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**Bay of Bengal Maritime Boundary Arbitration
between Bangladesh and India**

The Arbitral Tribunal Renders its Award

THE HAGUE, 8 July 2014

The Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (the “**Convention**”) in the matter of the *Bay of Bengal Maritime Boundary Arbitration* between the People’s Republic of Bangladesh and the Republic of India has yesterday issued its Award in respect of the delimitation of the maritime boundary between the two States.

In its Award dated 7 July 2014, the Tribunal unanimously decided that it has jurisdiction to identify the land boundary terminus and to delimit the territorial sea, the exclusive economic zone, and the continental shelf between the Parties within and beyond 200 nautical miles in the areas where the claims of the Parties overlap. The Tribunal was also unanimous in identifying the location of the land boundary terminus between Bangladesh and India and in determining the course of the maritime boundary in the territorial sea. By a majority of four votes to one, the Tribunal determined the course of the maritime boundary line between Bangladesh and India in the exclusive economic zone and the continental shelf within and beyond 200 nautical miles. A map indicating the delimitation decided on by the Tribunal is enclosed with this press release.

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Summary of the Award

1. The Arbitral Tribunal’s Jurisdiction

The Arbitral Tribunal recalled that both Bangladesh and India are parties to the Convention. Having analysed the relevant provisions of the Convention, the Tribunal found that Bangladesh had complied with the requirements for submission of the dispute to arbitration under Annex VII. The Tribunal also noted the agreement between the Parties that the Tribunal had jurisdiction to identify the location of the land boundary terminus and to delimit the continental shelf beyond 200 nautical miles.

2. Location of the Land Boundary Terminus

Bangladesh and India agreed that the location of the land boundary terminus was to be determined by application of the 1947 award rendered by Sir Cyril Radcliffe, Chairman of the Bengal Boundary Commission (the “**Radcliffe Award**”), as well as Notification No. 964 Jur. of the Governor of Bengal of 1925. The Radcliffe Award drew the boundaries between India and the new State of Pakistan (the eastern portion of which subsequently became Bangladesh), and provided in Annexure A that the boundary line shall “run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal.” Annexure B of the Radcliffe Award included a map of Bengal, indicating the boundary determined by that Award.

The boundary between the Districts of Khulna and 24 Parganas, referenced in the Radcliffe Award, had itself been set out in the 1925 Notification No. 964 Jur. in the following terms: “the western boundary of district Khulna passes along the south-western boundary of Chandanpur . . . 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 Parties disagreed on the interpretation of Annexure A to the Radcliffe Award and of the 1925 Notification. They also disagreed on the relevance and the interpretation of the map in Annexure B to the Radcliffe Award.

Having considered the Parties’ views, the Tribunal determined that the midstream of the main channel of the Haribhanga River must be located as it was in 1947, the date of the Radcliffe Award. It also found that the Radcliffe Award, incorporating the 1925 Notification, referred to the Haribhanga River alone and not to the combined waters of the Haribhanga and Raimangal Rivers as they meet the Bay of Bengal. The Tribunal used the map in Annexure B to the Radcliffe Award to identify the proper coordinates of the land boundary terminus, which was then transposed to a modern chart. The resulting position of the land boundary terminus is 21° 38’ 40.2”N, 89° 09’ 20.0”E (WGS-84).

3. Delimitation of the Territorial Sea

Both Parties agreed that article 15 of the Convention governs the delimitation of the territorial sea in this case. That provision provides for the boundary between two States with opposite or adjacent coasts to be the median, or equidistance, line unless either “historic title” or “special circumstances” apply. Neither Party claimed the existence of any agreement between them with respect to the boundary or a “historic title” within the meaning of article 15. They disagreed, however, on the interpretation of “special circumstances,” whether such circumstances exist in this case, and the implication any special circumstances for the method of delimiting the boundary.

The Tribunal emphasized that article 15 of the Convention refers specifically to the median/equidistance line method for the delimitation of the territorial sea, in which the boundary takes the form of a line, every point of which is equidistant from the nearest points on the coasts of the Parties. In constructing a provisional median/equidistance line, the Tribunal decided not to rely on base points located on low tide elevations.

The Tribunal noted, however, that the land boundary terminus, determined by reference to the Radcliffe Award, is not at a point on the median/equidistance line. The Tribunal considered this to constitute a special circumstance and decided that the boundary should take the form of a 12 nautical mile long geodetic line continuing from the land boundary terminus in a generally southerly direction to meet the median line at 21° 26’ 43.6”N; 89° 10’ 59.2”E.

4. Delimitation of the Exclusive Economic Zone and the Continental Shelf within 200 nautical miles

Beyond the limit of the territorial sea, the Convention entitles States to sovereign rights over an exclusive economic zone extending to 200 nautical miles from the coast and over the continental shelf. The Parties agreed that articles 74(1) and 83(1) of the Convention govern the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles. These articles provide that the delimitation “shall be effected by agreement on the basis of international law, . . . in order to achieve an equitable solution”.

The Parties disagreed, however, on the method to be used pursuant to this provision. India argued for the application of the “equidistance/relevant circumstances” method in which a provisional equidistance line is identified and then adjusted if relevant circumstances so require. India considered, however, that no adjustment was necessary in the present case. In contrast, Bangladesh argued that the concavity of the Bay of Bengal and the instability of the coast called for the application of the “angle-bisector” method. Under this approach, the overall direction of the Parties’ coasts is first identified, and the angle formed by these lines is then bisected to produce the boundary line.

In the Award, the Tribunal considered that the “equidistance/relevant circumstances” method is preferable unless, as the International Court of Justice noted in another matter, there are “factors which make the application of the equidistance method inappropriate.” The Tribunal held that this was not the case, noting that both Parties had been able to identify base points that would permit the construction of a provisional equidistance line, and decided that it would apply the equidistance/relevant circumstances method.

Turning to the existence of relevant circumstances, the Tribunal did not consider the instability of the coast of the Bay of Bengal to be a relevant circumstance that would justify adjustment of the provisional equidistance line. The Tribunal emphasized that what matters is the coast line at the time of delimitation and that future changes in the coast cannot alter the maritime boundary. The Tribunal concluded, however, that the concavity of the Bay of Bengal was a relevant circumstance and that, as a result of such concavity, the provisional equidistance line produced a cut-off effect on the seaward projections of the coast of Bangladesh. The Tribunal considered that the cut-off required an adjustment to the provisional equidistance line in order to produce an equitable result.

Consistent with the concept of a singular continental shelf, the Tribunal decided on the adjustment of the provisional equidistance line within 200 nautical miles together with the delimitation beyond 200 nautical miles.

5. Delimitation of the Continental Shelf beyond 200 nautical miles

Beyond 200 nautical miles from the coast, the Convention provides in certain circumstances for States to exercise sovereign rights over the continental shelf. The Parties agreed that both have entitlements to the continental shelf beyond 200 nautical miles, and that neither may claim a superior entitlement based on geological or geomorphological factors in the overlapping area. The Parties disagreed, however, regarding the appropriate method for delimiting the continental shelf beyond 200 nautical miles.

The Tribunal was of the view that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200 nautical miles. Having adopted the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200 nautical miles, the Tribunal used the same method to delimit the continental shelf beyond 200 nautical miles. Having decided that the concavity of the Bay of Bengal required the adjustment of the provisional equidistance line within 200 nautical miles, the Tribunal was also of the view that an adjustment was required beyond 200 nautical miles.

6. Adjustment of the Provisional Equidistance Line

Having found that the concavity of the Bay of Bengal required the adjustment of the provisional equidistance line both within and beyond 200 nautical miles, the Tribunal proceeded to identify the adjustment that it considered necessary to achieve an equitable result. The Tribunal noted that, in seeking to ameliorate excessive negative consequences the provisional equidistance line would have for Bangladesh, the Tribunal must not adjust the line in a way that would unreasonably encroach on India's entitlements in the area.

Keeping these considerations in mind, the Tribunal decided that the equidistance line should be adjusted beginning at Delimitation Point 3, which the Tribunal considered to be the point at which the cut-off effect on coast of Bangladesh began. From that point, the Tribunal decided that the boundary would be a geodetic line with an initial azimuth of 177° 30' 00" until this line meets with the maritime boundary between Bangladesh and Myanmar.

7. Disproportionality Test

The Parties agreed that the final step in the delimitation process involves a test to ensure that the delimitation line does not yield a disproportionate result. This test compares the ratio of the relevant maritime space accorded to each Party to the ratio of the length of the Parties' relevant coasts. The Tribunal evaluated the maritime areas that would be allocated to each Party by its adjusted delimitation line and concluded that, in comparison to the lengths of the Parties' coasts, the allocation was not disproportionate.

8. Grey Area

Finally, the Tribunal noted that the delimitation line it had adopted gives rise to an area that lies beyond 200 nautical miles from the coast of Bangladesh and within 200 miles from the coast of India, and yet lies to the east of the Tribunal's delimitation line. Within this "grey area", the Tribunal noted, Bangladesh has a potential entitlement with respect to the continental shelf, but not an exclusive economic zone, while India is potentially entitled to both zones. Accordingly, the Tribunal decided that, within the grey area, the boundary

line delimits only the Parties' sovereign rights with respect to the continental shelf, and does not otherwise limit India's sovereign rights to the exclusive economic zone in the superjacent waters.

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Summary of the Concurring and Dissenting Opinion of Dr. P.S. Rao

A Member of the Arbitral Tribunal, Dr. Pemmaraju Sreenivasa Rao, concurred in part and dissented in part with the decision reached by the majority of the Tribunal and attached a separate Concurring and Dissenting Opinion to the Award.

Dr. Rao agreed with the majority on the location of the land boundary terminus, the delimitation of the territorial sea, and the identification of base points for the construction of a provisional equidistance line in the exclusive economic zone and the continental shelf. He also concurred with the decision to reject the angle bisector method as a basis to delimit the maritime area within 200 nm and the continental shelf beyond 200 nm.

Dr. Rao's disagreed with the majority on the considerations that govern the adjustment of the provisional equidistance line. In his view, the adjustment should not have started at Delimitation Point 3, as that point lies well before a significant "cut-off" effect occurs. Dr. Rao also considered that the Award did not provide sufficient explanation for how the adjusted delimitation line was ultimately decided upon. Finally, he disagreed both as a matter of law and policy with the creation of a "grey area" as a result of the adjustment the majority made to the provisional equidistance line.

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The President of the Arbitral Tribunal is Judge Rüdiger Wolfrum (Germany). The other members of the Tribunal are Judge Jean-Pierre Cot (France), Judge Thomas A. Mensah (Ghana), Dr. Pemmaraju Sreenivasa Rao (India), and Professor Ivan Shearer (Australia). The Permanent Court of Arbitration in The Hague acts as Registry in this arbitration.

On 8 October 2009, Bangladesh instituted arbitral proceedings concerning the delimitation of the maritime boundary between Bangladesh and India pursuant to Article 287 and Annex VII, Article 1 of the United Nations Convention on the Law of the Sea. The Parties subsequently exchanged written pleadings over the course of 2010-13..

In October 2013, the Arbitral Tribunal conducted a site visit to relevant areas of the Bay of Bengal in both Bangladesh and India.

In December 2013, the hearing on the merits was held at the Peace Palace in The Hague.

Other press release and information relating to this arbitration are available on the website of the PCA at http://www.pca-cpa.org/showpage.asp?pag_id=1376.

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Background to the Permanent Court of Arbitration: The PCA is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

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