

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**



2011

Public sitting

held on Saturday, 24 September 2011, at 3.00 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President José Luís Jesus presiding

**DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY
BETWEEN BANGLADESH AND MYANMAR IN THE BAY OF BENGAL**

(Bangladesh/Myanmar)

Verbatim Record

<i>Present:</i>	President	José Luíz Jesus
	Vice-President	Helmut Tuerk
	Judges	Vicente Marotta Rangel
		Alexander Yankov
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tullio Treves
		Tafsir Malick Ndiaye
		Jean-Pierre Cot
		Anthony Amos Lucky
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Albert J. Hoffmann
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
	Judge <i>ad hoc</i>	Bernard H. Oxman
	Registrar	Philippe Gautier

Bangladesh is represented by:

H.E. Mrs Dipu Moni, Minister of Foreign Affairs,

as Agent;

Rear Admiral (Ret'd) Md. Khurshed Alam, Additional Secretary, Ministry of Foreign Affairs,

as Deputy Agent;

and

H.E. Mr Mohamed Mijraul Quayes, Foreign Secretary, Ministry of Foreign Affairs,

H.E. Mr Mosud Mannan, Ambassador to the Federal Republic of Germany, Embassy of Bangladesh, Berlin, Germany,

Mr Payam Akhavan, Member of the Bar of New York, Professor of International Law, McGill University, Montreal, Canada,

Mr Alan Boyle, Member of the Bar of England and Wales, Professor of International Law, University of Edinburgh, Edinburgh, United Kingdom,

Mr James Crawford SC, FBA, Member of the Bar of England and Wales, Whewell Professor of International Law, University of Cambridge, Cambridge, United Kingdom,

Mr Lawrence H. Martin, Foley Hoag LLP, Member of the Bars of the United States Supreme Court, The Commonwealth of Massachusetts and the District of Columbia, United States of America,

Mr Lindsay Parson, Director, Maritime Zone Solutions Ltd., United Kingdom,

Mr Paul S. Reichler, Foley Hoag LLP, Member of the Bars of the United States Supreme Court and of the District of Columbia, United States of America,

Mr Philippe Sands QC, Member of the Bar of England and Wales, Professor of International Law, University College London, London, United Kingdom,

as Counsel and Advocates;

Mr Md. Gomal Sarwar, Director-General (South-East Asia), Ministry of Foreign Affairs,

Mr Jamal Uddin Ahmed, Assistant Secretary, Ministry of Foreign Affairs,

Ms Shahanara Monica, Assistant Secretary, Ministry of Foreign Affairs,

Lt. Cdr. M. R. I. Abedin, System Analyst, Ministry of Foreign Affairs,

Mr Robin Cleverly, Law of the Sea Consultant, The United Kingdom Hydrographic Office, Taunton, United Kingdom,

Mr Scott Edmonds, Cartographic Consultant, International Mapping, Ellicott City, Maryland, United States of America,

Mr Thomas Frogh, Senior Cartographer, International Mapping, Ellicott City, Maryland, United States of America,

Mr Robert W. Smith, Geographic Consultant, Oakland, Maryland, United States of America

as Advisors;

Mr Joseph R. Curray, Professor of Geology, Emeritus, Scripps Institution of Oceanography, University of California, San Diego, United States of America
Mr Hermann Kudrass, Former Director and Professor (Retired), German Federal Institute for Geosciences and Natural Resources (BGR), Hannover, Germany,

as Independent Experts;

and

Ms Solène Guggisberg, Doctoral Candidate, International Max Planck Research School for Maritime Affairs, Germany,
Mr Vivek Krishnamurthy, Foley Hoag LLP, Member of the Bars of New York and the District of Columbia, United States of America,
Mr Bjarni Már Magnússon, Doctoral Candidate, University of Edinburgh, United Kingdom,
Mr Yuri Parkhomenko, Foley Hoag, LLP, United States of America,
Mr Remi Reichhold, Research Assistant, Matrix Chambers, London, United Kingdom,

as Junior Counsel.

Myanmar is represented by:

H.E. Mr Tun Shin, Attorney General of the Union, Union Attorney General's Office,

as Agent;

Ms Hla Myo Nwe, Deputy Director General, Consular and Legal Affairs Department, Ministry of Foreign Affairs,
Mr Kyaw San, Deputy Director General, Union Attorney General's Office,

as Deputy Agents;

and

Mr Mathias Forteau, Professor at the University of Paris Ovest, Nanterre La Défense, France,
Mr Coalter Lathrop, Attorney-Adviser, Sovereign Geographic, Member of the North Carolina Bar, United States of America,
Mr Daniel Müller, Consultant in Public International Law, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris Ovest, Nanterre La Défense, France,
Mr Alain Pellet, Professor at the University of Paris Ovest, Nanterre La Défense, Member and former Chairman of the International Law Commission, Associate Member of the Institut de droit international, France,

Mr Benjamin Samson, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre La Défense, France,
Mr Eran Sthoeger, LL.M., New York University School of Law, New York, United States of America,
Sir Michael Wood, K.C.M.G., Member of the English Bar, Member of the International Law Commission, United Kingdom,

as Counsel and Advocates;

H.E. Mr U Tin Win, Ambassador Extraordinary and Plenipotentiary to the Federal Republic of Germany, Embassy of the Republic of the Union of Myanmar, Berlin, Germany,
Captain Min Thein Tint, Commanding Officer, Myanmar Naval Hydrographic Center, Yangon,
Mr Thura Oo, Pro-Rector, Meiktila University, Meiktila,
Mr Maung Maung Myint, Counselor, Embassy of the Republic of the Union of Myanmar, Berlin, Germany,
Mr Kyaw Htin Lin, First Secretary, Embassy of the Republic of the Union of Myanmar, Berlin, Germany,
Ms Khin Oo Hlaing, First Secretary, Embassy of the Republic of the Union of Myanmar, Brussels, Belgium,
Mr Mang Hau Thang, Assistant Director, International Law and Treaties Division, Consular and Legal Affairs Department, Ministry of Foreign Affairs,
Ms Tin Myo Nwe, Attaché, International Law and Treaties Division, Consular and Legal Affairs Department, Ministry of Foreign Affairs,
Mrs Héloïse Bajer-Pellet, Lawyer, Member of the Paris Bar, France,
Mr Octavian Buzatu, Hydrographer, Romania,
Ms Tessa Barsac, Master, University of Paris Ouest, Nanterre La Défense, France,
Mr David Swanson, Cartography Consultant, United States of America,
Mr Bjørn Kunoy, Doctoral Candidate, Université Paris Ouest, Nanterre La Défense, France, currently Visiting Fellow, Lauterpacht Centre for International Law, University of Cambridge, United Kingdom,
Mr David P. Riesenber, LL.M., Duke University School of Law, United States of America.

as Advisers.

1 **THE PRESIDENT:** Please be seated. The hearing continues. I call on Mr Coalter
2 Lathrop to make his presentation.

3
4 **MR LATHROP:** Thank you, Mr President. Mr President, Members of the Tribunal, on
5 this beautiful Saturday afternoon I will be brief as I touch upon a series of issues
6 related to delimitation terminology and methodology, and the effects of the coastal
7 geography in the area on the delimitation between Myanmar and Bangladesh. As
8 I move through this short presentation, I will show several maps on the screen that
9 we have not reproduced in your folders. Most of these will be familiar to the Tribunal
10 from the written and oral pleadings. Where possible, we have provided references to
11 the original source of the maps.

12
13 I will start with an old favorite: mainland-to-mainland. “Mainland-to-mainland”
14 delimitation is a phrase that has been used for some time by writers from all over the
15 globe¹. Of course, who uses the phrase, “mainland-to-mainland”, is not half as
16 important as who uses the concept – that is, the Court of Arbitration in the *Anglo-*
17 *French Continental Shelf* case², the Arbitral Tribunal in *Eritrea/Yemen*,³ and the
18 International Court of Justice in both of its most recent delimitation cases, *Nicaragua*
19 *v Honduras*⁴ and the *Black Sea* case between Romania and Ukraine⁵. Despite much
20 attention to these cases, no member of Bangladesh’s team ever denied that a form
21 of mainland-to-mainland delimitation was applied in all four. Counsel for Bangladesh
22 was adamant, however, that the *phrase* “mainland-to-mainland” did not appear in
23 any of them. Mr Reichler said: “The ICJ did not speak of a ‘mainland-to-mainland
24 equidistance line’ in *Romania v Ukraine*. It did not utter the phrase.”⁶ Mr Reichler is
25 correct. Instead, the International Court described its line as a “provisional
26 equidistance line ... drawn between the relevant mainland coasts of the Parties”⁷. If

¹ Coalter G. Lathrop, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)*, in *American Journal of International Law*, Vol. 102, p. 113 (2008), at p. 119; J.I. Charney & L.M. Alexander (eds.), *Australia-New Zealand Boundary Report, in International Maritime Boundaries*, Vol. 5, p. 3759 (2005), at p. 3763; Steven Wei Su, *The Tiaoyu Islands and Their Possible Effect on the Maritime Boundary Delimitation between China and Japan*, in *Chinese Journal of International Law*, Vol. 3, p. 385 (2004), at p. 412; Zou Keyuan, *Maritime Boundary Delimitation in the Gulf of Tonkin*, in *Ocean Development & International Law*, Vol. 30, p. 235 (1999), at p. 246; Derek Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations*, in J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries*, Vol. 1, p. 131 (1993), at p. 136; Hiran Wasantha Jayewardene, *The Regime of Islands in International Law* (1990), at p. 429; L.A. Willis, *From Precedent to Precedent: The Triumph of Pragmatism in International Maritime Boundaries*, *Canadian Yearbook of International Law*, Vol. 24 p. 3 (1986), at p. 28; Jan Schneider, *The Gulf of Main Case: The Nature of an Equitable Result*, 79 *American Journal of International Law* p. 539 (1985), at p. 557, fn. 79.

² *Delimitation of the Continental Shelf between France and the United Kingdom*, Decision, 30 June 1977, *R.I.A.A.*, Vol. 18 (hereinafter “*Anglo-French Continental Shelf*”), p. 88, para. 183.

³ *Award of the Arbitral Tribunal in the second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation)*, 17 December 1999, *R.I.A.A.*, Vol. 22 (hereinafter “*Eritrea/Yemen*”), p. 371–372, para. 163.

⁴ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)*, *Judgment*, *I.C.J. Reports 2007* (hereinafter “*Nicaragua v Honduras*”), p. 76 and 78, paras. 280 and 287.

⁵ *Maritime Delimitation in the Black Sea (Romania v Ukraine)*, *Judgment*, *I.C.J. Reports 2009* (hereinafter “*Black Sea*”), pp. 55-56, paras. 182 and 187.

⁶ ITLOS/PV11/13 (E), p. 13, lines 2-3 (Reichler).

⁷ *Black Sea*, *I.C.J. Reports 2009*, p. 55, para. 182.

1 I continue to use the phrase “mainland-to-mainland” it is only for the sake of
2 efficiency.

3
4 I come to my second point, which is the recent and rather sudden reconciliation
5 between counsel for Bangladesh and the equidistance method. Certainly, the
6 Bangladesh submission is still based loosely on the angle bisector method; but we
7 now hear from Mr Reichler that equidistance could still be “legally correct”⁸.

8
9 Of course, even if Bangladesh has come to accept Myanmar’s equidistance
10 methodology, it still does not accept Myanmar’s views on the appropriate sources of
11 base points for constructing the equidistance line. Bangladesh complained
12 vigorously throughout the written pleadings and the first round of these hearings that,
13 if equidistance were used, the entire line would be driven by a single base point. In
14 fact, the Memorial contained a whole subsection titled *The Entire Course of the*
15 *Equidistance Line Is Determined by a Single, Insignificant Feature*⁹. Now
16 Bangladesh presents the Tribunal with its own equidistance line – a line that teeters
17 for its entire journey to the 200-M limit and beyond, on the extreme tip of an
18 attenuated and fast-eroding reef that extends nearly a kilometer off the southern
19 coast of the one and only Bangladeshi island in the area,¹⁰ which also happens to be
20 located on the wrong side of the equidistance line. This single base point,
21 Mr Reichler tells us, “should be given ... full weight in the event that an equidistance
22 approach is favoured by the Tribunal”¹¹.

23
24 Indeed, Bangladesh’s misapplication of equidistance in this case is exactly what the
25 Court was referring to in the *Black Sea* case when it cautioned against re-fashioning
26 geography.¹² When Mr Reichler discussed the *Black Sea* case on Thursday, he said:

27
28 “The deflection of the equidistance line across, and in front of, Romania’s
29 coast, and the consequent cut-off effect caused by Serpents’ Island”

30
31 could be described as

32
33 “blindingly obvious”.¹³

34
35 The equidistance line to which he was referring is the line that gives full effect to
36 Serpents’ Island, shown in blue. I submit that the distorting effect of Serpents’ Island,
37 as the screen now shows, would have been even more “blindingly obvious” if it had
38 been located on the wrong side of the equidistance line and hard against the
39 Romanian coast.

40

⁸ ITLOS/PV11/13 (E), p. 2, line 40 (Reichler).

⁹ Memorial of Bangladesh (hereinafter “BM”), pp. 84-86.

¹⁰ Sirajur Rahman Khan et al., *St. Martin’s Island and its Environmental Issues*, Geological Survey of Bangladesh (2002), in BM, Vol. IV, Annex 49, pp. 3-4 (describing “the three major islands” that comprise St. Martin’s Island, including the southernmost island of “Cheradia”, which is connected to the rest of St. Martin’s Island by a “rocky platform”. According to Professor Khan, the “southern shoreline” Cheradia suffers from “severe erosion”).

¹¹ ITLOS/PV11/13 (E), p. 15, lines 20-21 (Reichler).

¹² For the relevant map, see *Black Sea, I.C.J. Reports 2009*, p. 9, Sketch-map No. 1.

¹³ ITLOS/PV11/13 (E), p. 13, lines 12-15 (Reichler).

1 In contrast to Bangladesh's equidistance line, Myanmar's line is constructed from the
2 nearest base points on the mainland coasts of the Parties. It thereby takes account
3 of the actual geographic configuration in this corner of the Bay of Bengal, avoiding
4 the distortion caused by extraneous elements. This distortion is perfectly described
5 in a quotation from Sir Derek Bowett, which Mr Reichler kindly put up on the screen
6 on Thursday:

7
8 The notion of 'distortion' is always linked to a perception of what the line
9 would otherwise be, if the island did not exist. A variation caused by the
10 island which appears inequitable, given the location and size of the
11 island, will be regarded as a 'distortion'.¹⁴

12
13 As we have demonstrated throughout this hearing, the distortion caused by
14 St Martin's Island is, in Mr Reichler's words, "blindingly obvious."¹⁵ In accordance
15 with the method applied in 2009 in the *Black Sea* case, Myanmar has therefore
16 excluded St Martin's Island as a source of base points and drawn "what the line
17 would otherwise be, if the island did not exist"¹⁶ – that is, the mainland-to-mainland
18 equidistance line.

19
20 My third point relates to the transposition that Bangladesh calls, "slight," which
21 constitutes the "final step" in constructing Bangladesh's line¹⁷. Like Bangladesh's
22 changing attitudes about equidistance, the rationale for this "slight" transposition has
23 also undergone a slight transformation. As before, the proposed transposition would
24 require a shift of the bisector from its vertex at the land boundary terminus to
25 Bangladesh's point 7 or 8A. The original rationale for this transposition was that
26 Bangladesh's point 7 or 8A, and not the land boundary terminus, was the last point
27 agreed between the parties. To quote the Memorial:

28
29 Because this bisector intersects the coastal fronts of Bangladesh and
30 Myanmar at their land boundary terminus in the Naaf River, not the end
31 point of their agreed boundary in the territorial sea (point 7 of the 1974
32 agreement), one final step is required ... the 215° line must be transposed
33 slightly to the southeast so that it connects with point 7 ...¹⁸

34
35 Seeing that this argument regarding an existing agreement is completely untenable,
36 Bangladesh's rationale has now changed. Bangladesh now asks for the bisector to
37 be moved, not to give effect to any alleged agreement, but simply "to take account of
38 St Martin's"¹⁹. Purported rationales aside, this transposition creates a Frankenstein
39 monster. Bangladesh fabricates a line using a method that by its very nature gives
40 no effect to islands. It then tears the line from its roots and transplants it to an
41 entirely new location in order to take full account of the same island that was
42 disregarded in its initial creation.

¹⁴ *Ibid.*, p. 15, lines 1-4 (Reichler) (citing D. Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations*, in J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries* (1993), Vol. 1, p. 144.)

¹⁵ ITLOS/PV11/13 (E), p. 13, lines 12-15 (Reichler).

¹⁶ D. Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations*, p. 144.

¹⁷ BM, para. 6.73.

¹⁸ BM, para. 6.73.

¹⁹ ITLOS/PV11/13 (E), p. 1, lines 43-45 (Reichler).

1
2 It was asserted that *Gulf of Maine* provides support for this transplantation. I showed
3 the Tribunal how the Chamber in the *Gulf of Maine* actually constructed its line²⁰.
4 Professor Crawford responded with a story about baking a pizza on a boat²¹.
5

6 My fourth point relates to Bangladesh's evolving conception of its own coastal
7 configuration. Professor Crawford told us on Thursday that Bangladesh has
8 "a bi-directional coast"²², and he showed us what it looks like. The first section of
9 Bangladesh's bi-directional coast leaves the land boundary terminus trending toward
10 the north-west. At a point near Sonadia and Kutubdia Island, the first segment ends,
11 and the second segment begins trending generally due west. As Professor
12 Crawford's map showed us, these two segments are essentially perpendicular to
13 each other, or shaped like a capital letter "L". This seems a reasonable
14 approximation of Bangladesh's coasts and nearly matches the configuration that
15 Myanmar presented in its Counter-Memorial²³. A map based on Map 5.1 of the
16 Counter-Memorial has been added to the screen. When we remove the segments
17 that represent the coasts within the Meghna Estuary – the same segments that are
18 not relevant for measuring the coastal length – we start to see how similar the
19 Parties' conceptualizations of these coastal segments are to each other.
20

21 Bangladesh has a bi-directional coast, but Bangladesh's treatment of its coast in this
22 delimitation – connecting the dots to find the average direction of its two coastal
23 segments²⁴ – does not create a general direction line approximating the actual coast
24 and is not faithful to the treatment of bi-directional coasts in any of the case law. The
25 *Gulf of Maine*²⁵ and *Libya/Tunisia*²⁶ cases both featured geographic situations similar
26 to the configuration in this case: including the L-shaped coasts of the United States
27 and Tunisia, respectively. Bangladesh might call these coastal configurations,
28 "concavities", but the Chamber and the full Court characterized them as bi-directional
29 coasts²⁷. In both cases, the Court and the Chamber took the coasts of the U.S. and
30 Tunisia as they are. No "average direction" of coastal segments was calculated;
31 neither judicial body drew a hypotenuse, or cited to Pythagoras's fourth theorem;²⁸
32 and, finally, in neither case was the State with the L-shaped coast granted any
33 judicial remedy of "abatement" from the prejudicial effects²⁹ of the "L" shape.
34

35 In reality, Bangladesh's bi-directional coast is already reflected in Myanmar's
36 provisional delimitation line. From point A through B, E, F, G, and out to point Z, that

²⁰ ITLOS/PV11/11 (E), p. 5, lines 21-39 (Lathrop).

²¹ ITLOS/PV11/13 (E), p. 22, lines 30-40 (Crawford).

²² ITLOS/PV11/13 (E), p. 23, lines 6-7, 39 (Crawford); see also ITLOS/PV11/5 (E), p. 8, lines 15, 17, 20, 33 (Crawford).

²³ For the relevant map, see Myanmar's Counter-Memorial (hereinafter "MCM"), p. 109, Sketch-map No. 5.1.

²⁴ ITLOS/PV11/5 (E), p. 8, line 17-18 (Crawford); ITLOS/PV11/13 (E), p. 23, lines 6-7, 39 (Crawford).

²⁵ *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984* (hereinafter "*Gulf of Maine*"), p. 331, para. 207.

²⁶ *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 85-86 at paras. 121-122 (hereinafter "*Tunisia/Libya*").

²⁷ *Gulf of Maine, I.C.J. Reports 1984*, p. 331, para. 207; *Tunisia/Libya, I.C.J. Reports 1982*, p. 85-86, at para. 121-122.

²⁸ Contrast with ITLOS/PV11/5 (E), p. 8, line 35-36 (Crawford).

²⁹ Contrast with ITLOS/PV11/13 (E), p. 3, line 19-21 (Reichler); ITLOS/PV11/13 (E), p. 20, line 25-26 (Crawford); ITLOS/PV11/13 (E), p. 23, line 44-46 (Crawford).

1 line is controlled by base points on the adjacent coasts of the Parties – including on
2 the first of Bangladesh’s two coastal segments³⁰. Throughout most of the length of
3 the line, Bangladesh’s Shahpuri Point drives the line away from Bangladesh’s
4 second coastal segment. Then, at point Z, the second segment of Bangladesh’s
5 bi-directional coast begins to influence the course of the provisional equidistance
6 line, and turns that line to the south.

7
8 Of course, Bangladesh does not complain that the line turns toward the south.
9 Bangladesh’s complaint is that the line does not turn toward the south soon enough.
10 In effect, Bangladesh would like its second, western, or south-facing, section of its
11 coast – a section located some 200 to 300 km from the land boundary terminus – to
12 begin to influence the direction of the line *at the starting point*. This is the effect of
13 Professor Crawford’s novel average bearing line. When that line is used to form the
14 bisected angle, or to calculate an equidistance line, it transports the effect of the
15 western coastal segment to the land boundary terminus in the east. Applying the
16 approach taken in the cases, the effect of the second segment of Bangladesh’s
17 coast should not influence the line until the line has moved well offshore, if at all.

18
19 I now turn to a fifth point, third States. At or before the major inflection point in the
20 provisional equidistance line – point Z – where the south-facing coasts of
21 Bangladesh begin to influence the line, that line crosses into the area potentially
22 claimed by India – the third State in the vicinity of this delimitation.

23
24 But India is not a Party to the proceedings before this Tribunal. If the Tribunal’s
25 delimitation line were to enter into this unknown area of Indian interest, the
26 delimitation between the Parties to this case could prejudice the interests of India,
27 notwithstanding article 33 of the Statute of the Tribunal and the principle of *res inter*
28 *alios acta*. For that reason, a delimitation line between Myanmar and Bangladesh
29 that enters areas of third State interest can and should be avoided.

30
31 At the same time, because India is a non-Party, the coasts of India are simply not
32 part of the coastal configuration in this case. It is irrelevant what effect those coasts
33 may or may not have in a separate bilateral delimitation between Bangladesh and
34 India. As the International Court wrote in *Cameroon v Nigeria* – you have heard this
35 already in French today, but it is an important quote so I will read it again in English:

36
37 In the present case Bioko Island is subject to the sovereignty of
38 Equatorial Guinea, a State which is not a party to the proceedings.
39 Consequently the effect of Bioko Island on the seaward projection of the
40 Cameroonian coastal front is an issue between Cameroon and Equatorial
41 Guinea and not between Cameroon and Nigeria” – the Parties to the case
42 - “and is not relevant to the issue of delimitation before the Court. The
43 Court does not therefore regard the presence of Bioko Island as a
44 circumstance that would justify the shifting of the equidistance line as
45 Cameroon claims.³¹

30 For the relevant map, see MCM, p. 169, Sketch-map No. 5.11.

31 *Maritime Boundary between Cameroon and Nigeria, Judgment, I.C.J. Reports 2002* (hereinafter “*Cameroon v Nigeria*”), p. 446, para. 299.

1 As in the case between Cameroon and Nigeria, the case now before this Tribunal is
2 a bilateral delimitation between two States and their two coasts. Maritime boundaries
3 are established on a relative, or relational basis, by each State *vis-à-vis* each other
4 relevant coastal State. In practical terms, this means that India and its coasts may
5 not influence this delimitation. India's presence is not a circumstance that can shift
6 the delimitation line, or provide grounds for an "abatement."³² Bangladesh cannot
7 recruit India's coast to make its case against Myanmar.

8
9 Next, I would like to address, as my sixth point, the so-called "cut-off" effect, which
10 Bangladesh calls "severe"³³ and "dramatic"³⁴. From what, I ask, would Bangladesh
11 be cut off; and to the extent it would be cut off from anything, would that result be
12 inequitable?
13

14 Bangladesh tells us that it would be cut off from its "sovereign rights in an outer
15 continental shelf"³⁵ and "its access to a full 200-M EEZ and continental shelf"³⁶. But
16 here, as in other parts of Bangladesh's written and oral pleadings, Bangladesh
17 confuses the concepts of entitlement and delimitation. Bangladesh also reverses
18 their order, trying to drive the delimitation with its potential entitlements or claims. Of
19 course, without overlapping potential entitlements, there is no need for delimitation.
20 But it is the delimitation of those overlapping potential entitlements that finally
21 determines the actual entitlements of each coastal state. As the International Court
22 said in *Jan Mayen*:

23
24 The task of a tribunal is to define the boundary line between the areas
25 under the maritime jurisdiction of two States; the sharing-out of the area is
26 therefore the consequence of the delimitation, not vice versa.³⁷
27

28 The Law of the Sea Convention contains many articles that describe the extent and
29 content of potential coastal state entitlements. They grant coastal states a potential
30 entitlement to a "territorial sea up to a limit not exceeding 12 M"³⁸ and to an
31 "exclusive economic zone that shall not extend beyond 200 M"³⁹. And under article
32 76, coastal states with the correct morphology may have a potential entitlement to
33 continental shelf rights beyond 200 M.
34

35 But these entitlement provisions are the beginning, not the end, of the story. When a
36 coastal State is faced with a competing claim to the same areas, a delimitation is
37 required. That a coastal State may have potential entitlements in one or more of
38 these jurisdictional zones is not dispositive of anything. A State may have very
39 extensive entitlements in the abstract, but, in the face of competing claims, it has no
40 actual entitlements until there has been a negotiated or litigated delimitation.
41

³² Contrast with ITLOS/PV11/13 (E), p. 3, line 19-21 (Reichler); ITLOS/PV11/13 (E), p. 20, line 25-26 (Crawford); ITLOS/PV11/13 (E), p. 23, line 44-46 (Crawford).

³³ BM, para. 2.46(i).

³⁴ Reply of Bangladesh (hereinafter "BR"), para. 3.39.

³⁵ BM, para. 6.45.

³⁶ *Ibid.*, para. 2.2.

³⁷ See *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)*, Judgment, I.C.J. Reports 1993 (hereinafter "*Jan Mayen*"), pp. 66-67, paras. 64.

³⁸ United Nations Convention on the Law of the Sea, 1982, art. 3, U.N.T.S., Vol. 1833.

³⁹ *Ibid.*, art. 57.

1 Accordingly, Bangladesh can hardly hope to influence the course of the present
2 delimitation by arguing that certain delimitation lines would cut Bangladesh off from
3 its *actual* entitlements. Since delimitation determines where the actual entitlements
4 are, this is a logical impossibility. Bangladesh can only be cut off from its *potential*
5 entitlements, or claimed area, as would happen and does happen in every single
6 maritime delimitation. In this, Bangladesh must ultimately recognize that its
7 “predicament is not unique”⁴⁰.

8
9 Here are just two examples. In the absence of conflicting claims, Cameroon is
10 entitled to a 200-M exclusive economic zone and a wide margin shelf extending
11 beyond 200 M. Cameroon’s outer limit line, shown on the screen⁴¹, is from
12 Cameroon’s preliminary information submission to the Commission on the Limits of
13 the Continental Shelf⁴². This represents Cameroon’s sense of its potential
14 entitlement in the area. However, after the International Court in *Cameroon v Nigeria*
15 drew the delimitation line, Cameroon was zone-locked and “cut off” from what could
16 have been – in the absence of competing claims – a fairly extensive maritime area.

17
18 Counsel for Cameroon complained of a “radical and absolute cut-off”⁴³, which may
19 sound familiar to the Tribunal. As its judgment revealed, the International Court had
20 full knowledge of the claims of Equatorial Guinea to delimitation against Cameroon
21 based on equidistance. The Court knew quite well that its decision would cause what
22 Bangladesh has recently called “a severe cut-off of its coastal projection by
23 application of equidistance boundary lines.”⁴⁴ And yet, when the law of maritime
24 delimitation was applied to the coasts of Cameroon and Nigeria, the judgment limited
25 Cameroon to an area stretching no more than 30 M from its coast. The Court
26 observed “that the equidistance line represents an equitable result for the
27 delimitation of the area in respect of which it has jurisdiction to give a ruling”⁴⁵. It will
28 not escape the Tribunal’s notice that other States in the region, including for example
29 island nations and mainland states with convex coastlines, have received or would
30 receive substantial actual entitlements in delimitations based on equidistance, many
31 of them at Cameroon’s expense. But this was not problematic for the Court. In that
32 case, the Court applied an unadjusted equidistance line for the full length of the
33 delimitation⁴⁶.

34
35 The arbitration between Barbados and the Republic of Trinidad & Tobago provides
36 another example of the same phenomenon.⁴⁷ Trinidad and Tobago faces onto the
37 open sea unobstructed by the territory of another coastal State. Like Cameroon,
38 Trinidad & Tobago considers itself to be entitled to all of the zones contemplated in
39 the Convention, including a wide margin shelf that extends well beyond 200 M along

⁴⁰ See BM, para. 6.32.

⁴¹ For the relevant maps, see also *Cameroon v Nigeria*, *I.C.J. Reports 2002*, p. 444, Sketch-map No. 11, and p. 449, Sketch-map No. 12.

⁴² See generally *Demande Preliminaire de la Republique du Cameroun aux Fins De L’Extension des Limites de Son Plateau Continental Au-Dela De 200 Milles Marins*, 11 May 2009, filed pursuant to Decision regarding the workload of the Commission, SPLOS/183, available online at http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/cmr2009informationpreliminaire.pdf.

⁴³ *Cameroon v Nigeria*, *I.C.J. Reports 2002*, para. 274.

⁴⁴ BM, para. 2.46(i).

⁴⁵ *Cameroon v Nigeria*, *I.C.J. Reports 2002*, para. 306.

⁴⁶ *Ibid.*

⁴⁷ For the relevant map, see Myanmar Rejoinder (hereinafter “MR”), p. 171, Sketch-map No. R6.3.

1 the coast of South America toward French Guyana. And yet, in the delimitation with
2 Barbados, an Annex VII tribunal saw fit to delimit on the basis of equidistance⁴⁸. The
3 tribunal was not moved by the fact that, like Cameroon, Trinidad and Tobago would
4 be cut off from its potential entitlements, nor was the tribunal moved by the fact that,
5 just to the north, the smaller State of Barbados sits with uncontested rights to wide
6 expanses of maritime area including continental shelf well beyond 200 M.
7

8 Bangladesh – *Bangladesh* - concluded that this delimitation created an “equitable
9 result that followed from the delimitation process in accordance with Articles 74 and
10 83”⁴⁹. And in fact, this is the result dictated by the law of maritime boundary
11 delimitation. Delimitation defines actual entitlements, “not vice versa.”⁵⁰
12

13 Bangladesh claims to be cut off from the outer limit of its entitlements stretching
14 some 370 M from its coast⁵¹. But this measurement is based on the misconception
15 that Bangladesh could be cut off from something that it does not possess. Instead of
16 measuring what it does not possess, the only sensible measurement is the
17 measurement of what it does possess. Bangladesh will have sovereign rights and
18 jurisdiction in areas stretching as much as 182 M from its coasts and totaling
19 approximately 84,000 km².⁵² This is hardly, as Bangladesh calls it, a “small triangular
20 wedge”,⁵³ or a “narrow wedge of maritime space”.⁵⁴
21

22 Mr President, here is my final point. Considering all of the above, how then should
23 the Tribunal end its delimitation line? Bangladesh’s submission would have the
24 Tribunal fix an endpoint located hundreds of miles from the land boundary terminus
25 and closer to both Myanmar and India than to Bangladesh. During the oral hearings
26 this week, Bangladesh has suggested, in the alternative, that the Tribunal end the
27 delimitation with a directional line, to ensure that “the rights of any third parties are
28 fully protected”⁵⁵. Myanmar agrees with the latter approach and has always argued
29 that an arrow on the end of a directional line is the only reasonable solution in a
30 delimitation such as this. As the Tribunal is aware, delimitations ending in directional
31 lines are quite common when third-State interests lie in such close proximity. Courts
32 and tribunals have typically dealt with these interests by indicating a direction of the
33 final segment of the delimitation line, where the line has not yet entered the area of
34 third-State interest. Myanmar’s delimitation does just this, leaving the last
35 indisputably bilateral turning point – Point G – and travelling along a specified
36 azimuth toward the area of the third State interest.
37

38 Mr President and Members of the Tribunal, that concludes my presentation. I thank
39 you again for your kind attention and I ask that you please give the floor to
40 Sir Michael Wood.
41

42 **THE PRESIDENT:** Thank you, Mr Lathrop. I now give the floor to Sir Michael Wood.

⁴⁸ *Delimitation of Maritime Boundary between Barbados and Trinidad and Tobago*, Award, 11 April 2006, *R.I.A.A.*, Vol. 27, p. 221, para. 271.

⁴⁹ BR, para. 4.43.

⁵⁰ *Jan Mayen*, *I.C.J. Reports 1993*, pp. 66-67, para. 64.

⁵¹ BM, para. 6.42.

⁵² ITLOS/PV11/13 (E), p. 19, line 32 (Crawford).

⁵³ ITLOS/PV11/12 (E), p. 4, line 24 (Martin).

⁵⁴ BM, para. 6.31.

⁵⁵ ITLOS/PV11/14 (E), p. 7, lines 1-5, 11-13 (Akhavan).

1
2 **SIR MICHAEL WOOD:** Mr President, Members of the Tribunal, it falls to me to make
3 the concluding statement by Counsel for Myanmar in this, the second round of oral
4 pleadings. The Agent will then read out Myanmar's final submissions.

5
6 Mr President, this is not a particularly complicated case. Yet, as they did throughout
7 the negotiations, so too before this Tribunal, our friends from Bangladesh have
8 produced rabbit after rabbit out of a hat. They have devoted enormous effort to
9 conjuring up a pre-existing agreement that simply does not exist. They have
10 introduced the wholly inappropriate notion of an angle-bisector. They have presented
11 learned scientists, even masquerading as learned counsel, to explain the deepest
12 mysteries of the universe. We have been taken back almost to the Creation, the Big
13 Bang, or whatever it was – fortunately, I do not think you will need to decide
14 precisely what happened “In the beginning”, but these magician's tricks do not
15 deceive.

16
17 More seriously, our opponents have played fast-and-loose with juridical notions,
18 including those of the relevant coasts, the relevant area, and relevant circumstances.
19 Above all, our colleagues from Bangladesh have played fast-and-loose with legal
20 principle, as it has been developed, so carefully developed, by international courts
21 and tribunals and by learned authors over recent decades.

22
23 I hope that, despite the fog of litigation conjured up by our friends opposite, the main
24 issues before you are now relatively clear:

- 25
- 26 (i) Is there an existing agreement, within the meaning of article 15 of the
27 Law of the Sea Convention, between the Parties delimiting the
28 territorial sea? Answer, “No”.
 - 29
 - 30 (ii) What is the correct delimitation method to apply in the circumstances of
31 the present case? Answer, “Equidistance/special or relevant
32 circumstances.”
 - 33
 - 34 (iii) What is the significance of the overall concave nature of the Bay of
35 Bengal to this delimitation? Answer, “None”.
 - 36
 - 37 (iv) What weight, if any, is to be given to Bangladesh's St Martin's Island,
38 which lies directly off the coast of Myanmar? Answer, “Partial but
39 significant effect in the territorial sea, no effect for the EEZ/continental
40 shelf”.
 - 41
 - 42 (v) Does the line thus constructed by Myanmar represent an equitable
43 solution? Answer “Yes. It easily passes the disproportionality test.”
 - 44
 - 45 (vi) Is the Tribunal called upon, in this case, to consider the interpretation
46 and application of article 76 of the Law of the Sea Convention? Answer
47 “No”, for all the reasons given by Myanmar throughout our written and
48 oral pleadings.
 - 49

1 Mr President, Members of the Tribunal, what I propose to do in the next few minutes
2 is, first, to make two short general legal points that go to the heart of what we submit
3 is the approach that this Tribunal should adopt; second, to highlight some salient
4 features of Myanmar's case; and third, to show again that the line we propose
5 represents an equitable solution as mandated by articles 74 and 83 of the
6 Convention.

7
8 The first legal point is this. Despite Professor Crawford's protestations of innocence,
9 Bangladesh is urging you, Members of the Tribunal, to go on a journey back in time,
10 and apply the law as it stood at the time of the *North Sea* cases. For Bangladesh, the
11 law on maritime delimitation was frozen in amber in 1969. Yet international courts
12 and tribunals have struggled with the law over the decades since 1969. The modern
13 international law of maritime delimitation – with at its heart the three-stage
14 equidistance-relevant circumstances method – is set out systematically in the
15 February 2009 judgment of the International Court in the *Black Sea* case⁵⁶. With that
16 judgment, which is the culmination of a long line of cases, the International Court has
17 brought a high degree of clarity and legal certainty to the law, clarity and legal
18 certainty that reflects 40 years of jurisprudence since the *North Sea* cases.

19
20 Professor Crawford does not do his case any good when he seeks to caricature his
21 opponents. We are not 'intoning a canticle'⁵⁷. We are seeking to assist the Tribunal
22 to apply the law to the facts. Professor Crawford does not do his case any good
23 when he cites, for his basic propositions of law, writings dating mostly from the early
24 1990s. The late Sir Derek Bowett, if he were writing today, would surely take account
25 of the latest case-law.

26
27 A second and related point is this. Professor Crawford warned the Tribunal of the
28 proliferation of jurisdictions, and called on you to do your utmost to foster a
29 consistent interpretation of the Convention and its related agreements⁵⁸. We would,
30 of course, strongly agree with that. The dispute settlement bodies provided for in
31 Part XV of the Convention must surely work together for a consistent case-law.
32 International courts and tribunals owe each mutual respect, no more so than in the
33 field of the law of the sea. Unfortunately, Professor Crawford did not stop there. He
34 then put forward the proposition that "this is your *North Sea Continental Shelf*
35 case"⁵⁹. With respect, this is not your *North Sea Continental Shelf* case. This is your
36 *Bangladesh v Myanmar* case, not to be decided in a legal vacuum, but in light of
37 international delimitation law as it has developed over the years right up to the
38 present day.

39
40 Mr President, Members of the Tribunal, I shall now recall some salient features of
41 Myanmar's case. I shall not seek to summarize our case as a whole. For the
42 avoidance of doubt, let it be clear that we stand by all that we have said in our written
43 pleadings and during the hearing. In this second round we have, in accordance with
44 the usual practice, concentrated on points – and there were not very many – made
45 by our opponents that require answer.

56 *Maritime Delimitation in the Black Sea (Romania v. Ukraine) Judgment, I.C.J. Reports 2009*, p. 61.

57 ITLOS/PV.11/14 (E), p. 13, lines 46-47 (Crawford).

58 ITLOS/PV.11/2/Rev.1 (E), p. 21, lines 32-46 (Mr Crawford).

59 *Ibid.*, p. 21, lines 16-17 (Mr Crawford).

1 As you are all too well aware, Members of the Tribunal, the present proceedings
2 follow extended, but ultimately fruitless, negotiations stretching over almost four
3 decades – fruitless since the Parties were unable to reach any agreement regarding
4 the course of their maritime boundary; fruitless, despite Bangladesh’s attempt to
5 transform a conditional understanding as to what might be included in an eventual
6 comprehensive maritime delimitation agreement, reached between delegations in a
7 negotiating round some 37 years ago, into what – in all practical terms, and whatever
8 they now may say – they claim was an international agreement binding upon the
9 Parties under international law.

10
11 I do not think I need repeat what we have said about the Agreed Minutes of 1974.
12 You have seen their actual terms. You have seen the circumstances of their
13 conclusion. We have seen that important conditions were never met, and have still
14 not have been met, including (i) free and unimpeded passage for Myanmar ships;
15 and (ii) the conclusion of a comprehensive maritime delimitation agreement. As
16 Bangladesh itself acknowledged, the Agreed Minutes were merely a “summary of the
17 discussions”⁶⁰. As Bangladesh itself said in its application instituting these
18 proceedings, “[t]here is no treaty or other international agreement ratified by
19 Bangladesh. And Myanmar delimiting any part of the maritime boundary in the Bay
20 of Bengal”⁶¹, and, as we have heard this morning, as the Bangladesh Foreign
21 Minister said in 1985:

22
23 Our understanding is that international negotiations of this type are to put
24 it loosely without prejudice to either side till the conclusion of an
25 international agreement.⁶²
26

27 Mr President, Members of the Tribunal, the Bangladesh Foreign Minister was right.
28 What happened in the negotiations was “without prejudice to either side”. One can
29 only suspect that our friends opposite have placed such heavy emphasis on the
30 1974 minutes, not because they believe for one moment that there was an agreed
31 line, but because they want you, the Members of this Tribunal, to think that a line
32 under consideration some 37 years ago, in a completely different context, would be
33 acceptable today as part of the decision of the Tribunal based on law. It is clear from
34 the records that, even as early as 1974, discussions were continuing on where the
35 territorial sea boundary should end, and the EEZ/continental shelf boundary begin.
36 Right from the outset, in 1974, alternatives were under consideration for point 7⁶³.

37
38 Absent agreement on delimitation in the territorial sea, the Parties are in agreement
39 that the equidistance/special circumstances rule applies in that area. We have
40 explained the correct application of article 15 to the territorial sea of the Parties. The
41 line needs to correct the otherwise distorting effect that St Martin’s Island would have
42 on the equidistance line drawn on the basis of the general configuration of the coasts
43 of the Parties. For this reason, it is essential for the proper continuation of the line

⁶⁰ BM, Vol. III, Annex 14, para. 10.

⁶¹ *Notification under Article 287 and Annex VII, article 1 of UNCLOS and the Statement of Claim and Grounds on Which it is Based*, 8 October 2009, para. 4.

⁶² MCM, Vol. II, Burma-Bangladesh Maritime Boundary Delimitation Talks, Sixth Round, Speeches and Statements, 19-20 November 1985, p. 12 (Annex 8).

⁶³ E.g., BM, Vol. III, Annex 15, para. 5; MCM, Vol. II, Minutes of the Third Round, second meeting, paras. 5 and 7; third meeting, para. 8 (Annex 4); MCM, Vol. II, Sixth Round, Speeches and statements, p. 8 (Annex 8).

1 out to sea that the line in the area of St Martin's Island ends at Point E on the 12 M
2 arc around the Island. If it did not, the line would cease to reflect the actual
3 relationship between the coasts of the Parties.
4

5 Before we leave islands, let me follow Professor Forteau and state for the record
6 that, contrary to what Mr Reichler said⁶⁴, Myanmar does not accept that May Yu
7 Island (Oyster Island) is a rock within the meaning of article 121, paragraph 3 of the
8 Convention. May Yu Island is an island falling within article 121, paragraph 2.
9

10 Myanmar has applied the three-stage equidistance/relevant circumstances method
11 to the determination of the line beyond the territorial sea. We have explained that, in
12 the present case, it is perfectly feasible to apply this standard method, so there is no
13 reason to discard it in favour of any other, whether it be the angle-bisector to which
14 our opponents were so attached, or something else⁶⁵. Unlike Bangladesh, we have
15 correctly identified the relevant coasts and the relevant area. Then, at the first stage
16 we have drawn the provisional equidistance line using five relevant base points
17 located on appropriate features, two points on the coast of Bangladesh and three on
18 the coast of Myanmar.
19

20 We then considered whether there were any relevant circumstances that would
21 necessitate the adjustment of the provisional equidistance line, and found that there
22 were none. Neither the overall concavity of the Bay of Bengal, nor the presence of
23 St Martin's Island lying just off the coast of Myanmar, requires any adjustment of our
24 provisional equidistance line.
25

26 Third, we then applied the disproportionality test, and found that it did not require any
27 adjustment. I shall return to this in the concluding section of my speech.
28

29 Notwithstanding the fact that the final point of the maritime boundary reaches the
30 area where the rights of a third party may be affected before reaching the 200-M
31 limit, Myanmar has responded to Bangladesh's arguments regarding its self-
32 proclaimed 'entitlement' to an area of continental shelf beyond 200 M. We have
33 explained that Bangladesh's request that the Tribunal should recognize its
34 'entitlement' beyond 200 miles, and that the Tribunal should decide that Myanmar
35 has no such entitlement, are in any event inadmissible. These are matters to be
36 determined in accordance with the procedure provided for in article 76 and Annex II
37 of the Convention.
38

39 Mr President, I come now to the third and last section of this statement. This
40 concerns the equitable nature of our proposed line, which is to be assessed by
41 application of the disproportionality test. I dealt with this in some detail during the first
42 round. I shall not repeat what I said then. Instead, I shall respond to points made by
43 Bangladesh on Thursday.
44

45 Professor Crawford tried to muddy the waters by coming up with some completely
46 new figures, and a veritable smorgasbord of lines to choose from. He showed you a

⁶⁴ ITLOS/PV.11/13 (E), p. 11, lines 23-25 (Reichler).

⁶⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine) Judgment*, I.C.J. Reports 2009, p. 61, at p. 101, para. 116.

1 sketch-map with a cat's cradle of lines. No doubt these were carefully selected to
2 create the impression of reasonableness for Bangladesh's preferred line.

3
4 As you well know, and contrary to what Professor Crawford implied, the search for
5 an equitable solution, including the application of the disproportionality test, does not
6 involve an allocation of the relevant area in proportion to the coasts. Rather, the
7 Tribunal must evaluate whether a "significant"⁶⁶, "marked"⁶⁷, "great"⁶⁸ or "gross"⁶⁹
8 disproportion exists between the ratio of the coastal lengths of the Parties and the
9 areas of EEZ/continental shelf appertaining to Myanmar and to Bangladesh. To date,
10 international courts and tribunals have only adjusted the equidistance line in
11 instances of great disparity between coastal lengths, in ratios of 8:1 and higher.⁷⁰

12
13 With the case-law in mind, I now turn to the application of the disproportionality test
14 in the present dispute.

15
16 I look first at the relevant area. On Thursday, Bangladesh's sketch maps seemed to
17 concede that areas in dispute between Bangladesh and India, at least on
18 Bangladesh's side of the median line with India, were within the area to be delimited.
19 However, Bangladesh's sketch maps also attributed to Myanmar the large triangle in
20 the south which is not part of the overlapping projections generated by Myanmar's
21 and Bangladesh's coasts. As explained by Daniel Müller during the first round, this
22 addition has no basis in the modern law of maritime delimitation as found in the case
23 law. Accordingly, the total relevant area to be delimited is 214,300 km².

24
25 As for relevant coasts, Professor Crawford's attempts to shorten the Myanmar coast
26 and lengthen the Bangladesh coast were equally unconvincing. The coasts of the
27 Meghna Estuary – facing east and west – clearly do not "project into the area to be
28 delimited"⁷¹, while the coast between Cape Bhiff and Cape Negrais, which faces
29 north-west back into the area to be delimited, clearly does "generate projections
30 which overlap with projections from the coast of" Bangladesh⁷². As a result, the ratio
31 between Bangladesh and Myanmar's relevant coasts is approximately 1:2.03.

32
33 Mr President, Members of the Tribunal, on your screens you have the correct
34 relevant area. Myanmar's proposed delimitation line allocates 80,400 km² to
35 Bangladesh and 133,900 km² to Myanmar. The ratio is approximately 1:1.66. This is
36 clearly not disproportionate, and it is in any event in Bangladesh's favour.

37

⁶⁶ *Ibid.*, at p. 129, para. 210.

⁶⁷ *Ibid.*, at p. 103, para. 122.

⁶⁸ *Ibid.*, at p. 103, para. 122.

⁶⁹ *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, Award of 11 April 2006, UNRIAA, Vol. XXVII, p. 214, para. 238.

⁷⁰ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 48-49, paras. 66-73; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Judgment, I.C.J. Reports 1993*, p. 38, at p. 65, para. 61; *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, Award of 11 April 2006, UNRIAA, Vol. XXVII, p. 239, para. 352.

⁷¹ *Maritime Delimitation in the Black Sea (Romania v. Ukraine) Judgment, I.C.J. Reports 2009*, p. 61, at p. 97, para. 100 discussing coasts of Karkinit'ska Gulf.

⁷² *Ibid.*, at pp. 96-97, para. 99.

1 Mr President, even the true angle-bisector line, as described by Mr Lathrop on
2 Tuesday, within the correct relevant area, would pass the disproportionality test. The
3 true bisector line, as we described it, divides the relevant area into a ratio of 1:2.22.
4 With a coastal ratio of 1:2.03, that is well within the ratio found to meet the test in
5 *Tunisia/Libya*⁷³ and *Romania v Ukraine*⁷⁴.

6
7 Finally Mr President, we have placed a so-called “proportionality line” on the sketch
8 map, dividing the correct relevant area into two parts, proportionate to the relevant
9 coasts of the Parties. This of course is not the proper approach, as the International
10 Court has made clear, but the sketch is perhaps instructive: the equidistance line
11 produced by Myanmar is considerably more favourable to Bangladesh than the
12 so-called “proportionality line”, which itself runs slightly south of the true bisector.
13 A sketch with all three lines can be found at tab 7.3 and it is on the screen.

14
15 Mr President, Members of the Tribunal, to return to reality and to conclude on this
16 point, the disproportionality test, as applied in the case-law, does not require any
17 adjustment of Myanmar’s proposed line. Indeed, the line passes the test with flying
18 colours. If anything, it allocates to Bangladesh a larger portion of the relevant area in
19 comparison to the Parties’ coastal lengths. It is an eminently equitable solution.

20
21 In conclusion, Mr President, let me just say this. It is easy to see why Counsel for the
22 Applicant has felt the need to invite you to boldly go where none has gone before.
23 They are not at all comfortable with the application of the existing law to this
24 delimitation. Yet this is a straightforward case: straightforward in its geography,
25 straightforward in its applicable law. That is precisely why Myanmar, for its part, does
26 not wish you to set off into the unknown. We simply trust you to do what the Law of
27 Sea Convention envisages your role to be: to apply the law to the facts of the case.

28
29 Mr President, Members of the Tribunal, before I conclude, let me place on record
30 a personal word of thanks. I speak for all of Myanmar’s team of Counsel in
31 expressing our sincere appreciation to the Agent of Myanmar, and to the Deputy
32 Agents, and to all their Myanmar colleagues. We could not have wished for better
33 colleagues over the several years during which we have worked so closely together
34 on this important case.

35
36 Mr President, I would request you to ask the Agent of Myanmar, His Excellency Dr
37 Tun Shin, Attorney General of the Union, to make the final submissions on behalf the
38 Republic of the Union of Myanmar. I thank you, Mr President.

39
40 **THE PRESIDENT:** I thank you, Sir Michael. I now invite the Agent of Myanmar, His
41 Excellency the Attorney General, Dr Tun Shin, to present his Party’s final
42 submissions.

43
44 **MR SHIN:** Mr President, Members of the Tribunal, I shall now read the final
45 submissions of the Republic of the Union of Myanmar. These are, in substance,
46 unchanged from those in our Rejoinder:

⁷³ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, at p. 91, para. 131.

⁷⁴ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* Judgment, I.C.J. Reports 2009, p. 61, at p. 130, paras. 215-216.

1
2 Having regard to the facts and law set out in the Counter-Memorial and
3 the Rejoinder, and at the oral hearing, the Republic of the Union of
4 Myanmar requests the Tribunal to adjudge and declare that:

- 5
6 1. The single maritime boundary between Myanmar and Bangladesh
7 runs from point A to point G, as set out in the Rejoinder. With your
8 permission, I shall not read out the co-ordinates. (The co-ordinates
9 are referred to WGS 84 datum).
10
11 2. From point G, the boundary line continues along the equidistance line
12 in a south-west direction following a geodetic azimuth of 231° 37"
13 50.9" until it reaches the area where the rights of a third State may be
14 affected.
15

16 In accordance with article 75 of the Rules of the Tribunal, a copy of the written text of
17 these submissions is being communicated to the Tribunal.
18

19 Mr President, Members of the Tribunal, it only remains for me, on behalf of the
20 Myanmar team, to thank all those in this room, and behind the scenes, who have
21 worked so hard over the past few weeks on this case.
22

23 First, I wish to thank the Registrar, Mr Philippe Gautier, and the members of the
24 Registry who have worked so tirelessly and efficiently to ensure the smooth running
25 of these proceedings.
26

27 We especially thank the interpreters, who certainly have not had an easy time, and
28 those who have worked long hours to produce so promptly the records of the public
29 sessions.
30

31 We thank our friends from Bangladesh for their co-operation in the course of these
32 proceedings. We thank the Agent, Her Excellency the Honourable Dr Dipu Moni,
33 Foreign Minister of Bangladesh, His Excellency Mr Mohammed Mijraul Quayes,
34 Foreign Secretary of Bangladesh, who addressed the Tribunal on Thursday, the
35 Deputy Agent, Rear Admiral Muhammad Khurshed Alam, and all the members of the
36 Bangladesh team. We are grateful for the kind words that they addressed to the
37 Myanmar team and, in turn, wish to thank them for the professional and courteous
38 manner in which they have participated in these proceedings.
39

40 I also wish to associate myself with Bangladesh's Foreign Secretary's words of
41 friendship between our two countries. We, too, think that the Tribunal's judgment is
42 likely to reinforce our links of good neighbourliness.
43

44 I also want to record my thanks to the members of my own team for all their efforts.
45

46 Above all, we thank you, Mr President, and all the Members of this distinguished
47 Tribunal for listening to us with patience and attention. We are confident that your
48 eagerly awaited judgment will resolve the dispute between Myanmar and
49 Bangladesh in the Bay of Bengal on the basis of the modern law of maritime
50 delimitation, thus making an important contribution to friendly relations between our
51 two countries.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Mr President, Members of the Tribunal, I thank you for your attention.

THE PRESIDENT: Thank you, Excellency. This brings us to the end of the oral proceedings.

On behalf of the Tribunal, I would like to take this opportunity to express our appreciation for the high quality of the presentations of the Agents and counsel of both Bangladesh and Myanmar. I would also like to take this opportunity to thank both Agents for their exemplary spirit of co-operation.

The Registrar will now address questions in relation to documentation.

THE REGISTRAR: Thank you, Mr President. Pursuant to article 86(4) of the Rules of the Tribunal, the Parties, under the supervision of the Tribunal, may correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the meaning and scope thereof. If not done yet, corrections should be submitted to the Registry as soon as possible and at the latest by Thursday, 29 September 2011, noon, Hamburg time.

Thank you, Mr President.

THE PRESIDENT: The Tribunal will now retire to deliberate. The judgment will be read on a date to be notified to the Agents. The Tribunal has tentatively set a date for the delivery of the judgment. That date is 14 March 2012. The Agents will be informed reasonably in advance if there is any change to this schedule.

In accordance with the usual practice, I request the Agents to kindly remain at the disposal of the Tribunal in order to provide any further assistance and information that it may need in its deliberations prior to the delivery of the judgment.

The sitting is now closed.

(The sitting closed at 4.03 p.m.)