

## **TRIBUNAL RULES IN BAY OF BENGAL DISPUTE BETWEEN BANGLADESH AND INDIA**

*Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*

### **Introduction**

In a decision handed down on 7 July 2014, a Tribunal constituted under the United Nations Convention on the Law of the Sea, ruled in favour of Bangladesh in a maritime boundary dispute. The Tribunal, having found that it had jurisdiction over the dispute, identified the location of the land boundary terminus between Bangladesh and India and determined the course of the maritime boundary in the territorial sea and the exclusive economic zone and the continental shelf.

### **Background**

On 8 October 2009, Bangladesh instituted proceedings concerning the delimitation of the maritime boundary between Bangladesh and India and Bangladesh and Myanmar pursuant to Article 287 and Annex VII, Article 1 of the United Nations Convention on the Law of the Sea. A decision in the dispute between Bangladesh and Myanmar was handed down in 2012.

Bangladesh and India exchanged written pleadings over the course of 2010-13.

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

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

### **Decision**

In its decision, the Tribunal (comprising Judge Rüdiger Wolfrum (Germany) as President, and Judge Jean-Pierre Cot (France), Judge Thomas A. Mensah (Ghana), Dr. Pemmaraju Sreenivasa Rao (India), and Professor Ivan Shearer (Australia)) identified the location of the Land Boundary Terminus, delimitation of the Territorial Sea, and the delimitation of the Exclusive Economic Zone and the Continental Shelf.

In connection with the Exclusive Economic Zone and the Continental Shelf, the parties disagreed on whether the “equidistance/relevant circumstances” method (in which a provisional equidistance line is identified and then adjusted if relevant circumstances so require) or the “angle-bisector” method (in which the overall direction of the Parties’ coasts is first identified, and the angle formed by these lines is then bisected to produce the boundary line) should be applied.

The Tribunal considered that the “equidistance/relevant circumstances” method was preferable unless, as the International Court of Justice noted in another matter, there are “factors which make the application of the equidistance method inappropriate.” That was not the case in the present dispute. Instability in the coast was not a relevant circumstance that justified adjustment of the provisional equidistance line - what mattered was the coast line at the time of delimitation and future changes in the coast could not alter the maritime boundary. However, the concavity of the Bay of Bengal was a

relevant circumstance which required an adjustment to the provisional equidistance line in order to produce an equitable result.

The Tribunal also found that the delimitation line it had adopted gave rise to a “grey area”, and decided in respect of that grey area that the boundary line delimited only the parties’ sovereign rights with respect to the continental shelf, and did not otherwise limit India’s sovereign rights to the exclusive economic zone in the superjacent waters.

In a dissent, Dr. Pemmaraju Sreenivasa Rao disagreed with the majority of the Tribunal on the considerations that govern the adjustment of the provisional equidistance line. In particular, Dr Rao considered that the Award did not provide sufficient explanation for how the adjusted delimitation line was ultimately decided upon, and disagreed both as a matter of law and policy with the creation of a “grey area” as a result of the adjustment the majority made to the provisional equidistance line.

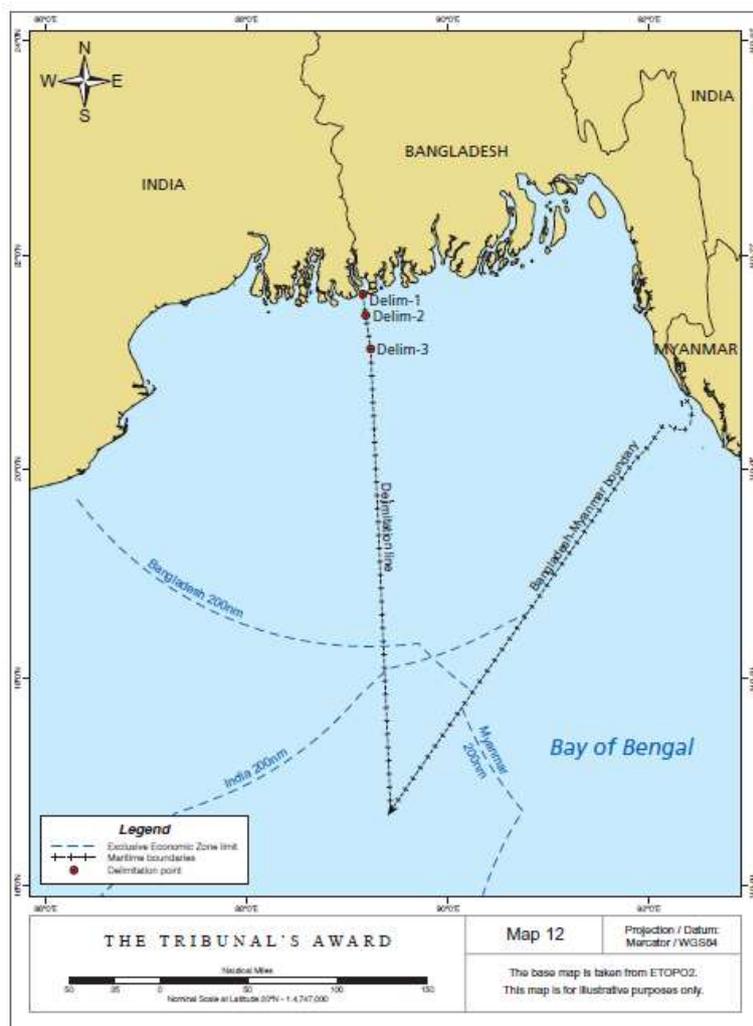


Fig. 1.1 – The Tribunal’s Award

## **Comment**

The decision has been welcomed in both India and Bangladesh, concluding what has been a thirty-year dispute. The decision paves the way for exploration to take place in the oil-rich waters, and increase opportunities for shipping and fishing.

5<sup>th</sup> August 2014