

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



2011

Public sitting

held on Tuesday, 20 September 2011, at 10.00 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President José Luís Jesus presiding

**DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY
BETWEEN BANGLADESH AND MYANMAR IN THE BAY OF BENGAL**

(Bangladesh/Myanmar)

Verbatim Record

<i>Present:</i>	President	José Lu3s Jesus
	Vice-President	Helmut Tuerk
	Judges	Vicente Marotta Rangel
		Alexander Yankov
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tullio Treves
		Tafsir Malick Ndiaye
		Jean-Pierre Cot
		Anthony Amos Lucky
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Albert J. Hoffmann
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
	Judges <i>ad hoc</i>	Thomas A. Mensah
		Bernard H. Oxman
	Registrar	Philippe Gautier

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and

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as Advisers.

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

2
3 **THE PRESIDENT:** Please be seated. Today, Myanmar will continue its oral
4 arguments in the dispute concerning delimitation of the maritime boundary between
5 Bangladesh and Myanmar in the Bay of Bengal. I call on Mr Coalter Lathrop to make
6 his presentation.

7
8 **MR LATHROP:** Mr President, distinguished members of the Tribunal, yesterday
9 Professor Pellet explained why it is not necessary, nor, indeed possible, to resort to
10 the angle bisector method in the circumstances of this case. To paraphrase
11 Professor Pellet, it is not appropriate to apply the bisector method because the
12 preferred method – the equidistance method – can be applied to the coasts of the
13 Parties without any of the obstacles faced by the International Court in *Nicaragua v*
14 *Honduras*. There are no sovereignty disputes. The Parties agree to the location of
15 the land boundary terminus and the starting point for this delimitation. The Parties
16 agree on the charts. The coasts of the Parties are stable, and the shapes of the
17 relevant adjacent coasts are relatively flat. Indeed, there are no obstacles to applying
18 the equidistance method whatsoever.

19
20 Yesterday I had the privilege of addressing the Tribunal regarding the proper
21 application of the equidistance method to the coasts of the Parties. As I emphasized
22 in that presentation, the construction of the provisional equidistance line is eminently
23 feasible in this coastal geography. Moreover, as Professor Forteau and Sir Michael
24 Wood demonstrated in subsequent presentations, the equidistance method
25 produces an equitable result in this case.

26
27 Accordingly, since the equidistance method is both feasible and equitable, Myanmar
28 does not suggest in any way that the angle bisector need be or should be applied in
29 this delimitation. Nonetheless, because the angle bisector method has been used –
30 albeit incorrectly – by Bangladesh in its proposed delimitation, it is incumbent upon
31 Myanmar to make the Tribunal aware of the flaws in Bangladesh’s application of the
32 angle bisector method. In doing so, Myanmar will show the Tribunal the actual
33 delimitation line that would result if that method were to be applied correctly.

34
35 My task this morning has three parts. First, I will cover some preliminary points about
36 the angle bisector method. Second, I will present to you a critique of Bangladesh’s
37 application of the angle bisector method. Third and finally, I will present a
38 demonstration of the proper angle bisector line that is actually generated in this
39 coastal configuration.

40
41 At the outset, two preliminary points should be made about the angle bisector
42 method. The first is that the bisector method is a modified version of the equidistance
43 method as applied to simplified coasts or, as the International Court said in
44 *Nicaragua v Honduras*, “the bisector method may be seen as an approximation of
45 the equidistance method”¹. On this first preliminary point, Bangladesh agrees².

¹ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, Judgment, I.C.J. Reports 2007* (hereinafter “*Nicaragua v Honduras*”), p. 78, para. 287.

² See Reply of Bangladesh (hereinafter “BR”), para. 3.127; ITLOS/PV11/5(E), p. 2, lines 1-4 (Crawford).

1 The second preliminary point is that, when properly applied, the angle bisector
2 lessens the effects of unusually prominent features. In that regard, it has been
3 described by a Chamber of the International Court as “a corrective”³. Unfortunately,
4 because the application of the method requires a subjective assessment of coastal
5 configurations, this “corrective” tool is particularly susceptible to abuse. To limit that
6 abuse, the International Court has laid down the following rule in its case law – the
7 bisector must be constructed using general direction lines that are representative of
8 the actual coast.

9
10 On this second preliminary point, Bangladesh clearly does not agree. But before
11 critiquing Bangladesh’s misapplication of the method, it is important to review the
12 Court’s limited case law on the use of general direction lines for constructing angle
13 bisectors. Since there have been so few bisector cases in international law, this will
14 not be a lengthy task.

15
16 In the *Gulf of Maine* case, a Chamber of the International Court addressed “the
17 abstract concept of the ‘general direction’ of the coast”⁴. This concept, wrote the
18 Chamber, “may indeed be used as a corrective where the real direction of the coast
19 at which the land boundary ends *deviates only insignificantly* from this ‘general
20 direction”⁵. The Chamber, in this passage, was writing about the problem of applying
21 a perpendicular to coasts that formed an angle, but the Chamber’s statement is no
22 less relevant in the present case. A general direction line must act as no more than a
23 corrective. It may deviate only insignificantly from the real direction of the coast or,
24 as the Chamber writes in the same paragraph, from “the real geographic
25 configuration.”

26
27 In resorting to this concept of a general direction line, the Chamber sought to
28 “correct” for the influence of “tiny islands, uninhabited rocks or low-tide elevations”
29 which would otherwise, as the most salient features, have influenced the
30 delimitation⁶. The result of the Chamber’s application of the general direction
31 concept to the coasts of the Parties in that case is shown on the screen. The
32 Tribunal will notice that the Chamber used a different version of the coasts for
33 measuring the coastal length of the two States. Mr Müller presented the latter
34 version of the coasts to you yesterday and we have added them to the screen for
35 comparison. Professor Crawford told you that there was no authority for the
36 proposition that different portions of the coast can be used for these two different
37 purposes – for general direction on the one hand and coastal length⁷ on the other –
38 but he was mistaken. The *Gulf of Maine* case followed exactly this approach.
39 In *Nicaragua v Honduras*, the full Court reaffirmed the view that general direction
40 lines may deviate only insignificantly from the real geographic configuration. In that
41 case, the Court described the angle bisector it constructed as “the line formed by
42 bisecting the angle created by the linear approximations of the coastlines”⁸. The
43 Court also described the general direction lines as “lines representing the relevant

³ See *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v U.S.)*, Judgment, I.C.J. Reports 1984 (hereinafter “*Gulf of Maine*”), p. 320, para. 176.

⁴ *Ibid.*

⁵ *Ibid.* (emphasis added).

⁶ *Gulf of Maine*, I.C.J. Reports 1984, p. 329, para. 201.

⁷ ITLOS/PV11/5(E), p. 8, lines 2-6 (Crawford).

⁸ *Nicaragua v Honduras*, I.C.J. Reports 2007, p. 78, para. 287.

1 mainland coasts”⁹. Applying this concept to the actual coasts in that case, the Court
2 examined two general direction lines proposed by Nicaragua, which were purported
3 to represent the direction of the Honduran coast. But because the two lines would in
4 fact cut across significant portions of Honduran territory¹⁰, the Court found that it did
5 not represent the actual coast. Accordingly, the Court rejected them—not for the
6 reasons Professor Crawford gives¹¹, but because they “would run entirely over the
7 Honduran mainland and thus would deprive the significant Honduran land mass
8 between the sea and the line of any effect on the delimitation”¹². Nicaragua’s
9 unacceptable coastal front line is shown on the screen. For the purpose of a
10 bisector-based delimitation, all of the territory north of that line would be effectively
11 erased from existence and given no effect. This was not a “linear approximation” of
12 the Honduran coast, and it was therefore rejected in favor of the coastal front line
13 that has now been added to the map. According to the Court, this third version of the
14 coastal front or general direction line would “avoid the problem of cutting off
15 Honduran territory”¹³.

16
17 To summarize, we can extrapolate from these two cases, *Gulf of Maine* and
18 *Nicaragua v Honduras*, the guiding principle for the application of the angle bisector
19 method—the general direction lines must represent approximations of the actual
20 coast, while deviating only insignificantly. As the Court noted in *Nicaragua v*
21 *Honduras*, applying this rule requires careful attention to “the actual coastal
22 geography”¹⁴. That is, an international court or tribunal must adhere faithfully to the
23 actual coasts in drawing the general direction lines. Then, once these lines have
24 been identified on the coasts of both Parties, the construction of the bisector is
25 a purely objective, relatively simple, mathematical calculation.

26
27 Bangladesh badly misapplies this simple rule when it identifies its own coastal
28 façade. But before I address Bangladesh’s errors, allow me to note several points of
29 agreement between the Parties with respect to the application of the angle bisector
30 method. First, both Parties use their agreed land boundary terminus as the vertex of
31 their angles¹⁵. Second, neither Party includes extraneous features in their general
32 direction lines¹⁶. And third, both Parties take largely the same view of the general
33 direction of the Myanmar coast. The lengths of the two versions are different, but
34 their directions vary by only two degrees¹⁷.

35
36 Bangladesh’s errors are the result, first and foremost, of the misapplication of the
37 coastal front rule to its own coast. Bangladesh’s version of its own coastal front does
38 not “represent” its actual coast. It does not “deviate only insignificantly” from the real
39 direction of its coast. It is not a “linear approximation” of that coast. The direction of
40 Bangladesh’s coastal front line is simply wrong. The map on the screen is sufficient
41 evidence of Bangladesh’s error, but it is not the only evidence.

⁹ *Ibid.*

¹⁰ *Ibid.*, pp. 80-81, paras. 295, 297.

¹¹ ITLOS/PV11/5(E), p. 9, lines 7-13 (Crawford).

¹² *Nicaragua v Honduras*, I.C.J. Reports 2007, p. 81, para. 297.

¹³ *Ibid.*, para. 298.

¹⁴ *Ibid.*, para. 289.

¹⁵ BM, at Figure 6.11; MCM, at Sketch-Map 5.6.

¹⁶ BM, at Figure 6.11; MCM, at Sketch-Map 5.6.

¹⁷ See MR, para. 5.61 (“[T]he coastal front of Myanmar ... follows an azimuth of 145°.”); BR, para. 3.142 (“[T]he general direction of [Myanmar’s] coast follows an azimuth of N143°E.”).

1
2 In fact, Bangladesh does not even pretend to follow the rule governing general
3 direction lines. Instead, Bangladesh claims that the construction of a general
4 direction line is “a straightforward operation of *connecting the two land boundary*
5 *termini*”¹⁸. Professor Crawford referred to this approach as the “simplest” way to
6 represent Bangladesh’s coast¹⁹. While there is no denying that connecting two points
7 with a line is a straightforward and simple operation, the resulting coastal front line
8 clearly does not “represent”, “approximate”, or “deviate only insignificantly” from
9 Bangladesh’s actual coast. It is not “faithful to the actual geographical situation”²⁰.
10 Moreover, the Court rejected this same approach in *Nicaragua v Honduras*²¹.

11
12 Of course, Bangladesh drew its own coastal front line this way in order to drive its
13 bisector to the south, away from Bangladesh’s coast and towards Myanmar’s. The
14 result is a bisector line running from the land boundary terminus at 215° east of
15 north. Like the versions of the coastal fronts that were tested and rejected by the
16 Court in *Nicaragua v Honduras*, this version of Bangladesh’s coastal front does not
17 reflect reality. In fact, it is the mirror image of Nicaragua’s strategy, presented in this
18 case exactly backwards. Much as the lines proposed by Nicaragua *deprived* its
19 neighbour’s territory of influence on the delimitation, the lines proposed by
20 Bangladesh would *create* territory for itself - where none actually exists - and permit
21 that invented territory to affect the delimitation.

22
23 Unfortunately, the bisector method is especially susceptible to abuse like this. The
24 International Court acknowledged as much when it noted that “where the bisector
25 method is to be applied, care must be taken to avoid ‘completely refashioning
26 nature’”²². Mr President, I could search the world over but it would be difficult to find
27 a better example of nature refashioned than the imaginary land reclamation project
28 represented by Bangladesh’s bogus coastal front line. Stretching from one end of
29 Bangladesh’s coast to the other, the line effectively adds over 23,000 square
30 kilometres of non-existent territory to Bangladesh’s mainland, rotates a properly
31 constructed bisector line 22 degrees in Bangladesh’s favour, and gives Bangladesh
32 an additional 25,000 square kilometres of maritime area as compared to the properly
33 constructed bisector.

34
35 Mr President, Bangladesh’s coastal façade is just that: it is a mask that disguises
36 Bangladesh’s actual coast, a coast that it does not come close to representing or
37 approximating. When that façade is, in turn, used to calculate an angle bisector, the
38 resulting line is equally absurd.

39
40 But Bangladesh does not stop there. Instead, Bangladesh takes its absurd bisector
41 and moves the line even further south, to begin its trajectory, not from the agreed
42 land boundary terminus, but from Bangladesh’s Point 7/8A. Bangladesh calls this

¹⁸ BR, para. 3.149 (emphasis added).

¹⁹ ITLOS/PV11/5(E), p. 8, line 20 (Crawford).

²⁰ *Nicaragua v Honduras*, I.C.J. Reports 2007, p. 79, para. 289 (citing *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 45, para. 57).

²¹ *Nicaragua v Honduras*, I.C.J. Reports 2007, p. 80, para. 295.

²² *Ibid*, para. 289 (quoting *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 49, para. 91).

1 move a “shift” or a “slight transposition”²³. The Tribunal would be excused for not
2 even noticing this “final step”²⁴, since it is barely mentioned in Bangladesh’s written
3 pleadings²⁵, and we heard about it only briefly in the first round of these hearings²⁶.
4 The reason Bangladesh says so little about this shift is that it is completely
5 unjustifiable and yet in fact this “slight transposition,” is not slight. It adds more than
6 8,000 square kilometres of maritime area to the area already taken in by
7 Bangladesh’s un-transposed bisector. Moreover, this shift functions to exaggerate
8 and amplify the distorting effect that St Martin’s Island would have on this
9 delimitation.

10
11 To the extent that Bangladesh attempts to justify this shift, it asserts that a Chamber
12 of the Court in the *Gulf of Maine* case “shifted, or transposed [the bisector] to the
13 agreed off-shore starting point for the maritime boundary, Point A ... ”²⁷. Bangladesh
14 then illustrated the Chamber’s so-called transposition at Memorial figure 6.7. The
15 Tribunal will have noticed that Bangladesh has since adjusted its figures somewhat
16 since the written pleadings were concluded²⁸. Still, Bangladesh continues to
17 misrepresent the methodology used in the *Gulf of Maine* case to construct its
18 bisector and to determine its starting point, claiming yet again that the Chamber
19 “moved the bisector line such that it started at point A”²⁹.

20
21 In fact the Chamber did not transpose, shift, or move the bisector to point A. It
22 constructed the bisector from point A, the agreed starting point of the delimitation,
23 and there it stayed. At risk of boring the Tribunal with a long quotation, allow me to
24 demonstrate the Chamber’s methodology by reading the relevant paragraph from the
25 *Gulf of Maine* judgment, while the method is illustrated on the screen.

26
27 The Chamber wrote:

28
29 [O]ne may justifiably draw from point A two lines respectively
30 perpendicular to the two basic coastal lines here to be considered, namely
31 the line from Cape Elizabeth to the international boundary terminus and
32 the line from that latter point to Cape Sable. These perpendiculars form, at
33 point A, on one side an acute angle of about 82° and on the other a reflex
34 angle of about 278°. It is the bisector of this second angle which the
35 Chamber considers that it should adopt for the course of the first segment
36 of the delimitation line³⁰.

37
38 It is the bisector of the 278° angle that the Court considers that it
39 should adopt in the course of the first segment of the delimitation line.

40
41 The map now on the screen and in your folders depicts the Chamber’s actual
42 methodology in the *Gulf of Maine* case. There was no transposition; there was no

²³ See Memorial of Bangladesh, para. 6.60, 6.73.

²⁴ *Ibid.*, para. 6.73; ITLOS/PV11/5(E), p. 9, line 34 (Crawford).

²⁵ See BR, para. 3.133; MR, para. 3.34.

²⁶ ITLOS/PV11/3(E), p. 29, lines 31-40 (Sands); ITLOS/PV11/5(E), p. 9, line 34-38 (Crawford).

²⁷ BM, para. 6.60.

²⁸ Compare ITLOS/PV11/3(E), p. 29, lines 35-40 and Figure A-22 (Sands), with BM, para. 6.73 and figure 6.7.

²⁹ ITLOS/PV11/3(E), p. 29, lines 37-40 (Sands).

³⁰ *Gulf of Maine, I.C.J. Reports 1984*, p. 333, para. 213.

1 shift; there was no move – just the construction of the bisector starting at the last
2 point agreed by the Parties.

3
4 In *Gulf of Maine*, the vertex of the bisected angle and the agreed starting point of the
5 maritime boundary were the same: Point A. Here, if the bisector method were used,
6 the proper vertex of the angle and the agreed starting point of the maritime boundary
7 would be the same as well: the agreed land boundary terminus. This fact does not
8 suit Bangladesh, as it would not allow for the so-called “slight transposition” that
9 Bangladesh urges upon the Tribunal. But it may well explain why, in the face of all
10 evidence and law to the contrary, Bangladesh insists that there is an agreed
11 boundary in the territorial sea out to point 7/8A. As has already been made clear,
12 there is no such agreement. Instead, the last agreed point on the boundary between
13 the Parties is the land boundary terminus. That point is the proper starting point for
14 this delimitation and Bangladesh’s “slight transposition” has no basis in law and
15 cannot stand.

16
17 Mr President, to further illuminate the flaws in Bangladesh’s proposed bisector, I will
18 now present to the Tribunal a proper application of the angle bisector method to the
19 coasts of the Parties. As I noted earlier, the Parties agree on the vertex of the angle
20 to be bisected and the general direction of Myanmar’s coast. The main difference
21 between the Parties is the treatment of Bangladesh’s coast.

22
23 To repeat the words of the Court in *Nicaragua v Honduras*, the point of this exercise
24 is to construct a “bisector of the angle created by lines representing the relevant
25 mainland coasts”³¹. It should be clear that the Court was not referring to the “relevant
26 coasts” used to measure overall coastal length for the purpose of applying the
27 disproportionality test. Here, the Court was referring only to the coasts which control
28 the direction of an angle bisector. The coasts that are relevant for that purpose are
29 the ones that conform to the rule set out above regarding conformity with the actual
30 coasts. Bangladesh’s version of its own coastal front simply does not comply.

31
32 The proper coastal front line for the Bangladesh coast, as now shown on the screen,
33 runs from the land boundary terminus to Bangladesh’s Sonadia Island on an angle of
34 329° east of north. Between those two points, the Bangladesh coast runs in a
35 relatively straight line and the proper coastal front line follows that actual coast with
36 only small deviations to both landward and seaward along its length. At Sonadia
37 Island, the direction of the Bangladesh coast changes to northward as it falls away
38 from the delimitation area. The length of Bangladesh’s coastal front line is
39 approximately 100 km. Combined with Myanmar’s 120 km coastal front line, the lines
40 generating the properly constructed bisector total approximately 220 km in length.

41
42 There is one final point to make about the properly constructed bisector. We have
43 added Myanmar’s proposed delimitation line to the map. The Tribunal will notice that
44 the properly constructed angle bisector is *more* favourable to Myanmar than the
45 equidistance line that Myanmar advocates in the present case. This comparison can
46 only support Myanmar’s position that the equidistance line creates an equitable
47 solution in this geography. But I would like to point out why, as a technical matter,
48 the two lines differ. They differ because the bisector method, properly applied, can

³¹ *Nicaragua v Honduras*, I.C.J. Reports 2007, p. 78, para. 287.

1 have a corrective effect. It reduces the weight that the equidistance method gives to
2 the most prominent coastal features and it increases the weight of large sections of
3 the coast that generate no relevant base points and would have no direct effect on
4 the equidistance line.

5
6 Here, the most prominent feature influencing the course of the equidistance line is
7 Bangladesh's Shahpuri Point – the northern headland of the Naaf River and the
8 location of Bangladesh's base point $\beta 1$. As you will recall, this lone base point drives
9 the equidistance line from the land boundary terminus all the way out to point Z of
10 the provisional equidistance line. Bangladesh complained that it had only one base
11 point on this part of its coast, but when yours is the most prominent base point, one
12 is all you need. The proper application of the bisector method to the Bangladesh
13 coast, which results in a coastal front line running just landward of Shahpuri Point,
14 reduces or "corrects" the effect of Bangladesh's $\beta 1$ on the delimitation line.

15
16 To be clear, Myanmar does not ask the Tribunal to use the angle bisector method
17 and does not seek this corrective effect. Even to its own disadvantage, Myanmar is
18 willing to accept the real coasts as they actually are.

19
20 Mr President, members of the Tribunal, that concludes my presentation on the
21 correct application of the angle bisector method. I thank you for your kind attention
22 and ask you to call upon Professor Pellet.

23
24 **THE PRESIDENT:** Thank you. I call on Professor Pellet.

25
26 **MR PELLET (*Interpretation from French*):** Mr President, Members of the Tribunal,
27 the last two statements that will be presented to you on behalf of the Republic of the
28 Union of Myanmar relate to a question which, as we firmly believe, does not arise in
29 law (and we are here in an institution that is dedicated to the law) What we intend to
30 talk to you about is the delimitation of the continental shelf beyond 200 M of the
31 baselines.

32
33 This question does not arise on two counts. First, as we have shown – and I refer in
34 particular to the last statement by Sir Michael Wood yesterday afternoon – the
35 maritime boundary between Bangladesh and Myanmar cannot legally extend beyond
36 this limit. In the absence of India, it is impossible to determine with any precision
37 where it ends. That is why we have indicated the extremity of the boundary line with
38 an arrow. This corresponds also to the submissions set forth in our Rejoinder, in
39 which Myanmar asks the Tribunal

40
41 (In English): To adjudge and declare that ... the boundary line continues
42 along the equidistance line in a south-west direction following a geodetic
43 azimuth of $231^{\circ} 37' 50.9$ until it reaches the area where rights of a third
44 State may be affected.³²

45
46 (Interpretation continued): I must repeat that, should the Tribunal grant this request,
47 it would be in conformity with the standard jurisprudence in cases of this nature, as
48 Sir Michael reminded us yesterday afternoon, and it would also settle the matter of

³² RM, p. 195, point 2.

1 the delimitation of the maritime boundary between the two States without
2 encroaching on the rights of India, as the two Parties in this case would wish.³³

3
4 However far this line may extend, it cannot confer any portion of the continental shelf
5 to Bangladesh beyond the 200 M limit from its coast. Furthermore, in the present
6 case, this is of rather academic interest - *if* the Applicant had been able to establish
7 the opposite possibility, which it has not done, Mr President – the Tribunal could not
8 in any case exercise its rightful jurisdiction with regard to delimitation of this area
9 absent the recommendations of the Commission on the Limits of the Continental
10 Shelf (the CLCS, as its name is abbreviated in English) and the response by the
11 States to those recommendations. I will expand briefly on this aspect of the matter
12 before my learned friend and colleague Daniel Müller explains that in any case it is in
13 vain that counsel for Bangladesh, lawyers and non-lawyers alike, are inundating us
14 with information – certainly very interesting in and of itself – on plate tectonics or the
15 Bengal depositional system. Article 76 of the Convention does not have the meaning
16 and scope that they attribute to it or dress it up in. For the same reasons the
17 discussion of the problem of the “grey area,” which Professor Crawford considered
18 useful to comment on at length in his pleadings last Monday, is devoid of any
19 significance.³⁴ His curious and keen intellect led him to describe this question as –
20 and I quote him - (in English): “one of the more analytically interesting issues in the
21 law of maritime delimitation”.³⁵ (Interpretation continued): Whether we talk about a
22 “grey area” or an “orphan wedge”, which is a lovely expression, or the problem of
23 *alta mar*, the matter at issue is not limited to those notions. It is a question that is
24 doubtless interesting from an academic perspective, but it is irrelevant in these legal
25 proceedings. Equitable delimitation, which the Tribunal is called upon to adjudicate,
26 does not extend beyond 200 M; consequently we need not wonder what would
27 happen in this grey area. Let me add that the solution proposed by Bangladesh is in
28 any case untenable. To advance a very hypothetical claim to the continental shelf
29 beyond 200 M against the sovereign rights enjoyed by Myanmar automatically under
30 article 77 of the Convention with respect to its continental shelf within this distance,
31 and against Myanmar’s right to extend its exclusive economic zone up to this limit
32 would be contrary to the Convention of Montego Bay. It is also contrary to the
33 international practice that we have cited in our Rejoinder, a practice about which
34 Professor Crawford has maintained a silence that I would make so bold as to call
35 awkward.³⁶

36
37 Leaving aside this academic problem, I must make perfectly clear that in principle
38 the jurisdiction of the Tribunal is not a problem for us. Following the notification of
39 arbitration by Bangladesh, the two Parties accepted the Tribunal’s jurisdiction on the
40 same terms, in accordance with the provisions of article 287 (1) of the Convention of
41 Montego Bay, “for the settlement of dispute ... relating to the delimitation of maritime
42 boundary between the two countries in the Bay of Bengal”.

³³ See in particular ITLOS/PV.11/2/Rev.1 (E), p. 7, lines 13-14 (Ms Moni); p. 23, lines 23-26 (Mr Crawford); or ITLOS/PV.11/5 E, p. 17, lines 36-37 and p. 25, lines 31-34 (Mr Akhavan); see also MB, para. 1.22; para. 4.25; para. 4.33 and para. 7.37 and RB, para. 4.19 and para. 4.21.

³⁴ ITLOS/PV.11/5 (E), pp. 13-16 (Mr Crawford).

³⁵ *Ibid.* p. 13, lines 11-13.

³⁶ RM, paras. 6.58-6.60.

1 The only problem that arises concerns the possibility – the possibility -- that the
2 Tribunal might in this matter exercise this jurisdiction and decide on the delimitation
3 of the continental shelf beyond 200 M. I did say “possibility”, Mr President, not
4 jurisdiction in the abstract. Myanmar does not contest that *if* Bangladesh could
5 advance claims to this part of the continental shelf in the Bay of Bengal, the Tribunal
6 *would* have jurisdiction to proceed with delimitation.
7

8 We feel no “desperation” to prevent the Tribunal deciding on the Applicant’s claims in
9 this respect³⁷ if – and it is a big “if” – these claims had a semblance of plausibility,
10 and if the procedure pursuant to article 76 (8) of the Convention had been duly
11 followed. (As Daniel Müller and I will refer at length to article 76, we have inserted
12 this in your folder today and you will find it under tab 1). For the time being, however,
13 the procedure in question has not been followed and the Applicant’s claims remain
14 putative and hypothetical in the absence of a determination of their merits by the
15 CLCS. The Tribunal therefore can only exercise the jurisdiction that it is in principle
16 conferred upon it, and in the current state of affairs that jurisdiction is also
17 hypothetical.
18

19 Accordingly, if, notwithstanding the other reasons – decisive reasons in our view –
20 for which the problem does not arise in any event, you nevertheless were to consider
21 the Application admissible on this point - *quod non* - you could not but defer
22 judgment on this aspect of the matter until the Parties, in accordance with Article 76
23 of the Convention, have taken a position on the recommendations of the
24 Commission concerning the existence of entitlements of the two Parties to the
25 continental shelf beyond 200 nautical miles and, if such entitlements exist, on their
26 seaward extension – i.e., on the outer (not lateral, *outer*) limits of the continental
27 shelf of the two countries.
28

29 Bangladesh put forward several arguments against this conclusion, and I will
30 respond to them briefly one by one.
31

32 First, it is alleged that Myanmar is confusing delimitation and delineation³⁸ – a word
33 that is difficult to translate into French, although the documents of the CLCS use the
34 neologism “*délinéation*”. However, this term appears only in article 5 of annex II of
35 the 1982 Convention – so let us say “lateral limits” and “outer limits.” This expression
36 “outer limits” is moreover to be found in article 76. While the CLCS is competent to
37 provide its views in the form of a recommendation on the outer limits of the
38 continental shelf of a coastal State, paragraph 10 of article 76 states:
39

40 The provisions of this article [relating to the definition of the continental
41 shelf] are without prejudice to the question of delimitation of the
42 continental shelf between States with opposite or adjacent coasts.
43

44 Article 9 of annex II goes in the same direction, but neither of these provisions
45 (article 76 and article 9) explicitly establishes an order of priority between the
46 delimiting of the outer limits of the continental shelf, for which the CLCS plays an
47 eminent role, and the delimiting of the lateral limits, which is a matter for one of the
48 dispute-settlement bodies provided for in part XV of the Convention – in the present

³⁷ ITLOS/PV.11/5, p. 18, line 30 (Mr Akhavan).

³⁸ MB, p. 52, para. 4.26.

1 case this Tribunal. In truth we need not worry about becoming these “excessively
2 polite gentlemen” described by Professor Akhavan last Monday;³⁹ the order of
3 priority is simply based on common sense: before proceeding with the lateral
4 delimitation of the continental shelf beyond 200 M between two coastal States, we
5 must first ensure that these two States have a legitimate claim to the continental
6 shelf in question. This, according to the Convention, is within the competence of the
7 Commission. To claim that lateral delimitation may be decided by judicial means
8 before the verification of the claim to the continental shelf beyond 200 M would not
9 only be a breach of the procedure provided for by the Convention, but would entirely
10 bypass the Commission, whose mandate is established in article 3 (1) (a) of annex II
11 of the Convention, and which would be confronted with a *fait accompli* and would
12 have nothing else to take a position on.
13

14 My second point is that Bangladesh is reducing the role of the Commission to that of
15 an expert advisor – Professor Akhavan has spoken about its “expert advisory role”⁴⁰
16 on the pretext that the Commission has only the power to recommend. Ergo,
17 according to the Applicant, it would be absurd to consider that a decision on lateral
18 delimitation must wait until the Commission acts to establish the outer limits.
19 Mr President, you can see that this is a very narrow construction of the
20 Commission’s powers, a construction that is in stark contradiction with the letter and
21 the spirit of article 76 and annex II of the Convention. Indeed, paragraph 76(8) reads,
22 and I quote:

23
24 The Commission shall make recommendations to coastal States on
25 matters related to the establishment of the outer limits of their continental
26 shelf.
27

28 However, these recommendations are not simply lyrical musings that the State is
29 free to accept or reject; they have powerful rule-making authority. As one eminent
30 expert on the subject has already commented, if a State established its limits on a
31 basis other than on the Commission’s recommendations, the Secretary-General of
32 the United Nations, (In English): “would be unable to accept them and to give them
33 the publicity as provided for under article 76, paragraph 9, of the Convention”.⁴¹
34 (Interpretation continued): The recommendations of the Commission are legal rulings
35 applicable to all and essential for the definitive establishment of the outer limits of the
36 continental shelf of the coastal State beyond 200 M.
37

38 As provided for in article 76(8):

39
40 The limits of the [continental] shelf established by a coastal State on the
41 basis of these recommendations shall be final and binding.
42

43 If the State concerned is in “... disagreement... with the recommendations of the
44 Commission,” all that it can do under article 8 (2) of the Convention is to make to the

³⁹ ITLOS/PV.11/5 E, p. 19, lines 3-7 (Mr Akhavan).

⁴⁰ ITLOS/PV.11/5 E, p. 20, line 14 (Mr Akhavan).

⁴¹ R. Wolfrum, “The Role of International Dispute Settlement Institutions in the Delimitation of the Outer Continental Shelf”, in R. Lagoni et D. Vignes (dirs.), *Maritime Delimitation*, Martinus Nijhoff Publishers, The Hague, 2006, p. 25; see also Statement by the Legal Counsel of the United Nations at the opening of the first meeting of the CLCS (CLCS/1, 30 June 1997, par. 12).

1 CLCS “within a reasonable time, ... a revised or new submission.” Of course, the
2 State can always reject the recommendation, but if that is the position it takes, then
3 the outer limits of its continental shelf would not be binding on third Parties, nor could
4 the Secretary-General of the United Nations give them the required publicity. It is
5 wrong therefore to reduce the Commission’s role to an advisory one. Of course, the
6 Commission does not decide, but its recommendations determine whether the limits
7 declared by a coastal State can be enforced vis-à-vis third parties.

8
9 Again, if the Tribunal should decide to disregard these considerations, it would be
10 encroaching upon the competence of the CLCS -- and, I would say, without any
11 “advantage” for its own jurisdiction, inasmuch as no one disputes that once the outer
12 limits of the coastal State’s claims have been determined, it is within the Tribunal’s
13 purview to decide upon the claims of the parties regarding “lateral” limits.
14 Furthermore, as provided in paragraph 10 of Article 76 of the Convention, under the
15 terms of article 5 (b) of Annex I of the Rules of Procedure of the CLCS:

16
17 The submissions made before the Commission and the recommendations
18 approved by the Commission thereon shall not prejudice the position of
19 States which are parties to a land or maritime dispute.

20
21
22 The third argument put forward by Bangladesh is that under sub-paragraph (a) of
23 this same provision, article 5 (a) of Annex I of the Rules of Procedure:

24
25 In the cases where a land or maritime dispute exists, the Commission
26 shall not consider and qualify a submission made by any of the States
27 concerned in the dispute.

28
29 According to the Applicant, it follows that Myanmar’s position is the product of
30 circular reasoning, which boils down to excluding any possibility of a binding
31 settlement of this type of dispute.⁴² Clearly, this is not the case: first, once the
32 Tribunal has settled the dispute the Parties have referred to it, there will no longer be
33 any dispute between them; second, the Commission’s Rules of Procedure already
34 afford it the possibility of deciding, because the same article 5(a) says:

35
36 The Commission may consider one or more submissions in the areas
37 under dispute with prior consent given by all States that are parties to
38 such a dispute.

39
40 In any event the Rules of Procedure of the Commission cannot be interpreted in a
41 way that prevents it from exercising its statutory powers – that is to say exercising its
42 exclusive authority in respect of examining the information submitted by coastal
43 States aiming to establish the outer limit of their continental shelf on the basis of
44 recommendations by the Commission, in accordance with Article 76.

45
46 And this triggers further laments from Bangladesh’s side. May I quote my esteemed
47 colleague Mr Akhavan:

48

⁴² See ITLOS/PV.11/5 E, p. 22, lines 12-27 (Mr Akhavan).

1 (In English): If Myanmar's contention is accepted that the Commission
2 must first delineate the outer margin, this Tribunal would have to wait 25
3 years to delimit the boundary in the outer shelf. Such an absurd situation
4 can hardly be called a trap that Bangladesh has laid for itself, or a 'catch-
5 22' of Bangladesh's 'own making', to quote Myanmar's Rejoinder.⁴³
6

7 But, Mr President, whose fault is that? Myanmar presented its submission on
8 16 December 2008,⁴⁴ and today it is the first in the "queue". The Commission has
9 only deferred examination of it.⁴⁵ Bangladesh, for its part, waited until
10 25 February 2011 – this year – to present its own submission (and I cannot help but
11 think that the timing had something to do with the case we are dealing with now or
12 with a tactical motive). In any case, this is the position: Myanmar is number 16,
13 Bangladesh number 55. Whose fault is that, Mr President? There are rules and they
14 apply to everyone.
15

16 Let me add that it all depends on Bangladesh to withdraw its opposition, which is
17 leading, in fact if not in law, to the impasse it complains of. Let me also note, by the
18 way, that it is far from established that Bangladesh is exercising any "right" in
19 opposing the examination of Myanmar's submission, as Professor Akhavan claims⁴⁶:
20 the Commission indeed has deferred examination of the submission, but contrary to
21 what happened in cases where the dispute had to do with the appurtenance of the
22 land territory concerned – such as in respect of the Falklands/Malvinas or the
23 Antarctic, for example⁴⁷ – the Commission has not declared itself to be without
24 competence but has confined itself to deferring examination of Myanmar's
25 submission.⁴⁸ It is therefore pretty obvious that, once you have rendered your
26 judgment, Members of the Tribunal, the Commission will forthwith discharge its own
27 responsibilities concerning the rights of Myanmar, and will do as much in due time (in
28 keeping with the order in which the submissions were filed) in respect of
29 Bangladesh's claims, in the unlikely event, that is, that Bangladesh is still in a
30 position to maintain them after you have delivered your judgment. Let me add that
31 my opponent's pessimistic forecasts of the amount of time necessary for this⁴⁹ seem
32 to be rather overblown. In any case, the Meeting of States Parties is aware of the
33 problem and has already taken steps to remedy the situation.⁵⁰
34

35 Mr President, let us reflect for a moment on the consequences of the Applicant's
36 argument were it to be sustained. All States not wanting to wait for the CLCS to
37 examine their submission would bring to you their disputes, whether real or invented
38 with their neighbours in order to bypass the Commission. This is called "sneaking
39 by". The Tribunal will obviously not lend its hand to such a manoeuvre. You have no

⁴³ ITLOS/PV.11/5 E, p. 22, lines 15-19 (Mr. Akhavan).

⁴⁴ CLCS/64, 1 October 2009, p. 9, para. 35. The Submission is available at http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/mmr_es.pdf (CMM, Annex 16).

⁴⁵ CLCS/70, 11 May 2011, p. 13, para. 52. The Submission is available at http://www.un.org/depts/los/clcs_new/submissions_files/bgd55_11/Executive%20summary%20final.pdf (RB, Annex R3).

⁴⁶ ITLOS/PV.11/5 E, p. 21, lines 46-47 (Mr. Akhavan).

⁴⁷ CLCS/66, 30 April 2010, p. 12, para. 60, or CLCS/64, 1 October 2009, p. 17, para. 77.

⁴⁸ CLCS/70, 11 May 2011, p. 13, para. 52.

⁴⁹ ITLOS/PV.11/6 E, p. 22, lines 13-17 (Mr. Akhavan).

⁵⁰ See Decisions of the Meeting of States Parties regarding the workload of the Commission on the Limits of the Continental Shelf of 18 June 2010 (SPLOS/216) and 17 June 2011 (SPLOS/229).

1 need in these times, Members of the Tribunal, to have your role pumped up in such
2 a contrived way!

3
4 Fourth, and finally, Bangladesh cites a judicial case – or rather an arbitral award –
5 which, according to them, contradicts Myanmar’s position in this respect.⁵¹ This is
6 the decision often mentioned during these hearings which was rendered on 11 April
7 2006 in the *Barbados v Trinidad & Tobago* case. In this award the arbitral tribunal
8 considered that its competence to establish the maritime boundary between the
9 continental shelf entitlements of the two countries extended to the part of the shelf
10 situated beyond 200 M. This is true, and a superficial reading of this award could
11 lead us to think that it contradicts the position of Myanmar.

12
13 But that is not so for at least two reasons.

14
15 *First*, such a conclusion relies on a mistaken interpretation of Myanmar’s position. As
16 I have indicated, we do not dispute the jurisdiction *in abstracto* of this Tribunal (or of
17 any other body seized in conformity with the provisions of Part XV) to adjudicate a
18 dispute relating to the lateral delimitation of the continental shelf beyond 200 M.⁵² On
19 the other hand, we are firmly convinced, Members of the Tribunal, that you cannot
20 exercise such jurisdiction in this case, because, in the absence of any CLCS
21 recommendations, this part of the Applicant’s claim is inadmissible.

22
23 *Secondly*, the arbitral tribunal in *Barbados v Trinidad and Tobago* ultimately made no
24 decision in this regard, since it observed: “(In English): There is no single maritime
25 boundary beyond 200 M ...”⁵³ (interpretation continued). And, we inevitably come
26 back to this, the same applies to our case. There can be no common boundary
27 beyond 200 M between Bangladesh and Myanmar because the common boundary
28 necessarily stops before this line.

29
30 Incidentally, the 2006 award is not the only precedent that can be cited. In the case
31 of *Saint-Pierre-et-Miquelon* between Canada and France the arbitral tribunal
32 categorically refused to decide on the claims of the French Republic to a continental
33 shelf beyond 200 M,⁵⁴ stating inter alia that:

34
35 It is not possible for a tribunal to reach a decision by assuming
36 hypothetically the eventuality that such rights will in fact exist.⁵⁵

37
38 In consideration of that the tribunal rightly said:

39
40 Obviously, a denial of a pronouncement on the French claim, based on
41 the absence of competence of the Tribunal cannot signify nor may be
42 interpreted as prejudging, accepting or refusing the rights that may be
43 claimed by France, or by Canada, to a continental shelf beyond 200 M.⁵⁶

⁵¹ Cf. ITLOS/PV.11/5 E, p. 18, lines 21-35 (Mr Crawford); or pp. 22-23, lines 34-41 and 1-3 (Mr Akhavan).

⁵² *R.I.A.A.*, vol. XXVII, p. 65, para. 217(ii).

⁵³ *Ibid.*, p. 109, para. 368.

⁵⁴ Arbitral Award, 10 June 1992, Case concerning *the delimitation of maritime areas between Canada and France*, *R.I.A.A.* vol. XXI, pp. 292-293, paras. 78-82.

⁵⁵ *Ibid.*, p. 293, para. 81.

⁵⁶ *Ibid.*, para. 80.

1
2 Bangladesh is trying to discredit this 1992 award simply on the pretext of its age
3 (which has a certain piquancy, knowing as we do how fond the Applicant is of the
4 mustiest case law possible); but it cannot tar the 2007 ICJ judgment with the same
5 brush. In that case the Court stated – by way of *obiter dictum* perhaps, but that only
6 adds more weight to it – that:

7
8 Any claim of continental shelf rights beyond 200 miles must be in
9 accordance with article 76 of UNCLOS and reviewed by the Commission
10 on the Limits of the Continental Shelf established thereunder.⁵⁷
11

12 This, Mr President, is in recent and perfectly clear terms!

13
14 In reality, Members of the Tribunal, the position of the Applicant goes against not
15 only the logic itself of the mechanism for determining coastal States' entitlement to
16 the continental shelf beyond the limit of 200 M from the base lines, as Myanmar
17 pointed out in the appendix to its Rejoinder,⁵⁸ but also the Applicant's own logic. This
18 is because, if Bangladesh is right that we have to distinguish between the outer
19 delimitation (the "delineation", if you prefer) and the lateral delimitation, it necessarily
20 follows that the former has to come before the latter; the opposite position is
21 untenable.
22

23 First, because it would lead to speculation over hypothetical rights – which is not
24 within a judicial body's role.⁵⁹ Professor Crawford asserts that such is not the case,
25 because, unlike Trinidad and Tobago at the time when the award was handed down,
26 Bangladesh ultimately presented a submission to the CLCS (in February 2011 – well
27 after the case was referred to you, Members of the Tribunal). I quote Professor
28 Crawford:

29
30 (In English): The same is not true here. Bangladesh has made its
31 submission to the Annex II Commission on a fully articulated basis. There
32 is nothing either theoretical or speculative about our claim to the outer
33 continental shelf.⁶⁰
34

35 (Interpretation continued): This is jumping the gun. As if the mere act of filing a
36 submission established a State's rights. I would add that Bangladesh, while
37 demanding that its submission remain confidential, has managed to circulate it,⁶¹ no
38 doubt in the hope, Members of the Tribunal, that you will be impressed by the
39 mountain of data – for the most part irrelevant – which it has thus let leak out. I am
40 sure you will not be fooled: let me repeat myself, making a submission is not the
41 same as proving it justified. On this point we have to await the decision of the CLCS.

⁵⁷ I.C.J. Judgment, 8 October 2007 *Case concerning territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, I.C.J. Reports 2007 (II), p. 759, para. 319.

⁵⁸ RM, pp. 203-204, para. A.17.

⁵⁹ I.C.J., Judgment, 2 December 1963, *Case concerning the Northern Cameroons (Cameroon v. United Kingdom) Preliminary Objections*, I.C.J. Reports 1963, pp. 33-34; *Case concerning the delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, Decision of 30 June 1977, R.I.A.A., vol. XVII, p. 155, para. 28

⁶⁰ ITLOS/PV.11/2/Rev.1 (E.), p. 27, lines 35-38 (Mr Crawford).

⁶¹ See the letter of the Registrar to the Agent of Myanmar of 16 March 2011.

1
2 And, that is exactly it, Bangladesh's position is tantamount to bypassing the
3 Commission on the Limits of the Continental Shelf and to preventing it from
4 exercising the competences assigned to it by the 1982 Convention. I am not saying
5 this is putting the cart before the horse; it would rather be taking the cart away from
6 the horse! (and I say this without intending any rude analogy, whether to the
7 Commission or to the Tribunal – *honi soit qui mal y pense!*) On the contrary, if we
8 proceed in following the logical order of things, we preserve not only the
9 competences of the Tribunal but those of the CLCS: for the latter, its irreplaceable
10 technical role in assessing the validity of submissions; for States and, in the last
11 instance, the Tribunal (or the other dispute-settlement mechanisms under Part XV)
12 the last word on disputes between States over the lateral delimitation (but a last word
13 enlightened by the Commission's opinion beforehand). Furthermore, to uphold
14 Bangladesh's reasoning would be to put third parties, whether India or the
15 international community, before a *fait accompli*.

16
17 This being so, Mr President, I have dwelt on this issue of admissibility because
18 Bangladesh has devoted lengthy argument to it; but I have done so only for the sake
19 of leaving nothing unaddressed. In fact, as I said at the beginning, the issue simply
20 does not arise. It follows from the application of the rules of delimitation in articles 74
21 and 83 of the Convention, as fleshed out by the subsequent development of the law
22 in this area, that Bangladesh cannot claim any entitlement to the continental shelf
23 beyond 200 M from its coast. There is therefore no need for you to rule on the
24 questions of principle raised by the Applicant's claims, however interesting they may
25 be.

26
27 I would like to thank you, Members of the Tribunal, for your kind attention once again
28 (I promise not to appear before you any more, at least during this first round). I would
29 ask you, Mr President, to give the floor to Mr Daniel Müller for a relevant submission
30 on the non-relevance of the Bangladesh's "geological" arguments.

31
32 **THE PRESIDENT:** I now give the floor to Mr Daniel Müller.

33
34 **MR MÜLLER (*Interpretation from French*):** Mr President, Members of the Tribunal,
35 my presentation will obviously go beyond the coffee break. Therefore, Mr President,
36 if you will allow me, I will indicate a suitable point in my presentation for a break.

37
38 Mr President, Members of the Tribunal, in actual fact Mr Pellet has just reminded us
39 that the first round of the presentation by Myanmar is already over, because no
40 problems concerning delineation or delimitation of the continental shelf beyond
41 200 M are raised in this case before you.

42
43 Therefore, it is neither necessary nor legally possible to give you a sophisticated
44 scientific analysis of the characteristics of the continental shelf in the Bay of Bengal
45 region, and this will allow me to refrain from going back 130 million years in time.
46 Neither Bangladesh, nor Myanmar, India, Sri Lanka or even the Bay of Bengal
47 existed at that time. I am also not going to present Myanmar's application to the
48 Commission on the Limits of the Continental Shelf, which was submitted in

1 December 2008.⁶² The Convention of 1982 rightly established an application
2 procedure which is an integral part of a system established by the Convention in
3 order to ensure a certain degree of control on claims by coastal States.⁶³ In the
4 framework of the system, it is to the Commission that applications are submitted and
5 information is presented on the limits of the continental shelf beyond 200 M and it is
6 up to this Commission to make recommendations on that limit, in accordance with
7 article 76, paragraph 8. Last week our friends on the other side made a mistake as
8 far as the forum is concerned. They did in Hamburg what they should have done and
9 eventually managed to do only a few weeks ago in New York. Bangladesh submitted
10 its application to the CLCS in February this year⁶⁴ and presented it to the plenary of
11 the Commission on 24 August.⁶⁵

12
13 However, even though there is no need to provide evidence on the geology of the
14 Bay of Bengal to counter the presentation by Bangladesh, I am appearing before
15 you, confidently, to confront, albeit slightly single-handedly – although I would like to
16 thank my friend Professor Pellet for his support last Friday and this morning – the
17 fleet commanded by Rear Admiral Alam and his crew, Dr Parson and Professor
18 Boyle⁶⁶, to whom one should certainly add the two “independent” experts –
19 “independent” in quotations marks – in the team pleading for Bangladesh, Professors
20 Kudrass and Curray, who, discretely it is true, made presentations to the Tribunal
21 last Tuesday.⁶⁷ I am confident, and I must say a little relieved, because the battle is
22 not being waged in the field of science, in which I am certainly less competent than
23 Mr Pellet suggested, and certainly not in the field of geology but in the field of law,
24 and more particularly in relation to article 76 of the United Nations Convention on the
25 Law of the Sea, the text of which we have included again in your folders, as
26 Professor Pellet has just mentioned. Only an application of this legal provision can
27 determine the entitlement of a coastal State to the continental shelf.

28
29 You do not need to determine whether the Parties actually have an entitlement to a
30 continental shelf beyond 200 M in order to perform your task, and in fact you cannot
31 do this in the absence of recommendations from the Commission. I will, however,
32 attempt to show that Bangladesh’s proposed interpretation and application of
33 article 76 of the Convention of 1982, on the basis of which the Bangladesh Party
34 denies any entitlement on the part of Myanmar to the seabed beyond 200 M, whilst
35 claiming an exclusive right to the same area, are completely without any legal
36 foundation. However, before doing this, it is indispensable to come back quickly to the
37 key error underlying all the arguments presented by Bangladesh concerning the

⁶² For the Summary of the submission of Myanmar, see CMM, Annex 16 (also available on the web site of the Commission on the Limits of the Continental Shelf: http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/mmr_es.pdf). See also CMM, Appendice, para. A.44-A.47.

⁶³ See also RM, Appendix, para. A.17.

⁶⁴ For the Summary of the Submission of Bangladesh, see RB, vol. III, Annex R3 (also available on the web site of the Commission on the Limits of the Continental Shelf: http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/Executive_summary_final.pdf). The full text of the Submission of Bangladesh was added to the file of the case, in virtue of Art. 63 (2) of the Rules of the Tribunal and under the condition that “*the submission should be treated as a confidential document*” (Letter of the Registrar of the Tribunal to the Agent of Myanmar, 16 March 2011). See also RM, Appendix, para. A.4-A.8.

⁶⁵ ITLOS/PV.11/6, p. 10, line 4 (Alam).

⁶⁶ ITLOS/PV.11/5 (E), p. 10, lines 36-37 (Crawford).

⁶⁷ See also ITLOS/PV.11/6 (E), p. 5, lines 17-18 and line 35 (Parson).

1 question of the continental shelf; and this error consists in confusing science and
2 law.

3
4 Mr President, Members of the Tribunal, I would like, however, once again to stress
5 that this is not a presentation *ex abundante cautela*. In spite of its abstract interest
6 for international lawyers like us, this question is not raised in the framework of the
7 present case, because Bangladesh does not in any case benefit from a continental
8 shelf beyond the 200-M limit of, precisely in view of the delimitation line that will
9 result from the correct application of relevant legal rules.

10
11 With this caveat, I would like to start with my first point, which consists in showing
12 that article 76 is a rule of law and not a scientific proposition. It may be surprising to
13 go into this because it appears obvious that article 76 is a legal rule.

14
15 However – and oral pleadings last Tuesday showed this once again – Bangladesh
16 persists in calling on scientists, more specifically geologists, in order to try to justify
17 its interpretation of the Convention. At the very beginning of his presentation,
18 Dr Parson did not hide the fact that he is a geologist and that therefore he would
19 concentrate on “the geology and the geomorphology of the seabed in the Bay of
20 Bengal.”⁶⁸ A little later he nevertheless tried to explain how article 76 should be
21 applied, whilst stating once again that he was speaking as a scientist, not as a
22 lawyer.⁶⁹ I would like to emphasize, however, that Dr Parson is a member of the
23 team of counsel and advocates for Bangladesh, not an “independent” expert.

24
25 In itself, there is no drawback in the fact that a scientist, and even a geologist,
26 interprets and applies a rule of law. *A priori*, it is not a problem and, after all, the
27 Commission on the Limits of the Continental Shelf itself is entrusted with “making
28 recommendations in accordance with article 76”⁷⁰, whilst it is composed of
29 21 members who are “experts in the field of geology, geophysics or hydrography”, to
30 use the words of article 2(1) of Annex II of the Convention of 1982.

31
32 The problem that we have here is different. It was illustrated with striking clarity by
33 Dr Parson last Monday when he stated – and I quote his words – that “a geologist
34 reading article 76 might immediately feel that the terms ... are very familiar ... there is
35 nothing in the text that is surprising to a scientist.” Those are his words. However, in
36 fact, it is just a feeling. It is not advisable to compare things that are not comparable.
37 Identifying legal terms and concepts that have been developed in the field of the law
38 of the sea with the relevant concepts of natural sciences is quite simply not possible.
39 Because scientists use the same terms does not mean that those terms actually
40 mean the same thing in a legal text. The differences between the disciplines are
41 considerable. Therefore, it is important that the scientist-interpreter does not try in
42 any way to graft his technical knowledge onto the law, but that, as the Commission
43 has done, he tries to understand the very logic of the legal text that he is applying.

44
45 The best example is given by Professor Curray in his report annexed to the Reply of
46 the Applicant State. He affirms with breathtaking certainty:

47

⁶⁸ ITLOS/PV.11/6, p. 1, lines 13-14 (Parson).

⁶⁹ *Ibid.*, p. 8, lines 16-17 (Parson).

⁷⁰ Article 3(1)(a) of Annex II of the United Nations Convention on the Law of the Sea.

1 The term continental shelf is not used in varied ways by earth scientists.
2 As a student of continental shelves and continental margins for over fifty
3 years, I am unaware of any disagreement or variation in use of this term in
4 the earth science profession, including geologists, geophysicists and
5 geochemists. Earth scientists agree that the continental shelf is the
6 submerged margin of a continent or island extending from the shoreline to
7 a prominent break in slope or increase in gradient at a world-wide depth
8 average of about 120 metres.⁷¹

9
10 In the sketch map that we now see on the screens, which represents an idealized
11 version of the continental margin, you will see what Mr Curray defines as “continental
12 shelf”. It is the seabed and the sub-soil which extend from the coast more or less up
13 to the green line.

14
15 I am not trying to contradict Bangladesh’s expert on this point from a scientific point
16 of view, but as lawyers we have a totally different notion of the continental shelf and
17 its extent which, in law, results from the definition given in article 76. For lawyers, the
18 continental shelf extends from the boundary of the territorial sea, that is, in principle,
19 from 12 M measured from the baselines (the blue or light-blue line on the sketch
20 map) and not from the coast, to at least a distance of 200 M from the baselines. If
21 the outer edge of the continental margin is located at a distance beyond 200 M, the
22 continental shelf for a lawyer is determined by reference to the outer edge.

23
24 Also, the notion of outer edge of the continental margin does not mean the same
25 thing to a scientist and in the framework of the Convention. Dr Parson proved this.
26 He affirmed in his presentation last Monday that “the physical extent of the Bengal
27 Depositional System, including the Bengal Fan, defines the outer edge of the
28 continental margin.”⁷² In other words, the edge, the limit of the continental margin, is
29 at the very limit of this new “wonder of the world’s oceans”⁷³ which, according to
30 Dr Parson, is nothing other than a huge rise.⁷⁴ Then, a few minutes later, Rear
31 Admiral Alam showed you a completely different outer edge of a continental margin
32 – the one that is included in the Bangladesh’s application submitted to the
33 Commission in February this year – and, according to the Rear Admiral, was not
34 determined scientifically but based on the application of the provisions of
35 article 76(4).

36
37 Schematically, therefore, the scientist, Dr Parson, defines the outer edge of the
38 continental margin in relation to the end of the rise, that is to say, the place where
39 the rise meets the deep ocean floor. You will see the area that corresponds to this
40 description in violet on the screen. It is of necessity a zone because, as Dr Parson
41 agrees with regard to the rise, “its characteristic subtle form often means it is difficult
42 to identify at all, or map accurately”.⁷⁵

43
44 Mr Alam, who himself applied the 1982 Convention, found the legal definition of the
45 outer edge of the continental margin, that is the maximum limit of the legal

⁷¹ RB, vol. III, Annex R4, p. 3.

⁷² ITLOS/PV.11/6 (E), p. 9, lines 9-10 (Parson).

⁷³ *Ibid.*, p. 5, line 28 (Parson).

⁷⁴ *Ibid.*, p. 8, lines 18-19 (Parson).

⁷⁵ *Ibid.*, p. 8, lines 9-10 (Parson).

1 continental shelf, in article 76(4). Applied to our model, that outer edge of the
2 continental margin is around the red line on the screen.

3
4 This model shows quite clearly the point at which the legal notions of continental
5 shelf and continental margin, or more precisely outer edge of the continental margin,
6 differ from the corresponding notions of earth scientists. In this respect, it is
7 interesting that, contrary to the counsel for Bangladesh, the CLCS was completely
8 aware of these difficulties. In its Scientific and Technical Guidelines, the Commission
9 underlined that:

10
11 [article 76 makes use of scientific terms in a legal context, which at times
12 departs significantly from accepted scientific definitions and terminology.
13 ... Article 76, paragraph 1, which defines the legal concept of the
14 continental shelf by means of a reference to the outer edge of the
15 continental margin, provides a measure of the current gap between the
16 juridical and the scientific use of terms.]⁷⁶
17

18 This applies, maybe above all, to the notion of “natural prolongation” which is so
19 cherished by our friends on the other side. Professor Pellet said a few words about
20 this on Friday afternoon. The Reply of the Applicant State affirmed in this respect,
21 hastily – and I quote in English:

22
23 (*In English*) the ordinary meaning of the words “natural prolongation” in
24 their context is clear: both geomorphological and geological continuity
25 must exist between the coastal State’s landmass and the seabed beyond
26 200 M. The words “natural” and “prolongation” applied to a continental
27 shelf cannot mean anything else.⁷⁷
28

29 (*Interpretation continued*) I do not need to contradict this. Professor Curray did this
30 when he wrote in his second report annexed to the Reply, (*In English*) “The term
31 ‘natural prolongation’ is not in common usage among earth scientists.”⁷⁸

32 (*Interpretation continued*) It is difficult to accept that paragraph 1 of article 76 uses
33 the term “natural prolongation” in its special scientific meaning if, according to the
34 scientists themselves, it does not exist in the generally accepted meaning, and
35 therefore we are back to square one.
36

37 Mr Curray, however, adds: (*in English*) “When the term [natural prolongation] is used
38 [by earth scientists], however, it carries strong connotations of geological continuity
39 and similarity of nature, age, structure and tectonics of the crust.”⁷⁹ (*Interpretation*
40 *continued*) So be it. However, Mr Curray forgot one detail which nevertheless was
41 firmly underscored by the ICJ in the continental shelf case in *Libya v. Malta*, one
42 extract of which gave rise to observations and criticisms by the scientific expert who I
43 have just quoted. I quote the International Court: “In spite of its physical origins,
44 [natural prolongation] has throughout its history become a more and more complex
45 and juridical concept”.⁸⁰ Like all the terms and notions in article 76, the expression

⁷⁶ Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, adopted by the CLCS on 13 May 1999 at its fifth session, doc. CLCS/11, point 6.1.5.

⁷⁷ RB, para. 4.58.

⁷⁸ RB, vol. III, Annex R4, p. 1.

⁷⁹ *Ibid.*

⁸⁰ *I.C.J. Reports 1985*, p. 33, para. 34 (emphasis added).

1 “natural prolongation” is not at all used in a scientific context but was formulated by
2 lawyers and diplomats for specific use in a legal instrument. In this context, the term
3 “natural prolongation” does not have the same sense when used by a geologist.
4

5 Mr President, article 76 is not an approximation of a scientific truth. In law, it is *the*
6 legal truth. For a lawyer and in the framework of the 1982 Convention, it describes
7 the continental shelf independently of scientific progress in this area. Article 76 is
8 what it is. Of course, it can (and must) be interpreted according to the rules and
9 methods of the interpretation of treaties, but to interpret is not to revise⁸¹. However,
10 this is exactly what Bangladesh is asking you to do when it proposes integrating a
11 new “test of geological natural prolongation” into article 76.
12

13 Even if you were led to pronounce on the existence and extent of a continental shelf
14 beyond 200 M, as a Tribunal ruling on points of law, you would have to apply the
15 law. You would have to determine what the continental shelf is by virtue of article 76
16 as it is drafted. We are speaking here of the law in this solemn judicial chamber. We
17 are not here to determine whether Myanmar or Bangladesh has a continental shelf in
18 the scientific sense of the term. For this reason, there is really no use fighting
19 scientific arguments in a void. It is law which is and must be at the centre of this
20 discussion. I do not refuse to cross swords with the scientists in the Bangladesh
21 team, if that were necessary, but their scientific concepts and terms mean nothing
22 before your Tribunal and in law. Therefore, with regret, I must state that at least three
23 members of the Rear Admiral’s team are eliminated.
24

25 Mr President, Members of the Tribunal, this brings me to the actual legal part of my
26 presentation.
27

28 As far as the legal rules that apply to the determination of entitlement and the outer
29 limit of the legal continental shelf are concerned, the Parties are in agreement. It is
30 article 76 of the United Nations Convention on the Law of the Sea. I think that the
31 Parties are also in agreement that this provision constitutes “a carefully structured
32 package”.⁸² Myanmar has never claimed that paragraph 1 of that provision “play[s]
33 almost no role in determining entitlements to an outer continental shelf”⁸³ beyond
34 200 M, as suggested by Professor Boyle, and is far from overriding⁸⁴ that provision.
35 It is not because we are applying another paragraph of article 76 to resolve the
36 equation of paragraph 1 that we are avoiding paragraph 1. On the contrary, we are
37 applying it as we should in law, because article 76 constitutes a whole, “a carefully
38 structured package”⁸⁵ in the words of Bangladesh. It does not contain a paragraph 1,
39 on the one hand, and another nine separate paragraphs, on the other, as is
40 insinuated by the Applicant State.
41

42 By insisting on a purported “ordinary meaning” of “natural prolongation” which does
43 not exist, and therefore cannot elucidate the problem of interpretation, the counsel

⁸¹ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, second phase, Advisory Opinion, I.C.J. Reports 1950, p. 229; Case concerning rights of nationals of the United States of America in Morocco (France v. United States of America), Judgment, I.C.J. Reports 1952, p. 196.*

⁸² RB, para. 4.47.

⁸³ ITLOS/PV.11/6 (E), p. 17, line 35 (Boyle).

⁸⁴ ITLOS/PV.11/6 (E), p. 18, line 13 (Boyle).

⁸⁵ RB, para. 4.47.

1 for Bangladesh is ignoring the other elements that must be taken into account for the
2 interpretation and application of paragraph 1. This paragraph is part of article 76 as a
3 whole and cannot be interpreted or applied on its own.

4
5 Therefore, one has to take into consideration the context and, more specifically, the
6 immediate context of paragraph 1 of article 76, that is, the other nine paragraphs, the
7 combination and reasonable application of which will be perfect to determine, in a
8 legal manner, the notion of continental shelf for the needs of the Convention and the
9 outer limits of this continental shelf. This last element, the outer limit of the juridical
10 continental shelf, is and always has been particularly important, and in no case can it
11 be separated from the question of legal entitlement to the continental shelf. This
12 entitlement extends necessarily and inevitably all the way through to its limit.

13
14 The determination of the outer limit of the juridical continental shelf thus constitutes
15 the main objective of article 76. For the negotiators of the Convention of 1982, there
16 was no doubt that any coastal State had a right to a continental shelf, a right which at
17 that time was already firmly established in the rules of international law through
18 article 1 of the Geneva Convention on the Continental Shelf of 1958.⁸⁶ The question
19 that remained open and gave rise to bitter negotiations throughout the Third
20 Conference was that of knowing the point up to where the sovereign rights can be
21 exercised. Where does the continental shelf end and, as a result, where do the
22 international spaces (which then will become the Area) start? Any interpretation of
23 article 776 has to answer these questions with the necessary precision in order to
24 ensure not only legal stability but also to allow orderly exploitation of the natural
25 resources of the seabed.

26
27 Mr President, this is an appropriate point at which to interrupt my presentation, which
28 I will continue after the thirty-minute break.

29
30 **THE PRESIDENT:** We will break for 30 minutes and resume at 12 noon.

31
32 *(Short adjournment)*

33
34 **THE PRESIDENT:** The hearing continues. You may resume your statement,
35 Mr Müller.

36
37 **MR MÜLLER (*Interpretation from French*):** Mr President, Members of the Tribunal,
38 I think the coffee break has allowed us to rid ourselves of any preconceived scientific
39 ideas. So let us now apply article 76, as a legal rule, to an idealized model of the
40 seabed that you see on the screen. We have a section of the globe, the land mass
41 on the left with the coast, and then the sea. We are not interested in the water here
42 and I am removing it so that we better see the surface of the seabed, which, to use
43 the words of Dr Parson, “conceals” geology.⁸⁷ Once again, this is an idealized
44 version of the seabed which in reality is often much more complex, but this
45 approximation is sufficient by way of demonstration.

86 See particularly *North Sea Continental Shelf Cases (Federal Republic of Germany/Netherlands; Federal Republic of Germany/Denmark)*, Judgment, I.C.J. Reports 1969, p. 39, para. 63.

87 ITLOS/PV.11/6 (E), p. 4, line 11 (Parson).

1 Paragraph 1 of article 76 constitutes our point of departure because you have to start
2 at the beginning and we do not want to apply law “backwards”.⁸⁸

3
4 By virtue of paragraph 1, therefore, the juridical continental shelf of a State, and I am
5 quoting paragraph 1 which you have in your Judges’ folder under tab 6 –

6
7 *(In English)* comprises the seabed and subsoil of the submarine areas
8 that extend beyond its territorial sea throughout the natural prolongation of
9 its land territory to the outer edge of the continental margin, or to
10 a distance of 200 M from the baselines from which the breadth of the
11 territorial sea is measured where the outer edge of the continental margin
12 does not extend up to that distance.

13
14 *(Interpretation continued)* The question which must be put now is not whether there
15 is a “natural prolongation” or not, but that of knowing where the outer edge of the
16 continental margin is. If it is situated at a distance less than 200 M from the
17 baselines, you are in the second situation referred to in this paragraph; the coastal
18 State can only have a claim to a continental shelf of 200 M. If, on the other hand, the
19 edge is beyond this limit, the State has a potential claim which extends to the outer
20 edge.

21
22 Let us leave aside right now the question of “natural prolongation”, not because we
23 dislike it but simply because it is not in relation to the outer limit of such a “natural
24 prolongation” that the differentiation is made between the two situations referred to in
25 paragraph 1, but in relation to the place where the outer edge of the continental
26 margin is located. It is not that we are going to forget the notion of “natural
27 prolongation”, but right now it has no concrete function for the application of
28 article 76.

29
30 This provision, article 76, refers not to the question of the determination of the
31 juridical continental shelf, but to the question where the continental margin of the
32 coastal State ends or in more exact terms at what distance from the baselines is the
33 outer edge of the continental margin. But rather than referring to scientific notion of
34 this continental margin. Mr Parson in his capacity as a geologist⁸⁹ in article 76 in
35 paragraph 3 describes legally this notion, and I quote:

36
37 *(In English)* The continental margin comprises the submerged
38 prolongation of the land mass of the coastal State, and consists of the
39 seabed and subsoil of the shelf, the slope and the rise. It does not include
40 the deep ocean floor with its oceanic ridges or the subsoil thereof.

41
42 *(Interpretation continued)* In other words, under the law on the continental shelf, or
43 rather the continental margin, the Convention distinguishes three regions: the *terra*
44 *firma* (or rather the mainland and the inland waters); the continental margin, with its
45 three components; and the deep ocean floor. This provision reinforces a certain idea
46 of continuity between the continental margin on the one hand and the landmass on
47 the other hand, without, however, requiring geological continuity. It is only the
48 morphology of the surface which is taken into consideration, nothing else.

⁸⁸ RB, paras. 4.52 et 4.45.

⁸⁹ ITLOS/PV.11/6 (E), p. 7, line 49 - p. 8, line 10 (Parson).

1
2 I draw your attention, Members of the Tribunal, to the definitions of the shelf, the
3 plateau, the slope and the rise given by Dr Parson, all of which were based on the
4 shape of the gradient.⁹⁰

5
6 Paragraph 3, and the entire concept of the continental margin in article 76, is based
7 therefore on a morphological model, on the surface of the sea floor, and not its
8 geology. Mr Pellet would say that the shell of the egg is sufficient to define the egg.

9
10 One might believe that paragraph 3 determines by implication the limit of the
11 continental margin as the meeting point of the rise, the final component in the
12 margin, and the deep ocean floor. One could say that paragraph 3 determines this,
13 but it is again ignoring the terms of article 76. Paragraph 3 certainly describes the
14 elements of the continental margin, but we have to wait for paragraph 4 to find a
15 legal description of the “outer edge of the continental margin”.

16
17 There cannot really be any other way and I will come back again to the explanation
18 given by Dr Parson. With regard to the rise, as the final element in the continental
19 margin, and I quote Dr Parson, “its characteristic subtle form often means it is
20 difficult to identify at all, or map accurately”.⁹¹ Such imprecision cannot fulfil the
21 needs of legal certainty and for this reason the fathers of the Montego Bay
22 Convention opted for a more restricted definition of the limit or outer edge of the
23 continental margin, a key notion for the identification of the extent of the legal
24 continental shelf.

25
26 So what is the legal limit of the continental margin which, I would remind you, we
27 need in order to decide the question posed in paragraph 1 of article 76? We are still
28 within this first paragraph and we have not really left it yet, but to apply paragraph 1
29 we have to know where the “outer edge of the continental margin” is. To that end, we
30 should refer to paragraph 4.

31
32 The identification of the outer edge of the continental margin in the legal sense is
33 based entirely on paragraph 4 and in sub-paragraph a there are two alternative
34 formulas which Professor Pellet has already mentioned on Friday afternoon. These
35 are the Gardiner formula, also known as the Irish formula, and the Hedberg formula.
36 These two formulae are applied in respect of a common reference point, that of the
37 “foot of the continental slope” which is, as its name indicates, on the slope and, more
38 precisely, at its foot, the orange zone on the screen.

39
40 The CLCS defined the base of the slope as “a region where the lower part of the
41 slope merges into the top of the continental rise, or into the top of the deep ocean
42 floor where a continental rise does not exist”.⁹² This is a quotation from point 5.4.5 of
43 from the Commission’s Scientific Guidelines.

44
45 All of this is not very concrete, you might say, and you would be right, but
46 article 76(4)(b) does not determine in any way area of a certain size but it defines

⁹⁰ ITLOS/PV.11/6, p. 7, line 45, p. 8, lines 2-3, p. 8, line 7 (Parson).

⁹¹ ITLOS/PV.11/6, p. 8, lines 9-10 (Parson).

⁹² Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, adopted by the CLCS on 13 May 1999 at its fifth session, doc. CLCS/11, point 5.4.5.

1 very clearly a the place, a point, which must be considered for the purposes of the
2 application of article 76 as the foot of the continental slope. I quote Article 76(4)(b):
3 “The foot of the continental slope shall be determined as the point of maximum
4 change in the gradient at its base”.

5
6 This gradient is measurable and the point of maximum change in the gradient is
7 calculable. The presentation by Rear Admiral Alam last week gave you an idea of
8 this process. In principle, this maximum point of change does not constitute a zone
9 but really a precise location on the curve of the seabed which is generally
10 represented by a point, the foot of the continental slope point.

11
12 At this point the exercise is not yet concluded; on the contrary we are still at the
13 beginning of the identification of the outer edge of the continental margin.
14 Allow me, Mr President, to make a few additional comments as far as this foot of the
15 continental slope is concerned.

16
17 Professor Pellet explained that paragraph 4(b) of article 76 allows “evidence to the
18 contrary”, but only in a subsidiary manner. It is “an exception to the rule”⁹³, as the
19 CLCS has recognized. Nevertheless, the same Commission considered that it is

20
21 an opportunity for coastal States to use the best geological and
22 geophysical evidence available to them to locate the foot of the
23 continental slope at its base when the geomorphological evidence given
24 by the maximum change in the gradient as a general rule does not or
25 cannot locate reliably the foot of the continental slope.⁹⁴

26
27 Therefore, it is by no means a question of giving *carte blanche* to the use of geology,
28 even in the confined and limited context of the determination of the foot of the slope
29 at its base; on the contrary, the Commission underlined in point 6.2.4 of the
30 Guidelines that it was “aware of the difficulties arising from the determination of the
31 foot of the continental slope and the edge of the continental margin from a geological
32 perspective”.⁹⁵

33
34 One of the particular situations in which the administration of “evidence to the
35 contrary” is accepted by the Commission concerns subduction zones comparable to
36 that which, according to Bangladesh, is found a few nautical miles off the coast of
37 Rakhine, and which is characterized by an accretionary prism⁹⁶, but even in such
38 cases only if the point of maximum change in the gradient was not identifiable by
39 morphological and bathymetric means could the foot of the slope be established by
40 reference to the “seaward edge from the accretionary prism”.⁹⁷ However, first of all,
41 this is not the case for the continental margin of Myanmar because the normal
42 method, the general rule, enables you to determine the foot of the slope by reference
43 to the point of maximum change in the gradient, and Bangladesh has itself done this.
44

⁹³ *Ibid.*, point 6.1.2.

⁹⁴ *Ibid.*, point 6.1.10.

⁹⁵ *Ibid.*, point 6.2.4.

⁹⁶ *Ibid.*, point 6.2.6(a)(i) and point 6.3.6.

⁹⁷ *Ibid.*, point 6.3.6.

1 I will come back to this at the end of my presentation. It is not because there is a
2 subduction zone that a State must necessarily apply the method of “evidence to the
3 contrary”. On the contrary, in its recommendations concerning the application made
4 by Barbados, the Commission refused to allow the coastal State to define certain
5 points at the foot of the slope on the accretionary prism formed along the subduction
6 zone. But this was not because there was a geological discontinuity but simply
7 because, according to the Commission “these foot of the slope points could be
8 determined on the basis of the general rule”.⁹⁸

9
10 Secondly, the determination of the foot of the slope point is not at all the end of the
11 story. The foot of the slope does not constitute by any means the limit of the outer
12 edge of the continental margin, as Professor Boyle would have us believe.⁹⁹ The foot
13 of the slope is nothing other than the start, the point of reference to which, whether
14 you have “evidence to the contrary” or not, we have to apply the lines described in
15 sub-paragraph (a) of paragraph 4; in other words, the foot of the slope constitutes
16 the “reference baseline”¹⁰⁰ for the application of the Gardiner and Hedberg formulae
17 under subparagraph (a), but certainly not the limit of the continental shelf or the outer
18 edge of the continental margin.

19
20 Nothing in the text about article 76(4)(b) points to the contrary. It is a starting point. I
21 quote the Commission. It is a starting point “that serves as the basis for entitlement
22 to the extended continental shelf and the delimitation of its outer limits”¹⁰¹ to quote
23 the Commission’s Guidelines. Once this pivotal point under article 76 is determined,
24 we have to apply the two formulae and to adopt the resulting outer edge of the
25 continental margin.

26
27 Let us start with the Hedberg formula, the formula provided for in subpara-
28 graph (a)(ii) of paragraph 4. Its application is particularly simple because it is
29 sufficient to determine the points which are at a distance of 60 M from the foot of the
30 continental slope. In our schematic drawing, it is the semicircle here in brown. There
31 is no need to examine the geology. It is only the distance in relation to the foot of the
32 slope which is important.

33
34 The implementation of the Gardiner formula is more difficult and we have to take into
35 account certain data on the composition of the subsoil to determine the thickness of
36 the layer of sediments on the seaward basement.

37
38 According to article 76(a)(i), the outer edge of the continental margin is determined
39 for the purposes of the Convention at the point where the thickness of the sediments
40 – and let me repeat: thickness, not nature, or even origin of the sediments (let us call
41 this variable e) is equal to 100th of the distance between the foot of the slope and the
42 point in question (that is our variable d, for distance); in other words, the thickness of
43 the sediments must not be less than 1% of the distance from this point at the foot of

⁹⁸ Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Submission made by Barbados on 8 May 2008, 15 April 2010, p. 3, para. 14.

⁹⁹ ITLOS/PV.11/6, p. 19, line 35-p. 20, line 3 (Boyle).

¹⁰⁰ Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, adopted by the CLCS on 13 May 1999 at its fifth session, doc. CLCS/11, point 5.1.1.

¹⁰¹ *Ibid.*

1 the slope. The application of this method in our fictitious case results in the line in
2 green.

3
4 The Bangladesh team has made much of the importance of the sedimentary
5 deposits throughout the Bay of Bengal¹⁰² and beyond its limits. During their
6 presentation, the counsel for Bangladesh underlined that these sediments were
7 essentially deposited across the Bengal Delta, which according to them constitutes
8 sufficient reason to appropriate this wonder of the world's oceans, as if Bangladesh
9 had created the Fan. But all of this again is irrelevant. Rear Admiral Alam said this
10 very clearly when he explained the determination of a Gardiner point by Bangladesh
11 in its applicant submitted to the Commission on the Limits of the Continental Shelf in
12 February this year, showing us the example of the seismic line, displayed on the
13 screen, which enables us by deduction to identify different structures in the subsoil.
14 He confined himself to identifying the sea bed on the one hand and the basement on
15 the other, concluding that everything that is between those two lines, the blue and
16 red, is sediments. He did not examine whether these sediments have the same
17 nature as the material which you find on the landmass of Bangladesh, and he has
18 not done any research into the origin of these sediments, which is undoubtedly in the
19 Himalayas and not in Bangladesh. It is only the thickness that is important.

20
21 The application of these two formulae under article 76(4)(a) are alternatives. Thus, it
22 is only the line which is furthest seawards or the outer envelope of a combination of
23 these two lines that is important. In our case, the Gardiner line is at greater distance
24 from the baseline than the Hedberg line and so it is the first line alone which is
25 relevant. This is the one which constitutes, for the requirements of the Convention in
26 general and the application of article 76 in particular, the legal outer edge of the
27 continental margin of the coastal State.

28
29 At this stage, we must not confuse this exercise. The dotted line on the screen does
30 not constitute the outer limit of the legal continental shelf. We are not yet at this
31 stage of the application of article 76, but only at the stage of the application of
32 paragraph 1. Yes, paragraph 1, because for the moment we have used certain
33 definitions here and there but we have never left paragraph 1 and the question of the
34 distance between the baseline and the outer edge of the continental margin. The
35 black dotted line only constitutes this outer edge of the continental margin, whose
36 distance from the coast, the baselines, enables us to determine if we are in one or
37 the other of the cases under paragraph 1. If the distance is less than 200 M (the red
38 line), we are in the second case; if not in the first.

39
40 In the configuration of the continental margin on the schematic drawing, the outer
41 edge of the margin drawn up in accordance with the provisions of article 76(4) is at a
42 distance not less than 200 M, but at a greater distance. The coastal State therefore
43 has a right to claim a continental shelf beyond 200 M up to "the outer edge of the
44 continental margin" and must delineate its entitlement. It is only at this stage that the
45 application of paragraph 1 of article 76 is completed and we are allowed to pass on
46 to paragraph 2, following the logical order of this provision. Whereas paragraph 1
47 defines the extent of the legal continental shelf by referring to the outer edge of the

¹⁰² ITLOS/PV.11/2/Rev.1 (E), p. 10, line 27 - p. 11, line 10 (Reichler); ITLOS/PV.11/6 (E), p. 6, lines 1-9 (Parson).

1 continental margin, paragraph 2 determines the outer limit, not of the continual
2 margin, but of the legal continental shelf, providing that the legal shelf “shall not
3 extend beyond the limits provided for in paragraphs 4 to 6”.

4
5 In this respect, I need only state that the outer limit of the continental shelf does not
6 simply coincide with the outer edge of the continental margin which we have already
7 had to determine in order to pass the test of paragraph 1. We have to take into
8 consideration the constraining limits of any legal continental shelf described in
9 paragraph 5. The legal continental shelf cannot extend beyond a limit of 350 M or
10 beyond the line which is situated at 100 M from the 2,500 isobath.

11
12 If, on the contrary, the general configuration of the seabed is different and the
13 continental margin is less extended towards the sea by dint of various facts of
14 nature, the application of article 76(1) gives an entirely different result. You will see
15 indicated on the schematic drawing the reference point, the foot of the slope, and the
16 Hedberg line (in brown) and the Gardiner line (in green). This time it is the Hedberg
17 line which is more favourable to the coastal State and which therefore determines
18 the outer edge of the continental margin for the requirements of the application of
19 paragraph 1 of article 76. The limit of 200 M measured from the baseline is seaward
20 here than the outer edge of the margin and it is for this reason, and this reason
21 alone, that we find ourselves in the second situation referred to in paragraph 1; that
22 is, in the case where the legal continual shelf extends “to a distance of 200 M from
23 the baselines from which the breadth of the territorial sea is measured”. In fact, and I
24 quote again from paragraph 1 “the outer edge of the continental margin does not
25 extend up to that distance”. The outer limit of this maritime area is *ipso facto* identical
26 to the 200-M limit.

27
28 It is therefore by no means because Myanmar’s “physical continental shelf “or
29 “scientific continental shelf” - I put these two expressions in inverted commas -
30 extend, according to Bangladesh, “only about 50 M offshore” that Myanmar’s legal
31 continental shelf is limited to 200 M, as Professor Boyle has suggested.¹⁰³

32
33 With all due respect, this is not at all consistent with the terms of article 76(1). It is
34 not the extent of the scientific shelf which is relevant here; it is the extent of the legal
35 continental margin and only the continental margin with its outer edge. The text of
36 article 76(1) is, I believe, quite clear in this respect.

37
38 Professor Boyle showed you last Tuesday the outer limits of the continental shelves
39 of Australia and New Zealand as they were recommended by the CLCS. The chart
40 concerning the outer limits of New Zealand, once again, you can see on the screen.
41 It is difficult for me to understand why Myanmar should make do with a continental
42 shelf of only 200 M if New Zealand, for its part, can benefit from a continental shelf
43 beyond that limit.

44
45 Professor Boyle only showed you 200-M limits. He forgot, however, to say that
46 immediately beside these 200-M limits there are areas where, under the
47 recommendations of the CLCS, New Zealand can determine an outer limit going
48 beyond 200 M. The nature of New Zealand’s scientific continental shelf has not

¹⁰³ ITLOS/PV.11/6 (E), p. 23, lines 24-26 (Boyle).

1 changed dramatically, however, from this point to that. What has changed is the
2 distance of the outer edge of the continental margin in relation to the nearest coasts.

3
4 Furthermore, I am using this chart on the screen to say one other point that
5 Myanmar has already developed in its written submissions.¹⁰⁴ In the north-east part
6 of New Zealand's continental shelf, the CLCS recognized an entitlement extending
7 beyond 200 M, in spite of the existence of a subduction zone which is much more
8 pronounced - it is visible on the chart - than the alleged geological discontinuity in
9 front of the coast of Rakhine.

10
11 Mr President, Members of the Tribunal, what are the lessons we can draw from the
12 application of the letter of article 76, or at least of part of this provision, and not least
13 because it is the provision which determines whether a coastal State has a right to a
14 continental shelf beyond 200 M or not?

15
16 We have to bear in mind three considerations, Members of the Tribunal. First, I think
17 I have shown you that article 76 is largely sufficient in itself. As a legal provision it
18 defines itself the terms and concepts that are important for its application, as in the
19 case of "continental margin", "outer edge of the continental margin", or "foot of the
20 slope" – concepts that – and this is essential – should not be confused with their
21 scientific counterparts.

22
23 Secondly, as you have noticed, at no time have I been required to refer to the very
24 complex geological structure of the basement, to the nature of the crust, below the
25 surface of the sea floor, or the tectonic plates. Just once we had to open the black
26 box to identify the thickness – only the thickness – of the sediments, and then closed
27 the box again; but never has the possible existence of a tectonic fault or a boundary
28 between two different tectonic plates come up; nor the existence of a subduction
29 zone, or the origin of the sediments that are deposited at the foot of the slope.

30
31 From the second point emerges a third: the question of geological continuity, the
32 need for which our Bangladeshi friends defended fiercely, simply does not occur in
33 applying article 76.

34
35 The question whether a coastal State has the to a legal continental shelf up to 200 M
36 or beyond this limit - a question that divides the Parties in this case, even though it is
37 irrelevant to the outcome of the delimitation dispute that you are going to decide on -
38 this question should find its answer solely in the application of the legal rules, which
39 refer to certain criteria of a scientific origin contained in article 76; it is not necessary
40 to apply any other scientific concepts. The outer edge of the continental margin
41 described in article 76 is not only one of the legal limits, and artificial limits, which
42 enable you to establish the outer limit of the continental shelf beyond 200 M; it is also
43 the pivot for the application of the test in paragraph 1, because there is a test. But it
44 is not a "test of natural prolongation", as Bangladesh wishes, but a "test of the
45 distance from the outer edge of the continental margin".

¹⁰⁴ RM, appendix, para. A.56.

1 This interpretation was also adopted by the Commission which did not confine itself
2 to examining if there was a geological continuity.¹⁰⁵ Contrary to what Professor Boyle
3 said, the members of the Commission apply article 76 to the letter. Just as we have
4 just done, the Commission consistently uses¹⁰⁶ the provisions of paragraph 4 to
5 determine, in a preliminary stage, if a State has the right to delineate its legal
6 continental shelf beyond 200 M or not, that is if the State passes the “test of the
7 distance from the outer edge of the continental margin” under paragraph 1, or not.
8 The Commission found a rather nicer name for this, and much more concise, and
9 they call it the “appurtenance test”. This appurtenance test is formulated as follows,
10 and I quote again from the Commission’s Scientific and Technical Guidelines at
11 point 2.2.8:

12
13 If either the line delineated at a distance of 60 M from the foot of the
14 continental slope, or the line delineated at a distance where the thickness
15 of sedimentary rocks is at least 1 per cent of the shortest distance from
16 such point to the foot of the slope

17
18 – this is the description of the Gardiner line –

19
20 or both, extend beyond 200 M from the baselines from which the breadth
21 of the territorial sea is measured, then a coastal State is entitled to
22 delineate the outer limits of the continental shelf as prescribed by the
23 provisions contained in article 76, paragraphs 4 to 10.¹⁰⁷

24
25 This description of the appurtenance test by the Commission seems much more
26 complicated than it actually is. It is simply a combination of the provisions and
27 relevant criteria of article 76, and in particular paragraphs 1, 4 and then 2.

28
29 Whether Bangladesh and Professor Boyle like it or not, the recommendations by the
30 Commission concerning the application by the United Kingdom with regard to
31 Ascension Island do not say anything to the contrary. In fact, they say even more
32 succinctly what Professor Boyle said last Tuesday.¹⁰⁸ I will quote the Commission’s
33 recommendations in English.

34
35 *(In English)* The “natural prolongation of [the] land territory” is based on
36 the physical extent of the continental margin to its outer edge.¹⁰⁹

37
38 *(Interpretation continued)* This is paragraph 1 of article 76, and nothing else. It is
39 not the natural prolongation that determines the shelf; it is the physical extent of the
40 continental margin, that is to say its outer edge, that is relevant.

41
42 This next part of this “declaration of principle”¹¹⁰, which Bangladesh did not show
43 you, confirms furthermore that for the application of paragraph 1 you have to take

¹⁰⁵ ITLOS/PV.11/6 (E), p. 17, lines 11-15 (Boyle).

¹⁰⁶ CMM, appendix, para. A.20-A.26; RM, appendix, para. A.52-A.53.

¹⁰⁷ Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, adopted by the CLCS on 13 May 1999 at its fifth session, doc. CLCS/11, point 2.2.8.

¹⁰⁸ ITLOS/PV.11/6 (E), p. 21, lines 38-42 (Boyle).

¹⁰⁹ Summary of Recommendations of the CLCS in regard to the Submission made by the United Kingdom of Great Britain and Northern Ireland in respect of Ascension Island on 9 May 2008, 15 April 2010, para. 22(i).

1 into account the definition of the outer edge of the continental margin in paragraph 4,
2 and once again I would like to quote the next part of the recommendations of the
3 Commission.

4
5 *(In English)* The outer edge of the continental margin in the sense of
6 article 76, paragraph 3, is established by applying the provisions of
7 article 76, paragraph 4, through measurements from the foot of the
8 continental slope.¹¹¹

9
10 *(Interpretation continued)* Paragraph 4 therefore not only determines the outer limit
11 of the legal continental shelf, but it plays an indispensable role in the identification of
12 the physical extent of the continental margin.

13
14 Mr President, Members of the Tribunal, our learned friends on the other side may be
15 persuaded right now that this entire demonstration is irrelevant because I have
16 eliminated the pertinence of the term “natural prolongation” that is found in
17 paragraph 1 of article 76, which for them constitutes precisely the expression of an
18 independent and priority test of geological and geomorphological continuity. They
19 want to ignore the fact that the claim by the United Kingdom, which wanted to
20 convince the CLCS that only such test of the geological prolongation is relevant to
21 the determination of the legal continental shelf, was dismissed by the
22 Commission.¹¹²

23
24 And rightly so: Article 76 does not contain any such supplementary or priority test,
25 but it is sufficient in itself.

26
27 If Bangladesh were correct, and if the term “natural prolongation” implied a test of
28 geological prolongation or, let us say, “scientific continuity”, article 76 would have
29 been better formulated in a single paragraph, which I will quote, and is displayed on
30 the screen:

31
32 The continental shelf of a coastal State comprises the seabed and subsoil
33 that extend beyond its territorial sea ...

34
35 There is no change until that point.

36
37 throughout the natural prolongation of its land territory, or to a distance of
38 200 M from the baselines from which the breadth of the territorial sea is
39 measured where the natural prolongation does not extend up to this limit.

40
41 However, article 76 does not read as such. Mr President, right at the beginning of
42 the Third United Nations Conference on the Law of the Sea, there were drafts of
43 texts concerning a new definition of the continental shelf which said more or less
44 exactly that. Professor Boyle gave you a few examples in the footnote on page 44 of
45 his pleadings last Tuesday. To give you just one example of many, the joint draft

¹¹⁰ ITLOS/PV.11/6 (E), p. 21, line 36 (Boyle).

¹¹¹ Summary of Recommendations of the CLCS in regard to the Submission made by the United Kingdom of Great Britain and Northern Ireland in respect of Ascension Island on 9 May 2008, 15 April 2010, para. 22 (ii). See also *ibid.*, para. 44 and RM, appendix, para. A.53.

¹¹² RM, appendix, para. A.53.

1 penned by Canada, Chile, Iceland, Indonesia, Mauritius, Mexico, New Zealand and
2 Norway, proposed in 1974, defined the continental shelf as follows:

3
4 *(In English)* The continental shelf of a coastal State extends beyond its
5 territorial sea to a distance of 200 miles from the applicable baselines and
6 throughout the natural prolongation of its land territory where such natural
7 prolongation extends beyond 200 miles.¹¹³

8
9 *(Interpretation continued)* This is a text which, according to the point of view
10 expressed by Bangladesh before this Tribunal, would have been absolutely
11 acceptable without reservation. But the sponsors of the draft that I have just read
12 were aware of the fact that an expression as vague as “natural prolongation” was not
13 capable of giving a legal definition of the physical extent of the legal continental
14 shelf, a crucial point for determining a definition

15
16 I would like to quote another footnote:

17
18 *(In English)* Further provisions will be required on the subject of article 19,
19 including provisions to cover the precise demarcation of the limits of the
20 continental margin beyond 200 miles.¹¹⁴

21
22 *(Interpretation continued)* The simple reference to a supposedly scientific criterion,
23 “natural prolongation” was clearly not sufficient.

24
25 It is not for nothing, Mr President, Members of the Tribunal, that during the eight
26 years of the Third Conference the States tried to find an acceptable legal definition of
27 the continental shelf, and that they adopted the criteria that today are included in
28 article 76. The text of what became article 76 evolved considerably and was
29 enriched throughout the period of negotiations by legal means, in order to determine
30 what, legally speaking, the continental shelf is. As I have just shown, and as the
31 Commission has stated, “the application of any other criteria would be inconsistent
32 with the provisions contained in the Convention for the delineation of the outer limits
33 of the continental shelf”¹¹⁵.

34
35 It is only the criteria in article 76 that describe what the continental shelf is in law.
36 For sure, science and even geology play a certain role in the process of application
37 of the legal criteria – nobody denies this – but you cannot replace the legal definition
38 established after lengthy and fierce negotiations by a definition that is purely
39 scientific, or have scientific criteria that are not part of it – in this case “natural
40 prolongation” – enter through the side door of the interpretation of certain terms of
41 article 76.

42
43 Bangladesh’s scientific experts explained throughout the written proceedings and in
44 their oral pleadings last Tuesday why, in law, it is not possible to rely on science
45 alone. I have already underscored that Dr Parson said that it was difficult to

¹¹³ A/CONF.62/L.4, *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III, *Documents of the Conference*, p. 83 (article 19, paragraph 2).

¹¹⁴ *Ibid.*

¹¹⁵ Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, adopted by the CLCS on 13 May 1999 at its fifth session, doc. CLCS/11, point 2.2.7.

1 determine with any precision the scientific end of the continental rise.¹¹⁶ However,
2 States and the international community need this certainty, which science cannot
3 provide today.

4
5 The vocabulary used by Dr Parson in his presentation is remarkable in this regard.
6 He did not present facts to you but a “reconstruction” of the earth’s surface¹¹⁷ or
7 *estimations* concerning the volumes of sediment deposited on the seabed¹¹⁸. He
8 recognized later that these sediments come “primarily” from the Himalayas, but he
9 did not dare to use the term “exclusively”, which certainly would slot in better with
10 Bangladesh’s arguments.¹¹⁹

11
12 The only scientific geological fact on which our opponents seem to have very precise
13 ideas is the location of the subduction zone. It is with some astonishment that you
14 can admire, on this familiar sketch, the aplomb with which the Applicant State
15 indicated the location of the subduction of the India Plate under the Burma Plate.
16 Without providing any scientific evidence, Mr Reichler¹²⁰ and Professor Boyle¹²¹, and
17 even Dr Parson¹²², affirmed that this subduction zone is about 50 M from the coast of
18 Myanmar.¹²³ It is certainly not because Dr Parson spoke in his capacity as a
19 geologist that he can give you scientific proof on this, especially when he is speaking
20 as a counsel for Bangladesh. Other counsel for the Applicant State¹²⁴ were a little
21 more precise. They referred to two reports by Professor Curray that were appended
22 to the written submissions of the opposing Party, and the report of Professor
23 Kudrass that was appended to the Reply. But Professors Curray and Kudrass never
24 mentioned the figure of 50 M in their reports. Professor Curray does not say anything
25 more than this, finally:

26
27 *(In English)* The approximate present day boundaries of these two
28 depositional systems [speaking about the Bengal System and the
29 Andaman Sea system] are illustrated in Figure 22, along with the Sunda
30 Arc subduction zone plate edge that separates the two systems.

31
32 *(Interpretation continued)* The image is quite different from the one that we have just
33 seen. The line that marks subduction does not run in front of the coast of Rakhine; it
34 plunges underground to the south of the estuary of the Naaf River. The difference is
35 obvious if you superimpose the subduction line of the Geology Professor on the
36 sketch map prepared by Bangladesh’s cartographers. It is not just a drawing error.
37 Professor Curray says exactly what his sketch map represents: the limit of the
38 Burma Plate “passes onto the land”.¹²⁵

116 See p. 18, lines 34-39 here above.

117 ITLOS/PV.11/6 (E), p. 2, lines 16 (Parson).

118 *Ibid.*, p. 4, line 24 and p. 6, line 2 (Parson).

119 *Ibid.*, p. 6, line 12-13 (Parson).

120 ITLOS/PV.11/2/Rev.1 (E), p. 12, line 1; p. 13, line 18; p. 19, line 15 (Reichler).

121 ITLOS/PV.11/6 (E) p. 18, line 12; p. 19, line 29 (Boyle).

122 *Ibid.*, p. 7, line 7-8 (Parson).

123 MB, para. 1.20, 2.3, 2.22, 2.41, 2.45, 3.38, 7.29, 7.32, 7.35, 7.39 ; RB, para. 1.20, 4.26, 4.35, 4.36, 4.46.

124 ITLOS/PV.11/2/Rev.1 (E), p. 12, line 1; p. 13, line 18 (Reichler); ITLOS/PV.11/6 (E) p. 18, line 12; p. 19, line 29 (Boyle).

125 RB, vol. III, Annex R4, p. 3.

1 Mr Nielsen's scientific article¹²⁶, which Mr Reichler included as one of his footnotes,
2 also does not confirm the claims made by the Applicant State. However, this article,
3 which was reproduced by the Applicant in volume IV of its Memorial, shows
4 something else. Mr Nielsen explains that the morphology of Myanmar's continental
5 margin does not present any discontinuity in spite of the existence of a subduction
6 zone. There is no trench, which normally characterizes this geological phenomenon.
7 Certainly the simple fact that you do not see it does not mean that there is not
8 one.¹²⁷ But, although for a scientist it is maybe not relevant that the trench is filled
9 with sediment or not, it is not relevant to application of article 76, which is based
10 simply on the surface, on morphology.

11
12 Furthermore, Bangladesh itself does not have any misgivings about ignoring the
13 most important geological discontinuity that exists, which it nevertheless invokes in
14 respect of Myanmar's rights. On your screens you will see a sketch map that Rear
15 Admiral Alam showed last Tuesday and which can be found in the application that
16 Bangladesh submitted to the CLCS. It shows the region around the foot of the slope
17 that the Applicant State has identified. I would like to draw your attention to the foot
18 of the slope point No 9, which is on the extreme right of the sketch map. The black
19 line corresponds to the bathymetric profile used for identification of point No 9. I will
20 make two remarks referring to this. First of all, the line is not only immediately
21 opposite the coast, not the coast of Bangladesh, but that of Myanmar, as you will see
22 in the top right corner of the sketch map. So this is a prolongation of the land territory
23 of Myanmar, not of Bangladesh. Secondly, the bathymetric profile used, which can
24 also be found in Bangladesh's application, does not refer to the geological
25 discontinuity opposite the coast of Myanmar. On the contrary, the morphology shows
26 a certain continuity all the way to the foot of the slope. Bangladesh determined foot
27 of the slope point 9 using only morphology. It also used this point, which should be
28 behind the subduction zone if they were correct, as a base point for the
29 determination of the Gardiner line.

30
31 Mr President, Members of the Tribunal, why should Bangladesh be able to do what it
32 denies Myanmar? There is absolutely no reason. This constitutes sufficient proof for
33 the proposition that geological discontinuity, which is so important in Bangladesh's
34 view, does not play any role in the identification of the legal continental shelf in
35 accordance with article 76 of the 1982 Convention.

36
37 Mr President, Members of the Tribunal, in this presentation, which has been a little
38 lengthy – I am sorry about that – I have shown that the interpretation of article 76 of
39 the United Nations Convention on the Law of the Sea proposed by Bangladesh is not
40 correct. The entitlement of a coastal State to a continental shelf beyond 200 M is not
41 dependent on any "test of natural geological prolongation". As a legal provision,
42 article 76 determines the criteria and conditions for the existence of such an
43 entitlement and at the same time defines its limits. In this respect, the existence of a
44 geological discontinuity in front of the coast of Myanmar is not at all relevant, as
45 Bangladesh has shown. Science does not determine a legal entitlement; it is the law
46 that does that. Myanmar satisfies the criteria and the conditions under article 76 and,
47 as a consequence, has a right to a continental shelf beyond 200 M.

¹²⁶ MB, vol. IV, Annex 52.

¹²⁷ RB, vol. III, Annex R4, p. 3.

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Finally, Mr President, none of this is relevant to the case that has been submitted to you by the two Parties. The delimitation line between Bangladesh and Myanmar, a line that we are asking you to determine, stops before the 200-M limit. For that reason, it is not at all necessary to determine the respective entitlements of the two Parties beyond this line, and even less so to delimit it.

With this presentation *ex abundante cautela*, we come to the end of the first round of oral arguments of the Republic of the Union of Myanmar. I would like to thank you, Mr President and the Members of the Tribunal, for your kind attention.

THE PRESIDENT: This brings us to the end of this morning's sitting and the end of the first round of the oral arguments by Myanmar.

The hearing will resume tomorrow, 21 September, when Bangladesh will commence its second round of oral arguments. This schedule may possibly be changed. If it is changed, it will be displayed on our website this afternoon, but in principle that will be the schedule for our hearing tomorrow. The sitting is now closed.

(The sitting closed at 12.52 p.m.)