

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



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held on Thursday, 22 September 2011, at 10.00 a.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 Lu3s 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
	Judges <i>ad hoc</i>	Thomas A. Mensah
		Bernard H. Oxman
	Registrar	Philippe Gautier

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as Advisers.

1 **CLERK OF THE TRIBUNAL:** All rise.

2

3 **THE PRESIDENT:** Please be seated. Good morning. Today, Bangladesh will
4 continue its second round of oral arguments in the dispute concerning delimitation of
5 the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.
6 I call upon Mr Paul Reichler to make his presentation.

7

8 **MR REICHLER:** Mr President, Members of the Tribunal, good morning. It is an
9 honour for me to appear before you again.

10

11 Myanmar's counsel have struggled mightily during these proceedings - they have
12 pulled out all stops - to persuade you to disregard St Martin's Island in the
13 delimitation of the boundary beyond the territorial sea. At least four different lawyers
14 dedicated themselves to this objective.¹ I admire their fortitude, and their
15 imagination; but, with respect, they have produced an extremely complicated set of
16 abstract arguments on this issue that are both misguided and impractical. They
17 ignore the law and the established geographical facts. Their approach to the problem
18 is ultimately unhelpful.

19

20 Their extraordinary and unorthodox efforts remind me of the four electricians who
21 went to replace a burnt-out light bulb in the ceiling. The master electrician stood on a
22 chair, holding the bulb high over his head, while his three apprentices slowly turned
23 the chair.

24

25 I have a vision of my old and dear friend, *mon cher ami, mon frère*, Professor Pellet
26 standing on a chair, holding the bulb high over his head, while his three apprentices,
27 his three acolytes slowly turn the chair. "Angular displacement", shouts Mr Lathrop,
28 straining under the weight; "Wrong side of the line", grunts Professor Forteau;
29 "Dominant mainland coast", says Mr Müller: and then, in unison, the final *cri de*
30 *coeur*: "Mainland to mainland provisional equidistance line".

31

32 Like the electricians, Myanmar's counsel supply an overabundance of effort, and
33 provide a much-too-complicated solution, to a not-so-difficult problem. But the worst
34 of it is: when they finish the job, the room is still dark.

35

36 Mr President, the problem of how to treat St Martin's Island is an important one, but it
37 is not an especially difficult one to solve, and it takes not more than a single lawyer
38 to do it, even one with talents as limited as mine.

39

40 There are really two ways to solve the problem. The first way – which is the one
41 used by Bangladesh – is to delimit the boundary by means of an angle bisector. The
42 bisector is drawn from the angle created by the intersection of the mainland coastal
43 facades of the two States at their land boundary terminus. Then, to take account of
44 St Martin's, the bisector is transposed to the south so that it begins at the outward
45 limit of the territorial sea boundary.

46

47 The transposition of the bisector is not as innovative as Myanmar would have you
48 believe. In fact, it is not innovative at all. It is something that has already been done

¹ A. Pellet, M. Forteau, C. Lathrop, B. Samson. See e.g. ITLOS/PV.11/9, p. 15, lines 19-28 (Forteau).

1 three times in the case law: by the ICJ, by a Chamber of the Court, and by a
2 distinguished arbitral tribunal. Professor Crawford will discuss these cases with you.

3
4 In regard to the use of an angle bisector or other non-equidistance methodologies,
5 I am grateful to my friend, Mr Lathrop, for calling the attention of the Tribunal to the
6 excellent article by Sir Derek Bowett in Volume I of the *International Maritime*
7 *Boundaries Series*, concerning State practice in regard to delimitations involving
8 islands.² The article entirely supports Bangladesh's approach, as Professor Sands
9 pointed out yesterday. However, Professor Sands also called attention to the
10 strikingly incomplete manner in which Mr Lathrop quoted from that article. Here is
11 another example - Mr Lathrop cited Sir Derek for this proposition:

12
13 "that offshore islands have a greater potential for distortion of any
14 equidistant line in situations of adjacency than in situations of
15 oppositeness".³

16
17 Those *were* Sir Derek's words, but they were only *some* of his words. The entire
18 sentence from which Mr Lathrop extracted them, reads as follows:

19
20 "*The rejection of equidistance* is therefore presumably connected with the
21 fact that offshore islands have a greater potential for distortion of any
22 equidistance line in situations of adjacency than in situations of
23 oppositeness."⁴

24
25 "The rejection of equidistance": rather important words to leave out, would you not
26 say?

27
28 Also left out by Mr Lathrop, is the paragraph immediately preceding these words,
29 from which Sir Derek drew his conclusion, in regard to the "rejection of
30 equidistance".⁵ He cites seven examples in State practice, where equidistance was
31 rejected on these grounds in delimitations involving islands. Three of them employed
32 angle bisectors to delimit the boundary, two used parallels of latitude, one used a
33 straight line running along a constant azimuth, and the last used a series of
34 loxodromes. I will not take up the Tribunal's time elaborating on them, but the
35 paragraph from Sir Derek's article that sets this out is at tab 7.1 of your Judges'
36 folder.

37
38 I said there are two ways to address St Martin's Island. Bangladesh's preferred way
39 is a transposed angle bisector. But if, contrary to Bangladesh's view, equidistance is
40 *not* rejected, the legally correct application of equidistance methodology, reflected in
41 the case law, leads to an entirely different conclusion than the one advocated by
42 Myanmar. It leads to the conclusion that St Martin's must be given full weight in any
43 solution based on an equidistance line, and that even *this*, is not enough to achieve
44 the equitable solution that is required by the 1982 Convention.

45

² D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries* (2005), Vol. 1, p. 131.

³ ITLOS/PV.11/8 p. 24, line 44 to p. 25, line 1 (Lathrop).

⁴ D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries* (2005), Vol. 1, p. 135.

⁵ *Ibid.*

1 Mr President, my presentation this morning will consist of three parts. First, I will
2 discuss the opposing conclusions the Parties draw from their review of the case law
3 regarding the effects given to islands in the delimitation of maritime boundaries. On
4 the one hand, both Bangladesh and Myanmar rely on essentially the same cases.
5 On the other, they draw opposite conclusions from these cases. Myanmar claims
6 that they support exclusion of St Martin's Island from the delimitation of the maritime
7 boundary in the EEZ and continental shelf. Bangladesh disagrees. We say the case
8 law demonstrates conclusively that St Martin's must be given full effect in delimiting
9 the area between 12 and 200 M. With your indulgence, Mr President, I will take you
10 through these cases, and show you that Bangladesh is right, and Myanmar is wrong,
11 in regard to the proper conclusions to be drawn from the rather considerable body of
12 jurisprudence developed by the ICJ and arbitral tribunals.

13

14 In the second part of my submission, I will apply the legal principles derived from the
15 case law to the delimitation between Bangladesh and Myanmar, and in particular to
16 the treatment of St Martin's Island. It will be *very* plain from this exercise that the law
17 does not allow St Martin's Island to be ignored; to the contrary, it requires that
18 St Martin's be given full effect in the construction of a provisional equidistance line;
19 and then it requires an adjustment of that line in Bangladesh's favour, to abate the
20 distorting effects of the only truly relevant circumstance in this case: the double
21 concavity of Bangladesh's coast. Only in this manner can the Tribunal fashion an
22 equitable solution, as required by the 1982 Convention.

23

24 In the third and final part of my presentation, I will discuss, based on the case law,
25 Bangladesh's view of how an equitable delimitation of the EEZ and continental shelf
26 might be achieved in this case.

27

28 With your permission, Mr President, I will turn to the Parties' opposing interpretations
29 of the case law, starting with that of Myanmar. There is more than a bit of
30 contradiction in Myanmar's position. Mr Lathrop calls St Martin's "the epitome" of a
31 special or relevant circumstance,⁶ while Professor Forteau insists that St Martin's is
32 anything but a relevant circumstance.⁷ However, they do agree with one another that
33 it should be given no effect in the delimitation, because it purportedly satisfies three
34 conditions: (1) St Martin's is an island that is in a relationship of adjacency with the
35 mainland of another State; (2) it lies in close proximity to the coast and land
36 boundary terminus; and (3) there are no so-called "balancing islands" to offset its
37 effects.⁸ Under Myanmar's view, it is a rule of law, derived from the jurisprudence,
38 that any island that satisfies these three conditions must, *a fortiori*, be disregarded in
39 any delimitation beyond the 12 M territorial sea.

40

41 There are several fundamental problems with Myanmar's view of the law. First, all of
42 their three conditions are, to use Mr Lathrop's own very apt description of them,
43 entirely "abstract" concepts.⁹ Myanmar would apply them universally regardless of
44 the geographical context in which the islands exist. We say it is only by examining an
45 island in the overall geographical context of a particular case, taking all of the
46 relevant coastal geography into account, that it is possible to determine whether the

⁶ ITLOS/PV.11/8, p. 23, line 44 (Lathrop).

⁷ ITLOS/PV.11/10, p.12, line 44 to p. 13, line 3 (Forteau).

⁸ ITLOS/PV.11/8, p. 24, line 42 to p. 25, line 6 (Lathrop).

⁹ ITLOS/PV.11/8, p. 25, line 15 (Lathrop).

1 island's effect is so distorting that it should be disregarded or given less than full
2 weight. Second problem, and relatedly, is that no Court or arbitral tribunal has ever
3 held that mere adjacency to another State's mainland coast, by itself, requires an
4 island to be disregarded. It all depends on the context. The distorting effect of the
5 island on the provisional equidistance line must be demonstrated. Third, there is no
6 case – none – in which islands have been disregarded either because of their
7 proximity to the land boundary terminus, or because there are no so-called
8 “balancing” islands to offset their effects. Myanmar's three principles are, simply put,
9 completely made up to fit this case. They are not supported by the case law.

10
11 If we examine the islands at issue in the principal cases relied on by both Parties,
12 including, especially, the cases invoked by Professor Forteau Monday afternoon, we
13 can see this very clearly.¹⁰ Even more, we can see from these cases that the ICJ
14 and arbitral tribunals have, indeed, developed a clear and common approach to the
15 determination of whether an island exerts such a distorting effect on the provisional
16 equidistance line that it must be disregarded or given less than full weight in the
17 delimitation; but what has emerged from all of these cases is nothing like the
18 interpretation served up by Myanmar's counsel.

19
20 The common approach, the *de facto* rule, which emerges from the case law is this:
21 an island *may* be deemed to have a distorting effect if it pushes the provisional
22 equidistance line across the coast of another State, cutting off the seaward
23 projection of that State's coastal front. Two elements are required for the island to be
24 disregarded or given less than full weight: (1) the deflection of the equidistance line
25 directly across another State's coastal front; and (2) the cut-off of that State's
26 seaward access.

27
28 As we examine the cases, you will find that *this* is the unifying principle that explains
29 and justifies *all* of the decisions cited and relied on by both Parties, including the
30 cases mentioned by Professor Forteau on Monday. Mr President, this is
31 Bangladesh's interpretation of the law, and I am confident that by the time we finish
32 you will agree that it is the correct one.

33
34 As you will recall, Professor Forteau told you that in all of the cases involving islands
35 like St Martin's, the ICJ and arbitral tribunals have disregarded them.¹¹ The key
36 words are “islands like St Martin's”. Of course, it is much easier to say that the
37 islands in these cases were like St Martin's than to *prove* it, and Professor Forteau
38 did no more than say it, and provide you with a list of cases and names of islands.
39 But it could not have escaped your notice that he did not present maps showing
40 these islands, or showing the delimitation lines that were adopted, or any of the
41 reasons the islands were disregarded. It thus falls to me to do so.

42
43 As we go through the cases carefully and individually – and there is no other way to
44 do it – you will see a common approach, a common principle, emerge from them.
45 And you will see that the case law does not support Myanmar's argument: it does not
46 support the exclusion of St Martin's from the delimitation of the EEZ and continental

¹⁰ ITLOS/PV.11/10, p.13, lines 13-35 (Forteau).

¹¹ ITLOS/PV.11/10, p. 13, lines 13-35 (Forteau).

1 shelf in this case. Quite the contrary: it supports not only including St Martin's, but
2 also giving it full effect in delimiting the boundary beyond 12 M.
3

4 Mr President, we begin with the *Anglo-French Continental Shelf* case, to which
5 Professor Forteau, Professor Pellet and Mr Lathrop have referred many times¹² (this
6 is at tab 7.2). What you see on the screen is an equidistance line, as proposed by
7 the United Kingdom, giving full weight to the Channel Islands - which lie directly in
8 front of France's coast and more than 60 and 75 M, respectively, from Britain - and
9 giving full weight as well to the Scilly Isles.¹³ You will clearly observe these effects:
10 the Channel Islands push the equidistance line closer to, and across, the French
11 coast, blocking its seaward projection into the English Channel; and the Scilly Isles
12 (which are in a relationship of adjacency to the French coast) push the equidistance
13 line across France's north-western coastal front, as shown by the thicker red arrow.
14

15 To relieve these blocking effects as best it could, the Court of Arbitration enclaved
16 the Channel Islands, and gave half effect to the Scilly Isles, as is now shown.¹⁴ If you
17 look at the delimitation line in the vicinity of the Scilly Isles, you will see that its
18 direction was adjusted so it would more closely approximate that of, rather than cut
19 across, the seaward projection of the French coastal front. As Professor Forteau
20 very appropriately reminded us: "Delimitation depends" - and this is the first aspect of
21 the principle "on the coastal configuration", and "the land dominates the sea through
22 the projection of the coasts or the coastal fronts".¹⁵ We agree. You will soon see how
23 this applies to the delimitation in this case, and fully supports Bangladesh's position.
24

25 The next case cited by Professor Forteau on Monday was *Eritrea v. Yemen*. The
26 approach followed by the arbitral tribunal in that case was similar to the one
27 employed in the *Anglo-French* arbitration (this is at tab 7.3). *Here* is the delimitation
28 line adopted by the arbitral tribunal, which did not give weight to the Yemeni islands
29 of al-Zubayr and Jabal al-Tayr.¹⁶ And this is why: if these islands, which are located
30 at a great distance from the mainland, had been given full effect, the equidistance
31 line would have been pushed directly toward, and closer to, Eritrea's coastal front. Of
32 course, when States lie directly opposite one another - like Eritrea and Yemen
33 across the Red Sea, or the UK and France across the English Channel - one State's
34 mid-sea islands will inevitably push the provisional equidistance line closer to the
35 other State's coastal front, generally cutting off or at least reducing its seaward
36 projection in those areas.
37

38 This is not *always* the case when an island lies *adjacent* to the mainland coast of
39 another State; but it does happen, and when it does, the same approach is followed.
40 Take, for example, what the ICJ did in *Qatar v. Bahrain*, also cited by Professor
41 Forteau (this is at tab 7.4). These two States lie opposite one another for part of the

¹² ITLOS/PV.11/7, p. 7, lines 37-40 (Pellet); ITLOS/PV.11/8, p. 15, lines 15-19; p. 16, line 37 *et seq.*;
p. 18, lines 17-18 (Lathrop); p. 31, line 45 *et seq.* (Pellet); ITLOS/PV.11/9, p. 31, line 15 (Lathrop);
ITLOS/PV/11/10, p. 13, line 15 (Forteau).

¹³ *Delimitation of the Continental Shelf between France and the United Kingdom*, Decision, 30 June
1977, reprinted in 18 RIAA 3 (hereinafter "*Anglo-French Continental Shelf Case*"), at paras. 199, 201-
202, 244.

¹⁴ *Anglo-French Continental Shelf Case*, at paras. 199, 201-202, 248-249.

¹⁵ ITLOS/PV. 11/9, p.10, lines 33-39 (Lathrop).

¹⁶ *Arbitration between Eritrea and Yemen*, Award, Second Phase (Maritime Delimitation), 17 De-
cember 1999, reprinted in 22 RIAA 335 (hereinafter "*Eritrea/Yemen II*"), at paras.147-148.

1 boundary, and then adjacent for another. In the area where they are adjacent, the
2 boundary line drawn by the Court gives no weight to Bahrain's Qit'at Jaradah
3 Island.¹⁷ Here is why: giving full weight to this feature, which is actually an
4 underwater reef with a tiny and barely visible projection above sea level, would have
5 pushed the equidistance line into Qatar's territorial sea, so that in the affected area
6 Qatar would have enjoyed no more than a 4.5-M territorial sea.

7
8 Professor Forteau helpfully brought up the *Newfoundland/Nova Scotia* arbitration,
9 where the same principle was employed (this is at tab 7.5).¹⁸ Sable Island lies 88 M
10 off the coast of Nova Scotia.¹⁹ Here is the delimitation line adopted by the arbitral
11 tribunal. If Sable Island had been given weight in the construction of the equidistance
12 line, it would have deflected the line right across the seaward projection of
13 Newfoundland's coast, producing a distinct cut-off effect as now shown.²⁰ This was,
14 in fact, one of the principal bases for the arbitral tribunal's award. Especially because
15 of what it called the "remote location" of this "small, unpopulated island", the arbitral
16 tribunal expressed its "concern relat[ing] to the cut-off effect that the provisional line
17 has on the south-west coast of Newfoundland".²¹

18
19 It is noteworthy, as well, that if Sable Island had been allowed to influence the
20 equidistance line it would have pushed the line right across France's continental
21 shelf emanating from St Pierre and Miquelon.²² The boundary line adopted by the
22 arbitral tribunal carefully avoided that. Now, I can see why my French friends like the
23 result, but it does not support their argument on behalf of Myanmar: none of their
24 three so-called "conditions" for disregarding an island were even mentioned in the
25 award, let alone taken into account. And the same can be said of all the other cases.

26
27 Professor Forteau gamely sought support from the ICJ's Judgment in *Tunisia v.*
28 *Libya*, although here again it fails to support Myanmar's argument (this is at tab 7.6).
29 Professor Forteau told you that the Court gave no effect to Tunisia's Djerba Island.²³
30 What he neglected to say was that the Court did not employ equidistance
31 methodology in the delimitation. In its first segment, the delimitation line was based
32 on a *de facto* agreement reflected in the Parties' oil concessions, and their consistent
33 treatment of the clear line separating their respective concessions as the
34 international boundary for many years.²⁴

35
36 The second segment of the boundary, to the north-east, was a transposed angle
37 bisector.²⁵ Here is what the delimitation line would have looked like if equidistance

¹⁷ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, p. 40 (hereinafter "*Qatar v. Bahrain*"), at para. 219.

¹⁸ ITLOS/PV.11/10, p.13, lines 30-31 (Forteau).

¹⁹ *Limits of the Offshore Areas between Newfoundland and Labrador and Nova Scotia*, Award, Second Phase, 26 March 2002, available at [http://lawlibrary.unbf.ca/boundaryarbitration/pdfs/Awards%20&%20Maps/PhaseII_Award_English\[1\].opt.pdf](http://lawlibrary.unbf.ca/boundaryarbitration/pdfs/Awards%20&%20Maps/PhaseII_Award_English[1].opt.pdf) (hereinafter "*Newfoundland/Nova Scotia Phase II*"), at para. 4.32.

²⁰ *Newfoundland/Nova Scotia Phase II*, at paras. 5.13-5.15.

²¹ *Newfoundland/Nova Scotia Phase II*, at paras. 5.14-5.15.

²² *Case concerning the delimitation of Maritime areas between Canada and the French Republic*, 31 I.L.M. 1145 (1992), at p.1148.

²³ ITLOS/PV.11/10, p.13, line 18 (Forteau).

²⁴ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18 (hereinafter "*Tunisia/Libya*"), at para. 133(C)(2).

²⁵ *Tunisia/Libya*, at para. 129.

1 methodology had been employed: a line cutting across Libya's coastal front and
2 blocking its seaward prolongation into the Mediterranean. Equidistance plainly would
3 have been inequitable to Libya.

4
5 Last week I showed you that the same approach was also followed in the
6 *Dubai/Sharjah* arbitration, where the island of Abu Musa was given no weight in the
7 delimitation of the EEZ boundary (this is at tab 7.7).²⁶ This is another case invoked
8 by Professor Forteau on Monday.²⁷ Here again, the effect of Abu Musa was to push
9 the equidistance line directly in front of, and across, Dubai's coastline, and to cut off
10 its seaward projection into the Persian Gulf.²⁸ Let me briefly show you once more
11 that giving Abu Musa weight in the EEZ delimitation would have created a functional
12 concavity for Dubai – which explains why the cut-off effect was so severe in that
13 case. Neither Professor Forteau nor any of his colleagues offered a response to this
14 point in five sessions of oral pleadings.

15
16 Now let's take a look at the final case on which Myanmar places heavy reliance,
17 *Romania v. Ukraine*.²⁹ This appears to be the favourite case of Myanmar's counsel.
18 We were told repeatedly that this case was decided unanimously, and that it
19 represents the current state of maritime boundary delimitation law.³⁰ We welcome
20 Myanmar's reliance on this case, because it follows exactly the same pattern as all
21 the others. It employs precisely the same approach in seeking to avoid cut-off – as
22 all of the other cases we have been discussing in regard to the effects of islands,
23 and the geographic circumstances in which they may be disregarded when
24 equidistance methodology is used (this is at tab 7.8).

25
26 As we all know, Ukraine's Serpents' Island – 22 M off the coast and 1/50th the size of
27 St Martin's – was given no weight in the delimitation of the EEZ.³¹ Here is why: just
28 as in all of the other cases we have been analyzing, the effect of this island would
29 have been to push the provisional equidistance line directly across, and in front of,
30 Romania's coast, significantly cutting off its access to the Black Sea.³²

31
32 Why was the cut-off of Romania so pronounced in these circumstances? Because
33 the inclusion of Serpents' Island in the delimitation of the EEZ would have created
34 a functional concavity for Romania. The ICJ did not make reference to any concavity
35 on Romania's coast, but it did fashion a solution that abated the cut-off effect
36 produced by Serpents' Island's deflection of the equidistance line across Romania's
37 coastal front.³³

38
39 Myanmar has spent a lot of time talking about adjacency and oppositeness, about
40 proximity to the land boundary terminus, about being on the "wrong side" of an

²⁶ *Dubai/Sharjah Border Arbitration*, Award, 19 October 1981, reprinted in 91 ILR 543 (hereinafter "*Dubai/Sharjah*"), at p. 677, para. 265.

²⁷ ITLOS/PV.11/10, p. 13, line 22 (Forteau).

²⁸ *Dubai/Sharjah*, at p.676, para. 263 and p.677, para. 265.

²⁹ ITLOS/PV.11/9, p.26, lines 41-43 (Lathrop); ITLOS/PV. 11/10, p.15, lines 27-29 (Forteau); ITLOS/PV.11/7, p.6, line 46 to p.7, line 3 (Pellet).

³⁰ ITLOS/PV.11/9, p. 26, lines 41-43 (Lathrop); ITLOS/PV.11/7, p. 2, 7, lines 1-3 (Pellet).

³¹ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 86 (hereinafter "*Romania v. Ukraine*"), at paras. 149, 150, 186-188.

³² *Romania v. Ukraine*, Sketch-map No.1 at p .9.

³³ *Romania v. Ukraine*, at para. 201.

1 artificially constructed “mainland to mainland provisional equidistance line”, and
2 about so-called “balancing islands”, but the fundamental rule that emerges from the
3 case law, when properly reviewed, is none of the above. The central and unifying
4 principle common to all these cases is this: if equidistance methodology is used –
5 and we continue to say it should *not* be used in this case – an island must be given
6 full weight unless it has the effect of pushing the provisional equidistance line across,
7 and in front of, another State’s coastal front, resulting in a cut-off of that State’s
8 seaward projection. If the provisional equidistance line *is* distorted in this manner, the
9 island may be discounted, or given less than full weight in the delimitation.
10 Otherwise, it must be fully counted. This is what all the cases we have just reviewed,
11 including the cases expressly relied on by Professor Forteau and his colleagues, all
12 show.

13
14 Mr President, I come now to the second part of my submission: the treatment of
15 St Martin’s Island under the applicable case law. We will look at the actual effects of
16 St Martin’s Island on the provisional equidistance line, and see how they compare to
17 the effects produced by the islands in the cases we have just reviewed. On the
18 screen is *Myanmar’s* map depicting the seaward projection of its coastal front
19 adjacent to and south-east of St Martin’s Island. This map was presented by
20 Mr Lathrop last Friday.³⁴ You can see from the thick arrow that the Myanmar coast
21 projects seaward directly toward the southwest. This is true, and it can be
22 appreciated even more clearly if we zoom out so that we can see the entire Rakhine
23 coast of Myanmar. What we have just added to the picture is a properly drawn
24 provisional equidistance line, which takes St Martin’s Island fully into account. This is
25 at tab 7.9.

26
27 Myanmar says that the equidistance method requires the following steps: first, to
28 draw a provisional equidistance line taking all features, including islands, into
29 account; second, to consider whether any of these features has a distorting effect on
30 the provisional line, and if it does, disregard it and adjust the line accordingly. This
31 process is described by Mr Lathrop in an article he wrote in the *American Journal of*
32 *International Law* in 2008, to which he very helpfully referred us in footnote 8 to his
33 speech last Friday. Here’s what he wrote:

34
35 “In applying the two-step equidistance process, *the Court and other*
36 *boundary tribunals have given full effect to the base points on all features,*
37 *regardless of size, in the first step of the analysis: the construction of the*
38 *provisional equidistance line. In the second step of the analysis, the effect*
39 *of these features on the equidistance line has then been discounted,*
40 *either partially or fully, if necessary, to achieve an equitable result.”³⁵*

41
42 As I pointed out last week, this is what Myanmar’s counsel say, but then they do
43 something altogether different: Mr Lathrop himself draws what he calls a provisional
44 equidistance line that ignores St Martin’s completely. He and his colleagues attempt
45 to justify this by their *a priori* declaration that St Martin’s has a distorting effect on the
46 line. But how can they know this before they draw a provisional equidistance line that
47 includes St Martin’s, and assess its effects on the line? Professor Pellet said on

³⁴ ITLOS/PV.11/8, tab 2.5 (Lathrop).

³⁵ Coalter G. Lathrop, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, 102 A.J.I.L. 113 (2008), at p. 118.

1 Monday that an equidistance line must be chosen not on the basis of the subjective
2 criteria of one of the parties, but on the basis of law.³⁶ We agree. But Professor
3 Pellet and his colleagues fail to practice what they preach. What else but the
4 subjective criteria of one of the parties – Myanmar – justifies excluding St Martin’s
5 from the drawing of the *provisional* equidistance line, even before its actual effects
6 are measured?
7

8 Perhaps this is an illustration of what my friend and colleague, Professor Sands,
9 might call the fourth golden rule of advocacy. It is this: If you write an article about
10 the law, and then say exactly the opposite in court, do not be surprised when
11 opposing counsel calls attention to the fact that you have contradicted yourself. We
12 hope that, in Myanmar’s second round, Mr Lathrop will tell us whether he got the law
13 right in his article, or here in Hamburg. Yes, no, maybe, or none of the above.
14

15 In accordance with the standard practice of the ICJ and arbitral tribunals and, as set
16 forth in Mr Lathrop’s article, if not in his pleadings before this Tribunal, we have
17 drawn a provisional equidistance line that includes St Martin’s Island. What we see
18 from this – and this is the critical point – is that it does *not* cut across, or in front of,
19 Myanmar’s south-west-facing coastal front in the area beyond 12 M. It does not cut
20 off Myanmar. It does not block Myanmar’s seaward projection. Except for the very
21 beginning of the line within the territorial sea, where Myanmar accepts full weight for
22 St Martin’s in the plotting of the equidistance line, it runs entirely in the same
23 direction as the seaward projection of Myanmar’s coast; it runs *with* the grain, so to
24 speak, not against it. Myanmar’s own arrow clearly shows this. The provisional
25 equidistance line, the legally correct one including St Martin’s Island, creates no
26 problem for Myanmar.
27

28 For Bangladesh, however, it is a different story. This is at tab 7.10. The provisional
29 equidistance line, which includes St Martin’s, *does* cut across somebody’s coastal
30 front, and *does* cause a significant cut-off effect – but the effect is not on Myanmar; it
31 is on Bangladesh. It is Bangladesh, not Myanmar, which needs an adjustment of the
32 provisional equidistance line, to achieve the equitable solution required by the 1982
33 Convention.
34

35 Professor Forteau points to this line, and he tells us: “The disproportion cannot be
36 missed”.³⁷ Really? If this is true for Professor Forteau, what he has told us is that
37 disproportion, like beauty, is in the eye of the beholder. What this reveals about
38 Myanmar’s case is that disproportion is entirely a subjective concept. Professor
39 Forteau’s remark is a telling admission that there is no objectivity, no substance, no
40 justification, no legal basis, for Myanmar’s rejection of St Martin’s Island.
41

42 Does St Martin’s have an *effect* on the provisional equidistance line? Of course it
43 does. That is true for geographical features, insular and mainland, used in plotting
44 the provisional line: they contribute to its direction. If all features that merely
45 contributed to the direction of the line were disregarded, there would be no line. The
46 pertinent question is not whether a particular feature affects the provisional
47 equidistance line but whether it *distorts* the line. Does St Martin’s distort the

³⁶ ITLOS/PV.11/9, p. 6, lines 2-5 (Pellet).

³⁷ ITLOS/PV.11/10, p. 14, lines 25-26 (Forteau).

1 provisional equidistance line? The answer, the objective answer, based on the case
2 law, is “No”! St Martin’s does not distort the line, because it does not cause the line
3 to cross, or cut across, or cut off Myanmar’s coastal front or its seaward projection.
4 The only State cut off by a properly drawn provisional equidistance line is
5 Bangladesh; and it is that cut-off that requires an adjustment, in favour of
6 Bangladesh, to avoid an inequitable solution.
7

8 However, instead of adjusting the line to reduce the cut-off of Bangladesh, Myanmar
9 asks the Tribunal to adjust it in the opposite direction, against Bangladesh, thereby
10 further exacerbating the cut-off. Myanmar’s line cannot be an equitable solution, but
11 neither is the technically correct provisional equidistance line, even if it includes
12 St Martin’s.
13

14 The reason these lines, or any other form of an equidistance line, are inequitable to
15 Bangladesh is not difficult to discern: it is the double concavity in which Bangladesh
16 sits. The concavity is the proverbial elephant in the room that Myanmar steadfastly
17 tries to ignore, or to wish away as what Professor Forteau called an “irrelevant”
18 circumstance. But as we have seen in our review of the *Dubai/Sharjah* and
19 *Romania/Ukraine* cases, the effect of a coastal concavity on an equidistance line is
20 to distort it by pulling the line closer and closer to the coast, until its seaward
21 projection is cut off. That was also true, of course, in the *North Sea* cases and in the
22 *Guinea/Guinea Bissau* arbitration, where equidistance methodology was rejected
23 altogether, for this very reason.
24

25 In this case, the pull – the distorting effect – of Bangladesh’s double concavity is so
26 strong that even St Martin’s Island can do no more than slightly reduce, but not even
27 remotely eliminate, the distorting effects of Bangladesh’s double concavity. For these
28 reasons, Bangladesh maintains that equidistance is the wrong methodology to apply
29 in this case.
30

31 Myanmar appears to believe that two wrongs make a right. In the face of the
32 distorting effects of Bangladesh’s double concavity, Myanmar would remove
33 St Martin’s from the delimitation, thus depriving Bangladesh of the one feature that
34 partially, but only partially, reduces the distorting effects of the concavity. This is
35 piling injury on top of injury.
36

37 Myanmar must recognize that its treatment of St Martin’s – giving it no effect – is
38 unsustainable as a matter of law. But their alternative argument is even worse, and
39 even less sustainable. They suggest that if St Martin’s is given full effect, then full
40 effect must also be given to their May Yu Island, also known as Oyster Island. This
41 is, with respect, ridiculous. In their written pleadings, Myanmar all but disowned May
42 Yu. They never sought any effect for it, and never drew a single line taking it into
43 account. In their Rejoinder, May Yu is practically ignored, meriting a footnote,³⁸ and
44 an afterthought to paragraph 5.32, which states:
45

46 “St Martin’s Island stands alone in the vicinity of the delimitation line –
47 except May Yu Island (Oyster Island) to which Myanmar agrees that no
48 effect is to be given in the delimitation of the maritime areas as long as St
49 Martin’s Island has no such effect either.”

³⁸ RM, footnote 169 to para. 3.18.

1
2 Myanmar's attempt to equate May Yu Island to St Martin's is difficult to take
3 seriously. This satellite photo at the same scale is located at tab 7.11. May Yu is
4 1/400th the size of St Martin's. That is 0.25 %, a quarter of one per cent. Next to May
5 Yu, Serpents' Island is a monster. This diagram compares the sizes of these islands.
6 We start with May Yu in the lower right corner; using the same scale, we add
7 Serpents', which is eight times larger than May Yu; then we add St Martin's which is
8 50 times bigger than Serpents'. This is at tab 7.12. Mr President, when it comes to
9 islands: size matters. You already know about the location, population and economic
10 life of St Martin's. The facts are undisputed by Myanmar. The facts about May Yu are
11 also undisputed: it has no permanent population, no economic life of any kind, nor is
12 it capable of sustaining either.³⁹ Myanmar's attempt to introduce alleged facts about
13 May Yu for the first time at these oral hearings, which were not part of its written
14 pleadings, and which are unsupported by any evidence before the Tribunal, is
15 inadmissible as a matter of fundamental fairness.⁴⁰ In any event, Mr Samson's
16 assertion that a permanent regiment of the Myanmar army is now stationed there is
17 not credible. A regiment consists of between 3,000 and 5,000 soldiers. The only way
18 that many soldiers could fit on this miniscule feature is by stacking them one on top
19 of the other like folding chairs.

20
21 Mr Lathrop asserts that May Yu is an island under Article 121.⁴¹ But, unlike St
22 Martin's Island, which falls under Article 121(2), and has the same entitlements in an
23 EEZ and continental shelf as a mainland, May Yu is governed by Article 121(3),
24 which makes it a rock. In that regard May Yu is like Filfla, depicted here. Filfla is the
25 Maltese rock that the ICJ gave no weight in the *Libya/Malta* delimitation.⁴²

26
27 On Monday, Mr Lathrop rather surprisingly tried to equate Filfla with St Martin's
28 Island. St Martin's is more than 130 times larger than Filfla.⁴³ Filfla is actually three
29 times larger than May Yu at high tide; Filfla was probably even larger at one time, but
30 the British navy used it for target practice during World War II. From the photo, it
31 looks like they had good aim. I thank Mr Lathrop for calling Filfla to mind, and
32 especially the ICJ's decision to disregard it because:

33
34 "the equitableness of an equidistance line depends upon whether the
35 precaution is taken of eliminating the disproportionate effects of certain
36 'islets, rocks and minor coastal projections'".⁴⁴

37
38 But to fully appreciate the mis-directedness of Myanmar's argument in regard to May
39 Yu, we need only look back at the map. This is at tab 7.13. Here is a provisional
40 equidistance line—in the red broken line-- giving full weight to both St Martin's Island
41 and May Yu. Here is one giving full weight to St Martin's Island and half weight to
42 May Yu—also a red broken line, even though May Yu is only 0.25% as large. As you
43 can clearly see, little May Yu, tiny and insignificant as it is, has a big effect on the

³⁹ RB, para. 3.124.

⁴⁰ ITLOS/PV.11/7, p. 12, lines 18-19 and p. 14, lines 30-38 (Samson).

⁴¹ ITLOS/PV.11/8, p. 16, lines 24-26 (Lathrop).

⁴² *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, Judgment, I.C.J. Reports 1985, p. 13 (hereinafter "*Libya v. Malta*"), at para. 64.

⁴³ ITLOS/PV.11/9, p. 29, lines 3-10 (Lathrop).

⁴⁴ *Libya v. Malta*, at para. 64.

1 provisional equidistance line because of its seaward location: it pushes the line, even
2 at half weight, more directly in front of and across Bangladesh's coastal front, and
3 exacerbates even further the cut-off of Bangladesh. It has no role—no role-- to play
4 in an equitable delimitation.

5
6 Mr President, please allow me to turn now from lines that are clearly inequitable to
7 Bangladesh to one that is not. Let us try to find the equitable solution to this case.
8 The next series of graphics will be found at tab 7.14. We start where we left off last
9 week in Bangladesh's first round. On your screens is a display of how, and to what
10 extent, a properly drawn provisional equidistance line – one that includes St Martin's
11 Island – helps to reduce the distorting effects of Bangladesh's concave coast. For
12 illustration purposes, as we explained last week, and not to "reclaim land", we have
13 eliminated the secondary concavity from the picture, so that we can determine its
14 effects on an equidistance line. The red line is what an equidistance line would look
15 like if there were no secondary concavity, and if St Martin's were disregarded. The
16 purple line is the provisional equidistance line including St Martin's. St Martin's, you
17 will see and may recall, offsets much, but not all, of the effect of the *secondary*
18 concavity, the concavity within a concavity. The orange area is the maritime space
19 lost to Bangladesh by reason of the secondary concavity that is not recovered even
20 by giving St Martin's the full weight to which it is entitled.

21
22 We have now added, in green, the angle bisector, before its transposition to the
23 south of St Martin's. As you can see, the green bisector is less favourable to
24 Bangladesh than a properly drawn provisional equidistance line, out to a distance of
25 approximately 140 M. The difference between the two lines out to this point is
26 shaded in red. However, as the green bisector extends seaward, beyond the point
27 where it intersects with, and crosses, the provisional equidistance line, it actually
28 recovers the orange area for Bangladesh. The highlighted line that you now see,
29 formed by the purple equidistance line that includes St Martin's, in combination with
30 the green untransposed bisector, can thus be said to properly offset the distorting
31 effects of the *secondary* concavity in Bangladesh's coast.

32
33 This highlighted line, at first glance, might appear to resemble an equitable solution,
34 but it is not. To be sure, it has the benefit of offsetting the distorting effects of the
35 secondary concavity. It also appears to give both sides something of what they have
36 argued for; for Myanmar, it is for 140 M an equidistance line, albeit a properly drawn
37 one that includes St Martin's Island, as the law requires; and for Bangladesh it is for
38 a 60 M a bisector, albeit one that is not transposed. But what makes this line still
39 inequitable to Bangladesh is that it does nothing to offset the distorting effect of the
40 primary concavity; it addresses only the problem caused by the secondary one.

41
42 Here is the only way, we believe, it is possible to address, and abate, the distorting
43 effects of both concavities. This is at tab 7.15. In fact, the distorting effects are still
44 evident, because even this line, the transposed bisector, leaves Bangladesh with
45 a tapering wedge of maritime space, the tell-tale sign of a major coastal concavity,
46 as my colleague Mr Martin has explained. Nevertheless, the transposed angle
47 bisector is the closest approximation to the equitable solution that this case requires.
48 It properly accounts for all of the features of coastal geography on which delimitation
49 within 200 M is based, including Bangladesh's double concavity and St Martin's

1 Island. It divides the relevant maritime area proportionately and equitably, and
2 Professor Crawford will show this to you following my speech.

3
4 Contrary to Myanmar's assertions, the ICJ did not speak of a "mainland-to-mainland
5 equidistance line" in *Romania v. Ukraine*. It did not utter the phrase. However, it did
6 break with custom and decide that Serpents' Island was entitled to no weight in the
7 delimitation of the EEZ without going through the first step of constructing a
8 provisional equidistance line taking it into account.⁴⁵ Mr Lathrop called this "unusual",
9 and it is.⁴⁶ As he acknowledged, the general practice of the Court and arbitral
10 tribunals, up to that point, had been to follow the two-step process he described in
11 his article.⁴⁷ To that extent, *Romania v. Ukraine* represents a departure from the
12 common approach.⁴⁸

13
14 However, the deflection of the equidistance line across, and in front of, Romania's
15 coast, and the consequent cut-off effect caused by Serpents' Island, were so
16 blindingly obvious, as our earlier graphic demonstrated, that the Court found no need
17 for the first step. St Martin's Island has no similar effect, and certainly not against
18 Myanmar.

19
20 How, then, are we to explain Mr Lathrop's assertions that: "there are minor
21 differences in geography between the two cases"; and that St Martin's "must be
22 eliminated from the construction of the provisional equidistance line, as a legal
23 matter, for the same reasons Serpents' Island, an otherwise legitimate source of
24 relevant base points, was eliminated by the Court in the *Black Sea case*"?⁴⁹ There is
25 no explanation for Myanmar's awkward attempt to conflate two very dissimilar
26 geographic situations. Like the four electricians changing the light bulb at the
27 beginning of my speech, Myanmar's counsel are guilty of trying too hard. Their
28 approach also leaves us in the dark. On Friday, Mr Lathrop said that there were
29 seven sources where the phrase "mainland-to-mainland equidistance line" can be
30 found.⁵⁰ None of them is a judicial or arbitral decision or award. The first source cited
31 is Mr Lathrop himself.⁵¹ It is, I would suggest, a relevant circumstance, when counsel
32 has to resort to citing himself to support his argument.

33
34 Professor Forteau provides no illumination either when he invokes *Romania/Ukraine*
35 for the rather strange proposition that a small island that is one of a "fringe of islands"
36 may be regarded as part of a State's coastal configuration; but even islands as large,
37 populated and significant as St Martin's do not count as part of the coast – no matter

⁴⁵ Coalter G. Lathrop, "International Decision: Maritime Delimitation in the Black Sea", 103 A.J.I.L. 543 (2009), at p. 548.

⁴⁶ Coalter G. Lathrop, "International Decision: Maritime Delimitation in the Black Sea", 103 A.J.I.L. 543 (2009), at p. 548.

⁴⁷ Coalter G. Lathrop, "International Decisions: Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*)", 102 A.J.I.L. 113 (2008), at p. 118.

⁴⁸ Coalter G. Lathrop, "International Decision: Maritime Delimitation in the Black Sea", 103 A.J.I.L. 543 (2009), at p. 548.

⁴⁹ ITLOS/PV.11/9, p. 3, lines 2-3.

⁵⁰ ITLOS/PV.11/8, p. 15 lines 11-12 and footnote 57 to that text (Lathrop).

⁵¹ ITLOS/PV.11/8, p. 15 lines 11-12 and footnote 57 to that text (Lathrop).

1 how close they are to the State's mainland – if they are not part of a so-called
2 “fringe” group.⁵²

3
4 It is true that the ICJ said that Serpents' Island could not be considered part of
5 Ukraine's coast because, among other reasons, it was not one of a “fringe of
6 islands”, but that does not help Myanmar. What the Court was saying was that the
7 only way an island like Serpents', located beyond the territorial sea at 22 M from the
8 coast, may be counted as part of the mainland coast, is if it belongs to a group of
9 islands fringing the coast and straddling the 12 M limit.⁵³ St Martin's needs no such
10 help from sister islands. It is within 5 M of the Bangladesh mainland, well within its
11 territorial sea, and an integral part of its coastal geography.

12
13 It is worth noting that Sir Derek Bowett's article, which addresses State practice,
14 draws this conclusion, at tab 7.16: “There are numerous examples of islands being
15 given separate entitlement and full weight as against mainland coasts”.⁵⁴ This is
16 reflected in the case law as well. For example, in the *Anglo-French* case, France's
17 Ushant Island, 10 M off the French coast, was given full weight and controlled the
18 median line for a length of 190 M.⁵⁵

19
20 Full weight was also given to very small islands, much less significant than
21 St Martin's, in the *Eritrea/Yemen* case.⁵⁶ Professor Sands told you yesterday that all
22 of these islands were given 12-M territorial seas. What I want to emphasize is that
23 they were all given full weight in the delimitation of the *continental shelf*, too. These
24 include some of Eritrea's Dahlak Islands, and Yemen's islands of Tiqfash, Kutama
25 and Uqbar, all of which were treated as “coastal islands” even though they are
26 farther from their respective coasts than St Martin's is from Bangladesh.⁵⁷ Contrary
27 to what you were told by Mr Lathrop, nowhere in this award – nowhere – did the
28 arbitral tribunal indicate that its decision to give full weight to these islands in the
29 continental shelf was based in any way on the presence of so-called “balancing”
30 islands.⁵⁸

31
32 None of Myanmar's counsel made any effort to explain how it could be equitable to
33 give Myanmar's Little Coco Island full effect in the delimitation of the equidistance
34 boundary with India out to the 200-M EEZ limit, but not equitable to provide the same
35 treatment to St Martin's Island, which is the same size as Little Coco and much
36 closer to the mainland coast. As you know, equidistance methodology was rejected
37 in the *Guinea/Guinea Bissau* case. But it is interesting to note that the arbitral
38 tribunal considered tiny Alcatraz Island to be significant enough to transpose the
39 boundary line more than 12 M to the west in order to keep Alcatraz within Guinea's
40 waters. Alcatraz Island is much smaller than St Martin's, much further from the
41 mainland coast, and has no population, except for the rather extended family of
42 seabirds you see on your screens.

⁵² ITLOS/PV.11/10, p. 12, lines 3-7, 35-38; p. 13, 14-18; p. 14, lines 19-22; p. 15, lines 19-22; p. 17, lines 1-6.

⁵³ *Romania v. Ukraine*, at para. 149.

⁵⁴ D. Bowett, “Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations,” in J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries* (2005), Vol. 1, p. 132.

⁵⁵ *Anglo-French Continental Shelf*, at para. 251.

⁵⁶ *Eritrea/Yemen II*, at paras. 146, 151.

⁵⁷ *Eritrea/Yemen II*, at paras. 146,

⁵⁸ ITLOS/PV.11/8, p. 25, lines 4-6; p. 25, lines 10-11 (Lathrop).

1
2 At tab 7.17 there is another of Sir Derek Bowett's conclusions. I am reading in the
3 interest of time from the middle of the highlighted portion but the rest of the
4 paragraph is presented:

5
6 "the notion of 'distortion' is always linked to a perception of what the line
7 would otherwise be, if the island did not exist. A variation caused by the
8 island which appears inequitable, given the location and size of the
9 island, will be regarded as a 'distortion'."⁵⁹

10
11 That is Bangladesh's argument. One cannot judge an island's effects to be distorting
12 based on a set of abstract rules, let alone "rules" or "conditions" that have never
13 been adopted or applied by any Court or arbitral tribunal. Nor is it wise, except in the
14 most extreme cases, to exclude an island on the basis that it is distorting, without
15 first plotting a provisional equidistance line that demonstrates such an effect.
16 Distortion can only be determined by looking at the effects of an island on a
17 particular provisional equidistance line, within a specific geographical context.

18
19 And this is precisely what the ICJ and arbitral tribunals have done. The common
20 thread of all the decided cases – the unifying theme – is that islands are deemed to
21 distort the equidistance line and produce an inequitable result when they push or
22 deflect the line across and in front of another State's coast and cut off its seaward
23 projection. St Martin's Island produces no such effect on Myanmar. It is not
24 "extraneous" to this delimitation. It cannot be ignored; it cannot be disappeared. It is
25 entitled to, and should be given, full weight in the event an equidistance approach is
26 favoured by the Tribunal.

27
28 But even then, the resulting line will not be equitable to Bangladesh. To produce an
29 equitable result in this case, a further adjustment must be made to mitigate the
30 effects of Bangladesh's concave coast, since St Martin's by itself provides
31 insufficient mitigation, or a more appropriate delimitation methodology should be
32 employed. And this is where I will pass the baton to Professor Crawford.

33
34 But before doing so, however, I feel that a response should be made to the
35 conclusion that Mr Lathrop gave to his argument on Monday, which – not to single
36 him out – may have reflected his colleagues' attitude as well. Here is a graphic that
37 he presented on Monday, and these are his words: "The fact that Myanmar,
38 Bangladesh and India share a tripoint in the vicinity of point Z is a *geographic fact*.
39 Bangladesh *must learn to live with that fact*".⁶⁰ The tone was as unfortunate as the
40 statement was wrong. With respect, it is not for counsel – not even Bangladesh's
41 own counsel – to lecture a sovereign State on what it "must learn to live with". This
42 conveys a message that is inconsistent with the spirit of friendship and mutual
43 respect that was underscored in the very commendable opening speeches of the
44 Agents of both Parties.

45
46 Mr Lathrop's statement about Myanmar's point Z is not only unkind but untrue. Point
47 Z is not a "geographic fact". The concavity of Bangladesh's coast is a geographic

⁵⁹ D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries* (2005), Vol. 1, pp. 143-144.

⁶⁰ ITLOS/PV.11/9, p. 34, lines 30-32 (Lathrop).

1 fact. It is apparent on every map and chart of the region, except those that Myanmar
2 put in front of you, which have a cut-off effect of their own: they cut off almost all of
3 Bangladesh; in fact, they cut it entirely out of the picture, except for the small slice of
4 coast next to the land boundary terminus. One gets the impression that they not only
5 want you to ignore the concavity and ignore St Martin's Island, they want you to
6 ignore *Bangladesh!*

7
8 Like the concavity, St Martin's Island is also a geographic fact. You can go there,
9 and you can stand anywhere on its eastern shores and see the mainland coasts of
10 both Bangladesh and Myanmar.

11
12 In contrast, point Z exists only on paper. It cannot be found anywhere in the Bay of
13 Bengal. It is an imaginary point derived solely by the cartographic manipulation of
14 ignoring the real, physical geographic facts: the concave Bangladesh coast, and
15 St Martin's Island. You cannot get there otherwise. In the words of the American, and
16 French, poet Gertrude Stein, who was not, but might have been, referring to point Z:
17 "There is no there, there".⁶¹

18
19 If point Z were ever to come into existence, it would not be by natural means. It
20 would be a man-made disaster and one which Bangladesh trusts that the Members
21 of this Tribunal, in your wisdom, mastery of the law, and commitment to achieve an
22 equitable solution, will not allow to occur.

23
24 Mr President, Members of the Tribunal, since this is the last time I will be addressing
25 you in these proceedings, please allow me once again to say what an honour and a
26 privilege it has been for me to plead before you in this history-making case. I am very
27 grateful and proud to be a part of it. I thank you again for your patience and your kind
28 and courteous attention. And I ask that you now give the floor to Professor Crawford.

29
30 **THE PRESIDENT:** Thank you, Mr Reichler, for your statement. I now give the floor
31 to Mr James Crawford.

32
33 **MR CRAWFORD:** Mr President, Members of the Tribunal, in this presentation, I will
34 do two things. First, I will deal with Myanmar's critique of the relevant coasts and
35 areas as presented in our first round; and, secondly, with its critique of the angle
36 bisector as a solution to the problem that Bangladesh finds itself in - shelf and zone-
37 locked in the vast open area of the Bay of Bengal.

38
39 I turn then to the first of these topics, the relevant coasts and relevant areas. There
40 are three aspects of the problem for which our argument was criticized: first, the
41 western segment of the line with India; second, the question whether a line should
42 be drawn across or within the Meghna Estuary and whether its coasts count as
43 relevant; and, third, the southern portion of Myanmar's coast between Bhiff Cape
44 and Cape Negrais. Before I deal with these, I should note that Myanmar made no
45 answer to my criticism of the way in which their line measured their coastal
46 configuration in loving detail, while ours was given a broad-brush treatment.
47 I mentioned in that context the point about fractal geometry; there are many different

⁶¹ G. Stern, *Everybody's Autobiography* (1937), at p. 289.

1 ways of measuring coasts and one must at least be consistent as between different
2 coasts.⁶²

3
4 Turning first to the putative line separating Bangladesh from India, we told the story
5 so far in our Reply.⁶³ Counsel for Myanmar, with great independence of mind,
6 complained that in no way could Myanmar be required to bear any burden or risk
7 relating to the unknown claims of India.⁶⁴ I am afraid that there is legitimate concern
8 on Bangladesh's part that it is the odd person out in a game of "pass the parcel" – or
9 perhaps the game is "pass the counsel". However, for the sake of argument, and
10 only for the purposes of this exercise, let us accept Myanmar's version of the
11 western limit of the relevant area, shown on the screen.

12
13 Then at the other end of the coast we have the controversy pitting Cape Bhiif against
14 Cape Negrais. You can see these two features on the screen now, with the
15 distances from the land boundary terminus: this is tab 7.19 in your folders. Myanmar
16 argues that all the coast down to Cape Negrais is relevant despite its great distance
17 from the delimitation area, this cannot be right.

18
19 In *Jan Mayen*, the Court identified the relevant coasts as follows: You can see the
20 graphic transposed from the Court's decision.

21
22 "It is appropriate to treat as relevant the coasts between points E and F
23 and between points G and H on sketch-map No. 1 in view of their role in
24 generating the complete course of the median line provisionally drawn
25 which is under examination."⁶⁵

26
27 You see these four points on the screen. The segments situated north of point H and
28 south of point G were not considered as relevant for two reasons. First, the
29 Greenland coast north of point H was not relevant because

30
31 "Point H, in conjunction with point E determined the equidistance line at
32 the point of its intersection with the Danish 200-mile limit."⁶⁶

33
34 Second, the Greenland coast south of point G was not relevant because "point G
35 determined in conjunction with the southern tip of Jan Mayen (point F) the
36 equidistance line at its point of intersection (point D) with the 200-mile line claimed
37 by Iceland"⁶⁷ – a third state – yet both points G and H were well within 200 M of the
38 area of the delimitation, and coasts beyond both points G and H generated
39 entitlements there.

40
41 To conclude, because Bhiif Cape is located 200 M from the land boundary terminus,
42 any segment of the coastline further south to Cape Negrais becomes irrelevant, just
43 like any segment northwest of point H on Greenland.

44

⁶² ITLOS/PV.11/5, p. 6, lines 24-26.

⁶³ MR, para 3.36; Annex R2.

⁶⁴ Lathrop, ITLOS/PV.11/9 p.m., p. 25 lines 4-28; Wood

⁶⁵ Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway),
Judgment, I.C.J. Reports 1993, p. 38 (hereinafter "Jan Mayen") at para. 67.

⁶⁶ *Jan Mayen* at para. 20.

⁶⁷ *Jan Mayen* at para. 20.

1 Finally, in the concavity of the Bay there is the closing line across the Meghna
2 Estuary. You have heard the arguments about the Karkinits'ka Gulf in *Romania v.*
3 *Ukraine*. The comparison is on the screen now, and they are obviously different.

4
5 Myanmar's characterization of the Meghna Estuary's coastline as not relevant is
6 unfounded, and the analogy between the Estuary and the Karkinits'ka Gulf is
7 misconceived. As you can see, these waters of the Meghna Estuary are part of the
8 area affected by the line, to the same extent as waters an equivalent distance to the
9 south of the putative boundary. The coasts within the estuary look out towards the
10 area of the delimitation.

11
12 In the interests of time, I will not read the long quotation from the *Gulf of Maine* case
13 in relation to the Bay of Fundy.

14
15 I simply make the point that two segments of the Canadian coastline in the Bay of
16 Fundy face each other and measure approximately 120 M. These were taken into
17 account in the calculation of the length of the relevant coastlines because they too
18 looked on to the area which was under delimitation.

19
20 Because the Meghna Estuary opens out onto the Bay of Bengal and constitutes an
21 integral part of it, the relevant coasts in that area as measured by Bangladesh should
22 be taken into account in the delimitation. For the same reason, the Meghna Estuary
23 cannot be analogized to Karkinits'ka Gulf in *Romania v. Ukraine*.

24
25 Mr President, Members of the Tribunal, I struggled in *Romania v. Ukraine* with the
26 south-facing coasts of Ukraine and lost that argument. I persist in thinking, that
27 having happened, that the predominantly south-facing Bangladeshi coasts within the
28 estuary are relevant coasts. If the stretch of coast which you can see here at 39 M
29 just north of Cape Negrais is relevant – it is more than 500 km south of the land
30 boundary terminus and does not generate any overlapping potential entitlement –
31 then I fail to understand how the equivalent coasts within the estuary of 39 M, which
32 is only 150 km north of the land boundary terminus and look straight on to the area
33 to be delimited, could possibly be irrelevant. How can the area in the south be
34 relevant and the area in the north be irrelevant?

35
36 Indeed, the relevance of the area in the north can be seen from Myanmar's own
37 graphic, which draws a line across the opening of the estuary and shows as relevant
38 area everything up to that line; you can see it on the screen now. How can the area
39 in the vicinity of that line be relevant, while the predominantly south-facing coasts
40 a few miles further north are not relevant coasts? How can that be? It will be one of
41 the mysteries of the world. People down further on the eastern Bioko could go and
42 see it. It does not make sense. These coasts generate overlapping potential
43 entitlements.

44
45 For the reasons I have given, Bangladesh maintains its position as to the relevant
46 coasts and areas in all respects.

47
48 **THE PRESIDENT:** I am sorry to interrupt. Perhaps a little slower.

1 **MR CRAWFORD:** I am sorry, Sir. But let us suppose, hypothetically, that Myanmar
2 is correct on Cape Negrais, correct on the limit with India and only incorrect, as it
3 must be incorrect, in relation to the estuary. Let us also suppose, as is consistent
4 with principle, that all relevant coasts generate corresponding relevant areas. In the
5 Meghna Estuary there are relevant coasts, shown as simplified straight lines in the
6 graphic on the screen; the area bounded by them must be part of the relevant area,
7 so we have coloured that in. In the south, Myanmar cannot claim Cape Negrais
8 without counting the areas offshore to the west out to 200 M, shown on the screen
9 now. Making those three adjustments gives a relevant area of 252,500 km².

10
11 Now as to relevant coasts – you can see the relevant area in the delightful pink –
12 again for the sake of argument, the entire Myanmar coast down to Cape Negrais and
13 the entire Bangladesh coast across to the land boundary terminus with India,
14 representing the complex coast of the estuary with a straight line and including all
15 the waters of the sea bounded by them. We measure the two coasts the same way,
16 with the same level of detail, and you can see on the screen now. The total of the
17 “relevant coasts” on this basis – a basis favourable to Myanmar – is as follows:

18
19 Bangladesh: 510 km
20 Myanmar: 600 km
21 Ratio (B:M): 1:1.17
22

23 Now as a preliminary, let us divide this area by the ratio of relevant coasts. I do this
24 not because the ratio of relevant coasts is necessarily a criterion for delimitation, but
25 simply so as to give you an idea of possible parameters. The result is a line much
26 more favourable to Bangladesh than any line for which either party has argued. It
27 would give Bangladesh a very significant frontage at 200M, with strong implications
28 for delimitation of the outer continental shelf. This is another way of saying – or at
29 least of illustrating – that Bangladesh is significantly disadvantaged by its position at
30 the back of the Bay of Bengal.

31
32 Now I propose to divide the relevant area now using lines for which the parties have
33 argued. Let us start with Myanmar’s mainland equidistance line, as Professor Pellet’s
34 peremptory norm of maritime delimitation would have us do. I will have more to say
35 about Pellet’s Law this afternoon. The result is shown on the screen:

36
37 Bangladesh: 84,100 km²
38 Myanmar: 168,300 km²
39 Area ratio (B:M): 1:2.00
40 As opposed to a
41 Coastal ratio (B:M): 1:1.17
42
43

44 Disporportionate? Pretty obviously. This is an indication of significant inequity.
45 Myanmar gets much more than its coastal length would suggest or imply, *twice* as
46 much.

47
48 Moreover you will see that this line falls short of the 200-M line from Bangladesh.
49 The necessary implication is that Myanmar gets the entire bilateral area of shelf
50 beyond 200 M and it has only India to deal with in the trilateral area. Already within

1 200 M Myanmar is significantly favoured; beyond 200 M its cup runneth over.
2 Bangladesh gets nothing.

3
4 Now let us use Bangladesh's line, the angle bisector. This produces the following
5 result:

6
7 Bangladesh: 107,100 km²
8 Myanmar: 145,300 km²
9 Area ratio (B:M): 1:1.36

10
11 This line also gives Bangladesh access to the outer continental shelf. It is a much
12 more equitable line. Whether it is open to the Tribunal to adopt it is a question to
13 which I will return.

14
15 Now, in the interests of equality, let us use Myanmar's version of the angle bisector,
16 which Mr Lathrop showed you on Tuesday. This produces the following result:

17
18 Bangladesh: 69,800 km²
19 Myanmar: 182,800 km²
20 Area ratio (B:M): 1:2.62

21
22 This line of course also denies Bangladesh access to the outer continental shelf. To
23 be fair to him, Mr Lathrop did not actually advocate this line.⁶⁸ One can see why.

24
25 Finally, in the interests of full transparency, let us look at two other versions of THE
26 equidistance line. The first, the Tribunal if it decides that some version of the
27 equidistance line is called for, will require some study. Thought we might call it the
28 full effect line. It is the line which entirely appropriately gives full effect to St Martin's
29 Island and zero effect to Oyster Island. Mr Reichler has already referred to it. He
30 stressed that it is only a starting point and that it requires adjustment to further abate
31 the effects of Bangladesh's concave coast. But as it is, it produces the following
32 result:

33
34 Bangladesh: 97,400 km²
35 Myanmar: 155,100 km²
36 Area ratio (B:M): 1:1.59

37
38 And it gives Bangladesh a modest frontage at 200 M.

39
40 The second version of an equidistance line is one to which Myanmar made no
41 reference whatever. This is the line which gives full effect both to St Martin's Island
42 and to Oyster Island. It produces the following result:

43
44 Bangladesh: 77,000 km²
45 Myanmar: 175,500 km²
46 Area ratio (B:M): 1:2.28

47

⁶⁸ ITLOS/PV.11/11, p. 7, lines 16-18 (Lathrop).

1 And it gives Bangladesh no frontage at all at 200 M – a powerful effect for an article
2 121(3) rock, which is all that Oyster Island is! You will find these results tabulated at
3 tab 7.24 of your bundles. I will return to them briefly this afternoon.

4
5 Mr President, Members of the Tribunal, before leaving the question of relevant
6 coasts and relevant areas, let me deal with two minor points.

7
8 First, no doubt it will be said that the figures I have just given you are new or revised
9 figures, no objection. The Tribunal will no doubt be in a position to check them
10 carefully for itself, as we have done. I would note in this context the figure cited by Mr
11 Lathrop for the area that our coastal façade from the two terminal points of the land
12 boundary “adds” to the land territory of Bangladesh is “over 23,000 sq km”.⁶⁹ The
13 figure in the Counter-Memorial was 19,519.⁷⁰ Apparently Bangladesh has grown
14 rather significantly in the course of the last year, perhaps due to plate tectonics. But
15 the better point, is that the Tribunal should have now the best figures available from
16 the serried ranks of technicians assembled on either side.

17
18 Secondly, counsel opposite criticised Bangladesh for supposedly having agreed
19 a different coastal length of Myanmar during the 2008 negotiations.⁷¹ What the
20 record reflects is that Bangladesh and Myanmar exchanged various ideas about
21 coastal lengths as part of their effort, ultimately unsuccessful, to justify their different
22 views on the boundary beyond 12 M. whatever may have been said on that
23 occasion, it cannot possibly be relevant now. There is no basis for an estoppel.
24 Where is the reliance? Moreover, if the doctrine of estoppel is to make its way into
25 maritime boundary negotiations – negotiations in which, according to Myanmar,
26 nothing was agreed until everything is agreed⁷² – then we will never hear an end of
27 it. There is nothing in the point.

28
29 Mr President, that concludes my presentation of relevant coasts and relevant areas
30 as I move now about to turn to the angle bisector, but I think we should be fortified by
31 caffeine for that experience.

32
33 **THE PRESIDENT:** Thank you very much. The Tribunal will now withdraw for a break
34 of 30 minutes and we shall return at 12 noon.

35
36 (Short adjournment)

37
38 **MR CRAWFORD:** I turn to the question of the angle bisector, vigorously assaulted
39 by Professor Pellet and Mr Lathrop (at one point I felt like I had been mugged in the
40 park!)

41
42 A preliminary point to be made, however, concerns the *point* of the bisector. It is not
43 there to smooth out the odd promontory or to justify ignoring coastal islands.
44 Mr Lathrop presented it as a matter of technique,⁷³ but that ignores the reason for
45 using it in the first place. It is a remedy for an inequitable result, which we know

⁶⁹ ITLOS/PV.11/11, p. 4, line 29 (Lathrop).

⁷⁰ Counter-Memorial of Myanmar (hereinafter “MCM”) at p 119, sketch-map 5.4.

⁷¹ ITLOS/PV.11/9, p. 20, lines 8-10 (Müller).

⁷² ITLOS/PV.11/3, p. 7, lines 25-26 (Wood).

⁷³ ITLOS/PV.11/11, p. 1, lines 41-45, p. 2, lines 1-8 (Lathrop).

1 follows from strict equidistance when there is a coastal State with a comparable
2 coastline caught in a concavity. If there are geographical circumstances to hand – for
3 example, coastal islands – which allow adjustment of the equidistance line to
4 achieve an equitable result, then well and good, they can be used. Let me repeat
5 that: if there are geographic circumstances to hand – for example, coastal islands –
6 which enable adjustment of the equidistance line to achieve an equitable result, then
7 well and good; they can be used in that way, even if they are unrelated to the cause
8 of the inequity. But what if there are no such features? An angle bisector which
9 simply stuck to the existing south-west facing adjacent coasts of the two parties –
10 such as Mr Lathrop showed you – will not solve the identified problem. You have
11 seen that Myanmar’s bisector gives the worst result of all for Bangladesh – an area
12 ratio of 1:2.62. Maritime delimitation, Mr President, Members of the Tribunal, is not
13 a matter of rolling dice, but nor is it a matter of fiddling at the edges; it is a purposive
14 activity with a clearly articulated rationale in articles 74(1) and 83(1) – achieving an
15 equitable result.

16
17 Professor Pellet and Mr Lathrop both complained that our angle bisector cut the
18 corner and was therefore inadmissible as a matter of law: they are fond of law doing
19 all the work, avoiding the need for the best judgment of your Tribunal. If they protest
20 so much *in limine* it is perhaps because they are concerned at what will transpire
21 over the threshold.

22
23 As to substance, Myanmar criticises both the closing line across our coastal front
24 and the transposition of the bisector to the end of the territorial sea boundary. Let me
25 deal with the transposition point first.

26
27 As to transposition, as Mr Reichler has said, this is by no means unprecedented. In
28 *Tunisia v. Libya*, the Court transposed the angle bisector reflecting the average
29 direction of Tunisia's coastal façade, so that it would begin at the end of the first
30 landward, segment of the delimitation line. You can see the transposition on the
31 screen.

32
33 In the *Gulf of Maine* case, the Chamber commenced the bisector at a point seaward
34 of the Parties’ territorial seas, which were not delimited in the area adjacent to the
35 land boundary terminus. This was agreed point A. It is true that the bisector was not
36 formally transposed to point A; Mr Lathrop complained that I said it was.⁷⁴ What
37 actually happened is that the same operation was performed at point A as would
38 have been performed at the land boundary terminus, producing exactly the same
39 angle of direction. It was as if Mr Lathrop told me that he took a pizza to a party on
40 a boat when what he actually did was to take the ingredients and cook the pizza
41 when he got to the boat. If it was the same pizza I would congratulate him on his
42 versatility, his capacity to replicate cooking his pizza while at sea – not accuse him of
43 not telling the truth.

44
45 The arbitral tribunal in *Guinea/Guinea Bissau* used a bisector of the West African
46 coastline to delimit the boundary, and commenced it at a seaward point 12 M to the
47 west of Alcatraz Island, so that that small feature would remain on Guinea’s side of
48 the boundary.

⁷⁴ ITLOS/PV.11/11, p. 5, lines 3, 21-25 (Lathrop).

1
2 What these cases show is that, where equidistance is not considered an appropriate
3 delimitation methodology, and a bisector is used instead, it is not uncommon to
4 transpose the bisector, or to commence it at an appropriate point seaward of the
5 land boundary terminus. That is what Bangladesh has done here.
6

7 I turn to the larger question of the choice of the line to represent Bangladesh's
8 coastal frontage. As the Tribunal will know, we chose a line joining the two land
9 boundary termini. As I said in our first round, this reflects the average direction of
10 a bidirectional coast: it is not a mere arbitrary line. It was directed at resolving, to
11 some degree, the problem of the concavity. And you saw from the figures
12 I presented before the coffee break that it did so to some degree.
13

14 The angle bisector must be applied so as to alleviate the problem that warrants
15 recourse to it in the first place. Thus, in the *Guinea/Guinea-Bissau* case, the arbitral
16 tribunal employed it in such a way as to remedy the cut-off that equidistance would
17 otherwise have imposed on Guinea. Any other approach would convert what is
18 intended to be a solution into a perpetuation of the problem.
19

20 As the Tribunal is aware, the International Court was not called upon to effect a final
21 delimitation in the *North Sea* cases. It was asked only to identify the applicable
22 principles. Nonetheless, it is instructive to consider what would have been the result
23 had the Court applied the bisector method in the manner we suggest here. Professor
24 Forteau in effect implied that this was impossible. He said:

25
26 "The International Court of Justice has never delimited Germany's
27 maritime boundaries in the North Sea and it is highly speculative to
28 imagine what it would have done in real terms."⁷⁵
29

30 But the Court *knew* that the parties were committed to apply its judgment, and it
31 must have believed that it was *possible* for them to do so. What is clear is that they
32 could not have done so by applying any version of equidistance, howsoever
33 modified. So let us apply the angle bisector methodology to the West German
34 concavity problem, and see what it looks like. As you will see, it would have actually
35 produced a worse result for Germany than the one ultimately negotiated, though
36 nonetheless a comparable result.
37

38 You can see of course the pertinent coasts and the eventual maritime agreement
39 made in 1971. We then draw straight line coastal façades for all three States. The
40 coastal façade for Germany resembles the one we have drawn for Bangladesh.
41 Visually, it appears to cut across open water from one end of the coast to the other.
42 In fact, it merely represents the average direction of a bi-directional coast. In any
43 event, if we were to bisect the angles of the coastal fronts so depicted, the result
44 would be as shown on the screen now.
45

46 The fact that the result is not as favourable for Germany as the agreed boundaries of
47 1971 shows the modest nature of what Bangladesh seeks in this case. Far from
48 seeking something radical, all we seek is a modest abatement of the concavity of the

⁷⁵ ITLOS/PV.11/10, p. 4, paras. 28-30 (Forteau).

1 coast. No doubt our colleagues opposite would regard this as a form of “land
2 reclamation”; but that is sour grapes: I hope the local vigneron of Hamburg (if such
3 there be) will forgive the phrase “sour grapes”. The fact is that the Court envisaged
4 a solution in accordance with international law, and in accordance with international
5 law, the Parties found one. The angle bisector provides a possible analysis of
6 a regular solution.

7
8 Mr President, Members of the Tribunal, to summarize, the bisector has been used as
9 an alternative to equidistance in a number of different contexts for a number of
10 different reasons, including to abate the prejudicial effects of a concave coast,
11 exactly the reason Bangladesh says it should be used here.

12
13 For these reasons I reject the criticism of our opponents as to the choice of coastal
14 lines or their transposition to the end of the territorial sea boundary. It would be
15 wholly unreasonable to apply the bisector method in a way that made matters
16 worse – even *more* inequitable. Its purpose is to produce an equitable result when
17 equidistance cannot do so. It is to be employed with that objective firmly in mind.

18
19 Mr President, Members of the Tribunal, thank you for your attention. I would ask you,
20 Mr. President, to call upon Professor Boyle.

21
22 **THE PRESIDENT:** Thank you, Mr Crawford. I now give the floor to Mr Alan Boyle.

23
24 **MR BOYLE:** Mr President, members of the Tribunal. On Tuesday you heard a very
25 long and complicated speech by Daniel Müller expanding on Myanmar’s arguments
26 regarding the continental shelf beyond 200 M and the interpretation of article 76.⁷⁶
27 And Mr Müller is obviously very interested in the technicalities of delineating the
28 outer limit of the continental shelf. It is an enthusiasm he no doubt hopes that we all
29 share, although I wonder if, like me, you sometimes felt rather confused by his
30 arguments. I have read and re-read his speech, and still find it hard to see how it can
31 help this Tribunal decide issues that are relevant to this case. He talked a great deal
32 about the views of “Earth scientists” on what constitutes a continental shelf and so
33 on, but with the utmost respect to scientists, including Professor Curray, who is in the
34 courtroom today, we are not here to conduct an academic seminar on the uses of
35 scientific language. Whatever the terms used in article 76 may mean is a question
36 for lawyers; it is not a question for scientists – and that much is obvious to a lawyer.
37 Fortunately, most of what Mr Müller said was previewed last week by Professor
38 Pellet, who was clearer, but no more convincing, and scarcely more relevant.

39
40 So with your permission, I propose to deal briefly with the comments of Professor
41 Pellet and Mr Müller on natural prolongation, before responding to what they had to
42 say about article 76. And I will do my best to end by one o’clock, but I cannot
43 promise that I will succeed.

44
45 Before doing so, however, let us recall what the Tribunal has to decide with respect
46 to the continental shelf beyond 200 M, because on this subject Myanmar has sought
47 to confuse the issues and to mislead the Tribunal into thinking that the case is far
48 more complex than it really is. First, there is the question whether Myanmar has any

⁷⁶ ITLOS/PV.11/11 (E/10) p. 15, line 31 *et seq.*(Müller).

1 entitlement under article 76 to exercise sovereign rights in the continental shelf
2 beyond 200 M. Bangladesh, of course, argues that it does not.⁷⁷ This requires the
3 Tribunal to decide whether article 76(1) requires geological and geomorphological
4 continuity between the land territory of Myanmar and the continental margin beyond
5 200 M. It also requires the Tribunal to decide whether geological and
6 geomorphological continuity actually exists between Myanmar's land territory and the
7 areas of continental shelf beyond 200 M, the ones that are also claimed by
8 Bangladesh. If geological and geomorphological continuity is necessary, pursuant to
9 article 76(1), and if the evidence does not show that it exists, then Myanmar can
10 have no entitlement to an outer continental shelf beyond the 200-M limit.

11
12 And Mr President, I might observe that the text from which I am reading is not quite
13 the text that you have. I have been making a number of additions to it.

14
15 Secondly, and only if the Tribunal decides that Myanmar does have an entitlement
16 beyond 200 M, then you have to achieve an equitable delimitation in the outer
17 continental shelf, as between Myanmar and Bangladesh.⁷⁸ That would require the
18 Tribunal to decide what circumstances are most relevant to an equitable delimitation
19 in that area. In particular, the Tribunal will have to decide whether, as Bangladesh
20 argues, the encroachment by Myanmar on the natural prolongation of Bangladesh
21 which results from the unusual concave coastal geography whether that is relevant
22 beyond 200 M. You will also have to decide whether the geology, geomorphology of
23 the seabed and subsoil are circumstances to be taken into account and relevant to
24 the delimitation beyond the 200-M limit. Bangladesh has already made known its
25 views on all of these questions.⁷⁹ Myanmar has said nothing about equitable
26 delimitation beyond 200 M in the first round – in its view the second question that the
27 Tribunal posed to the parties simply does not arise. We regret this refusal to address
28 the Tribunal's second question, even hypothetically, because it deprives us of the
29 opportunity to respond and it leaves the Tribunal in a position of some difficulty.
30 Accordingly, in this round I have nothing more to add on equitable delimitation
31 beyond 200 M, since there is nothing to respond to, and I will simply reiterate that the
32 position outlined by Bangladesh in its submissions last week on equitable
33 delimitation beyond 200 M has not changed.

34
35 Now Mr President, Members of the Tribunal, those are the only relevant questions
36 for the Tribunal in respect of delimitation beyond the 200 M. That is probably a large
37 enough menu for any court to decide in one case. Everything else in Professor
38 Pellet's speech and Mr Müller's is a diversion. Despite what Mr Müller seemed to
39 suggest, there is no need to understand or apply the Hedberg or the Gardiner
40 formulae on the outer edge of the continental margin. That very technical question
41 can safely be left to the States' Parties and to the CLCS in accordance with article
42 76(8). It is their task, not yours, to delineate the outer limit of the continental shelf of
43 either Party.

44
45 Nor, as the case now stands, do you need to decide whether Bangladesh has any
46 entitlement to a continental shelf beyond 200 M – not for the reasons given by

⁷⁷ ITLOS/PV.11/8 (E/5) p. 14, lines 27-29 (Boyle); Memorial of Bangladesh (hereinafter "MB") paras. 7.27-7.36.

⁷⁸ Ibid PV lines. 30-32; MB para. 7.42; Reply of Bangladesh (hereinafter "RB"), paras. 4.75-4.89.

⁷⁹ Ibid.

1 Myanmar, but simply because Myanmar has not challenged Bangladesh's evidence,
2 whether in the written pleadings or in these proceedings. And as Mr Martin reiterated
3 yesterday, the point is not an issue between the Parties, and it is now too late for
4 Myanmar to make an issue of it.

5
6 I turn then to natural prolongation, which is that the heart of this case, at least in so
7 far as it concerns boundary delimitation beyond 200 M. The point of departure in all
8 maritime delimitations is the entitlement of a State to a given maritime area.⁸⁰
9 Beyond 200 M, natural prolongation - not distance from the coast - is the basis of
10 entitlement to an extended continental shelf. The ICJ tells us in *Tunisia v. Libya*:

11
12 " [i]t is only the legal basis of the title to continental shelf rights [...] which
13 can be taken into account as possibly having consequences for the
14 claims of the Parties."⁸¹

15
16 Natural prolongation is therefore fundamental to any claim beyond 200 M. Without it,
17 Myanmar has no continental shelf beyond that limit.

18
19 Professor Pellet does not deny that the continental shelf beyond 200 M can only be
20 constituted by natural prolongation. What he objects to is the proposition that natural
21 prolongation is to any extent a geological phenomenon, although even here we note
22 that he only says "not necessarily so".⁸² He agrees that in the *North Sea Case* the
23 ICJ wisely accepted that geology "appears to have to be taken into account",⁸³ but
24 he immediately goes on to dismiss the statement as outdated, like the Court's
25 references to concavity and equidistance.⁸⁴ My colleagues have explained why the
26 *North Sea* case is still very relevant, and I do not think there is any need for me to
27 repeat what they have said. The *North Sea* is somewhat distant from Paris and
28 obviously not well understood there, but I am sure that will not be a problem in
29 Hamburg – or The Hague.

30
31 Professor Pellet seems much more comfortable in the Mediterranean. He agrees
32 that in the *Libya v. Malta Case* the ICJ

33
34 "recognized the relevance of geophysical characteristics of the area of
35 delimitation if they assist in identifying a line of separation between the
36 continental shelves of the parties."⁸⁵

37
38 So he accepts the principle – that geology is relevant to identifying a boundary
39 between two separate continental shelves – and that is precisely the point that
40 Bangladesh has repeatedly made. Geology can be relevant in this way if it marks the
41 limit of the natural prolongation of one state, where "a marked disruption or
42 discontinuance of the sea-bed" serves as "an indisputable indication of the limits of

⁸⁰ *Delimitation of Maritime Boundary between Barbados and Trinidad and Tobago*, Award, 11 April 2006, reprinted in 27 RIAA 147 para. 224. Reproduced in MB, Vol. V.

⁸¹ *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18 at para. 48 (hereinafter "*Tunisia/Libya*").

⁸² ITLOS/PV.11/8 (E/7) p. 30, lines 4 (Pellet).

⁸³ Ibid p. 30, lines. 12-14.

⁸⁴ Ibid lines. 18-19.

⁸⁵ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13, para. 40 (hereinafter "*Libya/Malta*").

1 two separate continental shelves, or two separate natural prolongations”. I am of
2 course quoting there from the language of the ICJ in *Tunisia v. Libya* once more.⁸⁶ It
3 is the undisputed, unchallenged evidence before the Tribunal showing the complete
4 absence of geological prolongation from Myanmar beyond 200 M which makes the
5 200-M line the limit of Myanmar’s continental shelf in the present case.
6

7 Now, to this argument Professor Pellet has a simple answer. He says: “This hardly
8 corresponds ... to the circumstances of the facts of our case...”⁸⁷ But, unlike Libya,
9 or Tunisia, or Malta, Bangladesh can point to a major geological discontinuity – the
10 most significant discontinuity of all – a tectonic plate boundary running all the way
11 along the Myanmar coast, barely 50 M offshore. In the Mediterranean the evidence
12 of the Parties before the International Court was, in the Court’s view, inconclusive
13 and contested.⁸⁸ But in the Bay of Bengal the uncontested evidence shows that
14 there is indeed a major geological discontinuity. So Professor Pellet cannot say that
15 “this hardly corresponds ... to the circumstances of the facts of our case...”⁸⁹ He is
16 firmly impaled on the horns of Myanmar’s failure to plead any evidence or to call any
17 experts to contradict what Bangladesh has argued. Having chosen that route,
18 Myanmar is not now in a position to challenge our clear, compelling evidence.
19

20 The best that Myanmar can do is to argue that the tectonic plate boundary is not
21 where Bangladesh says it is, but much further inland. And this was Daniel Müller’s
22 closing argument on Tuesday.⁹⁰ Unfortunately, Mr Müller is mistaken. He failed to
23 understand the evidence. Professor Curray’s figure, the one you can see on the
24 right, the one that was shown by Myanmar on Tuesday afternoon, indicates correctly
25 (as a red line) the northward continuation of the axis of the subduction zone between
26 the India and Burma Plate, buried as it is under the accretionary prism. But, if we can
27 go back to the previous slide, if you look on the left you can see that we have shown
28 you there the same red line, and if you look to the left of that you can see the outer
29 edge, western edge, of the accretionary prism, and you can also see that it is well
30 out to sea because that is what Mr Müller failed to understand.
31

32 In his report, Professor Curray traces the eastern margin of the Bengal Depositional
33 System, which is what he shows in his chart, and the locus of the tectonic plate
34 boundary, along that rather prominent dashed black line that you can see in the
35 same figure. Now it is that black line that you can see in both figures that
36 corresponds to the western edge of the accretionary prism and the outermost limit of
37 Myanmar’s geological prolongation.⁹¹ The key point when you look at both charts is
38 that it is the same line, on the left, and it is offshore by some 50 km. Again, we can
39 show you that on the next figure, which is simply a schematic representation of the
40 seabed, and you can see there the large serrated black line going underground; that
41 is the black line that you could see on the previous chart, and it is quite obviously
42 offshore.
43

⁸⁶ *Tunisia/Libya* at para. 66.

⁸⁷ ITLOS/PV.11/8 (E/7) p. 32, lines 41-43 (Pellet).

⁸⁸ *Ibid*; *Libya v. Malta* at para. 41.

⁸⁹ *Ibid*. (Pellet).

⁹⁰ ITLOS/PV.11/11 (E/10) p. 28, line 8.

⁹¹ Joseph R. Curray, “The Bengal Depositional System: The Bengal Basin and the Bay of Bengal” (23 June 2010) at pp. 4, 6.MB, Vol. IV, Annex 37.

1 Professor Curray's red line is not just a line on the map, I might say; it is the same
2 subduction zone that caused the devastating tsunami off Sumatra in December
3 2004. That subduction zone is still active today. And I think that emphasizes the
4 importance of this really rather major geological discontinuity between Myanmar and
5 the seabed and subsoil of the rest of the Bay of Bengal.

6
7 Now late in his speech on Tuesday Mr Müller also referred to a scientific article by
8 Mr C. Nielsen and others.⁹² He told the court that, according to Nielsen:

9
10 "The morphology of the continental margin of Myanmar does not present
11 any discontinuity in spite of the existence of a subduction zone."⁹³

12
13 Well Mr President, we spent some time last night scouring this article, looking for
14 a statement to this effect, but we could not find any in the text. The article does say,
15 however:

16
17 "The structures observed along a 700-km long portion of the West Burma
18 Scarp typically depict a dextral shear zone with wrenched accretionary
19 wedge."⁹⁴

20
21 If I can translate that into plain English, I think what they are saying is that it fully
22 confirms the illustrations I have just shown you. It provides no support for what
23 Mr Müller said on Tuesday.

24
25 Mr Müller's last illustration was taken from the Bangladesh submission to the
26 Commission on the Limits of the Continental Shelf, and he showed us the positions
27 of the foot-of-the-slope points used by Bangladesh to apply the Hedberg and
28 Gardiner formulae in paragraph 4 of Article 76.⁹⁵ He seemed to think there was
29 something significant here, notably the location of the last point, No. 9; but all of
30 these points, including point 9, lie within the natural prolongation of the land territory
31 of Bangladesh. And again, the helpful citation from Nielsen in 2004 shows that even
32 the most easterly of the points, including No. 9, lies west of the West Burma Scarp,
33 in other words west of the accretionary wedge, described in the Nielsen reference. I
34 think what that shows is that it is beyond the natural prolongation of Myanmar.

35
36 Turning back to Professor Pellet, his final act of surrealism is to transport Algeria to
37 Brazil in response to an argument that Bangladesh has never made about the origin
38 of sediments. The Bengal Fan is largely the natural prolongation of Bangladesh. We
39 have argued that, and that is what the scientists say, but it is the natural prolongation
40 of Bangladesh not because it has been transported there via Bangladesh - that fact
41 is immaterial. Most of the Bay of Bengal is the natural prolongation of Bangladesh
42 because of the continuous, unbroken, subsea structure of the Bengal Delta and the
43 Bengal Fan, extending from well inside the land territory of Bangladesh to the outer
44 edge of the continental margin far to the south. Our point is that Myanmar simply has
45 no comparable natural prolongation because its geological shelf ends approximately

⁹² C. Nielsen et al., "From Partial to Full Strain Partitioning Along the Indo-Burmese Hyper-oblique Subduction", *Marine Geology*, Vol. 209 (2004) at pp. 303-327, (hereinafter Nielsen) Annex BM-52.

⁹³ ITLOS/PV.11/11 (E/10) p. 32, lines 26-28 (Müller).

⁹⁴ Nielsen et al (2004) at p. 317.

⁹⁵ ITLOS/PV.11/11 (E/10) p. 32, lines 34 *et seq.* (Müller).

1 50 M offshore at the western boundary of two tectonic plates, marking again – to use
2 ICJ phraseology – “the juncture of two separate natural prolongations”.⁹⁶ And that,
3 Mr President, Members of the Tribunal, that is the fundamental difference at the
4 heart of this case.

5
6 That is the reason why Bangladesh is inviting this Tribunal to rule, in accordance
7 with the evidence, that Myanmar has no continental shelf extending beyond 200 M,
8 as provided for in article 76(1) of the 1982 Convention.

9
10 Mr President, Members of the Tribunal, Myanmar then attempts to reinterpret article
11 76 in order to avoid this inevitable conclusion. So we can now turn to that part of our
12 argument. Myanmar’s arguments on article 76 are indeed very complicated, and
13 Bangladesh does not accept them. Daniel Müller boldly told the court on Tuesday
14 that “Article 76 is not an approximation of a scientific truth. In law, it is the legal
15 truth.”⁹⁷ I suppose like a medieval pope or perhaps Donald Rumsfeld, he was not
16 interested in evidence or facts, whether scientific or otherwise. Salvation, it seems,
17 comes through law, and only law. But of course even Mr Müller cannot eliminate all
18 science from article 76. And he cannot do so because of the text of article 76. Even if
19 we ignore article 76(1), there are still many elements of the article that require
20 scientific evidence. The thickness of sedimentary rocks must be measured to apply
21 article 76(4)(a)(i). Only scientists can tell us where the foot of the continental slope is
22 located for the purposes of article 76(4)(a)(ii). Lawyers should probably not try to
23 draw the 2,500-metre isobath in article 76(5). We need a geologist to identify the
24 submarine ridges, plateaux, rises, caps, banks and spurs mentioned in article 76(6).
25 and a cartographer would be very useful to draw the lines referred to in article 76(7).
26 All of this different expertise is indeed carefully reflected in Annex II, article 2,
27 paragraph 1 of the 1982 Convention, which identifies potential members of the
28 Commission on the Limits of the Continental Shelf and calls for “experts in the field
29 of geology, geophysics or hydrography”.

30
31 So, Mr President, Members of the Tribunal, there is really no doubt the application of
32 article 76 requires a great deal of scientific and technical expertise before lawyers
33 can make effective use of it. That is why the submissions to the CLCS require
34 significant amounts of scientific research and data collection and take years to
35 assemble. It is why this Tribunal has to proceed on the basis of evidence before it,
36 not on the basis of mere assertion or speculation of the kind proffered by Mr Müller.
37 It is also why the CLCS Commissioners are not lawyers, and it explains why we have
38 geologists, hydrographers, and cartographers on our legal team. Their expertise is
39 indispensable, even to lawyers. So the idea that article 76 is simply law and only law
40 is untenable and unworkable. Indeed, it is absurd.

41
42 And what is true for the rest of article 76 is equally true for article 76(1). That
43 provision, as you know, redefined what constitutes a continental shelf. I think I do not
44 really need to read out that provision, right? It also sets out the legal basis of
45 entitlement to a continental shelf, partly in terms of distance, up to 200 M, but also in
46 terms of natural prolongation of the land territory beyond 200 M. “Natural
47 prolongation” and “continental margin” are legal terms because they are in a treaty,

⁹⁶ ITLOS/PV.11/6 (E/5) p. 7, lines 7-10 (Parson); BM paras. 2.22 and 2.41; BR para. 4.26.

⁹⁷ ITLOS/PV.11/11 (F/10) p. 19, lines 44-45 (Müller).

1 and they have to be defined and applied as treaty terms. We have to look, in
2 accordance with the Vienna Convention, article 31, for the ordinary meaning of the
3 terms in their context and in the light of the object and purpose of the treaty.⁹⁸ The
4 rules on treaty interpretation are no different here.

5
6 But Mr Müller in effect says that “natural prolongation” as a concept has no ordinary
7 meaning. He subsumes the concept entirely within the context of the rest of the
8 article, and especially of article 76(4), as I explained last week. He ignores the object
9 and purpose of the 1982 Convention, or at least he accords it no relevance, although
10 one obvious object and purpose of article 76 is to give the definition and extent of the
11 continental shelf greater certainty, a goal which his definition noticeably fails to
12 reach. Finally, both he and Professor Pellet largely eliminate geology from their
13 reading of natural prolongation. And of course that is what they want to achieve.
14 Professor Pellet says that article 76:

15
16 “merely relies on morphology to recognize the existence of natural
17 prolongation, and only turns to geology... secondarily as additional or
18 optional evidence.”⁹⁹ According to him “geology may by way of exception
19 be relevant [but] ...it is not at all necessary...”¹⁰⁰
20

21 Professor Pellet has given you a characteristically elegant and artful argument, but it
22 is a diversion from the evidential basis of natural prolongation that underpins article
23 76. Moreover, his views are contradicted by the only scientific source that Myanmar
24 cites in its Counter-Memorial for the proposition that “article 76 retains an essentially
25 geomorphic definition of the margin, including the shelf, the slope and the rise.”¹⁰¹
26 The article that he relies upon is by Dr Philip Symonds and his co-authors and that
27 article recognizes that the words “shelf, slope and rise” are “geomorphological” but
28 they go on, two pages later, to observe the following:

29
30 “Although continental rise is a geomorphic term, it is really used to
31 describe a depositional feature caused by the accumulation of sediment
32 largely derived from the continent and transported both down and along
33 the slope. Therefore, the definition of a rise should not be based simply
34 on the smooth surface and low gradient towards the abyssal plain, *but*
35 *also on its geological characteristic of being a sediment apron at the base*
36 *of their slope.”*¹⁰²
37

38 I think summarizing that, it is about geomorphology and geology. That is the key
39 point.

40
41 Throughout their pleadings, Myanmar repeatedly tries to convince the Tribunal to
42 decouple article 76 from geology, to decouple natural prolongation from geology, and

⁹⁸ See Article 31 of the Vienna Convention on the Law of Treaties (1969), UNTS, Vol. 1155, I-18232, p. 331.

⁹⁹ ITLOS/PV.11/8 (E/7) p. 34, lines 38-40 (Pellet).

¹⁰⁰ *Ibid* lines 40-41.

¹⁰¹ CMM at para. A. 11, citing Ph. A. Symonds *et al.*, “Characteristics of Continental Margins”, in P.J. Cook and Ch.M. Carleton (eds.), *Continental Shelf Limits, The Scientific and Legal Interface*, Oxford University Press, 2000, pp. 27-29.

¹⁰² *Ibid.* p. 31.

1 – in their own expression – to “keep it in a black box”,¹⁰³ until it is briefly opened and
2 when we turn to article 76(4)(a)(1), and then they close the lid again.

3
4 There are two answers to this view of article 76. First, it is simply wrong. The
5 continental shelf is not just the seabed – according to article 76(1) it is the seabed
6 and the subsoil, and the subsoil is nothing if it is not geology. The thickness of
7 sedimentary rocks in 76(4)(a) is also a geological question. Bangladesh entirely
8 accepts that geomorphology is relevant to the application of 76, but in conjunction
9 with geology, not in splendid isolation from it.

10
11 The Tribunal needs to look at all of the relevant evidence – geomorphological and
12 geological. You do not have to rely on Bangladesh for that view. Many of you will be
13 familiar with the Scientific and Technical Guidelines published by the CLCS. If I may,
14 we can look briefly at what they say about geology and article 76. In particular, they
15 say: Article 76 “contains a complex combination of four rules, two formulae and two
16 constraints, based on concepts of geodesy, geology, geophysics and hydrography.”
17 In the implementation of article 76, they say, they “will be guided by bathymetric,
18 geomorphologic, geologic and geophysical sources of evidence”. And they go on to
19 say much the same with regard to evidence to the contrary under article 76(4)(b).
20 That is interpreted by the CLCS in a whole chapter of their Guidelines to mean
21 geological and geophysical evidence.¹⁰⁴ The Guidelines also refer to the outer limit
22 of the shelf having both geological and geomorphological characteristics.¹⁰⁵

23
24 There are many other references to geology in the CLCS Guidelines. Indeed, the
25 Commission almost goes so far as to suggest the geological considerations are
26 more important than geomorphology in determining the outer edge of the continental
27 margin. And you will see on the screen I think two paragraphs that are particularly
28 helpful here. Mr. President, I will not read them out in the interests of time. You will
29 see there that at the end of paragraph 6.1.9 they refer to consideration of tectonics,
30 sedimentology and other aspects of geology.

31
32 You can see in 6.3.12 they talk about geological (plate tectonic) considerations and
33 they say these are very important for coastal States in the determination of the
34 various additional aspects they refer to there.

35
36 Mr President, a moment ago I quoted Dr Philip Symonds and his co-authors.
37 Dr Symonds is one of the original members of the CLCS. He is a well-known
38 geologist. He notes that it is possible to give a geomorphological interpretation to
39 article 76 but he then adds, and I think this is an important point:

40
41 [a]n alternative view would be that the natural prolongation being referred
42 to is defined by the geological continental margin (Figure 4.1b), and
43 embraces both the geomorphic and sub-surface characteristics of the
44 margin.

¹⁰³ ITLOS/PV.11/11 (E/10) p. 28, lines 10-11 (Müller).

¹⁰⁴ See Chapter 6 of Commission on the Limits of the Continental Shelf, *Scientific and Technical Guidelines*, U.N. Doc. No. CLCS/11 (13 May 1999) (hereinafter “*CLCS Guidelines*”).

¹⁰⁵ CLCS Guidelines at para 6.1.7. “Although article 76 refers to the continental shelf as a juridical term, it defines its outer limit with a reference to the outer edge of the continental margin with its natural components such as the shelf, the slope and the rise as *geological and geomorphological* features.”

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And he goes on then to refer to that view, building on the *North Sea* case, the subsequent interpretations of its significance by O’Connell, and he says that it gives support within article 76 from uses of the terms “seabed and subsoil”. And he concludes by saying it suggests that the continental margin comprises the submerged prolongation in article 76(3), implying prolongation in the geological sense.¹⁰⁶

Mr President, members of the Tribunal, I could go on, but I will spare you the ordeal. Like me, you are lawyers, not geologists and I probably sorely tested your patience and I would not wish to push it too far simply for the purposes of demolishing my opponent’s rather desperate arguments. I hope I have said enough to demonstrate why article 76 of the 1982 Convention cannot be interpreted and applied in clinical isolation from the natural world. Geology is an indivisible element of article 76 and of the concept of natural prolongation. That is the simple, sensible point I have been trying to make, possibly at excessive length.

There is a second way to answer Myanmar’s arguments but, Mr President, my sense is that, since I am not going to finish by 1 o’clock, my sense is this might be the moment to take a lunch break and to resume this afternoon.

THE PRESIDENT: Thank you. This brings us to the end of this morning’s sitting. The hearing will be resumed at 3 p.m. In this context, may I remind the parties that article 75, paragraph 2, of the Rules of the Tribunal provides the following:

At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party’s final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

The sitting is now closed.

(Luncheon adjournment)

¹⁰⁶ Ibid.