

PERMANENT COURT OF ARBITRATION

ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

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In the Matter of Bay of Bengal Maritime Boundary
Arbitration Between:

THE PEOPLE'S REPUBLIC OF BANGLADESH

PCA Case No. 2010-16

and

PCA Reference BD-IN

THE REPUBLIC OF INDIA

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Volume 6

HEARING ON THE MERITS

Wednesday, December 18, 2013

The Permanent Court of Arbitration
PCA Administrative Council Chamber/
"Japanese Room"
Carnegieplein 2, 2517 KJ The Hague
The Netherlands

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

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JUDGE JEAN-PIERRE COT, Arbitrator

JUDGE THOMAS A. MENSAH, Arbitrator

DR. PEMMARAJU SREENIVASA RAO, Arbitrator

PROFESSOR IVAN SHEARER, Arbitrator

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1 PROCEEDINGS

2 PRESIDENT WOLFRUM: Ladies and gentlemen, we are now on the last
3 round--the last leg, so to speak--of our oral proceedings, and this is now India's turn; and,
4 according to the schedule in front of me, it's Professor Reisman, who will start. And I ask
5 you, please, to take the floor.

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

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

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

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

17 PRESIDENT WOLFRUM: Okay. Thank you.

18 PROFESSOR REISMAN: Thank you, Mr. President.

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18 December 2013

PERMANENT COURT OF ARBITRATION

ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

BAY OF BENGAL MARITIME BOUNDARY ARBITRATION BETWEEN THE
PEOPLE'S REPUBLIC OF BANGLADESH AND THE REPUBLIC OF INDIA

REPUBLIC OF INDIA

LAND TERMINUS POINT

Professor W. Michael Reisman

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

2. The land boundary terminus is, of course, the point where the closing line between the two headlands of the Estuary intersects the midstream of the main channel of the Hariabhanga and Raimangal or of the Hariabhanga. Thanks to Professor Sands on Monday, we now have Bangladesh's coordinates for the closing line, Bangladesh explains

1 that it arrives at the DTP by comparing similar features on the datum-less chart of 1931
2 with the 2011 BA chart.

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

11 4. Bangladesh's closing line as given on the 1931 chart and on the WGS 84
12 2011 chart, duly corrected for the shift, is as indicated. [TAB 11.1- 5 slides] The problems
13 here are striking. On the three modern charts, the closing point supposedly on Mandarbaria
14 Island now plots at sea and this, in turn, must infect the land boundary terminus, as plotted
15 in the latest WGS Datum charts. So, Mr. President, we continue to be in the dark with
16 respect to Bangladesh's coordinates. We confirm the coordinates we submitted, and I will
17 pass on to other matters of concern.

18 5. Mr. President, Professor Sands was so generous as to summarize for you, in
19 paragraph 2 of his presentation on Monday, India's case. And while we are sure his effort
20 was well intentioned, I regret to say that it was inaccurate. India's case may be summarized
21 as follows:

1 (1) On *uti possidetis*, it is true that India has not written and spoken at length on
2 the principle. As India said in the Rejoinder, [TAB 11.2]“Nor need India
3 comment on the principle of *uti possidetis*, as it simply affirms the enduring
4 validity of the colonial boundary without assisting the Tribunal in its task of
5 determining the proper method for identifying that boundary in a case in which
6 what constitutes the boundary as well as the mode of its determination had
7 already been prescribed.”¹

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

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

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

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

¹ Rejoinder at 2.13.

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

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

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

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

14 6. Now, Mr. President, Bangladesh disagrees with many of these points and it
15 will be useful to consider the disagreements briefly. On the basis of *uti possidetis*,
16 Bangladesh looks for a photograph or snapshot of the situation in 1947. It proposes a
17 British map from 1931, based, for the depiction of the Estuary, solely on data from 1879.
18 This is, we are told by Bangladesh, the map that Radcliffe (and Mountbatten) must be
19 presumed to have had in mind. Yet there is no evidence before you to suggest that
20 Radcliffe had this or any other maritime chart in mind; after all, he had not been called to
21 effect a maritime delimitation but, as shown by his description in Annexure A and the map

1 in Annexure B, a land boundary. What we do know is that what he had before him, since he
2 used it for Annexure B, was a copy of the 1944 Bengal Drawing Office's map.

3 7. In any event, India struggles to understand how a pictorial representation of
4 data collected prior to 1879 can be considered contemporaneous with a decision taken in
5 1947. Yet, while repeatedly calling for the most contemporaneous data, Bangladesh avoids
6 the real "photograph" which is the Radcliffe Map with its red line indicating the district
7 boundary between 24 Parganas and Khulna as drawn on that map. [TAB 11.3 Map] While
8 the Map itself was, indeed, drawn by the Bengal Drawing Office in 1944, it was made
9 **absolutely** contemporaneous with the Radcliffe decision, indeed, by the terms of the
10 Award, the Map illustrates it. Moreover, it clearly indicates [TAB 11.4 : Enlargement of
11 Radcliffe Map's section of Estuary] that the main channel could not be the western channel
12 "hugging the Indian coast" but must, by the location of the district boundary line, be the
13 eastern channel.

14 8. As for the production of the actual Map, a question was raised on Monday –
15 and I would observe that it was signed by Sir Cyril Radcliffe, and it took us some time –
16 and some luck – to find it. [Tab 11.5 - the two letters in RJ11] The annexure in the Counter
17 Memorial is a copy of a certified true copy as indicated in the left hand corner of the map; it
18 was all that was available to us at that time. The map annexed to the Rejoinder is a copy of
19 the original signed map, the original of which we displayed in the room last week and
20 which is available for inspection by our opponents and the Tribunal. [TAB 11.6 - both

1 [copies] There should be no doubt that it is the original; indeed, it is the very same map
2 which was also used by the Bagge Tribunal.

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

16 10. Bangladesh now says that if the Notification really meant that the
17 Raimangal and Haribhanga join, it must also mean that the "Ichhamati and Kalindi" which
18 are also joined by the word "and" must also join. Professor Sands said he "would welcome
19 an explanation." Mr. President, the answer is not recondite and it's to be found in an extract
20 of BA 859 of 1931 which Professor Sands projected, with a line added. This is his
21 chart. [TAB 11.9 with B's sketch] You will note that the Ichhamati **joins** the Kalindi and

1 not the Raimangal; [TAB 11.10] that, Mr. President, is why the passage in the
2 Notification requires “and”. Incidentally, Bangladesh's adjoining figure, which continues
3 Bangladesh's superimposed line on BA 859 to the Bay misleadingly labels the stretch of
4 the Raimangal to the north but ignores its continuation in the Estuary where, as the
5 Notification states and you see, it is joined with the Hariabhanga. [TAB 11.]

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

13 12. India has thus shown that the evidence for the location of the main channel
14 is available in the Radcliffe Award and its Map and confirms India's land boundary
15 terminus proposal. Professor Sands stated on Monday that “neither [of the Radcliffe Maps]
16 assists you in locating the “midstream of the main channel” of the Hariabhanga River.”²
17 India agrees and, Mr. President, if I misspoke on Thursday, the point is correctly stated in
18 the Rejoinder.³ The Radcliffe Map shows the location of the main channel, but not its
19 midstream. I turn to the identification of the midstream of that main channel and, in

² Sands, paragraph 27.

³ Rejoinder paragraph 2.31.

1 particular, the important sequel to the Bagge Award, namely the 1951 Indo-Pakistani
2 exchange of notes.

3 13. Professor Sands viewed skeptically this – I’m quoting him – “agreement to
4 change a fixed boundary for one that was fluid.”⁴ We don’t see why. As my colleague,
5 Mr. Shankardass explained on Thursday, since the Radcliffe and Bagge Awards, India and
6 Pakistan and then India and Bangladesh have been in continuing negotiations about the
7 demarcation of the Bengal boundary; those meetings have continued through 2012. During
8 these negotiations, there have been many routine agreements and substantial parts of the
9 boundary have been agreed. So what’s so unusual about the 1951 agreement?

10 14. The particular agreement concluded in 1951, at the initiative of
11 Pakistan, sought to adjust part of the decision taken by the Bagge Tribunal in one
12 particular sector, the boundary between 24 Parganas and Khulna. Pakistan stated
13 **[TAB 11. 12]** that it had “very carefully considered the question of river boundary
14 between Khulna and 24 Parganas and they are of the opinion that the boundary in
15 this section should be fluctuating.” **[Tab 11.13]** It hoped that India would agree.⁵
16 And India did; **[TAB 11.14]**

⁴ Sands paragraph 9.

⁵ No. 1(1).3/10/50, 7 February 1951 (Vol. II, Annex RJ-1). [footnote 76 in the Rejoinder of the Republic of India, Volume 1, 31 July 2013.]

1 we agree that the boundary between Khulna and 24 Parganas running along the
2 midstream of the rivers should be a fluid one and are issuing necessary instructions
3 to the authorities concerned.⁶

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

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

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

⁶ Copy of Express Letter from Foreign, New Delhi to Foreign, Karachi, No. F. 20/50-Pak.III, 13 March 1951 (Vol. II, Annex RJ-2). [footnote 77 in the Rejoinder of the Republic of India, Volume 1, 31 July 2013.]

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

14 19. But now we come to the truly amazing character of this Estuary. From 1947
15 until 1953, after 66-plus years of complete stability, the Estuary changed so radically in the
16 course of a mere six years that even the 1953 BA map, based on the same 1879 data, was,
17 by 1953, no longer useful for either the profile of the Estuary or the location of the rivers
18 within it. But that sudden, radical change was nothing, compared to what comes later:
19 Professor Sands tells us that “it is blindingly obvious that the area has changed, the estuary

1 has changed and two river channels in the estuary have changed”.⁷ The Estuary and the
2 rivers within it, which had not changed for 66 years after 1879, changed ever more rapidly
3 for the next 66 years until 2013, indeed, they change so much that they make all new data
4 irrelevant for understanding the situation in 1947, or 1879, which is the same thing.

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

12 11.15 - six slides]

13 21. The correct way of making a comparison would be by measuring the
14 relative distances and bearings of the plotted features on all the charts of the area since
15 1880. India's specialists have done so and the results are placed in your folders and are
16 displayed on the screen. As is apparent, the shoal depths in the entrance of the Estuary and
17 their relative position with respect to the mainland on the East and West have been
18 consistent over the years. As I said, all of these charts are in your Folders, and we
19 recommend them to you.

⁷ Statement, paragraph 30.

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

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

16 24. On Thursday, I had had the opportunity to review with you the site visit to
17 the Estuary and won’t tax you with it again. But I would beg leave to recall two parts
18 which India conducted in the Estuary and of which Bangladesh has spoken, shall I say
19 ‘lightly’, if not disrespectfully. On Monday, Professor Sands warned of a “school

⁸ Sands at paragraph 22.

⁹ India Counter-Memorial at paragraph 4.30.

¹⁰ W.W. Hunger (ed.), *The Imperial Gazetteer of India*, Vol. 7, 1881, p. 483. III MB Annex B37.

¹¹ Sands, para 30.

1 | playground” and asked rhetorically, “why not go the extra mile and conclude that you have
2 | identified the present location of the “main channel” of the Hariabhanga River by use of a
3 | carefully conducted scientific experiment, which one might call “the floating hovercraft
4 | test”. Why not, indeed?

5 | 25. The demonstration to which Professor Sands referred was conducted with
6 | dignity, was very important for you and depending on how you interpret the Radcliffe and
7 | Bagge Awards and the ‘25 Notification could be outcome determinative. If you conclude

8 | (i) That the 1925 Notification refers only to the main channel of the
9 | Hariabhanga and not to the main channel of the conjoined
10 | Hariabhanga and Raimangal; and

11 | (ii) If you conclude that the “contemporaneous” evidence for locating the
12 | main channel is not decisive; and

13 | (iii) If you conclude that the Bagge Award requires you to decide on this
14 | segment of the boundary as at the moment of demarcation,

15 | then you will require a demonstration of the location of the main channel of the
16 | Hariabhanga. Indeed, without such evidence, you might even find yourself in a situation
17 | of *non liquet*. Hence the importance of what the Indian Navy did in the Estuary on 24
18 | October, for it clearly demonstrated the navigability and south easterly flow of the
19 | Hariabhanga to the north and east of New Moore. On Monday, in a court room in The
20 | Hague rather than on the bridge of a Bangladeshi ship, Professor Sands bravely asserted
21 | that the western channel was as navigable as the eastern, indeed, he said, as navigable as

1 the Hooghly.¹² But the hard fact is that the pilots of Bangladesh’s craft on October 24 had
2 the same opportunity as their Indian counterparts to demonstrate the navigability of their
3 channel. They cautiously approached their proposed land boundary terminus -- and they
4 stopped. Brave words in The Hague; prudent actions in the Estuary. *Res ipsa loquitur*, Mr.
5 President. Nor did Bangladesh provide any evidence of the flow of the Hariabhanga’s
6 so-called western channel despite this opportunity to do so. *Res ipsa loquitur*.

7 26. Incidentally, Professor Sands is suspicious of the 9-meter line on
8 Bangladesh’s chart 7501 which, he says, “India’s cartographers had imaginatively added”
9 and “in red” no less.¹³ There is no mystery here. The general practice of mariners is to
10 indicate on the navigational chart waters in which a ship can navigate safely. It is done by
11 drawing a limiting danger line on a chart.¹⁴ [TAB 11.18] No imagination or creativity is
12 involved. It is entirely factual. In our case, even changing the line to a 10 meter contour
13 would not alter anything in the main, eastern channel which is still the more navigable and
14 still moves in a south easterly direction.

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

¹² Sands, paragraph 17.

¹³ Sands, paragraph 16.

¹⁴ Admiralty Manual of navigation Volume 1 (page 345).

1 Rivers, India's demonstration on October 24 provides supplementary empirical evidence,
2 confirming that interpretation of the Notification.

3 Conclusion:

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

9 29. Past activities are only part of the issue. In its Rejoinder, India had emphasized
10 the future and I would return to it. The Tribunal will be making a decision that will endure
11 as long as India and Bangladesh do. Amidst the many scenarios with which you have been
12 regaled by Bangladesh, one future is certain: Both of these countries will continue to
13 develop, as their populations increase, and they will be compelled to make ever more
14 intensive use of their natural resources in order to provide their peoples with the
15 opportunity of a life of human dignity. The question to be resolved in the land boundary
16 terminus here is whether both States will have access to and from the sea in their respective
17 adjacent territories or whether the inland part of this sector of India will be consigned to a
18 land-locked or geographically disadvantaged status, to borrow the language of the Third
19 Law of the Sea Conference. The term "land boundary terminus" imports that this is about
20 an allocation of land territory. But in this case, no loss of terra firma is involved; neither

1 State will lose or gain any land territory if the other's land boundary terminus proposal is
2 accepted. The issue is fluvial access and access is at stake only for India. Let me explain.

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

11 31. By contrast, if the Tribunal confirms that the eastern channel is the main
12 channel and accepts India's proposed land boundary terminus, India will have fluvial
13 access to and egress from the Bay of Bengal—**and so will Bangladesh from its side of the**
14 **Hariabhanga!** Bangladesh, too, will have access to the eastern channel, for its midstream
15 -- the only navigable midstream from the Hariabhanga southward until it joins the
16 Raimangal and meets the Bay -- will henceforth be the boundary between the two States.
17 The point of emphasis, Mr. President, is that Bangladesh has nothing to lose, in this
18 regard, if India's proposed land boundary terminus is confirmed by the Tribunal: India's
19 proposal is, as my students put it, a “win-win” situation for both Parties. India has
20 everything to lose here if its proposed land boundary terminus is not accepted.

1 32. Mr. President, India believes that the Radcliffe Award, its Map, the 1925
2 Notification, the Bagge Award, the 1951 agreement and contemporary cartographical,
3 hydrological and bathymetric data, when applied to this case, will confirm as a strict legal
4 matter, India's land boundary terminus proposal. The Tribunal will then have confirmed
5 that it is the law and, like the best of law, that it is equitable.

6 32. Mr. President, Members of the Tribunal, as this concludes my appearance
7 before you in this important case, may I thank you for the courteous attention you have
8 shown, and ask you, Mr. President, to invite my colleague, Sir Michael, to the podium.

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PRESIDENT WOLFRUM: Thank you, professor Reisman, for your presentation, and I call upon Sir Michael Wood to continue.

Sir Michael, you have the floor.

MR. WOOD: Thank you very much, Mr. President, Members of the Tribunal.

18 December 2013

PERMANENT COURT OF ARBITRATION

ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

BAY OF BENGAL MARITIME BOUNDARY ARBITRATION BETWEEN THE
PEOPLE'S REPUBLIC OF BANGLADESH AND THE REPUBLIC OF INDIA

REPUBLIC OF INDIA

METHODOLOGY, INSTABILITY, RELEVANT COASTS AND RELEVANT
AREA, BASE POINTS

Sir Michael Wood

Mr. President, Members of the Tribunal,

1. I shall respond to what our friends opposite said on Monday concerning four matters:

- First, the delimitation method, where Professor Boyle offered you what he called "the agony of choice".¹⁵ Were he Shakespeare, his speech might have been entitled "*As You Like It*";

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

¹⁵ Transcript, 16 December 2013, Boyle, p. 507, para. 15, line 1.

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- Third, the relevant coasts and the relevant area, which were dealt with by Mr. Martin and Professor Crawford;

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

I. THE DELIMITATION METHOD

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

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

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

¹⁶ Transcript, 16 December 2013, Boyle, p. 504, para. 10, lines 19-20.
¹⁷ Transcript, 16 December 2013, Boyle, p. 505, para. 11, lines 3-5.
¹⁸ Transcript, 16 December 2013, Reichler, para. 2, lines 5-9.

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

14
15 5. Like the good advocate that he is, Professor Boyle then returned to what he
16 evidently sees as his best case, *Nicaragua v Honduras*. This time he showed the
17 two very different equidistance lines, proposed by Nicaragua and Honduras
18 respectively.²¹ I am glad he showed these lines. They neatly illustrate the
19 distinction between *Nicaragua v Honduras* and the present case. Professor
20 Boyle said that these two lines show that “even in that case it was not impossible
21 to start with a provisional equidistance line.”²² That, with respect, is precisely
22 what they do not show. The two equidistance lines, in that case, though initially
23 plotted from base points that were close together, were radically different – we

¹⁹ Transcript, 16 December 2013, Boyle, p. 500, para. 1, lines 20-22.

²⁰ Transcript, 16 December 2013, Boyle, p. 501, para. 3, lines 5-6.

²¹ Transcript, 16 December 2013, Boyle, p. 502, para. 6, lines 12-15. Tabs 4.21 and 4.22 in Bangladesh’s Arbitrators’ Folders.

²² Transcript, 16 December 2013, Boyle, p. 502, para. 6, lines 18-19.

1 made a similar point with our own sketch.²³ [ON SCREEN] But in the present
2 case it is the opposite; as we showed last week, the two Parties, using base points
3 that are close to each other, have in fact constructed equidistance lines that are
4 very similar.²⁴

5
6 6. Professor Boyle's thesis, if it deserves that name, is shot through with curious
7 logic. He says that I accepted "that the tribunal does not have to accept the base
8 points proposed by either party" – indeed I did – but Professor Boyle goes on to
9 ask, and I quote, "but on what more "objective" basis can the tribunal then select
10 its own base points? There is necessarily a subjective judgment even here.
11 Applying the equidistance method is not a mechanical process."²⁵ We on our
12 side have, of course, never suggested that it is mechanical. But it is a good deal
13 more objective than the angle-bisector 'method'.²⁶

14
15 7. In reality, Bangladesh seems less and less convinced of its angle-bisector method;
16 Professor Boyle's defence of it was, it seemed to me, luke-warm. He did not
17 even attempt to answer the criticisms of that method that I set out last Friday.²⁷
18 In particular, we heard not a word on the point that the choice of 'coastal facades'
19 is notoriously subjective. Professor Boyle let the cat out of the bag when he said
20 at one point "However you arrive at the solution, we say the 180 degree line will
21 be equitable."²⁸ 'However you arrive at the solution.' We would respectfully
22 invite the Tribunal to reject such patent subjectivity.

23 Tab 5.2 in India's Arbitrators' Folders.

24 Tab 5.3 in India's Arbitrators' Folders.

25 Transcript, 16 December 2013, Boyle, para. 14.

26 Cot's article look for references

27 Transcript, 13 December 2013, Wood, paras. 27-43.

28 Transcript, 16 December 2013, Boyle, p. 503, para. 4, lines 2-4.

1 **II. THE ISSUE OF INSTABILITY**

2

3 8. Mr. President, Members of the Tribunal, I now turn to the issue of instability.

4 Professor Akhavan said not a word on our basic point, that any instability of the

5 coastline is simply not relevant to the application of the three-stage method.

6 What matters is whether it is possible to select appropriate base points. That was

7 not possible in *Nicaragua v Honduras*. It is entirely possible in our case, as both

8 parties have shown.

9

10 9. Instead, Professor Akhavan returned to his general thesis of the instability of the

11 Delta, took us to task on several minor grounds, and referred to some more of his

12 studies.

13

14 10. For example, he briefly showed you a sketch-map from a short article on sea-level

15 rises depicting the shift of an equidistance line due to coastal erosion by 2100.²⁹

16 But again, as with the studies he addressed in the first round (and did not come

17 back to in the second round despite our comments), this too is misleading and

18 taken out of context.

19

20 11. The authors make clear that the figures and speculations are “illustrative

21 projections” done “irrespective of the actual sea-level rise by 2100” and “without

22 consideration of adaptation measures, coastal erosion and land subsidence”.³⁰

23 Furthermore, the figure chosen for predicted sea levels in 2100 is almost three

24 times the sea-level rise estimate of the UN Intergovernmental Panel on Climate

25 Change.³¹

²⁹ Transcript, 16 December 2013, Akhavan, para. 14, referring to a sketch in BM, Annex B79.

³⁰ BM, Annex B79, p. 813.

³¹ BM, Annex B79, p. 813.

1
2 12. Mr. President, last Thursday, Professor Pellet presented you with a study on the
3 world's 14 most significant deltas and showed that "the instability of the deltas of
4 the Ganges and Brahmaputhra, is just comparable to the instability of all the
5 major deltas in the world."³² He demonstrated that "every delta showed land loss,
6 but at varying rates, and human development activities accounted for half of the
7 losses, and up to 60% in the case of the Ganges-Brahmaputra delta."³³

8
9 13. Professor Akhavan dismissed this study as focusing on wetlands, rather than
10 instability of the coastline, and said, and I quote, that "where the study does
11 mention instability in general, it singles out the Bengal Delta as "extremely
12 unstable" compared to the fourteen major deltas in the world".³⁴

13
14 14. These points are not well placed. It is true that the study discusses loss of
15 wetlands and not instability *per se*. However, estuarine wetlands, which include
16 deltas, are one of the common types of wetlands as are mangrove forests.³⁵

17
18 15. The study does not discuss instability "in general", as Professor Akhavan put it.
19 Where it does discuss "extreme instability" it is not referring to the Delta and its
20 coastline, but rather to the channels of the Ganges and the Brahmaputra Rivers
21 and their riverbanks, not the shoreline.³⁶

22

³² Transcript, 12 December 2013, Pellet, para. 10.

³³ Transcript, 12 December 2013, Pellet, para. 10.

³⁴ Transcript, 16 December 2013, Akhavan, para. 2.

³⁵ The Convention on Wetlands (the "Ramsar Convention") website on wetlands,
http://www.ramsar.org/cda/en/ramsar-about-faqs-what-are-wetlands/main/ramsar/1-36-37%5E7713_4000_0_.

³⁶ Coleman, J.M., O.K. Huh, D.H. Braud, Jr., 2008. Wetland loss in world deltas, *Journal of Coastal Research*, 24(1A), 1–14, at p.4.

1 16. It has been noted that Professor Akhavan did not dispute the study's finding that
2 loss of wetlands in the Delta is mostly due to increased human activity of
3 agricultural and industrial nature.³⁷

4
5 17. Mr. President, Professor Akhavan also said that India has "completely ignored the
6 Indian Geological Survey's alarming conclusion" on erosion and sea-levels.³⁸
7 That is not the case. During my presentation last Friday, I referred to India's
8 observations on that very issue in its Rejoinder.³⁹ Bangladesh refers to the web
9 page of the Geological Survey of India (GSI) as evidence of the limited defence
10 of mangroves against coastal erosion. The web page is not, of course a scientific
11 study, but a summary made for the general public. Moreover, Bangladesh
12 overlooks the fact that the same web portal also states that mangroves protect
13 coastal areas from erosion, storm surge (especially during hurricanes) and
14 tsunamis.⁴⁰

15
16 18. Mr. President, in the first round, I quoted from Suriname's Counter-Memorial in
17 *Guyana v. Suriname*, where Suriname had argued that coastal instability weighs
18 heavily against the application of the equidistance method and instead, argued that
19 the bisector should be applied.⁴¹ And Professor Boyle returned to it.

20
21 19. It is worthwhile to look a bit more closely at that case, because on coastal
22 instability Suriname's position is remarkably similar to Bangladesh's in the
23 present case.

³⁷ *Ibid.*

³⁸ Transcript, 16 December 2013, Akhavan, para. 3.

³⁹ Transcript, 13 December 2013, Wood, para. 45; Rejoinder, para. 4.40.

⁴⁰ Geological Survey of India web portal,
http://www.portal.gsi.gov.in/portal/page?_pageid=127,723772&_dad=portal&_schema=PORTAL&linkId=1213

⁴¹ Transcript, 13 December 2013, Wood, para. 40 quoting Suriname Counter-Memorial, 6.35.

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20. Suriname argued that

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

And they continued

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

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

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

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

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

⁴² Guyana v. Suriname, Suriname Counter-Memorial, para. 3.51, see also para. 3.50.
⁴³ Guyana v. Suriname, Suriname Counter-Memorial, para. 6.35.
⁴⁴ Guyana v. Suriname, Guyana Reply, para. 7.36.
⁴⁵ Guyana v. Suriname, Guyana Reply, para. 3.50 (footnotes omitted).

1 wrote, after surveying boundary agreements implementing the equidistance
2 method that

3

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

12

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

14

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

19

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

25

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

⁴⁶ Guyana v. Suriname, Guyana Reply, Annex R1-a, “Independent Report on the Guyana – Suriname Coastal Geography and the Impact on the Maritime Boundary Delimitation”, Dr. Robert W. Smith, March 21, 2006, p. 10, para. 43. (footnotes omitted).

⁴⁷ Transcript, 16 December 2013, Boyle, para. 13.

1 Suriname.⁴⁸ Moreover, he omitted the words between the phrases he cited. The
2 passage reads,

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4 “It seems to this Tribunal that the general configuration of the maritime area to be
5 delimited does not present the type of geographical peculiarities which could lead
6 the Tribunal to adopt a methodology at variance with that which has been
7 practised by international courts and tribunals during the last two decades.”⁴⁹
8

9 26. In short, Mr. President, *Guyana v. Suriname* supports India’s positions in the
10 present case regarding the irrelevance of Bangladesh’s coastal instability
11 argument as a compelling reason to set aside the provisional equidistance line and
12 regarding the predominance of the equidistance method in maritime delimitation.
13

14 27. Before I leave instability I would note, however, an important point of apparent
15 agreement that has emerged in the course of these hearings. Bangladesh no
16 longer seeks to argue that instability is a relevant circumstance to be considered at
17 the second stage of the three-stage method; it was not mentioned as such by Mr.
18 Reichler on Monday, who focused entirely on concavity.⁵⁰
19
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21 **III. THE RELEVANT COASTS AND THE RELEVANT AREA**

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23 28. Mr. President, Members of the Tribunal, I now turn to the relevant coasts and the
24 relevant area.
25

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

⁴⁸ *Guyana v. Suriname*, Award, 17 September 2007, para. 3.69-3.72.

⁴⁹ *Ibid*, para. 3.72.

⁵⁰ Transcript, 16 December 2013, Reichler.

1 asked you to ‘flip the coin’.⁵¹ He pointed to the latitude of Sandy Point, as if that
2 could make it the endpoint of India’s relevant coast.⁵² And he next said that last
3 week I “conspicuously never suggested that [Bangladesh] had been unfaithful to
4 the lessons of that Judgment.”⁵³ Indeed I had not, since, with respect, it remains
5 unclear to me quite what these lessons are. Again on Monday Mr. Martin could
6 not enlighten us. He did, however, claim that the coast between Devi Point and
7 Sandy Point ‘faces onto’ areas which overlap, that is, according to Bangladesh,
8 areas of continental shelf beyond 200 miles.

9

10 30. Turning to the limit of the relevant area in the south-west, Mr. Martin explained
11 Bangladesh’s extraordinary line - ‘explained’ is perhaps a little generous - by
12 saying ‘we have simply connected the end of Bangladesh’s OCS claim to the
13 closest Indian coast by means of a perpendicular.’⁵⁴ Indeed they have. But
14 why? They don’t tell us.

15

16 31. And when it comes to justifying the inclusion within the relevant area of areas
17 that are within 200 miles of India but beyond 200 miles of Bangladesh, all Mr.
18 Martin can say is “we proceed on the basis that ITLOS knew what it was doing.”
19 “We proceed on the basis that ITLOS knew what it was doing.” And he says
20 that “ITLOS came up with a pragmatic solution to a practical problem.”⁵⁵ What
21 problem? What solution? The nearest Mr. Martin gets to an explanation of the
22 matter is in the following two sentences, and I quote “To do otherwise would
23 mean excluding from the relevant area zones of maritime space that lie directly in
24 front of a State’s relevant coast. For obvious reasons, that cannot be right.”

⁵¹ Transcript, 16 December 2013, Martin, para. 17.

⁵² Transcript, 16 December 2013, Martin, para.18.

⁵³ Transcript, 16 December 2013, Martin, para. 20.

⁵⁴ Transcript, 16 December 2013, Martin, para. 30.

⁵⁵ Transcript, 16 December 2013, Martin, para. 31.

1 Unfortunately, Mr. Martin does not tell what ‘obvious reasons’ there were to
2 include in the relevant area areas that are not subject to overlapping claims.

3

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

13

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

⁵⁶ Transcript, 16 December 2013, Martin, para. 8.

⁵⁷ Transcript, 13 December 2013, Wood, p. 351, para. 4.

⁵⁸ India, Arbitrators’ Folders, Tab 8.6.

⁵⁹ Bangladesh’s Arbitrators’ Folders, Tab. 5.27.

1 referred to “the relevant coasts ... for the purpose of outer continental shelf
2 delimitation”.⁶⁰ This at the very least seems to imply that the area off the coast
3 between Devi Point and Sandy Point within 200 nautical miles cannot, on any
4 basis, be part of the relevant area.

5

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

15

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

21

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

26

⁶⁰ Transcript 16 December 2013, Crawford, para. 7.

⁶¹ Transcript 16 December 2013, Crawford, para. 21.

1 37. Professor Crawford is, in any event, quite wrong to suggest that India would be
2 opposing Bangladesh’s position “in the last stage of an arduously pleaded case”,
3 as he put it. India’s position has been clear throughout, starting with our
4 Counter-Memorial, in which we described the Andaman-Nicobar group of
5 islands⁶² and set out fully our claim to an extended continental shelf from the
6 Andaman Islands.⁶³ In our Rejoinder we made our legal position absolutely clear,
7 at paras 7.23 and 7.24, concluding that “India has a claim to a 350-nautical-mile
8 continental shelf from the Andaman Islands as outlined in India’s
9 Counter-Memorial”. Elsewhere in the Rejoinder we said “If Bangladesh’s
10 exorbitant claim to a 390-nautical-mile continental shelf were to be even
11 considered by the Tribunal, the entitlements of India’s Andaman Islands coasts
12 would also have be taken into account.”⁶⁴

13
14
15 **IV. BASE POINTS**

16
17 38. Mr. President, Members of the Tribunal, I now turn to the question of base points.
18 I shall not repeat what I said last week, but I shall limit myself to responding to
19 what Professors Akhavan and Boyle had to say on Monday.

20
21 39. I would, however, begin by noting that on many issues they offered no response
22 to what we had to say. For example, we heard nothing on what has emerged as a
23 real difference of principle between the Parties. We say that the starting point for
24 any delimitation exercise, be it negotiation or court proceedings, is what is to be
25 found on the charts. Anyone who has negotiated a maritime delimitation

⁶² ICM, paras. 2.16-2.17.

⁶³ ICM, paras. 2.25-2.43.

⁶⁴ Rejoinder, para. 7.3, footnote 393.

1 agreement will know that the first thing each side does is to plot points and lines
2 on the best available charts. In the rare case where you first engage in a survey,
3 you plot the results of the survey on a chart and start with that. Even then the
4 data will never be entirely up to date. What is in any event clear is that negotiators,
5 or indeed the judges or arbitrators, cannot decide on the basis of what they
6 observed on a single short visit, even if they are technically qualified. The idea
7 that you can simply discard the charts and see everything on the ground is
8 fanciful. It would be a totally impractical way of proceeding. To endorse such
9 an approach would open the door to future chaos, with States rejecting charted
10 base points that do not suit their case.

11
12 40. Mr. President, perhaps the most telling of all the omissions is that we heard
13 nothing from those opposite on the various base points that I took you through
14 individually last Friday, with the exception of those on New Moore and I-2. There
15 was not a word in response to what we said about the difficulties of seeing some
16 of the base points at the time of the site visit. There was nothing about the
17 impossibility of matching specific photographs taken during the site visit with
18 exact locations on particular features. And, despite my explicit invitation to
19 Bangladesh to address the judgment in *Malaysia v. Singapore*, they chose to
20 remain silent.⁶⁵ That judgment, as you will recall, found that sovereignty over a
21 low-tide elevation can be attributed to a party when it is clear in which country's
22 territorial sea it lies, as is the case with New Moore in the present case.⁶⁶

23
24 41. But I'll turn to what Professor Akhavan did have to say about base points. Mr.
25 President, on Monday he suggested that the members of the Tribunal might

⁶⁵ Transcript, 13 December 2013, Wood, para. 63.

⁶⁶ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, *I.C.J. Reports 2008*, p. 12, pp. 101-102, paras. 297-300; see also Rejoinder, paras. 4.51-4.53.

1 ponder why India had “failed to produce a single authority supporting the use of
2 low-tide elevations as base points”.⁶⁷ And he said that “[i]n
3 *Bangladesh/Myanmar*, there were many low-tide elevations near the land
4 boundary terminus. ITLOS drew a delimitation line that sliced right through
5 them.”⁶⁸ That last point is easily explained. In *Bangladesh/Myanmar*, neither
6 side sought to place base points on the low-tide elevations. Article 13 of
7 UNCLOS is facultative: “the low-water line on that elevation **may** be used as the
8 baseline”.

9
10 42. As for his first point, there is, of course, extensive practice on the use of low-tide
11 elevations as base points, as can be seen from a cursory glance at the volumes of
12 *International Maritime Boundaries*.⁶⁹ I shall mention just a few examples:

13
14 - The location of the boundary in the Agreement between Australia and France (in
15 respect of New Caledonia) was significantly affected by the legal status of
16 Australia's Middleton Reef, a mid-oceanic low-tide elevation situated 125 nautical

⁶⁷ Transcript, 16 December 2013, Akhavan, p. 493, para. 6, lines 15-17.

⁶⁸ Transcript, 16 December 2013, Akhavan, p. 493, para. 6, lines 17-18 – p. 494, para. 6, line 1.

⁶⁹ American Society of International Law (1993-2011) *International Maritime Boundaries* Vols. 1-6, Leiden: Brill/Nijhoff. See: Canada-France (St Pierre and Miquelon) (1972), Vol.1, 387-400; Cuba-USA (1977), Vol.1, 417-425; Mexico-USA (1976), Vol.1, 427-445; Australia-France (New Caledonia) (1983), Vol.1, 905-913; Australia-Solomon Islands (1988), Vol.1, 977-984; Cook Islands-USA (American Samoa) (1980), Vol.1, 985-993; Indonesia-Singapore (1974), Vol.1, 1049-1056; Japan-South Korea (1974), Vol. 1 1057-1089; New Zealand (Tokelau)-United States (American Samoa) (1983), Vol.1, 1125-1134; Australia (Heard/McDonald Islands)-France (Kerguelen Islands) (1982), Vol.2, 1185-1194; Australia-Indonesia (Timor Gap) (1989), Vol.2, 1245-1328; France (Reunion)-Mauritius (1980), Vol. 2, 1353-1361; Bahrain-Saudi Arabia (1958), Vol. 2, 1489-1497; Iran-Oman (1974), Vol. 2, 1503-1510; Italy-Tunisia (1971), Vol. 2, 1611-1625; France-UK (1982), Vol. 2, 1735-1754; Netherlands-UK (1965), Vol. 2, 1859-1869; Belgium-France (1990), Vol. 2, 1891-1900; Belgium-UK (1991), Vol. 2, 1901-1912; Iraq-Kuwait (1993), Vol. 3, 2387-2432; France-UK (Guernsey) (1992), Vol. 3, 2471-2486; Australia-Indonesia (1997), Vol. 4, 2697-2727; Belgium-Netherlands (1996), Vol. 4, 2921-2939; France-UK (Jersey) (2000), Vol. 4, 2979-2992; Seychelles-Tanzania (2002), Vol. 5, 3795-3804.

1 miles offshore. This low-tide elevation was given full effect as one of the
2 Australian base points.⁷⁰

3

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

8

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

14

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

18

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

25

⁷⁰ *Ibid*, Vol. 2, 1185-1194.

⁷¹ *Ibid*, Vol. 2, 1735-1754.

⁷² *Ibid*, Vol.2, 1621.

⁷³ *Ibid*, Vol.1, 419.

1 43. Mr. President, the practice clearly shows that States have frequently considered it
2 appropriate to plot base points on low-tide elevations. There can certainly be no
3 objection of principle as our opponents would have you believe.

4
5 44. Mr. President, Professor Pellet explained to the Tribunal on Thursday that the
6 timing of the site visit was not conducive to seeing New Moore Island (show
7 figure of tide for 24 October) – as India had repeatedly forewarned – since it
8 would at best have been just visible at the lowest of tides on the relevant dates,
9 and only around 6:30 a.m. and 6:30 p.m. [ON SCREEN]

10
11 45. Professor Akhavan showed you this Figure⁷⁴ (ON SCREEN) to make the point
12 that at 8:00 a.m. on 24 October, New Moore should have been 20 centimetres
13 above water. But this is misleading. According to Bangladesh’s most recent
14 surveys, depicted on Bangladesh’s own chart 3529 published in 2012, New
15 Moore Island is at most 1.1 meters above water at lowest astronomical tide, the
16 relevant point of reference for the low-water line as Professor Akhavan
17 acknowledged.⁷⁵

18
19 46. As this is the case, at 8:00 a.m. on 24 October, New Moore was fully submerged
20 but its location just beneath the low-water line was clearly marked by the
21 breaking waves, which Bangladesh – perhaps with good reason - chose not to take
22 the Members of the Tribunal any closer to.

23
24 47. Also on Monday Professor Akhavan showed you, for the second time, a Figure
25 from Bangladesh’s Reply comparing satellite images of Bhangaduni Island,
26 entitled “The Erosion of Bhangaduni Island, India: 1975-2010”. While ambivalent

⁷⁴ Transcript, 16 December 2013, Akhavan, para. 4, referring to Bangladesh Tab 4.17.

⁷⁵ Transcript, 16 December 2013, Akhavan, para. 4.

1 on this point last week, this time Professor Akhavan was unequivocal when he
2 indicated that Bangladesh's base point I-2 was under water according to the 2010
3 Google Earth image, "although it is on the low-water line on the latest available
4 chart."⁷⁶

5
6 48. Mr. President, India maintains its position on the lack of value of these images for
7 the current proceedings. I would, however, note one thing about the image
8 presented by Bangladesh and base point I-2. At a quick glance, point I-2 may
9 seem to be offshore. But the satellite image, if anything, undermines Bangladesh's
10 own position. According to Google Earth's own elevation model, base point I-2's
11 elevation is at 0 metres. This information is at Tab 11.2 and on the screen. [ON
12 SCREEN]. This all serves to highlight that imagery as presented by Google Earth
13 cannot be relied upon for defining the low-water line. Bangladesh should not be
14 surprised; after all, it plotted its point I-2 on British Admiralty Chart 814. The
15 source data for Bhangaduni Island on Chart 814 are from surveys conducted by
16 the British between 1831 and 1889. According to what Bangladesh considers to
17 be relevant evidence, point I-1 [sic] remains on the low-water line. And according
18 to Bangladesh's own recent chart, I-1 is on the low-water line and the satellite
19 imagery that Bangladesh relies on confirms that that is correct.

20
21 49. Mr. President, Members of the Tribunal, on Monday Professors Boyle and
22 Akhavan both referred again to UNCLOS article 7 in an effort to prove that the
23 Bay of Bengal was special. Professor Boyle also threw in Annex II to the Final
24 Act of the Conference, which, as you know, has nothing to do with our case,
25 nothing to do with the northern part of the Bay of Bengal.

26

⁷⁶ Transcript, 16 December 2013, Akhavan, para. 12.

1 50. Professor Akhavan complained that “counsel for India did not even attempt to
2 address Article 7(2) in their oral pleadings”.⁷⁷ So I shall do so now, if only
3 briefly. You will recall that last week Professor Akhavan asked “what if,
4 hypothetically, there was a norm of international law that specifically recognized
5 the Bengal Delta as a “highly unstable” coastline”; and he went on to say that
6 article 7(2) did just that.⁷⁸

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

12
13 52. Second, Professor Akhavan seemed to be suggesting that article 7(2) was a
14 provision that established, as a matter of law, that the Bengal Delta is highly
15 unstable. That cannot be right. Stability or instability is not a matter to be
16 determined by treaty.

17
18 53. Third, Professor Akhavan asserted that, and I quote “States parties specifically
19 agreed that the Bengal Delta is a “highly unstable” coastline and consequently
20 that straight baselines are the appropriate method of delineation. This leads
21 logically to the conclusion that for delimitation purposes, an angle-bisector based
22 on straight-line coastal facades is equally the appropriate methodology.”⁷⁹ End of
23 quotation. With respect, States Parties agreed no such thing. They agreed on a
24 form of words in article 7(2), as part of the overall political package deal at the

⁷⁷ Transcript, 16 December 2013, Akhavan, p. 495, para. 10, lines 10-11.

⁷⁸ Transcript, 9 December 2013, Akhavan, para. 125.

⁷⁹ Transcript, 9 December 2013, Akhavan, para. 127.

1 Conference. And article 7(2) certainly does not ‘lead logically’ to an
2 angle-bisector.

3

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

9

10 “the Court will identify the appropriate points on the Parties’ relevant coast or coasts
11 which mark a significant change in the direction of the coast, in such a way that
12 the geometrical figure formed by the line connecting all these points reflects the
13 general direction of the coastlines.”⁸⁰

14

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

18

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

25

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

⁸⁰ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 61, para. 127.

1 Court. This is to be expected, it's entirely natural, when a coast is concave as base
2 points located on the baselines in the most concave parts of the coast would
3 naturally not control the equidistance line.
4

5 57. With this in mind, let us perform the same exercise using the base points chosen
6 by the Parties in the present case. **On your screen, and at Tab 11.4**, is a set of
7 straight lines in red connecting the base points selected by India. The resulting
8 geometrical figure does not hug the coast of either Party, as both are concave in
9 nature. The gap between parts of the relevant coasts on each side and the
10 geometric figure is similar to the gap we have just seen in the *Black Sea* case. In
11 addition, in the present case, that gap is "shared" almost equally by both Parties.
12 Comparing the geometrical figures in both cases showed that the figure
13 constructed by using the base points selected by India reflects the general
14 direction of the coasts within the meaning of the Court's dictum in *Black Sea*.
15

16 58. **Now on your screen**, we are adding, with a dashed green line, the geometrical
17 figure formed by the lines connecting the base points selected by Bangladesh. As
18 with India's base points, there are gaps between the lines and the relevant coasts
19 of the Parties. Comparing the two geometrical figures, the lines reflecting the
20 general direction of the Indian coasts are quite similar. On the Bangladesh side,
21 India's line is actually closer to the coastline and, to that extent, better reflects the
22 general direction of the coast.
23

24 59. Let us now add to the image the line connecting the base points of Bangladesh
25 selected by the ITLOS in the case between Bangladesh and Myanmar. This is
26 shown in blue, reflected by connecting β_1 and β_2 . The general direction of
27 Bangladesh's coast as found by ITLOS, lies a little further from the coastline, the
28 lines constructed using the base points identified by the Parties in the present case.

1

2

60. Mr. President, Members of the Tribunal, this shows that the geometrical figure constructed using the points selected by India does indeed reflect the general direction of the coasts of the Parties in accordance with the *Black Sea* dictum.

3

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

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PRESIDENT WOLFRUM: Thank you, Sir Michael, for your statement.

27

You didn't exhaust your time, but nevertheless let's have a coffee break until quarter to

1 4:00.

2 (Brief recess.)

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

9 Professor Pellet, you have the floor.

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

11 PRESIDENT WOLFRUM: That's an incentive.
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18 December 2013

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PERMANENT COURT OF ARBITRATION

**ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA**

**BAY OF BENGAL MARITIME BOUNDARY ARBITRATION BETWEEN THE
PEOPLE'S REPUBLIC OF BANGLADESH AND THE REPUBLIC OF INDIA**

REPUBLIC OF INDIA

THE DELIMITATION LINE (EEZ AND CONTINENTAL SHELF)

Professor Alain PELLET

Mr. President, Members of the Tribunal,

1. Listening to our amicable opponents on Monday, I got the impression that they had transformed *Bangladesh v. India* into *Pellet's* case. It is not! And I can assure you, with my Agent's full accord, that what I have presented last week – and what I will introduce now – is *India's* case. No need, I think, to personalize that much!

1 2. Mr. President, yes, we definitely stick to the three stage method. Professor
2 Reisman has dealt with the starting point of the single boundary line, and Sir
3 Michael has recalled our position concerning the relevant coasts and area. It
4 remains for me to apply the standard methodology within the framework, both
5 factual and legal thus described (I.). Moreover, since I bring up the rear, I will, at
6 the end of this speech, very briefly recapitulate the Indian case (II.).
7
8

9 I. APPLYING THE THREE STAGE METHOD

10
11 3. Mr. President, we were happy to learn on Monday from Mr. Reichler that
12 “Bangladesh is much interested in methodology”⁸¹ – as much as we were
13 astonished to hear from Mr. Martin,⁸² approved by Mr. Reichler,⁸³ that we had
14 “skip[ped] step two” and “jump[ed] over it to get to step three, so [we] rush to the
15 judgment that [our] equidistance line is not inequitable under the very liberal
16 standards of the disproportionality test.”⁸⁴ Before challenging the first part of the
17 sentence, let me take note of the double admission in the last phrase: 1. the
18 disproportionality test – which is better called the “non-gross disproportionality
19 test” – must be applied according to “very liberal standards” and 2. in accordance
20 with those standards, our equidistance line is, they say, not inequitable. Let me
21 however recall that I had devoted more than one hour last Friday to discussing
22 whether, in the present case, there were any relevant circumstances that required
23 adjusting or shifting the provisional equidistance line, and to showing that there
24 were none.⁸⁵ Now, what is true is that we went on formally describing the

⁸¹ Transcript, 16 December 2013, Mr. Reichler, p. 524, para. 6, lines 13-14.

⁸² Transcript, 16 December 2013, Mr. Martin, p. 513, para. 11, lines 17-18.

⁸³ Transcript, 16 December 2013, Mr. Reichler, p. 524, para. 7, line 20.

⁸⁴ Transcript, 16 December 2013, Mr. Reichler, p. 525, para. 7, lines 1-3.

⁸⁵ See transcript, 13 December 2013, pp. 400-417, paras. 19-46.

1 construction of that line only after discussing the issue of relevant
2 circumstances;⁸⁶ that was to avoid coming back to the question separately within
3 the territorial sea, on the one hand, and within and beyond 200 nautical miles, on
4 the other hand. I hope the structure of our pleadings was clear to the Tribunal,
5 even if it appears to have been beyond our friends opposite. (I might note in
6 passing that the structure of their oral pleadings has been, well... let me be polite
7 for once, and say ‘baroque’.)

8

9 4. In any event, it seems that Bangladesh no longer challenges that the same
10 rules apply to the delimitation of the continental shelf on both sides of this limit –
11 and I quote from Professor Crawford: “...Article 83 applies equally within and
12 beyond 200M, and the methodology is unchanged (as India insists)”⁸⁷ which does
13 not imply that, as he said, “the overall *equity* of the line must be assessed”,⁸⁸ but
14 – and it is something different – that the equitable character of the solution as a
15 whole must be assessed through the test of non-disproportionality; I will come
16 back to this when I will discuss the circumstances relevant to the second stage and,
17 of course, in respect of the third stage and the non-disproportionality test – but
18 this is premature. In order to meet the legitimate Cartesian requirements of our
19 opponents,⁸⁹ let’s have 1 and 2 before 3. But before I start, I would like to take
20 30 seconds to publicly thank the wonderful team of hydrographers and
21 cartographers who, together with [Martin Pratt and Benjamin Samson] have been
22 wonderfully helpful for me and devoted to their task very, very late in the night,
23 and I should probably say “in the nights.”

24

25

A. The First Stage: Drawing a Provisional Equidistance Line

⁸⁶ See *ibid.*, pp. 444-445, paras. 83-87.

⁸⁷ Transcript, 16 December 2013, Mr. Crawford, p. 555, para. 22, lines 9-10.

⁸⁸ *Ibid.* – italics added.

⁸⁹ Transcript, 16 December 2013, Mr. Reichler, p. 525, para. 7, line 4.

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5. However, Mr. President, if you refer to their pleadings of our opponents on Monday morning; you will note that, interestingly, they simply say nothing of ... the first phase. In fact, they, themselves eliminate this first phase and rush to the second phase while pretending to accept the third – three stage method. This is too much haste. Let’s do things properly.

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

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

add the base points and the segments while I name them

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

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

- afterwards, starting at point X (not a base point but the end point of the territorial sea), you have the limit between the continental shelves and the EEZ of the Parties; it passes through points T-4 governed by points I-2, I-3 and B-3, T-5 – here base points I-3, B-3 and B-4 control-, and T-6, where I-3, B-4 and B-5 come into play, until it joins point Y where the line crosses the 200 nautical miles limit;

1 - finally, from Y to Z, the line, in purple, represents the limit between the two
2 continental shelves alone, up to the point where it meets the boundary between
3 Bangladesh and Myanmar as determined by the ITLOS; in between a slight change of
4 direction (at point T-7) results from the influence of points I-3, I-4 – that is Devi Point,
5 and B-5, the two latter points being accepted by both Parties as base points.

6
7 **End of projection 2 – Projection n° 3: India’s and Bangladesh’s Equidistance Lines**
8 **Compared (Animation)**
9

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

⁹⁰ See BR, p. 67, Figure R3.14.

⁹¹ See Bangladesh’s Folder, 1st round, “Bangladesh’s 180° Line Compared to an Equiratio Line”, Tab. 2.34.

1 afternoon, our base points are more in line with the general direction of the coasts
2 than theirs. I suppose that Bangladesh has done its best to find base points as
3 beneficial to its case as it could; but it has found nothing better which could really
4 help it.

5

6 8. So much for the first stage of the standard method – which, by the way, is
7 not “Professor Pellet’s famous methodology” as Professor Crawford put it⁹², but
8 the normal method now adopted and applied by all international courts and
9 tribunals whenever drawing a provisional equidistance line is not unfeasible (or
10 possibly not “wholly inappropriate” – not in the very subjective sense our
11 opponents give to the word, but in view of the absurd results such a line would lead
12 to, and only if these results cannot be corrected by an adjustment) – and it is indeed
13 not open to courts and tribunals to pick and choose what they consider “the *most*
14 *appropriate* method by which to reach an equitable solution” as Professor Boyle
15 suggested in his last speech.⁹³ This would be, if I may say so, a ... most
16 inappropriate step backward, putting into question the trend toward more certainty
17 and more predictability in the law of maritime delimitation obtained through the
18 case-law of international courts and tribunals during the past thirty years or so.

19

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

24

25 **End projection 3**

26

⁹² Transcript, 16 December 2013, Mr. Crawford, p. 545, para. 3(11), line 12.

⁹³ Transcript, 16 December 2013, Mr. Boyle, p. 501, para. 3, lines 9-12 – italics added.

1 **B. Stage 2 – Taking Into Account Relevant Circumstances (If Any)**

2

3 10. Let me then go back to our provisional equidistance line since it better

4 reflects “physical reality at the time of the delimitation”⁹⁴ to quote the *Black Sea*

5 judgment. So better reflects “physical reality at the time of delimitation” than

6 Bangladesh’s line, and let us check whether “there are any relevant circumstances

7 which may call for an adjustment or shifting of the provisional

8 equidistance/median line so as to achieve an equitable result.”⁹⁵

9

10 11. But I would like to mention first something rather important – or at least

11 significant: at *no point* during their second round, have our friends on the other

12 side mentioned the so-called instability of the coast as a relevant circumstance

13 calling for a change of the provisional equidistance line: Mr. Martin has not cited

14 it as a “special circumstance” within the meaning of Article 15 of the UNCLOS;

15 nor have Mr. Reichler or Professor Crawford suggested that it could be a

16 “relevant circumstance” for the purposes of the second stage of the standard

17 three-stage method. We take note – it is an important rationalization of

18 Bangladesh’s argument;⁹⁶ and indeed, by no means could the instability of the

19 coast be considered as such a circumstance.

⁹⁴ I.C.J., Judgment, 3 February 2009, *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Reports 2009, p. 106, para. 131.

⁹⁵ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, para. 192 referring to: “*Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 47, para. 63; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, pp. 102-103, paras. 119-121”; see also para. 205 and I.C.J., Judgment, 10 October 2002, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Reports 2002, p. 441, para. 288, or I.C.J., Judgment, 3 February 2009, *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Reports 2009, p. 112, para. 155 and ITLOS, Judgment, 14 March 2012, *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Reports 2012, paras. 275.

⁹⁶ Comp. e.g. BR, p. 2, para. 1.6, p. 48, para. 3.55, transcript, 9 December 2013, Mr. Akhavan, p. 95, para. 70, lines 4-5, p. 97, para. 74, lines 11-13, pp. 114-115, para. 119.

1
2 12. We are, therefore left with one – and only one – special/relevant
3 circumstance (I have explained last Friday why there was no need for
4 differentiating about both expressions)⁹⁷: this circumstance is concavity. Before
5 discussing its merits (or absence of merits...), please allow me to make a
6 clarification concerning the very notion of relevant circumstances. On several
7 occasions, Mr. Reichler has alleged that “[t]he cutoff [...] constitutes a relevant
8 circumstance under the three-step method”⁹⁸; I think it will be more exact to say
9 that “the concavity constitutes a relevant circumstance under the three-step
10 method” not if it creates “a” cut-off but *if and when* it “produces a *pronounced*
11 cut-off effect” on the projection of the coast of the concerned State.⁹⁹
12

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

14 (1) Bangladesh’s coast is concave;

15 (2) India’s coast too is concave;

16 (3) “concavity *per se* is not necessarily a relevant circumstance.”¹⁰⁰
17

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

⁹⁷ See transcript, 13 December 2013, p. 393, para. 8.

⁹⁸ See e.g.: Transcript, 16 December 2013, Mr. Reichler, p. 531, para. 19, lines 4-7; see also: *ibid.*, pp. 526-527, para. 11.

⁹⁹ ITLOS, Judgment, 14 March 2012, *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Reports 2012, para. 323.

¹⁰⁰ *Ibid.*, para. 292; see also: See also BR, p. 54, para. 3.68, p. 86, para. 4.60, p. 91, para. 4.70; or transcript, 9 December 2013, Mr. Martin, p. 42, para. 43 and Mr. Reichler, pp. 123-124, para. 140 and p. 129, para. 149.

¹⁰¹ See transcript, 13 December 2013, A. Pellet, pp. 406-407, paras. 31-32.

1 incidental special feature from which an *unjustifiable difference of treatment* could
2 result.”¹⁰² As a result of such a distortion, the continental shelf rights of one of the
3 Parties should be “*considerably* different from those of its neighbours...”¹⁰³. This
4 is not so in the present case where the “treatment” of India on the one hand and of
5 Bangladesh on the other hand is neither “considerably different” nor, in any case,
6 “unjustifiable” if it could be seen to exist.
7

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

14
15 **Projection n° 4: Head of the Bay shared**
16

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

¹⁰² I.C.J., Judgment, 20 February 1969, *North Sea Continental Shelf, Reports 1969*, pp. 49-50, para. 91 – italics added.

¹⁰³ *Ibid.* – italics added.

¹⁰⁴ Transcript, 16 December 2013, Mr. Reichler, p. 527, para. 13, lines 7-9.

1 - *first*, what matters is not whether a State is “pinched” between two others or not,
2 but what matters are the relations between the respective coasts of the States concerned;
3 and,

4 - *second*, it can perfectly happen that the concavity of a “pinched” State
5 constitutes a relevant circumstance *vis-à-vis* one of its neighbours and not *vis-à-vis* the
6 other.

7
8 **End of projection 4**
9

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

15
16 “The ICJ itself rejected the thesis [...] that dealing with two boundaries in the
17 same case is somehow materially different from dealing with them in separate cases. To
18 quote the Court: ‘Although the proceedings have been joined, the cases themselves
19 remain separate, at least in the sense that they relate to different areas of the North Sea
20 continental shelf, and that there is no *a priori* reason why the Court must reach identical
21 conclusions in regard to them...’¹⁰⁵ ...”¹⁰⁶

22
23 I repeat, “There is no *a priori* reason why the Court must reach identical conclusions in
24 regard to them...”

25
26 We could not agree more: indeed the global situation is the same in both the ITLOS case
27 and our case; and certainly the Tribunal in Hamburg has taken this situation into due
28 consideration. However, there is no *a priori* reason why this Tribunal ought to reach
29 identical conclusions in regard to the maritime delimitation between Bangladesh and
30 India: the bilateral coastal relationship between these States is different from that between

¹⁰⁵ I.C.J., Judgment, 20 February 1969, *North Sea Continental Shelf, Reports 1969*, p. 49, para. 89.

¹⁰⁶ Transcript, 9 December 2013, Mr. Reichler, pp. 132-133, para. 155.

1 Bangladesh and Myanmar. *Vérité au-delà [de la Naaf River], erreur en deçà*¹⁰⁷ – “Truth
2 on this side of the [Naaf River], error on the other side.”¹⁰⁸

3
4 **Projection n° 5: Concavities (Animation)**
5

6 17. The truth when you consider the main geographical characteristics of the
7 coasts on both sides of the Hariabhanga River is concavity. Concavity East of the
8 River **draw the Bangladesh concavities my first round “The Bay of Bengal**
9 **(1)”**: this is Bangladesh’s concave coast; and, **draw the Indian concavity**
10 **concavity West of the Estuary – this is the Indian concave relevant coast. Now,**
11 **Mr. President, *this* (and only this) is what I put on the screen and which was in**
12 **your folder on last Friday. But **add the dotted lines and the various mentions****
13 ****(B-5, I-2 and I-3 + the distances added by India on Reichler’s 2nd round, Fig.****
14 ****4 – Tab 5.12 of their Folder *this*, now, is what Mr. Reichler introduced on****
15 **Monday as the “Map presented by Professor Pellet during India’s first round of**
16 **oral pleadings” and it was reproduced under Tab 5.12 of their folder – a**
17 **regrettable ... approximation to say the least. But let me pause and comment on**
18 **this revised figure if I may.**

19
20 18. It is very curiously asymmetric, Mr. President: why does the Indian
21 simplified coast run from I-2 to the south-western extremity of the Bay of
22 Balasore and not to Devi Point **take out I-3 and False Point and add Devi Point**
23 **in blue on the map (same characters as False Point) and I-4; then add a**
24 **dotted line from I-2 to I-4 + the length. I have no objections against**
25 **simplifications, Mr. President, but they must be balanced and equivalent for both**

¹⁰⁷ See Blaise Pascal, *Pensées*, 1660, para. 294

(<http://www.ub.uni-freiburg.de/referate/04/pascal/pensees.pdf>).

¹⁰⁸ Translated by W. F. Trotter, New York, E. P. Dutton & Co., 1958,

http://books.google.nl/books?id=qpYwR3FT0-kC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

1 sides... When this correction is made, it will be apparent that both concavities are
2 about the same length and it can genuinely be thought that they have the same
3 kind of effect on the equidistance line. May I also refer you back again, Mr.
4 President, Members of the Tribunal, to the geometrical figures connecting the
5 base points that Sir Michael put on the screen a moment ago, and which is in Tab
6 11.4 of your folder: it confirmed that it is appropriate to simplify the coasts of the
7 Parties – and it does it in regard to the same *relevant* coasts of the Parties.

8
9 **End of projection 5 – Projection n° 6: No Pronounced Distortion**

10
11 19. Bangladesh of course says “no – we are dramatically cut-off”. Is it so, Mr.
12 President? Let’s look anew at the provisional equidistance line and the alleged
13 intolerable cut-off it generates for Bangladesh. Yes, there is some cut-off. But is it
14 “pronounced”, “considerable” and “unjustifiable”? This is indeed very subjective.
15 I would think that, besides just the way we see the line, two reasons at least call
16 for a negative answer:

17
18 **End projection 6 – Projection n° 7 – Areas Lost by India and Myanmar under**
19 **Bangladesh’s Proposals/ITLOS Award**

20
21 - In the first place it is indeed much less pronounced than the one which, in
22 *Bangladesh/Myanmar*, persuaded the ITLOS to adjust the provisional equidistance line;
23 while, by contrast, the cut that India would bear as a result of Bangladesh’s claim is much
24 more considerable than the one inflicted upon Myanmar by the 2012 ITLOS Judgment.
25 On the screen you can see the ITLOS line, it is in red; and the Bangladesh’s claim line in
26 our case in yellow; **add our line** now in purple the equidistance line; **add the ITLOS**
27 **provisional equidistance line** and in green the Bangladesh-Myanmar provisional
28 equidistance line. The non-insignificant adjustment decided by the ITLOS resulted, if I
29 may say so, in a “gain” of less than 19,531 square kilometres for Bangladesh; if this
30 Tribunal were to accept the Bangladesh’s claim the “adjustment” would represent 32,522

1 square kilometres while (i) Indian coast is concave like Bangladesh's coast and (ii) the
2 length of the Indian relevant coast is 411 kilometres, that of Myanmar was 587
3 kilometres.¹⁰⁹

4 5 **End projection 7 - Projection n° 8 – Refashioning the Geography (Animation)**

6
7 - Secondly, this indentation of the line to the east is simply a negation of
8 geography as it is, a negation of nature as it is: this inflexion reflects two clearly marked
9 characters of the relevant coasts **underline the convex part between Maipoura Point**
10 **and Devi Point**: the (secondary) convexity of the segment of the relevant Indian coast
11 between Malpoura Point and Devi Point on the one hand and **underline the western part**
12 **of the Brahmaputra delta** Bangladesh's "concavity within the concavity" facing India
13 eastward; but, even though Mr. Reichler enjoys "discounting or eliminating"¹¹⁰ what he
14 calls "anomalous" features, this precisely consists in negating – and therefore
15 refashioning the nature and the geography.¹¹¹

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

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

¹¹⁰ Transcript, 9 December 2013, Mr. Reichler, p. 122, para. 134, line 17.

¹¹¹ I.C.J., Judgment, 20 February 1969, *North Sea Continental Shelf*, Reports 1969, para. 91, respectively pp. 49 and 50.

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

4
5 **End of projection 8 – Projection n° 9: An Angle Bisector Line? (Animation)**
6

7 20. Would an angle bisector be more appropriate Mr. President? Indeed, if
8 you take Bangladesh’s line it solves the problem: **Colour the space between the**
9 **equidistance line and the bisector** Bangladesh may complain of no cut off at all;
10 but – and these again are huge “buts” Mr. President:

11 - the line is entirely arbitrary, and can be justified by no rule of international law;
12 and

13 - it has a considerable cut-off effect on India – I’ll come back to this in a minute.

14
15 **End of projection 9**
16

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

25
26 **Projection n° 10: India’s Severe Cut-Off Resulting from the Bangladesh’s Claimed**
27 **Line (1)**
28

¹¹² I.C.J., Judgment, 24 February 1982, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Reports 1982, p. 54, para. 61.

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

4
5 **End of projection 10 – Projection n° 11: India's Severe Cut-Off Resulting from the**
6 **Bangladesh's Claimed Line (2)**
7

8 The same is true here, on this sketch-map which was also first presented in our Reply.
9 And of course, it is legitimate to appreciate the cut-off effect of a claimed line, not only
10 in respect to the area within two hundred nautical miles, but also beyond – in that, as I
11 have already said, I agree with Professor Crawford.¹¹³ This being said, this assessment
12 must be made in view of the general situation and the next screen reminds us opportunely
13 that India surrounds both sides of the Bay of Bengal,

14
15 **End projection 11 – Projection n° 12: India's Severe Cut-Off Resulting from the**
16 **Bangladesh's Claimed Line (3)**
17

18 since it reminds us of the existence of the Andaman Islands – as Sir Michael rightly did
19 earlier to-day, and it shows that India is doubly cut off by the Bangladesh's claim. May I
20 also note that the ITLOS line is certainly binding for Bangladesh but does not bind India?
21 This map – which was projected by Counsel for Bangladesh last week and which is
22 supposed to reproduce the previous one – of which it gives a very “free” (but interesting)
23 interpretation is very telling too (it was first included in Bangladesh's first round Folder;
24 and I have also shown it in India's first round Folder). Yes indeed, Bangladesh's line
25 severely cuts off India's entitlement to a continental shelf whether within or beyond the
26 200 nautical miles limit and, of course, it is of no avail for Bangladesh to claim a shift of
27 the equidistance line on the pretext of its being cut off when the result of this change is to
28 create a further cut-off for India. And all the less so that (i) this change in the direction of

¹¹³ Transcript, 16 December 2013, Mr. Crawford, p. 555, paras. 21-22, lines 7-11.

1 the line is purely arbitrary and finds no justification whatsoever in the standard method of
2 delimitation and (ii) that the cut-off Bangladesh complains of is limited. As rightly noted
3 by Professor Crawford, “[c]ut-off is a question of degree, not a generic prohibition”; the
4 cut off endured by Bangladesh is by no means “considerable” and must be assessed
5 keeping in mind that of India – and certainly a cut-off deriving from geography cannot be
6 “exchanged” (I was about to say “bargained”...) with a “compensatory cut-off”.

7
8 **End of projection 12.**
9

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

15
16 24. Some words, however, on the case-law, before leaving stage 2, since both,
17 Paul Reichler and James Crawford, came back at some length to it – although
18 both simply repeating in large parts what they had already said during the first
19 round – mainly repeated, at least but only when they have not contradicted each
20 other. Thus, I note that Mr. Reichler, has vehemently insisted that this review of
21 the cases where islands were considered as relevant circumstances was also fully
22 pertinent for our case where the only relevant (or irrelevant...) circumstance they
23 invoke is concavity.¹¹⁴ Professor Crawford disagrees – speaking of
24 *Barbados/Trinidad and Tobago*, he emphasized: “The problem of cut off was not
25 caused by concavity but by two other factors. First and most important, Barbados
26 is a long way to the east of Trinidad and Tobago, with consequent effects on the

¹¹⁴ Transcript, 16 December 2013, Mr. Reichler, p. 535, para. 26, lines 12-19.

1 200M line and the equidistance line.”¹¹⁵ – an island then; a remote island; not a
2 concavity; and, apparently, for Professor Crawford, it makes a difference – for me
3 too.

4
5 25. This being said, with respect, Professor Crawford’s analysis of *Barbados*
6 is inaccurate in several important respects:

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

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

14
15 **Projection n° 13: *Barbados/Trinidad and Tobago and Bangladesh v. India Compared***
16 **slide 1**
17

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

26
27 **End projection 13**

¹¹⁵ Transcript, 16 December 2013, Mr. Crawford, pp. 551-552, para. 14.

¹¹⁶ Transcript, 28 October 2005, Mr. Crawford, p. 18, lines 13-21.

1
2 26. Let me focus now on the other rare cases where concavity was at stake
3 (although I maintain that it was also the case in *Barbados/Trinidad and Tobago*). I
4 have said enough, I think, of the other *Bay of Bengal* case – and you know it by
5 heart. Just some words then on the “*two Guineas*” case. It is true, Mr. President
6 that I don’t “like”¹¹⁷ this eccentric decision: it is not principled, it has no legal
7 basis whatsoever, and one of the Arbitrators, Judge Bedjaoui – who, however,
8 concurred with the majority-, some years later dissociated himself from the
9 solution.¹¹⁸ That Award participates in the, I would say, “anything” strategy –
10 *stratégie du n’importe quoi* – “As you like it” would have said Michael
11 Shakespeare or was it William Wood – a strategy to which our friends on the
12 other side are addict; it is simply not serious even though it was invoked by the
13 ITLOS. This said, as I explained last Friday¹¹⁹, even this Award is to be
14 differentiated from our case: as Mr. Reichler now recognizes,¹²⁰ concavity was
15 only part of the reasons for the choice of a bisector.
16

17 27. Mr. President, I would certainly not dare to be as critical of the venerable
18 1969 Judgment in the *North Sea* cases – although it was at the origin of the
19 scramble of the law of maritime delimitation – but again, Mr. President: it *is*
20 venerable; the general principle it stated – the need for an equitable solution –,
21 which was embodied in the UNCLOS, is not self-sufficient; it does not stand by
22 itself and cannot be considered “in clinical isolation” as Bangladesh does.
23 Moreover,

¹¹⁷ See Transcript, 16 December 2013, Mr. Crawford, p. 549, para. 10, line 6; see also Mr. Reichler, p. 534, para. 25, lines 12-14.

¹¹⁸ See Dissenting opinion of arbitrator Mr. Bedjaoui in the case concerning the *Delimitation of the maritime boundary between Guinea-Bissau and Senegal*, decision of 31 July 1989, RIAA, vol. XX, p. 194, para. 104 and note 109.

¹¹⁹ Transcript, 13 December 2013, pp. 414-415, para. 42.

¹²⁰ Transcript, 16 December 2013, Mr. Reichler, p. 535, para. 26.

1 (1) even if Mr. Reichler was ironical about it,¹²¹ it cannot be said that the ICJ in
2 that case really adopted an angle-bisector; it fixed a number of general principles and –
3 temporarily – reduced equidistance to one possibility among others. This is a scramble;

4 (2) on Monday, Professor Crawford, surely inadvertently, gave the wrong
5 impression that the 1969 Judgment came in support of “[t]he presumption of maximum
6 reach”;¹²² and he added: “the *North Sea Continental Shelf* cases themselves allowed
7 Germany access to the median line with the opposite State as a result of negotiations”¹²³;
8 but of course, it is the subsequent agreement, not the Judgment which permitted Germany
9 to approach its so-called “maximum reach”.

10
11 28. Let me then briefly – time is elapsing quickly – say a few words of the
12 judgments and awards my opponent cited in favour of this academic and most
13 debatable notion of “maximum reach”:

14 - *Saint-Pierre et Miquelon*, which Mr. Crawford described as “a notable example
15 of the presumption of maximum reach at least out to 200M.”¹²⁴ Unfortunately, he did not
16 venture into the details of that case. There are three important points:¹²⁵

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

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

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

¹²¹ *Ibid.*, pp. 533-534, para. 24.

¹²² Transcript, 16 December 2013, Mr. Crawford, p. 548, para. 11, lines 17-19.

¹²³ *Ibid.*, lines 20-21.

¹²⁴ Transcript, 16 December 2013, Mr. Crawford, p. 549, para. 10, lines 10-11; see also: Transcript, 10 December 2013, Mr. Crawford, p. 217, para. 53, lines 8-10.

¹²⁵ See the pleadings for Myanmar in *Bangladesh/Myanmar*, ITLOS/PV.11/15/Rev.1, 24 September 2011, M. Forteau, p. 28. See ICM, p. 165, para. 6.66.

1
2 29. In this respect, the situation is similar to that prevailing in *Nicaragua v.*
3 *Colombia*. In that case,

4 - the Colombian Islands were surrounded by a single state's entitlement, Nicaragua;
5 - Colombia and not Nicaragua argued for equidistance;
6 - Colombian Islands were not given a "corridor", their maritime space was reduced to
7 that "corridor". The Court was concerned by the fact that "a few small islands which are
8 many nautical miles apart"¹²⁶ – and not a mainland coast – may very significantly cut-off
9 the projection of a mainland coast (some three quarters).¹²⁷

10 However, the Court considered: "... that those islands should not be treated as though
11 they were a continuous mainland coast stretching for over 100 nautical miles and *cutting*
12 *off Nicaraguan access to the sea-bed and waters to their east.*"¹²⁸

13
14 30. Two conclusions follow:

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

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

21
22 31. Mr. President, the case-law does not help Bangladesh's case; and the only
23 circumstance still claimed by Bangladesh as being relevant for justifying an
24 adjustment to the provisional equidistance line: the concavity of its coast, does not
25 meet the required conditions to that effect: indeed it creates a cut-off, preventing

¹²⁶ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, para. 215.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.* – italics added.

1 its entitlement to maritime areas to produce their full effect but (1) a cut-off is
2 unavoidable when maritime entitlements overlap; (2) the one it complains off is
3 not considerable; and (3) the “alternative” line it itself claims would create a
4 considerable cut-off to the detriment of India without any justification based on
5 the general configuration of the coasts. There is no justification for an adjustment
6 of the provisional equidistance line at stage 2 of the standard method.
7

8 **Stage 3 – The Non-Disproportionality Test**

9

10 32. Mr. President, on Monday, Counsel for Bangladesh had very little to say
11 on the “non-disproportionality test”, which constitutes the third stage of the now
12 standard equidistance/relevant circumstances method. I can therefore be
13 extremely brief.
14

15 33. From Bangladesh’s second round of oral presentations, the Parties appear
16 to agree on two points:

17 - *First*, the delimitation line must be tested “under the very liberal standards of the
18 [non-]disproportionality test”;¹²⁹ and,

19 - *Second*, beyond Devi Point, the maritime zones that lie within 200 nautical miles from
20 Bangladesh are to be excluded from the non-disproportionality test.¹³⁰
21

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

¹²⁹ Transcript, 16 December 2013, Mr. Reichler, p. 524, para. 7, line 3.

¹³⁰ Transcript, 16 December 2013, Mr. Crawford, pp. 555-556, paras. 23-24.

1 area as follows: 93,235 square kilometres for India and 83,521 square kilometres
2 for Bangladesh. The ratio of their respective shares of the relevant area is thus
3 1:0.90. The situation is nearly one of equality, not of disproportionality, let alone
4 of gross disproportionality.

5
6 **Projection n° 14: The Non-Disproportionality Test**
7

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

13
14 **End of projection 14**
15

16 36. Finally, I note that, even if the Tribunal were to accept the relevant area as
17 shown by Professor Crawford on Monday¹³¹ (*quod non*), the equidistance line
18 proposed by India, which is the result of a normal application of the 3-stage
19 method, passes unquestionably the non-disproportionality test. The ratio between
20 the shares of the relevant area would be 2:1 in favour of India. “Close enough”¹³²
21 said Professor Crawford. Well... “fair enough”, Mr. President. The result “is not
22 at all disproportionate [within the limits accepted by the jurisprudence as reflected
23 in the summary Table you can find under Tab 12.15 of your Folder], let alone
24 “grossly” disproportionate.¹³³ Without any need for further discussion, the
25 application of the standard equidistance/relevant circumstances easily passes the
26 test of non-disproportionality – whatever the length of the coasts are deemed
27 relevant. However, I hasten to say, Mr. President, that, by stating this, I do not

¹³¹ Transcript, 16 December 2013, Mr. Crawford, Tab 5.27.

¹³² Transcript, 16 December 2013, Mr. Crawford, p. 556, para. 26, line 16.

¹³³ Transcript, 16 December 2013, Mr. Crawford, p. 556, para. 25, line 12.

1 concede in any manner that we accept the relevance of the coasts advanced by
2 Counsel for Bangladesh in support of their calculation. What I simply mean is that
3 there is no need to lose time in discussing calculations which how “carefully” and
4 “cleverly performed” they might have been,¹³⁴ can have no influence on the
5 assessment to be made: whatever the calculations, the equidistance line as drawn
6 by India passes the test and the result, achieved through the methodology
7 followed by India in conformity with the applicable rules and principles of
8 maritime delimitation, is equitable.

9
10 **II. BRIEF SUMMARY OF THE INDIAN CASE**

11
12 37. Mr. President, before our Agent recapitulates the main political and legal
13 policy issues related to the present case, please allow me to briefly summarize the
14 India’s case. I will do it by underlining four main points.

15
16 38. *First*, the starting point of the maritime delimitation is the land terminus
17 point, defined in the 1947 Radcliffe Award, as the point where “the boundary
18 between the Districts of Khulna and 24 Parganas [...] meets the Bay of
19 Bengal”,¹³⁵ the boundary between these two Districts had been described by
20 Notification 964 of the Government of Bengal of 1925 as being formed by “the
21 midstream of the main channel for the time being of the rivers Ichhamati and
22 Kalindi, Raimangal and Haribhanga until it meets the Bay.”¹³⁶ However, the
23 combination of these formulas, as such, does not inform on the precise location of
24 that point. It must therefore be located by other means – primarily by using the
25 map annexed to the Award and signed by Sir Cyril. This map forms part of the

¹³⁴ Transcript, 16 December 2013, Mr. Crawford, p. 555, para. 22, line 13.

¹³⁵ Radcliffe Award, para. 8 (ICM, Annex IN-2).

¹³⁶ Government of Bengal, Notification 964 Jur. (24 January 1925), reprinted in *The Calcutta Gazette* (29 January 1925) (ICM, Annex IN-1).

1 Award, and shows very clearly that the land terminus is situated east of the
2 location where New Moore Island – to-day a low tide elevation – lies. The
3 Radcliffe Award has been authoritatively interpreted successively by the Bagge
4 Award of 1948, according to which “[i]f the demarcation of this line is found to
5 be impossible [...] the course of the midstream of the main channel” must be
6 “determined on the date of demarcation and not as it was on the date of the
7 award”,¹³⁷ then by the 1951 Indo-Pakistan administrative agreement, which
8 confirmed the fluidity of the mainstream between 24 Parganas and Khulna – up to
9 the date of the final demarcation of the boundary.¹³⁸ It results from this –
10 consistent – evidence that the terminus of the land boundary is located in the
11 midstream of the main channel of the conjoined Hariabhanga and Raimangal
12 rivers where it meets the Bay. The main channel thus defined flows north then
13 east of New Moore as can be deduced from all the relevant charts (including
14 Bangladesh’s) and noted by all of us during the site visit, notably during the
15 famous afternoon of 24 October.

16
17 39. *Second*, concerning the maritime delimitation, India is extremely
18 concerned by Bangladesh’s approach to the applicable law. Were you, Tribunal,
19 to be seduced by their call for “flexibility” or “legislation” – the sirens’ or
20 “mermaids” songs – then all the patient quest of international courts and tribunals
21 since 1969 for more certainty and predictability in the law of maritime
22 delimitation would be put into question. Whatever the French great play writer
23 Jean Giraudoux might have thought, *le droit [n’est] [pas] la plus puissante école*

¹³⁷ Bagge Award, *UNRIAA*, Vol. XXI, p. 29; BM, Vol. III, Annex B16.

¹³⁸ See IR, pp. 45-46, paras. 2.54-2.55 (Letter from Pakistan to India No. 1(1).3/10/50, 7 February 1951 (Vol. II, Annex RJ-1) and Copy of Express Letter from Foreign, New Delhi to Foreign, Karachi, No. F. 20/50-Pak.III, 13 March 1951 (IR, Vol. II, Annex RJ-2)).

1 *de l'imagination*¹³⁹ (law is not the most powerful school for imagination)...
2 Although not as explicitly as might have been hoped, the ITLOS wisely has not
3 tried to show imagination or creativity in applying the modern law of maritime
4 delimitation in its 2012 Judgment – and this although it was virtually the first time
5 that an international tribunal had to decide on the continental shelf beyond 200
6 nautical miles. We are convinced that you will confirm and strengthen this
7 judicious position: the law of maritime delimitation cannot be reduced to just the
8 general directive that the delimitation of maritime areas must achieve an equitable
9 result as Bangladesh wants you to think or to say. Of course such a result must be
10 achieved but the method is not left to fortune or to the full subjectivity of the
11 international courts or tribunals: I hesitate to recall it – but it is so tremendously
12 important, Mr. President – this standard, three-stage, method is the
13 equidistance/relevant circumstances method, which can only be neglected when
14 the drawing of a maritime boundary in accordance with it is unfeasible.

15
16 40. *Third*, by no means is it unfeasible in the present case:

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

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

21 - although Bangladesh has shown reluctance and much hesitation and uncertainty
22 in specifying what it considers as the relevant coasts and areas, both Parties have
23 determined base points without meeting particular problems; as we have shown, the
24 so-called instability of the coasts is much less marked than alleged by Bangladesh and is,

¹³⁹ J. Giraudoux, *La guerre de Troie n'aura pas lieu*, Paris, B. Grasset, 1935
(http://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD4QFjAC&url=http%3A%2F%2Fbeq.ebooksgratuits.com%2Fclassiques%2FGiraudoux_La_guerre_de_Troie_naura_pas_lieu.pdf&ei=uaewUv7eHYnm7Abj94BQ&usg=AFQjCNEfYHRB5LclQ--ULqrKKbKUR0-HZA&bvm=bv.57967247,d.ZGU&cad=rja).

1 in any case, not a circumstance which could lead to adjusting the direction of the
2 boundary line, let alone to ignoring the three-stage standard methodology;

3 - constructing provisional equidistance line is not problematic either; and,
4 interestingly, the equidistance lines respectively proposed by the two Parties are not that
5 different from each other in spite of the fact that they are constructed on the basis of
6 partly different base points;

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

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

19
20 41. *Fourth* and lastly, Mr. President, this case partly is about the delimitation
21 of the continental shelf beyond 200 nautical miles. It is indeed not an absolute
22 novelty, but there is still excitement in our ranks about it. However, this
23 intellectual excitement – which you probably share as is normal for nobly trained
24 international lawyers – should not, I stress it again, incite you to endorse the
25 adventurous options advocated by our opponents. The continental shelf is one; its
26 delimitation is ruled by the same principles as those applicable within 200
27 nautical miles. Moreover, in spite of Bangladesh’s excessive claims, it must be
28 kept in mind that the area of this “outer continental shelf”, as our friends on the

1 other side call it, where the entitlements of the Parties, reasonably defined,
2 overlap is very limited – if, at least, you resist the temptation, as you must, to
3 completely refashion the nature and geography.

4

5 Mr. President, Members of the Tribunal, I thank you very sincerely for your kind
6 attention. May I ask you, Mr. President, to call Dr. Neeru Chadha, the Agent of India for
7 some brief concluding remarks before the reading of our Submissions – which have
8 already been deposited with the Registry.

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PRESIDENT WOLFRUM: Thank you, Professor Pellet, for your presentation, and I call upon the Agent of India.

DR. CHADHA: Thank you, Mr. President.

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3 **PERMANENT COURT OF ARBITRATION**

4
5 **ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS**
6 **CONVENTION ON THE LAW OF THE SEA**

7
8 **BAY OF BENGAL MARITIME BOUNDARY ARBITRATION BETWEEN THE**
9 **PEOPLE'S REPUBLIC OF BANGLADESH AND THE REPUBLIC OF INDIA**

10
11 **REPUBLIC OF INDIA**

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13
14 **CONCLUDING REMARKS BY THE AGENT**

15 **Dr. Neeru Chada**

16
17
18 Mr. President, Distinguished Members of the Tribunal,

19
20 1. We are now at the end of India's second round and – subject to further questions
21 from the Tribunal – at the end of these hearings. Professor Pellet has summarized
22 India's legal case; but I would like to add some more general remarks on two
23 main points which we believe need to be stressed.

24
25 2. *First*, I wish to highlight the stark contrast between the submissions
26 respectively made by the two Parties. Bangladesh has advanced a maximalist and
27 totally untenable maritime claim, ostensibly advanced in the hope that “by chance”
28 it might just succeed: they clearly do not believe in the legal basis of their claim
29 for it kept changing during these proceedings but each successive argument is
30 tried in the hope that the Tribunal will split the difference. This strategy is
31 particularly apparent in respect of Bangladesh's claim to an area of continental

1 shelf beyond 200 nautical miles. The Tribunal will have noted the radical shift in
2 Bangladesh's position between its Memorial and its Reply; in the former it
3 claimed an area of the "outer continental shelf" whose sole basis was the geology
4 and geomorphology of the submarine region. After the ITLOS in
5 *Bangladesh/Myanmar* categorically rejected a similar claim by Bangladesh
6 including a proposed deflection of the delimitation line towards Myanmar's coast,
7 Bangladesh dreamt up a new claim seeking a deflection of its 180 degree line
8 towards India's coast to run parallel to its boundary with Myanmar. But this claim
9 had no more basis in the applicable legal principles than did its predecessor.
10 While Bangladesh seeks "maximum reach" for itself with this claim, it asks the
11 Tribunal to allow it not only to intrude into areas where India has sovereign rights
12 under UNCLOS and no corresponding coast of Bangladesh with overlapping
13 projections, but also to exclude from the equation the so-called maximum reach of
14 the Andaman Islands, which have a coastal frontage of 300 km and entitlements
15 that extend to Bangladesh's so-called south westerly claim.

16
17 3. Mr. President, Members of the Tribunal, while Bangladesh's claim on the
18 continental shelf beyond 200 nautical miles is the most exorbitant part of its
19 Submissions, I must also recall, as another example, of the legal vacuity of its
20 case, the virtually magical boundary line generated by an angle bisector
21 constructed on the basis of two alternative illusory constructions of coastal
22 facades. If that is not refashioning nature, then what is?

23
24 4. On the other hand, India's claims are reasonable, legally sound and carefully
25 argued. Bangladesh's claims are excessive and illogical and argued solely on the
26 basis of a misrepresentation of equity; India has deliberately opted for moderate
27 claims in accordance with the now well settled law of maritime delimitation and
28 we have articulated an argument aimed at assisting the Tribunal in its strictly legal
29 functions and not at tempting it to abandon its legal bases with a view to
30 securing a decision based on "purely equitable" considerations or for addressing

1 aspirations. Aspirations need to be commended Mr. President, Members of the
2 Tribunal, but not at the expense of another State's legitimate rights.

3
4 5. Bangladesh complains that India has not changed its position since it sat down to
5 negotiate and that India offers no guidance to the Tribunal as to how you might
6 adjust the equidistance line, or by how much. It is a very strange argument,
7 befitting a mediation and not an adjudication, a fortiori, one which Bangladesh
8 has commenced. India has not changed its position because India believes that it
9 is proposing an outcome premised on law. It has shown in its written pleadings and
10 the two rounds of arguments that there are no relevant circumstances in the present
11 case which necessitate an adjustment of the equidistance line. All this while,
12 Bangladesh has offered various permutations and combinations with graphics
13 designed to mask how excessive its claim is.

14
15 6. *Secondly*, also closely linked with what I have just said, I stress again that
16 Bangladesh is mistaken in respect of the mandate of this forum: as stated last
17 week, you are a court of law called to decide on the matter on the basis of law and
18 not to dispense Solomonic justice on the basis of equity. Neither are you a
19 legislator called to remedy the perceived lacunae in the existing law or to
20 ameliorate legal rules which do not find favour with Bangladesh.

21
22 7. Mr. President, Members of the Tribunal the law of maritime delimitation
23 is now well established and conceived in such a way as to achieve an equitable
24 solution on the basis of reliable rules with a degree of discretion or what
25 Bangladesh calls margin of appreciation for limited adjustment to address any
26 relevant circumstances. If this Tribunal were to depart from these rules – which
27 apply to the delimitation of maritime areas within as well as beyond 200 nautical
28 miles from the coasts-- this unprecedented decision, as Professor Pellet said,
29 would undermine the positive development of the case-law that has developed
30 over the last thirty years providing more certainty and objectivity in the law
31 regulating this area.

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8. India regrets and firmly rejects the flippant and irrelevant arguments made by Bangladesh in respect of its size or mightiness. Yes, India is a big State, with long coastlines, but this case is only concerned with a clearly defined and limited area. India asks for no more than that to what it is entitled under international law. We cannot accept Bangladesh’s recurring argument according to which, since India enjoys large maritime entitlements in other areas, the Tribunal could, without inconvenience, transfer some parts of India’s entitlements to Bangladesh. Bangladesh’s territorial sovereignty is not threatened by the present arbitration which is only aimed at determining the respective maritime entitlements of both Parties in accordance with international law; but India’s territorial sovereignty would be compromised if this egregious argument by Bangladesh were to be taken into consideration.

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

10. I wish therefore to express my sincere appreciation to the Bangladesh Team and, in particular, to Rear-Admiral Khurshid Alam, Bangladesh’s Deputy Agent for their friendly cooperation during these lengthy proceedings. Our thanks also go to the Permanent Court of Arbitration and the Registrar, Mr. Brooks Daly, who, together with his remarkable team have performed a heavy and complex task during the entire proceedings; they have an impeccable track record and deserve our deep and sincere gratitude. Our thanks also go to Mr. Kasdan and Ms.

1 Larson for their impressive job as real-time reporters. And I would certainly not
2 forget the Indian legal and technical team, and to express to all of them, whether
3 Indians or foreigners, the sincere appreciation of my Government for their work
4 and their devotion to the India's case. I also add to this my personal thanks to
5 each one of you for cooperation extended to me. It has been an honour to work
6 with such a distinguished and dedicated team.

7

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

12

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

15

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

20

21 - **Starting from the land boundary terminus at Point L with co-ordinates 21 degrees**
22 **38 minutes 40.4 seconds N, 89 degrees 10 minutes 13.8 seconds E, the**
23 **boundary follows a geodetic azimuth of 149.3 degrees until it reaches Point**
24 **T1, with the co-ordinates 21 degrees 37 minutes 15.7 seconds N, 89 degrees 11**
25 **minutes 07.6 seconds E.**

26

27 - **From Point T1, the boundary follows a geodetic azimuth of 129.4 degrees until it**
28 **reaches Point T2, with co-ordinates 21 degrees 35 minutes 12.7 seconds N, 89**
29 **degrees 13 minutes 47.5 seconds E.**

30

1 - From Point T2, the boundary follows a geodetic azimuth of 144.2 degrees until it
2 reaches Point T3, with co-ordinates 21 degrees 32 minutes 25.7 seconds N, 89
3 degrees 15 minutes 56.5 seconds E.

4
5 - From Point T3, the boundary follows a geodetic azimuth of 168.6 degrees until it
6 reaches Point T4, with the co-ordinates 20 degrees 30 minutes 17.9 seconds N,
7 89 degrees 29 minutes 20.9 seconds E.

8
9 - From Point T4, the boundary follows a geodetic azimuth of 157.0 degrees until it
10 reaches Point T5, with the co-ordinates 19 degrees 26 minutes 40.6 seconds N,
11 89 degrees 57 minutes 54.9 seconds E.

12
13 - From Point T5, the boundary follows a geodetic azimuth of 171.7 degrees until it
14 reaches Point T6, with the co-ordinates 18 degrees 46 minutes 43.5 seconds N,
15 90 degrees 04 minutes 02.5 seconds E.

16
17 - From Point T6, the boundary follows a geodetic azimuth of 190.7 degrees until it
18 reaches Point T7, with the co-ordinates 17 degrees 22 minutes 08.8 seconds N,
19 89 degrees 47 minutes 16.1 seconds E.

20
21 - From Point T7, the boundary follows a geodetic azimuth of 172.342 degrees until it
22 meets the maritime boundary line between Bangladesh and Myanmar at
23 Point Z with co-ordinates 17 degrees 15 minutes 12.8 seconds N, 89 degrees
24 48 minutes 14.7 seconds E.

25
26 Mr. President, Members of the Tribunal, that concludes my statement, and that
27 concludes India's second round of oral pleadings. I thank you.

28
29
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31

1 PRESIDENT WOLFRUM: Thank you, Dr. Chadha.

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

6 (Brief recess.)

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

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

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

22 Equally, I wish to thank both parties, also on behalf of my colleagues, for the

1 courtesies extended to us, and finally you will all agree that I should express my gratitude to
2 the members of the PCA, which have very smoothly prepared, administered not only the
3 site visit but also this hearing. You see it was so smooth that you hardly noticed that they
4 were pulling the strings occasionally.

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

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

11 The meeting is now closed.

12 (Whereupon, at 5:36 p.m., the hearing was concluded.)

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CERTIFICATE OF REPORTER

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

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

DAVID A. KASDAN