Seabed Boundaries in the Northern Bay of Bengal: The Unclear Role of the Commission on the Limits of the Continental Shelf in Paving the Way to Resource Exploitation

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**Abstract**

Even before Bangladesh’s submission on the outer limits of its continental shelf beyond 200 miles from its baseline reaches the head of the queue awaiting the attention of the Commission on the Limits of the Continental Shelf, the maritime boundary delimitations with Myanmar (2012) and India (2014) have produced a unique situation, in which Bangladesh’s seabed boundaries have been fully delimited with both neighbours, creating a single continuous outer limit landward of the one submitted to the Commission. This may mean that there is no need to await the Commission’s reaction to Bangladesh’s submission, as there is nothing to stop Bangladesh simply beginning to exploit areas on its side of the two boundaries. This article examines whether the position is really that simple, and whether any other State might have grounds for objecting if Bangladesh does so, together with deficits of cooperation that may confound early moves to exploitation.

The continental shelf is valuable to coastal States primarily because under the United Nations Convention on the Law of the Sea [“UNCLOS”][[1]](#footnote-1) it offers exclusive control over the extraction of the petroleum resources found under the seabed of that zone. The sovereign rights of the coastal State apply equally to all other mineral resources and also living resources belonging to sedentary species, but these are less valuable and are not the primary focus of this article.[[2]](#footnote-2) Where the *prima facie* entitlements to continental shelf of two or more States overlap, Article 83 of UNCLOS calls for the creation of a boundary, which would normally result in the area of overlap being divided among the States concerned, so that each can exercise its exclusive sovereign rights in the smaller (sub)area on its own side of the newly established boundary. States yet to delimit their boundaries may find difficulty attracting the investment needed to develop any resource known or suspected to exist in the area of overlap, as there is a higher than usual risk in such areas. This is that the investment will be forfeited if a later delimitation, whether by treaty or adjudication by an international court or tribunal, places the boundary landward, from the perspective of the host State of the investment, of the oilfield or a production site such as a well, so that it ceases to be part of that State’s continental shelf. While a recent judgment of the International Tribunal for the Law of the Sea [“ITLOS”] has confirmed that it is not unlawful for States to carry out such activities in areas yet to be delimited,[[3]](#footnote-3) that is of little comfort to an investor on the “wrong” side of a supervening boundary, for there is no guarantee that the neighbouring State on whose continental shelf the facility ends up being located will allow the investor to continue operating it under its own laws. Petroleum resources in such areas of overlap may accordingly be left undeveloped for longer than otherwise comparable fields in areas of uncontested jurisdiction of a single State, where such risks do not arise.

This affects the coastal States of the Bay of Bengal, a body of water that is relatively unexplored but beneath which there are promising indications of hydrocarbon deposits.[[4]](#footnote-4) It might not have mattered much in times when what might be called the wine theory of oil and gas held sway. Mirroring the rise in value of wine cellared as an investment, there was a solid body of opinion – though whether it was ever the orthodoxy may be doubted – to the effect that one should be in no hurry to recover resources, because the finite nature of petroleum deposits would lead to ever greater scarcity and thus ever higher prices.[[5]](#footnote-5) It might thus be perfectly rational to postpone the settlement of the boundary dispute, as the petroleum would only become more valuable the longer it stayed in the ground. But whether or not this was ever actually true, it is much less likely to be so now, since it has been estimated that, if the international community is serious about keeping global warming to 2°C above pre-industrial levels, only about a third of currently known reserves will be able to be developed.[[6]](#footnote-6) Expressed another way, in 2017 there was twice as much technically recoverable oil as the world was expected to need between then and 2050.[[7]](#footnote-7) This substantially raises the effective price to the States concerned of failing to settle their boundary. A petroleum deposit might be profitably developed today if the boundary were clear, and generate revenue for one of the States, but if resolution of the boundary is delayed long enough, the coming on stream of other energy sources less damaging to the climate may mean that the deposit in question falls instead into the two thirds of reserves that will never be developed, reducing the asset to worthlessness. Against this background, there is unfinished business for Bangladesh, despite its apparent success in 2014 in completely delimiting its continental shelf boundaries with its neighbouring States India and Myanmar, thanks to the award of that year delimiting the boundary between itself and India[[8]](#footnote-8) handed down by an arbitral tribunal established under Annex VII to UNCLOS, following the *Bay of Bengal case* decided in 2012 by ITLOS.[[9]](#footnote-9)

It is well known that Bangladesh, with a concave coast located at the northern end of the Bay of Bengal, has benefited in its maritime delimitation cases with its neighbours Myanmar and India from the willingness of courts and tribunals to eschew the use of equidistance lines when their effect would be to disadvantage the middle State in a row of three, as is inevitable in such a situation.[[10]](#footnote-10) Less widely known, and the focus of this article, are the obstacles still facing Bangladesh in exploiting to the full its continental shelf, even though its outer limit is now completely delimited as a combined result of the two cases. Map 1,[[11]](#footnote-11) produced by the tribunal that carried out the second in time of the two delimitations, illustrates the situation of the boundary in the later case meeting that laid down in the earlier one.

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**Map 1. Meeting of the delimited boundary lines of Bangladesh with each of its neighbours to form a single continuous outer limit for its continental shelf.**

There are in fact two obstacles, one actual and the other potential. The actual obstacle comes about through the delay of the Commission on the Limits of the Continental Shelf [CLCS or Commission], a body created by Article 76, paragraph 8 of, and Annex II to, UNCLOS, in reacting to the submission made to it by Bangladesh in 2011.[[12]](#footnote-12) The first-mentioned provision sets out the process for establishing the outer limits of the continental shelf according to a complex series of formulae defined in the preceding paragraphs of the same article, with which there is no need to trouble the reader here in detail. For the purposes of this article, it is enough to note that paragraph 4 sets out two alternative formulae of entitlement that turning points on the outer limit line must satisfy, constrained by two further formulae in paragraph 5 that require points on the paragraph 4 lines to be shifted landward so as to be no more than 350 nautical miles from the territorial sea baseline, or no more than 100 miles beyond the 2500-metre isobath. The Commission is a technical body that receives submissions from coastal States believing they can make a scientific case for a continental shelf extending more than 200 nautical miles from their baselines,[[13]](#footnote-13) and in return makes recommendations to submitting States on the delineation of the outer limits of their continental shelves beyond 200 miles. Actual delineation remains the prerogative of the coastal State itself, but if its outer limit is “on the basis of” the CLCS’s recommendations, it becomes “final and binding” and permanent once notified to the UN, though without prejudice to delimitation of the continental shelf between opposite and adjacent States.[[14]](#footnote-14) Although the text in the other authentic languages is ambiguous, the Russian text of UNCLOS confirms that it is not only the submitting State itself but also all other parties on whom such a limit is final and binding.

The potential obstacle lies in the fact that not only Myanmar and India but also Sri Lanka has made a submission to the CLCS in support of outer limits to its own continental shelf that produce an overlap with the part of Bangladesh’s continental shelf within its delimited boundaries that lies more than 200 miles from the latter’s baselines. While to date no adverse consequences have followed from this, that cannot be altogether ruled out until Sri Lanka’s own outer limit is definitively settled.

A complicating factor is the interaction between outstanding maritime boundary delimitations and the effect of Annex I to the CLCS Rules of Procedure[[15]](#footnote-15) on the process for delineating the outer limits of States beyond 200 miles, which produce an area of overlap if they cross.Because no delimitation is required unless the primary entitlements of two or more coastal States do indeed overlap,[[16]](#footnote-16) Part VI of UNCLOS on the continental shelf is constructed in a way that makes it logical for the CLCS process first to confirm, by way of recommendations under Article 76, that the entitlement of each of those States does in fact extend beyond 200 miles from its baselines, as this is what establishes the spatial extent of the overlap. By Article 83, a boundary can then be drawn to delimit the overlapping entitlements, either by treaty or, if agreement cannot be reached and the jurisdictional prerequisites are satisfied, by an international court or tribunal. Nonetheless, despite the absence of CLCS recommendations, among the reasons why ITLOS was prepared to extend Bangladesh’s boundary with Myanmar beyond 200 miles, with the Annex VII tribunal following suit for its boundary with India, was that in each case one State was blocking the other’s submission under subparagraph 5(a) of Annex I to the Rules of Procedure.[[17]](#footnote-17) Had ITLOS held back on this account, there would have been an impasse, with each of the two processes unable to begin until the other finished.[[18]](#footnote-18) In fact there have been more than a dozen treaties settling maritime boundaries beyond 200 miles in advance of the CLCS process between pairs of States of which at least one was also party to UNCLOS,[[19]](#footnote-19) and no other State has challenged the validity of any of them on this ground. It can be inferred that the States concerned are prepared to take the risk in delimiting such areas that the CLCS may later find that no overlap in fact exists, because only one of them, or neither, has an entitlement under the Article 76 rules. This is explicitly acknowledged in two of the delimitations, in instruments ostensibly not of treaty status, which are provisional, providing for adjustment of the boundaries should the risk eventuate.[[20]](#footnote-20)

The remainder of this article examines the outstanding issues affecting seabed boundaries in the northern Bay of Bengal.[[21]](#footnote-21) It does so in order to assess the prospects from a legal perspective of their resolution within a timeframe that offers some hope that, if resources exist in those areas that *ceteris paribus* are sufficiently easy to recover to fall within the third of reserves that global climate change regulation would leave exploitable, this can still occur in time to benefit Bangladesh and its neighbours. It first asks (Section I) whether the fate of Bangladesh’s submission to the CLCS still matters. Section II concerns the need for cooperation between Bangladesh and its neighbours in the “grey areas” where its continental shelf as a result of the delimitation is subjacent to the exclusive economic zone [“EEZ”] of one or other of its neighbours, while Section III highlights the additional uncertainty affecting a small area where the two grey areas themselves overlap. In Section IV, a fourth State is introduced whose territory lies wholly adjacent to the southern part of the Bay of Bengal, but whose primary continental shelf entitlement extends well into its northern part, producing further overlaps with consequences needing to be worked through. Developments since the completion of the two delimitations are analysed in Section V, showing that cooperation has been hard to discern in the actions of at least two of the littoral States, and the need to revive that cooperation, and the relative ease of doing so, are the main conclusions drawn in the final section VI.

# I. CAN THE CLCS BE IGNORED?

The submission of Bangladesh to the CLCS when made in 2011 was the 55th such,[[22]](#footnote-22) and it is likely to be some years before it reaches the front of the queue for the Commission’s attention.[[23]](#footnote-23) Submissions are considered in order of their receipt, except that priority is granted to new or revised submissions under Article 8 of Annex II to UNCLOS by States that have already made a submission and have received recommendations, to which the new or revised submission is a response.[[24]](#footnote-24) In mid-2020, the most recent submission for which the Commission had constituted a subcommission to examine and make draft recommendations[[25]](#footnote-25) was that of India, the 48th. Bangladesh’s submission is thus seventh in the queue, but liable to displacement by any new or revised submissions, and any original submissions ahead of it in the queue that have been put aside by the Commission under subparagraph 5(a) of Annex I to its Rules of Procedure pending resolution of the relevant disputes. Sections V and VI return to this matter, as the same provision, invoked by Bangladesh, also affects the fate of the submissions of both of its neighbours. Myanmar’s submission is blocked in its entirety, while the Indian submission is the subject of an instruction to the subcommission by the full Commission not to examine the part of it relating to the Bay of Bengal.[[26]](#footnote-26) By contrast, Bangladesh’s own submission has been met with greater forbearance on the part of its neighbours. Although both of them have reacted to it with *notes verbales* (Myanmar reserved its rights,[[27]](#footnote-27) while India observed that the Commission’s consideration of it would be without prejudice to its own rights[[28]](#footnote-28)), neither of these amounts to exercise of the veto that subparagraph 5(a) of Annex I creates for any State that objects to a submission,[[29]](#footnote-29) assuming – though the weight of opinion is to the contrary[[30]](#footnote-30) – that this is consistent with UNCLOS.

This raises the question of whether it still matters what the Commission will say about Bangladesh’s submission. If it does not, that would be because of the unique state of affairs that has come about through the outcome of the EEZ and continental shelf boundary delimitations with both of its neighbours. The later of these, that with India in 2014, produced a situation in which:

1. a State’s boundaries have been fully delimited with all of its neighbours in advance of the consideration by the CLCS of its submission, creating a single continuous outer limit of its continental shelf;
2. that outer limit is landward of the outer limit submitted to the CLCS; and
3. subject to the qualification in the next paragraph, neither of the outer limits abuts the seabed area beyond national jurisdiction [“the Area”] under the aegis of the International Seabed Authority [“ISA”] created by Part XI of UNCLOS.[[31]](#footnote-31)

The combination of these factors may mean that there is nothing to stop Bangladesh simply beginning to exploit the entirety of the area on its side of the 2012 and 2014 boundaries, as shown in Map 1 depicting the physical relationship of the various lines, or taking the necessary preliminary steps to do so, such as opening blocks in the area to bids by investors. Put another way, would any other State have grounds for objecting if Bangladesh does so? That would no longer be true of India and Myanmar themselves, with an important caveat to be considered below, thanks to the delimitations and Article 76, paragraph 10 of UNCLOS, quoted above,[[32]](#footnote-32) which lays down that the provisions of Article 76 as a whole are without prejudice to the delimitation of maritime boundaries. The same applies to the ISA,[[33]](#footnote-33) and to any fourth State, unless it sees some serious prospect that the part of Bangladesh’s continental shelf more than 200 miles from its baselines will fall within the Area.[[34]](#footnote-34) But for this to happen, ITLOS in the *Bay of Bengal* *case*, the Annex VII tribunal in the *Bangladesh v. India* arbitration and commentators would have to be uniformly wrong in their assumptions about the extent of continental shelves generally in the northern part of the Bay of Bengal, based on the existing state of scientific knowledge about the thickness of the sedimentary rock beneath the Bay, which was specifically remarked on during the Third UN Conference on the Law of the Sea.[[35]](#footnote-35) These circumstances give grounds for confidence that enough is already known about the geology and geomorphology of the Bay of Bengal to be able to conclude that the Commission will eventually do one of two things. Either it may agree with the outer limits of the continental shelves submitted to it by Myanmar and India, which together enclose the whole of the northern half of the Bay,[[36]](#footnote-36) or it may recommend that they run closer to land, but still in a way that sees those shelves separating the continental shelf of Bangladesh from either the Area or possibly – see below – the continental shelf of a fourth State.

If this surmise is correct, then the situation if Bangladesh proceeds without waiting for the Commission’s recommendations is closely equivalent to what would have happened if it had simply not taken the trouble to make a submission at all. Another reason for ITLOS holding in the *Bay of Bengal* *case* that it had jurisdiction to delimit the boundary beyond 200 miles, despite both States concerned being yet to receive recommendations on their respective submissions, and expressly rejecting Myanmar’s contrary argument, was that it can be deduced from Article 77, paragraph 3 of [UNCLOS](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)[[37]](#footnote-37) that a coastal State’s entitlement to its continental shelf does not depend on the establishment of its outer limits.[[38]](#footnote-38) The same reasoning was then followed by the Annex VII tribunal in the 2014 arbitration between Bangladesh and India.[[39]](#footnote-39) With the benefit of hindsight, it might hence be thought that the effort and expense of preparing the submission was wholly unnecessary, yet at the time this would have been a risky course of action for Bangladesh. The reason is that it is possible that ITLOS and the Annex VII tribunal might instead have taken the same approach as the International Court of Justice [“ICJ”], which in 2012 refused to carry out the part of the delimitation of the continental shelves of Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan baseline. It did this because the applicant, Nicaragua, unlike both parties in the *Bay of Bengal* *case* with which the Court drew an explicit contrast, had not yet made a submission.[[40]](#footnote-40) There, however, again by contrast with that case, the available evidence in the absence of a submission was much weaker as to the existence of continental shelf entitlements under the rules of Article 76.

Thus, although under UNCLOS Article 76, paragraph 8 there is normally an incentive to make a submission, because outer limits based on the Commission’s recommendations achieve legal certainty by becoming “final and binding” as against all other parties, Article 77, paragraph 3 ensures that even if it does not make one, the coastal State still retains the whole of its continental shelf beyond 200 miles from the baselines, albeit without certainty as to how far it extends. In Bangladesh’s case, the convergent boundaries of 2012 and 2014 now supply that certainty, as neither Myanmar nor India any longer has an overlapping entitlement to continental shelf in the area on Bangladesh’s side of the boundaries. This appears to put paid to any need to wait for the Commission’s recommendations on the outer limit submitted by Bangladesh, which are no longer relevant as it runs much farther seaward. With one exception, if any fourth State were to object, it would have to be on the basis that the area was beyond the limits of Bangladesh’s continental shelf as defined in Article 76, a tall order indeed to prove, and one that ITLOS and the Annex VII arbitral tribunal have already rejected in being prepared to draw a boundary there in the first place. The exception is a single State, Sri Lanka, which may, if only very tenuously, still have an overlapping entitlement, as will be explained below. That apart, however, the probability that any part of the area landward of the adjudicated outer limits would fall outside Bangladesh’s entitlement to continental shelf can reasonably be dismissed as negligible.

# II. THE GREY AREA PROBLEM

Does that mean that licensing and exploitation by Bangladesh of the area landward of its adjudicated boundaries can now proceed without hindrance? Not necessarily, because of a side-effect of the remedy for the concavity of Bangladesh’s coastline resulting in both the 2012 and 2014 boundaries departing significantly from the equidistance line (the line whose every point is equally distant from the nearest points on the respective baselines of the two States) in order to avoid the cut-off effect for Bangladesh that would have severely disadvantaged it *vis-à-vis* its neighbours. In such situations, it is geometrically inevitable that so-called “grey areas” will come into being, namely areas where part of the continental shelf beyond 200 nautical miles of the State to whose advantage the departure from equidistance operates – in this instance Bangladesh – will be under not the high seas but the EEZ of the neighbouring State(s). This comes about because part of the area beyond 200 miles from the baselines of the advantaged State is still within 200 miles of the disadvantaged one(s), here Myanmar and India.[[41]](#footnote-41) Only once that other State’s 200 miles run out does the standard situation of the superjacent water column being high seas reassert itself. This is perfectly possible under the relevant provision of UNCLOS, which is expressed in neutral terms in this regard:

*Article 78
Legal status of the superjacent waters and air space and the rights and freedoms of other States*

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

In other words, grey areas, while not anticipated by the drafters, are not excluded either. This conclusion is reinforced by comparing the text of paragraph 1 with its similar but not completely identical precursor, Article 3 of the 1958 Convention on the Continental Shelf,[[42]](#footnote-42) where the phrase “the legal status of the superjacent waters” is immediately followed by the specification “as high seas”. Thanks to the EEZ regime laid out in Part V of UNCLOS, the superjacent waters within 200 miles would ordinarily now be the EEZ of the coastal State if it has declared one, and this would clearly have been within the contemplation of the drafters.[[43]](#footnote-43) It is possible that they assumed the EEZ in question would be that of the same State to which the continental shelf belonged, but there is reason to believe that any attempt to make a positive requirement of this would have met resistance.[[44]](#footnote-44)

The result this produces in the northern Bay of Bengal can be seen in Map 2[[45]](#footnote-45) below. The grey area covers 548 square nautical miles in total.[[46]](#footnote-46)

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**Map 2. Grey Areas in which continental shelf of Bangladesh is overlain by the EEZs of Myanmar and India.**

Despite the general conclusion above that Bangladesh faces little risk in releasing seabed areas beyond 200 miles but within its boundaries for exploration and exploitation in exercise of its sovereign rights over the continental shelf, in the grey areas, therefore, at least some further negotiation with its neighbours will be necessary before Bangladesh (or persons licensed by it) can embark on any kind of activity relating to its seabed. The fact that the seabed can be approached only through the water column under the jurisdiction of one or other of them is addressed in paragraphs 498 to 508 of the award in the *Bangladesh v. India* arbitration, which also draws on the equivalent parts of the ITLOS judgment on the boundary with Myanmar. In particular, the 2014 award quotes paragraph 476 of the earlier judgment, which said that

[t]here are many ways in which the Parties may ensure the discharge of their obligations in this respect, including the conclusion of specific agreements or the establishment of appropriate cooperative arrangements. It is for the Parties to determine the measures that they consider appropriate for this purpose.[[47]](#footnote-47)

A little further on, in the last paragraph before the *dispositif*, it underlined that

[i]t is for the Parties to determine the measures they consider appropriate in this respect, including through the conclusion of further agreements or the creation of a cooperative arrangement. The Tribunal is confident that the Parties will act, both jointly and individually, to ensure that each is able to exercise its rights and perform its duties within this area.[[48]](#footnote-48)

The tribunal also pointed out that, even though the EEZ carries rights over the seabed, those rights under UNCLOS Article 56, paragraph 3 are to be exercised in accordance with Part VI of the Convention devoted to the continental shelf,[[49]](#footnote-49) which makes the Bangladesh seabed rights exclusive rather than concurrent and shared with its neighbours.

Because there are not many places around the world where this situation pertains, as the number of delimited boundaries going beyond 200 miles is rather limited, there is as far as the author is aware only a single precedent for how the States concerned might handle this overlap, namely the 1997 Perth Treaty between Australia and Indonesia.[[50]](#footnote-50) Although the relevant provision, Article 7, is expressed abstractly in terms of “First” and “Second” parties,[[51]](#footnote-51) the whole overlapping area involves Australian continental shelf under Indonesian EEZ. Thus it could theoretically advantage one side over the other, but despite some academic criticism to that effect shortly after the treaty was signed,[[52]](#footnote-52) it seems even-handed in fact as well as in form, and may thus commend itself to Bangladesh and its neighbours as a model to be followed. Whether it does in fact serve both parties equally well may not be known until the treaty enters into force, but Australia has been sufficiently confident to invite bids for petroleum acreage in the area of overlapping jurisdiction, albeit in a location where only a water column boundary depends on the 1997 treaty, because the seabed boundary was already in place under an earlier instrument.[[53]](#footnote-53) At all events, the subject matter of the 14 paragraphs of Article 7, if not their precise content or length, can serve as an indication of the issues that will confront Bangladesh and its neighbours in their cooperative management of the areas of overlap, to which they will need to develop their own solutions if they find those in the 1997 treaty unsatisfactory. Nothing in the text of the latter suggests that its suitability for other contexts is confined to situations where the overlap is between opposite rather than adjacent States.

# III. THE SPECIAL PROBLEM OF THE “DOUBLY GREY” AREA

The fact that the sovereign rights of at least three States are at stake in the northern part of the Bay of Bengal gives rise to an additional complication that is not present where only two States’ interests need to be balanced. Indeed there is an element of irony here that Bangladesh can move most easily to explore and exploit the most distant part of its continental shelf beyond 200 miles, where the superjacent water column is high seas, while the thorniest problem occurs in what is on average perhaps the closest subpart of it to land. This is what may be called the doubly grey area of 64 square nautical miles[[54]](#footnote-54) where the two grey areas already described themselves overlap. The existence of such an area was noticed by the *Bangladesh v. India* tribunal in its award, though it may not have adverted to the full ramifications of it in its brief observation that “[t]he present delimitation does not prejudice the rights of India vis-à-vis Myanmar in respect of the water column in the area where the exclusive economic zone claims of India and Myanmar overlap.”[[55]](#footnote-55)

If a negotiation needs to be had between Bangladesh and its neighbours to replicate or improve upon Article 7 of the Australia-Indonesia treaty before use of the continental shelf can proceed in a legally secure fashion, the practical effect of the doubly grey area is to delay this, because Bangladesh cannot know with which of Myanmar and India it has to negotiate the requisite arrangements until these two States have delimited their EEZ boundary with each other. Since this is likely to be linked to the delimitation of the boundary between their continental shelves south of the southernmost point of Bangladesh’s post-delimitation continental shelf, that may not occur until their own submissions to the CLCS have been through the Article 76 process. This gives Bangladesh an incentive to lift the veto it has lodged against the examination by the CLCS of its neighbours’ submissions,[[56]](#footnote-56) which as a result of the 2012 and 2014 adjudicated delimitations no longer appears to serve any useful purpose.

# IV. THE UNNOTICED FOURTH STATE, SRI LANKA

Both the ITLOS case and the arbitration proceeded entirely on the footing that only three States had *prima facie* continental shelf entitlements in the northern Bay of Bengal; this applies equally to the pleadings of each of the parties and to the ensuing judgment and award. A fourth State, Sri Lanka, has however made a submission to the CLCS in support of a continental shelf encompassing almost the whole of the Bay of Bengal beyond 200 miles from any of the coastal States. That includes the whole area landward (from Bangladesh’s perspective) of the outer limit presented in the Bangladesh submission and thus the whole of the smaller area on Bangladesh’s side of the convergent 2012 and 2014 boundaries. This is shown on Map 3,[[57]](#footnote-57) reproduced from the executive summary to Sri Lanka’s 2009 submission, which predates by several months the institution of proceedings in the *Bay of Bengal* litigation[[58]](#footnote-58) and thus was, or ought to have been, known to both parties from the very beginning.

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**Map 3. The outer limit of the continental shelf of Sri Lanka beyond 200 nautical miles from the baseline submitted to the CLCS. The submitted line begins at point A on Sri Lanka’s 200-mile line and ends at point B 200 miles from the baseline of the nearest State (either Myanmar or Thailand) and then follows the faint 200-mile line anti-clockwise around the Bay of Bengal in order to meet Sri Lanka’s 200-mile line again to produce a complete polygon.**

Neither the Indian Note of May 2010[[59]](#footnote-59) nor Bangladesh’s Note later the same year[[60]](#footnote-60) amount to objections to the consideration by the CLCS of Sri Lanka’s submission, and Myanmar has not submitted any such Note. Sri Lanka’s submission at the time of writing is one of those before a subcommission of the CLCS,[[61]](#footnote-61) and no instruction was issued by the full Commission to the subcommission when creating it in 2016 to disregard any part of the outer limit submitted to it by Sri Lanka.[[62]](#footnote-62) In the northern part of the Bay of Bengal Sri Lanka’s submitted outer limit is not described at all in the executive summary of its submission, but Map 3 above depicts it as the 200-mile line drawn from the baselines of the three littoral States. Accordingly, none of it is constructed, or needs to be, with reference to the formulae of Article 76, the integrity of whose application it is the Commission’s task to safeguard. Even if the CLCS will hence not need to concern itself directly with that part of the outer limit, in practice it might still wish to pronounce itself in more general terms on the question of whether Sri Lanka’s primary entitlement extends into the northern part of the Bay of Bengal, if not all the way to the 200-mile lines.

If this occurs, it would most likely be on the basis that there is doubt as to whether Sri Lanka has properly applied off its eastern coast the Statement of Understanding of 29 August 1980 annexed to the Final Act of the Third UN Conference on the Law of the Sea.[[63]](#footnote-63) This is a special concession to States in the southern part of the Bay of Bengal, where the foot of slope featuring in both entitlement formulae of UNCLOS Article 76, paragraph 4, occurs close to land, but seaward of it lies a very extensive rise, much of which would be lost to the coastal State by even the more generous of the formulae, dependent on the thickness of the sedimentary rock. If on average it is 3500 metres thick at the line drawn in accordance with that formula, with more than half of the continental margin lying seaward of it, the State concerned may instead follow the rise until the thickness of sedimentary rock drops to a kilometre, thus allowing it to enclose much more of the margin within its legal continental shelf.

In brief, the issue is whether this document is intended to exempt Sri Lanka from both paragraphs 4 and 5 of Article 76, inferred as Sri Lanka’s approach,[[64]](#footnote-64) or only from paragraph 4, as the CLCS Scientific and Technical Guidelines assume.[[65]](#footnote-65) The answer is not self-evident: only the positive entitlement formula of paragraph 4 and not the constraints of paragraph 5 are mentioned in the Statement of Understanding; on its face, it thus leaves the latter provision intact. Two counterarguments could be made, however: one is that paragraph 5 itself contains an internal cross-reference to paragraph 4 that thereby indirectly renders it inapplicable to Sri Lanka. The other is that it could perhaps be shown that that a narrow exemption from paragraph 4 only produces only a minor alleviation of the disadvantage to Sri Lanka by comparison with exemption from paragraph 5 in addition, which would strengthen the case for a purposive interpretation. This issue is no doubt being argued out in the forum of the subcommission, and although this occurs *in camera*, the outcome will become apparent when the subcommission finalises its draft recommendations for the full Commission, or at latest when the final recommendations are ultimately adopted.[[66]](#footnote-66)

Even if Sri Lanka’s view on this matter prevails, however, in reality the geography of the area all but ensures that its continental shelf will not ultimately go all the way to Bangladesh’s 200-mile line, or even as far as the southernmost point of the line submitted by Bangladesh to the Commission. This is because there will need to be an extension of Sri Lanka’s existing maritime boundary with India, whose land territory along with the maritime zone entitlements it generates lie between itself and Bangladesh, and that will put a practical northward constraint on Sri Lanka’s entitlement. The existing boundary delimits only the EEZs of the two States and meets the 200-mile line between 11° and 12° N, as seen on Map 3, still well within the southern part of the Bay of Bengal as defined above.[[67]](#footnote-67) In order for the extension of this boundary seaward to delimit the part of their continental shelves beyond 200 miles from their respective baselines to bend significantly northward in Sri Lanka’s favour, there would need to be some very pronounced seabed discontinuity clearly marking the relevant part of the seabed as the natural prolongation not of India’s land territory but of Sri Lanka’s.[[68]](#footnote-68) No such feature is visible on bathymetric charts or discernible from the colour scheme based on bathymetry in Map 3, as is consistent with the effect in the 2012 ITLOS case of the vast amounts of sediment beneath the Bay of Bengal masking the existence of a plate tectonic boundary. This masking effect led ITLOS to reject Bangladesh’s argument that the area could not be considered the seaward extension of the land territory of Myanmar, which according to Bangladesh lacked any natural prolongation west of that geological boundary and was therefore deprived of any primary entitlement beyond 200 miles.[[69]](#footnote-69) Rather, the pronounced change in direction of the eastern coast of India around 15° N would have the effect of pushing an equidistance line with Sri Lanka moderately but appreciably southward. This makes it all the more unlikely that Sri Lanka’s continental shelf as finally delimited with India’s mainland territory and the Andaman and Nicobar Islands on the eastern side of the Bay of Bengal will reach the 12th parallel of North latitude, let alone the 14th. On this basis, Sri Lanka’s theoretical entitlement to a continental shelf extending into the northern part of the Bay is almost certain to prove little more than notional, leaving Bangladesh with two maritime neighbours, not three.

Meanwhile, however, as long as no such extension to the boundary with India exists, can Sri Lanka nonetheless prevent Bangladesh exploiting the outermost part of its “wedge” on the basis of this potential overlap of continental shelf entitlements? Though very unlikely to occur in practice, there seems to be no obvious theoretical basis to prevent it. To its credit, Sri Lanka has not used the opportunity created by Annex I to the CLCS Rules of Procedure to object to the consideration of any of the submissions by the three coastal States in the northern Bay of Bengal, and this suggests – though it can be no more than an educated guess – that any step Bangladesh might take in this direction would likewise not encounter trouble from that quarter. That may not be true, however, of the post-delimitation reaction by one of Bangladesh’s neighbours, Myanmar, to the settlement of the boundary with the other neighbour, India, the final issue in this context that it is necessary to canvass.

# V. HAS MYANMAR BEEN TOO CLEVER BY HALF?

Following the 2012 ITLOS judgment, Myanmar could have been forgiven for thinking that the boundary dispute between itself and Bangladesh had been settled, and that the obstacle to the consideration of its submission by the CLCS would be removed by the lifting by Bangladesh of its objection. After all, by paragraph 10 of Article 76 the Commission’s recommendations are without prejudice to the delimitation of maritime boundaries, as already noted above,[[70]](#footnote-70) so that any such recommendation to Myanmar could not affect the boundary thus put in place, unless it were to fly in the face of all that is known about the Bay of Bengal seabed by denying it altogether any continental shelf entitlement extending beyond 200 nautical miles. As on each occasion when the Commission completes its work on a State’s submission and is ready to move to the next submission, when this occurred at its 29th session in March-April 2012, the Commission went first to those submissions that had already reached the front of the queue but been held there because of objections from other States. It appeared to have Myanmar in mind, given the delivery of the *Bay of Bengal* judgment a month earlier, when it noted that:

The Commission noted that the consideration of some submissions which were next in line had been deferred owing to the nature of statements contained in communications received in respect of those submissions. The Commission also noted that, in at least one case, the circumstances which had led to the postponement of the consideration of the submission might no longer exist. However, it was of the view that in order to be able to proceed with the establishment of a subcommission and the consideration of the submission, an official communication from the States concerned would be required.[[71]](#footnote-71)

Myanmar thereupon addressed a Note to the Commission asking that a subcommission be formed without delay to take up its submission.[[72]](#footnote-72) Crucially, however, Bangladesh advised that it considered that the circumstances that led to the postponement of the consideration of Myanmar’s submission still existed, as “Myanmar ha[d] not amended, modified or in any way altered its submission to take account of” the judgment in the case”, and the CLCS “should therefore not accede to Myanmar’s request.”[[73]](#footnote-73) Elaborating, Bangladesh indicated that, in its view, the boundary had not been fully drawn – what was missing was an endpoint, since the last segment of it was defined by ITLOS simply by a line of azimuth 215° from the last fixed point. Hence it could not be determined until the delivery of the award in the Bangladesh/India arbitration whether its dispute with Myanmar had been “fully and finally resolved”.[[74]](#footnote-74)

This does not seem convincing, and certainly ought not to have been so perceived at the time. The technique employed by ITLOS in the *Bay of Bengal* *case* of an azimuthal line of indefinite length to define the final segment of the boundary in circumstances where one or more third States have primary entitlements of their own in the area is a relatively common one, and it has not been suggested to date that courts and tribunals have thereby failed to resolve the dispute completely.[[75]](#footnote-75) However long or short the azimuthal line (and it is clear from Map 2 that, if projected far enough, it would miss the east coast of India but make landfall on that of Sri Lanka), it is clear that the result of the adjudicated delimitation is that Bangladesh no longer has any continental shelf entitlement east of it, and Myanmar none to its west. In these circumstances, it is impossible to understand what harm Bangladesh might suffer from the examination by the CLCS of Myanmar’s submission, with the azimuthal boundary line serving as a substitute – and more landward – constraint line in lieu of those in Article 76, paragraph 5 of UNCLOS already mentioned. For its part, however, the Commission was unmoved by Myanmar’s entreaty: at a subsequent session it merely took note of the foregoing and other unpublished communications from both parties and “decided to further defer the consideration of the submission of Myanmar in order to take into account any further developments that might occur in the intervening period”.[[76]](#footnote-76)

At all events, however, without more, the delivery of the award in 2014 would have put the matter beyond doubt, as this was what Bangladesh in its own explanation of its position had identified as the step by which its boundary with Myanmar would become fully delimited, and the same must logically apply equally to its boundary with India. It might thus have been expected that, after this development, the examination of Myanmar’s submission could at last proceed, and in due course, when its turn came, that of India too. This, however, is not what happened.

Instead, in 2015 Myanmar amended its submission in the light of the two boundary delimitation decisions, but did so in a clumsy and provocative way that if anything retrospectively vindicated Bangladesh’s earlier ill-founded hesitation. The executive summary of the amended submission states that it is not based on new data superseding those underlying the original submission of 2008, and the co-ordinates of the six turning points of the outer limit are likewise unaltered. Rather, some additional argumentation is put forward to justify one turning point based on the 1980 Statement of Understanding.[[77]](#footnote-77) It is also indicated that Myanmar’s maritime boundary with India in the middle of the Bay of Bengal, i.e. an EEZ boundary resolving the overlap creating the doubly grey area, and southward of that a pure continental shelf boundary, will not be in place until the CLCS has established the two States’ primary entitlements via recommendations through the Article 76 process for both States.[[78]](#footnote-78)

The problem lies in the map produced by Myanmar (Map 4) showing the post-delimitation situation. Here the azimuthal line of the 2012 ITLOS judgment is newly inserted, but extends barely if at all beyond Myanmar’s 200-mile line, stopping well short of the reaffirmed outer limit line.[[79]](#footnote-79) West of the adjudicated boundary line, the 200-mile lines of both Myanmar itself and India, which were part of the polygon defining the area enclosed by the outer limit line in the 2008 submission, have been removed and not replaced by anything else. The result is that there is no longer any polygon, so that the area of Myanmar’s primary entitlement to continental shelf consequently becomes uncertain. Inexplicably, the 215° azimuth line has not been extended to meet and truncate the unchanged Article 76 line submitted by Myanmar, which would occur roughly halfway along the latter. Such an extension would have created a polygon of around half the size of that of the 2008 submission, and one to which Bangladesh could not credibly object as failing to respect the outcome of the 2012 delimitation.[[80]](#footnote-80) Just such an objection, this time understandably, was now raised by Bangladesh. By a further *note verbale* to the Secretary-General, it claimed that Myanmar’s amended submission “does not reflect the judgment of ITLOS” in the *Bay of Bengal* *case* laying down the 215° azimuthal line as the boundary “until it reaches the area where the rights of third States may be affected”,[[81]](#footnote-81) nor the boundary in the Bangladesh/India arbitral award of 2014 expressed to end where it meets the 2012 boundary.[[82]](#footnote-82) This leads to the complaint that “[t]he area claimed by Myanmar in its amended submission overlaps Bangladesh’s continental shelf, including the….area which was awarded to Bangladesh by the ITLOS and the Arbitral Tribunal.”[[83]](#footnote-83)

**TAKE IN HERE OR AT TOP OF NEXT PAGE IF IT WILL NOT FIT ON THE REMAINDER OF TYPESET PAGE:**

**Map 4. Myanmar’s amended map demonstrating the outer limits of its extended continental shelf, with a newly inserted discontinuity in the outer limit preventing the creation of a polygon depicting the extent of its continental shelf 200 nautical miles from the baseline.**

A conceivable reason for the remarkable shortness of the mapped azimuthal line might have been that it was an attempt by Myanmar to take account of the enclosure of the whole of the Bay of Bengal beyond 200 miles by the outer limit in the Sri Lankan submission, as would be required by a literal reading of the *dispositif* (“may affect”). If so, though, this would surely have been mentioned by Myanmar in its executive summary, yet it was not. The point about the 2014 boundary is self-evidently correct, but its absence does not appear to create in itself any adverse consequences for Bangladesh. By contrast, the absence of a polygon means that it is not clear to what area if any Myanmar is laying claim, so that while it is possible that the last statement is an overreaction, by the same token one can see why Bangladesh expressed the view it did. This culminates in the final paragraph:

Myanmar’s submission thus improperly seeks a recommendation from the Commission concerning areas that the ITLOS Judgment and the Arbitral Tribunal’s award indisputably awarded to Bangladesh. For that reason, Bangladesh considers that for the Commission to take any action on Myanmar’s submission would directly prejudice the rights of Bangladesh as adjudged and declared by ITLOS and the Arbitral Tribunal. Under the circumstances, Bangladesh maintains its objection to Myanmar’s submission and respectfully submits that the Commission must decline Myanmar’s request to establish a sub commission [*sic*] to examine its submission.[[84]](#footnote-84)

India shortly thereafter lodged its own Note,[[85]](#footnote-85) which reaffirms its earlier one of 2009 before going on to invoke subparagraph 5(a) of Annex I to the CLCS Rules of Procedure. In addition, it

observe[s] that there are overlapping claims in the amended submission of the Republic of the Union of Myanmar with the claims of the Republic of India in the continental shelf beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. It is, therefore, requested that pending resolution of the dispute, the amended submission of the Republic of the Union of Myanmar may be considered as under dispute[.]

Since the 2009 Note did not refer to either a dispute or this rule, the indirect effect of the 2015 amended submission has been to add to the veto of Bangladesh a second one from India. While this compounds the problem for Myanmar, it is difficult to avoid the conclusion that on this occasion it has been the author of its own misfortune.

# VI. CONCLUSION: THE NEED TO UNBLOCK THE IMPASSE OVER THESUBMISSIONS

Although ITLOS in its 2012 judgment did the States Parties to UNCLOS a service in advancing a cogent reason for breaking out of the stalemate created by the unfortunate effect of paragraph 5 of Annex I to the CLCS Rules of Procedure, it is to be lamented that subsequent poor and unnecessary choices by coastal States of the northern Bay of Bengal have in practice contrived to revive that impasse. None appears willing to take the first step towards untangling the knot of objections and counter-objections that has brought the Article 76 process to a halt. Judging by the Commission Chair’s 2012 statement,[[86]](#footnote-86) while Bangladesh could and, it can be argued, should have withdrawn its objection of its own accord after the *Bay of Bengal* judgment of that year, all Myanmar for its part needed to do to induce this action by Bangladesh would have been to acknowledge the judgment, which it has accepted, and ask the CLCS to take it into account in its recommendations. While their failure to take either of these steps is regrettable, as an alternative short of this it would still have been open to Bangladesh to modify its objection so that it applied to only to any part of the Myanmar Article 76 line west of its intersection with the 215° azimuth boundary line, thereby automatically producing for itself the outcome it sought, rather than reiterating its objection to the entire submission. A similar modification of its Note regarding the Indian submission, confining its objection to the part of India’s Article 76 line east of its intersection with the counterpart 177° 30’ azimuth boundary line in the 2014 arbitral award,[[87]](#footnote-87) would likewise have fully protected Bangladesh’s interests while allowing the whole of the remainder of the submission to be examined, rather than setting aside the significant portion of it that relates to the Bay of Bengal. These opportunities too went begging.

For Bangladesh in particular, the converging boundary lines of 2012 and 2014 have reduced the line it submitted to the CLCS, lying far to the south, to practical irrelevance. While in hindsight the submission risks being seen as an overly costly insurance policy, it is a brave adviser who would have counselled Bangladesh to stand back and let its neighbours do the work of convincing the Commission that the whole of the Bay of Bengal was part of the Asian continental margin, and then to demand its share of it by way of delimitation. As a counterfactual it can never be known, but Bangladesh appears to have been well served in both of its delimitations by having made its submission, even though receipt of recommendations on it remains years off, as in its absence there was some risk that ITLOS might take the same view about its authority to delimit the area beyond 200 nautical miles from the baselines that the ICJ did at the first time of asking by Nicaragua. With both delimitations now behind it, though, there is advantage for Bangladesh in not waiting until it has reached the front of the queue, but instead moving promptly to put into place the practical arrangements with its neighbours that would allow a much sooner start to exploration and exploitation of the seabed areas on its side of the boundaries, in which the superjacent water column is the EEZ of one or other of these neighbours. In order to achieve this in those grey and doubly grey areas, however, a more cooperative approach will be needed than that which has hitherto been on display. Myanmar’s 2015 amended submission has exacerbated the already existing problem, but if it remains unwilling to revise it, a selective modification by Bangladesh of its objection as suggested above can nonetheless neutralise it. Nor can Bangladesh resist such negotiation with its neighbours by pointing to the non-fulfilment by them of the condition of obtaining CLCS recommendations, as long as it is itself preventing that from happening by not withdrawing or at least modifying its objections that the Commission – albeit wrongly, in the author’s view – treats as an obstacle to this.

After many years of uncritical acceptance of the flawed CLCS Rules of Procedure, several States are now voicing disquiet in annual meetings of the States Parties to UNCLOS about the indefinite blockage of their CLCS submissions by disputes.[[88]](#footnote-88) The reports of the meetings, though, do not disclose any increasing trend in their number, which would have to increase substantially, forming a bloc with critical mass, for the CLCS to be persuaded to revisit that Annex. Any hope of exploiting the hydrocarbon resources of the affected area thus seems forlorn for the immediate future, and the plunge in international oil prices in 2020, followed by only a modest recovery, may have discredited for ever the “wine theory” alluded to in the introduction. Unless the littoral States are content to see these oil deposits become stranded assets in the medium term under an international energy dispensation geared towards combatting anthropogenic climate change, however, they may not have much time left to reverse their missteps.

POSTSCRIPT

In October 2020 Bangladesh amended its submission, replacing the original outer limit line based on paragraphs 4 and 5 of UNCLOS Article 76 with a new outer limit consisting solely of the parts of its boundaries with each of its neighbours running more than 200 nautical miles from its baseline.[[89]](#footnote-89) This has not, however, necessitated any revision of the foregoing argumentation, as, in order to satisfy itself that Bangladesh’s continental shelf entitlement extends at minimum as far these boundaries, the CLCS can still rely *a fortiori* on at least part of the information originally submitted by Bangladesh to show that there is in fact such an entitlement under paragraph 4. There is thus no need for Bangladesh to revise or update that information, nor indeed any indication in the executive summary that it has done so. The amendment does however mean that, if either Myanmar or India was considering objecting to examination by the CLCS of Bangladesh’s submission as prejudicial to the now completed delimitations, there would no longer be any conceivable justification for this.

1. \* Professor of the Public International Law of the Sea. This article was originally delivered as a presentation under the title “The Outer Limit of Bangladesh’s Continental Shelf after the Delimitation of its Boundaries with its Neighbours: Is There Still Any Role for the CLCS?” at the 8th Conference of the [International Hydrographic Organisation and International Association of Geodesy] Advisory Board on the Law of the Sea, Monaco, 21 October 2015. In addition to thanking an anonymous reviewer for a number of worthwhile suggestions to improve the text, the author is grateful for the observation from the floor at the 2015 conference, by a participant whose name has sadly been lost to time, that alerted him to the Sri Lankan dimension of the issue.

 *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 U.N.T.S. 3 (entered into force 16 November 1994) [“UNCLOS”]. [↑](#footnote-ref-1)
2. UNCLOS Art 77(1) and (2) provide that:

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. [↑](#footnote-ref-2)
3. *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana v. Côte d’Ivoire)*, Judgment of 23 September 2017, [2017] ITLOS Rep. 4. [↑](#footnote-ref-3)
4. See Raghavendra MISHRA, “The ‘Grey Area’ in the Northern Bay of Bengal: A Note on a Functional Cooperative Solution” (2016) 47 Ocean Development & International Law 29 at 29 [“Mishra”] and sources there cited. [↑](#footnote-ref-4)
5. Julian LEE, “Welcome to a Truly Free Oil Market” *Bloomberg Opinion* (29 March 2020), online: Bloomberg <<https://www.bloomberg.com/opinion/articles/2020-03-29/the-coronavirus-means-it-s-a-truly-free-market-for-oil>>, attributing to such reasoning Saudi Arabia’s willingness to cut its production in past oversupply crises: “Those were the days when oil was regarded as a depleting asset whose value would only rise in the future, as demand outstripped available supply. Cutting production would leave oil in the ground that would appreciate in value.” [↑](#footnote-ref-5)
6. #  Christophe McGLADE and Paul EKINS, “The Geographical Distribution of Fossil Fuels Unused when Limiting Global Warming to 2°C” (2015) 517 Nature 187.

 [↑](#footnote-ref-6)
7. Andrew WARD, “BP Warns of Price Pressures from Long-Term Oil Glut” *Financial Times* (26 January 2017), online: Financial Times <<https://www.ft.com/content/28607ed2-e305-11e6-8405-9e5580d6e5fb>>. [↑](#footnote-ref-7)
8. *In the Matter of the Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India (Bangladesh v. India)*, Award of7 July 2014, [2014] PCA Case No. 2010-16, online: PCA <https://pcacases.com/web/sendAttach/383> [“*2014 Award*”]. [↑](#footnote-ref-8)
9. *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar*), Judgment of 14 March 2012, [2012] ITLOS Rep. 4 [“*Bay of Bengal case*”]. [↑](#footnote-ref-9)
10. See the *North Sea Continental Shelf* *Cases* *(Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment of 20 February 1969, [1969] I.C.J. Rep. 3 and 175, and Figure 1.1 (Equidistance Cutoff in the Bay of Bengal) in Bangladesh’s written pleadings in the *Bay of Bengal case* at 4-5, online: ITLOS <<https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/Memorial_of_Bangladesh_Volume1.pdf>>, showing that, if its boundaries with each neighbour were drawn on the basis of equidistance, the two lines would meet well short of 200 miles. This would leave Bangladesh with sovereign rights over a far smaller area than Myanmar and India, which between them would have such rights over the remainder of the northern part of the Bay of Bengal, every point in which would be closer to one or the other of them than to Bangladesh. [↑](#footnote-ref-10)
11. Map 9 (Adjustment of the Provisional Equidistance Line) in *2014 Award*, *supra* note 8 at 149. [↑](#footnote-ref-11)
12. The executive summary of Bangladesh’s submission can be seen at People's Republic of Bangladesh, “Submission to the Commission on the Limits of the Continental Shelf, Executive Summary” (February 2011), online: UN <<https://www.un.org/depts/los/clcs_new/submissions_files/bgd55_11/Executive%20summary%20final.pdf>>. [↑](#footnote-ref-12)
13. This should be done within ten years of the entry into force of UNCLOS for the submitting State — see UNCLOS, *supra* note 1 at Annex II, Art 4. Bangladesh complied with this requirement by making its submission on 25 February 2011, having ratified UNCLOS on 27 July 2001 (see the relevant webpage on the UN Treaty Collection website, “Chapter XXI Law of the Sea” (visited on 1 May 2020), online: UN <<https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en>>), the entry into force for Bangladesh occurring 30 days after that, by virtue of UNCLOS Art 308(2). [↑](#footnote-ref-13)
14. The text of the relevant paragraphs (8 to 10) of UNCLOS Art 76 is as follows:

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf … The Commission shall make recommendations to coastal States on … the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts. [↑](#footnote-ref-14)
15. *Rules of Procedure of the Commission on the Limits of the Continental Shelf*,UN Doc. CLCS/40/Rev.1 (17 April 2008), at 22 [“Rules of Procedure”]. [↑](#footnote-ref-15)
16. *Bay of Bengal* *case*, *supra* note 9 at 105, para. 397. [↑](#footnote-ref-16)
17. *Rules of Procedure*, *supra* note 15; subparagraph 5(a) states that:

In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.

This would appear to be an overimplementation of UNCLOS Art 76(10), which speaks of non-prejudice to delimitation, but makes no mention of disputes: according to Lindsay PARSON, “Article 76” in Alexander PROELSS, ed., The United Nations Convention on the Law of the Sea: A Commentary (Munich: C.H. Beck/Hart/Nomos, 2017), 587 at 599 [“Proelss”]:

Delimitation is not the intention nor the remit of any part of Art. 76, and this allows the Commission to proceed with its work divorced completely from issues of the existing, or future position of maritime boundaries. The Commission has chosen to interpret this in Annex I of its Rules of Procedure to preclude its examination of submissions which are in any way subject to disputed areas relevant to the continental shelf.

In the case of Bangladesh’s continental shelf boundaries, it is true that Bangladesh formerly had delimitation disputes with both of its neighbours, but the *Bay of Bengal case* and *2014 Award* have settled those disputes. Any remaining dispute that may subsist about how to co-ordinate the exercise of their rights in the grey areas considered in the next section is irrelevant to the CLCS’s examination of the blocked submissions and cannot justify its continued inaction. [↑](#footnote-ref-17)
18. *Bay of Bengal* *case*, *supra* note 9 at 102-3, paras. 390-4. [↑](#footnote-ref-18)
19. Bjarni Már MAGNÚSSON, “Outer Continental Shelf Boundary Agreements” (2013) 62 International and Comparative Law Quarterly 345 at 350-68. [↑](#footnote-ref-19)
20. “Agreed Minutes on the Delimitation of the Continental Shelf beyond 200 Nautical Miles between the Faroe Islands, Iceland and Norway in the Southern Part of the Banana Hole of the Northeast Atlantic” (20 September 2006), online: Regjeringen Norway <<https://www.regjeringen.no/en/dokumenter/Agreed-Minutes/id446839>>; “Agreed Minutes on the Delimitation of the Continental Shelf beyond 200 Nautical Miles between Greenland and Iceland in the Irminger Sea” (16 January 2013), online: Stjórnarráðs Íslands <<https://www.stjornarradid.is/media/utanrikisraduneyti-media/media/thjodrettarmal/Agreed-Minutes-og-vidaukar.pdf>>. [↑](#footnote-ref-20)
21. For present purposes, the northern part of the Bay of Bengal may be defined as that part of the Bay lying north of the 14th parallel of North latitude, with the remainder of that body of water forming its southern part. This dividing line has been chosen so as to ensure that (a) the whole of the area landward of the outer limit lines submitted by Bangladesh to the CLCS lies north of it, and also, for the sake of avoiding needless complication, that (b) no States other than the four already mentioned in the main text have potential continental shelf entitlements projecting north of it. In particular, to the extent that such entitlements of the next nearest State, Thailand, whose land boundary with Myanmar meets the sea at its western end at approximately 10°N, project at all into the Bay of Bengal rather than being blocked by the presence of the Andaman and Nicobar Islands belonging to India, they do so only into its southern part. [↑](#footnote-ref-21)
22. ##  See the table in UN, “Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982” (10 December 1982), online: UN <<https://www.un.org/depts/los/clcs_new/commission_submissions.htm>> [“Table of Submissions”].

 [↑](#footnote-ref-22)
23. *Progress of Work in the Commission on the Limits of the Continental Shelf — Statement by the Chairperson*, UN Doc. CLCS/72 (16 September 2011), at 7, para. 22 [“UN Doc. CLCS/72”]. [↑](#footnote-ref-23)
24. *Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*,UN Doc. CLCS/68 (17 September 2010), at 13-14, para. 57 [“UN Doc. CLCS/68”]. [↑](#footnote-ref-24)
25. As required by Art 5 of Annex II to UNCLOS, *supra* note 1. [↑](#footnote-ref-25)
26. *Progress of Work in the Commission on the Limits of the Continental Shelf — Statement by the Chair*, UN Doc. CLCS/50/2 (5 September 2019), at 13, para. 81. The submissions put aside after reaching the front of the queue were at that time eight in number: these are listed *ibid*.,at para. 77. [↑](#footnote-ref-26)
27. *Permanent Mission of the Republic of the Union of Myanmar to the United Nations*, Note No. 146 / 03 20 17 (31 March 2011), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/mmr_nv_un_001_08_04_2011.pdf>>. The Myanmar Note opens by saying that in Myanmar’s view Bangladesh has no entitlement to any continental shelf beyond 200 nautical miles, but this issue was soon thereafter resolved in Bangladesh’s favour in *Bay of Bengal case*, *supra* note 9. [↑](#footnote-ref-27)
28. *Permanent Mission of the Republic of India to the United Nations*, Note No. PM/NY/443/2/2011 (20 June 2011), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/ind_nv_un_001_20_06_2011.pdf>>. [↑](#footnote-ref-28)
29. Accord UN Doc. CLCS/72, *supra* note 23 at 7, para. 21, per the leader of the Bangladesh delegation making the initial presentation of the submission to the Commission as a whole. [↑](#footnote-ref-29)
30. Øystein JENSEN, *The Commission on the Limits of the Continental Shelf: Law and Legitimacy* (Leiden/Boston: Brill, 2014) at 65-71; Andrew SERDY, “Annex II, Article 9” in Proelss, ed., *supra* note 17, 2104 at 2111-12. [↑](#footnote-ref-30)
31. ITLOS in its 2012 judgment accepted that the area subject to delimitation was a long way from the Area: *Bay of Bengal case*, *supra* note 9 at 94, para. 353 and 97, para. 368. [↑](#footnote-ref-31)
32. *Supra* note 14. [↑](#footnote-ref-32)
33. Although the ISA does have a role in enforcing UNCLOS Art 82, as the conduit through which payments based on the value or volume of production from the area beyond 200 nautical miles will be redistributed among States Parties according to an equitable formula yet to be negotiated, this does not give it any standing to argue for any particular location of the outer limit. Rather, the deep seabed area it administers is the residue left over after the outer limits of States’ continental shelves beyond 200 miles have been delineated; see UNCLOS Art 134(4). [↑](#footnote-ref-33)
34. Note, however, that the effect of UNCLOS Art 76(10) is not absolute: it does not permit two States to escape the constraints of the Art 76 rules *vis-à-vis* all other States by agreeing *inter se* to delimit a boundary separating areas to which they are not actually entitled under those rules. Were it otherwise, delimitation would become constitutive of the States’ titles to seabed areas rather than merely resolving the overlap of existing titles. [↑](#footnote-ref-34)
35. *Bay of Bengal* *case*, *supra* note 9 at 115, para. 444. [↑](#footnote-ref-35)
36. See the outer limits in the executive summaries of their submissions, Republic of the Union of Myanmar, “Continental Shelf Submission of Union of Myanmar, Executive Summary” (December 2008), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/mmr_es.pdf>> and Republic of India, “The Indian Continental Shelf — Partial submission to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8 of the United Nations Convention on the Law of the Sea” (2009), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/ind2009executive_summary.pdf>>, at 8 and 12 respectively. [↑](#footnote-ref-36)
37. The text of the provision (“The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”) does not explicitly say this, but the delineation by the coastal State of its outer limits under paragraph 7 of Art 76, and their deposit with the United Nations and subsequently the publicity given to them under paragraph 9, are necessarily public pronouncements, either of which might be regarded as a “proclamation”. [↑](#footnote-ref-37)
38. *Bay of Bengal* *case*, *supra* note 9 at 107, paras. 408-10. [↑](#footnote-ref-38)
39. *2014 Award*, *supra* note 8 at 20-22, paras. 74-82. [↑](#footnote-ref-39)
40. *Territorial and Maritime Dispute* (*Nicaragua v. Colombia)*, Judgment of 19 November 2012, [2012] I.C.J. Rep. 624 at 669, paras. 127-9. [↑](#footnote-ref-40)
41. In such a case, the sovereign rights of the coastal State in its EEZ, which normally embrace the seabed and subsoil as provided in UNCLOS Art 56(1)(a), will in practice be confined to the water column. [↑](#footnote-ref-41)
42. *Convention on the Continental Shelf*, 29 April 1958, 499 U.N.T.S. 311 (entered into force 10 June 1964). [↑](#footnote-ref-42)
43. The Virginia Commentary states that “[u]nder the 1982 Convention the superjacent waters of the continental shelf either come within the [EEZ] of the coastal State or are part of the high seas.”: Myron H. NORDQUIST, Satya N. NANDAN, and Shabtai ROSENNE, eds., *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. II (Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1993) at 906, para. 78.8(a). According to a more recent commentary, Amber Rose MAGGIO, “Article 78”, in Proelss, ed., *supra* note 17, 614 at 616, “The legal status of the waters above the continental shelf is not determined by reference to the shelf, but rather the limits of the EEZ of the relevant coastal State.” This formulation leaves room for a different State to be the “relevant coastal State”. [↑](#footnote-ref-43)
44. A maritime boundary treaty negotiated at the same time as the Third UN Conference on the Law of the Sea had separate boundaries for seabed jurisdiction and fisheries (water column) jurisdiction, resulting in the creation of an area in which Papua New Guinea’s continental shelf was overlain by the Australian Fishing Zone and subsequently the Australian EEZ: *Treaty between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, Including the Area Known as Torres Strait, and Related Matters*, 18 December 1978, 1429 U.N.T.S. 207 (entered into force 15 February 1985), Art 4 and Annexes 5-8. [↑](#footnote-ref-44)
45. Map 11 (Grey Areas - Detail) in *2014 Award*, *supra* note 8 at 161. The colour scheme of this map is suboptimal, obscuring the existence of an overlap between the two grey areas, which has its own legal significance explained below, by denying it a third colour: it is depicted in the same orange (appearing here as a darker shade of grey than its surrounds) as the remainder of the area of Bangladesh shelf under Indian EEZ, whereas the green (in greyscale rendered almost as black) shows only that part of the Bangladesh shelf under Myanmar’s EEZ that is not also under the Indian EEZ. For a three-colour map see Figure 5 (Detailed depiction of the Bay of Bengal Grey Area, Adapted from India–Bangladesh PCA Award (2014)) in Mishra, *supra* note 4 at 35. [↑](#footnote-ref-45)
46. *Ibid*., at 33-4, where the figure of 545 square miles appears to be an arithmetical error, too big to be a rounding error, contradicted by the sum of the three component sub-areas. [↑](#footnote-ref-46)
47. *2014 Award*, *supra* note 8 at 155, para. 500. [↑](#footnote-ref-47)
48. *Ibid*., at 157, para. 508. This follows a paragraph (para. 507, *ibid*., at 156) drawing attention to provisions within UNCLOS envisaging “shared rights” and “recogniz[ing] to a greater or lesser degree the rights of one State within the maritime zones of another”, mentioning in relation to the EEZ and continental shelf Arts 56, 58, 78, and 79 which “all call for States to exercise their rights and perform their duties with due regard to the rights and duties of other States”. The parallel is inexact, however, as these are all situations of a single coastal State on one hand and a user or flag State on the other, whereas in the grey areas the issue is between two coastal States. [↑](#footnote-ref-48)
49. *Ibid*., at para. 504. [↑](#footnote-ref-49)
50. *Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries*, 14 March 1997 (not yet entered into force), reprinted in Jonathan I. CHARNEY and Robert W. SMITH, eds., *International Maritime Boundaries*, Vol 4 (The Hague/London/New York: Martinus Nijhoff Publishers, 2002) at 2697. [↑](#footnote-ref-50)
51. Under the heading “Areas of overlapping jurisdiction”, the full text of Art 7 is as follows:

In those areas where the areas of exclusive economic zone adjacent to and appertaining to a Party (the First Party) overlap the areas of seabed adjacent to and appertaining to a Party being the other Party (the Second Party):

(a) the First Party may exercise exclusive economic zone sovereign rights and jurisdiction provided for in the 1982 Convention in relation to the water column;

(b) the Second Party may exercise continental shelf sovereign rights and jurisdiction provided for in the 1982 Convention in relation to the seabed;

(c) the construction of an artificial island shall be subject to the agreement of both Parties. An “artificial island” for the purposes of this Article is an area of land, surrounded by water, which is above water at high tide by reason of human intervention;

(d) the Second Party shall give the First Party three months notice of the proposed grant of exploration or exploitation rights;

(e) the construction of installations and structures shall be the subject of due notice and a permanent means of giving warning of their presence must be maintained;

(f) (i) any installation or structure which is abandoned or disused shall be removed by the Party which authorised its construction in order to ensure the safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organisation;

(ii) such removal shall also have due regard to fishing and to the protection of the marine environment. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed;

(g) the construction of a fish aggregating device shall be the subject of due notice;

(h) the Party constructing an artificial island, installation, structure or fish aggregating device shall have exclusive jurisdiction over it;

(i) marine scientific research shall be carried out or authorised by a Party in accordance with the 1982 Convention and such research shall be notified to the other Party;

(j) the Parties shall take effective measures as may be necessary to prevent, reduce and control pollution of the marine environment;

(k) each Party shall be liable in accordance with international law for pollution of the marine environment caused by activities under its jurisdiction;

(l) any island within the meaning of Article 121.1 of the 1982 Convention which emerges after the entry into force of this Treaty shall be the subject of consultations between the Parties with a view to determining its status;

(m) neither Party shall exercise its rights and jurisdiction in a manner which unduly inhibits the exercise of the rights and jurisdiction of the other Party; and

(n) the Parties shall cooperate with each other in relation to the exercise of their respective rights and jurisdiction. [↑](#footnote-ref-51)
52. Max HERRIMAN and B. Martin TSAMENYI, “The 1997 Australia-Indonesia Maritime Boundary Treaty: A Secure Legal Regime for Offshore Resource Development?” (1998) 29 Ocean Development & International Law 361 at 361-96. [↑](#footnote-ref-52)
53. See the General and Special Notices accompanying Geoscience Australia, “Offshore Petroleum Exploration Acreage Release, Australia 2014” (2014), online: Geoscience Australia <[https://web.archive.org.au/awa/20160228063410mp\_/http://petroleum-acreage.gov.au/files/files/2014/documents/special-notices/Special\_Notices.docx](https://web.archive.org.au/awa/20160228063410mp_/http%3A//petroleum-acreage.gov.au/files/files/2014/documents/special-notices/Special_Notices.docx)> at 13, referring to the *Agreement Between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, supplementary to the Agreement of 18 May 1971*, 9 October 1972, 974 U.N.T.S. 319 (entered into force 8 November 1973) and to Australia’s practice of not just acting in accordance with the 1997 treaty in advance of its entry into force but giving Indonesia three months’ notice of the release, even though Art 7(d) requires such notice only when a licence is granted. [↑](#footnote-ref-53)
54. Mishra, *supra* note 4 at 34. [↑](#footnote-ref-54)
55. *2014 Award*, *supra* note 3 at 156, para. 506. [↑](#footnote-ref-55)
56. Two Notes both numbered PMBNY-UNCLOS/2009- addressed by the Permanent Mission of the People’s Republic of Bangladesh to the Secretary-General of the United Nations, the first in relation to Myanmar dated 23 July 2009, *Permanent Mission of the People’s Republic of Bangladesh to the United Nations*, Note No. PMBNY-UNCLOS/2009- (23 July 2009), online: UN <<https://www.un.org/depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_mmr_bgd_e.pdf>> and the second in relation to India dated 29 October 2009, *Permanent Mission of the People’s Republic of Bangladesh to the United Nations*, Note No. PMBNY-UNCLOS/2009- (29 October 2009), online: UN <<https://www.un.org/depts/los/clcs_new/submissions_files/ind48_09/bgd_re_ind_clcs48_2009e.pdf>>, are ambiguous as to whether Bangladesh is actually withholding its consent to the CLCS moving to examine the submissions, but they both use the problematic term “dispute” found in Annex I to the CLCS Rules of Procedure (paras. 2 and 8 of the former and 2(a) and 4 of the latter). The 2012 ITLOS judgment and the parties themselves seem to have assumed that the earlier Note does amount to an objection, which was one of the reasons for ITLOS not to wait for the Art 76 process to play out before drawing the boundary beyond 200 miles: *Bay of Bengal case*, *supra* note 9 at 98-103, paras. 369-94. As the Myanmar submission was one of the earlier ones made to the CLCS and reached the front of the queue as early as 2010, the CLCS too would not have put it aside unexamined unless it likewise treated the Note of 23 July 2009 as an objection enabled by paragraph 5 of Annex I: UN Doc. CLCS/68, *supra* note 24 at 12, paras. 50-51. [↑](#footnote-ref-56)
57. Figure 3 (Map showing the outer limits of the continental shelf of Sri Lanka beyond 200 M), in Democratic Socialist Republic of Sri Lanka, “Continental Shelf Submission of Sri Lanka, Executive Summary” (8 May 2009), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/lka43_09/lka2009executivesummary.pdf>>, at 12. [↑](#footnote-ref-57)
58. Sri Lanka’s submission was made on 8 May 2009, whereas Bangladesh instituted arbitral proceedings against Myanmar, later transferred to ITLOS, on 8 October 2009: Table of Submissions, *supra* note 22; *Bay of Bengal case*, *supra* note 9 at 10, para. 1. [↑](#footnote-ref-58)
59. *Permanent Mission of the Republic of India to the United Nations*, Note No. NY/PM/161/2/2010 (10 May 2010), online: UN <<https://www.un.org/depts/los/clcs_new/submissions_files/lka43_09/clcs_43_2009_los_ind.pdf>>. [↑](#footnote-ref-59)
60. *Permanent Mission of the People’s Republic of Bangladesh to the United Nations*,Note No. PMBNY-Unclos/2010 (20 October 2010), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/lka43_09/clcs_43_2009_los_bgd.pdf>> [“Note No. PMBNY-Unclos/2010”]. [↑](#footnote-ref-60)
61. See *Progress of Work in the Commission on the Limits of the Continental Shelf: Statement by the Chair*, UN Doc. CLCS/52/2 (25 March 2020), at 8, paras. 47-51, referring to interactions between the Sri Lankan delegation and the subcommission in February 2020 during the Commission’s 52nd session. [↑](#footnote-ref-61)
62. *Progress of Work in the Commission on the Limits of the Continental Shelf — Statement by the Chair*, UN Doc. CLCS/95 (21 September 2016), at 22-3, paras. 106, 108, and 109. [↑](#footnote-ref-62)
63. *Annex II — Statement of Understanding Concerning a Specific Method to be Used in Establishing the Outer Edge of the Continental Margin*, Final Act of the Third United Nations Conference on the Law of the Sea, 10 December 1982, 1835 U.N.T.S. 291. [↑](#footnote-ref-63)
64. This is noted in the Note by Bangladesh in response to the submission, which observes that the area is more than 350 nautical miles from Sri Lanka’s baseline and more than 100 miles beyond the 2500-metre isobath and thus complies with neither of the constraints, but reserves its position as regards further steps: Note No. PMBNY-Unclos/2010, *supra* note 60. See generally M. Christopher W. PINTO, “Article 76 of the UN Convention on the Law of the Sea and the Bay of Bengal Exception” (2013) 3 Asian Journal of International Law 215 at 222-4 and 226-8 arguing that Sri Lanka is exempt from the paragraph 5 constraints; the opposite view is taken in Lindsay PARSON, “Annex II to the Final Act: Statement of Understanding Concerning a Specific Method to be Used in Establishing the Outer Edge of the Continental Margin”, in Proelss, ed., *supra* note 17, 600 at 601: “This special methodology provides an alternative to either of the criteria laid out in of [*sic*] Art. 76(4)(a)(i) and (ii).” [↑](#footnote-ref-64)
65. *Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf*, UN Doc. CLCS/11 (13 May 1999), at 57, para. 8.1.12. [↑](#footnote-ref-65)
66. See generally Arts 5 and 6(1) of Annex II to UNCLOS, *supra* note 1, respectively concerning how subcommissions operate and their interaction with the full Commission. [↑](#footnote-ref-66)
67. *Supra* note 11. The boundary in question is established by the *Agreement between Sri Lanka and India on the Maritime Boundary between the two Countries in the Gulf of Mannar and the Bay of Bengal and Related Matters*, 23 March 1976, 1049 U.N.T.S. 43 (entered into force 10 May 1976), Art 2. [↑](#footnote-ref-67)
68. As per the *North Sea Continental Shelf* *Cases*, *supra* note 10 at 31, para. 43:

[W]henever a given submarine area does not constitute a natural–or the most natural--extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State;--or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it. [↑](#footnote-ref-68)
69. *Bay of Bengal* *case*, *supra* note 9 at 113-14, paras. 433-38. [↑](#footnote-ref-69)
70. *Supra* note 34 and accompanying text. [↑](#footnote-ref-70)
71. *Progress of Work in the Commission on the Limits of the Continental Shelf — Statement by the Chairperson*, UN Doc. CLCS/74 (30 April 2012), at 11-12, para. 59. [↑](#footnote-ref-71)
72. The communication from Myanmar is not in the public domain, but is mentioned and dated (5 July 2012) in Bangladesh’s response in the next footnote. [↑](#footnote-ref-72)
73. *Permanent Mission of the People’s Republic of Bangladesh to the United Nations*, Note No. PMBNY/67/UNCLOS/2012 (30 September 2012), online: <<https://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/2012_09_30_BGD_NV_UN.pdf>>, which refers to a separate communication from the Commission itself to Bangladesh of 14 August 2012, whose content can be inferred as inviting Bangladesh to withdraw its objection. [↑](#footnote-ref-73)
74. *Ibid.*, at 1-2. [↑](#footnote-ref-74)
75. For a useful survey see Naomi BURKE O’SULLIVAN, “The Case Law’s Handling of Issues Concerning Third States” in Alex G. OUDE ELFERINK, Tore HENRIKSEN, and Signe V. BUSCH, eds., *Maritime Boundary Delimitation: The Case Law: Is It Consistent and Predictable?* (Cambridge: Cambridge University Press, 2018), 262-90. [↑](#footnote-ref-75)
76. *Progress of Work in the Commission on the Limits of the Continental Shelf — Statement by the Chair*, UN Doc. CLCS/78 (1 April 2013), at 12, para. 47. [↑](#footnote-ref-76)
77. Republic of the Union of Myanmar, “The Republic of the Union of Myanmar Continental Shelf Submission, Executive Summary, Amended July 2015” (July 2015), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/Myanmar_Amended_Ex_Summary.pdf>>, at 1. [↑](#footnote-ref-77)
78. *Ibid*., at 4-5. [↑](#footnote-ref-78)
79. *Ibid*., Figure 3 (Amended map demonstrating the outer limits of the extended Rakhine continental shelf of Myanmar, beyond 200 M), at 10. [↑](#footnote-ref-79)
80. This smaller polygon would then shrink further on completion of the outstanding delimitation between Myanmar and India in the central Bay of Bengal, but here Myanmar would have a good case for departure from the equidistance line in its favour. This is because, like Bangladesh, if not to the same extent, it too can plausibly claim the benefit of the concave coast argument, as the considerable geographical advantage to India through its Andaman and Nicobar Islands produces a situation in which Myanmar too is inequitably squeezed between its neighbours. A fuller analysis of the implications of this is beyond the scope of this article. [↑](#footnote-ref-80)
81. *Permanent Mission of the People’s Republic of Bangladesh to the United Nations*,Note No. PMBNY/CLCS/2015 (22 October 2015), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/2015_10_22_BGD_NV_UN.pdf>>, at para. 2. [↑](#footnote-ref-81)
82. *Ibid.*, at para. 3. [↑](#footnote-ref-82)
83. *Ibid.*, at para. 4. [↑](#footnote-ref-83)
84. *Ibid.*, at para. 5. [↑](#footnote-ref-84)
85. *Permanent Mission of the Republic of India to the United Nations*,Note No. NY/PM/443/1/2015 (30 October 2015), online: UN <<https://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/2015_10_30_IND_NV_UN.pdf>>. [↑](#footnote-ref-85)
86. *Supra* note 71. [↑](#footnote-ref-86)
87. *2014 Award*, *supra* note 8 at 147, para. 478 and 165, para. 509(3). [↑](#footnote-ref-87)
88. *Report of the Twenty-Fourth Meeting of States Parties*, UN Doc. SPLOS/277 (14 July 2014), at 14, para. 81 and 19, para. 113; *Report of the Twenty-Fifth Meeting of States Parties*,UN Doc. SPLOS/287 (13 July 2015), at 12, para. 59; *Report of the Twenty-Sixth Meeting of States Parties*, UN Doc. SPLOS/307 (2 August 2016), at 11, para. 61; *Report of the Twenty-Seventh Meeting of States Parties*, UN Doc.SPLOS/316 (10 July 2017), at 10, para. 57; *Report of the Twenty-Ninth Meeting of States Parties*,UN Doc. SPLOS/29/9 (8 July 2019), at 12, para. 70. [↑](#footnote-ref-88)
89. See People’s Republic of Bangladesh, “Submission by the People’s Republic of Bangladesh to the Commission on the Limits of the Continental Shelf[,] Executive Summary (Amended)” (October 2020), online: UN <https://www.un.org/Depts/los/clcs\_new/submissions\_files/bgd55\_11/Executive%20summary\_BGD\_AMD.pdf>. [↑](#footnote-ref-89)