

NOTIFICATION OF SPECIAL AGREEMENT

Letter dated 13 December 2009 from the Minister of Foreign Affairs of Bangladesh to the President of the Tribunal, inviting the Tribunal to exercise jurisdiction over the maritime boundary dispute between Bangladesh and Myanmar¹, with Attachments A to G:

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

পররাষ্ট্র মন্ত্রী
FOREIGN MINISTER



GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA

13 December 2009

Judge José Luis Jesus
President
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany
(email: itlos@itlos.org)

Re: *Delimitation of the maritime boundaries among Bangladesh, India and Myanmar in the Bay of Bengal*

Dear President Jesus:

I have the honour to write you concerning the proceedings for the delimitation of the maritime boundaries among Bangladesh, Myanmar and India in the Bay of Bengal.

Background

2. On 08 October 2009, the Government of the People's Republic of Bangladesh instituted arbitral proceedings against both the Union of Myanmar and the Republic of India pursuant to Annex VII of the UN Convention on the Law of the Sea ("UNCLOS") by submitting Notifications and Statements of Claim to the diplomatic representatives of both States in Dhaka. The purpose of the statements of claim was and is to secure the full and satisfactory delimitation of Bangladesh's maritime boundaries with India and Myanmar in the territorial sea, the exclusive economic zone and the continental shelf in accordance with international law. Copies of both statements of claim are attached to this letter at **Attachments A and B**.

3. In its 08 October 2009 statements of claim, Bangladesh identified Professor Vaughan Lowe as its party-appointed arbitrator in both cases. As provided in Article 3(c) of Annex VII, Myanmar and India identified Judge P Chandrasekhara Rao and Dr. P Sreenivasa Rao as their party-appointed arbitrators, respectively, within the 30-day period stipulated.

¹ *Note by the Registry:* Some passages of this letter are omitted as they do not relate to the present dispute.

Diplomate

Bangladesh-Myanmar

4. Simultaneously with its identification of Judge P C Rao as its party appointed arbitrator in the Annex VII proceeding, Myanmar proposed that the matter between it and Bangladesh be submitted to your distinguished Tribunal for decision, and transmitted a declaration consenting to the jurisdiction of ITLOS over the case. A copy of Myanmar's declaration accepting ITLOS's jurisdiction, dated 4 November 2009, is attached hereto at **Attachment C**.

5. In response to Myanmar's proposal and declaration, Bangladesh issued a parallel declaration accepting ITLOS's jurisdiction over the dispute and communicated its decision to Myanmar. A copy of Bangladesh's declaration, dated 12 December 2009, is attached hereto as **Attachment D**. Given Bangladesh's and Myanmar's mutual consent to the jurisdiction of ITLOS, and in accordance with the provisions of UNCLOS Article 287(4), Bangladesh considers that your distinguished Tribunal is now the only forum for the resolution of the parties' dispute.

6. In light of these developments, Bangladesh respectfully invites ITLOS to exercise jurisdiction over the maritime boundary dispute between Bangladesh and Myanmar, which is the subject of Bangladesh's 08 October 2009 statement of claim. Bangladesh hereby notifies the Tribunal of its intention to select Professor Vaughan Lowe QC as judge *ad hoc*, in accordance with the Tribunal's Statute and Article 19 of the Rules. (A copy of Professor Lowe's curriculum vitae is attached at **Attachment E**.)

(Note by the Registry: Some passages are omitted here as they do not relate to the present dispute.)

11. Please accept, Sir, the assurances of my highest consideration.



Dr. Dipu Moni, MP
Minister for Foreign Affairs
Government of the People's Republic of
Bangladesh
Agent

Attachment A

Note verbale No. MOFA/UNCLOS/320/2 dated 8 October 2009 from the Ministry of Foreign Affairs of Bangladesh to the Embassy of Myanmar in Dhaka, attached:

- Notification under Article 287 and Annex VII, Article I of UNCLOS and the Statement of the Claim and Grounds on which it is based dated 8 October 2009

MINISTRY OF FOREIGN AFFAIRS
GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA



পররাষ্ট্র দফতর
গণপ্রজাতন্ত্রী বাংলাদেশ
সরকার
ঢাকা

No. MOFA/UNCLOS/320/2

Note Verbale

The Ministry of Foreign Affairs of the Government of the People's Republic of Bangladesh presents its compliments to the Embassy of the Union of Myanmar in Dhaka and with respect to the dispute concerning the maritime boundary of Bangladesh and Myanmar in the Bay of Bengal, the Government of Bangladesh has the honour to submit herewith the attached Notification under Article 287 and Annex VII of the 1982 United Nations Convention on Law of the Sea and the Statement of Claim and Grounds on which it is Based, (containing pages 1 to 7) in order to initiate arbitral proceedings for the delimitation of the Bangladesh-Myanmar boundary in the Territorial Sea, Exclusive Economic Zone, and the Continental Shelf.

The Government of Bangladesh has initiated these proceedings in furtherance of friendly relations with Myanmar, mindful of its obligation under Article 279 of the Convention to seek a solution for the settlement of its maritime boundary dispute by the means indicated in Article 33(1) of the Charter of the United Nations.

Pending the Final Award of a Tribunal constituted under Annex VII of the Convention, the Government of Bangladesh remains committed to ongoing negotiations with Myanmar for the equitable settlement of its maritime boundary dispute.

The Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh avails itself of the opportunity to renew to the Embassy of the Union of Myanmar the assurances of its highest consideration.

The Embassy of the Union of Myanmar
Dhaka



**1982 UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA**

**IN THE DISPUTE CONCERNING
THE MARITIME BOUNDARY
BETWEEN BANGLADESH AND MYANMAR**

BANGLADESH v. MYANMAR

**NOTIFICATION UNDER ARTICLE 287
AND ANNEX VII, ARTICLE 1 OF UNCLOS**

**AND THE STATEMENT OF THE CLAIM
AND GROUNDS ON WHICH IT IS BASED**

08 OCTOBER 2009

Dipa Moni

1982 UNCLOS-ANNEX VII ARBITRATION**NOTIFICATION
AND STATEMENT OF CLAIM**

1. Pursuant to Articles 286 and 287 of the 1982 *United Nations Convention on the Law of the Sea* ("UNCLOS"), and in accordance with the requirements of Article 1 of Annex VII thereto, Bangladesh hereby gives written notification to Myanmar that, having failed to reach a settlement after successive negotiations and exchanges of views as contemplated by Part XV of UNCLOS, it has elected to submit the dispute concerning the delimitation of its maritime boundary with Myanmar in the Bay of Bengal to the arbitral procedure provided for in Annex VII of UNCLOS. A statement of claim and the grounds on which it is based accompany this Notification, as required by Article 1 of Annex VII.
2. In accordance with the requirements of Annex VII, Article 3(b), Bangladesh hereby appoints Professor Vaughan Lowe QC as a member of the arbitral tribunal.

SUBJECT MATTER OF THE DISPUTE

3. The dispute concerns the delimitation of the maritime boundary of Bangladesh with Myanmar in the Bay of Bengal, and unlawful exploratory drilling and other activities by Myanmar's licensees in maritime areas claimed by Bangladesh.
4. There is no treaty or other international agreement ratified by Bangladesh and Myanmar delimiting any part of the maritime boundary in the Bay of Bengal.
5. In 1974, Bangladesh and Myanmar signed the *Agreed Minutes Between the Bangladesh Delegation and the Burmese Delegation Regarding the Delimitation of the Maritime Boundary Between the Two Countries* which delimited the maritime boundary in the territorial sea. Although it has not been ratified, both parties have consistently conducted themselves in accordance with the boundary in the territorial sea as described in that agreement.



6. Despite extensive negotiations over the past 35 years, Bangladesh and Myanmar have not succeeded in agreeing upon a maritime boundary in the EEZ or the continental shelf. During these negotiations, including the most recent, which took place in July 2009, Bangladesh and Myanmar exchanged their views regarding the settlement of the dispute, as required by Article 283 of UNCLOS.
7. Accordingly, mindful of its obligation under Article 279 of UNCLOS to settle any dispute concerning the interpretation or application of the Convention by peaceful means, Bangladesh hereby initiates proceedings under Section 2 of Part XV of UNCLOS to settle its dispute with Myanmar on the maritime boundary in the Bay of Bengal.

JURISDICTION

8. Bangladesh and Myanmar are both parties to UNCLOS, having ratified the Convention on 27 July 2001 and 21 May 1996 respectively. Part XV of UNCLOS establishes a regime for the settlement of disputes concerning the interpretation and application of the Convention. Article 279 requires parties to seek a solution by peaceful means in accordance with the UN Charter. Article 283(1) further requires that when a dispute arises between States Parties, the parties should proceed expeditiously to an exchange of views regarding a settlement by negotiation or other peaceful means. Bangladesh has complied with the requirements of Part XV fully and in good faith.
9. As Bangladesh and Myanmar have failed to settle the dispute between them by peaceful means of their own choice, Article 281(1) allows recourse to procedures provided for in Part XV, including compulsory procedures entailing binding decisions under Section 2 of that Part. Article 286 allows these compulsory procedures to be initiated by any party to the dispute in the court or tribunal having jurisdiction under Section 2.
10. Article 287 governs the choice of compulsory procedures. Article 287(1) allows a State Party, by means of a written declaration, to choose one or more of the means for the settlement of disputes listed in the paragraph, which includes recourse to

an arbitral tribunal under Annex VII. Since Bangladesh and Myanmar have made no declarations pursuant to Article 287(1), they are deemed by operation of Article 287(3) to have accepted arbitration in accordance with Annex VII.

11. It is further noted that Article 298 governing optional exceptions to applicability of Section 2 does not apply since neither Bangladesh nor Myanmar has declared in writing that it does not accept any one or more of the compulsory procedures referred to in Article 287.
12. Therefore, in conformity with Article 286, Bangladesh submits its dispute with Myanmar concerning the delimitation of their maritime boundary in the Bay of Bengal to an arbitral tribunal (“Tribunal”) constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1).

THE FACTS

13. Bangladesh and Myanmar are States with adjacent coasts in the Bay of Bengal.
14. The claims of Bangladesh and Myanmar overlap throughout the EEZ and continental shelf.
15. In 1974, the Parliament of Bangladesh adopted the *Territorial Waters and Maritime Zones Act*. This Act defines Bangladesh’s maritime boundaries with Myanmar and India in the territorial sea, the EEZ, and the continental shelf. The boundaries consist of two parallel lines extending southward on the meridians of longitude, from baselines corresponding to Bangladesh’s coastline up to the outer limits of the continental margin.
16. In 1974, Myanmar claimed a maritime boundary with Bangladesh based on what it characterized as an equidistance line. Bangladesh rejected Myanmar’s proposed line of delimitation as inequitable because, *inter alia*, the line, in combination with Bangladesh’s concave coastline at the northern end of the Bay of Bengal, severely cut off and reduced Bangladesh’s maritime entitlement.

17. In 1979, in the context of bilateral negotiations, Bangladesh proposed a more equitable line of delimitation in the EEZ and continental shelf. Although no formal agreement was reached, between 1979 and 2005, Myanmar's conduct was in accordance with this proposed boundary which it referred to as the "Friendship Line". From 2005 onwards however, Myanmar changed its long-standing practice and offered several concession blocks for oil and gas exploration in an area between the so-called "Friendship Line" and the equidistance line as defined by Myanmar.
18. In disregard of Bangladesh's maritime boundary claims under the 1974 Act, Myanmar's licensees have engaged in drilling and other exploratory activities in disputed areas without prior notice to or consent by Bangladesh.
19. Myanmar's boundary claims and exploratory activities have seriously prejudiced Bangladesh's rights to equitable delimitation and its sovereign rights for the purpose of exploring and exploiting natural resources in the EEZ and continental shelf under UNCLOS.
20. On 16 December 2008, Myanmar submitted to the Commission on the Limits of the Continental Shelf information on its extended continental shelf. Myanmar's claim, which denies Bangladesh any portion whatsoever of its continental shelf beyond 200 nautical miles, is inconsistent with the principles and rules established by UNCLOS. Bangladesh shall submit its claims to an extended continental shelf by July 2011. When it makes its submission, Bangladesh will describe and justify its entitlement to an extended continental shelf, beyond 200 nautical miles from its coastal baselines, in the very areas where Myanmar has asserted claims in its submission to the Commission.

GROUND ON WHICH BANGLADESH'S CLAIMS ARE BASED

21. Bangladesh's claim is based on the provisions of UNCLOS as applied to the relevant facts, including but not limited to UNCLOS Articles 15, 74, 76 and 83.

22. Bangladesh's claim is also based on its Territorial Waters and Maritime Zones Act, 1974, and the subsequent Notification No. LT – 1/3/74 of the Ministry of Foreign Affairs of 13 April 1974.
23. Details of these grounds will be particularized at the appropriate stage in this arbitration, as determined by the Tribunal.

RELIEF SOUGHT

24. Bangladesh requests the Tribunal to delimit, in accordance with the principles and rules set forth in UNCLOS, the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal, in the territorial sea, the EEZ, and the continental shelf, including the portion of the continental shelf pertaining to Bangladesh that lies more than 200 nautical miles from the baselines from which its territorial sea is measured.
25. In regard to the territorial sea, Bangladesh requests the Tribunal to confirm that the maritime boundary between Bangladesh and Myanmar is delimited by the 1974 *Agreed Minutes Between the Bangladesh Delegation and the Burmese Delegation Regarding the Delimitation of Maritime Boundary Between the Two Countries*.
26. Bangladesh also requests the Tribunal to declare that by authorizing its licensees to engage in drilling and other exploratory activities in maritime areas claimed by Bangladesh without prior notice and consent, Myanmar has violated its obligations to make every effort to reach a provisional arrangement pending delimitation of the maritime boundary as required by UNCLOS Articles 74(3) and 83(3), and further requests the Tribunal to order Myanmar to pay compensation to Bangladesh as appropriate.
27. Details of this claim will be particularized at the appropriate stage in this arbitration as determined by the Tribunal.

28. Bangladesh reserves the right to supplement and/or amend its claim and the relief sought as necessary, and to make such other requests from the arbitral tribunal as may be necessary to preserve its rights under UNCLOS.

Respectfully submitted,



Dr. Dipu Moni, MP
Foreign Minister
Ministry of Foreign Affairs, Dhaka
Government of the People's Republic of Bangladesh,
Agent

08 October 2009

**Attachment B
omitted²**

**Attachment C
Declaration of the Minister for Foreign Affairs of Myanmar dated
4 November 2009**



*Minister for Foreign Affairs
Union of Myanmar*

Nay Pyi Taw
4th November 2009

**Declaration under Article 287 of the UNCLOS Accepting the
Jurisdiction of the International Tribunal for the
Law of the Sea**

In accordance with Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Government of the Union of Myanmar hereby declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of dispute between the Union of Myanmar and the People's Republic of Bangladesh relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nyan Win', written over a horizontal line.

(Nyan Win)
Minister for Foreign Affairs
Government of the Union of Myanmar

² Note by the Registry: This document does not relate to the present dispute.

Attachment D**Declaration of the Minister for Foreign Affairs of Bangladesh dated
12 December 2009**

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

পররাষ্ট্র মন্ত্রী
FOREIGN MINISTER



GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA

12 December 2009

**DECLARATION UNDER ARTICLE 287(1) OF UNCLOS
ACCEPTING THE JURISDICTION OF
THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

Pursuant to Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea, the Government of the People's Republic of Bangladesh declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of the dispute between the People's Republic of Bangladesh and the Union of Myanmar relating to the delimitation of their maritime boundary in the Bay of Bengal.

Dipu Moni

Dr. Dipu Moni, MP
Minister for Foreign Affairs
Government of the People's Republic of
Bangladesh