HEARING ON THE MERITS

Wednesday, December 18, 2013

The hearing in the above-entitled matter convened at 2:00 p.m. before:

JUDGE RÜDIGER WOLFRUM, Presiding Arbitrator

JUDGE JEAN-PIERRE COT, Arbitrator

JUDGE THOMAS A. MENSAH, Arbitrator

DR. PEMMARAJU SREENIVASA RAO, Arbitrator

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## CONTENTS

<table>
<thead>
<tr>
<th>Argument of Republic of India:</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Professor Reisman</td>
<td>573</td>
</tr>
<tr>
<td>By Sir Michael Wood</td>
<td>591</td>
</tr>
<tr>
<td>By Professor Pellet</td>
<td>615</td>
</tr>
<tr>
<td>By Agent Chadha</td>
<td>643</td>
</tr>
</tbody>
</table>
PRESIDENT WOLFRUM: Ladies and gentlemen, we are now on the last round--the last leg, so to speak--of our oral proceedings, and this is now India's turn; and, according to the schedule in front of me, it's Professor Reisman, who will start. And I ask you, please, to take the floor.

PROFESSOR REISMAN: Thank you, Mr. President, Members of the Tribunal.

Before I begin, may I inform our second-round pleading will be as follows: I shall address the land boundary terminus, and Sir Michael Wood will talk about a number of matters, including relevant coasts and base points; Professor Pellet will talk about the delimitation line and draw together the main points of our case. The Agent for India will make some concluding remarks and read out our final submissions.

PRESIDENT WOLFRUM: When would your team like to have the tea break or coffee break?

PROFESSOR REISMAN: I think it would be most appropriate during Sir Michael Wood's presentation or end of his presentation, depending on how long it goes.

PRESIDENT WOLFRUM: Okay. Thank you.

PROFESSOR REISMAN: Thank you, Mr. President.
Mr. President, Members of the Tribunal. I have the honor to address you again on the issue of the location of the land boundary terminus. Two rounds of written submissions and two rounds of oral argument have, I believe, clarified the issues and highlighted points of agreement and disagreement.

2. The land boundary terminus is, of course, the point where the closing line between the two headlands of the Estuary intersects the midstream of the main channel of the Hariabhanga and Raimangal or of the Hariabhanga. Thanks to Professor Sands on Monday, we now have Bangladesh’s coordinates for the closing line, Bangladesh explains.
that it arrives at the DTP by comparing similar features on the datum-less chart of 1931 with the 2011 BA chart.

3. The problem here is that the 1931 chart, based on vintage surveys of 1879, and due to the survey techniques and archaic cartographic methods of the time, is beset with errors. At best, these surveys just about indicate the features and, even then, their plotted accuracy is doubtful. Any transposition of an old local datum with its idiosyncratic warps and tensions, especially those from a vintage archaic datum-less chart to that of a more modern homogeneous Datum, presents challenges. In trying to plot Bangladesh's transposition, India's hydrographers plotted the closing line provided on Monday, transferring it to the WGS 84 Datum using Bangladesh's parameters.

4. Bangladesh's closing line as given on the 1931 chart and on the WGS 84 2011 chart, duly corrected for the shift, is as indicated. [TAB 11.1-5 slides] The problems here are striking. On the three modern charts, the closing point supposedly on Mandarbaria Island now plots at sea and this, in turn, must infect the land boundary terminus, as plotted in the latest WGS Datum charts. So, Mr. President, we continue to be in the dark with respect to Bangladesh's coordinates. We confirm the coordinates we submitted, and I will pass on to other matters of concern.

5. Mr. President, Professor Sands was so generous as to summarize for you, in paragraph 2 of his presentation on Monday, India's case. And while we are sure his effort was well intentioned, I regret to say that it was inaccurate. India's case may be summarized as follows:
On *uti possidetis*, it is true that India has not written and spoken at length on the principle. As India said in the Rejoinder, "Nor need India comment on the principle of *uti possidetis*, as it simply affirms the enduring validity of the colonial boundary without assisting the Tribunal in its task of determining the proper method for identifying that boundary in a case in which what constitutes the boundary as well as the mode of its determination had already been prescribed."

That prescribed mode of determination is to be found in the 1947 Radcliffe Award, including its Map; Notification 964Jur of 1925; the Bagge Award; and the 1951 agreement between India and Pakistan.

Together, those awards, the Map and the instruments confirm, first, that the land boundary is located in the main channel of the conjoined Hariabhanga and Raimangal rivers where it meets the Bay; second, that the precise boundary is the midstream of that main channel; and that, as confirmed by the 1951 agreement, said midstream is still fluid.

If the Parties are not able to identify the main channel or its midstream on the basis of the instruments, then the decision as to those questions is to be made by the Tribunal on the basis of the situation at the time of the demarcation.

In India's view, the Tribunal should find, on the basis of the Radcliffe Award, its Map and Notification 964, that the main channel of the conjoined Raimangal

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1 Rejoinder at 2.13.
and Hariabhanga is the one referred to in the Award and Notification and that its midstream, the fluid boundary between the Parties, becomes fixed as of the date of the Award.

(6) But if the Tribunal finds the Radcliffe Award and Map are not dispositive of the question of the main channel, then, on the authority of the Bagge Award, it should turn to the findings of the site visit and other current hydrographic bathymetric data on which it will proceed to base its decision.

(7) Either way and whether the Tribunal locates the boundary in the main channel of the Raimangal and Hariabhanga or in the main channel of the Hariabhanga alone, the midstream of that main channel will flow to the east of New Moore.

(8) As for the midstream of the main channel, until the Award fixes it permanently, it is a fluid boundary in accordance with the agreement of the Parties and remains so until the Tribunal fixes it.

6. Now, Mr. President, Bangladesh disagrees with many of these points and it will be useful to consider the disagreements briefly. On the basis of uti possidetis, Bangladesh looks for a photograph or snapshot of the situation in 1947. It proposes a British map from 1931, based, for the depiction of the Estuary, solely on data from 1879. This is, we are told by Bangladesh, the map that Radcliffe (and Mountbatten) must be presumed to have had in mind. Yet there is no evidence before you to suggest that Radcliffe had this or any other maritime chart in mind; after all, he had not been called to effect a maritime delimitation but, as shown by his description in Annexure A and the map
in Annexure B, a land boundary. What we do know is that what he had before him, since he
used it for Annexure B, was a copy of the 1944 Bengal Drawing Office’s map.

7. In any event, India struggles to understand how a pictorial representation of
data collected prior to 1879 can be considered contemporaneous with a decision taken in
1947. Yet, while repeatedly calling for the most contemporaneous data, Bangladesh avoids
the real “photograph” which is the Radcliffe Map with its red line indicating the district
boundary between 24 Parganas and Khulna as drawn on that map. [TAB 11.3 Map] While
the Map itself was, indeed, drawn by the Bengal Drawing Office in 1944, it was made
absolutely contemporaneous with the Radcliffe decision, indeed, by the terms of the
Award, the Map illustrates it. Moreover, it clearly indicates [TAB 11.4 : Enlargement of
Radcliffe Map’s section of Estuary] that the main channel could not be the western channel
“hugging the Indian coast” but must, by the location of the district boundary line, be the
eastern channel.

8. As for the production of the actual Map, a question was raised on Monday –
and I would observe that it was signed by Sir Cyril Radcliffe, and it took us some time –
and some luck – to find it. [Tab 11.5 - the two letters in RJ11] The annexure in the Counter
Memorial is a copy of a certified true copy as indicated in the left hand corner of the map; it
was all that was available to us at that time. The map annexed to the Rejoinder is a copy of
the original signed map, the original of which we displayed in the room last week and
which is available for inspection by our opponents and the Tribunal. [TAB 11.6 - both
copies] There should be no doubt that it is the original; indeed, it is the very same map which was also used by the Bagge Tribunal.

9. Mr. President, by this time, the Tribunal should know by heart the Radcliffe Award’s Annexure A’s words, [TAB 11.7] “The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay.” And that takes us to the 1925 Notification, which established the boundary between Khulna and 24 Parganas, with the words, also by now seared in your memories, [TAB 11.8] “till it meets the midstream of the main channel of the river Ichhamati, then along the midstream of the main channel for the time being of the rivers Ichhamati and Kalindi, Raimangal and Haribhanga till it meets the Bay.” The respective twinning of “Ichhamati and Kalindi and Raimangal and Haribhanga” confirm that the rivers were not treated sequentially. There is no question that Commander Kennedy’s description in his 1957 study and all the maps of the Estuary show the Raimangal and Haribhanga joining just before the point at which India proposes as its land boundary terminus.

10. Bangladesh now says that if the Notification really meant that the Raimangal and Haribhanga join, it must also mean that the “Ichhamati and Kalindi” which are also joined by the word “and” must also join. Professor Sands said he “would welcome an explanation.” Mr. President, the answer is not recondite and it’s to be found in an extract of BA 859 of 1931 which Professor Sands projected, with a line added. This is his chart.[TAB 11.9 with B’s sketch] You will note that the Ichhamati joins the Kalindi and
not the Raimangal; that, Mr. President, is why the passage in the Notification requires “and”. Incidentally, Bangladesh's adjoining figure, which continues Bangladesh's superimposed line on BA 859 to the Bay misleadingly labels the stretch of the Raimangal to the north but ignores its continuation in the Estuary where, as the Notification states and you see, it is joined with the Hariabhanga.

11. The 1925 Notification is neither puzzling nor poetic. It says what it means and it means that the land boundary terminus is where the Raimangal and Hariabhanga meet. Yet, as I said on Thursday, this difference between the Parties is without legal consequence, for even if one reads the Notification as ending with the Hariabhanga, the Radcliffe Map and the other contemporaneous maps show the main channel of the Hariabhanga swinging to the east and meeting the Raimangal at the point which India has proposed as the land boundary terminus.

12. India has thus shown that the evidence for the location of the main channel is available in the Radcliffe Award and its Map and confirms India's land boundary terminus proposal. Professor Sands stated on Monday that “neither [of the Radcliffe Maps] assists you in locating the “midstream of the main channel” of the Hariabhanga River.” India agrees and, Mr. President, if I misspoke on Thursday, the point is correctly stated in the Rejoinder. The Radcliffe Map shows the location of the main channel, but not its midstream. I turn to the identification of the midstream of that main channel and, in

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2 Sands, paragraph 27.
3 Rejoinder paragraph 2.31.
particular, the important sequel to the Bagge Award, namely the 1951 Indo-Pakistani exchange of notes.

13. Professor Sands viewed skeptically this – I’m quoting him – “agreement to change a fixed boundary for one that was fluid.”

We don’t see why. As my colleague, Mr. Shankardass explained on Thursday, since the Radcliffe and Bagge Awards, India and Pakistan and then India and Bangladesh have been in continuing negotiations about the demarcation of the Bengal boundary; those meetings have continued through 2012. During these negotiations, there have been many routine agreements and substantial parts of the boundary have been agreed. So what’s so unusual about the 1951 agreement?

14. The particular agreement concluded in 1951, at the initiative of Pakistan, sought to adjust part of the decision taken by the Bagge Tribunal in one particular sector, the boundary between 24 Parganas and Khulna. Pakistan stated [TAB 11.12] that it had “very carefully considered the question of river boundary between Khulna and 24 Parganas and they are of the opinion that the boundary in this section should be fluctuating.” [Tab 11.13] It hoped that India would agree.

And India did; [TAB 11.14]

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4 Sands paragraph 9.
we agree that the boundary between Khulna and 24 Parganas running along the midstream of the rivers should be a fluid one and are issuing necessary instructions to the authorities concerned.\(^6\)

15. Professor Sands claims that there is no evidence of this agreement, that the Indian civil servant is not identified and that the exchange was not registered with the United Nations. If one applies by analogy the customary rules on treaty interpretation, as reflected in the Vienna Convention, the agreement concluded in 1951 would be a subsequent agreement between the parties regarding the interpretation of the Radcliffe Award or the application of its provisions, within the meaning of article 31(3)(a) of the Vienna Convention. So it’s to be taken into account in the interpretation and application of the Award.

16. As the International Law Commission pointed out in its 2013 report, “Article 31 (3) (a) uses the term “subsequent agreement” and not the term “subsequent treaty”. The term “agreement” in the Vienna Convention and in customary international law does not imply any particular degree of formality.

17. And lest our colleagues utter yet again “uti possidetis”, I hardly need remind the Tribunal that uti possidetis is not a jus cogens; it is perfectly permissible for two formerly colonized states to agree to interpret an inherited colonial arrangement. And that is what exactly happened in 1951.

18. I return to the stability over time of the Estuary and its relation to the admissibility of data, which was gathered after 1947, whether hydrographical, bathymetric and whether presented digitally or pictorially in a map. In listening to Professor Sands on Monday, it surely occurred to you that the Estuary which you visited on 24 October is a most unusual natural phenomenon. From the period before 1879 until 1947, it did not change. Not one bit! That is why the British Admirality Map of 1879, based on data gathered before that date, could serve Bangladesh as a perfectly accurate and contemporary description – a photograph of the profile of the Estuary and its rivers in 1947. For Bangladesh, the 1931 map, that map is the map than which nothing can be more contemporary, not even the Radcliffe map. And, *mirabile dictu*, the 66 years of stability, even immobility, Mr. President, occurred while the rest of the Bengal coast was highly morpho-dynamic and unstable, as our friends from the other side have dramatically described it.

19. But now we come to the truly amazing character of this Estuary. From 1947 until 1953, after 66-plus years of complete stability, the Estuary changed so radically in the course of a mere six years that even the 1953 BA map, based on the same 1879 data, was, by 1953, no longer useful for either the profile of the Estuary or the location of the rivers within it. But that sudden, radical change was nothing, compared to what comes later: Professor Sands tells us that “it is blindingly obvious that the area has changed, the estuary
has changed and two river channels in the estuary have changed”. The Estuary and the rivers within it, which had not changed for 66 years after 1879, changed ever more rapidly for the next 66 years until 2013, indeed, they change so much that they make all new data irrelevant for understanding the situation in 1947, or 1879, which is the same thing.

20. Isn’t that a remarkable natural phenomenon? Mr. President, Members of the Tribunal, it is preposterous. India's position, as you will recall, is not that no change whatsoever has taken place in the Estuary. Heraclitus’s Cosmos means “changing, it rests.” India’s position is that with respect to the profile of the Estuary and its major features, successive and increasingly refined maps and satellite images confirm a remarkable stability in the profile of the Estuary and the location of its rivers. Accordingly, that evidence should be admissible as evidence of the location of its relevant features. [TAB 11.15 - six slides]

21. The correct way of making a comparison would be by measuring the relative distances and bearings of the plotted features on all the charts of the area since 1880. India's specialists have done so and the results are placed in your folders and are displayed on the screen. As is apparent, the shoal depths in the entrance of the Estuary and their relative position with respect to the mainland on the East and West have been consistent over the years. As I said, all of these charts are in your Folders, and we recommend them to you.

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7 Statement, paragraph 30.
22. Professor Sands invokes the 1881 Imperial Gazetteer of India and recommends that “it is worth reading carefully.” \(^8\) [TAB 11.16] We heartily agree and indeed quoted it extensively in the Counter-Memorial.\(^9\) You will note that the Gazetteer alerts mariners to the fact that “two considerable reefs of breakers have formed on the western side of the channel leading to these rivers, situated respectively at 5 and 10 miles from the land.”\(^10\) Evidence of navigability? It would be an intrepid navigator, indeed, who would brave that channel.

23. And this, Mr. President, brings me to the important information which the site visit produced for the Tribunal. On Friday, my colleague, Professor Pellet, confessed that despite his earlier doubts, the visit proved worthwhile. Professor Sands, by contrast, warns you that if you make your decision on the basis of the visit, you had better be “willing to take a few hits on the chin”.\(^11\) I had quite a different reaction as regards the land boundary terminus visit. Having sat on several boundary commissions which, for different reasons, did not conduct site visits, I was struck by how such visits enable arbitrators to make more responsible decisions.

24. On Thursday, I had had the opportunity to review with you the site visit to the Estuary and won’t tax you with it again. But I would beg leave to recall two parts which India conducted in the Estuary and of which Bangladesh has spoken, shall I say ‘lightly’, if not disrespectfully. On Monday, Professor Sands warned of a “school
“playground” and asked rhetorically, “why not go the extra mile and conclude that you have
identified the present location of the “main channel” of the Hariabhanga River by use of a
carefully conducted scientific experiment, which one might call “the floating hovercraft
test”. Why not, indeed?

25. The demonstration to which Professor Sands referred was conducted with
dignity, was very important for you and depending on how you interpret the Radcliffe and
Bagge Awards and the ‘25 Notification could be outcome determinative. If you conclude
(i) That the 1925 Notification refers only to the main channel of the
Hariabhanga and not to the main channel of the conjoined
Hariabhanga and Raimangal; and
(ii) If you conclude that the “contemporaneous” evidence for locating the
main channel is not decisive; and
(iii) If you conclude that the Bagge Award requires you to decide on this
segment of the boundary as at the moment of demarcation,
then you will require a demonstration of the location of the main channel of the
Hariabhanga. Indeed, without such evidence, you might even find yourself in a situation
of non liquet. Hence the importance of what the Indian Navy did in the Estuary on 24
October, for it clearly demonstrated the navigability and south easterly flow of the
Hariabhanga to the north and east of New Moore. On Monday, in a court room in The
Hague rather than on the bridge of a Bangladeshi ship, Professor Sands bravely asserted
that the western channel was as navigable as the eastern, indeed, he said, as navigable as
the Hooghly. But the hard fact is that the pilots of Bangladesh’s craft on October 24 had
the same opportunity as their Indian counterparts to demonstrate the navigability of their
channel. They cautiously approached their proposed land boundary terminus -- and they
President. Nor did Bangladesh provide any evidence of the flow of the Hariabhanga’s
so-called western channel despite this opportunity to do so. Res ipsa loquitur.

26. Incidentally, Professor Sands is suspicious of the 9-meter line on
Bangladesh’s chart 7501 which, he says, “India’s cartographers had imaginatively added”
and “in red” no less. There is no mystery here. The general practice of mariners is to
indicate on the navigational chart waters in which a ship can navigate safely. It is done by
drawing a limiting danger line on a chart. [TAB 11.18] No imagination or creativity is
involved. It is entirely factual. In our case, even changing the line to a 10 meter contour
would not alter anything in the main, eastern channel which is still the more navigable and
still moves in a south easterly direction.

27. India's demonstration was serious and dignified, as befits an international
tribunal. And it addressed a question with which the Tribunal may have to grapple; even if,
as India submits, the Tribunal decides that the 1925 Notification speaks of the land
boundary terminus as the main channel of the joinder of the Hariabhanga and Raimangal

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12 Sands, paragraph 17.
13 Sands, paragraph 16.
Rivers, India's demonstration on October 24 provides supplementary empirical evidence, confirming that interpretation of the Notification.

Conclusion:

28. Mr. President, on Thursday, Professor Shearer solicited information on marine activities in the Estuary and you requested information on the populations of the Parties in, respectively, the Hariabhanga and Raimangal regions. Information will be supplied within the time-limits agreed but allow me to briefly comment on one aspect of the questions.

29. Past activities are only part of the issue. In its Rejoinder, India had emphasized the future and I would return to it. The Tribunal will be making a decision that will endure as long as India and Bangladesh do. Amidst the many scenarios with which you have been regaled by Bangladesh, one future is certain: Both of these countries will continue to develop, as their populations increase, and they will be compelled to make ever more intensive use of their natural resources in order to provide their peoples with the opportunity of a life of human dignity. The question to be resolved in the land boundary terminus here is whether both States will have access to and from the sea in their respective adjacent territories or whether the inland part of this sector of India will be consigned to a land-locked or geographically disadvantaged status, to borrow the language of the Third Law of the Sea Conference. The term “land boundary terminus” imports that this is about an allocation of land territory. But in this case, no loss of terra firma is involved; neither
State will lose or gain any land territory if the other’s land boundary terminus proposal is accepted. The issue is fluvial access and access is at stake only for India. Let me explain.

30. If the Tribunal concludes that the western channel is the main channel and accepts Bangladesh's proposed land boundary terminus, the internal sector of this part of India will be effectively land-locked, inasmuch as the western channel, as the Tribunal was able to see on the site visit to the Estuary, is not navigable south of Bangladesh's proposed land boundary terminus. At the same time, the eastern channel which Bangladesh will perforce use to navigate to and from the Bay from its side of the Hariabhanga will be closed to India, as it will have become Bangladeshi internal waters through which no right of innocent passage avails. [TAB 11.19]

31. By contrast, if the Tribunal confirms that the eastern channel is the main channel and accepts India's proposed land boundary terminus, India will have fluvial access to and egress from the Bay of Bengal—*and so will Bangladesh from its side of the Hariabhanga!* Bangladesh, too, will have access to the eastern channel, for its midstream— the only navigable midstream from the Hariabhanga southward until it joins the Raimangal and meets the Bay -- will henceforth be the boundary between the two States. The point of emphasis, Mr. President, is that Bangladesh has nothing to lose, in this regard, if India's proposed land boundary terminus is confirmed by the Tribunal: India's proposal is, as my students put it, a “win-win” situation for both Parties. India has everything to lose here if its proposed land boundary terminus is not accepted.
32. Mr. President, India believes that the Radcliffe Award, its Map, the 1925 Notification, the Bagge Award, the 1951 agreement and contemporary cartographical, hydrological and bathymetric data, when applied to this case, will confirm as a strict legal matter, India's land boundary terminus proposal. The Tribunal will then have confirmed that it is the law and, like the best of law, that it is equitable.

32. Mr. President, Members of the Tribunal, as this concludes my appearance before you in this important case, may I thank you for the courteous attention you have shown, and ask you, Mr. President, to invite my colleague, Sir Michael, to the podium.
PRESIDENT WOLFRUM: Thank you, professor Reisman, for your presentation, and I call upon Sir Michael Wood to continue.

Sir Michael, you have the floor.

MR. WOOD: Thank you very much, Mr. President, Members of the Tribunal.
1. I shall respond to what our friends opposite said on Monday concerning four matters:

- First, the delimitation method, where Professor Boyle offered you what he called “the agony of choice”.

  Were he Shakespeare, his speech might have been entitled “As You Like It”;

- Second, the issue of instability, to which Professor Akhavan returned yet again, though perhaps rather half-heartedly this time;

\[15\] Transcript, 16 December 2013, Boyle, p. 507, para. 15, line 1.
Third, the relevant coasts and the relevant area, which were dealt with by Mr. Martin and Professor Crawford;

Fourth, the base points, a matter on which Professor Akhavan again had rather little to say.

I. THE DELIMITATION METHOD

2. Professor Boyle again invited you to choose freely from a smorgasbord of methods, or indeed to apply no method at all. As he put it, and I quote, “[t]he law says you have a choice, if you think it appropriate to start somewhere else, or even to finish somewhere else.”16 ‘Just pick what you feel like’ he seems to be saying, ‘so long as you end up with our 180 degree line.’

3. Professor Boyle repeated his assertion from last week that “[t]he cases say that the angle bisector method can be used when it's not appropriate to draw a provisional equidistance line.”17 Only this time he clearly thought it safer to cite no authority for this proposition. We have already said all that needs to be said on this.

4. Professor Boyle began by caricaturing our case. His was indeed a fine illustration of what his colleague, Mr. Reichler, referred to as ‘the deliberate attribution … of bad arguments’.18 Professor Boyle said that we took the position that “the role of equity in maritime boundary cases has entirely fossilised into one rule –

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16 Transcript, 16 December 2013, Boyle, p. 504, para. 10, lines 19-20.
17 Transcript, 16 December 2013, Boyle, p. 505, para. 11, lines 3-5.
18 Transcript, 16 December 2013, Reichler, para. 2, lines 5-9.
equidistance, now, forever, everywhere, in all circumstances - or almost all.”¹⁹
We could, Mr. President, no doubt, argue endlessly about which side has best
understood the development of the case-law. But I do not think it can seriously
be disputed that the ICJ’s unanimous judgment in Black Sea, expressly endorsed
by ITLOS in Bangladesh/Myanmar, represents the modern law. Professor Boyle
told you that “[t]he North Sea Case may be old – but that did not stop ITLOS
from applying it to the Bay of Bengal in its [2012] judgment.”²⁰ He gave no
reference, and so we do not know which passage of the ITLOS Judgment he had
in mind. The ITLOS of course cited North Sea from time to time. Like
Shakespeare, North Sea is eminently quotable if not always easy to follow. But
it is difficult to see how the ITLOS could be said to have ‘applied’ the North Sea
methodology in Bangladesh/Myanmar. What it did apply was that set out in
Black Sea.

5. Like the good advocate that he is, Professor Boyle then returned to what he
evidently sees as his best case, Nicaragua v Honduras. This time he showed the
two very different equidistance lines, proposed by Nicaragua and Honduras
respectively.²¹ I am glad he showed these lines. They neatly illustrate the
distinction between Nicaragua v Honduras and the present case. Professor
Boyle said that these two lines show that “even in that case it was not impossible
to start with a provisional equidistance line.”²² That, with respect, is precisely
what they do not show. The two equidistance lines, in that case, though initially
plotted from base points that were close together, were radically different – we

¹⁹ Transcript, 16 December 2013, Boyle, p. 500, para. 1, lines 20-22.
²⁰ Transcript, 16 December 2013, Boyle, p. 501, para. 3, lines 5-6.
²¹ Transcript, 16 December 2013, Boyle, p. 502, para. 6, lines 12-15. Tabs 4.21 and 4.22 in Bangladesh’s
Arbitrators’ Folders.
²² Transcript, 16 December 2013, Boyle, p. 502, para. 6, lines 18-19.
made a similar point with our own sketch. But in the present case it is the opposite; as we showed last week, the two Parties, using base points that are close to each other, have in fact constructed equidistance lines that are very similar.

6. Professor Boyle’s thesis, if it deserves that name, is shot through with curious logic. He says that I accepted “that the tribunal does not have to accept the base points proposed by either party” – indeed I did – but Professor Boyle goes on to ask, and I quote, “but on what more “objective” basis can the tribunal then select its own base points? There is necessarily a subjective judgment even here. Applying the equidistance method is not a mechanical process.” We on our side have, of course, never suggested that it is mechanical. But it is a good deal more objective than the angle-bisector ‘method’.

7. In reality, Bangladesh seems less and less convinced of its angle-bisector method; Professor Boyle’s defence of it was, it seemed to me, luke-warm. He did not even attempt to answer the criticisms of that method that I set out last Friday. In particular, we heard not a word on the point that the choice of ‘coastal facades’ is notoriously subjective. Professor Boyle let the cat out of the bag when he said at one point “However you arrive at the solution, we say the 180 degree line will be equitable.” ‘However you arrive at the solution.’ We would respectfully invite the Tribunal to reject such patent subjectivity.

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23 Tab 5.2 in India’s Arbitrators’ Folders.
24 Tab 5.3 in India’s Arbitrators’ Folders.
26 Cot’s article look for refrences.
28 Transcript, 16 December 2013, Boyle, p. 503, para. 4, lines 2-4.
II. THE ISSUE OF INSTABILITY

8. Mr. President, Members of the Tribunal, I now turn to the issue of instability. Professor Akhavan said not a word on our basic point, that any instability of the coastline is simply not relevant to the application of the three-stage method. What matters is whether it is possible to select appropriate base points. That was not possible in *Nicaragua v Honduras*. It is entirely possible in our case, as both parties have shown.

9. Instead, Professor Akhavan returned to his general thesis of the instability of the Delta, took us to task on several minor grounds, and referred to some more of his studies.

10. For example, he briefly showed you a sketch-map from a short article on sea-level rises depicting the shift of an equidistance line due to coastal erosion by 2100. But again, as with the studies he addressed in the first round (and did not come back to in the second round despite our comments), this too is misleading and taken out of context.

11. The authors make clear that the figures and speculations are “illustrative projections” done “irrespective of the actual sea-level rise by 2100” and “without consideration of adaptation measures, coastal erosion and land subsidence”. Furthermore, the figure chosen for predicted sea levels in 2100 is almost three times the sea-level rise estimate of the UN Intergovernmental Panel on Climate Change.\(^\text{29}\)\(^\text{30}\)\(^\text{31}\)

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\(^{29}\) Transcript, 16 December 2013, Akhavan, para. 14, referring to a sketch in BM, Annex B79.

\(^{30}\) BM, Annex B79, p. 813.

\(^{31}\) BM, Annex B79, p. 813.
12. Mr. President, last Thursday, Professor Pellet presented you with a study on the world’s 14 most significant deltas and showed that “the instability of the deltas of the Ganges and Brahmaputhra, is just comparable to the instability of all the major deltas in the world.” He demonstrated that “every delta showed land loss, but at varying rates, and human development activities accounted for half of the losses, and up to 60% in the case of the Ganges-Brahmaputra delta.”

13. Professor Akhavan dismissed this study as focusing on wetlands, rather than instability of the coastline, and said, and I quote, that “where the study does mention instability in general, it singles out the Bengal Delta as “extremely unstable” compared to the fourteen major deltas in the world”.

14. These points are not well placed. It is true that the study discusses loss of wetlands and not instability _per se_. However, estuarine wetlands, which include deltas, are one of the common types of wetlands as are mangrove forests.

15. The study does not discuss instability “in general”, as Professor Akhavan put it. Where it does discuss “extreme instability” it is not referring to the Delta and its coastline, but rather to the channels of the Ganges and the Brahmaputra Rivers and their riverbanks, not the shoreline.

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32 Transcript, 12 December 2013, Pellet, para. 10.
33 Transcript, 12 December 2013, Pellet, para. 10.
34 Transcript, 16 December 2013, Akhavan, para. 2.
16. It has been noted that Professor Akhavan did not dispute the study’s finding that loss of wetlands in the Delta is mostly due to increased human activity of agricultural and industrial nature.\(^{37}\)

17. Mr. President, Professor Akhavan also said that India has “completely ignored the Indian Geological Survey’s alarming conclusion” on erosion and sea-levels.\(^{38}\) That is not the case. During my presentation last Friday, I referred to India’s observations on that very issue in its Rejoinder.\(^{39}\) Bangladesh refers to the web page of the Geological Survey of India (GSI) as evidence of the limited defence of mangroves against coastal erosion. The web page is not, of course a scientific study, but a summary made for the general public. Moreover, Bangladesh overlooks the fact that the same web portal also states that mangroves protect coastal areas from erosion, storm surge (especially during hurricanes) and tsunamis.\(^{40}\)

18. Mr. President, in the first round, I quoted from Suriname’s Counter-Memorial in *Guyana v. Suriname*, where Suriname had argued that coastal instability weighs heavily against the application of the equidistance method and instead, argued that the bisector should be applied.\(^{41}\) And Professor Boyle returned to it.

19. It is worthwhile to look a bit more closely at that case, because on coastal instability Suriname’s position is remarkably similar to Bangladesh’s in the present case.

\(^{37}\) *Ibid.*.

\(^{38}\) Transcript, 16 December 2013, Akhavan, para. 3.

\(^{39}\) Transcript, 13 December 2013, Wood, para. 45; Rejoinder, para. 4.40.


\(^{41}\) Transcript, 13 December 2013, Wood, para. 40 quoting Suriname Counter-Memorial, 6.35.
20. Suriname argued that

“large shifts in the equidistance line caused by minor changes in the baselines demonstrate that the equidistance method does not lead to an equitable result”.\(^42\)

And they continued

“Due to the natural forces which are constantly at work in reshaping the low-water line in this region, the coastline from which a provisional equidistance line is determined will be subject to constant change”.\(^43\)

21. Guyana replied firmly. First, it challenged the factual claims made by Suriname. It stated that “it appears clear that the equidistance line has remained relatively stable for a long period.” which was apparent from the similarities of the provisional equidistance lines put forward by the parties.\(^44\) As you can see, very similar to this case.

22. Second, Guyana challenged Suriname’s position as a matter of law:

“practise refutes Suriname’s argument that an equidistance line should not be used in areas where coastal accretion or erosion might unduly influence the positional stability of the controlling basepoints. There is considerable on-going accretion and erosion along the entirety of the Atlantic Coast of South America caused by the many rivers that flow into the ocean, including the Amazon and the Plate. Yet, equidistance has been the means of delimiting maritime boundaries in all of these situations.”\(^45\)

23. Mr. President, Guyana based itself on an expert opinion on coastal geography. The expert - who as it happens is a member of Bangladesh’s team here today -

\(^{42}\) Guyana v. Suriname, Suriname Counter-Memorial, para. 3.51, see also para. 3.50.
\(^{43}\) Guyana v. Suriname, Suriname Counter-Memorial, para. 6.35.
\(^{44}\) Guyana v. Suriname, Guyana Reply, para. 7.36.
\(^{45}\) Guyana v. Suriname, Guyana Reply, para. 3.50 (footnotes omitted).
wrote, after surveying boundary agreements implementing the equidistance method that

“in each of these situations the coastal States face the same uncertainty of what may happen to their respective coasts by way of erosion or accretion. And, it has been noted that worldwide not “one maritime boundary agreement contains a termination provision. Thus, states have treated their maritime boundaries as being permanent….” The idea that a particular area of the coastline may be subject to accretion or erosion does not lead to discrediting the use of the equidistance methodology as a viable means towards achieving an equitable solution”. ⁴⁶

The quote is at Tab 11.1, and it’s what Guyana’s expert said in that case.

24. The Tribunal, as I noted last week, did not accept Suriname’s position. It applied the equidistance line. Professor Boyle on Monday suggested the Award did not support India’s case since the Tribunal decided not to apply the angle-bisector because it found that, and I quote,

“the general configuration of the maritime area to be delimited “does not present the type of geographical peculiarities” found in the angle bisector cases. It accepted that “Such peculiarities may, however, be taken into account as relevant circumstances, for the purpose of adjusting or shifting the provisional delimitation line.” ⁴⁷

25. Professor Boyle, however, quoted rather selectively from the Award. The Tribunal made this statement not after dealing with arguments of coastal instability, but rather after rejecting the cut-off argument put forward by

⁴⁷ Transcript, 16 December 2013, Boyle, para. 13.
Moreover, he omitted the words between the phrases he cited. The passage reads,

“It seems to this Tribunal that the general configuration of the maritime area to be delimited does not present the type of geographical peculiarities which could lead the Tribunal to adopt a methodology at variance with that which has been practised by international courts and tribunals during the last two decades.”

In short, Mr. President, *Guyana v. Suriname* supports India’s positions in the present case regarding the irrelevance of Bangladesh’s coastal instability argument as a compelling reason to set aside the provisional equidistance line and regarding the predominance of the equidistance method in maritime delimitation.

Before I leave instability I would note, however, an important point of apparent agreement that has emerged in the course of these hearings. Bangladesh no longer seeks to argue that instability is a relevant circumstance to be considered at the second stage of the three-stage method; it was not mentioned as such by Mr. Reichler on Monday, who focused entirely on concavity.

**III. THE RELEVANT COASTS AND THE RELEVANT AREA**

Mr. President, Members of the Tribunal, I now turn to the relevant coasts and the relevant area.

Mr. Martin continued to cling to his lamp-post, the *Bangladesh/Myanmar* Judgment’s treatment of Myanmar’s relevant coast and of the relevant area. He

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49 *Ibid*, para. 3.72.
50 Transcript, 16 December 2013, Reichler.
asked you to ‘flip the coin’. He pointed to the latitude of Sandy Point, as if that could make it the endpoint of India’s relevant coast. And he next said that last week I “conspicuously never suggested that [Bangladesh] had been unfaithful to the lessons of that Judgment.” Indeed I had not, since, with respect, it remains unclear to me quite what these lessons are. Again on Monday Mr. Martin could not enlighten us. He did, however, claim that the coast between Devi Point and Sandy Point ‘faces onto’ areas which overlap, that is, according to Bangladesh, areas of continental shelf beyond 200 miles.

30. Turning to the limit of the relevant area in the south-west, Mr. Martin explained Bangladesh’s extraordinary line - ‘explained’ is perhaps a little generous - by saying ‘we have simply connected the end of Bangladesh’s OCS claim to the closest Indian coast by means of a perpendicular.” Indeed they have. But why? They don’t tell us.

31. And when it comes to justifying the inclusion within the relevant area of areas that are within 200 miles of India but beyond 200 miles of Bangladesh, all Mr. Martin can say is “we proceed on the basis that ITLOS knew what it was doing.” "We proceed on the basis that ITLOS knew what it was doing." And he says that “ITLOS came up with a pragmatic solution to a practical problem.” What problem? What solution? The nearest Mr. Martin gets to an explanation of the matter is in the following two sentences, and I quote “To do otherwise would mean excluding from the relevant area zones of maritime space that lie directly in front of a State’s relevant coast. For obvious reasons, that cannot be right.”

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51 Transcript, 16 December 2013, Martin, para. 17.
52 Transcript, 16 December 2013, Martin, para.18.
53 Transcript, 16 December 2013, Martin, para. 20.
54 Transcript, 16 December 2013, Martin, para. 30.
55 Transcript, 16 December 2013, Martin, para. 31.
Unfortunately, Mr. Martin does not tell what ‘obvious reasons’ there were to include in the relevant area areas that are not subject to overlapping claims.

Professor Crawford was somewhat more helpful. He at least did not cling to the ITLOS sketch-map No. 8. But he did accuse us of the ‘cardinal error’, as he put it, of identifying “as relevant coast only the coastline which is necessary to sustain that state’s position.”\textsuperscript{56} We did not say that. It is perhaps another example of Mr. Reichler’s ‘deliberate attribution of bad arguments’. What we did say, citing \textit{Black Sea} and \textit{Nicaragua v Colombia}, was that the relevant coasts are “those coasts the projections of which overlap.”\textsuperscript{57} \textsuperscript{[ON SCREEN Sketch]} Professor Pellet illustrated the projections from the relevant coasts in the sketch which he showed on Friday afternoon, which is once again on the screens.\textsuperscript{58}

Mr. President, at the very end of his statement on Monday, Professor Crawford showed a graphic entitled “India’s Model of the Relevant Coasts and Relevant Area Properly Applied”.\textsuperscript{59} It is on the screen now. This is interesting because here Bangladesh has shown you a sketch on which the area off the coast of India between Devi Point and Sandy Point which lies within 200 miles of India’s coast but beyond 200 miles of Bangladesh’s coast is not depicted as part of the relevant area, which it plainly is not. The depiction is similar to ours in this respect, except that they have refined the south-west limit of the relevant area by showing it as an arc. Ours was a simplified depiction of the same line. On the same sketch they indicate India’s coast as ending at Devi Point, thus departing – for no clear reason – from their earlier assertions that India’s coast should be extended a further 300 kilometres to Sandy Point. We also noted that Professor Crawford

\textsuperscript{56} Transcript, 16 December 2013, Martin, para. 8.
\textsuperscript{57} Transcript, 13 December 2013, Wood, p. 351, para. 4.
\textsuperscript{58} India, Arbitrators’ Folders, Tab 8.6.
\textsuperscript{59} Bangladesh’s Arbitrators’ Folders, Tab. 5.27.
referred to “the relevant coasts … for the purpose of outer continental shelf delimitation”.\[^{60}\] This at the very least seems to imply that the area off the coast between Devi Point and Sandy Point within 200 nautical miles cannot, on any basis, be part of the relevant area.

34. Mr. President, before I move on to the last section of this statement, I need to say a word about Professor Crawford’s remarks on Monday concerning the Andaman Islands. Mr. President, Professor Crawford said, and I quote, that “If India in right of the Andaman Islands has claims to areas now being claimed by Bangladesh, it has had every opportunity to substantiate them in these proceedings”, and he went on to assert that “India cannot at the last stage of an arduously pleaded case, when Bangladesh no longer has the opportunity to respond, oppose the position of the Andaman Islands to obstruct Bangladesh’s south-westerly projection in the outer continental shelf.”\[^{61}\]

35. Mr. President, India’s continental shelf entitlement based on the Andaman Islands is not in fact at issue in this case; this is because no question of delimiting the areas of shelf appertaining to Bangladesh and the areas of shelf appertaining to India in respect of the Andaman Islands can arise, as Bangladesh’s entitlement cannot extend that far south.

36. However, if that question were to arise, which, as I’ve said, it does not, any delimitation would not be governed by a continuation of the ITLOS line. That line was concerned with delimitation between Myanmar and Bangladesh. While it limits Bangladesh’s entitlements, it has no effect on those of India.

\[^{60}\] Transcript 16 December 2013, Crawford, para. 7.

\[^{61}\] Transcript 16 December 2013, Crawford, para. 21.
37. Professor Crawford is, in any event, quite wrong to suggest that India would be opposing Bangladesh’s position “in the last stage of an arduously pleaded case”, as he put it. India’s position has been clear throughout, starting with our Counter-Memorial, in which we described the Andaman-Nicobar group of islands and set out fully our claim to an extended continental shelf from the Andaman Islands. In our Rejoinder we made our legal position absolutely clear, at paras 7.23 and 7.24, concluding that “India has a claim to a 350-nautical-mile continental shelf from the Andaman Islands as outlined in India’s Counter-Memorial”. Elsewhere in the Rejoinder we said “If Bangladesh’s exorbitant claim to a 390-nautical-mile continental shelf were to be even considered by the Tribunal, the entitlements of India’s Andaman Islands coasts would also have be taken into account.”

IV. BASE POINTS

38. Mr. President, Members of the Tribunal, I now turn to the question of base points. I shall not repeat what I said last week, but I shall limit myself to responding to what Professors Akhavan and Boyle had to say on Monday.

39. I would, however, begin by noting that on many issues they offered no response to what we had to say. For example, we heard nothing on what has emerged as a real difference of principle between the Parties. We say that the starting point for any delimitation exercise, be it negotiation or court proceedings, is what is to be found on the charts. Anyone who has negotiated a maritime delimitation

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62 ICM, paras. 2.16-2.17.
63 ICM, paras. 2.25-2.43.
64 Rejoinder, para. 7.3, footnote 393.
agreement will know that the first thing each side does is to plot points and lines on the best available charts. In the rare case where you first engage in a survey, you plot the results of the survey on a chart and start with that. Even then the data will never be entirely up to date. What is in any event clear is that gotiators, or indeed the judges or arbitrators, cannot decide on the basis of what they observed on a single short visit, even if they are technically qualified. The idea that you can simply discard the charts and see everything on the ground is fanciful. It would be a totally impractical way of proceeding. To endorse such an approach would open the door to future chaos, with States rejecting charted base points that do not suit their case.

40. Mr. President, perhaps the most telling of all the omissions is that we heard nothing from those opposite on the various base points that I took you through individually last Friday, with the exception of those on New Moore and I-2. There was not a word in response to what we said about the difficulties of seeing some of the base points at the time of the site visit. There was nothing about the impossibility of matching specific photographs taken during the site visit with exact locations on particular features. And, despite my explicit invitation to Bangladesh to address the judgment in *Malaysia v. Singapore*, they chose to remain silent. That judgment, as you will recall, found that sovereignty over a low-tide elevation can be attributed to a party when it is clear in which country’s territorial sea it lies, as is the case with New Moore in the present case.

41. But I’ll turn to what Professor Akhavan did have to say about base points. Mr. President, on Monday he suggested that the members of the Tribunal might

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66 *Sovereignty over Pedra Branco/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, p. 12, pp. 101-102, paras. 297-300; see also Rejoinder, paras. 4.51-4.53.
ponder why India had “failed to produce a single authority supporting the use of low-tide elevations as base points”. And he said that “[i]n Bangladesh/Myanmar, there were many low-tide elevations near the land boundary terminus. ITLOS drew a delimitation line that sliced right through them.” That last point is easily explained. In Bangladesh/Myanmar, neither side sought to place base points on the low-tide elevations. Article 13 of UNCLOS is facultative: “the low-water line on that elevation may be used as the baseline”.

42. As for his first point, there is, of course, extensive practice on the use of low-tide elevations as base points, as can be seen from a cursory glance at the volumes of *International Maritime Boundaries*. I shall mention just a few examples:

- The location of the boundary in the Agreement between Australia and France (in respect of New Caledonia) was significantly affected by the legal status of Australia’s Middleton Reef, a mid-oceanic low-tide elevation situated 125 nautical

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67 Transcript, 16 December 2013, Akhavan, p. 493, para. 6, lines 15-17.
68 Transcript, 16 December 2013, Akhavan, p. 493, para. 6, lines 17-18 – p. 494, para. 6, line 1.
miles offshore. This low-tide elevation was given full effect as one of the Australian base points.\textsuperscript{70}

The North Sea is particularly rich in low-tide elevations, which support base points in various agreements. For example, in the Agreement between France and the United Kingdom, both the Banc Breedt (a French low-tide elevation) and the Goodwin Sands (a UK low-tide elevation) were counted.\textsuperscript{71}

The Italy-Tunisia Agreement expressly provides, in its Article I, that delimitation has to be accomplished using "the median line every point of which is equidistant from the nearest points of the baselines from which the breadths of the Italian and Tunisian territorial seas are measured, taking into account islands, islets, and low-tide elevations".\textsuperscript{72} That is from Article I of India/Tunisia Agreement [sic].

And the learned author of the IMB report, the International Maritime Boundaries report on the Agreement between Cuba and the USA – and I hope he is still in the room -- wrote that

“For the portion of the boundary that was an equidistant line, all islands and rocks were given full weight in its determination. On the US side, - these features included small islands and low-tide elevations associated with the Florida Keys. On the Cuban side, the rocks and islets are located relatively close to the main island. There was perceived to be a general balance between the two opposite coastlines.”\textsuperscript{73}

\textsuperscript{70} Ibid, Vol. 2, 1185-1194.
\textsuperscript{71} Ibid, Vol. 2, 1735-1754.
\textsuperscript{72} Ibid, Vol. 2, 1621.
\textsuperscript{73} Ibid, Vol. 1, 419.
43. Mr. President, the practice clearly shows that States have frequently considered it appropriate to plot base points on low-tide elevations. There can certainly be no objection of principle as our opponents would have you believe.

44. Mr. President, Professor Pellet explained to the Tribunal on Thursday that the timing of the site visit was not conducive to seeing New Moore Island (show figure of tide for 24 October) – as India had repeatedly forewarned – since it would at best have been just visible at the lowest of tides on the relevant dates, and only around 6:30 a.m. and 6:30 p.m. [ON SCREEN]

45. Professor Akhavan showed you this Figure\textsuperscript{74} (ON SCREEN) to make the point that at 8:00 a.m. on 24 October, New Moore should have been 20 centimetres above water. But this is misleading. According to Bangladesh’s most recent surveys, depicted on Bangladesh’s own chart 3529 published in 2012, New Moore Island is at most 1.1 meters above water at lowest astronomical tide, the relevant point of reference for the low-water line as Professor Akhavan acknowledged.\textsuperscript{75}

46. As this is the case, at 8:00 a.m. on 24 October, New Moore was fully submerged but its location just beneath the low-water line was clearly marked by the breaking waves, which Bangladesh – perhaps with good reason - chose not to take the Members of the Tribunal any closer to.

47. Also on Monday Professor Akhavan showed you, for the second time, a Figure from Bangladesh’s Reply comparing satellite images of Bhangaduni Island, entitled “The Erosion of Bhangaduni Island, India: 1975-2010”. While ambivalent

\textsuperscript{74} Transcript, 16 December 2013, Akhavan, para. 4, referring to Bangladesh Tab 4.17.
\textsuperscript{75} Transcript, 16 December 2013, Akhavan, para. 4.
on this point last week, this time Professor Akhavan was unequivocal when he indicated that Bangladesh’s base point I-2 was under water according to the 2010 Google Earth image, “although it is on the low-water line on the latest available chart.”

48. Mr. President, India maintains its position on the lack of value of these images for the current proceedings. I would, however, note one thing about the image presented by Bangladesh and base point I-2. At a quick glance, point I-2 may seem to be offshore. But the satellite image, if anything, undermines Bangladesh’s own position. According to Google Earth’s own elevation model, base point I-2’s elevation is at 0 metres. This information is at Tab 11.2 and on the screen. [ON SCREEN]. This all serves to highlight that imagery as presented by Google Earth cannot be relied upon for defining the low-water line. Bangladesh should not be surprised; after all, it plotted its point I-2 on British Admiralty Chart 814. The source data for Bhangaduni Island on Chart 814 are from surveys conducted by the British between 1831 and 1889. According to what Bangladesh considers to be relevant evidence, point I-1 [sic] remains on the low-water line. And according to Bangladesh’s own recent chart, I-1 is on the low-water line and the satellite imagery that Bangladesh relies on confirms that that is correct.

49. Mr. President, Members of the Tribunal, on Monday Professors Boyle and Akhavan both referred again to UNCLOS article 7 in an effort to prove that the Bay of Bengal was special. Professor Boyle also threw in Annex II to the Final Act of the Conference, which, as you know, has nothing to do with our case, nothing to do with the northern part of the Bay of Bengal.

76 Transcript, 16 December 2013, Akhavan, para. 12.
50. Professor Akhavan complained that “counsel for India did not even attempt to
address Article 7(2) in their oral pleadings”. So I shall do so now, if only briefly. You will recall that last week Professor Akhavan asked “what if, hypothetically, there was a norm of international law that specifically recognized the Bengal Delta as a “highly unstable” coastline”; and he went on to say that article 7(2) did just that.

51. I shall make three points in response. First, article 7(2) is a general provision; it does not refer to the Bengal Delta. To determine whether or not it applies to a particular stretch of coast, at a particular point in time, would require detailed analysis.

52. Second, Professor Akhavan seemed to be suggesting that article 7(2) was a provision that established, as a matter of law, that the Bengal Delta is highly unstable. That cannot be right. Stability or instability is not a matter to be determined by treaty.

53. Third, Professor Akhavan asserted that, and I quote “States parties specifically agreed that the Bengal Delta is a “highly unstable” coastline and consequently that straight baselines are the appropriate method of delineation. This leads logically to the conclusion that for delimitation purposes, an angle-bisector based on straight-line coastal facades is equally the appropriate methodology.” End of quotation. With respect, States Parties agreed no such thing. They agreed on a form of words in article 7(2), as part of the overall political package deal at the

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77 Transcrip, 16 December 2013, Akhavan, p. 495, para. 10, lines 10-11.
78 Transcript, 9 December 2013, Akhavan, para. 125.
79 Transcript, 9 December 2013, Akhavan, para. 127.
Conference. And article 7(2) certainly does not ‘lead logically’ to an angle-bisector.

54. Mr. President, our friends on the other side continue to urge you to depart from the three-stage method on the ground that it is not possible to identify appropriate base points. Let me recall the passage from Black Sea case, where the Court described the technical exercise to be followed in selecting base points. The Court said:

“the Court will identify the appropriate points on the Parties’ relevant coast or coasts which mark a significant change in the direction of the coast, in such a way that the geometrical figure formed by the line connecting all these points reflects the general direction of the coastlines.”

In other words, when the appropriate base points are joined by a set of lines, this should result in what the Court called a geometrical figure reflecting the general direction of the coastlines.

55. The geometrical figure formed by the line connecting the base points selected by the Court in Black Sea will now be demonstrated. It’s also at Tab 11.3. You can also see the equidistance line constructed from the base points selected by the Court. Now, joining the base points with a set of straight lines, we can see the geometrical figure reflecting the general direction of the coasts of Romania and Ukraine.

56. An important point that immediately stands out is that there is quite a large gap between the northern section of the relevant coastline of Ukraine and the geometrical figure formed by the lines connecting the base points chosen by the

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Court. This is to be expected, it’s entirely natural, when a coast is concave as base
points located on the baselines in the most concave parts of the coast would
naturally not control the equidistance line.

57. With this in mind, let us perform the same exercise using the base points chosen
by the Parties in the present case. **On your screen, and at Tab 11.4,** is a set of
straight lines in red connecting the base points selected by India. The resulting
geometrical figure does not hug the coast of either Party, as both are concave in
nature. The gap between parts of the relevant coasts on each side and the
geometric figure is similar to the gap we have just seen in the *Black Sea* case. In
addition, in the present case, that gap is “shared” almost equally by both Parties.
Comparing the geometrical figures in both cases showed that the figure
constructed by using the base points selected by India reflects the general
direction of the coasts within the meaning of the Court’s dictum in *Black Sea.*

58. **Now on your screen,** we are adding, with a dashed green line, the geometrical
figure formed by the lines connecting the base points selected by Bangladesh. As
with India’s base points, there are gaps between the lines and the relevant coasts
of the Parties. Comparing the two geometrical figures, the lines reflecting the
general direction of the Indian coasts are quite similar. On the Bangladesh side,
India’s line is actually closer to the coastline and, to that extent, better reflects the
general direction of the coast.

59. Let us now add to the image the line connecting the base points of Bangladesh
selected by the ITLOS in the case between Bangladesh and Myanmar. This is
shown in blue, reflected by connecting $\beta 1$ and $\beta 2$. The general direction of
Bangladesh’s coast as found by ITLOS, lies a little further from the coastline, the
lines constructed using the base points identified by the Parties in the present case.
60. Mr. President, Members of the Tribunal, this shows that the geometrical figure constructed using the points selected by India does indeed reflect the general direction of the coasts of the Parties in accordance with the Black Sea dictum.

61. Mr. President, Members of the Tribunal, that concludes my statement. I thank you very much for your attention, and it’s probably time for the coffee break.

PRESIDENT WOLFRUM: Thank you, Sir Michael, for your statement. You didn’t exhaust your time, but nevertheless let's have a coffee break until quarter to
(Brief recess.)

PRESIDENT WOLFRUM:  Professor Pellet, before I just give you the floor, just a brief announcement--please come forward--it has already been arranged, after the Agent of India has spoken, we will have a brief break to consider amongst ourselves whether we have questions.  We have not yet decided.  And it's perhaps just a brief break of 10 to 15 minutes maximum.  And then we will return and inform you about these questions, and we will deal with other procedural matters as we will see.

    Professor Pellet, you have the floor.

    PROFESSOR PELLET:  Don't feel obliged to find questions.

    PRESIDENT WOLFRUM:  That's an incentive.
1. Listening to our amicable opponents on Monday, I got the impression that they had transformed *Bangladesh v. India* into Pellet’s case. It is not! And I can assure you, with my Agent’s full accord, that what I have presented last week – and what I will introduce now – is *India’s* case. No need, I think, to personalize that much!
2. Mr. President, yes, we definitely stick to the three stage method. Professor Reisman has dealt with the starting point of the single boundary line, and Sir Michael has recalled our position concerning the relevant coasts and area. It remains for me to apply the standard methodology within the framework, both factual and legal thus described (I.). Moreover, since I bring up the rear, I will, at the end of this speech, very briefly recapitulate the Indian case (II.).

I. APPLYING THE THREE STAGE METHOD

3. Mr. President, we were happy to learn on Monday from Mr. Reichler that “Bangladesh is much interested in methodology”\textsuperscript{81} – as much as we were astonished to hear from Mr. Martin,\textsuperscript{82} approved by Mr. Reichler,\textsuperscript{83} that we had “skip[ped] step two” and “jump[ed] over it to get to step three, so [we] rush to the judgment that [our] equidistance line is not inequitable under the very liberal standards of the disproportionality test.”\textsuperscript{84} Before challenging the first part of the sentence, let me take note of the double admission in the last phrase: 1. the disproportionality test – which is better called the “non-gross disproportionality test” – must be applied according to “very liberal standards” and 2. in accordance with those standards, our equidistance line is, they say, not inequitable. Let me however recall that I had devoted more than one hour last Friday to discussing whether, in the present case, there were any relevant circumstances that required adjusting or shifting the provisional equidistance line, and to showing that there were none.\textsuperscript{85} Now, what is true is that we went on formally describing the

\textsuperscript{81} Transcript, 16 December 2013, Mr. Reichler, p. 524, para. 6, lines 13-14.
\textsuperscript{82} Transcript, 16 December 2013, Mr. Martin, p. 513, para. 11, lines 17-18.
\textsuperscript{83} Transcript, 16 December 2013, Mr. Reichler, p. 524, para. 7, line 20.
\textsuperscript{84} Transcript, 16 December 2013, Mr. Reichler, p. 525, para. 7, lines 1-3.
\textsuperscript{85} See transcript, 13 December 2013, pp. 400-417, paras. 19-46.
construction of that line only after discussing the issue of relevant circumstances;\(^{86}\) that was to avoid coming back to the question separately within the territorial sea, on the one hand, and within and beyond 200 nautical miles, on the other hand. I hope the structure of our pleadings was clear to the Tribunal, even if it appears to have been beyond our friends opposite. (I might note in passing that the structure of their oral pleadings has been, well... let me be polite for once, and say ‘baroque’.)

4. In any event, it seems that Bangladesh no longer challenges that the same rules apply to the delimitation of the continental shelf on both sides of this limit – and I quote from Professor Crawford: “…Article 83 applies equally within and beyond 200M, and the methodology is unchanged (as India insists)\(^{87}\) which does not imply that, as he said, “the overall equity of the line must be assessed”,\(^{88}\) but – and it is something different – that the equitable character of the solution as a whole must be assessed through the test of non-disproportionality; I will come back to this when I will discuss the circumstances relevant to the second stage and, of course, in respect of the third stage and the non-disproportionality test – but this is premature. In order to meet the legitimate Cartesian requirements of our opponents,\(^{89}\) let’s have 1 and 2 before 3. But before I start, I would like to take 30 seconds to publicly thank the wonderful team of hydrographers and cartographers who, together with [Martin Pratt and Benjamin Samson] have been wonderfully helpful for me and devoted to their task very, very late in the night, and I should probably say “in the nights.”

A. The First Stage: Drawing a Provisional Equidistance Line

\(^{87}\) Transcript, 16 December 2013, Mr. Crawford, p. 555, para. 22, lines 9-10.
\(^{89}\) Transcript, 16 December 2013, Mr. Reichler, p. 525, para. 7, line 4.
5. However, Mr. President, if you refer to their pleadings of our opponents on Monday morning; you will note that, interestingly, they simply say nothing of … the first phase. In fact, they, themselves eliminate this first phase and rush to the second phase while pretending to accept the third – three stage method. This is too much haste. Let’s do things properly.

**Projection n° 1: The Provisional equidistance line (1 – The Territorial Sea) (Animation)**

6. Sir Michael has shown that the equidistance line can (and then must) be constructed on the basis of our carefully identified base points – just have in mind, Members of the Tribunal, Sir Michael’s graph showing the line connecting the base points, you have seen before the break and which you have under Table 11.4 of your folder. Then, here is the line:

*add the base points and the segments while I name them*

- first, in the territorial sea, the first segment is governed by base points I-1, I-2 and B-1 until it reaches point T-1;
- then, the line runs through points T-2 governed by base points I-2, B-1 and B-2 and T-3 controlled by base points I-2, B-2 and B-3;

**End of projection 1 – Projection n° 2: The Provisional equidistance line (2 – The EEZ and the Continental Shelf) (Animation)**

- afterwards, starting at point X (not a base point but the end point of the territorial sea), you have the limit between the continental shelves and the EEZ of the Parties; it passes through points T-4 governed by points I-2, I-3 and B-3, T-5 – here base points I-3, B-3 and B-4 control-, and T-6, where I-3, B-4 and B-5 come into play, until it joins point Y where the line crosses the 200 nautical miles limit;
- finally, from Y to Z, the line, in purple, represents the limit between the two continental shelves alone, up to the point where it meets the boundary between Bangladesh and Myanmar as determined by the ITLOS; in between a slight change of direction (at point T-7) results from the influence of points I-3, I-4 – that is Devi Point, and B-5, the two latter points being accepted by both Parties as base points.

**End of projection 2 – Projection no 3: India’s and Bangladesh’s Equidistance Lines Compared (Animation)**

7. Now, I can understand, Mr. President, why Bangladesh has carefully avoided to put on the screen any graphic showing how its equidistance line has been constructed (and you will only find one in the written pleadings which only concerns the territorial sea)\(^{90}\) and I also understand why Bangladesh has only shown this line very fleetingly and contrasting with a highly fanciful “equiratio line”.\(^{91}\) **Put B’s “provisional equidistance line” as plotted on R4.12.** Here is Bangladesh’s equidistance line, until the point where it joins the prolongation of the ITLOS line **add the ITLOS line in red up to the point where it meets B.’s provisional line.** As Sir Michael has already shown, it is striking how much this line is proximate to our provisional equidistance line **add our provisional equidistance line (in order to get the same general view as R4.12 but also prolong our line up to the meeting point with the ITLOS line).** And it is even more striking than it looks if you shift the starting point of the line from the “middle of the main channel” of the Hariabhanga River as inaccurately claimed by Bangladesh to the proper one, as again described by Professor Reisman before the break. Besides the fact that Bangladesh’s line is slightly less favourable to it in the area beyond 200 nautical miles the similarities are more striking – infinitely more striking than the differences – except that, as Sir Michael has shown this

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\(^{90}\) See BR, p. 67, Figure R3.14.

\(^{91}\) See Bangladesh’s Folder, 1\(^{st}\) round, “Bangladesh’s 180° Line Compared to an Equiratio Line”, Tab. 2.34.
afternoon, our base points are more in line with the general direction of the coasts than theirs. I suppose that Bangladesh has done its best to find base points as beneficial to its case as it could; but it has found nothing better which could really help it.

8. So much for the first stage of the standard method – which, by the way, is not “Professor Pellet’s famous methodology” as Professor Crawford put it\textsuperscript{92}, but the normal method now adopted and applied by all international courts and tribunals whenever drawing a provisional equidistance line is not unfeasible (or possibly not “wholly inappropriate” – not in the very subjective sense our opponents give to the word, but in view of the absurd results such a line would lead to, and only if these results cannot be corrected by an adjustment) – and it is indeed not open to courts and tribunals to pick and choose what they consider “the most appropriate method by which to reach an equitable solution” as Professor Boyle suggested in his last speech.\textsuperscript{93} This would be, if I may say so, a … most inappropriate step backward, putting into question the trend toward more certainty and more predictability in the law of maritime delimitation obtained through the case-law of international courts and tribunals during the past thirty years or so.

9. In our case drawing a provisional equidistance line is perfectly feasible and in no way inappropriate. It must be drawn. And there is indeed no room for the so-called “alternative method” of the “angle bisector”, neither here – nor elsewhere! (even though I’ll make one or two brief comments on it later on).

\textbf{End projection 3}

\textsuperscript{92} Transcript, 16 December 213, Mr. Crawford, p. 545, para. 3(11), line 12.
\textsuperscript{93} Transcript, 16 December 2013, Mr. Boyle, p. 501, para. 3, lines 9-12 – italics added.
B. Stage 2 – Taking Into Account Relevant Circumstances (If Any)

10. Let me then go back to our provisional equidistance line since it better reflects “physical reality at the time of the delimitation”\(^{94}\) to quote the Black Sea judgment. So better reflects “physical reality at the time of delimitation” than Bangladesh’s line, and let us check whether “there are any relevant circumstances which may call for an adjustment or shifting of the provisional equidistance/median line so as to achieve an equitable result.”\(^{95}\)

11. But I would like to mention first something rather important – or at least significant: at no point during their second round, have our friends on the other side mentioned the so-called instability of the coast as a relevant circumstance calling for a change of the provisional equidistance line: Mr. Martin has not cited it as a “special circumstance” within the meaning of Article 15 of the UNCLOS; nor have Mr. Reichler or Professor Crawford suggested that it could be a “relevant circumstance” for the purposes of the second stage of the standard three-stage method. We take note – it is an important rationalization of Bangladesh’s argument;\(^{96}\) and indeed, by no means could the instability of the coast be considered as such a circumstance.


\(^{96}\) Comp. e.g. BR, p. 2, para. 1.6, p. 48, para. 3.55, transcript, 9 December 2013, Mr. Akhavan, p. 95, para. 70, lines 4-5, p. 97, para. 74, lines 11-13, pp. 114-115, para. 119.
12. We are, therefore left with one – and only one – special/relevant circumstance (I have explained last Friday why there was no need for differentiating about both expressions)\textsuperscript{97}: this circumstance is concavity. Before discussing its merits (or absence of merits…), please allow me to make a clarification concerning the very notion of relevant circumstances. On several occasions, Mr. Reichler has alleged that “[t]he cutoff […] constitutes a relevant circumstance under the three-step method”\textsuperscript{98}, I think it will be more exact to say that “the concavity constitutes a relevant circumstance under the three-step method” not if it creates “a” cut-off but if and when it “produces a pronounced cut-off effect” on the projection of the coast of the concerned State.\textsuperscript{99}

13. Now, on three points we seem to agree with Bangladesh:

(1) Bangladesh’s coast is concave;

(2) India’s coast too is concave;

(3) “concavity \textit{per se} is not necessarily a relevant circumstance.”\textsuperscript{100}

14. In reality, and this is exactly what I had tried to explain on Friday,\textsuperscript{101} a concavity is a relevant circumstance when and inasmuch as it distorts excessively the orientation of the provisional equidistance line to the detriment of one of the two States otherwise in the same or a similar situation. The idea, as was expressed by the ICJ in the \textit{North Sea Continental Shelf} cases is to abate “the effects of an

\textsuperscript{97} See transcript, 13 December 2013, p. 393, para. 8.
\textsuperscript{98} See e.g.: Transcript, 16 December 2013, Mr. Reichler, p. 531, para. 19, lines 4-7; see also: \textit{ibid.}, pp. 526-527, para. 11.
\textsuperscript{99} \textit{ITLOS, Judgment}, 14 March 2012, \textit{Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Reports 2012}, para. 323.
\textsuperscript{100} \textit{Ibid.}, para. 292; see also: See also BR, p. 54, para. 3.68, p. 86, para. 4.60, p. 91, para. 4.70; or transcript, 9 December 2013, Mr. Martin, p. 42, para. 43 and Mr. Reichler, pp. 123-124, para. 140 and p. 129, para. 149.
incidental special feature from which an *unjustifiable difference of treatment* could result."\(^{102}\) As a result of such a distortion, the continental shelf rights of one of the Parties should be “*considerably* different from those of its neighbours…”\(^{103}\). This is not so in the present case where the “treatment” of India on the one hand and of Bangladesh on the other hand is neither “considerably different” nor, in any case, “unjustifiable” if it could be seen to exist.

15. Mr. President, Mr. Reichler attributed to me an admission that I have not made. I have never conceded and I do not concede “that a coastal concavity can be a relevant circumstance where the State with a concave coast is pinched between two other States…”\(^{104}\) This is apparent if I put again on the screen one of the “schematics” I projected on Friday, following Mr. Martin’s example – but head down.

**Projection n° 4: Head of the Bay shared**

Here State A is representing Myanmar; India is C and B (Bangladesh) is “pinched” between A and C but its concavity has no unjustifiable effect *vis-à-vis* C, while it certainly has such an effect in its relations with A. A’s coastline continues the coastline of B and here the concavity creates an unjustifiable distortion of the line; but it is not C’s business and this is not so with regard to the relations between B and C: both coasts are concave; the equidistance line (which happens in this diagram to coincide with an angle bisector, but it does not matter for our case) is not distorted in their bilateral relations. This, though it is a very schematic form, this graph illustrates two things:


\(^{104}\) Transcript, 16 December 2013, Mr. Reichler, p. 527, para. 13, lines 7-9.
- first, what matters is not whether a State is “pinched” between two others or not, but what matters are the relations between the respective coasts of the States concerned; and,
- second, it can perfectly happen that the concavity of a “pinched” State constitutes a relevant circumstance *vis-à-vis* one of its neighbours and not *vis-à-vis* the other.

End of projection 4

16. This is exactly what happens in the present case: Bangladesh’s concavity is a relevant circumstance for the delimitation between Bangladesh and Myanmar – this circumstance was fully taken into account by the ITLOS. It is not relevant for drawing the maritime boundary between Bangladesh and India. As Mr. Reichler himself explained during the first round, and I quote from him:

“The ICJ itself rejected the thesis […] that dealing with two boundaries in the same case is somehow materially different from dealing with them in separate cases. To quote the Court: ‘Although the proceedings have been joined, the cases themselves remain separate, at least in the sense that they relate to different areas of the North Sea continental shelf, and that there is no *a priori* reason why the Court must reach identical conclusions in regard to them…’[^105] …[^106]

I repeat, “There is no *a priori* reason why the Court must reach identical conclusions in regard to them…”

We could not agree more: indeed the global situation is the same in both the ITLOS case and our case; and certainly the Tribunal in Hamburg has taken this situation into due consideration. However, there is no *a priori* reason why this Tribunal ought to reach identical conclusions in regard to the maritime delimitation between Bangladesh and India: the bilateral coastal relationship between these States is different from that between

[^106]: Transcript, 9 December 2013, Mr. Reichler, pp. 132-133, para. 155.
Bangladesh and Myanmar. *Vérité au-delà [de la Naaf River], erreur en deçà*\(^{107}\) — “Truth on this side of the [Naaf River], error on the other side.”\(^{108}\)

**Projection n° 5: Concavities (Animation)**

17. The truth when you consider the main geographical characteristics of the coasts on both sides of the Hariabhanga River is concavity. Concavity East of the River **draw the Bangladesh concavities my first round “The Bay of Bengal (1)”**: this is Bangladesh’s concave coast; and, **draw the Indian concavity concavity West of the Estuary** – this is the Indian concave relevant coast. Now, Mr. President, **this** (and only this) is what I put on the screen and which was in your folder on last Friday. But **add the dotted lines and the various mentions (B-5, I-2 and I-3 + the distances added by India on Reichler’s 2\(^{nd}\) round, Fig. 4 – Tab 5.12 of their Folder this**, now, is what Mr. Reichler introduced on Monday as the “Map presented by Professor Pellet during India’s first round of oral pleadings” and it was reproduced under Tab 5.12 of their folder – a regrettable … approximation to say the least. But let me pause and comment on this revised figure if I may.

18. **It is very curiously asymmetric, Mr. President:** why does the Indian simplified coast run from I-2 to the south-western extremity of the Bay of Balasore and not to Devi Point **take out I-3 and False Point and add Devi Point in blue on the map (same characters as False Point) and I-4; then add a dotted line from I-2 to I-4 + the length.** I have no objections against simplifications, Mr. President, but they must be balanced and equivalent for both


sides… When this correction is made, it will be apparent that both concavities are
about the same length and it can genuinely be thought that they have the same
kind of effect on the equidistance line. May I also refer you back again, Mr.
President, Members of the Tribunal, to the geometrical figures connecting the
base points that Sir Michael put on the screen a moment ago, and which is in Tab
11.4 of your folder: it confirmed that it is appropriate to simplify the coasts of the
Parties – and it does it in regard to the same relevant coasts of the Parties.

End of projection 5 – Projection n° 6: No Pronounced Distortion

19. Bangladesh of course says “no – we are dramatically cut-off”. Is it so, Mr.
President? Let’s look anew at the provisional equidistance line and the alleged
intolerable cut-off it generates for Bangladesh. Yes, there is some cut-off. But is it
“pronounced”, “considerable” and “unjustifiable”? This is indeed very subjective.
I would think that, besides just the way we see the line, two reasons at least call
for a negative answer:

End projection 6 – Projection n° 7 – Areas Lost by India and Myanmar under
Bangladesh’s Proposals/ITLOS Award

- In the first place it is indeed much less pronounced than the one which, in
Bangladesh/Myanmar, persuaded the ITLOS to adjust the provisional equidistance line;
while, by contrast, the cut that India would bear as a result of Bangladesh’s claim is much
more considerable than the one inflicted upon Myanmar by the 2012 ITLOS Judgment.
On the screen you can see the ITLOS line, it is in red; and the Bangladesh’s claim line in
our case in yellow; add our line now in purple the equidistance line; add the ITLOS
provisional equidistance line and in green the Bangladesh-Myanmar provisional
equidistance line. The non-insignificant adjustment decided by the ITLOS resulted, if I
may say so, in a “gain” of less than 19,531 square kilometres for Bangladesh; if this
Tribunal were to accept the Bangladesh’s claim the “adjustment” would represent 32,522
square kilometres while (i) Indian coast is concave like Bangladesh’s coast and (ii) the length of the Indian relevant coast is 411 kilometres, that of Myanmar was 587 kilometres.\(^{109}\)

End projection 7 - Projection n° 8 – Refashioning the Geography (Animation)

- Secondly, this indentation of the line to the east is simply a negation of geography as it is, a negation of nature as it is: this inflexion reflects two clearly marked characters of the relevant coasts **underline the convex part between Maipoura Point and Devi Point**: the (secondary) convexity of the segment of the relevant Indian coast between Maipoura Point and Devi Point on the one hand and **underline the western part of the Brahmaputra delta** Bangladesh’s “concavity within the concavity” facing India eastward; but, even though Mr. Reichler enjoys “discounting or eliminating”\(^{110}\) what he calls “anomalous” features, this precisely consists in negating – and therefore refashioning the nature and the geography.\(^{111}\)

- Last but not least, **add the construction lines for points T-4, T-5 and T-6 as on Projection 1** in line with Mr. Reichler’s magic trick consisting in just eliminating what he considers as being “anomalous”, it could be said that, after all, if you simply forget base point I-3 you get rid of the cut-off. Besides the fact that, here too, you simply refashion nature, it is troubling to note that when constructing its own equidistance line, **substitute Bangladesh’s line with the relevant construction lines and base points (as at the end of projection 2)** Bangladesh itself has not dared taking this radical step and it has adopted a similar base point although not situated on the same low-tide elevation as India’s I-3. Why? Because otherwise the equidistance line would be completely

\(^{109}\) ITLOS, Judgment, 14 March 2012, *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Reports 2012*, para. 204.

\(^{110}\) Transcript, 9 December 2013, Mr. Reichler, p. 122, para. 134, line 17.

disconnected from the “geographical configuration of the present-day coasts”\textsuperscript{112} which is no more acceptable at stage 2 than at stage 3 save if you ignore the fundamental principle according to which the land dominates the sea.

End of projection 8 – Projection n° 9: An Angle Bisector Line? (Animation)

20. Would an angle bisector be more appropriate Mr. President? Indeed, if you take Bangladesh’s line it solves the problem: \textbf{Colour the space between the equidistance line and the bisector} Bangladesh may complain of no cut off at all; but – and these again are huge “but’s” Mr. President:
- the line is entirely arbitrary, and can be justified by no rule of international law; and
- it has a considerable cut-off effect on India – I’ll come back to this in a minute.

End of projection 9

21. Mr. President, I have indulged myself in this short excursion in the bisector fantasy only because it shows that our opponents accept that it is legitimate to “eliminate” both Parties’ concavities. This being so, it seems difficult, to put it mildly, to claim at one and the same time that it is appropriate to eliminate the concavities (and, primarily, Bangladesh’s concavity) and that these “eliminable” circumstances are nevertheless special or relevant within the meaning of Article 15 of the UNCLOS or of the standard method of delimitation of the EEZ and continental shelf.

Projection n° 10: India’s Severe Cut-Off Resulting from the Bangladesh’s Claimed Line (1)

22. Speaking of cut-off Mr. President, if you take the Bangladesh’s claimed line, here, you have, indeed, an obvious, pronounced and considerable distorting effect as is shown by this map which was included in the Reply.

End of projection 10 – Projection n° 11: India’s Severe Cut-Off Resulting from the Bangladesh’s Claimed Line (2)

The same is true here, on this sketch-map which was also first presented in our Reply. And of course, it is legitimate to appreciate the cut-off effect of a claimed line, not only in respect to the area within two hundred nautical miles, but also beyond – in that, as I have already said, I agree with Professor Crawford. This being said, this assessment must be made in view of the general situation and the next screen reminds us opportunely that India surrounds both sides of the Bay of Bengal,

End projection 11 – Projection n° 12: India’s Severe Cut-Off Resulting from the Bangladesh’s Claimed Line (3)

since it reminds us of the existence of the Andaman Islands – as Sir Michael rightly did earlier to-day, and it shows that India is doubly cut off by the Bangladesh’s claim. May I also note that the ITLOS line is certainly binding for Bangladesh but does not bind India? This map – which was projected by Counsel for Bangladesh last week and which is supposed to reproduce the previous one – of which it gives a very “free” (but interesting) interpretation is very telling too (it was first included in Bangladesh’s first round Folder; and I have also shown it in India’s first round Folder). Yes indeed, Bangladesh’s line severely cuts off India’s entitlement to a continental shelf whether within or beyond the 200 nautical miles limit and, of course, it is of no avail for Bangladesh to claim a shift of the equidistance line on the pretext of its being cut off when the result of this change is to create a further cut-off for India. And all the less so that (i) this change in the direction of

113 Transcript, 16 December 2013, Mr. Crawford, p. 555, paras. 21-22, lines 7-11.
the line is purely arbitrary and finds no justification whatsoever in the standard method of
delimitation and (ii) that the cut-off Bangladesh complains of is limited. As rightly noted
by Professor Crawford, “[c]ut-off is a question of degree, not a generic prohibition”; the
cut-off endured by Bangladesh is by no means “considerable” and must be assessed
keeping in mind that of India – and certainly a cut-off deriving from geography cannot be
“exchanged” (I was about to say “bargained”…) with a “compensatory cut-off”.

End of projection 12.

23. You will certainly therefore understand, Members of the Tribunal, why, at
the risk of disappointing Professor Crawford, I will still not discuss what he calls
his “numerical tables”: all these data are extraneous to the process of maritime
delimitation by a tribunal called to decide on the basis of the law and have
nothing to do with stage 2 of the standard methodology.

24. Some words, however, on the case-law, before leaving stage 2, since both,
Paul Reichler and James Crawford, came back at some length to it – although
both simply repeating in large parts what they had already said during the first
round – mainly repeated, at least but only when they have not contradicted each
other. Thus, I note that Mr. Reichler, has vehemently insisted that this review of
the cases where islands were considered as relevant circumstances was also fully
pertinent for our case where the only relevant (or irrelevant…) circumstance they
invoke is concavity. 114 Professor Crawford disagrees – speaking of
Barbados/Trinidad and Tobago, he emphasized: “The problem of cut off was not
caused by concavity but by two other factors. First and most important, Barbados
is a long way to the east of Trinidad and Tobago, with consequent effects on the

114 Transcript, 16 December 2013, Mr. Reichler, p. 535, para. 26, lines 12-19.
200M line and the equidistance line.\textsuperscript{115} – an island然后; a remote island; not a concavity; and, apparently, for Professor Crawford, it makes a difference – for me too.

25. This being said, with respect, Professor Crawford’s analysis of Barbados is inaccurate in several important respects:

- \textit{First}, you may “move” Barbados as close to Trinidad and Tobago as you like; the situation of Trinidad and Tobago will not improve: the fact is that the coasts of Barbados, Trinidad and Tobago and Venezuela form a concavity; and

- \textit{Second}, reading the transcript of the hearings in this case, even though the word “concavity” does not appear, it is difficult to believe that Professor Crawford, pleading for Trinidad and Tobago, had not a concavity in his mind when he compared heavily his client with Germany.\textsuperscript{116}

\textit{Projection n° 13: Barbados/Trinidad and Tobago and Bangladesh v. India Compared slide 1}

But there is an even more interesting point. You have now on your screen a mirrored comparison of the claims of Trinidad and Tobago (on the left) and of Bangladesh (on the right) both of which as pleaded by my opponent and friend. As you can see, Trinidad and Tobago’s claim was very similar – even though more reasonable – to that of Bangladesh in the present case. \textit{Slide 2} Now, this was the solution obtained by the Tribunal. Of course, Mr. President we have changed the orientation of the Barbados/Trinidad and Tobago map but we have changed nothing else. \textit{Slide 3}. This interesting comparative table is in Tab 12.13 of your Folder.

\textit{End projection 13}

\textsuperscript{115} Transcript, 16 December 2013, Mr. Crawford, pp. 551-552, para. 14.
\textsuperscript{116} Transcript, 28 October 2005, Mr. Crawford, p. 18, lines 13-21.
26. Let me focus now on the other rare cases where concavity was at stake (although I maintain that it was also the case in *Barbados/Trinidad and Tobago*). I have said enough, I think, of the other *Bay of Bengal* case – and you know it by heart. Just some words then on the “two Guineas” case. It is true, Mr. President that I don’t “like”117 this eccentric decision: it is not principled, it has no legal basis whatsoever, and one of the Arbitrators, Judge Bedjaoui – who, however, concurred with the majority, some years later dissociated himself from the solution.118 That Award participates in the, I would say, “anything” strategy – *stratégie du n’importe quoi* – “As you like it” would have said Michael Shakespeare or was it William Wood – a strategy to which our friends on the other side are addict; it is simply not serious even though it was invoked by the ITLOS. This said, as I explained last Friday119, even this Award is to be differentiated from our case: as Mr. Reichler now recognizes,120 concavity was only part of the reasons for the choice of a bisector.

27. Mr. President, I would certainly not dare to be as critical of the venerable 1969 Judgment in the *North Sea* cases – although it was at the origin of the scramble of the law of maritime delimitation – but again, Mr. President: it is venerable; the general principle it stated – the need for an equitable solution –, which was embodied in the UNCLOS, is not self-sufficient; it does not stand by itself and cannot be considered “in clinical isolation” as Bangladesh does. Moreover,

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117 See Transcript, 16 December 2013, Mr. Crawford, p. 549, para. 10, line 6; see also Mr. Reichler, p. 534, para. 25, lines 12-14.
119 Transcript, 13 December 2013, pp. 414-415, para. 42.
120 Transcript, 16 December 2013, Mr. Reichler, p. 535, para. 26.
(1) even if Mr. Reichler was ironical about it, it cannot be said that the ICJ in that case really adopted an angle-bisector; it fixed a number of general principles and – temporarily – reduced equidistance to one possibility among others. This is a scramble;

(2) on Monday, Professor Crawford, surely inadvertently, gave the wrong impression that the 1969 Judgment came in support of “[t]he presumption of maximum reach”, and he added: “the North Sea Continental Shelf cases themselves allowed Germany access to the median line with the opposite State as a result of negotiations”; but of course, it is the subsequent agreement, not the Judgment which permitted Germany to approach its so-called “maximum reach”.

28. Let me then briefly – time is elapsing quickly – say a few words of the judgments and awards my opponent cited in favour of this academic and most debatable notion of “maximum reach”:

- Saint-Pierre et Miquelon, which Mr. Crawford described as “a notable example of the presumption of maximum reach at least out to 200M.” Unfortunately, he did not venture into the details of that case. There are three important points:

- First, in this case, the French Islands were surrounded by a single State, Canada, and not two, as Bangladesh is in the present case;

- Second, France argued for equidistance, not Canada; and

- Three, France was not given a “corridor”, rather its maritime areas were reduced to 10.5 nautical miles wide “corridor.” The Tribunal was not concerned by the application of an alleged principle of “maximum reach” but by the cut-off of a mainland coast – that of Canada – produced by a group of small islands belonging to another State.

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121 Ibid., pp. 533-534, para. 24.
122 Transcript, 16 December 2013, Mr. Crawford, p. 548, para. 11, lines 17-19.
123 Ibid., lines 20-21.
124 Transcript, 16 December 2013, Mr. Crawford, p. 549, para. 10, lines 10-11; see also: Transcript, 10 December 2013, Mr. Crawford, p. 217, para. 53, lines 8-10.
125 See the pleadings for Myanmar in Bangladesh/Myanmar, ITLOS/PV.11/15/Rev.1, 24 September 2011, M. Forteau, p. 28. See ICM, p. 165, para. 6.66.
29. In this respect, the situation is similar to that prevailing in *Nicaragua v. Colombia*. In that case,
- the Colombian Islands were surrounded by a single state’s entitlement, Nicaragua;
- Colombia and not Nicaragua argued for equidistance;
- Colombian Islands were not given a “corridor”, their maritime space was reduced to that “corridor”. The Court was concerned by the fact that “a few small islands which are many nautical miles apart”\(^{126}\) – and not a mainland coast – may very significantly cut-off the projection of a mainland coast (some three quarters).\(^{127}\)

However, the Court considered: “… that those islands should not be treated as though they were a continuous mainland coast stretching for over 100 nautical miles and cutting off Nicaraguan access to the sea-bed and waters to their east.”\(^{128}\)

30. Two conclusions follow:

(1) International courts and tribunals are concerned by the potential severely distorting effect of small islands on mainland coasts’ entitlement and not by a so-called “maximum reach” principle, as interesting it may be for scholarly discussions; and

(2) According to the ICJ’s most recent Judgment, it can perfectly well happen that a State be cut off – even significantly – by the mainland coast of another neighbouring State.

31. Mr. President, the case-law does not help Bangladesh’s case; and the only circumstance still claimed by Bangladesh as being relevant for justifying an adjustment to the provisional equidistance line: the concavity of its coast, does not meet the required conditions to that effect: indeed it creates a cut-off, preventing

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\(^{127}\) *Ibid.*

its entitlement to maritime areas to produce their full effect but (1) a cut-off is unavoidable when maritime entitlements overlap; (2) the one it complains off is not considerable; and (3) the “alternative” line it itself claims would create a considerable cut-off to the detriment of India without any justification based on the general configuration of the coasts. There is no justification for an adjustment of the provisional equidistance line at stage 2 of the standard method.

Stage 3 – The Non-Disproportionality Test

32. Mr. President, on Monday, Counsel for Bangladesh had very little to say on the “non-disproportionality test”, which constitutes the third stage of the now standard equidistance/relevant circumstances method. I can therefore be extremely brief.

33. From Bangladesh’s second round of oral presentations, the Parties appear to agree on two points:
- First, the delimitation line must be tested “under the very liberal standards of the [non]-disproportionality test”,\(^\text{129}\) and,
- Second, beyond Devi Point, the maritime zones that lie within 200 nautical miles from Bangladesh are to be excluded from the non-disproportionality test.\(^\text{130}\)

34. As both Michael Wood and Michael Reisman have explained last Friday, the length of India’s relevant coast is 411 kilometres and that of Bangladesh’s 417 kilometres. The ratio of the lengths of the relevant coasts of India and Bangladesh is thus 1:1.015. Within the limit of 200 nautical miles, the relevant area is 176,756 square kilometres. The equidistance line proposed by India divides the relevant

\(^{129}\) Transcript, 16 December 2013, Mr. Reichler, p. 524, para. 7, line 3.

\(^{130}\) Transcript, 16 December 2013, Mr. Crawford, pp. 555-556, paras. 23-24.
area as follows: 93,235 square kilometres for India and 83,521 square kilometres for Bangladesh. The ratio of their respective shares of the relevant area is thus 1:0.90. The situation is nearly one of equality, not of disproportionality, let alone of gross disproportionality.

Projection n° 14: The Non-Disproportionality Test

35. This finding is globally unchanged if one takes into consideration the area of real overlaps of the Parties claims beyond the 200 nautical miles limit since inside this quasi triangle, the proportion is again 1:0.80 (that is, 107,616 km² for India and 86,432 km² for Bangladesh). As a consequence, no adjustment of the delimitation line is required by the application of the non-disproportionality test.

End of projection 14

36. Finally, I note that, even if the Tribunal were to accept the relevant area as shown by Professor Crawford on Monday (quod non), the equidistance line proposed by India, which is the result of a normal application of the 3-stage method, passes unquestionably the non-disproportionality test. The ratio between the shares of the relevant area would be 2:1 in favour of India. “Close enough” said Professor Crawford. Well… “fair enough”, Mr. President. The result “is not at all disproportionate [within the limits accepted by the jurisprudence as reflected in the summary Table you can find under Tab 12.15 of your Folder], let alone "grossly” disproportionate. Without any need for further discussion, the application of the standard equidistance/relevant circumstances easily passes the test of non-disproportionality – whatever the length of the coasts are deemed relevant. However, I hasten to say, Mr. President, that, by stating this, I do not

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131 Transcript, 16 December 2013, Mr. Crawford, Tab 5.27.
132 Transcript, 16 December 2013, Mr. Crawford, p. 556, para. 26, line 16.
133 Transcript, 16 December 2013, Mr. Crawford, p. 556, para. 25, line 12.
concede in any manner that we accept the relevance of the coasts advanced by
Counsel for Bangladesh in support of their calculation. What I simply mean is that
there is no need to lose time in discussing calculations which how “carefully” and
“cleverly performed” they might have been,\(^{134}\) can have no influence on the
assessment to be made: whatever the calculations, the equidistance line as drawn
by India passes the test and the result, achieved through the methodology
followed by India in conformity with the applicable rules and principles of
maritime delimitation, is equitable.

II. BRIEF SUMMARY OF THE INDIAN CASE

37. Mr. President, before our Agent recapitulates the main political and legal
policy issues related to the present case, please allow me to briefly summarize the
India’s case. I will do it by underlining four main points.

38. First, the starting point of the maritime delimitation is the land terminus
point, defined in the 1947 Radcliffe Award, as the point where “the boundary
between the Districts of Khulna and 24 Parganas [...] meets the Bay of
Bengal”;\(^{135}\) the boundary between these two Districts had been described by
Notification 964 of the Government of Bengal of 1925 as being formed by “the
midstream of the main channel for the time being of the rivers Ichhamati and
Kalindi, Raimangal and Haribhanga until it meets the Bay.”\(^{136}\) However, the
combination of these formulas, as such, does not inform on the precise location of
that point. It must therefore be located by other means – primarily by using the
map annexed to the Award and signed by Sir Cyril. This map forms part of the

\(^{134}\) Transcript, 16 December 2013, Mr. Crawford, p. 555, para. 22, line 13.
\(^{135}\) Radcliffe Award, para. 8 (ICM, Annex IN-2).
Award, and shows very clearly that the land terminus is situated east of the location where New Moore Island – to-day a low tide elevation – lies. The Radcliffe Award has been authoritatively interpreted successively by the Bagge Award of 1948, according to which “[i]f the demarcation of this line is found to be impossible […] the course of the midstream of the main channel” must be “determined on the date of demarcation and not as it was on the date of the award”, 137 then by the 1951 Indo-Pakistan administrative agreement, which confirmed the fluidity of the mainstream between 24 Parganas and Khulna – up to the date of the final demarcation of the boundary. 138 It results from this – consistent – evidence that the terminus of the land boundary is located in the midstream of the main channel of the conjoined Hariabhanga and Raimangal rivers where it meets the Bay. The main channel thus defined flows north then east of New Moore as can be deduced from all the relevant charts (including Bangladesh’s) and noted by all of us during the site visit, notably during the famous afternoon of 24 October.

39. Second, concerning the maritime delimitation, India is extremely concerned by Bangladesh’s approach to the applicable law. Were you, Tribunal, to be seduced by their call for “flexibility” or “legislation” – the sirens’ or “mermaids’” songs – then all the patient quest of international courts and tribunals since 1969 for more certainty and predictability in the law of maritime delimitation would be put into question. Whatever the French great play writer Jean Giraudoux might have thought, le droit [n’]est [pas] la plus puissante école

Although not as explicitly as might have been hoped, the ITLOS wisely has not tried to show imagination or creativity in applying the modern law of maritime delimitation in its 2012 Judgment – and this although it was virtually the first time that an international tribunal had to decide on the continental shelf beyond 200 nautical miles. We are convinced that you will confirm and strengthen this judicious position: the law of maritime delimitation cannot be reduced to just the general directive that the delimitation of maritime areas must achieve an equitable result as Bangladesh wants you to think or to say. Of course such a result must be achieved but the method is not left to fortune or to the full subjectivity of the international courts or tribunals: I hesitate to recall it – but it is so tremendously important, Mr. President – this standard, three-stage, method is the equidistance/relevant circumstances method, which can only be neglected when the drawing of a maritime boundary in accordance with it is unfeasible.

40. Third, by no means is it unfeasible in the present case:

- once the relevant coasts and the relevant area have been determined (and, here again, in conformity with by now well-established legal principles),

- base points must be determined “by reference to the physical geography of the relevant coasts.” in order to construct the provisional equidistance line;

- although Bangladesh has shown reluctance and much hesitation and uncertainty in specifying what it considers as the relevant coasts and areas, both Parties have determined base points without meeting particular problems; as we have shown, the so-called instability of the coasts is much less marked than alleged by Bangladesh and is,
in any case, not a circumstance which could lead to adjusting the direction of the boundary line, let alone to ignoring the three-stage standard methodology;

- constructing provisional equidistance line is not problematic either; and,

interestingly, the equidistance lines respectively proposed by the two Parties are not that different from each other in spite of the fact that they are constructed on the basis of partly different base points;

- when arriving at the second stage, Bangladesh – here again in spite of uncertainties and unwillingness has invoked only one allegedly particular circumstance which would be relevant to adjust or shift the provisional equidistance line: the concavity of its coast; however, as we have shown, this characteristic, which has constituted a “relevant circumstance” which induced the ITLOS to modify the direction of the provisional line in Bangladesh/Myanmar is not “relevant” to that effect in the present case, in part because of the similar concavity of the Indian coast; moreover, it must be noted that the “angle bisector” line advocated by Bangladesh creates a serious cut-off on India’s maritime entitlement – and particularly so on the continental shelf beyond 200 nautical miles;

- lastly, as I have just showed, the Indian proposed line has no problem with the non-disproportionality test.

41. Fourth and lastly, Mr. President, this case partly is about the delimitation of the continental shelf beyond 200 nautical miles. It is indeed not an absolute novelty, but there is still excitement in our ranks about it. However, this intellectual excitement – which you probably share as is normal for nobly trained international lawyers – should not, I stress it again, incite you to endorse the adventurous options advocated by our opponents. The continental shelf is one; its delimitation is ruled by the same principles as those applicable within 200 nautical miles. Moreover, in spite of Bangladesh’s excessive claims, it must be kept in mind that the area of this “outer continental shelf”, as our friends on the
other side call it, where the entitlements of the Parties, reasonably defined, overlap is very limited – if, at least, you resist the temptation, as you must, to completely refashion the nature and geography.

Mr. President, Members of the Tribunal, I thank you very sincerely for your kind attention. May I ask you, Mr. President, to call Dr. Neeru Chadha, the Agent of India for some brief concluding remarks before the reading of our Submissions – which have already been deposited with the Registry.
PRESIDENT WOLFRUM: Thank you, Professor Pellet, for your presentation, and I call upon the Agent of India.

DR. CHADHA: Thank you, Mr. President.
Mr. President, Distinguished Members of the Tribunal,

1. We are now at the end of India’s second round and – subject to further questions from the Tribunal – at the end of these hearings. Professor Pellet has summarized India’s legal case; but I would like to add some more general remarks on two main points which we believe need to be stressed.

2. First, I wish to highlight the stark contrast between the submissions respectively made by the two Parties. Bangladesh has advanced a maximalist and totally untenable maritime claim, ostensibly advanced in the hope that “by chance” it might just succeed: they clearly do not believe in the legal basis of their claim for it kept changing during these proceedings but each successive argument is tried in the hope that the Tribunal will split the difference. This strategy is particularly apparent in respect of Bangladesh’s claim to an area of continental
shelf beyond 200 nautical miles. The Tribunal will have noted the radical shift in
Bangladesh’s position between its Memorial and its Reply; in the former it
claimed an area of the “outer continental shelf” whose sole basis was the geology
and geomorphology of the submarine region. After the ITLOS in
Bangladesh/Myanmar categorically rejected a similar claim by Bangladesh
including a proposed deflection of the delimitation line towards Myanmar’s coast,
Bangladesh dreamt up a new claim seeking a deflection of its 180 degree line
towards India’s coast to run parallel to its boundary with Myanmar. But this claim
had no more basis in the applicable legal principles than did its predecessor.
While Bangladesh seeks “maximum reach” for itself with this claim, it asks the
Tribunal to allow it not only to intrude into areas where India has sovereign rights
under UNCLOS and no corresponding coast of Bangladesh with overlapping
projections, but also to exclude from the equation the so-called maximum reach of
the Andaman Islands, which have a coastal frontage of 300 km and entitlements
that extend to Bangladesh’s so-called south westerly claim.

Mr. President, Members of the Tribunal, while Bangladesh’s claim on the
continental shelf beyond 200 nautical miles is the most exorbitant part of its
Submissions, I must also recall, as another example, of the legal vacuity of its
case, the virtually magical boundary line generated by an angle bisector
constructed on the basis of two alternative illusory constructions of coastal
facades. If that is not refashioning nature, then what is?

On the other hand, India’s claims are reasonable, legally sound and carefully
argued. Bangladesh’s claims are excessive and illogical and argued solely on the
basis of a misrepresentation of equity; India has deliberately opted for moderate
claims in accordance with the now well settled law of maritime delimitation and
we have articulated an argument aimed at assisting the Tribunal in its strictly legal
functions and not at tempting it to abandon its legal bases with a view to
securing a decision based on “purely equitable” considerations or for addressing
aspirations. Aspirations need to be commended Mr. President, Members of the Tribunal, but not at the expense of another State’s legitimate rights.

5. Bangladesh complains that India has not changed its position since it sat down to negotiate and that India offers no guidance to the Tribunal as to how you might adjust the equidistance line, or by how much. It is a very strange argument, befitting a mediation and not an adjudication, a fortiori, one which Bangladesh has commenced. India has not changed its position because India believes that it is proposing an outcome premised on law. It has shown in its written pleadings and the two rounds of arguments that there are no relevant circumstances in the present case which necessitate an adjustment of the equidistance line. All this while, Bangladesh has offered various permutations and combinations with graphics designed to mask how excessive its claim is.

6. Secondly, also closely linked with what I have just said, I stress again that Bangladesh is mistaken in respect of the mandate of this forum: as stated last week, you are a court of law called to decide on the matter on the basis of law and not to dispense Solomonic justice on the basis of equity. Neither are you a legislator called to remedy the perceived lacunae in the existing law or to ameliorate legal rules which do not find favour with Bangladesh.

7. Mr. President, Members of the Tribunal the law of maritime delimitation is now well established and conceived in such a way as to achieve an equitable solution on the basis of reliable rules with a degree of discretion or what Bangladesh calls margin of appreciation for limited adjustment to address any relevant circumstances. If this Tribunal were to depart from these rules – which apply to the delimitation of maritime areas within as well as beyond 200 nautical miles from the coasts-- this unprecedented decision, as Professor Pellet said, would undermine the positive development of the case-law that has developed over the last thirty years providing more certainty and objectivity in the law regulating this area.
8. India regrets and firmly rejects the flippant and irrelevant arguments made by Bangladesh in respect of its size or mightiness. Yes, India is a big State, with long coastlines, but this case is only concerned with a clearly defined and limited area. India asks for no more than that to what it is entitled under international law. We cannot accept Bangladesh’s recurring argument according to which, since India enjoys large maritime entitlements in other areas, the Tribunal could, without inconvenience, transfer some parts of India’s entitlements to Bangladesh. Bangladesh’s territorial sovereignty is not threatened by the present arbitration which is only aimed at determining the respective maritime entitlements of both Parties in accordance with international law; but India’s territorial sovereignty would be compromised if this egregious argument by Bangladesh were to be taken into consideration.

9. This being said, Mr. President, Members of the Tribunal, as long as this Distinguished Tribunal will act in accordance with its mandate – and we are sure and we have full faith that you will! –, your Award will dissipate the only cloud which still casts a shadow over the links between our two friendly and law abiding countries. And I am certain that, although, as was appropriate, each Party has expressed its case before the Tribunal with some vigour, the friendly relations between our two Teams, which have been perceptible during the present hearings as well as during the site visit, reflect the deep ties of amity between our two nations.

10. I wish therefore to express my sincere appreciation to the Bangladesh Team and, in particular, to Rear-Admiral Khurshid Alam, Bangladesh’s Deputy Agent for their friendly cooperation during these lengthy proceedings. Our thanks also go to the Permanent Court of Arbitration and the Registrar, Mr. Brooks Daly, who, together with his remarkable team have performed a heavy and complex task during the entire proceedings; they have an impeccable track record and deserve our deep and sincere gratitude. Our thanks also go to Mr. Kasdan and Ms.
Larson for their impressive job as real-time reporters. And I would certainly not
forget the Indian legal and technical team, and to express to all of them, whether
Indians or foreigners, the sincere appreciation of my Government for their work
and their devotion to the India’s case. I also add to this my personal thanks to
each one of you for cooperation extended to me. It has been an honour to work
with such a distinguished and dedicated team.

11. And, above all, our deep gratitude goes to you, Mr. President, and the
distinguished Members of the Tribunal, for your patience and your courteous and
benevolent attention throughout these proceedings and especially on the occasion
of the site-visit and during these hearings.

12. As you have invited me, Mr. President, I will now read the final
Submissions of the Republic of India:

Having regard to the facts and law set out in its Counter-Memorial, its Rejoinder
and during the oral proceedings, the Republic of India requests the Tribunal
to adjudge and declare that the maritime boundary between India and
Bangladesh (in WGS 84 datum terms) runs as follows:

- Starting from the land boundary terminus at Point L with co-ordinates 21 degrees
  38 minutes 40.4 seconds N, 89 degrees 10 minutes 13.8 seconds E, the
  boundary follows a geodetic azimuth of 149.3 degrees until it reaches Point
  T1, with the co-ordinates 21 degrees 37 minutes 15.7 seconds N, 89 degrees 11
  minutes 07.6 seconds E.

- From Point T1, the boundary follows a geodetic azimuth of 129.4 degrees until it
  reaches Point T2, with co-ordinates 21 degrees 35 minutes 12.7 seconds N, 89
  degrees 13 minutes 47.5 seconds E.
- From Point T2, the boundary follows a geodetic azimuth of 144.2 degrees until it reaches Point T3, with co-ordinates 21 degrees 32 minutes 25.7 seconds N, 89 degrees 15 minutes 56.5 seconds E.

- From Point T3, the boundary follows a geodetic azimuth of 168.6 degrees until it reaches Point T4, with the co-ordinates 20 degrees 30 minutes 17.9 seconds N, 89 degrees 29 minutes 20.9 seconds E.

- From Point T4, the boundary follows a geodetic azimuth of 157.0 degrees until it reaches Point T5, with the co-ordinates 19 degrees 26 minutes 40.6 seconds N, 89 degrees 57 minutes 54.9 seconds E.

- From Point T5, the boundary follows a geodetic azimuth of 171.7 degrees until it reaches Point T6, with the co-ordinates 18 degrees 46 minutes 43.5 seconds N, 90 degrees 04 minutes 02.5 seconds E.

- From Point T6, the boundary follows a geodetic azimuth of 190.7 degrees until it reaches Point T7, with the co-ordinates 17 degrees 22 minutes 08.8 seconds N, 89 degrees 47 minutes 16.1 seconds E.

- From Point T7, the boundary follows a geodetic azimuth of 172.342 degrees until it meets the maritime boundary line between Bangladesh and Myanmar at Point Z with co-ordinates 17 degrees 15 minutes 12.8 seconds N, 89 degrees 48 minutes 14.7 seconds E.

Mr. President, Members of the Tribunal, that concludes my statement, and that concludes India’s second round of oral pleadings. I thank you.
PRESIDENT WOLFRUM: Thank you, Dr. Chadha.

As I indicated earlier, we will break for now, let's say, 15 minutes, as I was
given to understand that also the Parties wanted to have some consultation that I would
hope give you sufficient time to do so, and we consult amongst ourselves how many
questions we are going to put to you.

(Brief recess.)

PRESIDENT WOLFRUM: Ladies and gentlemen, I have just a technical
question, which is a question by the hydrographer, or perhaps to the hydrographer, and we
will hand it over to you after we close, and I think it's a purely technical question that it
could be responded to by the 23rd of December this year.

Apart from that, I have the pleasure to inform you that we have no further
questions of you which we may follow in respect of the recommendation of Professor
Pellet. Therefore, this brings me to my closing remarks, and to the end of the oral
proceedings in this case.

May I take the opportunity to thank both Parties equally very profoundly for
the very high standard presentation and the very professional preparation of the whole case.
Also, I would like to mention the extremely smooth cooperation between the Parties, and it
was as I hoped and expected it, so to speak, taken over from the site visit where we
experienced in the preparation and administration carrying out of that site visit. We had
that very responsive cooperation already. And it is, so to speak, the feature not only of the
site visit but also of this hearing. This was very positive.

Equally, I wish to thank both parties, also on behalf of my colleagues, for the
courtesies extended to us, and finally you will all agree that I should express my gratitude to
the members of the PCA, which have very smoothly prepared, administered not only the
site visit but also this hearing. You see it was so smooth that you hardly noticed that they
were pulling the strings occasionally.

And, finally, but very profoundly, I would like to thank the proceedings
writers. It is a marvelous work they are doing; it helped us, was helping us in the
preparation for the next day, for the assessment, tremendously.

This is all what I wanted to say, and we will meet downstairs for the reception
and thereafter for dinner for those who are not leaving already, but we will not talk about
the case.

The meeting is now closed.

(Whereupon, at 5:36 p.m., the hearing was concluded.)
CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

________________________
DAVID A. KASDAN