



Quantitative analysis for maritime delimitation: Reassessing the Bay of Bengal delimitation between Bangladesh and Myanmar[☆]



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ABSTRACT

This article examines technical aspects of the maritime boundary dispute between Bangladesh and Myanmar (the 'Bay of Bengal case'). This dispute was the first maritime delimitation determined by the International Tribunal for the Law of the Sea (ITLOS). The 2012 decision was also the first time that a maritime boundary for the seabed and subsoil of the Exclusive Economic Zone (EEZ) and the extended continental shelf (ECS) was determined by international adjudication. This was also therefore the first time that detailed technical quantification of seabed areas within the EEZ and ECS was needed for achieving an equitable division of these maritime zones in an international forum. Following review of the principles of maritime delimitation on which the ITLOS reached its determination, this article analyzes the legal status and delimitation effect of St. Martin's Island. Concerning the question of whether the legal regimes of the EEZ and continental shelf should be treated differently in a single delimitation line, although the ITLOS determined that the legal regimes should not be distinguished in the present case, a different approach is proposed for future cases. The article identifies how quantitative modelling can be used to achieve an equitable boundary and proposes a model to adjust provisional equidistance lines in accordance with the complex geophysical rules prescribed for the outer limits of the ECS in Article 76 of the United Nations Law of the Sea Convention (LOSC).

1. Introduction

The resolution of the dispute concerning the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal involved the delimitation of three partial maritime boundaries extending from the baselines of both States: the territorial sea boundary, a single boundary between both States' EEZ and underlying continental shelf, and the continental shelf beyond 200 M. The boundaries in these three regions connect to produce one continuous maritime boundary. The ITLOS was obliged to analyze a range of coastline and seabed geophysical features to delimit a boundary in accordance with the international law of the sea. The geography of the States' coastlines in the immediate vicinity of their land border is the relevant factor for delimiting their territorial sea boundary.¹ Coastal geographic features are also relevant for determining the EEZ and underlying continental shelf boundary

although other considerations also arise, such as to ensure that delimitation does not result in States' maritime areas being disproportionate to their respective coastal lengths. The delimitation of the ECS boundary also requires consideration of the ratio of maritime areas to coastlines and sophisticated geomorphological assessment to delineate the outer limit of the ECS [1,2].

In this judgment, ITLOS considered delimitation principles to reach its decision, *inter alia*, the delimitation methodology in different zones,² the equidistance and median lines,³ the relevant circumstances to be considered⁴ and the equitable solution/equitable result [4, p. 443]. The fundamental objective in delimiting maritime boundaries is to achieve equity between involved parties. As Tanaka stated, 'there is no doubt that the equitable principles as customary law are at the heart of the law of maritime delimitation' [5]. In the 1982 Tunisia/Libyan case concerning the continental shelf, the International Court of Justice

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¹ See Article 15 of the LOSC: Delimitation between two States' territorial sea is based on the equidistance line, unless there are 'special circumstances'.

² The delimitation methodology in different zones is considered as 'Principle A', see [3], p. 397.

³ The equidistance and median lines are considered as 'Principle D', *ibid.*, p. 401. This system for delimitation was often used in whole maritime zones but currently focuses on the territorial sea zone.

⁴ The relevant circumstances are considered as 'Principle E', *ibid.*, p. 402.

(ICJ) declared that '[e]quity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it' [6, p. 60]. This principle is enshrined in the LOSC with respect to the delimitation between States of the EEZ and the continental shelf.

Article 74(1) of the LOSC provides that.

'the delimitation of the EEZ between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law... in order to achieve an equitable solution.'

In identical form, Article 83(1) of the LOSC provides that.

'the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law... in order to achieve an equitable solution.'

The principle of equity is also emphasized in other disputes concerning the EEZ. For example, Article 59 of the LOSC considers equity as the basis for resolving conflicts and includes the expectation that all the relevant circumstances are taken into account.

The LOSC does not specify what method of delimitation should be used to achieve an equitable solution. The ICJ considered this issue in 1985 when it delimited the continental shelf boundary between Libya and Malta. It affirmed that delimitation is to be achieved 'by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result' [7, p. 38]. The ICJ went on to explain that the application of equity should 'display consistency and a degree of predictability' [7, p. 39] and identified examples of equitable principles that are relevant to maritime boundary delimitations, including no 'refashioning geography', or 'compensating for the inequalities of nature', and that 'equity does not necessarily imply equality' [7, pp. 39–40].

Concerning the delimitation methodology in the present case, Bangladesh had proposed use of the angle-bisector method (A-B method), which was also proposed by Bangladesh in the 2014 Maritime Boundary Arbitration between Bangladesh and India (the 2014 Award) [8, pp. 93–94]. The A-B method involves two steps: (1) the parties' coasts facing the delimitation area are rendered as straight lines depicting their general direction; (2) the angle formed by these straight lines is bisected to yield the direction of the delimitation line [9, p. 87]. This approach enables an approximation of the equidistance method in circumstances where complex and unstable coastlines exist and identifying agreed basepoints is difficult [8, p. 95; 9, pp. 88–89]. Nonetheless, the ITLOS declined to use the A-B method because of the potential inaccuracy of generalizing coastline direction and recent jurisprudence supporting the equidistance/relevant circumstances method (E/R C method) [10, p. 75]. A similar decision was taken in the 2014 Award, since there were no compelling reasons which would result in the application of an inappropriate equidistance method or render the establishment of an equidistance line infeasible [8, pp. 97–99; 11, p. 659].

The delimitation methodology adopted by ITLOS was the modern 'three-step approach' developed by the ICJ. The ICJ first referred to this delimitation methodology in 2009 in the Black Sea case between Romania and Ukraine. The three-step approach arrives at a delimitation in this manner: first draw a provisional equidistance line between adjacent coasts or a median line between opposite coasts; then consider whether there are factors that indicate the provisional line should be shifted to achieve an equitable result; finally, verify that the adjusted boundary line does not lead to an inequitable result by any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State [12, pp. 101–103].

The maritime boundary determined by ITLOS in the present case divided by a single line the territorial sea, the EEZ and the entire continental shelf, including the ECS. Its methodology for doing so was

the three-step approach:

- (1) In accordance with the geography of Bangladesh and Myanmar's coasts, the E/R C method was adopted to delimit the provisional line with the same direction dividing all maritime zones [10, pp. 76–85].
- (2) Relevant factors were considered for the purpose of adjusting the provisional line to enable it to be as accurate as possible. The relevant factors were the location of an island, the concave nature of the coasts, and the Bengal depositional system [10, pp. 87–97].
- (3) The adjusted line was reassessed to ensure that there was no significant disproportion between the ratio of the respective coastal lengths and the area-ratio of maritime zones allocated to each party [10, pp. 139–143].

It can be argued that the approach adopted by the ITLOS has merit because it provides the simplest method possible to delimit maritime boundaries for adjacent coasts. Nevertheless, as the 2014 Award said, the tribunal 'wishes to add that transparency and the predictability of the delimitation process as a whole are additional objectives to be achieved in the process' [8, p. 98]. It is argued here that a more comprehensive assessment of relevant factors and the juridical differences of the EEZ and ECS would enable greater confidence that a final delimitation best achieve equity between the parties with a combination of enhanced predictability and greater flexibility [13, pp. 129–182]. This article further argues that adopting a more comprehensive assessment need not result in an unwieldy and over-complex methodology. Therefore, a model is proposed by which EEZ and ECS differences can be quantified together with various relevant factors in each maritime zone.⁵ This approach is premised on the assumption that detailed geographic qualitative analysis is critical in the process of resolving maritime boundary disputes equitably.

2. Coastal features of Bangladesh and Myanmar in the Bay of Bengal

The maritime boundary that required determination by ITLOS lies in the north-east of the Bay of Bengal. It is an area of the Indian Ocean where Bangladesh and Myanmar have extensive coasts. Bangladesh's land territory covers approximately 1.47×10^5 km² and is home to more than 160 million people. From the Meghna River, the Bangladesh coastline makes a nearly 90° turn to the south-southeast. The mouth of the river is extremely wide (more than 50 M) and creates a steep concave coastline. Another significant geographic feature of Bangladesh is the major river system that flows through it into the Bay of Bengal. This system carries vast quantities of sediment from the Himalayas.

Bangladesh's St. Martin's Island is located near the southwest region of Myanmar. It is approximately 8 km² and supports a permanent population of 7000 residents. Fishing and tourism are important economic activities [15, p. 26]. Myanmar's land territory covers approximately 6.77×10^5 km² and is bordered by Bangladesh and India in the west and northwest, China in the north, Laos in the east and Thailand in the south and southeast. Its coastline is neither deltaic nor constantly shifting. There is also a small sandy island (Oyster) approximately 10.5 M off the Myanmar mainland. It is 0.02 km² and does not have a permanent population. Thus, in accordance with Article 121(3) of the LOSC, this sandy island is unlikely to generate a maritime entitlement and Myanmar has not made such a claim. Furthermore, there is a tectonic plate boundary around Myanmar. Most of the Bay stands on the Indian plate, while the

⁵ A similar view was proposed that the 2012 case relied extensively on the previous decisions of international courts and tribunals. The Tribunal applied the law on maritime delimitation, rather than progressively developed. A further elaborated decision is required to achieve a legal order for the seas and oceans, see [14], p. 153.

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