

BANGLADESH V. INDIA

A Case Summary for the
Maritime Dispute Resolution Project
Round II



U.S.-ASIA LAW INSTITUTE
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Maritime Dispute Resolution Project

The Bay of Bengal
Maritime Boundary Arbitration
(*Bangladesh v. India*)

Case Summary by SONG Yann-Huei*



A research project of the
U.S.-Asia Law Institute

* Research Fellow, Institute of European and American Studies, Academia Sinica (Taiwan)

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Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

The Bay of Bengal Maritime Boundary Arbitration (Bang. v. India), 32 R.I.A.A. 1 (Perm. Ct. Arb. 2014).

Section I – Background and Summary of the Case

This case concerns a land and maritime boundary dispute between Bangladesh and India. The dispute can be traced to 1947 when the land boundary between India and Bangladesh (then East Pakistan) was first established by the Bengal Boundary Commission. The commission based its determination on a report, submitted to the commission in August 1947 by Sir Cyril Radcliffe. The so-called “Radcliffe Award” described the boundary line between East and West Bengal in its Annexure A and showed the line on a map in Annexure B.

In March 1971, Bangladesh declared its independence from Pakistan and succeeded to the territory of the former East Pakistan and its boundaries. In the early 1970s, a sandbar emerged in the mouth of the Hariabhanga River, which divides the two countries. The sandbar, called South Talpatty by Bangladesh and New Moore Island by India, triggered a territorial dispute over the feature and contributed to the continuation of a conflict between Bangladesh and India in the overlapping waters in the Bay of Bengal.

The Bay of Bengal, occupying an area of approximately 2.2 million square kilometers, is in the northeastern part of the Indian Ocean, bordered by Bangladesh, Myanmar, India, and Sri Lanka. Long before the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982,¹ in the 1970s each of the four coastal states enacted national legislation declaring the limits of

¹The convention was opened for signature 12/10/1982, entered into force 11/16/1994, and had 168 parties as of 3/21/2020. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 (hereinafter UNCLOS).

their territorial sea, exclusive economic zone (EEZ), and continental shelf in the Bay of Bengal, arising from new interests in developing the living and non-living resources. The improvement of offshore drilling technology further heightened the stakes for exploration and development of offshore hydrocarbon resources in the seabed of the bay. In 1974, Bangladesh awarded seven offshore blocks on its continental shelf to six international companies. India started to explore the deep waters of the bay for oil and gas resources in 2006.

Tensions escalated in 2006 when India auctioned oil and gas blocks in the Bay of Bengal to international oil companies, including over 15,000 square kilometers of ocean territory that was claimed by Bangladesh. In November and December 2008, respectively, Bangladesh took action in response to Myanmar's and India's efforts to explore and develop hydrocarbon resources in the waters claimed by Bangladesh. There were multiple rounds of bilateral negotiations between Bangladesh and its neighbors between 1974 and 2009 to help resolve the disputes, but all failed.

On October 8, 2009, Bangladesh instituted arbitral proceedings against India to delimit a maritime boundary in the Bay of Bengal, pursuant to UNCLOS article 287 and Annex VII. The International Tribunal for the Law of the Sea (ITLOS) found that it had jurisdiction to adjudicate this case.

Bangladesh and India agreed on the need to first identify the land boundary terminus before delimiting the overlapping maritime boundary. They also agreed that UNCLOS articles 15, 74, 76, and 83 applied to the delimitation of the territorial sea, the EEZ, and the continental shelf within and beyond 200 nautical miles (nm). However, they differed on several points: the interpretation of the Radcliffe Award, the selection of the base points, which delimitation method to apply, factors constituting special

circumstances or relevant circumstances, and the adjustment of the provisional equidistance lines in the delimitation process.

The tribunal decided that the year 1947 was the critical date on which the land boundary terminus was established. It decided to use the map attached to the Radcliffe Award to identify the terminus. The tribunal affirmed the application of the standard equidistance/relevant circumstances method in the delimitation process. The impact of climate change was not taken into account as a relevant circumstance warranting an adjustment of the provisional equidistance line. After conducting a disproportionality test, the tribunal concluded that the delimitation line it had plotted did not produce any significant disproportion in the allocation of maritime areas to the parties that would require alteration of the adjusted equidistance line to reach an equitable solution.

On July 7, 2014, the arbitral tribunal issued its award, unanimously identifying the land boundary terminus and determining, by four votes to one, the maritime boundary between Bangladesh and India. The final delimitation line drawn is shown in Map 1, below. A “gray area,” located on the eastern side of the delimitation line, was also created, which lay beyond 200 nm from the coast of Bangladesh but within 200 nm of the coast of India in the Bay of Bengal. The “gray area” is shown on Map 2, also below.

Section II – Summary of the Major Procedural Questions

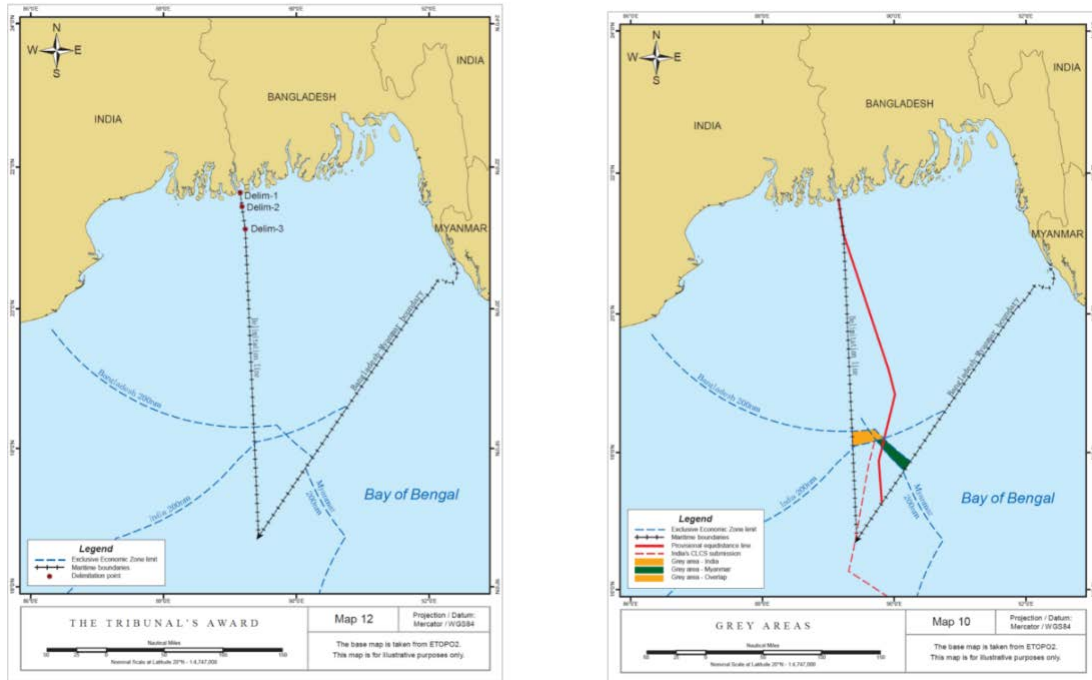
There existed no serious disputes between Bangladesh and India over the procedural matters during the arbitral proceedings. When signing, ratifying the UNCLOS, and at any time thereafter, neither Bangladesh nor India had made a declaration to choose one or

more of the four means provided in article 287, paragraph 1, of UNCLOS for the settlement of disputes concerning the interpretation and application of the treaty. As a result, in accordance with paragraph 3 of article 287, the two countries were deemed to have accepted Annex VII arbitration.

As the tribunal found that Bangladesh had complied with the requirements of the UNCLOS for the submission of the dispute to arbitration under Annex VII and both parties had agreed that it had jurisdiction to delimit the continental shelf beyond 200 nm, the tribunal concluded that it had jurisdiction to adjudicate the case, to identify the land boundary terminus and to delimit the maritime boundary between the parties in the areas where their claims overlapped.

In April 2011, with the agreement of the parties, the tribunal appointed Mr. David H. Gray as expert hydrographer in the arbitral proceedings. The appendix (“Technical Report of the Tribunal’s Hydrographer”) to the award in this case demonstrates the importance of mapping work done by the expert.

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Map 1 (left): Final delimitation line. Map 2 (right): The “gray area” identified by the tribunal. Source: Arbitral judgment.

In October 2013, the tribunal and the representatives of Bangladesh and India conducted a five-day site visit to the relevant areas of the Bay of Bengal for the purpose of checking the disputed localities and the base points selected and proposed by Bangladesh and India. India raised a number of points questioning the findings of the tribunal during the site visit with respect to the visibility of the low-tide elevations in question. However, before the visit, India did not challenge Procedural Order No. 1 issued by the tribunal in August 2013 that set out the site visit itinerary.

Section III – Summary of Key Issues in the Case

1. Determination of the Land Boundary Terminus

While the parties agreed on the role and importance of the land boundary terminus in the delimitation of the maritime boundaries, they disagreed on its precise location. Although Bangladesh and India agreed that the 1947 Radcliffe Award should be used as the basis for determining the terminus, they differed in how to interpret the award, which declared the land boundary between the two countries to be a line that ran southwards along the district line between Khulna (a division of Bangladesh) and 24 Parganas (a district of India), where it met the Bay of Bengal. In particular, Bangladesh and India disagreed on the meaning of two phrases in Annexure A to the Radcliffe Award and in the corresponding provision of the 1925 Notification No. 964 Jur by the governor of Bengal (1925 Notification), namely: (1) “the midstream of the main channel of the river” and (2) “for the time being.” The parties also disagreed on the point where the land boundary met the Bay of Bengal.

Important issues related to the tribunal’s analysis include when to set the critical date for identifying the land boundary terminus and what weight to give to evidence submitted by the parties in the forms of charts or government records to support their respective positions.

The tribunal found that the year 1947 was the critical date for the interpretation of the 1925 Notification and the Radcliffe Award. Dismissing the relevance of a 1951 correspondence, the tribunal stated that it was difficult to accept that a low-level and brief exchange of letters between civil servants of India and East Pakistan (now Bangladesh) could reverse an important general determination of the formal Indo-Pakistan Boundary Disputes

Tribunal, which issued its award in 1948 and confirmed the determination in the Radcliffe Award.

As far as the maps were concerned, the tribunal decided not to use the 1931 Reprint of BA Chart 859 submitted by Bangladesh, as it was drawn based on surveys undertaken many years before the critical date. The tribunal also disregarded the 2011 edition of Indian Navy Chart 351 submitted by India, as the chart was prepared much later than 1947. The tribunal decided to rely on the Radcliffe Map, as it was drawn based upon a survey much closer to the critical date, and Sir Radcliffe himself had found the map reliable enough to use and incorporate into his award.

The tribunal considered that the land boundary terminus was finalized in the Radcliffe Award in 1947. Accordingly, it concluded that the midstream of the main channel of the Hariabhanga River should be located as it was in 1947. Taking the illustrative map in Annexure B of the Radcliffe Award, the tribunal first drew a closing line across the estuary of the Hariabhanga River. This was followed by identifying the junction of the dash-dot-dash line with the closing line, as the latter would have been drawn in 1947. Finally, the tribunal transposed this point onto a modern chart and unanimously decided that the transposed point was the land boundary terminus, located at 21°38'44.2" N, 89°9'20"E.

2. Selection of Base Points and Delimitation of Territorial Sea

Three principal issues were involved in the selection of the base points and delimitation of the territorial sea, including: (1) the role of low-tide elevations (LTE) in the delimitation process; (2) the use of delimitation method; and (3) the existence of “special circumstances” warranting an adjustment of the provisional median/equidistance line.

The tribunal found that South Talpatty/New Moore Island was a LTE. It rejected India's argument over the application of Article 13 of the UNCLOS, asserting that the LTE should be used as the baseline for measuring the territorial sea. The tribunal did not accept Bangladesh's argument opposing the use of the equidistance/special circumstances delimitation method, based on the reason that instability of Bangladesh's coastline constituted a "special circumstance." The tribunal stressed that its main concern was the "physical reality at the time of the delimitation," and therefore it did not accept the argument that the instability of the coast and the risk of sea level rising would constitute "special circumstances."

Bangladesh's proposal to use the angle-bisector delimitation method was rejected by the tribunal, which noted that Article 15 of the UNCLOS refers specifically to the method of median/equidistance line for delimitation of the territorial sea. For the purpose of drawing a provisional median/equidistance line, the tribunal considered the status of South Talpatty/New Moore Island and whether it could be used for base points to draw the line. In the end, the tribunal decided not to rely on base points located on South Talpatty/New Moore Island, as they did not fall on the coastline and did not constitute a protuberant coastal point.

The tribunal rejected Bangladesh's argument that the coastal instability and concavity of the coastline in the Bay of Bengal constituted "special circumstances" and therefore qualified for adjustment of the median/equidistance line. However, it considered that the need to connect the land boundary terminus to the median line constructed by the tribunal for the delimitation of the territorial sea constituted a special circumstance under the meaning of article 15 of the UNCLOS, and therefore decided that the boundary should take the form of a 12 nm-long geodetic line continuing from the land boundary terminus in a generally

southerly direction to meet the median line at 21° 26' 43.6"N; 89° 10' 59.2"E.

3. Relevant Coasts and Relevant Area for Delimitation beyond Territorial Sea

The tribunal cited two ICJ cases for the purpose of identifying the parties' relevant coasts, to support its observation that "the principles underpinning the identification of the relevant coast are well established," and that "in practice ...the relevance of any segment of the coast of a Party depends upon the identification of the projections generated by that coast."²

Since the tribunal determined the exact location of the land boundary terminus between Bangladesh and India, it concluded that the first segment of Bangladesh's coastline extended from the land boundary terminus to the lighthouse on Kutubdia Island, as identified by the ITLOS in its 2012 decision. The second segment of Bangladesh's coastline then extended from the Kutubdia Island point to the land boundary terminus with Myanmar in the Naaf River. As a result, the length of Bangladesh's relevant coast was measured at 418.6 km.

The tribunal decided that the Indian coast between Devi Point and Sandy Point was relevant to the delimitation of the maritime boundary. Beyond Sandy Point, there involved no question of relevant coasts. Thus, the relevant coast of mainland India, running from the land boundary terminus to Sandy Point was measured at 706.4 kilometers. As the tribunal decided that the coast of India's

² North Sea Continental Shelf Cases (Ger. v. Den.; Ger. v. Neth.), 1969 I.C.J. 3 (Feb 20); Maritime Delimitation in the Black Sea (Rom. v. Ukr.), 2009 I.C.J. 61 (Feb 3)

Andaman Islands also generated projections overlapped with those of the coast of Bangladesh, the relevant coast of the Andaman Islands, measured at 97.3 kilometers, was included in the calculation of India's relevant coast. The total length of India's relevant coast in the delimitation was thereby increased to 803.7 kilometers. Based on this determination, the ratio between Bangladesh's and India's relevant coasts was 1:1.92. The tribunal calculated the size of the relevant area to be approximately 406,833 square kilometers.

4. Delimitation of EEZ and Continental Shelf within 200 nm

The tribunal considered three issues in the delimitation of the EEZ and continental shelf within 200 nm, including: (1) the appropriate delimitation method; (2) the existence of "relevant circumstances," such as the instability of the coast, coastal concavity, cut-off effect of concavity, and dependency on fishing warranting an adjustment of the provisional equidistance line; and (3) the concept of a single continental shelf.

The tribunal again turned down the proposal by Bangladesh to use the angle-bisector delimitation method and affirmed the application of the standard three-stage equidistance/relevant circumstances method. The tribunal concluded that as a result of the concavity of the coast, the provisional equidistance line it constructed in fact produced a cut-off effect on the seaward projections of the coast of Bangladesh. For that reason, the tribunal found that the cut-off effect constituted a relevant circumstance requiring adjustment of the provisional equidistance line. The tribunal decided there was insufficient evidence to support Bangladesh's claim that its people's dependency on fishing was a relevant circumstance that should affect the delimitation.

The tribunal noted that articles 74 and 83 of the UNCLOS do not refer to a specific delimitation method, and that international courts and tribunals are guided by a paramount objective, namely, “the method chosen so as to lead to an equitable result,” and that, at the end of the process, an equitable result should be achieved. The tribunal added that transparency and the predictability of the delimitation process as a whole are additional objectives to be achieved in the process.

After reviewing the base points proposed by the parties, the tribunal, by adding five more base points, drew a provisional equidistance line for the EEZ and continental shelf within 200 nm. The tribunal held that the cut-off effect on the seaward projection of the coast of Bangladesh constituted a relevant circumstance, and so concluded that the provisional equidistance line it had constructed needed to be adjusted in order to avoid an unreasonable cut-off effect to the detriment of Bangladesh. At the same time, however, the tribunal emphasized that any adjustment in favor of Bangladesh should not produce an unreasonable result for India. Consistent with the concept of a single continental shelf it already confirmed, the tribunal moved to the delimitation of the continental shelf beyond 200 nm.

5. Delimitation of Continental Shelf beyond 200 nm

The tribunal decided to apply the same method to delimit the continental shelf beyond 200 nm, that is, the equidistance/relevant circumstances delimitation method. It relied heavily on the decision made by ITLOS in the *Bangladesh/ Myanmar* case³, which found that

³ Delimitation of the Maritime Boundary in the Bay of Bengal (Bangl. v. Myan.), Case No. 16, Judgement of Mar. 14, 2012, 16 ITLOS Rep. 4, <https://www.itlos.org/cases/list-of-cases/case-no-16/>.

the concavity of the Bangladesh coast was a relevant circumstance for the purpose of delimiting the EEZ and the continental shelf within 200 nm and found that the concavity of the Bangladesh coast had a continuing effect beyond 200 nm. In this case, the tribunal concluded that the provisional equidistance line required adjustment beyond (as well as within) 200 nm to produce an equitable result. Adjustment was therefore made by the tribunal to ameliorate the excessive negative impact the implementation of the provisional equidistance line would have on the entitlement of Bangladesh to the continental shelf and the EEZ, as well as to the continental shelf beyond 200 nm.

Before conducting the disproportionality test, the tribunal emphasized that proportionality was not a mathematical exercise that would result in the attribution of maritime areas as a function of the length of the coasts of the parties or other such ratio calculations.

As the lengths of Bangladesh's and India's relevant coast were measured respectively at 418.6 kilometers and 803.7 kilometers, the ratio between the two parties' relevant coasts was 1:1.92. The relevant area was decided as comprising 406,833 square kilometers. By taking into account the adjustment of the provisional equidistance line, the tribunal allocated approximately 106,613 square kilometers of the relevant area to Bangladesh and approximately 300,220 square kilometers of the relevant area to India. The ratio of the allocated areas therefore was calculated approximately at 1:2.81. The tribunal considered that this ratio did not produce any significant disproportion in the allocation of maritime space to the parties that would require alteration of the adjusted equidistance line to ensure an equitable solution.

6. Creation of the Gray Area

The tribunal's delimitation created an area beyond 200 nm from the coast of Bangladesh and within 200 nm from the coast of India in the Bay of Bengal. The so-called gray area was located on the eastern side of the delimitation line. A similar situation was established between Bangladesh and Myanmar in the eastern part of the Bay as a result of the delimitation line drawn by ITLOS in March 2012. While Bangladesh considered the creation of the gray area appropriate, India did not address the question of the gray area.

The tribunal emphasized that beyond 200 nm from its coast, Bangladesh had an entitlement only to the seabed and its subsoil, pursuant to the legal regime governing the continental shelf. Within the gray area, Bangladesh had no entitlement to an EEZ that would give it sovereign rights in the water column or over the living resources therein. With this gray area, there could be no question of delimiting entitlements, except with respect to the continental shelf.

The gray area created by the tribunal in this case overlapped with the gray area established by the 2012 ITLOS *Bangladesh/Myanmar maritime boundary delimitation case*.⁴ However, it should be noted that the rights of India vis-à-vis Myanmar in respect of the water column in the area where their EEZ claims overlapped were not affected by the result of the delimitation in this case. The tribunal pointed out that the establishment of a maritime area in which the states concerned have shared rights is not unknown under the UNCLOS. In accordance with articles 56, 58, 78, and 79, the states concerned are asked to exercise their rights, but at the same time perform their duties with due regard to the rights and duties of other states. The

⁴ *Id.*

tribunal concluded by suggesting that it was up to Bangladesh and India to adopt measures to exercise their rights and duties within the gray area, including through the conclusion of further agreements or the creation of a cooperative arrangement.

Section IV – Implementation of the Tribunal’s Decision

This case represents the willingness of the two countries, after a failure to reach a peaceful settlement through negotiation, to adhere to a third-party binding dispute resolution process in accordance with articles 279, 287 and Annex VII of UNCLOS to settle their disputes concerning the interpretation and application of articles 15 (territorial sea), 74 (EEZ), 76 (continental shelf), and 83 (continental shelf) of the UNCLOS. It involves two countries with asymmetrical power. While Bangladesh is less powerful than India, it obtained most, if not all, of its claim to the maritime zones in the overlapping area, as the tribunal awarded Bangladesh nearly four-fifths of the disputed waters in the Bay of Bengal. Although the tribunal adjusted the equidistance line in a way that significantly favored Bangladesh, India still received a larger EEZ, as the ratio of the EEZ awarded to Bangladesh in comparison with the EEZ awarded to India was 1:2.81. Thus, it can be said that there was no winner or loser in this case as each of Bangladesh and India won and lost different aspects of the ruling.

Immediately following the announcement of the award, Bangladesh's foreign minister stated: “It is the victory of friendship and a win-win situation for the peoples of Bangladesh and India.” India also welcomed the verdict. Its external affairs ministry said that “the settlement of the maritime boundary will further enhance mutual understanding and goodwill between India and Bangladesh by bringing to closure a long-pending issue.” Both countries agreed

to comply with the ruling because they considered the outcomes of the delimitation as equitable enough.

In the aftermath of the arbitral proceedings, Bangladesh and India have sought to foster better relations and promote maritime cooperation in the Bay of Bengal. In June 2015, at the invitation of Bangladeshi Prime Minister Sheikh Hasina, Indian Prime Minister Narendra Modi paid a state visit to Bangladesh for the first time. During Modi's visit, twenty bilateral documents were signed, exchanged, adopted, and handed over, including an Exchange of Instrument of Ratification of the 1974 Land Boundary Agreement and its Protocol, an Exchange of Letters on Modalities for Implementation of the 1974 Land Boundary Agreement, a Memorandum of Understanding (MOU) on Blue Economy and Maritime Cooperation in the Bay of Bengal and the Indian Ocean, an MOU between Coastal Guards, and the Agreement on Coastal Shipping.

In April 2017, at the invitation of Indian Prime Minister Narendra Modi, Bangladeshi Prime Minister Sheikh Hasina paid a state visit to India. During the visit, again, a number of bilateral instruments were signed or exchanged between the two countries. They also welcomed the signing of an MOU, in April 2016, between Indian Oil Corporation Limited (IOCL) and Bangladesh Petroleum Corporation (BPC) to facilitate setting up a liquefied petroleum gas (LPG) terminal in Bangladesh and constructing an LPG pipeline.⁵ In October 2019, Sheikh Hasina again paid an official visit to India. During the visit, the two prime ministers, *inter alia*, welcomed the initiatives for development of a closer maritime security

⁵E.g., Sanjay Dutta, *Indian Oil Corporation Inks MoU with Bangladesh Petroleum Corporation*, TIMES OF INDIA, Apr. 18, 2016.

partnership, and signed an MOU to provide a coastal surveillance system.⁶

The settlement of the maritime disputes paved the way for Bangladesh and India to explore and develop oil and gas resources in the waters of the Bay of Bengal. Bangladesh began to focus on exploration and development of oil and gas resources in the bay's shallow and deep waters. A survey of marine resources started in 2016. The Bangladesh Institute of Marine Technology began to conduct the study of oceanography at two public universities in order to carry out research in the Bay of Bengal. In 2009, Bangladesh had only two marine academies, but the number stood at 22 in 2018.

In September 2016, PetroBangla, a government-owned oil company of Bangladesh, extended an invitation to international oil companies to submit expressions of interest to explore for hydrocarbons in the three offshore blocks in the Bay of Bengal. In December 2016, PetroBangla signed an initial agreement with POSCO Daewoo Corporation of South Korea for gas exploration in deep-sea block-12 in the bay. With the contract awarded in 2017, POSCO Daewoo is exploring in deep water block DS-12. In February 2020, a Japanese hydrocarbon exploration company, Mitsui, announced its intention to explore Bangladesh's onshore blocks 8 and 11 under a joint venture with state-run Bangladesh Petroleum Exploration and Production Company Ltd.

India also has conducted oil and gas exploration and development activities. In September 2015, Oil and Natural Gas Corporation

⁶ E.g. Dipanjan Roy Chaudhury, *India, Bangladesh Sign MoU for Setting Up a Coastal Surveillance System Radar in Bangladesh*, THE ECONOMIC TIMES, Oct. 7, 2019.

Limited (ONGC), India's state-run company, discovered oil and gas in block KG-D5. In July 2016, the U.S. Geological Survey assisted India in the discovery of large, highly enriched accumulations of natural gas hydrate in the Bay of Bengal.

Despite the aforementioned positive developments, maritime disputes between Bangladesh and India in the Bay of Bengal have continued since the award issued by the tribunal in July 2014.

In October 2009, Bangladesh submitted a *note verbale* to the UN secretary-general. It objected to India's submission of information to the Commission on the Limits of the Continental Shelf (CLCS) about the continental shelf beyond 200 nm in the Bay of Bengal. Bangladesh subsequently made its own submission to the CLCS about the outer limits of its continental shelf.

In June 2011, India sent a *note verbale* to the UN secretary-general, stating, *inter alia*, that the baselines drawn by Bangladesh were not consistent with article 7 (concerning the straight baseline method) of the UNCLOS. In 2015, Bangladesh, in accordance with the 2014 arbitral award, published a gazette declaring its baseline, territorial sea, and EEZ. This was followed by sending a list of geographical coordinates of points concerning the straight baselines to the UN secretary-general in March 2016. In response, in August 2017 India sent a *note verbale* to the UN secretary-general lodging a protest against Bangladesh's new straight baselines and base points (No. 2 and No. 5) as they caused seaward shift of Bangladesh's EEZ, encroaching into India's EEZ and minimized the gray area recognized by the arbitral tribunal in its award of July 2014. India accused Bangladesh of violating the tribunal's ruling. In February 2019, Myanmar also sent a *note verbale* to the UN secretary-general, accusing Bangladesh of violating the ITLOS 2012 judgment on similar grounds.

In August 2019, after his meeting with Indian external affairs minister, Bangladesh's foreign minister stated that the two ministers had discussed how to resolve disputes related to the claims on the continental shelf in the Bay of Bengal and both countries would "mutually withdraw their objections lodged with the United Nations." However, two months later, Bangladesh's Prime Minister Sheikh Hasina said that her government had declined to entertain a request from India to withdraw its objection, as India was unwilling to resolve a dispute involving Bangladesh's rights in the gray area. During her visit to New Delhi in October 2019, Prime Minister Hasina met with Indian Prime Minister Narendra Modi and Minister of External Affairs Subrahmanyam Jaishankar and gave them a map of the Bay of Bengal, asking them to withdraw India's claim to waters in the gray area, which would cut off Bangladesh's access to the deep sea and create a dispute over 9,000 square kilometers of areas claimed by Bangladesh. Following the meeting, a technical committee was established to look into the issue. It has been reported that Bangladesh and India will discuss the issue after receiving a report from the committee.

This new development seems to echo the comment made by Dr. P.S. Rao, one of the five arbitrators in this case: "The gray area may thus create more problems for the parties—who are now forced to co-habit the same area—than the benefits it could potentially offer."

In November 2019, the cabinet of Bangladesh approved in principle a draft law, the Bangladesh Maritime Zones Act of 2019, which has not yet been made available to the public. But it is worth noting that the preamble of the draft of Bangladesh Maritime Zones Act of 2018 stated that it is necessary to determine Bangladesh's maritime boundaries with its neighboring coastal states in accordance with the 2012 ITLOS Judgment and the 2014 award of the Arbitral Tribunal. In addition, paragraph 57 of the

draft act declared the rights of Bangladesh in the two gray areas which are two separate areas beyond 200 nm of the EEZ and situated separately within the 200-nm EEZs of Myanmar and India, as determined by the 2012 judgment of the ITLOS and the award in this case. The draft law stated that in the gray areas, Bangladesh shall have sovereign and exclusive rights for the purpose of exploring and exploiting the natural resources of the seabed and sub-soil together with the living organisms belonging to sedentary species. The paragraph also stated that according to international law, Bangladeshi fishermen may not exploit living resources in the gray area belonging to India and Myanmar.

Section V – Conclusions

Despite the criticisms raised by Arbitrator P.S. Rao and other commentators on the tribunal's analysis and decision in this case, particularly regarding the final delimitation line that was very similar to the azimuth of the bisector line (180°) proposed by Bangladesh and the creation of the gray area, this arbitration case still represents a good example for coastal states with similar problems to resolve their maritime boundary disputes by adopting the third-party binding dispute resolution mechanism provided for in the UNCLOS, as the outcome was considered sufficiently equitable and was accepted by Bangladesh and India. The arbitral proceedings put an end to the four-decades-long dispute between the two countries.

It would have been very difficult, if not impossible, to settle the dispute had Bangladesh and India decided not to rely on the legal mechanism provided in Part XV of the UNCLOS for the settlement of disputes. A number of reasons can be given to explain why the parties accepted the adjudicative approach, which include:

(1) **Fulfilling the legal obligation to faithfully comply with and implement the UNCLOS.** Bangladesh and India signed the UNCLOS in December 1982 and ratified it in June 1995 and July 2001, respectively. They also ratified the 1994 Implementing Agreement relating to deep seabed mining at the time they ratified the UNCLOS. In addition, both countries ratified the agreement for the implementation of UNCLOS provisions relating to the conservation and management of straddling fish stocks and highly migratory fish stocks in August 2003 (Bangladesh) and November 2012 (India). Their domestic ocean laws, in particular those in relation to the declaration of the limits of the territorial sea, EEZ, and the continental shelf, were enacted in accordance with the provisions of the UNCLOS. Likewise, Bangladesh and India submitted their applications to the Commission on the Limits of the Continental Shelf for their continental shelf claims beyond 200 nm in February 2011 (Bangladesh) and in May 2009 (India) in accordance with article 76 of UNCLOS.

(2) **Accepting the legal mechanism provided for in UNCLOS to resolve the maritime disputes by peaceful means.** As Bangladesh and India had not made declarations on the selection of one of the institutions listed in article 287 of the UNCLOS, they agreed to settle their dispute via arbitration in accordance with the provision and UNCLOS, Annex VII.

(3) **Establishing an adequate legal team to argue the case in line with their national interests.** In this case, counsel and advocates for Bangladesh included well-known scholars in the area of the law of the sea, including Professors Payam Akhavan, Alan Boyle, James Crawford, and Philippe Sands, and well-known international law litigants Lawrence H. Martin and Paul S. Reichler from Foley Hoag LLP. For India, advocates included Professors Alain Pellet and W.M. Reisman.

(4) **Involving no sensitive, complicated sovereignty issue.** Although the two countries disputed the ownership of South Talpatty/New Moore Island, the sensitive problem was handled cleverly by the tribunal in its determination of the boundary of the territorial sea and their solution was accepted by both parties.

(5) **Increasing domestic political pressure.** There was a public desire on both sides to put an end to the long-standing dispute to allow for exploration and development of the marine resources in the Bay of Bengal. Demand for development had grown both in Bangladesh and India.

(6) **Increasing desire to improve relations between the two countries.** It is believed that India was very concerned about the rising Chinese influence in Bangladesh.

(7) **Parallel proceedings and the judgment made by the ITLOS in 2012.** Bangladesh instituted the proceedings against India in October 2009 and against Myanmar in December of the same year. It was suggested that the arguments made by Bangladesh and Myanmar, and the considerations of and decision made by ITLOS had, to a large extent, influenced the arbitral proceedings in the Bangladesh/India case.

In conclusion, the case can be seen as reaffirming the rules-based order at sea and producing an equitable outcome in the maritime boundary delimitation. It was accepted by both parties. High-ranking officials of Bangladesh and India stated repeatedly that they would comply with the ruling. This was also confirmed in the draft Maritime Zone Act of Bangladesh of 2018 and official statements made by both governments since the announcement of the award in July 2014.

The legal approach adopted by Bangladesh and India to delimit the overlapping maritime boundaries in the Bay of Bengal should be

noted by other countries that have similar maritime boundary delimitation problems and are seeking possible ways for the settlement of the disputes, such as Japan and the People's Republic of China in the East China Sea, and the claimant countries in the South China Sea. If the longstanding disputes between the coastal states in East Asia could be resolved by taking the legal approach that Bangladesh and India adopted, exploration and development of hydrocarbon resources in the overlapping waters would then become possible.



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