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

2011

Public sitting

held on Thursday, 8 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

Present:	President	José Luís Jesus
	Vice-President	Helmut Tuerk
	Judges	Vicente Marotta Rangel
		Alexander Yankov
		L. Dolliver M. Nelson
		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 *ad hoc*	Thomas A. Mensah
		Bernard H. Oxman
	Registrar	Philippe Gautier

Bangladesh is represented by:

H.E. Mrs Dipu Moni, Minister of Foreign Affairs,

as Agent;

Rear Admiral (Ret'd) Md. Khurshed Alam, Additional Secretary, Ministry of Foreign Affairs,

as Deputy Agent;

and

H.E. Mr Mohamed Mijraul Quayes, Foreign Secretary, Ministry of Foreign Affairs,
H.E. Mr Mosud Mannan, Ambassador to the Federal Republic of Germany, Embassy of Bangladesh, Berlin, Germany,
Mr Payam Akhavan, Member of the Bar of New York, Professor of International Law, McGill University, Montreal, Canada,
Mr Alan Boyle, Member of the Bar of England and Wales, Professor of International Law, University of Edinburgh, Edinburgh, United Kingdom,
Mr James Crawford SC, FBA, Member of the Bar of England and Wales, Whewell Professor of International Law, University of Cambridge, Cambridge, United Kingdom,
Mr Lawrence H. Martin, Foley Hoag LLP, Member of the Bars of the United States Supreme Court, The Commonwealth of Massachusetts and the District of Columbia, United States of America,
Mr Lindsay Parson, Director, Maritime Zone Solutions Ltd., United Kingdom,
Mr Paul S. Reichler, Foley Hoag LLP, Member of the Bars of the United States Supreme Court and of the District of Columbia, United States of America,
Mr Philippe Sands QC, Member of the Bar of England and Wales, Professor of International Law, University College London, London, United Kingdom,

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Mr Jamal Uddin Ahmed, Assistant Secretary, Ministry of Foreign Affairs,
Ms Shahanara Monica, Assistant Secretary, Ministry of Foreign Affairs,
Lt. Cdr. M. R. I. Abedin, System Analyst, Ministry of Foreign Affairs,
Mr Robin Cleverly, Law of the Sea Consultant, The United Kingdom Hydrographic Office, Taunton, United Kingdom,
Mr Scott Edmonds, Cartographic Consultant, International Mapping, Ellicott City, Maryland, United States of America,
Mr Thomas Frogh, Senior Cartographer, International Mapping, Ellicott City, Maryland, United States of America,
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as Advisors;

Mr Joseph R. Curray, Professor of Geology, Emeritus, Scripps Institution of Oceanography, University of California, San Diego, United States of America
Mr Hermann Kudrass, Former Director and Professor (Retired), German Federal Institute for Geosciences and Natural Resources (BGR), Hannover, Germany,

as Independent Experts;

and

Ms Solène Guggisberg, Doctoral Candidate, International Max Planck Research School for Maritime Affairs, Germany,
Mr Vivek Krishnamurthy, Foley Hoag LLP, Member of the Bars of New York and the District of Columbia, United States of America,
Mr Bjarni Már Magnússon, Doctoral Candidate, University of Edinburgh, United Kingdom,
Mr Yuri Parkhomenko, Foley Hoag, LLP, United States of America,
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Myanmar is represented by:

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as Agent;

Ms Hla Myo Nwe, Deputy Director General, Consular and Legal Affairs Department, Ministry of Foreign Affairs,
Mr Kyaw San, Deputy Director General, Union Attorney General's Office,

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and

Mr Mathias Forteau, Professor at the University of Paris Ouest, Nanterre La Défense, France,
Mr Coalter Lathrop, Attorney-Adviser, Sovereign Geographic, Member of the North Carolina Bar, United States of America,
Mr Daniel Müller, Consultant in Public International Law, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre La Défense, France,
Mr Alain Pellet, Professor at the University of Paris Ouest, Nanterre La Défense, Member and former Chairman of the International Law Commission, Associate Member of the Institut de droit international, France,

Mr Benjamin Samson, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre La Défense, France,

Mr Eran Sthoeger, LL.M., New York University School of Law, New York, United States of America,

Sir Michael Wood, K.C.M.G., Member of the English Bar, Member of the International Law Commission, United Kingdom,

as Counsel and Advocates;

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Captain Min Thein Tint, Commanding Officer, Myanmar Naval Hydrographic Center, Yangon,

Mr Thura Oo, Pro-Rector, Meiktila University, Meiktila,

Mr Maung Maung Myint, Counselor, Embassy of the Republic of the Union of Myanmar, Berlin, Germany,

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Mrs Héloise Bajer-Pellet, Lawyer, Member of the Paris Bar, France,

Mr Octavian Buzatu, Hydrographer, Romania,

Ms Tessa Barsac, Master, University of Paris Ouest, Nanterre La Défense, France,

Mr David Swanson, Cartography Consultant, United States of America,

Mr Bjørn Kunoy, Doctoral Candidate, Université Paris Ouest, Nanterre La Défense, France, currently Visiting Fellow, Lauterpacht Centre for International Law, University of Cambridge, United Kingdom,

Mr David P. Riesenberg, LL.M., Duke University School of Law, United States of America,

as Advisers.

CLERK OF THE TRIBUNAL: All rise.

THE PRESIDENT: Please be seated.

CLERK OF THE TRIBUNAL: The International Tribunal for the Law of the Sea is now in session.

THE PRESIDENT: The Tribunal meets today pursuant to article 26 of its Statute to hear the arguments of the parties in a dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.

At the outset I would like to note that Judge Hugo Caminos is prevented by illness from sitting on the bench.

I will now call on the Registrar to summarize the main procedural steps followed in this case.

THE REGISTRAR: Mr President, the proceedings were instituted before the Tribunal on 14 December 2009.

By a letter dated 13 December 2009, filed in the Registry of the Tribunal on 14 December 2009, the Minister of Foreign Affairs of Bangladesh notified the President of the Tribunal of declarations issued by Myanmar on 4 November 2009 and by Bangladesh on 12 December 2009 respectively.

In its declaration of 4 November 2009, Myanmar stated that it "accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of dispute between the Union of Myanmar and the People's Republic of Bangladesh relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal".

In its declaration of 12 December 2009, Bangladesh stated that "it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of the dispute between the People's Republic of Bangladesh and the Union of Myanmar relating to the delimitation of the maritime boundary in the Bay of Bengal".

Based on these declarations, the Minister of Foreign Affairs of Bangladesh, in a letter dated 13 December 2009 addressed to the President of the Tribunal, invited the Tribunal to exercise jurisdiction over the maritime boundary dispute between Bangladesh and Myanmar.

On 14 December 2009 a certified copy of the notification of Bangladesh was communicated to Myanmar pursuant to article 55 of the Rules of the Tribunal.

In light of the agreement of the parties, as expressed through their respective declarations, to submit to the Tribunal their dispute relating to the delimitation of their maritime boundary in the Bay of Bengal, the case was entered in the Tribunal's list of cases as Case No. 16.

(Interpretation): By an order dated 28 January 2010, the President of the Tribunal fixed 1 July 2010 and 1 December 2010 respectively as the time-limits for the filing of the Memorial of Bangladesh and of the Counter-Memorial of Myanmar. Both Parties duly filed their pleadings within those time-limits.

By an order dated 17 March 2010, the Tribunal authorized the submission of a Reply by Bangladesh and a Rejoinder by Myanmar, and fixed 15 March 2011and 1 July 2011 respectively as the time-limits for the filing of these pleadings. Again, both Parties duly submitted their pleadings within the time-limits.

In its Memorial dated 1 July 2010 (on page 113 of the original in English) Bangladesh made its submissions, which were reproduced in its Reply dated 15 March 2011 (on page 149 of the original in English).

Myanmar made its submissions in its Rejoinder dated 1 July 2011 (on pages 195 to 196 of the original in English) repeating the submissions made in its Counter-Memorial dated 1 December 2010 (on pages 171 to 172 of the original in English).

THE PRESIDENT: Thank you.

By a further order dated 19 August 2011, the President of the Tribunal fixed 8 September 2011, that is today, as the date for the opening of the hearing. Pursuant to the Rules of the Tribunal, copies of the written pleadings are being made available to the public as of today. They will be placed on the Tribunal's website. The hearing will also be transmitted live on this website.

The first round of the hearing will begin today and will close on Tuesday, 20 September 2011. The second round of the hearing will begin on Wednesday, 21 September 2011 and will end on Saturday, 24 September 2011.

I note the presence at the hearing of the Agents, Counsel and Advocates of both parties.

I now call on the Agent of the People's Republic of Bangladesh, Her Excellency Minister Dipu Moni, to note the representation of Bangladesh.

MS MONI: Mr President, it is my distinct pleasure to introduce the members of the Bangladesh delegation.

Our Deputy Agent is Rear Admiral (Retired) Mohammed Khurshed Alam, Additional Secretary, Ministry of Foreign Affairs, Bangladesh.

Our Counsel and Advocates are: H.E. Mr Mohamed Mijarul Quayes, Foreign Secretary, Ministry of Foreign Affairs; H.E. Mr Mosud Mannan, Ambassador to the Federal Republic of Germany, Embassy of Bangladesh, Berlin, Germany; Dr Payam Akhavan, Member of the Bar of New York, Professor of International Law; McGill University, Montreal, Canada; Dr Alan Boyle, Member of the Bar of England and Wales, Professor of International Law, University of Edinburgh, Edinburgh, United Kingdom; Dr James Crawford SC, FBA, Whewell Professor of International Law,

University of Cambridge, Cambridge, United Kingdom; Mr Lawrence H. Martin, Foley Hoag LLP, Member of the Bars of the United States Supreme Court, The Commonwealth of Massachusetts and the District of Columbia, United States of America; Dr Lindsay Parson, Director, Maritime Zone Solutions Ltd., United Kingdom; Mr Paul S. Reichler, Foley Hoag LLP, Member of the Bars of the United States Supreme Court and of the District of Columbia, United States of America; and Mr Philippe Sands QC, Member of the Bar of England and Wales, Professor of International Law, University College London, London.

Our Advisers: Dr Robin Cleverly, Law of the Sea Consultant, United Kingdom Hydrographic Office; Mr Scott Edmonds, Cartographic Consultant, International Mapping; Dr Robert W Smith, Geographic Consultant; Ms Shahanara Monica, Assistant Secretary, Ministry of Foreign Affairs, Lieutenant Commander MRI Abedin, System Analyst, Ministry of Foreign Affairs of Bangladesh.

THE PRESIDENT: Thank you, Excellency. I now call on the Agent of the Republic of the Union of Myanmar, His Excellency Attorney General Tun Shin, to note the representation of Myanmar.

MR SHIN: Mr President, members of the Tribunal, it is a great honour for me to appear before you as Agent of the Republic of the Union of Myanmar in the present proceedings. I should like to begin by expressing our appreciation and thanks to you, sir, and to all your colleagues, and to the Registrar and his staff, and to all those who are working so hard to ensure the smooth running of these proceedings.

I shall now introduce Myanmar's team.

I am the Agent, Dr Tun Shin, the Attorney General of the Union.

Our Deputy Agents are: Ms Hla Myo Nwe, Deputy Director-General, Consular and Legal Affairs Department of the Ministry of Foreign Affairs in Nay Pyi Taw; Mr Kyaw San, Deputy Director-General of the Union Attorney-General's Office, Nay Pyi Taw.

Our Counsel and Advocates are: Professor Alain Pellet, Professor at the University, Nanterre La Défense; Sir Michael Wood, who is a member of the English Bar; Professor Mathias Forteau of the University of Paris Ouest; Mr Coalter Lathrop of Sovereign Geographic and a Member of the North Carolina Bar; Mr Daniel Műller, Researcher at the Centre for International Law at Nanterre; Mr Benjamin Samson, who is also a researcher at that institute; and Mr Eran Sthoeger LLM from New York University.

As Advisers, we have: His Excellency, Mr U Tin Win, Ambassador of Myanmar to the Federal Republic of Germany; Captain Min Thein Tint (Mr), Commanding Officer, Myanmar Naval Hydrographic Centre, Yanbon; Dr Thura Oo, Pro-Rector of Meikhtila University; Ms Khin Oo Hlaing, First Secretary at our Embassy in Brussels; Mr Kway Htin Lin, First Secretary at our Embassy in Berlin; Mr Mang Hau Thang, Assistant Director of the International Law and Treaties Division of the Ministry of Foreign Affairs; Ms Tin Myo Nwe of the International Law and Treaties Division of the Ministry of Foreign Affairs; Mrs Bajer-Pellet, member of the Paris Bar; Ms Tessa

Barsac, who is assistant to maître Bajer; Mr Octavian Buzatu, who is a hydrographer; and Mr David Swanson, who is a cartography consultant.

I thank you, Mr President.

THE PRESIDENT: Thank you, Excellency. I now request the Agent of Bangladesh to begin her statement.

MS MONI: Mr President, distinguished members of the Tribunal, it is a great honour and a privilege for me to appear before you today as the Agent for the Government of the People's Republic of Bangladesh.

Please allow me to commence by expressing my thanks. On behalf of Bangladesh, I wish to thank you, Mr President, your fellow judges and the able Registry for all that has been accomplished to facilitate these proceedings. As you know, this is a first appearance by Bangladesh as a claimant before an international court or tribunal. The transparency and fairness with which the Tribunal has conducted this case so far have been a source of great comfort to us and we are confident that this modern Tribunal, composed as it is of judges who truly represent the principal judicial systems of the world, will dispense justice in full conformity with the law.

May I also express our thanks to the Agent of Myanmar and his delegation for the commendable manner in which his Government has approached this case. Our two States have long enjoyed strong ties borne of the familiarity that comes with being neighbours. We are confident that these proceedings, and the resolution of the long-standing dispute they promise, will open the door to even closer and stronger ties in the years ahead.

Mr President, members of the Tribunal, Bangladesh is a developing country that emerged as an independent state in 1971. It is striving to build a better future for its people, sometimes in challenging conditions. Our nearly 160 million citizens are resilient and full of potential, addressing a shortage of natural resources and extreme climatic conditions, including floods and cyclones, that regularly inundate a great part of our landmass. We believe that we have achieved impressive strides in human development in the last 20 years. Securing an equitable share of the maritime areas in front of our coast and the resources they contain is important for the continued success of our development efforts.

The people of Bangladesh have deep ties to the sea, to the Bay of Bengal. The very name of our country, which means "Country of Bengal" in Bengali, parallels that of the Bay. The great number of rivers that flow through our land – large and small – connect us to the sea; and, as you will know from the pleadings, the land itself has arisen from the sea, created by the deposition of vast quantities of sediment carried by rivers and into the Bay over a great period of time.

These natural processes have endowed Bangladesh with a bounty of clean-burning natural gas that my Government hopes to be able to utilize more fully over time. Yet, precisely as a function of the geological facts that you will hear more about this week and next, much of this natural gas is located offshore. The absence of defined maritime boundaries with Myanmar and India has undermined our ability to exploit

this much needed resource. Our difficulties are compounded by the far-reaching maritime claims of our neighbours. The resolution of this case in a manner that achieves an equitable solution in the areas beyond 12 miles provides an opportunity for us to realize our full potential.

The same is true of fisheries resources. The people of Bangladesh are deeply connected to and dependent on the sea and its biodiversity. Fish provide both a key source of nutrition and employment for our people. The legal certainty that the resolution of this case will provide will allow us to more rationally exploit this resource so as to maximize the current benefit while at the same time ensuring long-term sustainability, a goal to which we are strongly committed.

Mr President, if I may, I would like to trace very briefly the path that led us to your distinguished Tribunal today. Since at least 1974 Bangladesh and Myanmar have engaged in extensive negotiations concerning their maritime boundary in the Bay of Bengal. Over the course of 34 years, our countries have conducted some 13 rounds of talks. We achieved some notable early successes. In particular, in 1974, at just our second round of meetings, we reached the agreement concerning the maritime boundary in the territorial sea about which you will hear more tomorrow. That agreement was fully applied and respected by both States over more than three decades. As a result of that agreement, there have never been any problems concerning the right of passage of ships of Myanmar through our territorial sea around St Martin's Island. In its two rounds of pleadings Myanmar had every opportunity to introduce evidence of any difficulties, if indeed there were any. It has not done so. That is because there are no difficulties. I am happy to restate that Bangladesh will continue to respect such access in full respect of its legal obligations.

Now Myanmar says there was no agreement, and we strongly disagree. That, of course, is a question for the Tribunal to decide. But the essential point is that our earliest talks concerning the areas closest to shore met with substantial success.

Unfortunately, the promise of those early talks was short-lived. Despite the meeting of the minds concerning the territorial sea, subsequent talks concerning other maritime zones achieved little. We met in 1975, in 1976, in 1979, in 1986, in 2008, in 2009, and even in 2010 following the initiation of these proceedings, always to discuss our boundary in the continental shelf and exclusive economic zone. All of these meetings were to no avail. Myanmar was, as it still is, steadfast in its insistence that the boundary must be determined by reference to the equidistance method. For our part, we were – and remain – certain of the view that equidistance does not yield an equitable solution given the geographic realities in the northern Bay of Bengal.

Mr President, at this stage of the case, after all you have read, I suspect you do not need me to tell you what Bangladesh considers to be the central geographic fact of this case: it is the concavity of the Bay of Bengal's north coast. This concavity, combined with the location of our land boundaries with Myanmar to the east and India to the west, makes the equidistance method wholly unsuited to produce an equitable solution. It cannot produce such a solution. Despite a coast of several hundred kilometres, equidistance would leave us with just a small, wedge-shaped

area of maritime space, all of it less than 200 nautical miles from our coast. It would deprive us of any access to the outer continental shelf.

In 2008, after 34 years of trying, we were stuck. The bilateral path led only to the same endless circle. For Bangladesh, the impasse had much more than diplomatic consequences. The inability to develop our resources in a sustainable manner has slowed the pace of our development.

Faced with this situation, Bangladesh had two options: it could either continue to do nothing, or it could seek the intervention of a neutral third party by pursuing the dispute resolution mechanisms that the drafters of the Law of the Sea Convention so wisely included.

The institution of these proceedings is not in any way a hostile act. It is intended to resolve a long-standing dispute, in an equitable manner that serves the interest of peace and stability in the region. The resolution of this dispute will thus serve the interests of both States. We have every confidence that with your Tribunal's judgment in hand and this matter behind us, Bangladesh-Myanmar relations will be able to move forward on an even more positive and productive basis.

As you know, Bangladesh initially instituted these proceedings under the provisions of Annex VII. We would have preferred to bring proceedings before this Tribunal. But at the time there were no applicable declarations in force. We were therefore delighted when Myanmar expressed its willingness to have the matter heard here, and we readily agreed. We were equally delighted that the Tribunal rejected a later effort on the part of Myanmar to withdraw its consent to your jurisdiction. This is the Tribunal's first maritime delimitation case, and we have every confidence of your wisdom as the foremost guardians of the Law of the Sea Convention.

As you know, we have a parallel proceeding pending with our other maritime neighbour, India. That proceeding is being heard before a distinguished arbitral tribunal convened under Annex VII, and there is a degree of overlap between the composition. Bangladesh would have preferred to have that case too heard in this Tribunal. In many respects, the cases are quite similar. We regret that India declined our invitation to accept ITLOS jurisdiction.

Mr President, members of the Tribunal, with that I come to the organization of our first-round presentations. Following me to the podium this morning will be Mr Paul Reichler of Foley Hoag who will provide an overview of the most critical facts relevant to the resolution of this dispute. Mr Reichler will focus on the geographic and geologic circumstances that frame our case. Following Mr Reichler will be Professor James Crawford of the University of Cambridge. Professor Crawford will discuss this matter in institutional context as the Tribunal's first delimitation case.

Tomorrow morning, Professor Alan Boyle from the University of Edinburgh will be the first to speak. He will address the 1974 Agreement between Bangladesh and Myanmar concerning the delimitation of their boundary in the territorial sea. After Professor Boyle, Professor Philippe Sands of University College London will address the principles applicable to the delimitation of the territorial sea in the unlikely event the Tribunal disagrees with us as to the existence of an agreement in 1974.

When we return on Monday morning, Professor Sands will again take the podium to outline the most critical points of law relating to the delimitation of the exclusive economic zone and continental shelf within 200 miles. Mr Lawrence Martin, also of Foley Hoag, and then Mr Reichler, will address in more detail why equidistance cannot achieve an equitable result in the EEZ and continental shelf within 200 miles.

On Monday afternoon, Professor Crawford will return to discuss the 215° bisector that Bangladesh has proposed. When he is done, Professor Payam Akhavan of McGill University will take up the subject of the Tribunal's jurisdiction and show that there can be no doubt that it has jurisdiction over this dispute in its entirety, including in the outer continental shelf, and that there is no bar to its exercise of jurisdiction.

When we return on Tuesday morning, Dr Lindsay Parson will address the geological and geomorphological facts pertinent to the delimitation of the outer continental shelf, which is based in part on expert evidence we have put before the Tribunal and which has not been rebutted by any expert evidence tendered by Myanmar. Our Deputy Agent, Admiral Khurshed Alam, will then describe for the Tribunal the manner in which the limits of our claim in the outer continental shelf were drawn. After that, Professor Boyle will conclude our first-round presentations with a discussion of the legal conclusions that flow from the facts described by Dr Parson and Admiral Alam.

Mr President, members of the Tribunal, I would like to thank you for your time and courteous attention. Bangladesh invites the Tribunal to decide this case in conformity with the 1982 Convention as written, taking due account of the unique aspects you will now hear Mr Reichler describe. I ask that you now invite Mr Reichler to the podium.

THE PRESIDENT: Thank you, Excellency. I now give the floor to Mr Paul Reichler.

MR REICHLER: Mr President, distinguished Members of the Tribunal, it is a special honour for me to appear before you in these proceedings: the first case in which the Parties have asked this prestigious Tribunal to delimit a maritime boundary.

That the Parties have done so reflects their mutual confidence in the Tribunal, and in your determination and capacity to delimit the boundary in a manner that produces an equitable solution, as required by the 1982 Convention.

I am very pleased to say that the Tribunal has thus far not disappointed. To the contrary, you have lived up to and even surpassed the Parties' high expectations. We stand here before you today, at the opening of oral hearings, less than 21 months from the registration of the case. At the urging of the President, the Parties completed two rounds of comprehensive written pleadings in just 18 months. This is a world record for judicial efficiency in a maritime delimitation case!

Bangladesh, as the Party that initiated these proceedings, is extremely grateful to you, Mr President, to the entire Tribunal and to the Registry, for the fairness and integrity, as well as the efficiency, which have characterized these proceedings. With such a record, this case can only be the first of many maritime delimitation

cases to find their way to Hamburg. The entire Bangladesh team feels privileged to be a part of it.

As the first of Bangladesh's counsel to speak, I have been asked by the Agent of Bangladesh, the Honourable Dr Dipu Moni, Minister of Foreign Affairs, to address some matters of administration. In regard to the Judges' folders that have been submitted today, you will note that Bangladesh has provided a hard cover binder that includes the exhibits that will be presented this morning during my speech and that of Professor Crawford. Prior to each of Bangladesh's five half-day sessions in the first round, we will provide the Tribunal with the exhibits for that session, which can be inserted into the binder, along with a different coloured file divider to distinguish the exhibits presented during session one from those presented during session two, and so on. Today's exhibits are preceded by a dark blue file divider, marked with the number 1, to indicate that these exhibits correspond to the first session. The exhibits themselves are numbered consecutively in the order in which they will be presented. As you will soon see, when I speak about the first exhibit in the Judges' folder, it is marked as exhibit 1.1, indicating it was presented in the first session as the first exhibit. This will be followed by exhibit 1.2, and so on. Tomorrow's supplement will be preceded by a light blue file divider, with the number 2, and the exhibits will be numbered 2.1, 2.2, etc.

If you have followed me this far, you need not be concerned about any complexities in the rest of my speech. We have just gotten through the most difficult part!

There is one other clerical matter, however. To avoid the lengthy, and often very boring, reading aloud of citations to the evidence and arguments contained in the written pleadings, including the expert reports and other annexes, my colleagues and I will not read any citations, but will include them as footnotes in the written versions of our speeches that we submit prior to each session for the benefit of the interpreters. We ask that these footnotes be included in the official transcripts of the hearings, even though we do not read them aloud. In this manner, we will provide citations for all of the evidence that we will be discussing, as well as for the case law.

Mr President, members of the Tribunal, it is customary in maritime delimitation cases to begin by setting out the geographical context in which the delimitation is to occur. In this case, where the Tribunal has been called upon to delimit not only the maritime zones within 200 nautical miles, but also the continental shelf beyond 200 miles – the so-called "outer continental shelf" – it is appropriate to set out the geological context as well, since article 76 of the convention bases entitlement to the outer continental shelf on geological criteria, rather than distance from the coast.

The title given to this case by the Tribunal is the "Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal". As the title reflects, the boundary to be delimited is in the Bay of Bengal. The Bay is depicted on the screens in front of you and in our exhibit 1.1 of your Judges' folder. It is a very large body of water, measuring 1,800 kilometres across, from west to east at its widest point, and extending to the south for 1,500 kilometres beginning at its northernmost extremity along the Bangladesh coast.[1] It covers more than two million

[1] Memorial of Bangladesh, para. 2.4 (hereinafter "MB").

square kilometres.[2] According to the International Hydrographic Organization, the Bay is bounded in the north by the Bangladesh and Indian coasts, in the west by the coasts of peninsular India and Sri Lanka, in the east by the Myanmar coast extending down to Cape Negrais, and from there along the Andaman and Nicobar Islands of India.[3] In the south, the Bay begins its transition into the Indian Ocean at approximately 6° north latitude.[4]

The area to be delimited in this case is in the northern part of the Bay, adjacent to the coasts of Bangladesh and Myanmar. The northern coast of the Bay is concave.[5] As highlighted on the screen, and in exhibit 1.2 of your Judges' folder, the concavity extends from the coast of peninsular India in the west, along all of the Bangladesh coast, to the western coast of Myanmar.[6] Bangladesh's entire coast lies within this general, or primary, concavity. At the north-eastern end of the Bay, within Bangladesh itself, there is a secondary concavity – a concavity within the overall concavity of Bangladesh's coast – which extends from one land boundary terminus to the other. This "double concavity" is a particular and unique feature of the coastal geography of the northern Bay of Bengal.

To the east of the Meghna Estuary, which occupies the centre of Bangladesh's coast,[7] the coast extends south-easterly to the land boundary terminus with Myanmar, at the Naaf River. This section of the coast is marked by long sandy beaches and several coastal islands very close to the mainland.[8] The most significant and heavily populated of these is St Martin's Island, lying opposite the land boundary terminus. According to British Admiralty Chart 817, which both Parties consider accurate,[9] St Martin's lies within five miles of the mainland coast of Bangladesh, and also within five miles of the mainland coast of Myanmar.

West of the Meghna Estuary, all the way to the border with India, Bangladesh's coast takes on an entirely different character.[10] Here, it is completely deltaic, formed by the mighty Ganges and Brahmaputra Rivers and their many tributaries, which empty into the Bay of Bengal along this section of the coast.[11] This is the world's largest river delta, far larger than the Nile and Mississippi deltas combined. It creates one of the most highly morphodynamic and unstable coastlines on the planet, with continuous accretion and erosion, and the sudden appearances and disappearances of small islands and low tide elevations that are, almost literally, here today and gone tomorrow.[12]

[2] MB, para. 2.4.
[3] MB, para. 2.5; *see also* International Hydrographic Organization, *Limits of Oceans and Seas* (3d ed. 1953), at pp. 21-22. MB, Vol. III, Annex 30.
[4] International Hydrographic Organization, *Limits of Oceans and Seas* (3d ed. 1953), at p. 21. MB, Vol. III, Annex 30.
[5] Counter-Memorial of the Union of Myanmar, para. 2.3 (hereinafter "MCM").
[6] MCM, para. 2.3.
[7] MB, paras. 2.11, 2.17.
[8] MB, para. 2.7.
[9] *See e.g.*, MB at paras. 3.27, 3.29; MCM at paras. 4.68 and 5.99.
[10] MB, para. 2.12.
[11] *Ibid*.
[12] MB, para. 2.9.

The Bengal Delta is part of the unique geological structure known as the Bengal Depositional System, depicted on your screens and at tab 1.3 of your Judges' folders.[13] The Bengal Depositional System is comprised of the same geological material in three contiguous and continuous sections: the above-water portion of the delta, which constitutes the major part of Bangladesh's landmass; the below-water or subaqueous, portion of the delta, which extends seaward into the Bay of Bengal for 80 miles from the shoreline; and the Bengal Fan, which extends from the base of the continental slope more than 1,500 miles southward, beyond the southernmost point of Sri Lanka.[14] These three components of the Bengal Depositional System constitute a single, integrated system that unites the Bangladesh landmass and the Bay of Bengal seafloor both geologically and geomorphologically, from the northern to the southern end of the Bay.[15]

The Bengal Depositional System was formed by the accumulation of Himalayan sediments carried by the Ganges and Brahmaputra river system and its precursors over millions of years.[16] The process is ongoing. In an average year, the river system carries nearly a thousand million tons of sediments toward the Bay of Bengal.[17] One third of these sediments are deposited in the above-ground portion of the Bengal Delta; the remaining two thirds are deposited in the Bay, contributing to both the subaqueous portion of the Delta and the Bengal Fan.[18] The thickness of these sediments in the Delta ranges from 12 to 24 km; by way of comparison, Mt Everest rises less than 9 km above sea level.[19]

The thickness of the same sediments further south in the Bengal Fan ranges from 16.5 to 1 kilometre, covering a surface of some 3,000,000 square kilometres.[20] As shown on your screens, and at tab 1.4 of the Judges' folders, this is the largest river depositional system in the world – larger than the Amazon and Congo depositional systems combined.[21] The total volume of sedimentary material in the Fan has been estimated at 12.5 million cubic kilometres – more than enough to cover the entire

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[13] MB, para. 2.32.
[14] MB, paras. 2.33-2.45.
[15] MB, paras. 2.32.
[16] MB, paras. 2.32, 2.39; *see also* Joseph R. Curray, " The Bengal Depositional System: The Bengal Basin and the Bay of Bengal" (23 June 2010), at p. 1. MB, Vol. IV, Annex 37 (hereinafter "Curray Expert Report (2010)"); G. Einsele et al., "The Himalaya-Bengal Fan Denudation-Accumulation System during the Past 20 Ma", *The Journal of Geology*, Vol. 104, No. 2 (1996), at p. 179. MB, Vol. IV, Annex 40. Himalayan sediments are easily identified because they are chemically distinct from those originating from other regions that drain into the Bay of Bengal, such as the southern peninsula of India. See G.S. Roonwal et al., "Mineralogy and Geochemistry of Surface Sediments from the Bengal Fan, Indian Ocean", *Journal of Asian Earth Sciences*, Vol. 15, No. 1 (1997), at pp. 33-41. MB, Vol. IV, Annex 44.
[17] MB, para. 2.10; *see also* Hermann Kudrass, "Elements of Geological Continuity and Discontinuity in the Bay of Bengal: From the Coast to the Deep Sea" (2011), at p. 1. Reply of Banglades, Vol. III, Annex R5 (hereinafter Kudrass Expert Report (2011)").
[18] MB, para. 2.10; *see also* S. Kuehl et al., "Subaqueous Delta of the Ganges-Brahmaputra River System", *Marine Geology*, Vol. 144, No. 1 (1997) (hereinafter "Kuehl et al. (1997)"), at p. 84. MB, Vol. IV, Annex 42.
[19] MB, para. 2.10; *see also* Joseph R. Curray, "Sediment Volume and Mass beneath the Bay of Bengal", *Earth and Planetary Science Letters*, No. 125 (1994), at p. 374. MB, Vol. IV, Annex 38.
[20] MB, apar. 2.37; Joseph R. Curray et al., "The Bengal Fan: Morphology, Geometry, Stratigraphy, History and Processes", *Marine and Petroleum Geology*, Vol. 19, No. 10 (2002) (hereinafter "Curray et al. (2002)"), at p. 1200. MB, Vol. IV, Annex 48.
[21] MB, para. 2.35.

continent of Europe in a layer of sediment an entire kilometre thick.[22] More than 80% of these sediments are transported to the Bay by the great rivers flowing through Bangladesh. The remainder originates in India, and is supplied especially by the rivers on the Indian side of the Bengal Delta.[23] In contrast, there is no measurable contribution from Myanmar's rivers, the most important of which flow into the Andaman Sea through the Gulf of Martaban, well beyond the eastern limits of the Bay of Bengal.[24]

Bangladesh and the seafloor of the Bay of Bengal are connected not only by the continuous Bengal Depositional System but by the geological fact that they both lay, almost entirely, on the Indian tectonic plate.[25] As shown on the screens, and at tab 1.5 of the Judges' folders, there is no tectonic plate boundary, or geological or geomorphologically separation of any kind, between the Bangladesh landmass and the Bengal Fan, even as far as its southern limit.[26]

This is not the case for Myanmar. Myanmar sits on a different tectonic plate, the Burma Plate.[27] The tectonic plate boundary is located in the easternmost portion of the Bay of Bengal, and runs in a north/south direction close to the Myanmar coast.[28] *This* is the tectonic plate boundary, as I have indicated. The boundary is marked by a subduction zone, where the Indian Plate subducts – or passes under – the Burma Plate.[29] The passing of one tectonic plate beneath another frequently produces a deep trench in the seafloor.[30] The trench which marks this tectonic plate boundary extends far southward, even beyond Sumatra.[31] To the east of this plate boundary, there is an accretionary prism, now highlighted, produced by the subduction process, where the leading edge of the overlying Burma Plate has scraped off sediments from the subducting – or downgoing – Indian Plate, deforming the seabed, obscuring the trench, and creating mountains on Myanmar's landmass. The geological extension of Myanmar's landmass seaward, that is to the west of its coast, ends at the outer edge of the accretionary prism which marks the tectonic plate boundary. This, as shown, is approximately 50 miles from Myanmar's coast.[32] At no point does Myanmar's geological extension reach any farther, let alone out to 200 miles.[33]

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[22] MB, para. 2.37; s*ee also* Curray et al. (2002) at p. 1200.
[23] MB, para. 2.32; G. Einsele et al., "The Himalaya-Bengal Fan Denudation-Accumulation System during the Past 20 Ma", *The Journal of Geology*, Vol. 104, No. 2 (1996), at p. 179. MB, Vol. IV, Annex 40. *See also* Kudrass Expert Report (2011) at p. 2.
[24] MB, para. 2.32; *see also* Curray Expert Report (2010), at p. 3.
[25] MB, para. 2.23; *see also* Curray Expert Report (2010), at p. 1.
[26] MB, para. 2.30.
[27] MB, para. 2.23; *see also* Curray Expert Report (2010), at p. 1; Kudrass Expert Report (2011), at pp. 2-3.
[28] *Ibid.*
[29] *Ibid.*
[30] MB, para. 2.45; Joseph R. Curray, "Comments on the Myanmar Counter-Memorial" (2011), at p. 3. Reply of Bangladesh, Vol. III, Annex R4 (hereinafter "Curray Expert Report (2011)"). *See also* Curray Expert Report (2010), at p. 1.
[31] MB, para. 2.37 and Figure 2.6 following p. 24. of MB; *See also* Curray et al. (2002), at p. 1200.
[32] MB, para. 2.45. Curray Expert Report (2011) at pp. 3-4; *see also* C. Nielsen et al., "From Partial to Full Strain Partitioning Along the Indo-Burmese Hyper-oblique Subduction", *Marine Geology*, Vol. 209 (2004), at pp. 304, 307. MB. Vol. III, Annex 52.
[33] *Ibid.* MB, para. 2.23. *See also* Curray Expert Report (2010) at p. 1.

All of these facts pertaining to the geology and geography of the Bay of Bengal, and to the particular part of it on which this case is focused, are fully documented in the evidence that has been submitted by Bangladesh to the Tribunal, including the expert reports of Dr Joseph Curray and Dr Hermann Kudrass, two of the world's leading authorities on the geology and geomorphology of the Bay of Bengal.[34] None of this evidence has been disputed by Myanmar, which has chosen to submit no contrary evidence of any kind.

This, then, Mr. President, is the overall geographical and geological context in which the present dispute between Bangladesh and Myanmar arises. Within this particular setting, I will now bring into sharper focus the main geographical and geological features that characterize and distinguish this particular case.

There are three.

The first of the three, as I have already indicated, is the concave shape of Bangladesh's coastline, which extends from the land boundary terminus with India in the west to the land boundary terminus with Myanmar in the east. What is especially notable here, and at tab 1.6 of your Judges' folders, is that, unlike India and Myanmar, only Bangladesh stands with both feet – that is, both of its land boundary termini – planted inside the general concavity that constitutes the northern coast of the Bay of Bengal. Bangladesh is the only one of these the States that lies entirely within the concavity.[35]

The Bangladesh coast is also marked by a secondary concavity, that is, a concavity within the overall concavity of its coastline. This "double concavity" also covers Bangladesh's entire coast, receding to the north-east from the land boundary terminus with India and arcing all the way to the land boundary terminus with Myanmar.

Because the entirety of Bangladesh's coast lies within a concavity sandwiched between India and Myanmar, and then recedes into an even deeper concavity, equidistance lines inevitably produce a very noticeable cut-off effect, as shown on the screens and at tab 1.7 of the Judges' folders. The result is not unlike the one faced by the Federal Republic of Germany in the *North Sea* cases.[36] Here are the two cases side-by-side. The maps are drawn to the same scale; the only change has been to rotate the North Sea coast so that it faces in the same direction as the northern coast of the Bay of Bengal. The similarity of the two geographical situations – that of concave Germany squeezed between Denmark and the Netherlands, and that of concave Bangladesh pinched between India and Myanmar – makes the judgment in the *North Sea* cases, and especially the ICJ's reasoning in regard to the distorting effects of pronounced coastal concavities like these, particularly relevant to this proceeding. Professor Crawford will have more to say about this later this morning.

The second major geographical feature in this case is Bangladesh's St Martin's

[34] Curray Expert Report (2010); Curray Expert Report (2011); Kudrass Expert Report (2011).
[35] MB, paras. 1.8, 2.2, 6.30.
[36] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 3.

Island, a significant Bangladesh coastal island lying within 5 miles of the Bangladesh mainland.[37] St Martin's is home to more than 7,000 permanent residents, and is the destination of hundreds of thousands of tourists annually.[38] In addition to tourism, St Martin's is a significant fishing and agricultural centre.[39] It is also the home base of strategic Bangladesh Navy and Coast Guard stations, with harbours that are important to Bangladesh's naval operations.[40]

The third of the three major distinguishing features in this case is the Bengal Depositional System, which, as I have described, comprises both the landmass of Bangladesh and its uninterrupted geological prolongation into and throughout the Bay of Bengal.[41] It is not connected geologically to Myanmar, which sits on a different tectonic plate than most of Bangladesh and the Bay of Bengal and whose landmass extends geologically no farther than 50 miles into the Bay.[42]

Mr President, Members of the Tribunal, there is no dispute about the existence of these three features, or about any of the facts pertaining to them. Bangladesh and Myanmar agree on the facts. They agree on the geography and geology that pertain to this case. Myanmar accepts that the entire coastline of Bangladesh is concave, and that a secondary coastal concavity exists within the extremities of the general concavity.[43]

Myanmar challenges none of the facts presented about St Martin's Island, including that it is a significant coastal island lying within 5 miles of the Bangladesh mainland, with a permanent population of 7,000 and a vibrant economic life of its own.[44]

And Myanmar also accepts the facts established by the extensive geological and geomorphological evidence submitted by Bangladesh, to the effect that the Bengal Depositional System is the geological prolongation of Bangladesh into the Bay of Bengal and that Myanmar has no similar prolongation because its landmass is separated by a tectonic plate boundary a short distance from its coast; in its Rejoinder, at page 7, Myanmar expressly confirmed that it has not disputed any of these facts.[45]

The Parties are not only in agreement in regard to the existence of these three critical features, and the salient facts pertaining to them, but also on their effects: first, Bangladesh and Myanmar agree that because of Bangladesh's entirely concave coastline, equidistance lines emanating from the Bangladesh/Myanmar and Bangladesh/India land boundaries intersect in front of Bangladesh's coast, cutting it

[37] MB, para. 2.18.
[38] MB, para. 2.18; See also Sirajur Rahman Khan et al., "St. Martin's Island and its Environmental Issues", Geological Survey of Bangladesh (2002). MB, Vol. IV, Annex 49.
[39] MB, para. 2.18; See also Mohammad Mahmudul Hasan, "Tourism and Conservation of Biodiversity: A Case Study of St. Martins Island, Bangladesh", *Law, Social Justice & Global Development,* Vol. 1 (2009) (available at <http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2009_1/hasan/hasan.pdf>). MB, Vol. III, Annex 36.
[40] *Ibid.*
[41] MB, para. 2.32; See also Curray Expert Report (2010), at p. 1 and Figure 22.
[42] MB, para. 2.23; See also Curray Expert Report (2010), at p. 1.
[43] MCM, para. 2.16.
[44] MCM, para. 2.18.
[45] Rejoinder of the Republic of the Union of Myanmar, para. 1.17 (hereinafter "MR").

off well short of the 200 mile limit, as measured from its normal baselines;[46] second, they agree that the existence and location of St Martin's Island influence an equidistance line in Bangladesh's favour;[47] and, third, they do not dispute that the scientific evidence and expert reports demonstrate that the continental shelf in the Bay of Bengal is the geological continuation and prolongation of Bangladesh, but not of Myanmar.[48]

The difference between the Parties is this. In Bangladesh's view, these are all important geographical and geological features that must necessarily be taken into account in fashioning an equitable delimitation of the maritime boundary between the two States. By contrast, Myanmar's view is that all three of these features should be completely ignored – not taken into account at all – by this Tribunal in fixing the maritime boundary. The delimitation line that Myanmar in its submissions asks the Tribunal to adopt was constructed, as acknowledged by Myanmar, without taking into account any of these three features.[49]

In Bangladesh's view, Myanmar cannot be right to deliberately to ignore the most important and unique features that define the geographical and geological context in which this delimitation is taking place.

Mr President, in the remainder of my presentation this morning, I will explain why Bangladesh believes it is not possible to delimit the boundary in a manner that achieves an equitable solution without taking each of these three features duly into account. I will take them in order, starting with the concave Bangladesh coast.

Here, and at tab 1.10 of the Judges' folders, is Myanmar's proposed boundary line, drawn exactly as per the coordinates and geodetic azimuth presented by Myanmar in its submissions.[50] Myanmar calls this a properly drawn equidistance line. Bangladesh disagrees, and I will come back to this point later. What is important to observe here is how Myanmar ignores all three of the most important natural features that characterize and distinguish the area to be delimited in this case. First, Myanmar's line ignores the concavities of Bangladesh's coast and the cut-off effect that predictably results from applying equidistance methodology to a concave coast. Because the Bangladesh coast is concave, it generates no base points inside the concavity for the construction of an equidistance line; as a result, Myanmar constructs its entire equidistance line beyond the territorial sea, using only a single base point on Bangladesh's coast – right here at the land boundary terminus.[51] There are no other base points placed by Myanmar along the rest of the Bangladesh coast, between the land boundary terminus with Myanmar and the land boundary terminus with India, that affect the location or direction of Myanmar's equidistance line. According to Myanmar, none of the rest of Bangladesh's coast, which faces onto the area to be delimited, plays any role in the development of the boundary, and that is just fine with them. The fact that this is due to the double concavity of Bangladesh's coast is simply ignored.

[46] MCM, paras. 5.155-5.162; RM, paras. 6.71 and A.2.
[47] MR, paras. 1.6, 5.35-5.36.
[48] MR, para. 1.13.
[49] MR, p. 195.
[50] MCM, p.171; MR, p. 195.
[51] MR, para. 5.13.

Here is something else that Myanmar ignores. This is India's claim line, as shown in Bangladesh's written pleadings.[52] It is nowhere depicted by Myanmar: not in their written pleadings or in any of the 45 charts and maps that they have submitted to the Tribunal. This omission cannot be attributed to a lack of knowledge of India's claim. The same counsel that represent Myanmar in these proceedings also represent India in the parallel proceedings between Bangladesh and India under Annex VII. Rather than address, or even acknowledge, India's claim line, Myanmar has deliberately chosen to ignore it – and to ignore the severe cut off of Bangladesh that this line, in combination with Myanmar's putative equidistance line, produces.

Mr. President, it is not as if the inequitableness to Bangladesh of equidistance-based boundaries was recently discovered. This was expressly recognized in the *North Sea* cases themselves, where Bangladesh's (then East Pakistan's) situation was specifically compared to Germany's, in this graphic.[53] You can also see this at tab 1.11 of your Judges' folders. This is the same cut-off 42 years later. It has not become any less inequitable to Bangladesh with the passage of time. To the contrary, the distorting effects of equidistance on a concave coastline have been widely recognized ever since the *North Sea* cases. This is not rocket science; it is not even controversial, and it is certainly not news to this Tribunal. This is at tab 1.12 of the Judges' folders. As stated and depicted in the *Handbook on the Delimitation of Maritime Boundaries*, published in 2000 by the United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea: "The relevance of convexity or concavity of the relevant coastline was highlighted by the International Court of Justice in the 1969 *North Sea Continental Shelf cases*. The distorting effects of the equidistance method in the presence of a concave or convex coastline is shown in the following illustration":[54] Instead of acknowledging the "relevance of ... concavity of the relevant coastline" – in this case the concavity of the Bangladesh coastline – Myanmar ignores it.

Mr. President, there is no generally accepted method for measuring, and compensating for, the distorting effects of a concave coastline on the plotting of an equidistance line. That is why, in the only two prior maritime delimitation cases where the relevant coasts were expressly determined to be concave – the *North Sea* cases[55] and the *Guinea/Guinea Bissau* arbitration[56] – the ICJ in the former case and the distinguished arbitral tribunal in the latter rejected equidistance as an appropriate methodology. Bangladesh follows those examples and does the same in this case, adopting the angle bisector methodology that was employed in the *Guinea/Guinea*

[52] RB, Figure R3.2.
[53] MB, paras. 1.9-1.10 and Figures 1.1 and 1.2.
[54] MB, para. 6.32; *see also* United Nations. Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries* (2000), at p. 30, para. 143. Figure 6.2.
[55] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 3.
[56] *Delimitation of Maritime Boundary between Guinea and Guinea-Bissau,* Award, 14 February 1985, *reprinted in* 25 ILM 252 (hereinafter "*Guinea/Guinea-Bissau*"). Reproduced in Memorial of Bangladesh, Vol. 5.

Bissau case and in two other ICJ cases in which equidistance was determined not to be appropriate.[57]

In this case, it is possible to measure some, but by no means all, of the distortion produced by the application of equidistance methodology to Bangladesh's concave coast. Let us focus for the time being on only the secondary concavity that marks Bangladesh's coast, the concavity within the general concavity of the coastline. By eliminating on this graphic, which is also at Exhibit 1.13 of your Judges' folder, only this secondary concavity – not the much more influential primary or general concavity in which all of the Bangladesh coast sits, but only the one that recedes from the primary one into the Meghna Estuary – we can see how the equidistance line is distorted by the presence of this secondary concavity. Myanmar's version of equidistance deprives Bangladesh of this area solely because of the secondary concavity within the overall concavity of Bangladesh's coast.

If this were the only distortion produced by equidistance, it might be possible to adjust a properly drawn equidistance line, in some fashion, to produce an equitable result. But the graphic that you just saw does not even begin to measure the distorting effects on an equidistance line of the much more influential primary concavity in which the entirety of Bangladesh's coast sits. It depicts, at most, only a small part of the adjustment to equidistance that would have to be made to achieve an equitable solution. Without a generally accepted means of measuring the distorting effects of the primary concavity of Bangladesh's coast, any attempt to quantify this distortion and further adjust the equidistance line is bound to be highly subjective – hence the need, in Bangladesh's view, to employ the angle bisector method where, as here, equidistance cannot lead to an equitable result and is simply inappropriate.

Bangladesh will address these points in greater depth on Monday, when Professor Sands, Professor Crawford, Mr Martin and I speak about delimitation of the EEZ and the continental shelf within 200 miles and the appropriateness of the angle bisector methodology in achieving an equitable solution.

With your permission, Mr President, I will now turn the spotlight on St Martin's Island. Here again is Myanmar's purported equidistance line. This is at Exhibit 1.14 of your Judges' folders. In regard to the EEZ and continental shelf within 200 miles, Myanmar describes it as a "mainland to mainland equidistance line".[58] This is a new concept, as far as we can tell, developed by Myanmar for the purposes of this case. There is no mention of such a line in the 1982 Convention or in any of the prior maritime delimitation cases between adjacent States that have preceded this one. It is no doubt the fruit of fertile and creative legal imaginations. Mainland to mainland, according to Myanmar, means that no islands are taken into account. Myanmar thus ignores St Martin's Island, one of the main geographical features that characterize and define the area to be delimited in this case. This appears to be the sole reason for constructing a so-called mainland-to-mainland-only line: to exclude St Martin's.

[57] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment I.C.J. Reports 1984, p. 246. *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007.
[58] MR, para. 3.7.

This brings me back bad memories from my childhood. I do not know whether this happened in your neighbourhood, Mr President, but in mine it was common for a group of boys to form a club, which had no discernible purpose other than to exclude the one boy who had temporarily fallen out of favour with the rest. I never liked those clubs, since I was more than once the boy who was excluded. Hence I have a great deal of sympathy for St Martin's, in respect of which Myanmar has created the mainland-to-mainland club for the sole purpose of excluding it.

Myanmar takes great pains in its written pleadings, especially in its Rejoinder, to explain this exclusion. It states over and over again that St Martin's has a distorting or disproportionate effect on the equidistance line in the EEZ and continental shelf within 200 miles, and therefore must be ignored in constructing that line. By my count they make this very statement at least ten times in their Rejoinder alone – you will see the footnotes in the written version of the speech – and they refer to St Martin's 80 times in that single pleading.[59] That is quite a bit of attention to devote to a feature that Myanmar says the Tribunal should ignore. Like Jacob wrestling all night with the angel of God, Myanmar wrestles with St Martin's Island from one end of their Rejoinder to the other and with the same effect; they do not win and they exhaust themselves trying. Repeating their argument endlessly does not noticeably improve it. What it reduces to is this: the effect of taking St Martin's into account in drawing the equidistance line favours Bangladesh by bringing more sea within its EEZ; therefore it is disproportionate to Myanmar, therefore it must be ignored. But the same argument could be made about any coastal feature, island or mainland, which pushes or pulls the equidistance line in one direction or another: the effect will always be more beneficial to one State. That alone does not make it disproportionate or unworthy of base points in the plotting of the equidistance line.

Myanmar's own graphics demonstrate this. Here is Myanmar's sketch map R5.4 from page 113 of their Rejoinder. The red line, which is Myanmar's proposed boundary with Bangladesh, was constructed using only one base point on Bangladesh's coast, located at the land boundary terminus in the mouth of the Naaf River. The black line is a purported equidistance line, also constructed by Myanmar, using base points on St Martin's Island. What makes the black line disproportionate? The fact that Myanmar is not as well served by an equidistance line that is constructed using the four legitimate base points on St Martin's Island as it would be if St Martin's were ignored in favour of a single base point at the mouth of the Naaf River? Significantly, Myanmar never conducts or provides the results of a proportionality test, or a disproportionality test, to demonstrate that the equidistance line that results from including rather than excluding St Martin's is inequitable to Myanmar.

Now let us take a closer look at the effects of St Martin's on Myanmar's proposed equidistance line. Here again is Myanmar's proposed boundary line. Here again, and at tab 1.15 of your folders, is an equidistance line that is adjusted to compensate only for the effects of the secondary concavity of Bangladesh's coast, the concavity within a concavity, but which still ignores completely St Martin's Island; and here, superimposed as a purple line, is an equidistance line that does not ignore St Martin's. What this graphic now shows is that St Martin's partially offsets the

[59] MR at paras. 1.6, 3.15, 3.16, 3.17, 3.18, 3.26, 5.29, 5.34, 5.35, 5.67, 6.92.

distorting effects of the secondary concavity in Bangladesh's coast, but only partially. There is still an area here, shown in orange, which equidistance takes away from Bangladesh and gives to Myanmar because of the secondary concavity, and which is not recuperated even by including St Martin's in the drawing of the equidistance line. Even giving St Martin's the full effect that it so obviously deserves in the application of equidistance methodology does not come close to relieving the inequity of equidistance to Bangladesh. St Martin's only partially offsets the secondary concavity along Bangladesh's coast and does not begin to offset the distorting effects of the primary concavity in which the entire Bangladesh coast sits. That is why none of these purported equidistance lines can be considered equitable.

Mr President, before concluding my remarks, please allow me to return briefly to the Bengal Depositional System. Here again is Myanmar's proposed boundary line. As clearly depicted here, this line cuts off Bangladesh well within 200 miles of its coast, thereby completely denying it access to the outer continental shelf. Given this line, it makes no difference where the boundary line between Bangladesh and India is eventually drawn by the Annex VII Tribunal. Wherever that line is placed, it will inevitably intersect with the boundary line Myanmar has proposed in a way that precludes Bangladesh from reaching any part of the outer continental shelf.

In Bangladesh's view, this cut-off is particularly unjustified, especially in light of the extensive area of outer continental shelf that Bangladesh is entitled to claim by application of the provisions of article 76. The factual elements – the underlying geology and geomorphology – supporting Bangladesh's claim in the outer continental shelf are undisputed in these proceedings.[60] There is no question that the Bay of Bengal seafloor is the physical prolongation of Bangladesh's landmass, which extends into the Bay of Bengal far beyond 200 miles. Bangladesh submits that it cannot be equitable to ignore these undisputed geological and geomorphological facts and delimit the outer continental shelf without taking them into account.

I come now to my conclusions in regard to the geographical and geological facts of this case and the different approaches to them taken by the Parties. There are three:

First, the Parties agree that Bangladesh's entire coastline sits within a pronounced concavity and that it is the only coastal State on the Bay of Bengal with an entirely concave coastline. The Parties also agree that Bangladesh's coastline is marked by a secondary or double concavity within the overall concavity of its coast. They disagree over the relevance of these facts. Bangladesh considers that the concavity of its coastline renders equidistance inherently inequitable as a method for delimiting the maritime boundary in the EEZ and the continental shelf within 200 miles. Myanmar considers the concavity of Bangladesh's coast to be irrelevant and asks the Tribunal to ignore it for purposes of this delimitation.

Second, the Parties agree on all the facts concerning St Martin's Island, including its location within 5 miles of Bangladesh's mainland coast, its permanent population of

[60] MR, para.1.17.

over 7,000, its substantial tourism, agriculture and fishing industries, and its importance as a naval and coastguard base. Bangladesh believes it is impossible to ignore St Martin's for purposes of delimiting the maritime boundary in this case. Myanmar's submissions ask the Tribunal to ignore St Martin's entirely in the delimitation of the boundary in the EEZ and continental shelf, and to give it reduced weight in the delimitation of the territorial sea.

Third, and finally, the Parties also agree on all of the facts regarding the Bengal Depositional System, and the geological and geomorphological prolongation of Bangladesh's landmass into the Bay of Bengal far beyond 200 miles from Bangladesh's coast. They do not dispute that Myanmar's geological prolongation into the Bay of Bengal extends approximately 50 miles from its coast, and at no point reaches anywhere close to 200 miles. Bangladesh considers that these facts should be taken into account as a relevant circumstance in fashioning an equitable delimitation within 200 miles, and should inform the delimitation of the outer continental shelf as between Bangladesh and Myanmar beyond 200 miles. Myanmar argues that these facts are irrelevant, because its version of an equidistance line cuts off Bangladesh entirely from the outer continental shelf.

Mr President, Members of the Tribunal, this concludes my presentation this morning. I thank you Mr. President for your kind and courteous attention. Bangladesh's next speaker is Professor James Crawford. I would respectfully ask that you call him to the podium, unless you would prefer to hear from Professor Crawford after the mid-morning coffee break.

THE PRESIDENT: Thank you, Mr Reichler. We have seven minutes left, but at this point, the Tribunal will withdraw for a break. The hearing will be continued at 12 pm.

(Short adjournment)

THE PRESIDENT: I now give the floor to Mr James Crawford.

MR CRAWFORD: Thank you, sir. I am comparatively refreshed by a caffeine-free coffee break!

Mr President, Members of the Tribunal, it is a great honour to appear again before you and to do so on behalf of Bangladesh.

My colleague, Mr Reichler, has already introduced the geographical context, the key features of the coastlines, and the Parties' competing claims. It is my task to emphasise in the context of this dispute the core principles of maritime delimitation, as first articulated in the *North Sea Continental Shelf Cases*, and to stress their continuing vitality.

Mr President, Members of the Tribunal, the first modern judicial determination concerning a maritime boundary was that of the International Court in the *North Sea Continental Shelf Cases*. I stress the plural, "cases"; that was the official title of the

two cases after they had been joined by the Court's order of 26 April 1968,[61] following individual counter-memorials. The possibility of joinder – which was agreed between the Parties – arose in those cases for two reasons. First, they were before the same court, which had the power to order joinder. Second, the Court was not asked actually to delimit the maritime boundaries, but rather, in the words of the separate special agreements, to determine "what principles and rules of international law are applicable to the limitation as between the Parties of the areas of the continental shelf in the North Sea."[62] Following that, the Parties would delimit their respective boundaries by negotiation, which of course they did.[63]

The Court still lists the two cases separately on its website. They are numbers 1 and 2 on the list of modern maritime boundary decisions. (I omit the *Grisbadarna* case, where a tribunal delimited the territorial sea purportedly applying the law of the 17th century.[64]) If the *North Sea Cases* are numbers 1 and 2, then this – the first case to be decided by this Tribunal – will be the twenty-second judicial decision on maritime boundaries. You will find the complete list as tab 1.16 in your folders. After 42 years, 21 decisions – of the Court, of a commission, of *ad hoc* tribunals, of Annex VII tribunals, you may well think it is time for your first contribution to the case law.

Mr Reichler has already shown you the geographical situation in the *North Sea Cases* but it is worthwhile dwelling a little on the similarities and differences with that case that now confront you between Bangladesh and Myanmar. I will start with the differences – and there are five of them.

The first difference is that the Parties to the *North Sea Cases* had no common conventional link under the law of the sea. Denmark and the Netherlands were parties to the Geneva Convention on the Continental Shelf of 1958; the Federal Republic of Germany was not. The delimitation dispute was accordingly governed by customary international law, which – the Court famously held – did not embody any presumption, still less rule, of equidistance, but was framed in terms of equity and an equitable solution having regard to varying factors which the Court articulated.

Here, there is an important difference that you are, of course, making your decision under the 1982 Convention, which is an integrated treaty, a system of the law of the sea. Viewed from a certain perspective one can treat the twentieth century as a struggle for coherence in the law of the sea – punctuated no doubt by certain wars. We remember 1907 (at least some items on the agenda), 1930, 1958, 1960, the

[61] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 3 (hereinafter "*North Sea Cases"),* p. 9.
[62] Special Agreement between the Governments of Denmark and the Federal Republic of Germany, Article 1; Special Agreement between the Governments of the Federal Republic of Germany and the Netherlands, Article 1; see *North Sea Cases*, pp. 7-8.
[63] Treaty between the Kingdom of the Netherlands and the Federal Republic Germany concerning the Delimitation of the Continental Shelf under the North Sea, 28 January 1971, 857 U.N.T.S. 131; Treaty between the Kingdom of Denmark and the Federal Republic Germany concerning the Delimitation of the Continental Shelf under the North Sea, 28 January 1971, 857 U.N.T.S. 109. See also Protocol to the Treaties of 28 January 1971 between the Federal Republic of Germany and Denmark and the Kingdom of the Netherlands, respectively, concerning the delimitation of the continental shelf under the North Sea, 28 January 1971, 857 U.N.T.S. 155.
[64] (1909) 11 RIAA 147.

opening of UNCLOS III in 1974. The 1982 convention is the fruit of that struggle, and that presents a systemic issue. There is, perhaps unfortunately, no single court or tribunal designated to exercise a specialized jurisdiction under the Convention; instead there is an *à la carte* menu. But that is not a recipe for proliferation, still less rivalry. Courts and tribunals exercising jurisdiction under Part XV of the Convention should seek to act in aid of each other and, to the fullest extent possible, foster a consistent interpretation of the convention and its related agreements.

The second and obvious difference is that here there are two cases which have not been joined. One involves Myanmar, which is before you today; the other involves India, which is before an Annex VII tribunal, which will not hear the case before you have handed down your judgment. I will not go into the somewhat tangled procedural history that in the present case brought us to where we are. One can only say that it is regrettable that our two cases were not able to be joined. The more one works with Part XV the more issues one finds with it. I will not in this company mention the word "tuna"![65] The absence of a power of joinder is one of several mechanism problems with Part XV. It could only have been fixed had the drafters been willing and able to confront the full implications of their decision to create a new specialist tribunal with a special overarching mandate for the law of the sea. I refer of course to this Tribunal.

But the point for present purposes is that none of this, none of the procedural or mechanism problems, can affect the applicable law, which is the same for all judicial bodies exercising jurisdiction under the 1982 Convention. The key provision is article 293(1), which provides: "A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention." Article 293(2), like its counterpart in article 38(2) of the Statute of the International Court, deals with jurisdiction *ex aequo et bono*; but the jurisdiction to delimit maritime boundaries is jurisdiction to apply the law, not to decide *ex aequo et bono*.

Both paragraphs of article 293 refer to, "A court or tribunal having jurisdiction under this section". "This section" is of course Section 2 of Part XV, entitled, revealingly, "Compulsory Procedures Entailing Binding Decisions". I have just said that courts or tribunals with jurisdiction under Part XV should act in aid of each other, to the fullest extent possible. Part XV may not have solved the problem of proliferation of forums but it remains true that the 1982 Convention is an integrated text – no reservations allowed – and the applicable law under article 293 is a single body of law. Under that law, Bangladesh is entitled, in the absence of agreement, to maritime zones which are equitable as between itself and its neighbours, so of course are its neighbours. It is for the "courts or tribunals having jurisdiction under Part XV" to give effect to such entitlements, acting consistently with the judicial function. Thus it should not make any difference to the outcome of this case whether or not the proceedings have been joined – just as it should have made no difference in 1969. The availability or not of a procedure under Part XV should not affect the substance, the equities, the merits of Bangladesh's case.

[65] *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan),* Order of 27 August 1999, ITLOS Reports 1999; Annex VII arbitration, Washington, May 2000, 119 ILR 508.

In its Rejoinder Myanmar responds to this argument by asserting that Bangladesh has no "pre-existing rights which would pre-empt the maritime delimitation".[66] According to Myanmar: "Bangladesh asserts that it already has maritime rights – in particular in areas also claimed by other States – and deduces from these alleged rights that an equitable maritime delimitation would have to respect them." Myanmar responds: "International law does not grant to a coastal State pre-existing or absolute rights to a 200-mile limit", nor to some alleged "indisputable entitlement in the continental shelf beyond 200 miles".[67]

There are at least three things wrong with this. First, it parodies Bangladesh's argument: we have never suggested that our rights in the maritime areas in question are prior to those of Myanmar or that we are approaching this case on anything else than a basis of equality. Second, it treats maritime delimitation as if it involved the sharing out of an undivided whole in the waters concerned, which is certainly not the case. Third, it misrepresents the judicial process, which under article 293(1) is rule-governed and not a mere discretionary parcelling out. I accept, as I must, that the rules are open-textured – in the 1982 Convention perhaps more than usually so – but that does not mean that they do not exist, or that you are unconstrained. You are not – and in particular you are not constrained by equidistance, even as a starting point, as I will show.

The third difference between this case and the *North Sea* is that – unlike the Court in 1969 – you actually have to delimit the maritime boundary. Moreover, it is – on our submission – a boundary extending beyond 200 miles from the baseline, to the so-called outer continental shelf. But that should present no difficulty of principle. My colleagues will come back to the outer continental shelf in later presentations. The more general point is that it is precisely the function of tribunals sitting under Part XV to settle disputes over sea boundary delimitation by delimiting the boundaries to their full extent and definitively. The only exception is the work of the Annex II Commission, which does not affect bilateral boundaries beyond 200 miles. The position in the *North Sea Cases* was in that respect exceptional. The Parties to the two special agreements specifically withheld from the Court the actual task of delimitation and instead asked it to decide an issue of principle – equidistance plus special circumstances, as laid down in article 6 of the Geneva Convention on the Continental Shelf or some broader, more flexible principle of delimitation. You of course know the result: the Court rejected article 6 and rejected any suggestion of a presumption of equidistance. You can see these negotiated boundaries on the screen, and it is at tab 1.17 in your folders. By comparison with equidistance, the Federal Republic of Germany got quite a lot more. Its continental shelf beyond 12 miles, applying equidistance, would have been 16,500 square kilometres to the nearest hundred. Its negotiated continental shelf as shown here was some 28,600 square kilometres, a substantially greater area, some 1.7 times greater, nearly twice.

Now, it is obvious from the graphic that the resulting lines followed no principle but were the result of bargaining which took into account access to resources. No court or tribunal could have drawn those lines, certainly no sober court or tribunal! But, especially now with 40 years of delimitation experience, a court or tribunal could

[66] MR, p 147.
[67] MR, para. 6.9.

determine a continental shelf boundary in the North Sea between the three states. That task might have been difficult but its difficulty would not have prevented its accomplishment. My present point is that this case is different from *North Sea Cases*, in that the experiment of asking for a response on a point of principle and reserving the actual delimitation for the parties to negotiate has not been followed in any subsequent case. No doubt one reason is that articles 74(1) and 83(1) require the Parties to try to reach agreement before resorting to third-party settlement at all. There is no point in telling them to go off and negotiate some more when they have already been fruitlessly negotiating for years, as here. You are here to resolve the disputes, not to postpone their resolution!

The fourth difference is this. By virtue both of the joinder of the two proceedings and the terms of its mandate, the Court in *North Sea Cases* had no third-party problem. There was no problem with the United Kingdom because the boundary between it and the opposite coastal states was fixed and was not in dispute. There was no problem with the adjacent States since they were or had become Parties to the case. Here, by reason of the non-joinder of India, there is a third-party problem. You cannot in these proceedings delimit maritime boundaries as between Bangladesh and India; but that does not mean that you cannot have regard to the situation between Bangladesh and India as a fact, and it does not mean that you cannot perform your task as between Bangladesh and Myanmar to the full.

The fifth difference is that for the first time at the international level – the very first time – your Tribunal is asked not just to delimit a single maritime boundary out to 200 miles but to go further – to boldly go – and to delimit the outer continental shelf. This claim is made of course in the alternative, since our primary submission, based on geomorphology, is that Myanmar has no entitlement beyond 200 miles in any event.

So much for the differences between this case and the *North Sea Cases*.

As against these differences there are two overwhelming similarities, a geographical one and a legal one. The geographical one has already been illustrated, and here it is again. These three States front onto the Bay of Bengal on a markedly concave coastline. This can be compared with the situation in the North Sea, where the scale is of the same general order, but the extent of course is not. In fact, as Mr Reichler has said, the position of Bangladesh is in one respect at least even worse than that of the Federal Republic of Germany, since the waters of the Bay of Bengal are unconfined whereas the three *North Sea* States were limited by the opposite median line boundary with the United Kingdom: there was no possibility of their getting to 200 miles in any event.

Myanmar argues by reference to its graphic R6.4 that there is "nothing comparable between the *North Sea Continental Shelf Cases* and this case."[68] Since, as we will shortly see, it asserts that the situations in *Cameroon/Nigeria* and *Barbados/Trinidad and Tobago* are comparable, I can only say it has a curious conception of comparability. Looking at the graphic one would say that the situations here are similar in principle. They show what a concavity can do to a coastal State in the grip of equidistance – it is squeezed of areas of overlapping potential entitlement. It is

[68] MR, para. 6.72; for graphic R6.4 see MR, p.179.

true that Germany's situation within 200 miles from the coast was worse, but it was for the same cause.

Indeed the middle State on a concave coast has become the textbook example of the inappropriateness of the equidistance principle in some cases. But because the final outcome in the *North Sea Cases* was negotiated, not adjudicated, there has been surprisingly little consideration in the literature of how exactly to delimit in such a circumstance. The present dispute raises, squarely, that issue.

Myanmar's response to the concavity argument is to trivialise it by reference in particular to *Cameroon/Nigeria* and to the decision of the Annex VII Tribunal in *Barbados/Trinidad and Tobago*. I should say something accordingly about both cases. First, *Cameroon/Nigeria*. Myanmar described it as "compelling in the present case".[69] It implies that it is comparable. It continues:

> "First, despite the obvious concavity of the Gulf of Guinea and particularly of the Bay of Biafra and of Cameroon's coast, which is not very different from that of Bangladesh, the ICJ decided that the configuration of the coast does not represent 'a circumstance which would justify deriving, shifting, or *a fortiori* setting aside the equidistance line.'"[70]

This is, with respect, a complete misinterpretation. The Court did not decide that "the obvious concavity of the Gulf of Guinea and particularly of the Bay of Biafra and of Cameroon's coast" did not justify shifting the equidistance line: it decided that the relevant coasts were not concave at all!

In order to understand the point it is necessary to look briefly at the geographical situation in *Cameroon/Nigeria*, and in particular the claim made by Cameroon (through my old adversary and friend, Professor Pellet – it was one of the cases in which we crossed swords). Here you can see the immediate coastal geography in figure R6.2 taken from Myanmar's Rejoinder.[71] It is entitled, "Cameroon's Relevant Coast in Cameroon/Nigeria", and it accurately shows that part of the Cameroon coast which the Court held to be relevant, from Debudsha Point and around the Bakassi Peninsula to the land boundary.

It is the thin red line on this map and easy to overlook. It is dwarfed by the thick red line called "coastal concavity". The result in that case is now superimposed on figure R6.2. Myanmar seeks to recruit the decision to its cause: according to it, "the *Cameroon v Nigeria* case clearly supports Myanmar's position." (I am fond of the word clearly.)
Myanmar justifies this in the following passage:

> The ICJ decided that the cut-off effect was not a special circumstance requiring the adjustment of the equidistance line *even if* there was an additional element which exacerbated this effect (Bioko Island in this case.)… the application of the 2002 Judgment would lead to strict equidistance between the adjacent coasts of Bangladesh and Myanmar even though the

[69] MR, para. 6.39.
[70] *Ibid.*
[71] MR, p. 165.

> cut-off effect would be more marked for Bangladesh than it is in the actual geography of this case.[72]

In the last sentence, Myanmar is hypothesizing that the Island of Bioko, which you see on the screen, is transposed to the Bay of Bengal.

As an exercise in the legal imagination this takes some beating. Myanmar conjures into existence in the Bay of Bengal a non-existing Bioko while further south it ignores an island which does exist, St Martin's Island. For Myanmar, geography is an exercise in virtual reality!

In response, I need to draw attention to the actual coastal geography of the *Cameroon v Nigeria* case and to Myanmar's remark that Bioko Island was simply "an additional element which exacerbated this [cut-off] effect".[73] Bioko Island was not merely an "additional element" in that case. It was the key to the maritime part of the case, rather as St Martin's Island is key here, but for different reasons. Bioko Island is a large island right in the corner of the concavity: it is host to the capital city of Equatorial Guinea. The distance between the north-west cape of Bioko and the mainland, Cameroon's Debundsha Point, is less than 24 miles. It is less than twice the breadth of the territorial sea. It is instructive in this regard to see Cameroon's actual claim line in its Memorial, which we have superimposed on the map. It was that line – and the express claim to redistribute the maritime zones of the seven States bordering the Gulf of Guinea – that the Court rejected. It never had to consider what should have been done if Bioko had not been there – for the very good reason that it is there.

The problem for Cameroon is that it was, relative to Bangladesh here, "a stranger in a crowded room". I wanted to sing that phrase but I find that it is not quite accurate for the song but it is accurate for the position of Cameroon. It was the stranger in the crowded room in the corner of the Gulf of Guinea. As counsel for Nigeria pointed out, Cameroon had bilateral coastal relationships as adjacent or opposite State with three other coastlines – the east-facing coastline of Bioko, the east-facing archipelagic coast of São Tomé and Principe, and the adjacent mainland coast of Rio Muni (Equatorial Guinea). Nigeria had no involvement in any of those coastal relationships.

The only relevant coastal relationship between Nigeria and Cameroon was as regards the Cameroon coastline to the west of Debundsha Point, but those coastlines were not concave at all but essentially south-facing and the Nigerian relevant coastline was actually longer than Cameroon's. Cameroon sought to take the concave coastline to the east of Bioko, to lift it up over Bioko, and to take it into account *vis-à-vis* Nigeria. That was caught by the prohibition against the reconfiguration of geography. The Court resolutely refused to do it. It said:

> ….the Court cannot accept Cameroon's contention that account should be taken of the coastline of the Gulf of Guinea from Akasso (Nigeria) to Cap Lopez (Gabon) in order to delimit Cameroon's maritime boundary with Nigeria

[72] MR, para. 6.42(iii).
[73] *Ibid*.

> and, on the other, that no account should be taken of the greater part of the coastline of Bioko Island…..the presence of Bioko makes itself felt from Debundsha, at the point where the Cameroon coast turns south-south-east. Bioko is not an island belonging to either of the two Parties. It is a constituent part of a third State….The part of the Cameroon coastline beyond Debundsha Point faces Bioko. It cannot be treated as facing Nigeria so as to be relevant to the maritime delimitation between Cameroon and Nigeria.[74]

To repeat, the Court applied equidistance in that case, not, as Myanmar would have it, "despite the obvious concavity of the…Bay of Biafra and of Cameroon's coast, which is not very different from that of Bangladesh":[75] it decided that the relevant Cameroon coasts were not concave at all because they were limited in extent. If Sherlock Holmes, the famous English detective, had been asked to solve the problem – and I like to think that if Sherlock Holmes had lived in our times he would have been an international lawyer – his amanuensis Dr Watson would have described the story as "The Clear Case of the Missing Concavity".

In particular, the Court nowhere said that if the island of Bioko did not exist, so that Cameroon and Nigeria had looked out unimpeded into the Gulf of Guinea, a strict equidistance solution would still have been appropriate.[76] That "no Bioko" case did not arise, and it is pure speculation what the Court would have done in that event. We can agree with Myanmar that Bangladesh would be worse off – I should say, even worse off – if there were an island the size of Bioko in front of its coast belonging to a fourth State – you can see that it is Eastern Bioko. No doubt the inhabitants of Western Bioko could go there on holiday! But we are not in Arthur Conan Doyle's fictional world and we do not have to solve that problem. The problem you have to solve is that of coasts which are open to the sea and not impeded.

In its Rejoinder Myanmar also tries to recruit *Barbados/Trinidad and Tobago* to its cause. It says that Bangladesh's arguments have been tried once before and rejected by the Annex VII Tribunal in that case.[77] Trinidad and Tobago argued that an equidistance-based boundary with Barbados would not lead to an equitable solution because, among other reasons, it would entirely cut it off from its claimed entitlement beyond 200 miles. In its decision, the Tribunal did adjust the equidistance line somewhat in favour of Trinidad and Tobago, as you can see. I argued that part of the case for Trinidad and Tobago. I have always regarded that little triangle in the south-east – I call it affectionately the Tobago triangle – as one of the modest successes in my life. I do admit that it is a very modest success though, relative to Barbados' actual claim, it was a real one. A tribunal that was as devoted to equidistance as Myanmar says this one was would not have awarded that triangle.

Yet it is true that that deviation from equidistance was not enough to give Trinidad and Tobago access to the area beyond 200 miles. In fact, the Tribunal's delimitation

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[74] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening),* Judgment, I.C.J. Reports 2002, para. 291.
[75] MR, para. 6.39.
[76] Cf MR, para. 6.42(iii).
[77] *Delimitation of Maritime Boundary between Barbados and Trinidad and Tobago,* Award, 11 April 2006, reprinted in 27 RIAA 147. Reproduced in MB, Vol. V.

line stopped at exactly the point 200 miles from Tobago where it intersected the previously agreed boundary between Venezuela and Trinidad and Tobago.

There are, however, several important distinctions between that case and this one. First of all, Trinidad and Tobago played a significant role in cutting itself off – it was a sort of auto cut-off – by earlier agreeing with Venezuela to a delimitation that materially departed from equidistance to Trinidad and Tobago's detriment. The difference between the Venezuela-Trinidad and Tobago equidistance line and the agreed line is shown again on the map. The Court made specific reference to it, saying that Barbados cannot be required to compensate Trinidad and Tobago for the agreements it made it by shifting the maritime boundary in favour of Trinidad and Tobago.[78] If Trinidad and Tobago had not made that concession to Venezuela, it would have had the potential outlet to the area beyond 200 miles that it sought, at least in the south.

For the *Barbados/Trinidad and Tobago* case to be analogous to the present case, Bangladesh would have to have previously agreed with India to a delimitation departing from equidistance in favour of India, and being tried to pass the cost on to Myanmar, but of course it is doing no such thing. We are currently before an Annex VII tribunal in a parallel case with India where we are making many of the same arguments against equidistance. This Court is part of a system of delimitation. You do not decide a case involving India but you are entitled to take into account the fact that the case involving India has not been decided and that the same issues will arise.

A second distinction between the *Barbados/Trinidad and Tobago* case and the present one is that Trinidad and Tobago had not made a submission to the CLCS, the Annex II Commission, which it did, somewhat surprisingly, in 2009. This fact rendered Trinidad and Tobago's arguments about its entitlement "theoretical and highly speculative",[79] in Barbados' words. The same is not true here. Bangladesh has made its submission to the Annex II Commission on a fully articulated basis. There is nothing either theoretical or speculative about our claim to the outer continental shelf.

A third point and perhaps the most important is that the coastal frontages in *Barbados/Trinidad and Tobago* were tiny: the north- and east-facing coast of the small island of Tobago and the north- and east-facing coast of the small State of Barbados. There was no concave coastline, no state squeezed between adjacent neighbours. It was simply that Barbados lies well to the east of Tobago and that its 200 mile EEZ projects in front of the EEZ of Trinidad and Tobago, overlapping to a small extent even with the 200 mile EEZ of Guyana. The two situations are completely different.

Thus neither of the "modern" cases on which Myanmar relies to distinguish the *North Seas* case is of any help to it. Bangladesh's situation is comparable to Germany's.

[78] *Ibid.*, para. 346.
[79] *Delimitation of Maritime Boundary between Barbados and Trinidad and Tobago,* Reply of Barbados (9 June 2005) Vol. I, para. 152.

So that is the first geographical similarity between his case and the *North Seas* case, but I mentioned also a legal similarity. This concerns the applicable law. The question is as follows: what is the lesson of the *North Seas* case after 40 years and 21 decisions? Of course, article 6 of the 1958 Convention on the Continental Shelf, with its express reference to equidistance beyond the territorial sea, was dropped. It was replaced with the open-ended formula in article 74(1) and 83(1), with its closing phrase "in order to achieve an equitable solution". Article 6 was rejected but does that mean that the Court's reasoning in 1969 was effectively endorsed? If so, that would have strong implications for our case. Bangladesh could not, consistently with that reading of the decision, unless the decision itself is repudiated, have the equidistance principle foisted upon it, as Myanmar wishes to do, though admittedly with an equidistance line modified to Bangladesh's disadvantage.

What does the respondent State say about this question? In its Rejoinder it makes five points.

First, and I am quoting: "the law has considerably developed and matured since the North *Sea Continental Shelf* cases"; the inference is that those decisions were undeveloped and immature – a bit like a teenager;

Second, the decision is riddled with "indeterminacy" whereas since 1969 the uncertainties have been largely cleared up;

Thirdly, the decision played a role in the adoption of the rule in the 1982 Convention but it was a minor role;

Fourthly, the *North Sea Continental Shelf* cases have in important respects been superseded by the subsequent case law.

Fifthly, as to the doctrine of natural prolongation, the decision was largely overtaken by the outcome of the conference.

Indeed, Myanmar repeatedly links the *North Sea Cases* with the *Guinea/Guinea-Bissau* case; the latter it describes as "a very odd decision which calls for particular caution".[80] You've got to be careful which cases you are associated with!

All in all, I am reminded of Alexander Pope's lines, which I hope I may adapt for the occasion, for what Myanmar seeks to do is to

Damn [the *North Sea Continental Shelf* case] with faint praise
Assent with civil leer
And without sneering
Teach the [Tribunal] to sneer.[81]

I will not analyze in detail the *Guinea/Guinea-Bissau* decision – my colleague Larry Martin will do so on Monday – but I will analyze in a bit more detail the *fons et origo mali*, if I can paraphrase what the intention of Myanmar seems to be, the 1969

[80] MR, para. 6.10; see also ibid, para. 6.47.
[81] Alexander Pope, "Epistle to Dr Arbuthnot", in Selected Poetry (Oxford World Authors, 1994) 93.

decision itself. I propose to say something briefly about the legislative history, then its treatment in subsequent cases, before concluding.

The parties have debated the legislative history of article 74 and 83 at some length in the pleadings, and I will not go into the detail here. I will simply make three points.

The first is that Myanmar, while admitting that the decision "played a role" in the language of articles 74 and 83, asserts that this was only a minor role. It is a bit like saying that Claudius "played a role" in Shakespeare's *Hamlet*; a bystander really – all he did was kill Hamlet's father, usurp the throne and marry his mother under questionable circumstances. The authority cited by Myanmar for the limited role of the *North Seas* case in the 82 Convention is El Salvador but, in the passage cited, El Salvador was arguing for article 6, that it should be adopted as a rule. It was not; El Salvador lost that argument.

The second point is that even a mere chronological recital shows what happened.

1945: the Truman Proclamation affirms that delimitation of the continental shelf is to take place by agreement "in accordance with equitable principles".[82]

1958: acting on cartographic advice and in the interests of certainty, the legislators agree on article 6, equidistance subject to special circumstances – equitable principles or equity are not mentioned.

1969: The *North Sea Cases* reject article 6 as customary international law, referring to the importance of negotiation and equitable considerations.

1974-1982: UNCLOS III rejects article 6 and prefers a general formulation reminiscent of the Truman Proclamation in order to achieve an equitable solution.

You do not need to be Sherlock Holmes to follow the train of events; even the stolid Dr Watson could do that without the aid of a detective.

The third point is that the 1982 Convention predated the decisions on which Myanmar relies as evidence of movement away from the *North Sea* cases towards a presumption an equidistance, but as between the parties to it, it is the 1982 Convention which prevails and not article 6. Of course articles 74 and 83 cannot be read in isolation, clinical or otherwise; they refer to international law which can change and develop, but they expressly refer to the agreement of the parties and to equity, which is the context and sense of the 1969 decision. The presumption must be that the law develops accordingly, with greater flexibility than Myanmar allows.

I turn briefly to review the *North Sea* cases through the eyes of later Courts and Tribunals. The decision was of immediate relevance in the *Tunisia v Libya*[83] and

[82] 1945 United States Presidential Proclamation No 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil of the Seabed and Continental Shelf, reprinted in Lowe & Talmon, The Legal Order of the Oceans: Basic Documents of the Law of the Sea (2009), no 5.
[83] *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, (hereinafter "Tunisia/Libya").

Gulf of Maine[84] cases. In neither decision was the central contention of the *North Sea* cases – that equidistance was not custom or even a presumption – challenged. In fact in neither case did any party request delimitation according to an equidistance or median line.[85] You will recall a special agreement[86] in the *Tunisia v Libya*[87] which provided that the Court, in rendering its decision, should take account of equitable principles in the relevant circumstances, as well as the recent trends admitted at the Third Conference on the Law of the Sea.

In *Gulf of Maine* the Chamber invoked the *North Sea* cases while positing a broad solution to the problem before it noting: "delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result."[88] The Chamber then used a bisector line to delimit the contested area, discarding equidistance.[89]

In *Libya*/*Malta* the court was called upon to delimit the maritime boundary between two opposite States. Equidistance functions differently between opposite States as compared with adjacent States. The Parties were in agreement that their dispute was governed by customary international law. The Court concluded that article 83(1) was an adequate reflection of customary international law – not surprisingly. The Court went on to place particular emphasis on the need for an equitable solution and further noted:

> "The Convention sets a goal to be achieved, but is silent as to the method to be followed to achieve it. It restricts itself to setting a standard, but it is left to the States themselves, or the courts, to endow this standard with specific content."[90]

The Court remained adamant that by first having recourse to an equidistance line, it was upholding the *North Sea* cases with equitable principles as the central mode of delimitation. Consequently, insofar as judicial commentary is concerned, the Court in *Libya*/*Malta* clearly considered the *North Sea* cases to be continued good law. It is true that it continued the trend of looking at equidistance as the best method of determining equity, but it never said that it was the only method.

It should be remembered that the central point of *North Seas* was not that the equidistance line could not be considered as equitable; it was that there was no single method of delimitation.[91] In *North Seas* the Court disregarded a delimitation

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[84] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment I.C.J. Reports 1984, p. 246.
[85] The final result was the division of the contested area into two sectors, which were then delimited separately to reach the most equitable solution.
[86] Special agreement between the Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya for the submission to the International Court of Justice of the question of the continental shelf between the two countries, 10 June 1977, 1120 U.N.T.S. 106.
[87] See further *Tunisia/Libya,* at pp. 43–44.
[88] *Gulf of Maine*, at para. 112.
[89] *Ibid.*, pp. 300–302.
[90] *Continental Shelf (Libyan Arab Jamahiriya v. Malta),* Judgment, I.C.J. Reports 1985, p. 13 (hereinafter "*Libya v. Malta*"), p. 30.
[91] *North Sea Cases*, pp. 35–6, 45–6.

based on the equidistance which would have led to an inequitable result due to the concavity of the coastline[92] and advocated a more nuanced delimitation. That implication was equally accepted in the later decisions – indeed, the possibility of the plurality of methods even in a single case:

> "If for the above reasons equity excludes the use of the equidistance method in the present instance as the sole method of delimitation, the question arises whether there is any necessity to employ only one method for the purposes of a given delimitation. There is no logical basis for this, and no objection need be felt to the idea of effecting a delimitation of adjoining continental shelf areas by the concurrent use of various methods. The Court has already stated why it considers that the international law of continental shelf delimitation does not involve any imperative rule and permits recourse to various principles or methods, as may be appropriate, or a combination of them, provided that, by the application of equitable principles, a reasonable result is arrived at."

And yet there are commentators who, in search for complete and illusory certainty, failed to grasp that essential point: there is a choice of methods.

Libya/*Malta* was also the decision in which the *North Sea Continental Shelf* position on natural prolongation was abandoned for delimitations within 200 miles. This is the one qualification which was brought out by the 1982 Convention. The Court said:

> "To rely on the earlier jurisprudence would be to overlook the fact that where such jurisprudence appears to ascribe a role to geophysical or geological factors in delimitation, it finds warrant for doing so in the regime of the title itself which used to allot these factors a place which now belongs to the past, *in so far as sea-bed areas less than 200 miles from the coast are concerned*."[93]

That is the qualification. It is a crucial qualification in the accretionary manner of the law of the sea and of international law in general. The automatic 200-mile continental shelf was superimposed on a newly-defined geomorphological continental shelf which in certain circumstances extended beyond 200 miles. These are sovereign rights. The one does not exclude the other.

With *Libya*/*Malta* showing the way, the Court has issued a series of continental shelf delimitation decisions, all of which follow the *North Seas* in their application of equitable principles while normally utilizing the equidistance line as the default first step,[94] but not inevitably. This allows for the marriage of equity and greater certainty in delimitation, as the Court observed in *Cameroon v Nigeria*.

[92] *North Sea Cases*, p. 49.
[93] *Libya v. Malta*, p. 36 (emphasis added).
[94] D. Colson, "The Delimitation of the Outer Continental Shelf Between Neighboring States" (2003) 97 AJIL 91, 101.

This method has been seen in *Jan Mayen*,[95] in *Qatar v Bahrain*,[96] in *Cameroon v Nigeria* and in *Black Sea*.[97] In all of these cases *North Sea Continental Shelf* was referred to without disapproval. Particularly popular was the *dictum* that "delimitation in an equitable manner is one thing, but not the same thing as awarding a just and equitable share of a previously undelimited area, even though in a number of cases the results may be comparable, or even identical."[98] Other points relied on in *North Seas* include the various factors that will justify the modification of a provisional equidistance line[99] and the distinction between delimitation and the apportionment of resources.[100] The central thesis of the *North Sea* cases is not diminished. The equidistance line is applied in all cases with particular attention to equity, even if is found that equity does not require the application in a given case of a different methodology.

I turn now from the Court to arbitrations. The *Anglo-French Continental Shelf* arbitration[101] fills a gap of sorts between the *North Sea* cases and *Tunisia v Libya*. The law applicable was the 1958 Convention, but the Tribunal chose to interpret it in light of the *North Sea* cases, which was considered to be reflective of customary international law,[102] and it paid great attention to the decision.

In the *Guinea-Guinea Bissau* maritime delimitation,[103] there was a more direct application of *North Sea Continental Shelf*. There the 1958 Convention did not apply. The Tribunal emphasized that equidistance was one of only several methods that could be applied to resolve the dispute, and it refused to draw a median line on the basis that it would not be equitable to do so.[104]

In the light of *Libya*/*Malta,* the 1969 decision was also recontextualized in the *St Pierre and Miquelon*[105] and *Eritrea*/*Yemen*[106] cases.[107] Equidistance was considered first as a methodology but was abandoned to a large extent in *St Pierre and Miquelon* and retained in *Eritrea*/*Yemen*. In the former case, where *North Sea* cases are mentioned, it is spoken of as the progenitor of later decisions on

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[95] *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, p. 38.
[96] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),* Merits, Judgment, I.C.J. Reports 2001, p. 40.
[97] *Maritime Delimitation in the Black Sea (Romania v. Ukraine),* Judgment, I.C.J. Reports 2009, (hereinafter "*Romania v. Ukraine*").
[98] *North Sea Cases*, p. 18. See, e.g., *Romania v. Ukraine*, p. 100.
[99] *North Sea Cases*, p. 59. See, e.g., *Romania v. Ukraine*, p. 112.
[100] *North Sea Cases*, p. 22. See, e.g., *Romania v. Ukraine*, p. 116.
[101] (1977) 54 I.L.R. 6.
[102] (1977) 54 I.L.R. 6, 57. Indeed, both France and the UK relied heavily on the decision in making their submissions.
[103] *Delimitation of the Maritime Boundary between Guinea-Guinea Bissau* (1985) 77 ILR 635.
[104] (1985) 77 I.L.R. 635, 686–91.
[105] *Case Concerning Delimitation of Maritime Areas between Canada and France (St Pierre et Miquelon),* Decision, 10 June 1992, 95 I.L.R. 645.
[106] *Arbitration between Eritrea and Yemen,* Award, Second Phase (Maritime Delimitation), 17 December 1999, 119 I.L.R. 419.
[107] D. Colson, "The Delimitation of the Outer Continental Shelf Between Neighboring States" (2003) 97 AJIL 91, 101.

delimitation.[108] In *Eritrea*/*Yemen* it is referred to in order to explain the corrective "test" of proportionality.[109]

I have already dealt with the *Barbados/Trinidad and Tobago* arbitration as to the actual situation. But what the Tribunal there said, and I quote:

> "It is today well established that the starting point of any delimitation is the entitlement of a State to given maritime areas ... At the time when the continental shelf was the principal maritime area beyond the territorial sea, such entitlement found its basis in the concept of natural prolongation ... However, the subsequent emergence and consolidation of the EEZ mean that a new approach was introduced, based upon distance from the coast." [110]

Well that is true, but it is true only within 200 miles, and it is without prejudice to the effect of the *North Sea* cases in the actual context of delimitation.

Finally, there is the *Guyana*/*Suriname* arbitration, [111] in which only limited reference is made to the *North Sea* cases. The Court's elucidation of the "equity is not equality" principle emerged in the award, quoted through the lens of *Cameroon v Nigeria*.[112]

So I've been through them all, at some speed.

To summarize, the *North Sea Continental Shelf* decision remains good law. It remains the progenitor of the modern law of maritime delimitation and requires, in essence, two things: the use of equitable principles in the delimitation of maritime boundaries to achieve an equitable result; and, second, no one method of maritime delimitation is considered automatically as obligatory.[113] The sole area in which the decision is out of step with the current law is in its reliance on natural prolongation as defining the continental shelf within 200 miles, and it is for this reason that *Libya/Malta* is considered the modern benchmark; not as a replacement for the *North Sea* cases but as an elaboration which emerged to take account of the post-UNCLOS landscape.

Mr President, members of the Court, let me summarize.

The decision in the *North Sea* cases has never been disapproved or even overtly criticized as a decision on delimitation in subsequent decisions of the Court or of other Tribunals. Forty-two years on, it is still taken as authority.

[108] See, e.g., (1992) 95 I.L.R. 645, 667 (identifying the principle of non-encroachment as being introduced by North Sea Cases).
[109] (1999) 119 I.L.R. 419, 465.
[110] (2006) 139 I.L.R. 449, 519–520, and see further 521–522. The Tribunal also made reference to *North Sea Continental Shelf* as the source of the principle of non-encroachment (at 545).
[111] (2007) 139 I.L.R. 566.
[112] (2007) 139 I.L.R. 566.
[113] As seen in the *Gulf of Maine, Guinea-Guinea Bissau* and *St Pierre & Miquelon* cases.

Second, it is notable for its ready acceptance of the geomorphological continental shelf as already customary international law. That strand of custom is still very much with us in the context, for example, of the Annex II Commission.

Third, the decision has a strong relation to existing customary international law, implying a dynamic conception of our discipline – by contrast with what I will only describe as the ethnocentric stolidity of Lord Asquith in the *Abu Dhabi* case (his Lordship).[114] Notably, in emphasizing the importance of negotiated solutions and of equitable outcomes, the *North Sea* cases reaffirmed the customary law origins of the continental shelf doctrine in the Truman Proclamation.

Despite Myanmar's insistence to the contrary, the *North Sea* decision was obviously determinative in the formulation of the delimitation provisions of the 1982 Convention, as we have seen with the authority of Dr Watson.

Although overlain by subsequent state practice and treaty provisions concerning the 200-mile zone (both as *ipso facto* continental shelf and claimed EEZ) the *North Sea* cases continue to be influential in terms of delimitation.

In particular, there is no presumption of equidistance outside the territorial sea (see article 15 where it is expressly referred to) – a distinction both sensible in itself and one which testifies to the influence of the decision in terms of delimitation beyond 12 miles.

In other words, maritime delimitation is inescapably a more flexible and open process than article 6 implied, at least on a strict interpretation. In many situations one starts with equidistance, but equidistance is subsumed by the overarching principle stated in the 1982 Convention and is displaced where the circumstances require it – as they did with the angle bisector in *Nicaragua*/*Honduras*. That decision came as a shock to some. It was a manifestation of the underlying logic of the maritime delimitation rules and the law of the sea.

It is in the tradition of judicial decisions on the law of the sea to opt for flexibility rather than rigidity, notably *Anglo-Norwegian Fisheries*[115] and – dare I say it? – even *Lotus*.[116] The latter decision was repudiated by the legislator, whereas *Anglo-Norwegian Fisheries* and *North Sea Continental Shelf* were accepted, and still are accepted, as fundamental precedents.

Consistently with this appreciation of the law, an equidistance line solution in the present case is not opposable to Bangladesh, any more than it was to Germany. Equity prevails, OK! To support that, I have allocated each decision since 1969 to one or more of four categories: strict equidistance; modified equidistance; geometric solutions, including bisectors; and the fourth, miscellaneous category. That is at tab 1.18 in your folders. You will see that the cases are spread across the spectrum: seven equidistance; five modified equidistance; four geometric solutions; and five *sui generis*. That is in the nature of things.

[114] See the Award of Lord Asquith as umpire in the *Abu Dhabi* Arbitration (1951) 37 I.L.R. 18.
[115] ICJ *Fisheries case* (United Kingdom v. Norway), Judgment, ICJ Reports 1951, p. 116, 131.
[116] *The Lotus* (1927) P.C.I.J. Series A, No. 10.

Mr President, members of the Tribunal, this is your first delimitation case; this is your *North Sea Continental Shelf* case. It is brought under the 1982 Convention, the greatest diplomatic achievement in the field of general international law of our shared professional lives. That is the heritage that you will leave to your successors, and your decision in this case will be a notable part of that heritage.

There are, with respect, at least five elements that fall within your mandate in this case and by which you as Judges, I respectfully suggest, will be judged. I say this with all the respect due to this Tribunal and its present membership.

Those five elements are as follows: first, respect for the existing body of authority on maritime delimitation and its integration into articles 74 and 83 of the 1982 Convention; secondly, developing the geomorphologic basis of the continental shelf beyond 200 miles and, depending on your decision in that regard, delimiting for the first time that sector of the shelf between two States, such delimitation of course without prejudice to the position of India as a third State in these proceedings; thirdly, giving due – we say full – effect to the significant feature of St Martin's Island, in the spirit of article 121 of the Convention, a point that I have not addressed because my colleagues are dealing with it later on; fourthly, taking due account of the position of India as a third party, but nonetheless producing as complete a delimitation as possible as between these two States – they have not been able to solve the problems themselves and it is for you to solve them; above all, delimiting the maritime entitlements, as you decide them to be, of these two States "on the basis of international law ... in order to achieve an equitable solution".

For its part, Bangladesh is confident in this Tribunal. It is confident that you will perform your task to the full, with full regard to what is appropriate in the high tradition of the law of the sea.

Mr President, members of the Tribunal, thank you for your attention.

THE PRESIDENT: Thank you, Mr Crawford. That brings us to the end of today's sitting. The pleading will be resumed tomorrow morning at 10 a.m. The sitting is now closed.

(The meeting closed at 1 p.m.)