

The historic verdict of ITLOS on maritime border delimitation in the region of the Bay of Bengal: A historical analysis

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Abstract

In 1982, the United Nations Convention on the Law of the Sea (UNCLOS) established the International Tribunal for the Law of the Sea (ITLOS) as an independent tribunal to sit in judgment on resolving maritime clash between the states. The ITLOS published on 14 March 2012 its case judgment on the Dispute Maritime Border between Bangladesh and Myanmar in the sea area of the Bay of Bengal. That tribunal was asked to demarcate three maritime borders; the Territorial Sea Border, Exclusive Economic Zone (EEZ), and Continental Shelf beyond EEZ were the principles of delimitation. The article focuses on analyzing and investigating the main features of the remarkable verdict from the historical perspectives. This paper also attempts to study its significant implication in sharing sea resources from both countries. Regional relations and border security tension can be more exposed in the regional geopolitics due to the judgment. Therefore, Bangladesh will adopt effective roles in the chessboard of south Asian regional politics following significant historical lessons of past and present.

Keywords ITLOS, UNCLOS, Maritime boundary, Bangladesh, Bay of Bengal

Paper type Research paper

1. Introduction

It was 14 March 2012; the venerable argument over the maritime borders between Myanmar and Bangladesh was settled by the verdict of ITLOS. In the northeastern part of the Bay of Bengal, the conflict between the two states was relating to the delimitation of the Territorial Sea, Exclusive Economic Zones (EEZ), and the Outer Continental Shelf. Bangladesh's government, as well as Myanmar, is ecstatic over this triumph. However, the Tribunal defined a Single Maritime boundary, beginning from the negotiated land boundary terminus and delimiting each state's territorial sea, as well as its exclusive economic zone (EEZ) and its continental shelf. To delimit the EEZ and the continental shelf, all within 200 nautical miles and beyond,



the Tribunal used the equidistance procedure, and the equidistance/relevant circumstances method, as specified by the International Court of Justice (ICJ), for the delimitation of territorial waters. This was the first Maritime Boundary ruling by the Tribunal the first court order that the continental shelf be delimited within 200 nautical miles (Anderson, 2012). There are neighboring mainland coasts and a negotiated land border for Myanmar and Bangladesh.

The jurisdiction of Bangladesh including St. Martin's Island, a comparatively remote, populated part located at the end of the land border, just south of the mainland of Bangladesh and opposite the Myanmar mainland. The Tribunal defined the border starts at the end of the land boundary at the mouth of the Naaf River and usually continues southward, following the equidistance line between the base points on St. Martin Island and the mainland coast of Myanmar, up to the point where the territorial sea borders of 12 nautical miles cease to overlap. The border then meets the boundary of 12 nautical miles estimated from St. Martin's Island, heading west-northwest to point 9, where the EEZ boundary starts. For a distance of approximately 29 nautical miles between points 9 and 11, the EEZ border is an equidistant line drawn between points on the mainland coast, decided by the Tribunal as the case may be.

The boundary traces the 215° azimuth from point 11 through the rest of the EEZ and then the continental shelf above 200 nautical miles “until it reaches the area where the rights of third States may be affected”. The dispute occurred after (1) several years of unconvincing border talks from both countries, dedicated largely to determine the delimitation of the sea borders with the territorial sea; (2) a naval occurrence at the end of 2008 in which Bangladesh objected to Myanmar exploration at the south of the St. Martin's Island outside the territorial sea; and (3) In December 2008, when the delimitation of Continental Shelf was submitted to the Boundary Commission, protest of Bangladesh against Myanmar's argue for a continental shelf of around 200 nautical miles in the Bay of Bengal was carried forward (Anderson, 2012).

However, the proceedings had been new and for both Bangladesh and Myanmar there were some important multidimensional achievements. No international court or tribunal had ever discussed such continental shelf demarcation outside 200 nautical miles immediately before. Indeed, this is the first time ITLOS has interfered with the resolution of a maritime dispute between any two countries.

2. Methodology

This study is followed the research based on qualitative approach. Since, qualitative research is an unstructured method, this article is designed based on desk and library-oriented research. To find out the analysis and investigation on the main features of the remarkable verdict from the historical perspectives, the research focused on available published literatures, journals, newspapers, magazines, works of the renowned scholars and thinkers. The texts and documents of the procedure of The International Tribunal for Sea Law (ITLOS), the United Nations Convention on the Law of the Sea (UNCLOS), Maritime Law of the United Nations are used as primary sources of data for analysis the study and its concept.

3. United Nations conventions on the Law of the Sea (UNCLOS) and Bangladesh

Following United Nations (UN) Charter is often considered as the most important international treaty. This is the first agreement in which a comprehensive collection of Ocean laws was drawn up, which sets in order over 70% of the surface of the earth, providing the legal basis for all ocean-related legislation. “UNCLOS also describes nations' rights and responsibilities in using the world's oceans, providing standards for trade, climate, and marine natural resource management” . Nonetheless, it is referred to the Law of the Sea Treaty as the Sea Convention law or, is the International Treaty in the light of the Third Sea Law Conference of the United Nations (UNCLOS III), held in 1973 A.D. It was one of the greatest maritime law successes of the last century by 1982 A.D. “The Convention encompasses all ocean space, living and non-living, in national jurisdictions, in territorial waters, in the EEZ (Exclusive Economic Zone), in the coastal sand sheet, in short, the utilization of its resources is in the high seas and the seabed and ocean floors” (Affairs, 2012: 15). It also sets four guidelines for marine environmental protection, scientific research at sea, and a structure for sustainable ocean usage, safety, and restoration. The Convention has established categorically various Maritime areas; shoreline zones rights and obligations to these areas. “The convention concentrated extensively on the enduring use of the sea ecosystems, the naturalistic and non-renewable resources of the seabed” (Affairs, 2012: 15-16).

Many nations have historically controlled the use of the sea by naval forces. Since the technological developments, unregulated maritime areas have created confusion everywhere, and the economic opportunities provided for oil and gas exploration at sea by 1927 A.D. In 1956, the UN did receive the initiative to implement a formal maritime policy framework to

normalize such rivalry and reduce conflicts at sea among the nations. “In 1958 A.D. in Geneva, four conventions were adopted. Another conference was held in 1960 A.D., but without success, to satisfy the blanks left out in 1958” (Affairs, 2012: 15). Eventually, at the 3rd Conference of the UNCLOS, this lasted from 1973 to 1982, and the United Nations State Parties created a detailed report. The treaty emerged from the most prolonged and comprehensive agreements in United Nations history. Finally, the conference was accepted in 1982. The Convention was a formal deed that articulated the optimism, aspirations, and desires of virtually every nation in this topography, tiny and great. In the year 1982 “together with 119 countries, Bangladesh signed the convention and subsequently ratified it in July 2001” (Affairs, 2012: 15).

4. Maritime boundary

A maritime boundary is a conceptual demarcation of the Earth's sea surface areas by using geopolitical or physiographic measurement. Typically, it covers regions of a state with national monopolistic rights to bio and mineral wealth, including coastal characteristics and boundaries. Sea boundary is acknowledged by the UNCLOS, although the term sea boundary in several countries defines the borders of a marine national, and it is widely used to describe the international sea border. In territorial waters, sea frontiers exist, and the littoral land is free to legislate, control its use and use any tool which is indicating 12 nautical miles (22.22 kilometers; 14 miles) from the landline of a nation.

The adjacent areas outside the 12 nautical miles limit are recorded as additional 18 nautical miles from the baseline of the territorial sea. Besides, this is the neighboring territory whereby a nation may proceed to formalize laws in four specific areas such as customs, damage to the environment, the imposition of taxes, and immigration. Stretching from a nation's baseline to 200 nautical miles (370 km; 230 miles) from the edge of the territorial sea renders the surrounding region a hot pursuit field and exclusive economic zones. The coastal nation has the exclusive right of ownership of the whole natural and sea resources of this region. The word may incorporate in casual use the territorial sea, and even the continent's coastline.

Significance of maritime boundary

Historically the sea has been used for catching fish, and business purposes all over the world from the ancient time. As a result, with the huge growth of international maritime trade, the world's oceans have acquired ever greater importance. Today every nation may withdraw from the sea, and it is now called the last disputed boundary for this reason. Nonetheless, since

the sea can offer only alternatives to land resources, maritime protection is a broad concept in globalization's current competitive context. UNCLOS covers a wide range of notions, including maritime protection, navigation rights, maritime border communication security, maritime resource defense, and territorial disputes.

Another main argument is that safety dynamics are necessary to understand the enormous dependence on the development of the trades in sea zones and local naval forces. For the stability and economic growth of Bangladesh, safety in marine zones has become very important. Confirming the sea roads remain free or open the transportation of goods and services demanded and stopping the inter-state conflict in sea zones that might climb out of the investigation of the sea resources. Because of the geographic location, Bangladesh is becoming very significant for sea-traveling, the building of ships, traditions, and business relationships with other countries. In 1982 A.D., the SLOC in the Bay of Bengal has supplied a huge sea area comprising of International Water (IR), Territorial Sea (TS), Contiguous Zone (CZ), Exclusive Economic Zone (EEZ), and Continental Shelf (CS) put up with testimony to the fact. Bangladesh's dependence on the sea would grow to commerce, natural resources, shipment, and perfect conclusion of maritime resources, investigation, and issues related to the boundary of the sea, which could be considered as a censorious element for the security of sea in the existing environmental security.

Because of globalization the military force and gathering by intelligence activities organized by foreign countries in or over EEZ are becoming more needed. Also, never be resourceful and direct the sea on experiments to best use the area's technology-driven development. Simultaneously, regulation of their EEZ is becoming increasingly impotent for coastal areas with that the threat is increasing to the environment of the sea zone and tensions for the safety of sea tracts. Littoral states are enlarging the necessity of control of the EEZs at the same instant.

5. The backdrop of the delimitations

In the northeastern corner of the Bay of Bengal, Bangladesh is situated and Myanmar is likewise associated with the region. Due to its abundant natural assets, in the Bay of Bengal, the peoples of both countries have different interests. But, regrettably, the areas of Bangladesh have not been identified. With the discussion of Myanmar and India, it is truly difficult for Bangladesh to establish its legitimate rights over its Bay. Because of unremarked maritime borders, Bangladesh's peoples were unable to take any action to obtain

maritime resources that exist in the Bay of Bengal. For an instant, “Before the Tribunal’s verdict India and Myanmar, both claimed 10 and 18 gas-blocks respectively in the maritime zones of Bangladesh and now 8 gas-blocks from India and 13 gas-blocks from Myanmar won by Bangladesh in the Bay of Bengal. According to the Report of USGS, around 40 Trillion Cubic Foot (TCF) gas may be found in these blocks.” (Moula, Parvin, & Ferdaus, 2014).

Furthermore, the fishermen community in Bangladesh faced a range of obstacles to catch fish on its sea boundary because of the absence of an accurate water boundary and, on the other hand, fishing people from other countries continuously caught fish from the huge resources of Bangladesh’s water. Besides, the coastguard and other armed forces in Bangladesh have faced different barriers to routine activities. For Bangladesh, the maritime border in Bangladesh needed to be demarcated than Myanmar. Since Myanmar already has its maritime regions from the Andaman Sea and the Indian Ocean beyond the Bay of Bengal. Besides, Bangladesh has the only sea that is the Bay of Bengal. Therefore, for the citizens of Bangladesh, the demarcation of the maritime boundaries was a crucial feature. However, after the final judgment by the ITLOS on 14th March 2012 A.D, the long maritime conflict between Bangladesh and Myanmar finally ended. And tribunal’s judgment is a landmark in the history of the international maritime act. This verdict is also a milestone for both the countries.

-- Addressing first the delimitation of the territorial sea, the parties accepted that the applicable law was Article 15 of the Convention, which deals with such delimitation between states with opposite or adjacent coasts, and that the starting point of the maritime boundary was the terminus of the land boundary agreed in 1966 between Pakistan (the predecessor state of Bangladesh) and Burma (as Myanmar was then called). (Anderson, 2012)

This arrangement set a boundary only along the delta of Naaf River, which ended in the Bay of Bengal at the mouth of the river. In 1986, eight rounds of Bangladesh-Myanmar bilateral talks were held to define maritime boundaries, including territorial waters, EEZs, and continental shelf borders (Watson, 2015). Meanwhile, Bangladesh acted out the Law in 1974 on maritime areas with the territorial sea, through which it was able to announce a straight baseline, a landmark, and a continental shelf with economic zones (Shah, 2013). A Negotiated Procurement Protocol between both countries on the maritime boundaries was signed by the respective delegates. And their second round of discussion took place on 23 November 1974. “Following the Equidistance system used between the St. Martin’s Island and the mainland of Myanmar the agreement placed the maritime boundary within 12 nautical miles” (Alam, 2012). The Burmese delegation was led by

Commodore Chit Hliang, the vice-chairman of the Navy, while Ambassador Kwaja Mohammad Kaiser headed the Bangladesh delegation.

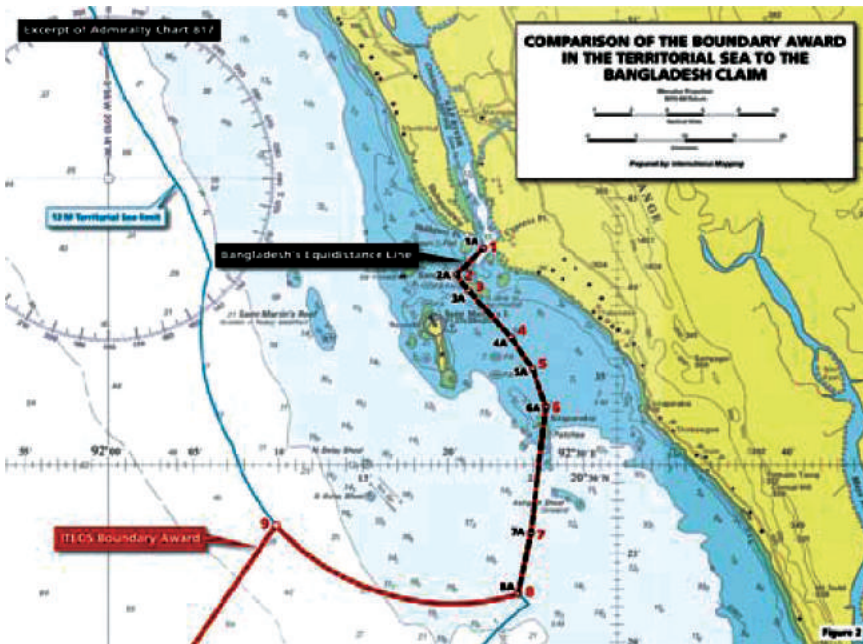
The Minutes were decided and the border geographically defined followed by a line paralleled and equidistant from the Rakhine coast of Myanmar and the St. Martin's Island (Balaram, 2012). However, exceptional Chart 114 was included in the discussion of 1974. "The dispute re-emerged over 40 years later. Two key factors, such as the recent findings of hydrocarbon reserves in the Bay of Bengal and the rising demand for natural gas in both nations, have led to this conflict again. Between 2002 and 2007, most of the hydrocarbon gas supply in Bengal was found" (Bissinger, 2010). Though Bangladesh, which is afflicted with regular power outages, supplies its domestic energy shortages with oil, it is more likely that Myanmar will export natural gas for China and India. "The second period of six rounds of negotiations, from 2008 A.D. to 2010 A.D., was characterized by rising tensions" (Melebet Le, Dispute, 2012, para- 21).

An agreement similar to 1974 agreed minutes was signed by the parties in April 2008. This archive alluded to hence as the 2008 A.D. "The key points in the 2008 Minutes decided on were the classification of islands, following Article 121 of the Convention and reasserted and explained, by allocating a sequence of particular latitudinal and longitudinal locations, the line suggested in the 1974 Decided Minutes" (Melebet Le, Dispute, 2012. para-27).

Moreover, in compliance with Article 121 of UNCLOS 1982, it has been recommended that the land famous as St. Martin's Island should be called an island. Nevertheless, Oyster Island, which is located on the seashore of Myanmar, will not be regarded as an island, because it hasn't freshwater and its failure to provide economic life or any permanent human settlement, since it has been declared uninhabitable. "Under Article 121 UNCLOS, only islands which, as mentioned above, are in a position to support human residence or their own economic life will, for EEZ as well as the continental shelf, be subject to the convention" (Melebet Le, Dispute , 2012. para- 27). A second bilateral negotiation held in 2008 A.D was established with the possibility of the discovery of natural gas. On 17 October 2008, four survey ships were escorted by two Myanmar Navy warships, to begin exploration in the area concerned, on the southwest of St. Martin's Island within 50 nautical miles. Bangladesh replied by demanding that Myanmar suspend its exploratory exploration until it was established maritime boundaries, and by dispatching the three Bangladesh Naval vessels it was also threatening the use of force against Myanmar. And there was no clear confrontation with the weeks-long standoff. Besides, on the concave north coast of Bangladesh's

Bay of Bengal, Bangladesh is tucked between Myanmar and India, which adds to Bangladesh's coastline. Therefore, Bangladesh's maritime region is cut-off in the equidistant 130 nm by Myanmar on the East and India on the west by Bangladesh against the demand for 200 nm EEZ and 350 nm CS of Bangladesh (see map 2). The maritime boundaries between Bangladesh and Myanmar have been delimited since 1974. With its neighbors, Bangladesh claimed legally to consent to an alternative solution to prevent a 'cut-off.' Regrettably,

Finally, to address this question bilaterally, Bangladesh's Government took an audacious and timely decision on this issue through mandatory UNCLOS conflict resolution mechanisms. On 08 October 2009, the two parties subsequently agreed on the competence of ITLOS for resolving the contested issue. The case joined the ITOLOS docket as the 16th case on 14 December 2009. Nevertheless, in the process discussed underneath, Bangladesh and Myanmar have agreed to reach an agreement through ITLOS.



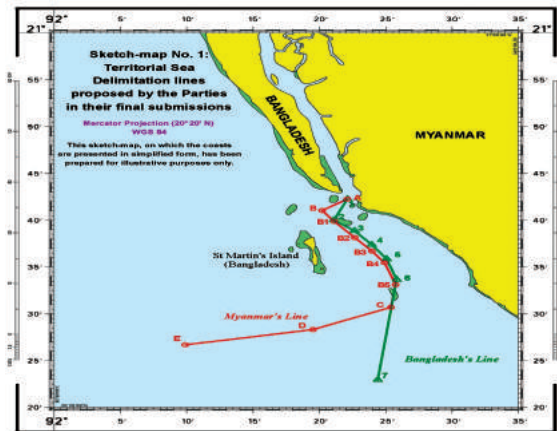
Map 1: Showing the boundary of the 12 Nautical Mile Territorial Sea superimposed by the 1974 Agreement (Alam, 2012).



Map 2: Due to equidistant lines claimed by Myanmar and India, indicating a 130 Nautical Mile cut-off (Affairs, 2012: 24).

6. Territorial water delimitation

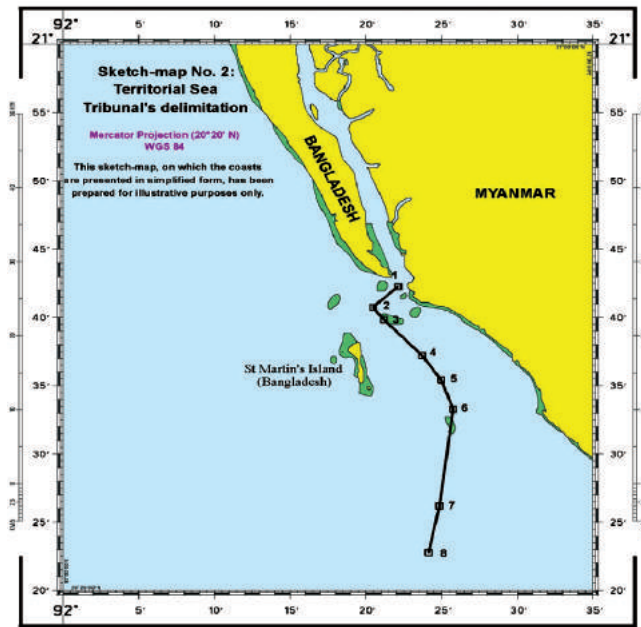
Concerning the demarcation of a marine geographical border, Bangladesh claimed that the border had already demarcated in the 1974 and 2008 Agreement Minutes respectively, as recorded by the signing of the two Heads of Delegation during the negotiations on the sea border. However, Myanmar denied that any other binding agreement would be accepted as a convention. Myanmar argued that the negotiated minutes represented nothing more than a log of a contractual arrangement and that legal obligations were not to be enforced. The ITLOS stated that those minutes did not justify a treaty and therefore, the territorial sea was delimited.



Map 3: The territorial sea boundary proposed by both Bangladesh and Myanmar (Melebet Le, dispute, 2010: 50).

When the participating states will not be in the condition of binding any agreement, which mentioned earlier, UNCLOS declares by its Article 15, which ensures the borders of the territorial waters are demarcated on an equidistant basis, except it is appropriate to divide the territorial sea in another way due to historical title or other special conditions. “That was at that point proposed by Bangladesh” (Faruque, 2018. p.74). “Since no party to the dispute raised the question of historical title in any of the waters concerned, the ITLOS applied the concept of equidistance in the delimitation of territorial waters, taking into account the base points used by the parties, and acknowledged that Bangladesh has the right to a 12 nm territorial sea around St. Martin's Island” (Melebet Le, Dispute, 2012: para 4). “In this connection, Myanmar has raised the question of St. Martin's Island as a special case in the sense of territorial sea delimitation, claiming that St. Martin's Island should be entirely ignored and should grant 6 nautical miles of effects in such maritime structure around St. Martin's Island” (Melebet Le, Dispute, 2012: para- 4). The ITLOS, however, found that this island is situated off the mainland coast of Bangladesh, beyond the 12 nm maritime territorial frontier.

The court agreed with Bangladesh in the association that St. Martin Island was accepted as a vital picture of the oceanic boundary, including its geological highlights and the righteousness of its territory, occupants, and the scope of the economic activities and other tricks involved therein. Moreover, the court additionally recognized St. Martin Island as a successful piece of Bangladesh's regional water and as there are no other extraordinary conditions in the Island that would legitimize the Island as the uncommon conditions. “At long last, Tribunal reasoned that the St. Martin Island ought to be given full impact (12 nautical miles) in drawing the delimitation line of the regional ocean between the two nations. Likewise, the court drew the limit of the regional ocean following the equidistance line between the two base focuses on the St. Martin Island and the territory bank of Myanmar” (Faruque, 2018:75). In this way, it is seen that, with regards to the delimitation of the regional water, the way that was trailed by the council, had just contended in the concurred minutes of 1974 between the two nations. The ITLOS also mapped the boundaries of the territorial sea demarcation, which normally starts at the land boundary junction at the mouth of the Naaf River and runs south, following the equidistant line between two states' base points; from Myanmar's mainland coastline and St. Martin's Island. The ITLOS, according to Bangladesh, describes a regional area that is virtually equivalent to the 1974 agreement (Herdt, 2020).



Map 4: The ITLOS demarcated the territorial sea border (Melebet Le, Dispute , 2012: 52)

7. Continental shelf and Exclusive Economic Zone (EEZ) within 200 nm

In the hearing of the case, Myanmar demanded that the concept of equity be extended to the delimitation of the EEZ borders between the two nations, while Bangladesh has always claimed to delimit its maritime boundaries based on the principles of equity. Centered on the equidistance principle, the delimitation of the EEZ frontier was supposed to lead to the occupation by Myanmar of a large part of Bangladesh's sea territory. Bangladesh would have had only a small share of the Bay of Bengal and would have been practically stopping from entry to the high seas if the equidistance principle had been established. The Tribunal applied an equitable standard for the resolution of the dispute instead of equidistance (Faruque, ITLOS Judgment, 2012).

Also, international courts and tribunals have been regarded as having to take into consideration a condition with its distinctive features, the issue of delimitation. The special circumstances of coastal natural features have an essential role to play in finding a fair solution to the problems of maritime delimitation. "Bangladesh has a concave coast, as mentioned above, and

countries with concave coastlines require unconventional solutions” (Faruque, ITLOS Judgment, 2012). One more point of concern is found, a borderline should not be shaped in the manner that it impacts the cuts off areas that be owned by a group closer to one than the other physically. Bangladesh argued that an equal principle should be used to demarcate the EEZ, the continental shelf, and the area's outer surface of 200 nm.

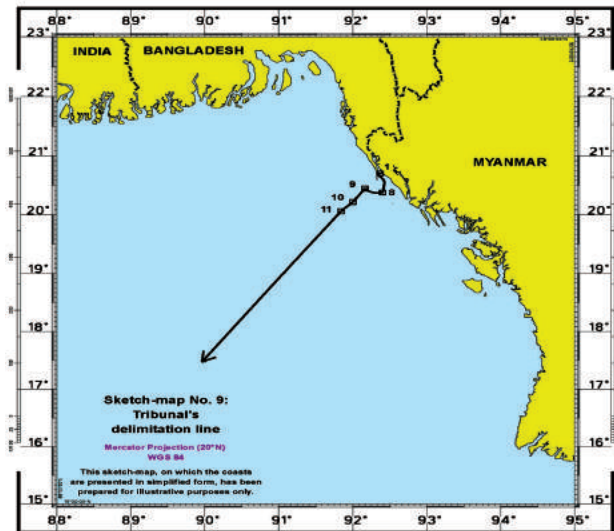
To oppose the equidistance system, Bangladesh has not defined any fundamental points. Bangladesh has argued that the supposed equidistance line of Myanmar is unequal on account of the apparent cut-off impact she creates. Bangladesh attempted to contend that notwithstanding the unusual drawing of its coastline with a dual concavity that characterizes it, and the Tribunal may extend the angle-bisector strategy to a demarcation of the EEZ and continental shelf as well. According to Tribunal, this strategy would theoretically mitigate the unfairness inherent of equidistance and lead to a more equal outcome. Myanmar, on the other hand, consistently argued that the equidistance technique will be applied and told ITLOS that Bangladesh's angle-bisector technique would also have an unequal impact. The ITLOS did not, however, fully agree with all Bangladesh's claims. Tribunal also rejected Myanmar's justification that their proposed base point did not have any significance.

“Interestingly, Bangladesh had distinguished a few potential applicable bases focuses that were adequate. The ITLOS added its base focuses to prompt a more fair temporary equidistance line” (Faruque, ITLOS Judgment, 2012). It agreed that the equidistance line needed to be modified to accommodate for the coast's concavity. In that respect, the ITLOS noted that the primary concern driving the demarcation must be the goal of obtaining an equal result. In that sense, a three-stage approach was applied by ITLOS. At the very first stage, it formulated a provisional equidistance line based on the geographical location of the coasts of the Parties and mathematical equations. In the subsequent stage, in the wake of drawing the temporary equidistance line, it has made a change with the goal that the line produces a fair outcome.

“At the third and final stage, the ITLOS considered that there should be no significant disproportion between the ratio of the respective coastal lengths and the ratio of the respective maritime areas allocated to each Party to the adjusted line.” (Ndiaye, 2015)

In the case of adjustment to the temporary line, the ITLOS measured the relevant circumstances intending to reach an equitable outcome. In this connection, Bangladesh emphasized three key geographical features as important circumstances such as that of the "concave shape of the coastline

of Bangladesh,” the site of St. Martin's Island, and the Bengal depositional scheme as evidence of Bangladesh's natural extension. Myanmar opposed that there was no appropriate situation that could lead to the provisional equidistance line being changed. However, the ITLOS noted here that the coast of Bangladesh is concave, and it further identified that because of the coast's concavity under debate; the interim equidistance line it established has a cut-off effect on the maritime boundaries of Bangladesh. As a result, the ITLOS reshaped the line to produce a more equal result. However, the ITLOS didn't deem St. Martin's Island or the Bengal depositional structure to be relevant circumstances. One very significant point is that the ITLOS agreed that it's time to draw a single maritime line regarding the demarcation of the EEZ and the continental shelf.



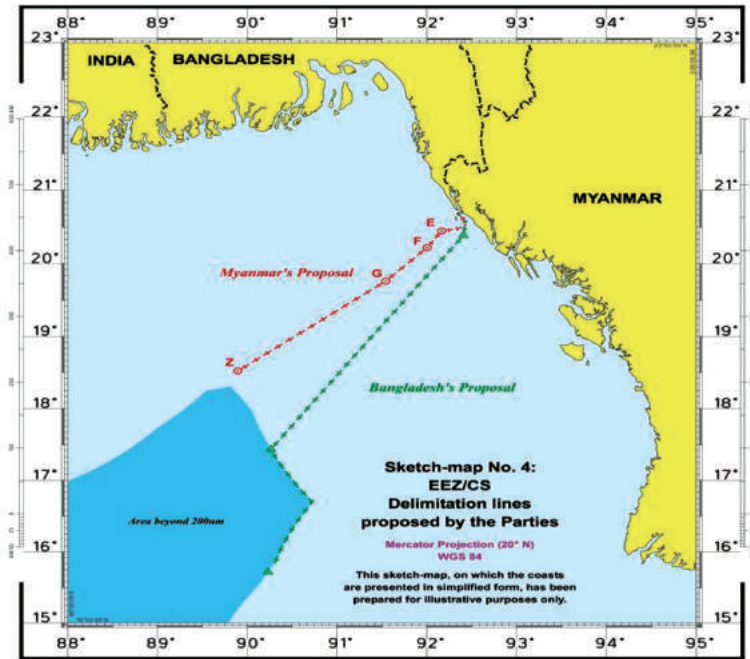
Map-5: Exclusive Economic Zone delimitated by the ITLOS (Melebet Le, Dispute , 2012: 129).

8. Exclusive Economic Zone (EEZ) and continental shelf over 200 nm
Tribunal's third and final task was to create a marine boundary or outer continental shelf beyond 200 nautical miles. It was the striking aspect of the entire decision. Although it is true that in the present age of globalization, such a kind of demarcation has been concluded or fixed by the bilateral agreement, nevertheless, this was the first time that ITLOS has solved such a problem or demarcated EEZ beyond 200 nautical miles applying by existing acts and conventional law.

To demarcate the outer continental shelf beyond 200 nautical miles, ITLOS first did solve the objection of Myanmar. As Myanmar demanded that all kinds of data and information of both the countries did not accept or not consider yet by the ITLOS even, according to the articles, no 76 of UNCLOS the geological availability of the extended continental shelf of the two countries has not yet determined. Therefore, demarcation of the boundary of the said areas is like ‘putting the cart before the horse’ for the ITLOS. Moreover, Myanmar also demanded that although the ITLOS has supreme power to demarcate such an area, it will not be applicable in the case of Bangladesh and Myanmar due to the equidistance line. The maritime boundary of Bangladesh is ended within 200 nautical miles due to concavity. Therefore, Bangladesh has no outer continental shelf beyond 200 nautical miles. Moreover, Myanmar also argued that the tribunal lacked jurisdiction over the matter and even did it; it ought not to exercise in this present case.

“However, ITLOS has made it clear that a court or tribunal having jurisdiction based on part 15 of UNCLOS could delimit the continental shelf beyond 200 nautical miles in the absence of a recommendation from the Commission on the limits of the continental shelf.” (Lando, 2017). Nonetheless, Myanmar's claim that ITLOS did not have authority over the question of demarcation in the outer continental shelf was rejected by the Tribunal. The Tribunal also rejected another argument put forward by Myanmar that Bangladesh has no rights on the outer continental shelf due to a cut-off or half effect. The current gray area was also a hot topic in the sense of the outer continental shelf. In this regard, the EEZ of Bangladesh up to 200 nautical miles and after it 200 nautical miles of Myanmar's EEZ situated that is created a grey zone. Due to such a grey area, Bangladesh has to leapfrog Myanmar's EEZ if Bangladesh wants to set the outer continental shelf beyond 200 nautical miles. So, Myanmar has raised concerns about these issues.

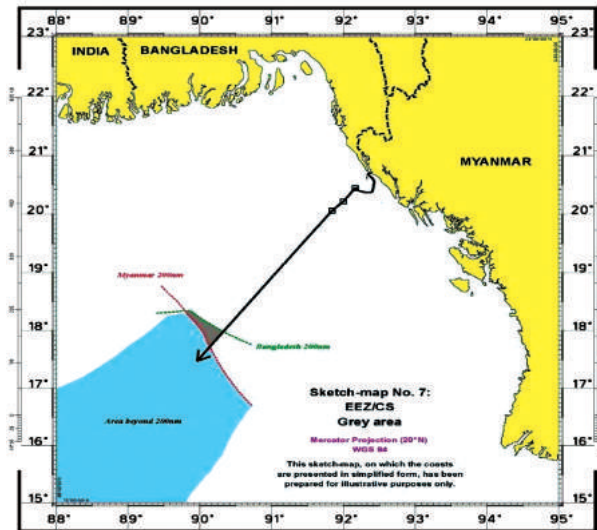
In this case, the tribunal ruled in favor of Myanmar on the surface of the water in favor of Bangladesh on the seabed of the water in the grey zone. Undoubtedly, it was a remarkable declaration of ITLOS. After then, to demarcate the area tribunal decided to extend the natural 215-degree line outside of the 200 nautical miles. The endpoint of the 215-degree line was not set by the tribunal but instead produced an arrow at the endpoint, indicating that it would proceed in the same direction until it reaches the third state areas. Never before has Myanmar acknowledged Bangladesh's right beyond 200 nautical miles to the outer continental shelf.



Map 6: Continental Shelf beyond 200 Nautical Miles (Melebet Ie, Dispute, 2012: 75).

9. Issue of the grey zone

“According to Churchill, if a single maritime boundary is not an equidistance line and particularly if such a line is extended to form the boundary of the continental shelf beyond 200 nm, grey zones are liable to occur” (Churchill, 2012). The Tribunal acknowledged that the continental shelf of both countries is over 200 nm has resulted in a slight grey region within 200 nm of the Myanmar coast, but not on the Bangladesh maritime border. In this grey zone, Bangladesh's external continental shelf assertions clash with the 200 nm EEZ of Myanmar. Under the ITLOS, Myanmar was granted permission to use a water column in this grey region, while Bangladesh was granted the right to use the seabed within the Myanmar EEZ. Following the principle laid down in Article 56 of the UNCLOS, the ITLOS recommended that, with due regard to their rights and duties, each participant should exercise their rights in this grey region. To be constrained by ITLOS, this grey area was required. After recognizing the obstacles, it faced, the ITLOS observed that there were many ways in which the parties could find a two-way resolution, proposing a joint formation or unitization, in this restricted area. Nonetheless, ITLOS has given Bangladesh access to this grey zone.



Map 7: Grey zone Area (Melebet Le, Dispute, 2012: 122).

10. The test of proportionality

“Myanmar suggested that for both countries the proportion of the length of the related coastal region would be 1:2 (364 km for Bangladesh and 740 km for Myanmar). The Tribunal eventually assessed the length for Bangladesh to be 413 km and for Myanmar to be 587 km. The size ratio of Myanmar is a respective coast is 1:1.42 in favor of Myanmar. The assigned area ratio for Myanmar is about 1:1.54” (Chowdhury, 2012). As per the Tribunal's judgment, Myanmar's coastline is approximately 171,832 square kilometers compared to Bangladesh's is approximately 1,11,631 square kilometers, which has been considered equal, and the verdict shows that both parties were successful in the proportionality examination.

11. Present scenario of the maritime boarder of Bangladesh

Bangladesh's government has begun oil and gas exploration 200 nautical miles and beyond off its coast. Exploration of oil and gas in Bangladesh's maritime zone might meet the country's domestic energy demands. It has declared the Bay of Bengal as a new economic zone in this respect. The country has already started to build its blue economy in order to capitalize on the country's recently found marine resources. Bangladesh has organized a series of seminars, meetings and workshops on the blue economy since 2015 (Bank, 2021). Bangladesh's Seventh Five Year Plan (FY: 2016-2020) has twelve projects in place to help the Blue Economy grow, including fisheries,

renewable energy, human resources, transportation, and tourism, as well as climate change and environmental preservation. To that purpose, the Bangladeshi Ministry of Foreign Affairs established the "Blue Economy Cell" in 2017 with the purpose of coordinating Blue Economy initiatives across sectoral ministries (Patil, Virdin, Colgan, Hussain, Failler, & Vegh, 2018). Power and energy, fishing, maritime commerce and shipping, coastal preservation, tourism, and maritime security and surveillance are among the possible blue economy sectors listed by Bangladesh's Ministry of Foreign Affairs (MFA). Bangladesh and Myanmar, on the other hand, have benefited from their own established maritime boundaries as a result of the ITLOS ruling. Both countries must consider their best interests in a comprehensive manner, based on international law, and resist all temptations. We hope that while the border dispute is being settled, Bangladesh, Myanmar, and India may move on with plans to negotiate agreements for Joint Development Zones between India, Bangladesh, and Myanmar for petroleum exploration in the delimitation of the Bay.

12. Concluding remarks

To recapitulate in short, it can be said that the conflict concerned the delimitation regarding the territorial area in the sea, exclusive economic zones with continental shelves in the Bay of Bengal was a historic verdict. The verdict was also a sign of an important model that would be appropriate to settle any potential conflicts over maritime boundaries between any countries. For both Bangladesh and Myanmar the decision is important for remarking the reasons as following:

Firstly, for Bangladesh, the decision takes on great and fine merit. Since, the tribunal, which had previously been challenged, has acknowledged its lawful claim on the maritime region.

Secondly, the two countries longstanding conflict was settled peacefully. Before the verdict, Bangladesh has always initiated to resolve the issue through amicable bilateral negotiations; though Myanmar has been indisposed to resolve it by joining bilateral negotiations, or yet by arbitration of an international court. After failing to achieve any result in reaching a contract via negotiation with Myanmar, Bangladesh decided to resolve the conflict through a neutral third party via a judicial process. The decision to end the conflict through peaceful resolution is a judicial triumph for Bangladesh on its own.

Thirdly, an established and agreed-upon maritime border will open the way for Bangladesh to have peaceful access to all maritime resources, thus it

will be accelerating its economic development. So who is winning on the occasion? "Affirmation of Historic Victory" has just happened for the situation. By and by, this is conceivably not a worthy inquiry to pose as strife for a sea limit. The goal of oceanic limit delimitation (past the regional ocean) was a reasonable arrangement, which was underlined by the council all through the judgment along these lines; it is outlandish that the consequence of any choice will be a "the champ brings home all the glory" situation. The choice was fundamentally a success win situation for the two sides. Indeed, through the judgment, Bangladesh secured a greater part in the Bay of Bengal, and that part was otherwise not possible by bilateral negotiations. Conversely, in the maritime zone of the Bay, Myanmar also won a much bigger share of the valuable maritime sector. Thus, the verdict established for both states a "win-win" result.

Notes:

- a. The International Tribunal for Sea Law (ITLOS) is an intergovernmental body created by the third conference on Maritime Law of the United Nations. This Convention was established in Montego Bay, Jamaica on 10 December 1982 by the United Nations Convention on the Law of the Sea (UNCLOS). On 16 November 1994, the Convention entered into force and formed the legal international structure for 'all oceans' to be used and monitored. The ITLOS is a procedure referred to under Article 287 of UNCLOS for dispute resolution.
- b. Delimitation of the Maritime Boundary in the Bay of Bengal (Bangl./Myan.), Case No. 16 (ITLOS Mar. 14, 2012) [hereinafter Judgment]. The basic documents, pleadings, transcripts, press releases, and other materials on the case are available on the Tribunal's website, <http://www.itlos.org>. See also Bangladesh-Myanmar, Report No. 6-24 (Add.1), in *International Maritime Boundaries Online: Region (06) Vi, the Indian Ocean And South East Asia* (Coalter Lathrop ed., forthcoming 2012), Retrieved from, <http://nijhoffonline.nl/book?id>
- c. Available at: <https://www.lawteacher.net/free-law-essays/international-law/united-nations-convention-law-of-the-sea-international-law-essay.php>
- d. Daily Star, October 22, 2008.
- e. The blue economy, as defined the World Bank, is the "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem." European Commission remarks it as "All economic activities related to oceans, seas and coasts. It

covers a wide range of interlinked established and emerging sectors." The Commonwealth of Nations defines it "an emerging concept which encourages better stewardship of our ocean or 'blue' resources." The Blue Economy, according to a UN spokesman, is an economy that comprises a variety of economic sectors and related policies that together determine whether the use of ocean resources is sustainable. Understanding and better managing the many aspects of oceanic sustainability, such as sustainable fisheries, ecosystem health, and pollution prevention, is an important challenge for the blue economy. (Available at: https://www.un.org/regularprocess/sites/www.un.org.regularprocess/files/rok_part_2.pdf)

References

- Affairs, B. M. (2012). *Commemoration Ceremony of the 30th Anniversary of the 'United Nations Convention on the Law of the Sea (UNCLOS) 1982' - 1982-2012*. Dhaka: 44.
- Al Faruque, A. (2018). Judgment in maritime boundary dispute between Bangladesh and Myanmar: Significance and implications under international law. In *Asian Yearbook of International Law, Volume 18* (2012) (pp. 65-87). Brill Nijhoff.
- Alam, M. K. (2012). Delimitation of maritime boundary between Bangladesh and Myanmar by the ITLOS. *Northern University Journal of Law*, 3, 7-14.
- Anderson, D. H. (2012). Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh / Myanmar). *American Journal of International Law*, 106(4), 817-824.
- Balaram, R. A. (2012). Case study: The Myanmar and Bangladesh maritime boundary dispute in the Bay of Bengal and its implications for South China sea claims. *Journal of Current Southeast Asian Affairs*, 31(3), 85-104.
- Bangladesh Bank. (2015). *Bangladesh Bank Annual Report*. Dhaka: Bangladesh Bank.
- Bangladesh Bank. (2021). *Blue economy of Bangladesh: Prospects and challenges*. Retrieved on January 27, 2021 from <https://thefinancialexpress.com.bd/views/blue-economy-of-bangladesh-prospects-and-challenges-1611760062>

- Bissinger, J. (2010). The maritime boundary dispute between Bangladesh and Myanmar: Motivations, potential solutions, and implications. *Asia Policy*, 10(1), 103-142.
- Chowdhury, S. I. (2012, March 22). Delimiting over maritime boundary puts Bangladesh at disadvantage. *New Age*. Retrived from <https://www.newagebd.net/>
- Churchill, R. (2012). The Bangladesh/Myanmar case: Continuity and novelty in the law of maritime boundary delimitation. *Cambridge International Law Journal*, 1(1), 137-152.
- De Herdt, S. (2020). Judges ad hoc and the international tribunal for the law of the sea: An overview of its practice. *Journal of International Dispute Settlement*, 11(3), 438-458.
- Faruque, A. A. (2012, April 21). ITLOS judgment: A clear legal victory for Bangladesh. *The Daily Star*. Retrived from <https://www.thedailystar.net/>
- Lando, M. (2017). Delimiting the continental shelf beyond 200 nautical miles at the international court of justice: The Nicaragua v. Colombia cases. *Chinese Journal of International Law*, 16(2), 137-173.
- Melebet Le, M. D. (2010). *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal, Bangladesh*. Hamburg: International tribunal for the law of the sea. Reports of judgments.
- Melebet Le, M. D. (2012). *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the bay of bengal (Bangladesh, case n. 16*. Humbrag: international tribunal for the law of the sea.
- Moula, G., Parvin, F., & Ferdaus, J. (2014). The prospects and challenges before Bangladesh in exploring and exploiting marine resources: An economic and legal study. *Beijing L. Rev.*, 5, 249.
- Ndiaye, T. M. (2015). The judge, maritime delimitation and the grey areas. *Indian Journal of International Law*, 55(4), 493-533.
- Patil, P. G., Virdin, J., Colgan, C. S., Hussain, M. G., Failler, P., & Vegh, T. (2018). *Toward a blue economy: A pathway for Bangladesh's sustainable growth*. World Bank, Washington, DC: World Bank.
- Shah, R. (2013). Bangladesh-Myanmar ITLOS verdict: Precedence for India? *Strategic Analysis*, 37(2), 178-185.
- Watson, S. (2015). The Bangladesh/Myanmar maritime dispute: Lessons for peaceful resolution. *Asia Maritime Transparency Initiative*, 19.

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