Asia-Pacific, particularly the South and East China seas, where there are serious sovereignty disputes and tensions. However, the Bay of Bengal has now become another “sea of troubles”.

New Tensions

In November 2008, Bangladesh and Myanmar naval vessels confronted each other in a part of the bay claimed by both countries. This was in an area where valuable hydrocarbon reserves are known to exist but no maritime boundaries have been agreed. Tensions flared again in October 2009 when Bangladesh became concerned about a military build-up by Myanmar in the border area, and the intimidation of Bangladeshi-licensed survey vessels by Myanmar patrol ships in disputed waters. In response, Bangladesh sent additional naval vessels to the area. Myanmar had earlier warned against oil companies with concessions granted by Dhaka going ahead with surveys in this area.

Meanwhile other maritime jurisdictional problems in the Bay of Bengal simmer away. Bangladesh and India have a long-running maritime boundary dispute. In December 2008, Myanmar lodged a submission to the UN’s Commission on the Limits of the Continental Shelf (CLCS) relating to an extensive extended continental shelf in the bay. This met with strong opposition from its neighbours.

On the positive side, the parties have agreed to take their maritime boundary disputes to international arbitration. Bangladesh and Myanmar recently agreed to put their case to the International Tribunal on the Law of the Sea (ITLOS) while Bangladesh and India have agreed to settle their maritime boundary dispute under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) with

appointments to the arbitral tribunal made by the President of ITLOS.

Maritime Boundaries

Waters such as the Gulf of Thailand and the Bay of Bengal pose major problems for maritime boundary delimitation. This is because in some parts of these concave features, agreement between three or even more countries is required before a full set of boundaries can be established.

Due to the bay's concavity, Bangladesh at the top of the bay becomes what is known as a "zone-locked" country with potentially only a small exclusive economic zone (EEZ). Geographically it is locked in-between India and Myanmar. Its maritime boundaries with Myanmar and India will at some stage reach a tri-point where the boundaries with these countries intersect and trilateral agreement is required.

Extended Continental Shelf Submissions

India, Myanmar and Sri Lanka have all lodged submissions with the CLCS in relation to an area of 'outer' or 'extended' continental shelf located beyond their respective EEZs in the Bay of Bengal. India's submission was subsequently protested by Myanmar and Bangladesh, and Myanmar's by India, Bangladesh and Sri Lanka.

Bangladesh has not yet made a submission to the CLCS. It has until ten years after its ratification of UNCLOS in July 2001 to do so. It will undoubtedly be another controversial submission. Just as in the South China Sea, and elsewhere in the world, it will show how CLCS submissions introduce a new dimension to the complexity of maritime boundary disputes. The CLCS will not consider submissions in disputed areas. The Commission is scientific and technical rather than legal. Its task is to ensure that the outer limits to the continental shelf, as submitted by states, are consistent with the complex criteria prescribed in UNCLOS. Any recommendations made by the Commission are also specifically without prejudice to the delimitation of maritime boundaries.

Need For Cooperation

A cooperative approach is required to the Bay of Bengal. All the littoral countries (Sri Lanka, India, Bangladesh, and Myanmar) are parties to UNCLOS. Thus they have a strong obligation under Part IX of that convention to cooperate with regard to protecting the bay's marine environment, managing its resources and coordinating their scientific research policies. However, there is little indication that this is occurring.

The Bay of Bengal is a semi-enclosed sea under UNCLOS Part IX because it consists "entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States". At its mouth between Sri Lanka and the Nicobar Islands, the bay is about 650 nautical miles wide. The Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation (BIMSTEC) provides a possible forum for maritime cooperation. The main focus of BIMSTEC is on economic and social development, as well as the management of climate change and natural hazards. There's already a BIMSTEC Convention on Cooperation in Combating International Terrorism, Organised Crime and Illicit Drug Trafficking. As well as the littoral countries, the Maldives, Nepal, and Thailand are members of BIMSTEC.

The South Asian Association for Regional Cooperation (SAARC) is another prospective forum for dialogue but Myanmar is not a member. The ASEAN Regional Forum (ARF) includes all the Bay of Bengal littoral countries and potentially could use its good offices to mediate against tensions in the bay.

Looking to the Future

Arbitration of the disputes may be long and complex. The Bangladesh-Myanmar case is the first maritime boundary dispute to go before ITLOS, which was especially established under UNCLOS to deal with law of the sea disputes, but so far has only handled relatively minor cases, mainly associated with fishing.

There will be “winners” and a “losers” with taking these cases to international arbitration. In choosing to go before an independent umpire rather than pursuing bilateral negotiations, the parties have someone else to blame should the case go against them. This might be important for Bangladesh, which by virtue of its geographical handicap as a “zone-locked” country, has a hard case to argue. Geography does not treat countries fairly!

As countries more actively pursue the exploration and exploitation of offshore energy resources, relations in the Bay of Bengal have the potential to deteriorate. It is likely to remain a “sea of troubles” for some time to come.

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