

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



PEOPLE'S REPUBLIC OF BANGLADESH

V.

REPUBLIC OF INDIA

MEMORIAL OF BANGLADESH

VOLUME III
ANNEXES

31 MAY 2011

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ANNEXES**

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Annex B1

Convention on the Continental Shelf, 499 UNTS 311 (29 April 1958), entered into force 10 June 1964.

Convention on the Continental Shelf

1958

Done at Geneva on 29 April 1958. Entered into force on 10 June 1964.
United Nations, *Treaty Series*, vol. 499, p. 311



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Convention on the Continental Shelf
Done at Geneva on 29 April 1958

The States Parties to this Convention

Have agreed as follows:

Article 1

For the purpose of these articles, the term “continental shelf” is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

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

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless

another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

Article 8

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

- (a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;
- (b) Of the date on which this Convention will come into force, in accordance with article 11;
- (c) Of requests for revision, in accordance with article 13;
- (d) Of reservations to this Convention, in accordance with article 12.

Article 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

Annex B2

Convention on the Territorial Sea and the Contiguous Zone, 516 UNTS 205 (29 April 1958), entered into force 10 September 1964.

**Convention on the Territorial Sea and the
Contiguous Zone**
1958

Done at Geneva on 29 April 1958. Entered into force on 10 September 1964.
United Nations, *Treaty Series*, vol. 516, p. 205.



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2005

Convention on the Territorial Sea and the Contiguous Zone
Done at Geneva on 29 April 1958

The States Parties to this Convention

Have agreed as follows:

PART I.
TERRITORIAL SEA

SECTION I.
GENERAL

Article 1

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

SECTION II.
LIMITS OF THE TERRITORIAL SEA

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 4

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semicircle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceed twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 10

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph

shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

SECTION III.

RIGHT OF INNOCENT PASSAGE

Subsection A. Rules applicable to all ships

Article 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Article 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Subsection B. Rules applicable to merchant ships

Article 18

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 19

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

- (a) If the consequences of the crime extend to the coastal State; or
 - (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 20

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Subsection C. Rules applicable to government ships other than warships

Article 21

The rules contained in subsections A and B shall also apply to government ships operated for commercial purposes.

Article 22

1. The rules contained in subsection A and in article 18 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Subsection D. Rules applicable to warships

Article 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

PART II.

CONTIGUOUS ZONE

Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

- (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
- (b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

PART III.

FINAL ARTICLES

Article 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 26

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 27

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 28

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 29

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 30

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 31

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

- (a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 26, 27 and 28;
- (b) Of the date on which this Convention will come into force, in accordance with article 29;
- (c) Of requests for revision in accordance with article 30.

Article 32

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

Annex B3

Australia/Papua New Guinea, Treaty concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, 1429 UNTS 207 (18 December 1978), entered into force 15 February 1985

No. 24238

**AUSTRALIA
and
PAPUA NEW GUINEA**

Treaty concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters (with annexes). Signed at Sydney on 18 December 1978

Authentic text: English.

Registered by Australia on 7 July 1986.

**AUSTRALIE
et
PAPOUASIE-NOUVELLE-GUINÉE**

Traité relatif à la souveraineté et aux frontières maritimes entre les deux pays, y compris dans la région dénommée Détroit de Torres, et à des questions connexes (avec annexes). Signé à Sydney le 18 décembre 1978

Texte authentique : anglais.

Enregistré par l'Australie le 7 juillet 1986.

TREATY¹ BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

Australia and Papua New Guinea,

Desiring to set down their agreed position as to their respective sovereignty over certain islands, to establish maritime boundaries and to provide for certain other related matters, in the area between the two countries including the area known as Torres Strait;

Recognising the importance of protecting the traditional way of life and livelihood of Australians who are Torres Strait Islanders and of Papua New Guineans who live in the coastal area of Papua New Guinea in and adjacent to the Torres Strait;

Recognising also the importance of protecting the marine environment and ensuring freedom of navigation and overflight for each other's vessels and aircraft in the Torres Strait area;

Desiring also to cooperate with one another in that area in the conservation, management and sharing of fisheries resources and in regulating the exploration and exploitation of seabed mineral resources;

As good neighbours and in a spirit of cooperation, friendship and goodwill;

Have agreed as follows:

PART I. DEFINITIONS

Article 1. DEFINITIONS

1. In this Treaty:

(a) "adjacent coastal area" means, in relation to Australia, the coastal area of the Australian mainland, and the Australian islands, near the Protected Zone; and, in relation to Papua New Guinea, the coastal area of the Papua New Guinea mainland, and the Papua New Guinea islands, near the Protected Zone;

(b) "fisheries jurisdiction" means sovereign rights for the purpose of exploring and exploiting, conserving and managing fisheries resources other than sedentary species;

(c) "fisheries resources" means all living natural resources of the sea and seabed, including all swimming and sedentary species;

(d) "free movement" means movement by the traditional inhabitants for or in the course of traditional activities;

(e) "indigenous fauna and flora" includes migratory fauna;

(f) "mile" means an international nautical mile being 1,852 metres in length;

¹ Came into force on 15 February 1985 by the exchange of the instruments of ratification, which took place at Port Moresby, in accordance with article 32.

(g) “Protected Zone” means the zone established under Article 10;

(h) “Protected Zone commercial fisheries” means the fisheries resources of present or: potential commercial significance within the Protected Zone and, where a stock of such resources belongs substantially to the Protected Zone but extends into an area outside but near it, the part of that stock found in that area within such limits as are agreed from time to time by the responsible authorities of the Parties;

(i) “seabed jurisdiction” means sovereign rights over the continental shelf in accordance with international law, and includes jurisdiction over low-tide elevations, and the right to exercise such jurisdiction in respect of those elevations, in accordance with international law;

(j) “sedentary species” means living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;

(k) “traditional activities” means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed:

- (i) activities on land, including gardening, collection of food and hunting;
- (ii) activities on water, including traditional fishing;
- (iii) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and
- (iv) barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, “traditional” shall be interpreted liberally and in the light of prevailing custom;

(l) “traditional fishing” means the taking by traditional inhabitants for their own or their dependants’ consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle;

(m) “traditional inhabitants” means, in relation to Australia, persons who:

- (i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,
- (ii) are citizens of Australia, and
- (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities; and

in relation to Papua New Guinea, persons who:

- (i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,
- (ii) are citizens of Papua New Guinea, and
- (iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities.

2. Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by

reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of $\frac{100}{29825}$ and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

3. In this Treaty, the expression "in and in the vicinity of the Protected Zone" describes an area the outer limits of which might vary according to the context in which the expression is used.

PART 2. SOVEREIGNTY AND JURISDICTION

Article 2. SOVEREIGNTY OVER ISLANDS

1. Papua New Guinea recognises the sovereignty of Australia over:

- (a) the islands known as Anchor Cay, Aubusi Island, Black Rocks, Boigu Island, Bramble Cay, Dauan Island, Deliverance Island, East Cay, Kaumag Island, Kerr Islet, Moimi Island, Pearce Cay, Saibai Island, Turnagain Island and Turu Cay; and
- (b) all islands that lie between the mainlands of the two countries and south of the line referred to in paragraph 1 of Article 4 of this Treaty.

2. No island over which Australia has sovereignty, other than those specified in sub-paragraph 1(a) of this Article, lies north of the line referred to in paragraph 1 of Article 4 of this Treaty.

3. Australia recognises the sovereignty of Papua New Guinea over:

- (a) the islands known as Kawa Island, Mata Kawa Island and Kussa Island; and
- (b) all the other islands that lie between the mainlands of the two countries and north of the line referred to in paragraph 1 of Article 4 of this Treaty, other than the islands specified in sub-paragraph 1(a) of this Article.

4. In this Treaty, sovereignty over an island shall include sovereignty over:

- (a) its territorial sea;
- (b) the airspace above the island and its territorial sea;
- (c) the seabed beneath its territorial sea and the subsoil thereof; and
- (d) any island, rock or low-tide elevation that may lie within its territorial sea.

Article 3. TERRITORIAL SEAS

1. The territorial sea boundaries between the islands of Aubusi, Boigu and Moimi and Papua New Guinea and the islands of Dauan, Kaumag and Saibai and Papua New Guinea shall be the lines described in Annex 1 to this Treaty, which are shown on the map annexed to this Treaty as Annex 2,¹ together with such other portion of the outer limit of the territorial sea of Saibai described in Annex 3 to this Treaty that may abut the territorial sea of Papua New Guinea.

2. The territorial seas of the islands specified in sub-paragraph 1(a) of Article 2 of this Treaty shall not extend beyond three miles from the baselines

¹ See insert in a pocket at the end of this volume.

from which the breadth of the territorial sea around each island is measured. Those territorial seas shall not be enlarged or reduced, even if there were to be any change in the configuration of a coastline or a different result from any further survey.

3. The provisions of paragraph 2 of this Article shall not apply to that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty.

4. The outer limits of the territorial seas of the islands specified in subparagraph 1(a) of Article 2 of this Treaty, except in respect of that part of the territorial sea of Pearce Cay which lies south of the line referred to in paragraph 1 of Article 4 of this Treaty, shall be as described in Annex 3 to this Treaty. The limits so described are shown on the maps annexed to this Treaty as Annexes 2 and 4.¹

5. Australia shall not extend its territorial sea northwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

6. Papua New Guinea shall not:

(a) extend its territorial sea off its southern coastline between the meridians of Longitude 142°03'30" East and of Longitude 142°51'00" East, beyond three miles from the baselines from which the breadth of the territorial sea is measured;

(b) extend its territorial sea or archipelagic waters into the area bounded by that portion of the line referred to in paragraph 2 of Article 4 of this Treaty running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of Article 4 of this Treaty which runs between those two points;

(c) establish an archipelagic baseline running in or through the area referred to in subparagraph (b) of this paragraph; or

(d) extend its territorial sea southwards across the line referred to in paragraph 1 of Article 4 of this Treaty.

Article 4. MARITIME JURISDICTION

1. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of seabed and subsoil that is adjacent to and appertains to Australia and the area of seabed and subsoil that is adjacent to and appertains to Papua New Guinea, and over which Australia and Papua New Guinea respectively shall have seabed jurisdiction, shall be the line described in Annex 5 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6¹ and, in part, on the map annexed to this Treaty as Annex 7.¹

2. Subject to the provisions of Article 2 of this Treaty, the boundary between the area of sea that is adjacent to and appertains to Australia and the area of sea that is adjacent to and appertains to Papua New Guinea, and in which Australia and Papua New Guinea respectively shall have fisheries jurisdiction, shall be the line described in Annex 8 to this Treaty. The line so described is shown on the map annexed to this Treaty as Annex 6 and, in part, on the maps annexed to this Treaty as Annexes 2 and 7.

¹ See insert in a pocket at the end of this volume.

3. In relation to the area bounded by the portion of the line referred to in paragraph 2 of this Article running from the point of Latitude 9°45'24" South, Longitude 142°03'30" East to the point of Latitude 9°40'30" South, Longitude 142°51'00" East and that portion of the line referred to in paragraph 1 of this Article which runs between those two points, exclusive of the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi, Saibai and Turnagain:

- (a) neither Party shall exercise residual jurisdiction without the concurrence of the other Party; and
- (b) the Parties shall consult with a view to reaching agreement on the most effective method of application of measures involving the exercise of residual jurisdiction.

4. In paragraph 3 of this Article, "residual jurisdiction" means:

- (a) jurisdiction over the area other than seabed jurisdiction or fisheries jurisdiction, including jurisdiction other than seabed jurisdiction or fisheries jurisdiction insofar as it relates to *inter alia*:
 - (i) the preservation of the marine environment;
 - (ii) marine scientific research; and
 - (iii) the production of energy from the water, currents and winds; and
- (b) seabed and fisheries jurisdiction to the extent that the exercise of such jurisdiction is not directly related to the exploration or exploitation of resources or to the prohibition of, or refusal to authorise, activities subject to that jurisdiction.

PART 3. SOVEREIGNTY AND JURISDICTION — RELATED MATTERS

Article 5. EXISTING PETROLEUM PERMIT

1. Where prior to 16 September 1975 Australia has granted an exploration permit for petroleum under Australian law in respect of a part of the seabed over which it ceases by virtue of this Treaty to exercise sovereign rights, and a permittee retains rights in respect of that permit immediately prior to the entry into force of this Treaty, Papua New Guinea, upon application by that permittee, shall offer to that permittee a petroleum prospecting licence or licences under Papua New Guinea law in respect of the same part of the seabed on terms that are not less favourable than those provided under Papua New Guinea law to any other holder of a seabed petroleum prospecting licence.

2. An application for a licence under paragraph 1 of this Article shall be made:

- (a) in respect of a part of the seabed lying outside the Protected Zone, within six months after the date of entry into force of this Treaty;
- (b) in respect of a part of the seabed lying within the Protected Zone, during the period referred to in Article 15 and any extension of that period to which the Parties may agree.

Article 6. EXPLOITATION OF CERTAIN SEABED DEPOSITS

If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit beneath the seabed, extends across any line defining the

limits of seabed jurisdiction of the Parties, and if the part of such accumulation or deposit that is situated on one side of such a line is recoverable in fluid form wholly or in part from the other side, the Parties shall consult with a view to reaching agreement on the manner in which the accumulation or deposit may be most effectively exploited and on the equitable sharing of the benefits from such exploitation.

Article 7. FREEDOMS OF NAVIGATION AND OVERFLIGHT

1. On and over the waters of the Protected Zone that lie:
 - (a) north of the line referred to in paragraph 1 of Article 4 of this Treaty and seaward of the low water lines of the land territory of either Party, and
 - (b) south of that line and beyond the outer limits of the territorial sea,each Party shall accord to the vessels and aircraft of the other Party, subject to paragraphs 2 and 3 of this Article, the freedoms of navigation and overflight associated with the operation of vessels and aircraft on or over the high seas.
2. Each Party shall take all necessary measures to ensure that, in the exercise of the freedoms of navigation and overflight accorded to its vessels and aircraft under paragraph 1 of this Article:
 - (a) those vessels observe generally accepted international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships;
 - (b) those civil aircraft observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft, and State aircraft normally comply with such of those rules as related to safety and at all times operate with due regard for the safety of navigation;
 - (c) those vessels and aircraft north of the line referred to in paragraph 1 of Article 4 of this Treaty do not engage in the embarking or disembarking of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the other Party, provided that the relevant laws and regulations of that Party do not have the practical effect of denying, hampering or impairing the freedoms of navigation and overflight accorded under paragraph 1 of this Article; and
 - (d) those vessels and aircraft, north of the line referred to in paragraph 1 of Article 4 of this Treaty, do not act in a manner prejudicial to the peace, good order or security of the other Party.
3. Vessels of a Party engaged in the exploration or exploitation of resources in an area of jurisdiction of the other Party shall remain subject to the laws and regulations of the other Party made in the exercise of its resources jurisdiction consistently with this Treaty and with international law, including the provisions of those laws and regulations concerning the boarding, inspection and apprehension of vessels.
4. In those areas of the Protocol Zone north of the line referred to in paragraph 1 of Article 4 of this Treaty to which paragraph 1 of this Article does not apply, civil aircraft of a Party engaged in scheduled or non-scheduled air services shall have the right of overflight, and the right to make stops for non-traffic purposes, without the need to obtain prior permission from the other Party,

subject to compliance with any applicable laws or regulations made for the safety of air navigation.

5. In areas of the Protected Zone to which paragraph 1 of this Article does not apply, the vessels of a Party shall enjoy the right of innocent passage. There shall be no suspension of that right, and neither Party shall adopt laws or regulations applying to those areas that might impede or hamper the normal passage of vessels between two points both of which are in the territory of one Party.

6. In cases where the provisions of neither paragraph 1 nor paragraph 5 of this Article apply, a regime of passage over routes used for international navigation in the area between the two countries, including the area known as Torres Strait, shall apply in respect of vessels that is no more restrictive of passage than the regime of transit passage through straits used for international navigation described in Articles 34 to 44 inclusive of Document A/Conf. 62/WP.10 of the Third United Nations Conference on the Law of the Sea, provided that, before a Party adopts a law or regulation that might impede or hamper the passage over those routes of vessels proceeding to or from the territory of the other Party, it shall consult with the other Party. If the provisions of those Articles are revised, are not included in any Law of the Sea Convention or fail to become generally accepted principles of international law, the Parties shall consult with a view to agreeing upon another regime of passage that is in accordance with international practice to replace the regime of passage applying under this paragraph.

7. The rights of navigation and overflight provided for in this Article are in addition to, and not in derogation of, rights of navigation and overflight in the area concerned under other treaties or general principles of international law.

Article 8. NAVIGATIONAL AIDS

With a view to maintaining and improving the safety of navigation through the waters in the area between the two countries, the Parties shall cooperate and, with due regard to the technical and other means available to each of them, shall, where appropriate and as may be agreed between them, provide mutual assistance in the provision and maintenance of navigational aids and in the preparation of charts and maps.

Article 9. WRECKS

1. Wrecks of vessels and aircraft which lie on, in or under the seabed in an area of seabed jurisdiction of a Party shall be subject to the jurisdiction of that Party.

2. If a wreck of historical or special significance to a Party is located or found in an area between the two countries under the jurisdiction of the other Party, the Parties shall consult with a view to reaching agreement on the action, if any, to be taken with respect to that wreck.

3. The provisions of this Article shall be without prejudice to the competence of the courts of a Party, for the purposes of the laws of that Party, in relation to maritime causes of action in respect of wrecks coming within the provisions of this Article.

4. This Article shall not apply to any military vessel or aircraft of either Party wrecked after the date of entry into force of this Treaty.

PART 4. THE PROTECTED ZONE

Article 10. ESTABLISHMENT AND PURPOSES OF THE PROTECTED ZONE

1. A Protected Zone in the Torres Strait is hereby established comprising all the land, sea, airspace, seabed and subsoil within the area bounded by the line described in Annex 9 to this Treaty. The line so described is shown on the maps annexed to this Treaty as Annexes 6 and 7 and, in part, on the map annexed to this Treaty as Annex 2.

2. The Parties shall adopt and apply measures in relation to the Protected Zone in accordance with the provisions of this Treaty.

3. The principal purpose of the Parties in establishing the Protected Zone, and in determining its northern, southern, eastern and western boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.

4. A further purpose of the Parties in establishing the Protected Zone is to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.

Article 11. FREE MOVEMENT AND TRADITIONAL ACTIVITIES INCLUDING TRADITIONAL FISHING

1. Subject to the other provisions of this Treaty, each Party shall continue to permit free movement and the performance of lawful traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Paragraph 1 of this Article shall not be interpreted as sanctioning the expansion of traditional fishing by the traditional inhabitants of one Party into areas outside the Protected Zone under the jurisdiction of the other Party not traditionally fished by them prior to the date of entry into force of this Treaty.

3. The provisions of this Article and the other provisions of this Treaty concerning traditional fishing are subject to Article 14 and paragraph 2 of Article 20 of this Treaty.

Article 12. TRADITIONAL CUSTOMARY RIGHTS

Where the traditional inhabitants of one Party enjoy traditional customary rights of access to and use of areas of land, seabed, seas, estuaries and coastal tidal areas that are in or in the vicinity of the Protected Zone and that are under the jurisdiction of the other Party, and those rights are acknowledged by the traditional inhabitants living in or in proximity to those areas to be in accordance with local tradition, the other Party shall permit the continued exercise of those rights on conditions not less favourable than those applying to like rights of its own traditional inhabitants.

Article 13. PROTECTION OF THE MARINE ENVIRONMENT

1. Each Party shall take legislative and other measures necessary to protect and preserve the marine environment in and in the vicinity of the Protected Zone. In formulating those measures each Party shall take into account internationally agreed rules, standards and recommended practices which have been adopted by diplomatic conferences or by relevant international organisations.

2. The measures that each Party shall take in accordance with paragraph 1 of this Article shall include measures for the prevention and control of pollution or other damage to the marine environment from all sources and activities under its jurisdiction or control and shall include, in particular, measures to minimise to the fullest practicable extent:

- (a) the release of toxic, harmful or noxious substances from land-based sources, from rivers, from or through the atmosphere, or by dumping at sea;
- (b) pollution or other damage from vessels; and
- (c) pollution or other damage from installations and devices used in the exploration and exploitation of the natural resources of the seabed and subsoil thereof.

3. The measures taken by each Party in accordance with paragraph 1 of this Article shall be consistent with its obligations under international law, including obligations not to prejudice the rights of foreign ships and aircraft, and shall be subject to the provisions of Article 7 of this Treaty.

4. The Parties shall consult, at the request of either, for the purpose of:

- (a) harmonising their policies with respect to the measures that each shall take pursuant to this Article; and
- (b) ensuring the effective and coordinated implementation of those measures.

5. If either Party has reasonable grounds for believing that any planned activity under its jurisdiction or control may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, that Party shall, after due investigation, communicate to the other Party its assessment of the potential impact of that activity on the marine environment.

6. If either Party has reasonable grounds for believing that any existing or planned activity under the jurisdiction or control of the other Party is causing or may cause pollution or other damage to the marine environment in or in the vicinity of the Protected Zone, it may request consultations with the other Party, and the Parties shall then consult as soon as possible with a view to adopting measures to prevent or control any pollution or other damage to that environment from that activity.

Article 14. PROTECTION OF FAUNA AND FLORA

1. Each Party shall, in and in the vicinity of the Protected Zone, use its best endeavours to:

- (a) identify and protect species of indigenous fauna and flora that are or may become threatened with extinction;
- (b) prevent the introduction of species of fauna and flora that may be harmful to indigenous fauna and flora; and
- (c) control noxious species of fauna and flora.

2. Notwithstanding any other provision of this Treaty except paragraph 4 of this Article, a Party may implement within its area of jurisdiction measures to protect species of indigenous fauna and flora which are or may become threatened with extinction or which either Party has an obligation to protect under international law.

3. The Parties shall as appropriate and necessary exchange information concerning species of indigenous fauna and flora that are or may become threatened with extinction and shall consult, at the request of either of them, for the purpose of:

- (a) harmonising their policies with respect to the measures that each may take to give effect to paragraphs 1 and 2 of this Article; and
- (b) ensuring the effective and coordinated implementation of those measures.

4. In giving effect to the provisions of this Article, each Party shall use its best endeavours to minimise any restrictive effects on the traditional activities of the traditional inhabitants.

*Article 15. PROHIBITION OF MINING AND DRILLING
OF THE SEABED*

Neither Party shall undertake or permit within the Protected Zone mining or drilling of the seabed or the subsoil thereof for the purpose of exploration for or exploitation of liquid hydrocarbons, natural gas or other mineral resources during a period of ten years from the date of entry into force of this Treaty. The Parties may agree to extend that period.

Article 16. IMMIGRATION, CUSTOMS, QUARANTINE AND HEALTH

1. Except as otherwise provided in this Treaty, each Party shall apply immigration, customs, quarantine and health procedures in such a way as not to prevent or hinder free movement or the performance of traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.

2. Each Party, in administering its laws and policies relating to the entry and departure of persons and the importation and exportation of goods into and from areas under its jurisdiction in and in the vicinity of the Protected Zone, shall act in a spirit of mutual friendship and good neighbourliness, bearing in mind relevant principles of international law and established international practices and the importance of discouraging the occurrence, under the guise of free movement or performance of traditional activities, of illegal entry, evasion of justice and practices prejudicial to effective immigration, customs, health and quarantine protection and control.

3. Notwithstanding the provisions of paragraph 1 of this Article:

(a) traditional inhabitants of one Party who wish to enter the other country, except for temporary stay for the performance of traditional activities, shall be subject to the same immigration, customs, health and quarantine requirements and procedures as citizens of that Party who are not traditional inhabitants;

(b) each Party reserves its right to limit free movement to the extent necessary to control abuses involving illegal entry or evasion of justice; and

(c) each Party reserves its right to apply such immigration, customs, health and quarantine measures, temporary or otherwise, as it considers necessary to meet problems which may arise. In particular each Party may apply measures to limit or prevent free movement, or the carriage of goods, plants or animals in the course thereof, in the case of an outbreak or spread of an epidemic, epizootic or epiphytotic in or in the vicinity of the Protected Zone.

Article 17. IMPLEMENTATION AND COORDINATION

In order to facilitate the implementation of the provisions of this Treaty relating to the Protected Zone, the authorities of each Party shall, at the request of the authorities of the other Party, as may be appropriate and necessary:

- (a) make available to the authorities of the other Party information on the relevant provisions of its laws, regulations and procedures relating to immigration, citizenship, customs, health, quarantine, fisheries, the protection of the environment and other matters; and
- (b) consult with the authorities of the other Party with a view to making appropriate administrative or other arrangements to resolve any problems arising in the implementation of those provisions.

Article 18. LIAISON ARRANGEMENTS

1. Each Party shall designate a representative who shall facilitate the implementation at the local level of the provisions of this Treaty.

2. The two designated representatives shall:

(a) exchange information on relevant developments in and in the vicinity of the Protected Zone;

(b) consult together and take such action as is appropriate to their respective functions to facilitate the practical operation at the local level of the provisions of this Treaty and to resolve any problems arising therefrom;

(c) keep under review free movement by the traditional inhabitants of one Party into areas under the jurisdiction of the other Party and the local arrangements applying in respect of such free movement; and

(d) draw to the attention of their Governments, and make recommendations as appropriate on, any matters affecting the implementation of the provisions of this Treaty or arising therefrom which are not capable of resolution at the local level or which may otherwise require consideration by both Parties.

3. In the exercise of his functions, each representative shall:

(a) consult closely with representatives of the traditional inhabitants of his country, particularly in relation to any problems which may arise in respect of free movement, traditional activities and the exercise of traditional customary rights as provided for in this Treaty, and convey their views to his Government; and

(b) maintain close liaison with national, State, Provincial and local authorities of his country on all matters falling within their respective responsibilities.

4. Unless a different location is required by the circumstances, the representative of Australia shall be based at Thursday Island and the representative of Papua New Guinea shall be based at Daru.

Article 19. TORRES STRAIT JOINT ADVISORY COUNCIL

1. The Parties shall jointly establish and maintain an advisory and consultative body which shall be known as the Torres Strait Joint Advisory Council (called in this Article "the Advisory Council").

2. The functions of the Advisory Council shall be:

(a) to seek solutions to problems arising at the local level and not resolved pursuant to Article 18 of this Treaty;

(b) to consider and to make recommendations to the Parties on any developments or proposals which might affect the protection of the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in this Treaty; and

(c) to review from time to time as necessary, and to report and to make recommendations to the Parties on, any matters relevant to the effective implementation of this Treaty, including the provisions relating to the protection and preservation of the marine environment, and fauna and flora, in and in the vicinity of the Protected Zone.

3. The Advisory Council shall not have or assume responsibilities for management or administration. These responsibilities shall, within the respective areas of jurisdiction of each Party, continue to lie with the relevant national, State, Provincial and local authorities.

4. In the exercise of its functions, the Advisory Council shall ensure that the traditional inhabitants are consulted, that they are given full and timely opportunity to comment on matters of concern to them and that their views are conveyed to the Parties in any reports and recommendations made by the Advisory Council to the Parties.

5. The Advisory Council shall transmit its reports and recommendations to the Foreign Ministers of the Parties. After consideration by appropriate authorities of the Parties, consultations may be arranged with a view to the resolution of matters to which the Advisory Council has invited attention.

6. Unless otherwise agreed by the Parties, the Advisory Council shall consist of eighteen members, that is nine members from each Party who shall include:

- (a) at least two national representatives;
 - (b) at least one member representing the Government of Queensland in the case of Australia and one representing the Fly River Provincial Government in the case of Papua New Guinea; and
 - (c) at least three members representing the traditional inhabitants,
- with each Party being free to decide from time to time from which of the aforementioned categories any other of its members will be drawn.

7. The Advisory Council shall meet when necessary at the request of either Party. Consecutive meetings of the Advisory Council shall be chaired alternately by a representative of Australia and a representative of Papua New Guinea. Meetings shall be held alternately in Australia and Papua New Guinea or as may from time to time be otherwise arranged.

PART 5. PROTECTED ZONE COMMERCIAL FISHERIES

Article 20. PRIORITY OF TRADITIONAL FISHING AND APPLICATION OF MEASURES TO TRADITIONAL FISHING

1. The provisions of this Part shall be administered so as not to prejudice the achievement of the purposes of Part 4 of this Treaty in regard to traditional fishing.

2. A Party may adopt a conservation measure consistent with the provisions of this Part which, if necessary for the conservation of a species, may be applied

to traditional fishing, provided that that Party shall use its best endeavours to minimise any restrictive effects of that measure on traditional fishing.

Article 21. CONSERVATION, MANAGEMENT AND OPTIMUM UTILISATION

The Parties shall cooperate in the conservation, management and optimum utilisation of Protected Zone commercial fisheries. To this end, the Parties shall consult at the request of either and shall enter into arrangements for the effective implementation of the provisions of this Part.

Article 22. CONSERVATION AND MANAGEMENT OF INDIVIDUAL FISHERIES

1. The Parties shall, where appropriate, negotiate subsidiary conservation and management arrangements in respect of any individual Protected Zone commercial fishery.

2. If either Party notifies the other in writing that it regards one of the Protected Zone commercial fisheries as one to which common conservation and management arrangements should apply, the Parties shall within ninety days from the date of the notification enter into consultations with a view to concluding arrangements specifying the measures to be applied by them with respect to that fishery.

3. The Parties shall, where appropriate, also negotiate supplementary conservation and management arrangements in respect of resources directly related to a fishery referred to in paragraph 1 of this Article, including resources involving stocks occurring in the Protected Zone where such stocks are not otherwise subject to the provisions of this Treaty.

Article 23. SHARING OF THE CATCH OF THE PROTECTED ZONE
COMMERCIAL FISHERIES

1. The Parties shall share the allowable catch of the Protected Zone commercial fisheries in accordance with the provisions of this Article and of Articles 24 and 25 of this Treaty.

2. The allowable catch, that is to say the optimum sustainable yield, of a Protected Zone commercial fishery shall be determined jointly by the Parties as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty.

3. If either Party has reasonable grounds for believing that the commercial exploitation of a species of Protected Zone commercial fisheries would, or has the potential to, cause serious damage to the marine environment or might endanger another species, that Party may request consultations with the other Party and the Parties shall then consult as soon as possible with a view to reaching agreement on whether such commercial exploitation could be undertaken in a manner which would not result in such damage or endanger another species.

4. In respect of any relevant period where the full allowable catch of a particular Protected Zone commercial fishery might be taken, each Party shall be entitled to a share of the allowable catch apportioned, subject to paragraphs 5, 6 and 8 of this Article to Articles 24 and 25 of this Treaty, as follows:

(a) in areas under Australian jurisdiction, except as provided in (b) below:

Australia: 75%

Papua New Guinea: 25%

(b) within the territorial seas of Anchor Cay, Black Rocks, Bramble Cay, Deliverance Island, East Cay, Kerr Islet, Pearce Cay and Turu Cay:

Australia: 50%

Papua New Guinea: 50%

(c) in areas under Papua New Guinea jurisdiction:

Australia: 25%

Papua New Guinea: 75%

5. Papua New Guinea shall have the sole entitlement to the allowable catch of the commercial barramundi fishery near the Papua New Guinea coast, except within the territorial seas of the islands of Aubusi, Boigu, Dauan, Kaumag, Moimi and Saibai where, in respect of that fishery, the provisions of paragraph 4 (a) of this Article shall not apply.

6. In apportioning the allowable catch in relation to an individual fishery, the Parties shall normally consider the allowable catch expressed in terms of weight or volume. In calculating the apportionment of the total allowable catch of the Protected Zone commercial fisheries, the Parties shall have regard to the relative value of individual fisheries and shall, for this purpose, agree on a common value for production from each individual fishery for the period in question, such value being based on the value of the raw product at the processing facility or such other point as may be agreed, but prior to any enhancement of value through processing, including processing at a pearl culture farm, or further transportation or marketing.

7. The Parties may agree to vary the apportionment of the allowable catch determined for individual fisheries as part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty but so as to maintain in respect of the total allowable catch of the Protected Zone commercial fisheries the apportionment specified in paragraph 4 of this Article for each Party.

8. In calculating the total allowable catch of the Protected Zone commercial fisheries, the allowable catch of the commercial barramundi fishery referred to in paragraph 5 of this Article shall be disregarded.

Article 24. TRANSITIONAL ENTITLEMENT

1. As part of the subsidiary conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty, the level of the catch of each Protected Zone commercial fishery to which each Party is entitled, provided it remains within the allowable catch:

(a) shall not, during the period of five years immediately after the entry into force of this Treaty, be reduced below the level of catch of that Party before the entry into force of this Treaty; but

(b) may, during the second period of five years after the entry into force of this Treaty, be adjusted progressively so that at the end of that second five-year period it reaches the level of catch apportioned in each case in Article 23 of this Treaty.

2. The entitlement of a Party under this Article shall, where the limitation of the allowable catch makes it necessary, take priority over the entitlement of the

other Party under Article 23 of this Treaty, but shall be taken into account in calculating the entitlement of the first Party.

Article 25. PREFERENTIAL ENTITLEMENT

If, in any relevant period, a Party does not itself propose to take all the allowable catch of a Protected Zone commercial fishery to which it is entitled, either in its own area of jurisdiction or that of the other Party, the other Party shall have a preferential entitlement to any of the allowable catch of that fishery not taken by the first Party.

Article 26. LICENSING ARRANGEMENTS

1. In the negotiation and implementation of the conservation and management arrangements referred to in paragraph 1 of Article 22 of this Treaty:

(a) the parties shall consult and cooperate in the issue and endorsement of licences to permit commercial fishing in Protected Zone commercial fisheries;

(b) the responsible authorities of the Parties may issue licences to fish in any Protected Zone commercial fishery; and

(c) persons or vessels which are licensed by the responsible authorities of one Party to fish in any relevant period in a Protected Zone commercial fishery shall, if nominated by the responsible authorities of that Party, be authorised by the responsible authorities of the other Party, wherever necessary, by the endorsement of licences or otherwise, to fish in those areas under the jurisdiction of the other Party in which the fishery concerned is located.

2. The persons or vessels licensed by one Party which have been authorised, or are to be authorised, under the provisions of paragraph 1 of this Article to fish in waters under the jurisdiction of the other Party shall comply with the relevant fisheries laws and regulations of the other Party except that they shall be exempt from licensing fees, levies and other charges imposed by the other Party in respect of such fishing activities.

3. In issuing licences in accordance with paragraph 1 of this Article, the responsible authorities of both Parties shall have regard to the desirability of promoting economic development in the Torres Strait area and employment opportunities for the traditional inhabitants.

4. The responsible authorities of both Parties shall ensure that the traditional inhabitants are consulted from time to time on the licensing arrangements in respect of Protected Zone commercial fisheries.

*Article 27. THIRD STATE FISHING IN PROTECTED ZONE
COMMERCIAL FISHERIES*

1. The responsible authorities of the Parties shall inform one another and shall consult, at the request of either of them, concerning the proposed exploitation of the Protected Zone commercial fisheries:

(a) by a joint venture in which there is third-State equity participation; or

(b) by a vessel of third-State registration or with a crew substantially of the nationality of a third State.

2. Vessels the operations of which are under the control of nationals of a third State shall not be licensed to exploit the Protected Zone commercial fisheries

without the concurrence of the responsible authorities of both Parties in a particular case or class of cases.

Article 28. INSPECTION AND ENFORCEMENT

1. The Parties shall cooperate, including by exchange of personnel, inspection and enforcement to prevent violations of the Protected Zone commercial fisheries arrangements and in taking appropriate enforcement measures in the event of such violations.

2. The Parties shall consult from time to time, as necessary, so as to ensure that legislation and regulations adopted by each Party pursuant to paragraph 1 of this Article are, as far as practicable, consistent with the legislation and regulations of the other Party.

3. Each Party shall make it an offence under its fisheries laws or regulations for a person to use a vessel of its nationality to fish in Protected Zone commercial fisheries for species of fisheries resources in areas over which the other Party has jurisdiction in respect of those species:

- (a) without being duly licensed or authorised by that other Party; or
- (b) in the case of a licensed or authorised vessel, in breach of the fisheries laws or regulations of the other Party applying within those areas.

4. Each Party will, in relation to species of fisheries resources in areas where it has jurisdiction in respect of those species:

- (a) investigate suspected offences against its fisheries laws and regulations; and
- (b) except as provided in or under this Article, take corrective action when necessary against offenders against those laws or regulations.

5. In this Article, "corrective action" means the action normally taken in respect of a suspected offence, after due investigation, and includes, where appropriate, the apprehension of a suspected offender, the prosecution of an alleged offender, or the execution of a penalty imposed by a court or the cancellation or suspension of the licence of an offender.

6. In accordance with the provisions of this Article, and in other appropriate cases as may be agreed between the Parties, corrective action in respect of offences or suspected offences against the fisheries laws or regulations of the Parties shall be taken by the authorities of the Party whose nationality is borne by the vessel or person concerned (called in this Article "the first Party") and not by the Party in whose area of jurisdiction the offence or suspected offence occurs (called in this Article "the second Party").

7. The Parties acknowledge that the principle stated in paragraph 6 of this Article should not be applied so as to frustrate the enforcement of fisheries laws or regulations or to enable offenders against those laws or regulations to go unpunished.

8. Where, in the case of a suspected offence alleged to have been committed in or in the vicinity of the Protected Zone, it appears that the offence was, or might reasonably be considered to have been, committed in the course of traditional fishing, corrective action or other measures shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance

with arrangements that will avoid undue expenses or inconvenience to the authorities of the second Party.

9. Where paragraph 8 of this Article applies, the authorities of the second Party may require assurance in a particular case that corrective action or other measures will be taken by the authorities of the first Party that will adequately ensure that the activity complained of will not be repeated.

10. Where the provisions of paragraph 8 of this Article do not apply, and the person or vessel alleged to have been involved or used in the commission of a suspected offence in the Protected Zone is licensed to fish in the Protected Zone by the authorities of the first Party, corrective action shall be taken by the authorities of the first Party and not by the authorities of the second Party and, if being detained by the authorities of the second Party, the alleged offenders and their vessel shall be either released or handed over to the authorities of the first Party, in accordance with arrangements that will avoid undue expense or inconvenience to the authorities of the second Party, and the provisions of paragraphs 13 and 14 of this Article shall apply.

11. The provisions of paragraph 10 of this Article shall also apply in respect of a suspected offence by a person or vessel of the first Party in an area of jurisdiction of the second Party outside the Protected Zone where:

- (a) that person or vessel was authorised by the authorities of the second Party to fish in the area where the suspected offence was committed under the arrangements referred to in paragraph 1 of Article 22 of this Treaty; and
- (b) the suspected offence was committed in relation to the fishery the subject of that authorisation and did not involve the taking of other species or potential injury to another fishery.

12. Persons or vessels of the first Party detained by the authorities of the second Party in the circumstances described in paragraphs 8 and 10 of this Article may be detained for as long as necessary to enable those authorities to conduct an expeditious investigation into the offence and to obtain evidence. Thereafter, they shall not be detained other than for the purpose of the handing over of the persons or vessels in accordance with the provisions of those paragraphs unless they are lawfully detained on some other ground.

13. If an alleged offender referred to in paragraph 10 of this Article is, in respect of conduct in waters under the jurisdiction of the second Party:

- (a) convicted of an offence against the fisheries laws or regulations of the first Party; or
- (b) found by the authorities of the first Party, on the basis of sufficient available evidence, to have contravened or failed to comply with a condition of his licence or authorisation or that of his vessel;

the authorities of the first Party shall, where appropriate and having regard to paragraph 7 of this Article, cancel or suspend the licence or authorisation of the person or his vessel so far as it relates to the Protected Zone commercial fisheries.

14. Where a person or vessel involved or used in the commission of the alleged offence referred to in paragraph 10 of this Article is also currently licensed or authorised to fish in the area of the Protected Zone by the second Party, the authorities of the second Party may, after receiving a report and representations, if any, from the authorities of the first Party, cancel or suspend that licence or

authorisation in accordance with its laws for such period as is warranted by the circumstances of the case.

15. Each Party shall provide the other Party with any evidence obtained during investigations carried out in accordance with this Article into a suspected offence involving a person or vessel of the other Party. Each Party shall take appropriate measures to facilitate the admission of such evidence in proceedings taken in respect of the suspected offence.

16. In this Article references to persons and vessels of, or of the nationality of, a Party include references to persons or vessels licensed by that Party under sub-paragraph 1(b) of Article 26 of this Treaty, and the crews of vessels so licensed, except where such persons or vessels have a prior current licence from the other Party under that sub-paragraph.

PART 6. FINAL ARTICLES

Article 29. SETTLEMENT OF DISPUTES

Any dispute between the Parties arising out of the interpretation or implementation of this Treaty shall be settled by consultation or negotiation.

Article 30. CONSULTATIONS

The Parties shall consult, at the request of either, on any matters relating to this Treaty.

Article 31. ANNEXES

The Annexes to this Treaty shall have force and effect as integral parts of this Treaty.

Article 32. RATIFICATION

This Treaty shall be subject to ratification and shall enter into force on the exchange of the instruments of ratification.

IN WITNESS WHEREOF the undersigned being duly authorised have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate at Sydney on this eighteenth day of December, One thousand nine hundred and seventy-eight.

For Australia:

MALCOLM FRASER
Prime Minister

ANDREW PEACOCK
Minister for Foreign Affairs

For Papua New Guinea:

MICHAEL SOMARE
Prime Minister

N. EBIA OLEWALE
Deputy Prime Minister
and Minister for Foreign Affairs
and Trade

ANNEX 1 TO THE TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

TERRITORIAL SEA BOUNDARIES BETWEEN THE ISLANDS OF AUBUSI, BOIGU AND MOIMI AND PAPUA NEW GUINEA AND BETWEEN THE ISLANDS OF DAUAN, KAUMAG AND SAIBAI AND PAPUA NEW GUINEA

Between the islands of Aubusi, Boigu and Moimi and Papua New Guinea

A line:

- commencing at the point of Latitude 9°15'43" South, Longitude 142°03'30" East ("Point 1");
- running thence north-easterly along the geodesic to the point of Latitude 9°12'50" South, Longitude 142°06'25" East ("Point 2");
- thence north-easterly along the geodesic to the point of Latitude 9°11'51" South, Longitude 142°08'33" East ("Point 3");
- thence south-easterly along the geodesic to the point of Latitude 9°11'58" South, Longitude 142°10'18" East ("Point 4");
- thence north-easterly along the geodesic to the point of Latitude 9°11'22" South, Longitude 142°12'54" East ("Point 5");
- thence south-easterly along the geodesic to the point of Latitude 9°11'34" South, Longitude 142°14'08" East ("Point 6");
- thence south-easterly along the geodesic to the point of Latitude 9°13'53" South, Longitude 142°16'26" East ("Point 7"); and
- thence south-easterly along the geodesic to the point of Latitude 9°16'04" South, Longitude 142°20'41" East ("Point 8") where it terminates.

Between the islands of Dauan, Kaumag and Saibai and Papua New Guinea

A line:

- commencing at the point of Latitude 9°22'04" South, Longitude 142°29'41" East ("Point 9");
- running thence north-easterly along the geodesic to the point of Latitude 9°21'48" South, Longitude 142°31'29" East ("Point 10");
- thence south-easterly along the geodesic to the point of Latitude 9°22'33" South, Longitude 142°33'28" East ("Point 11");
- thence north-easterly along the geodesic to the point of Latitude 9°21'25" South, Longitude 142°35'29" East ("Point 12");
- thence north-easterly along the geodesic to the point of Latitude 9°20'21" South, Longitude 142°41'43" East ("Point 13");
- thence north-easterly along the geodesic to the point of Latitude 9°20'16" South Longitude 142°43'53" East ("Point 14"); and
- thence north-easterly along the geodesic to the point of Latitude 9°19'26" South, Longitude 142°48'18" East ("Point 15") where it terminates.

ANNEX 2¹

ANNEX 3 TO THE TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

OUTER LIMITS OF TERRITORIAL SEAS

Territorial sea of the islands of Aubusi, Boigu and Moimi

The outer limit of the territorial sea of the islands of Aubusi, Boigu and Moimi shall be a continuous line:

- (a) commencing at the point specified as Point 1 in Annex 1 to this Treaty;
- (b) running thence along the geodesics successively joining the points specified as Points 1 to 8 in Annex 1 to this Treaty; and
- (c) thence along a series of intersecting arcs of circles having a radius of three miles and drawn successively from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°15'53"	142°17'39"
(ii)	9°16'26"	142°17'36"
(iii)	9°16'28"	142°17'36"
(iv)	9°16'31"	142°17'30"
(v)	9°17'06"	142°17'30"
(vi)	9°17'15"	142°17'30"
(vii)	9°17'26"	142°17'15"
(viii)	9°17'50"	142°16'46"
(ix)	9°17'55"	142°16'39"
(x)	9°17'56"	142°16'30"
(xi)	9°17'53"	142°16'11"
(xii)	9°17'52"	142°16'07"
(xiii)	9°17'44"	142°14'52"
(xiv)	9°17'45"	142°14'49"
(xv)	9°17'44"	142°14'38"
(xvi)	9°17'44"	142°14'30"
(xvii)	9°17'38"	142°14'06"
(xviii)	9°17'38"	142°13'59"
(xix)	9°17'36"	142°13'47"
(xx)	9°17'34"	142°13'31"
(xxi)	9°17'33"	142°13'20"
(xxii)	9°17'32"	142°12'56"
(xxiii)	9°17'32"	142°12'46"
(xxiv)	9°17'33"	142°12'26"
(xxv)	9°17'38"	142°11'56"
(xxvi)	9°17'39"	142°11'51"
(xxvii)	9°17'38"	142°11'34"
(xxviii)	9°17'37"	142°11'30"
(xxix)	9°17'33"	142°10'20"
(xxx)	9°17'30"	142°10'13"
(xxxi)	9°17'15"	142°09'08"

¹ See insert in a pocket at the end of this volume.

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(xxxii)	9°17'13"	142°09'00"
(xxxiii)	9°17'02"	142°08'35"
(xxxiv)	9°16'56"	142°08'23"
(xxxv)	9°16'52"	142°08'15"
(xxxvi)	9°16'47"	142°08'01"
(xxxvii)	9°16'46"	142°07'58"
(xxxviii)	9°16'21"	142°06'52"
(xxxix)	9°16'19"	142°06'51"
(xl)	9°15'08"	142°06'28"

to the point of commencement.

Territorial sea of the islands of Dauan, Kaumag and Saibai

The outer limit of the territorial sea of the islands of Dauan, Kaumag and Saibai shall be a continuous line:

- (a) commencing at the point specified as Point 9 in Annex 1 to this Treaty;
- (b) running thence along the geodesics successively joining the points specified as Points 9 to 15 in Annex 1 to this Treaty; and
- (c) thence along a series of intersecting arcs of circles having a radius of three miles and drawn successively from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°22'24"	142°47'49"
(ii)	9°22'28"	142°47'53"
(iii)	9°22'39"	142°47'57"
(iv)	9°22'48"	142°48'00"
(v)	9°22'58"	142°48'01"
(vi)	9°23'02"	142°48'01"
(vii)	9°23'06"	142°47'59"
(viii)	9°23'12"	142°47'55"
(ix)	9°23'28"	142°47'46"
(x)	9°23'44"	142°47'41"
(xi)	9°25'46"	142°46'36"
(xii)	9°25'48"	142°46'36"
(xiii)	9°25'53"	142°46'29"
(xiv)	9°26'05"	142°46'12"
(xv)	9°26'10"	142°46'03"
(xvi)	9°26'15"	142°45'47"
(xvii)	9°26'15"	142°45'34"
(xviii)	9°26'12"	142°45'25"
(xix)	9°26'09"	142°45'12"
(xx)	9°26'06"	142°45'07"
(xxi)	9°25'57"	142°44'39"
(xxii)	9°25'48"	142°43'07"
(xxiii)	9°25'54"	142°42'42"
(xxiv)	9°25'53"	142°42'13"
(xxv)	9°25'52"	142°41'59"
(xxvi)	9°25'51"	142°41'51"
(xxvii)	9°25'48"	142°41'15"
(xxviii)	9°25'47"	142°41'04"
(xxix)	9°25'46"	142°40'55"

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(xxx)	9°25'43"	142°40'20"
(xxxix)	9°25'44"	142°40'04"
(xxxii)	9°25'50"	142°39'30"
(xxxiii)	9°25'51"	142°39'22"
(xxxiv)	9°25'50"	142°39'13"
(xxxv)	9°25'48"	142°39'03"
(xxxvi)	9°25'35"	142°38'05"
(xxxvii)	9°25'31"	142°37'46"
(xxxviii)	9°25'28"	142°37'36"
(xxxix)	9°25'23"	142°37'22"
(xl)	9°25'22"	142°37'19"
(xli)	9°25'04"	142°36'35"
(xlii)	9°24'50"	142°36'03"
(xliii)	9°25'25"	142°33'03"
(xliv)	9°25'27"	142°32'58"
(xlv)	9°25'54"	142°32'17"
(xlvi)	9°26'11"	142°33'00"
(xlvii)	9°26'15"	142°31'55"
(xlviii)	9°26'17"	142°31'52"
(xlix)	9°26'17"	142°31'48"
(l)	9°26'15"	142°31'46"
(li)	9°26'06"	142°31'47"
(lii)	9°25'38"	142°31'35"
(liii)	9°25'28"	142°31'34"
(liv)	9°25'24"	142°31'33"
(lv)	9°25'05"	142°31'27"
(lvi)	9°24'39"	142°31'18"
(lvii)	9°24'37"	142°31'17"
(lviii)	9°24'32"	142°31'24"

to the point of commencement.

Territorial sea of Anchor Cay and East Cay

The outer limit of the territorial sea of Anchor Cay and East Cay shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the islands, from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°21'27"	144°07'30"
(ii)	9°21'25"	144°07'28"
(iii)	9°21'25"	144°07'38"
(iv)	9°21'26"	144°07'44"
(v)	9°21'29"	144°07'50"
(vi)	9°21'31"	144°07'55"
(vii)	9°21'44"	144°08'24"
(viii)	9°21'45"	144°08'27"
(ix)	9°21'49"	144°08'33"
(x)	9°21'54"	144°08'37"
(xi)	9°23'09"	144°12'43"
(xii)	9°23'02"	144°12'55"
(xiii)	9°23'02"	144°13'23"
(xiv)	9°23'04"	144°13'29"

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(xv)	9°23'06"	144°13'33"
(xvi)	9°23'09"	144°13'40"
(xvii)	9°23'13"	144°13'44"
(xviii)	9°23'30"	144°13'59"
(xix)	9°23'40"	144°14'11"
(xx)	9°23'44"	144°14'18"
(xxi)	9°23'50"	144°14'25"
(xxii)	9°23'59"	144°14'30"
(xxiii)	9°24'05"	144°14'31"
(xxiv)	9°24'19"	144°14'33"
(xxv)	9°24'29"	144°14'37"
(xxvi)	9°24'40"	144°14'40"
(xxvii)	9°24'44"	144°14'40"
(xxviii)	9°24'49"	144°14'35"
(xxix)	9°24'53"	144°14'33"
(xxx)	9°24'57"	144°14'27"
(xxxi)	9°24'57"	144°14'20"
(xxxii)	9°24'56"	144°14'14"
(xxxiii)	9°24'44"	144°13'19"
(xxxiv)	9°24'40"	144°13'02"
(xxxv)	9°24'36"	144°12'58"
(xxxvi)	9°24'31"	144°12'56"
(xxxvii)	9°23'47"	144°12'34"
(xxxviii)	9°22'06"	144°08'38"
(xxxix)	9°22'07"	144°08'31"
(xl)	9°21'59"	144°07'57"
(xli)	9°21'47"	144°07'32"
(xlii)	9°21'44"	144°07'29"
(xliii)	9°21'40"	144°07'26"
(xliv)	9°21'35"	144°07'24"

Territorial sea of Black Rocks and Bramble Cay

The outer limit of the territorial sea of Black Rocks and Bramble Cay shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the islands, from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°10'28"	143°49'59"
(ii)	9°08'40"	143°52'19"
(iii)	9°08'33"	143°52'22"
(iv)	9°08'26"	143°52'32"
(v)	9°08'24"	143°52'41"
(vi)	9°08'23"	143°52'48"
(vii)	9°08'24"	143°52'54"
(viii)	9°08'27"	143°53'06"
(ix)	9°08'32"	143°53'12"
(x)	9°08'43"	143°53'19"
(xi)	9°08'48"	143°53'19"
(xii)	9°08'52"	143°53'17"
(xiii)	9°09'00"	143°53'13"
(xiv)	9°09'04"	143°53'07"
(xv)	9°09'08"	143°53'00"
(xvi)	9°09'07"	143°52'49"

Territorial sea of Deliverance Island and Kerr Islet

The outer limit of the territorial sea of Deliverance Island and Kerr Islet shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the islands, from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°32'39"	141°32'15"
(ii)	9°32'35"	141°32'11"
(iii)	9°32'07"	141°31'50"
(iv)	9°32'02"	141°31'54"
(v)	9°31'56"	141°31'58"
(vi)	9°31'51"	141°32'02"
(vii)	9°31'29"	141°32'17"
(viii)	9°31'27"	141°32'19"
(ix)	9°31'24"	141°32'21"
(x)	9°30'40"	141°33'32"
(xi)	9°30'08"	141°34'01"
(xii)	9°30'01"	141°34'05"
(xiii)	9°29'57"	141°34'08"
(xiv)	9°29'51"	141°34'14"
(xv)	9°29'51"	141°34'19"
(xvi)	9°29'58"	141°36'13"
(xvii)	9°30'04"	141°36'16"
(xviii)	9°30'12"	141°36'16"
(xix)	9°30'28"	141°36'18"
(xx)	9°30'47"	141°36'18"
(xxi)	9°31'00"	141°36'15"
(xxii)	9°31'11"	141°36'10"
(xxiii)	9°31'29"	141°36'02"
(xxiv)	9°31'38"	141°35'55"
(xxv)	9°31'47"	141°35'46"
(xxvi)	9°31'50"	141°35'42"
(xxvii)	9°32'02"	141°35'21"
(xxviii)	9°36'21"	141°34'33"
(xxix)	9°36'24"	141°34'34"
(xxx)	9°36'35"	141°34'33"
(xxxi)	9°36'49"	141°34'26"
(xxxii)	9°36'56"	141°34'21"
(xxxiii)	9°37'05"	141°34'02"
(xxxiv)	9°37'14"	141°33'47"
(xxxv)	9°37'15"	141°33'28"
(xxxvi)	9°37'13"	141°33'25"
(xxxvii)	9°37'09"	141°33'22"
(xxxviii)	9°37'03"	141°33'21"
(xxxix)	9°36'58"	141°33'22"
(xl)	9°36'52"	141°33'27"

Territorial sea of Pearce Cay

The outer limit of that part of the territorial sea of Pearce Cay which lies north of the line referred to in paragraph 1 of Article 4 of this Treaty shall be a continuous line:

(a) commencing at the point of Latitude 9°33'00" South, Longitude 143°14'51" East;

(b) thence along a series of intersecting arcs of circles having a radius of three miles and drawn successively from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°30'56"	143°17'03"
(ii)	9°30'53"	143°17'03"
(iii)	9°30'50"	143°17'08"
(iv)	9°30'46"	143°17'19"
(v)	9°30'43"	143°17'26"
(vi)	9°30'42"	143°17'34"
(vii)	9°30'41"	143°17'43"
(viii)	9°30'48"	143°17'42"
(ix)	9°30'50"	143°17'40"

to the point of Latitude 9°33'00" South, Longitude 143°19'46" East; and

(c) thence along the parallel of Latitude 9°33'00" South to the point of commencement.

Territorial sea of Turnagain Island

The outer limit of the territorial sea of Turnagain Island shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles, and drawn successively, so as to enclose the island, from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°32'54"	142°10'47"
(ii)	9°32'54"	142°10'44"
(iii)	9°32'54"	142°10'40"
(iv)	9°32'52"	142°10'36"
(v)	9°32'49"	142°10'35"
(vi)	9°32'44"	142°10'36"
(vii)	9°32'23"	142°10'54"
(viii)	9°32'11"	142°11'39"
(ix)	9°32'10"	142°11'45"
(x)	9°32'15"	142°11'54"
(xi)	9°32'37"	142°14'59"
(xii)	9°32'36"	142°15'08"
(xiii)	9°32'37"	142°15'14"
(xiv)	9°32'40"	142°15'24"
(xv)	9°32'44"	142°15'40"
(xvi)	9°32'44"	142°15'47"
(xvii)	9°32'45"	142°15'53"
(xviii)	9°32'48"	142°16'04"
(xix)	9°32'51"	142°16'16"
(xx)	9°32'53"	142°16'28"
(xxi)	9°32'54"	142°16'34"
(xxii)	9°32'56"	142°16'39"
(xxiii)	9°32'58"	142°16'49"
(xxiv)	9°33'02"	142°17'01"
(xxv)	9°33'03"	142°17'12"
(xxvi)	9°33'05"	142°17'18"
(xxvii)	9°33'11"	142°17'30"
(xxviii)	9°33'14"	142°17'40"
(xxix)	9°33'16"	142°17'50"
(xxx)	9°33'18"	142°18'00"
(xxxii)	9°33'21"	142°18'09"
(xxxii)	9°33'23"	142°18'16"

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(xxxiii)	9°33'28"	142°18'27"
(xxxiv)	9°33'33"	142°18'42"
(xxxv)	9°33'35"	142°18'51"
(xxxvi)	9°33'38"	142°19'03"
(xxxvii)	9°33'41"	142°19'12"
(xxxviii)	9°33'42"	142°19'19"
(xxxix)	9°33'44"	142°19'25"
(xl)	9°33'47"	142°19'38"
(xli)	9°33'49"	142°19'40"
(xlii)	9°34'15"	142°20'11"
(xliii)	9°34'19"	142°20'16"
(xliv)	9°34'23"	142°20'17"
(xlv)	9°34'29"	142°20'14"
(xlvi)	9°34'34"	142°20'10"
(xlvii)	9°34'42"	142°20'03"
(xlviii)	9°34'46"	142°19'58"
(xlix)	9°34'49"	142°19'52"
(l)	9°34'52"	142°19'32"
(li)	9°34'52"	142°19'24"
(lii)	9°34'52"	142°19'15"
(liii)	9°34'50"	142°19'05"
(liv)	9°34'48"	142°18'54"
(lv)	9°34'46"	142°18'39"
(lvi)	9°34'43"	142°18'28"
(lvii)	9°34'40"	142°18'11"
(lviii)	9°34'38"	142°18'05"
(lix)	9°34'35"	142°17'56"
(lx)	9°34'30"	142°17'39"
(lxi)	9°34'23"	142°17'09"
(lxii)	9°34'21"	142°16'55"
(lxiii)	9°34'19"	142°16'39"
(lxiv)	9°34'16"	142°16'29"
(lxv)	9°34'07"	142°15'58"
(lxvi)	9°34'05"	142°15'49"
(lxvii)	9°34'01"	142°15'41"
(lxviii)	9°33'50"	142°15'17"
(lxix)	9°33'48"	142°15'10"
(lxx)	9°33'44"	142°15'00"
(lxxi)	9°33'35"	142°14'48"
(lxxii)	9°33'24"	142°14'31"
(lxxiii)	9°33'09"	142°13'59"
(lxxiv)	9°33'08"	152°13'53"

Territorial sea of Turu Cay

The outer limit of the territorial sea of Turu Cay shall be a continuous line formed by a series of intersecting arcs of circles having a radius of three miles and drawn successively, so as to enclose the island, from the following points:

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(i)	9°49'53"	141°24'42"
(ii)	9°49'39"	141°24'44"
(iii)	9°49'31"	141°24'52"
(iv)	9°49'25"	141°25'02"

	<i>Latitude (South)</i>	<i>Longitude (East)</i>
(v)	9°49'23"	141°25'13"
(vi)	9°49'20"	141°25'25"
(vii)	9°49'19"	141°25'36"
(viii)	9°49'18"	141°25'43"
(ix)	9°49'18"	141°25'53"
(x)	9°49'17"	141°26'07"
(xi)	9°49'23"	141°26'09"
(xii)	9°49'26"	141°26'06"
(xiii)	9°49'32"	141°25'58"
(xiv)	9°49'38"	141°25'49"
(xv)	9°49'44"	141°25'38"
(xvi)	9°49'47"	141°25'31"
(xvii)	9°49'53"	141°25'19"
(xviii)	9°49'56"	141°25'09"
(xix)	9°49'57"	141°24'54"
(xx)	9°49'56"	141°24'45"

ANNEX 4¹

ANNEX 5 TO THE TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

SEABED JURISDICTION LINE

A line:

- (a) commencing at the point of Latitude 10°50'00" South, Longitude 139°12'00" East;
- (b) running thence south-easterly along the geodesic to the point of Latitude 11°09'00" South, Longitude 139°23'00" East;
- (c) thence north-easterly along the geodesic to the point of Latitude 10°59'00" South, Longitude 140°00'00" East;
- (d) thence north-easterly along the geodesic to the point of Latitude 9°46'00" South, Longitude 142°00'00" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 9°45'24" South, Longitude 142°03'30" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 9°42'00" South, Longitude 142°23'00" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 9°40'30" South, Longitude 142°51'00" East;
- (h) thence north-easterly along the geodesic to the point of Latitude 9°40'00" South, Longitude 143°00'00" East;
- (i) thence north-easterly along the geodesic to the point of Latitude 9°33'00" South, Longitude 143°05'00" East;
- (j) thence east along the parallel of Latitude 9°33'00" South to its intersection by the meridian of Longitude 143°20'00" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 9°24'00" South, Longitude 143°30'00" East;

¹ See insert in a pocket at the end of this volume.

- (l) thence north-easterly along the geodesic to the point of Latitude 9°22'00" South, Longitude 143°48'00" East;
- (m) thence south-easterly along the geodesic to the point of Latitude 9°30'00" South, Longitude 144°15'00" East;
- (n) thence south-easterly along the geodesic to the point of Latitude 9°51'00" South, Longitude 144°44'00" East;
- (o) thence south-easterly along the geodesic to the point of Latitude 12°20'00" South, Longitude 146°30'00" East;
- (p) thence south-easterly along the geodesic to the point of Latitude 12°38'30" South, Longitude 147°08'30" East;
- (q) thence south-easterly along the geodesic to the point of Latitude 13°10'30" South, Longitude 148°05'00" East;
- (r) thence south-easterly along the geodesic to the point of Latitude 14°38'00" South, Longitude 152°07'00" East;
- (s) thence south-easterly along the geodesic to the point of Latitude 14°45'00" South, Longitude 154°15'00" East;
- (t) thence north-easterly along the geodesic to the point of Latitude 14°05'00" South, Longitude 156°37'00" East; and
- (u) thence north-easterly along the geodesic to the point of Latitude 14°04'00" South, Longitude 157°00'00" East where it terminates.

ANNEX 6¹ANNEX 7¹

ANNEX 8 TO THE TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

FISHERIES JURISDICTION LINE

A line:

- (a) commencing at the point of Latitude 10°50'00" South, Longitude 139°12'00" East;
- (b) running thence south-easterly along the geodesic to the point of Latitude 11°09'00" South, Longitude 139°23'00" East;
- (c) thence north-easterly along the geodesic to the point of Latitude 10°59'00" South, Longitude 140°00'00" East;
- (d) thence north-easterly along the geodesic to the point of Latitude 9°46'00" South, Longitude 142°00'00" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 9°45'24" South, Longitude 142°03'30" East;
- (f) thence north along the meridian of Longitude 142°03'30" East to its intersection by the parallel of Latitude 9°15'43" South;
- (g) thence north-easterly along the geodesic to the point of Latitude 9°12'50" South, Longitude 142°06'25" East;

¹ See insert in a pocket at the end of this volume.

- (h) thence north-easterly along the geodesic to the point of Latitude 9°11'51" South, Longitude 142°08'33" East;
- (i) thence south-easterly along the geodesic to the point of Latitude 9°11'58" South, Longitude 142°10'18" East;
- (j) thence north-easterly along the geodesic to the point of Latitude 9°11'22" South, Longitude 142°12'54" East;
- (k) thence south-easterly along the geodesic to the point of Latitude 9°11'34" South, Longitude 142°14'08" East;
- (l) thence south-easterly along the geodesic to the point of Latitude 9°13'53" South, Longitude 142°16'26" East;
- (m) thence south-easterly along the geodesic to the point of Latitude 9°16'04" South, Longitude 142°20'41" East;
- (n) thence south-easterly along the geodesic to the point of Latitude 9°22'04" South, Longitude 142°29'41" East;
- (o) thence north-easterly along the geodesic to the point of Latitude 9°21'48" South, Longitude 142°31'29" East;
- (p) thence south-easterly along the geodesic to the point of Latitude 9°22'33" South, Longitude 142°33'28" East;
- (q) thence north-easterly along the geodesic to the point of Latitude 9°21'25" South, Longitude 142°35'29" East;
- (r) thence north-easterly along the geodesic to the point of Latitude 9°20'21" South, Longitude 142°41'43" East;
- (s) thence north-easterly along the geodesic to the point of Latitude 9°20'16" South, Longitude 142°43'53" East;
- (t) thence north-easterly along the geodesic to the point of Latitude 9°19'26" South, Longitude 142°48'18" East where it joins the outer limit of the three mile territorial sea of Saibai Island;
- (u) thence along that outer limit so as to pass to the east of Saibai Island to the point of Latitude 9°23'40" South, Longitude 142°51'00" East;
- (v) thence south along the meridian of Longitude 142°51'00" East to its intersection by the parallel of Latitude 9°40'30" South;
- (w) thence north-easterly along the geodesic to the point of Latitude 9°40'00" South, Longitude 143°00'00" East;
- (x) thence north-easterly along the geodesic to the point of Latitude 9°33'00" South, Longitude 143°05'00" East;
- (y) thence east along the parallel of Latitude 9°33'00" South to its intersection by the meridian of Longitude 143°20'00" East;
- (z) thence north-easterly along the geodesic to the point of Latitude 9°24'00" South, Longitude 143°30'00" East;
- (za) thence north-easterly along the geodesic to the point of Latitude 9°22'00" South, Longitude 143°48'00" East;
- (zb) thence south-easterly along the geodesic to the point of Latitude 9°30'00" South, Longitude 144°15'00" East;
- (zc) thence south-easterly along the geodesic to the point of Latitude 9°51'00" South, Longitude 144°44'00" East;
- (zd) thence south-easterly along the geodesic to the point of Latitude 12°20'00" South, Longitude 146°30'00" East;

- (ze) thence south-easterly along the geodesic to the point of Latitude 12°38'30" South, Longitude 147°08'30" East;
- (zf) thence south-easterly along the geodesic to the point of Latitude 13°10'30" South, Longitude 148°05'00" East;
- (zg) thence south-easterly along the geodesic to the point of Latitude 14°38'00" South, Longitude 152°07'00" East;
- (zh) thence south-easterly along the geodesic to the point of Latitude 14°45'00" South, Longitude 154°15'00" East; and
- (zi) thence north-easterly along the geodesic to the point of Latitude 14°05'00" South, Longitude 156°37'00" East where it terminates.

ANNEX 9 TO THE TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS

PROTECTED ZONE

A line:

- (a) commencing at the point of Latitude 10°28'00" South, Longitude 144°10'00" East;
- (b) running thence west along the parallel of Latitude 10°28'00" South to its intersection by the meridian of Longitude 141°20'00" East;
- (c) thence north along that meridian to its intersection by the parallel of Latitude 9°33'00" South;
- (d) thence north-easterly along the geodesic to the point of Latitude 9°13'00" South, Longitude 141°57'00" East;
- (e) thence north along the meridian of Longitude 141°57'00" East to its intersection by the southern coastline of the island of New Guinea at low water;
- (f) thence generally easterly along the southern coastline of the island of New Guinea, that is along the low water line on that coast and across any river mouth and in the case of the mouth of the Mai Kussa River along the parallel of Latitude 9°09'00" South, thence along the southern coastline of the island of New Guinea, that is along the low water line on that coast and across any river mouth to its intersection by the meridian of Longitude 142°36'00" East;
- (g) thence south along that meridian to its intersection by the parallel of Latitude 9°21'00" South;
- (h) thence north-easterly along the geodesic between that point of intersection and the point of Latitude 9°09'00" South, Longitude 143°47'20" East;
- (i) thence along the outer limit of the three-mile territorial sea of Black Rocks, so as to pass to the north-west of Black Rocks, to the point of intersection of that limit by the outer limit of the three-mile territorial sea of Bramble Cay;
- (j) thence along that outer limit, so as to pass successively to the north and east of Bramble Cay, to the point of Latitude 9°10'50" South, Longitude 143°55'40" East;
- (k) thence south-easterly along the geodesic to the point of Latitude 9°18'40" South, Longitude 144°06'10" East;
- (l) thence along the outer limit of the three-mile territorial sea of Anchor Cay, so as to pass to the north of Anchor Cay, to the point of intersection of that limit by the outer limit of the three-mile territorial sea of East Cay;

-
- (m) thence along that outer limit, so as to pass successively to the north and east of East Cay, to the point of Latitude $9^{\circ}26'50''$ South, Longitude $144^{\circ}16'50''$ East;
 - (n) thence south-easterly along the geodesic to the point of Latitude $9^{\circ}35'15''$ South, Longitude $144^{\circ}28'00''$ East;
 - (o) thence south along the meridian of Longitude $144^{\circ}28'00''$ East to its intersection by the parallel of Latitude $9^{\circ}54'00''$ South;
 - (p) thence south-westerly along the geodesic to the point of Latitude $10^{\circ}15'00''$ South, Longitude $144^{\circ}12'00''$ East; and
 - (q) thence south-westerly along the geodesic to the point of commencement.
-

Annex B4

Presidential Proclamation 2667, "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf" (1 October 2003), reprinted in *U.S. Federal Register*, Vol. 10, p. 12,303 (2 October 1945)

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1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 10 NUMBER 193

Washington, Tuesday, October 2, 1945

The President

PROCLAMATION 2665

COLUMBUS DAY, 1945

BY THE PRESIDENT OF THE UNITED STATES OF
AMERICA

A PROCLAMATION

WHEREAS Christopher Columbus with courage and daring sailed an uncharted sea and found a new world which became the haven of millions who sought freedom from oppression and want; and

WHEREAS we, the spiritual and material heirs of Columbus, have through valiant effort and heroic sacrifice preserved our country from those who would have enslaved us and have given strength to all people who have struggled against tyranny; and

WHEREAS we, with the resolute faith of the discoverer of America, have determined that through international organization the freedoms for which this Nation and other nations have waged victorious war shall flourish in peace and security; and

WHEREAS, at this period, the Italian people with fortitude and courage are striving to rid their country of the last vestige of fascism, to establish liberty, and to regain an honorable place in the family of nations, it is peculiarly appropriate that we honor the courage and vision of a great Italian, whose discovery gave a birthplace for democracy; and

WHEREAS Public Resolution 21, Seventy-third Congress, approved April 30, 1934, provides:

That the President of the United States is authorized and requested to issue a proclamation designating October 12 of each year as Columbus Day and calling upon officials of the Government to display the flag of the United States on all Government buildings on said date and inviting the people of the United States to observe the day in schools and churches, or other suitable places, with appropriate ceremonies expressive of the public sentiment befitting the anniversary of the discovery of America:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby designate Friday, October 12, 1945, as Columbus Day. I direct, also, that the flag of the United

States be displayed on all Government buildings on that day; and I invite the people of the United States to observe the day with appropriate ceremonies in schools and churches or other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September in the year of our Lord nineteen hundred and [SEAL] forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Acting Secretary of State.

[F. R. Doc. 45-18173; Filed, Oct. 1, 1945;
11:10 a. m.]

PROCLAMATION 2666

IMMIGRATION QUOTAS FOR AUSTRIA AND
GERMANY

BY THE PRESIDENT OF THE UNITED STATES
OF AMERICA
A PROCLAMATION

WHEREAS the Secretary of State, the Secretary of Commerce, and the Attorney General have reported to the President that pursuant to the duty imposed and the authority conferred upon them in and by sections 11 and 12 of the Immigration Act approved May 26, 1924 (43 Stat. 159-161), and Reorganization Plan No. V (3 CFR Cum. Supp., Ch. IV), they jointly have made the revision provided for in section 12 of the said act and have fixed the quotas for Austria and Germany in accordance therewith to be as hereinafter set forth:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the power in me vested by the aforesaid act of Congress, do hereby proclaim and make known that the annual quotas for Austria and Germany effective for the remainder of the fiscal

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year ending June 30, 1946, and for each fiscal year thereafter, have been determined in accordance with the law to be, and shall be, as follows:

Austria.....	1,413
Germany.....	25,957

The immigration quotas assigned to Austria and Germany are designed solely for purposes of compliance with the pertinent provisions of the Immigration Act of 1924 and are not to be regarded as having any significance extraneous to this object.

This proclamation shall take effect immediately, and shall have the effect of amending Proclamation 2283 of April 28, 1938.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 28th day of September, in the year of our Lord nineteen hundred and [SEAL] forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Acting Secretary of State.

[F. R. Doc. 45-18174; Filed, Oct. 1, 1945; 11:10 a. m.]

PROCLAMATION 2667

POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF¹

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Government of the United States of America, aware of the

¹ See Executive Order 9633, *infra*.

long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and [SEAL] forty-five, and of the Independence of the United States of America the one hundred and-seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Acting Secretary of State.

[F. R. Doc. 45-18176; Filed, Oct. 1, 1945; 11:11 a. m.]

Annex B5

Bangladesh Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974) (14 February 1974)

Territorial Waters and Maritime Zones Act 1974, Act No. XXVI of 1974

An act to provide for the declaration of the territorial waters and maritime zones.

Whereas clause (2) of Article 143 of the Constitution provides that Parliament may, from time to time, by law provide for the determination of the territorial waters and the continental shelf of Bangladesh;

And whereas it is necessary to provide for the declaration of the territorial waters, continental shelf and other maritime zones and for matter ancillary thereto;

It is hereby enacted as follows:

Short title

1. This Act may be called the Territorial Waters and Maritime Zones Act, 1974.

Definitions

2. In this Act, unless there is anything repugnant to the subject or context:
 - (a) "conservation zone" means a conservation zone established under section 6;
 - (b) "contiguous zone" means the zone of the high seas declared by section 4 to be the contiguous zone of Bangladesh;
 - (c) "continental shelf" means the continental shelf of Bangladesh referred to in section 7;
 - (d) "economic zone" means the zone of the high seas declared under section 5 to be the economic zone of Bangladesh;
 - (e) "territorial waters" means the limits of sea declared under section 3 to be the territorial waters of Bangladesh.

Territorial waters

3. (1) The Government may, by notification in the official Gazette, declare the limits of the sea beyond the land territory and internal waters of Bangladesh which shall be the territorial waters of Bangladesh specifying in the notification the baseline:
 - (a) from which such limits shall be measured; and
 - (b) the waters on the landward side of which shall form part of the internal waters of Bangladesh.

(2) Where a single island, rock or a composite group thereof constituting the part of the territory of Bangladesh is situated seawards from the main coast or baseline, territorial waters shall extend to the limits declared by notification under sub-section (1) measured from the low waterline along the coast of such island, rock or composite group.

(3) The Sovereignty of the Republic extends to the territorial waters as well as to the air space over and the

bed and subsoil of, such waters.

(4) No foreign ship shall, unless it enjoys the right of the innocent passage, pass through the territorial waters.

(5) Foreign ship having the right of innocent passage through the territorial waters shall, while exercising such right, observe the laws and rules in force in Bangladesh.

(6) The Government may, by notification in the official Gazette, suspend, in the specified areas of the territorial waters, the innocent passage of any ship if it is of opinion that such suspension is necessary for the security of the Republic.

(7) No foreign warship shall pass through the territorial waters except with the previous permission of the Government.

(8) The Government may take such steps as may be necessary:

- (a) to prevent the passage through the territorial waters of any foreign ship having no right of innocent passage;
- (b) to prevent and punish the contravention of any law or rule in force in Bangladesh by any foreign ship exercising the right of innocent passage;
- (c) to prevent the passage of any foreign warship without previous permission of Government; and
- (d) to prevent and punish any activity which is prejudicial to the security or interest of the Republic.

Explanation - In this section "warship" includes any surface or sub-surface vessel or craft which is or may be used for the purpose of naval warfare.

Contiguous zone

4. (1) The zone of the high seas contiguous to the territorial waters and extending seawards to a line six nautical miles measured from the outer limits of the territorial waters is hereby declared to be the contiguous zone of Bangladesh.

(2) The Government may exercise such powers and take such measures in or in respect of the contiguous zone as it may consider necessary to prevent and punish the contravention of, and attempt to contravene, any law or regulation in force in Bangladesh relating to:

- (a) the security of the Republic;
- (b) the immigration and sanitation; and
- (c) customs and other fiscal matters.

Economic zone

5. (1) The Government may, by notification in the official Gazette, declare any zone of the high seas adjacent to the territorial waters to be the economic zone of Bangladesh specifying therein the limits of such zone.

(2) All natural resources within the economic zone, both living and non-living, on or under the seabed and sub-soil or on the water surface or within the water column shall vest exclusively in the Republic.

(3) Nothing in sub-section (2) shall be deemed to affect fishing within the economic zone by a citizen of

Bangladesh who uses for the purpose vessels which are are not mechanically propelled.

Conservation zone

6. The Government may, with a view to the maintenance of the productivity of the living resources of the sea, by notification in the official Gazette, establish conservation zones in such areas of the sea adjacent to the territorial waters as may be specified in the notification and may take such conservation measures in any zone so established as it may deem appropriate for the purpose including measures to protect the living resources of the sea from indiscriminate exploitation, depletion or destruction.

Continental shelf

7. (1) The continental shelf of Bangladesh comprises:

- (a) the seabed and subsoil of the submarine areas adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor; and
- (b) the seabed and subsoil of the analogous submarine areas adjacent to the coasts of any island, rock or any composite group thereof constituting part of the territory of Bangladesh.

(2) Subject to sub-section (1), the Government may, by notification in the official Gazette, specify the limits thereof.

(3) No person shall, except under and in accordance with the terms of, a licence or permission granted by Government explore or exploit any resources of the continental shelf or carry out any search or excavation or conduct any research within the limits of the continental shelf.

Provided that no such licence or permission shall be necessary for fishing by a citizen of Bangladesh who uses for the purpose vessels which are not mechanically propelled.

Explanation: Resources of the continental shelf include mineral and other non-living resources together with living organisms belonging to sedentary species, that is to say, organisms which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

(4) The Government may construct, maintain or operate within the continental shelf installations and other devices necessary for the exploration and exploitation of its resources.

Control of pollution

8. The Government may, with a view to preventing and controlling marine pollution and preserving the quality and ecological balance in the marine environment in the high seas adjacent to the territorial waters, take such measures as it may deem appropriate for the purpose.

Power to make rules

9. (1) The Government may makes rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide -

- (a) for the regulation of the conduct of any person in or upon the territorial waters, contiguous zone, economic zone, conservation zone and continental shelf;

- (b) for measures to protect, use and exploit the resources of the economic zone;
- (c) for conservation measures to protect the living resources of the sea;
- (d) for measures regulating the exploration and exploitation of resources within the continental shelf;
- (e) for measures designed to prevent and control of marine pollution of the high seas.

(3) In making any rule under this section the Government may provide that a contravention of the rule shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand takas.

Annex B6

Bangladesh Ministry of Foreign Affairs, *Notification No. LT-1-3-7* (13 April 1974)

**Notification No. LT - I/3/74 of the
Ministry of Foreign Affairs, Dacca, of 13 April 1974**

No. LT-I/3/74. In exercise of the powers conferred by sub-section (1) of section 3 of the Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974), and in supersession of any previous declaration on the subject, the Government is pleased to declare that the limits of the sea specified in paragraph 2 beyond the land territory and internal waters of Bangladesh shall be the territorial waters of Bangladesh.

2. The limits of the sea referred to in paragraph 1 shall be twelve nautical miles measured seaward and the baselines set out in paragraph 3 so that each point of the outer limit of the sea to the nearest point inward on the baselines is twelve nautical miles.

3. The baselines from which territorial waters shall be measured seaward are the straight lines linking successively the baseline points set out below:

<u>Baseline Point</u>	<u>Geographical Co-ordinates</u>		<u>Baseline</u>
	<u>Point</u>	<u>Point</u>	
	<u>Latitude</u>	<u>Longitude</u>	
No. 1	21° 12'00" N.	89° 06'45" E.	
No. 2	21° 15'00" N.	89° 16'00" E.	
No. 3	21° 29'00" N.	89° 36'00" E.	
No. 4	21° 21'00" N.	89° 55'00" E.	
No. 5	21° 11'00" N.	90° 33'00" E.	
No. 6	21° 07'30" N.	91° 06'00" E.	
No. 7	21° 10'00" N.	91° 56'00" E.	
No. 8	20° 21'45" N.	92° 17'30" E.	

...

No. LT-I/3/74 - In exercise of the powers conferred by sub-section (1) of section 5 of the Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974), the Government is pleased to declare that the Zone of the high seas extending to 200 nautical miles measured from the baselines shall be the economic zone of Bangladesh.

Annex B7

India Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976
(Act No. 80 of 1976) (28 May 1976)

28. India

A. Maritime Zones Act, 1976

Entered into force: May 28, 1976 (except for Sections 5- contiguous zone- and 7- exclusive economic zone).

Source: *The Gazette of India, Extraordinary Part II-Section 2, No. 49*, May 28, 1976.

B. Act No. 80

Entered into force: January 15, 1977 (Sections 5 and 7 of the Maritime Zones Act, 1976).

Source: Notification of Act No. 80 reported by Ministry of Foreign Affairs in *The Indian Journal of International Law*, Vol. 16, No. 4, 1976, pp. 557-562.

PUBLISHED BY AUTHORITY

New Delhi, Friday, May 28, 1976, Jyaistha 7, 1898, No. 49

Separate paging is given to this Part in order that it may be filed as a separate compilation.

Rajya Sabha

The following Bills were introduced in the Rajya Sabha on the 28th May, 1976:—

I

Bill No. XXVIII of 1976

A Bill to provide for certain matters relating to the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic in India as follows:—

Short title and commencement

1. (1) This Act may be called the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

(2) Sections 5 and 7 shall come into force on such date or on such different dates as the Central Government may, by notification in the Official Gazette, appoint; and the remaining provisions of this Act shall come into force at once.

Definition

2. In this Act, 'limit', in relation to the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zone of India, means the limit of such waters, shelf or zone with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the territory of India.

Sovereignty over, and limits of territorial waters.

3. (1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over, such waters.

(2) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, whenever it

considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

(4) No notification shall be issued under sub-section (3) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

Use of territorial waters by foreign ships

4. (1) Without prejudice to the provisions of any other law for the time being in force, all foreign ships (other than warships including submarines and other underwater vehicles) shall enjoy the right of innocent passage through the territorial waters.

Explanation.—For the purposes of this section, passage is innocent so long as it is not prejudicial to the peace, good order or security of India.

(2) Foreign warships including submarines and other underwater vehicles may enter or pass through the territorial waters after giving prior notice to the Central Government:

Provided that submarines and other underwater vehicles shall navigate on the surface and show their flag while passing through such waters.

(3) The Central Government may, if satisfied that it is necessary so to do in the interests of the peace, good order or security of India or any part thereof, suspend, by notification in the Official Gazette, whether absolutely or subject to such exceptions and qualifications as may be specified in the notification, the entry of all or any class of foreign ships into such area of the territorial waters as may be specified in the notification.

Contiguous zone of India

5. (1) The contiguous zone of India (hereinafter referred to as the contiguous zone) is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the contiguous zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as in may consider necessary with respect to,—

(a) the security of India, and

(b) immigration, sanitation, customs and other fiscal matters.

(5) The Central Government may, by notification in the Official Gazette,—

(a) extend with such restrictions and modifications as it thinks fit, any enactment, relating to any matter referred to in clause (a) or clause (b) of sub-section (4), for the time being in force in India or any part thereof, to the contiguous zone, and

(b) make such provisions as it may consider necessary in such notification for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the contiguous zone is a part of the territory of India.

Continental shelf.

6. (1) The continental shelf of India (hereinafter referred to as the continental shelf) comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline referred to in sub-section (2) of section 3 where the outer

edge of the continental margin does not extend up to that distance.

(2) India has, and always had, full and exclusive sovereign rights in respect of its continental shelf.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Union has in the continental shelf,—

- (a) sovereign rights for the purposes of exploration, exploitation, conservation and management of all resources;
- (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the continental shelf or for the convenience of shipping or for any other purpose;
- (c) exclusive jurisdiction to authorise, regulate and control scientific research; and
- (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution.

(4) No person (including a foreign Government) shall, except under, and in accordance with, the terms of a licence or a letter of authority granted by the Central Government, explore the continental shelf or exploit its resources or carry out any search or excavation or conduct and research within the continental shelf or drill therein or construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device therein for any purpose whatsoever.

(5) The Central Government may, by notification in the Official Gazette,—

- (a) declare any area of the continental shelf and its superjacent waters to be a designated area; and
- (b) make such provisions as it may deem necessary with respect to,—
 - (i) the exploration, exploitation and protection of the resources of the continental shelf within such designated area; or
 - (ii) the safety and protection of artificial islands, off-shore terminals, installations and other structures and devices in such designated area; or
 - (iii) the protection of marine environment of such designated area; or
 - (iv) customs and other fiscal matters in relation to such designated area.

Explanation.—A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

(6) The Central Government may, by notification in the Official Gazette,—

- (a) extend with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the continental shelf or any part [including any designated area under sub-section (5)] thereof; and
- (b) make such provisions as it may consider necessary for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the continental shelf or the part [including, as the case may be, any designated area under sub-section (5)] thereof to which it has been extended is a part of the territory of India.

(7) Without prejudice to the provisions of sub-section (2) and subject to any measures that may be necessary for protecting the interests of India, the Central Government may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf by foreign States:

Provided that the consent of the Central Government shall be necessary for the delineation of the course for the laying of such cables or pipelines.

Exclusive economic zone

7. (1) The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the exclusive economic zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) In the exclusive economic zone, the Union has,—

- (a) sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both living and non-living as well as for producing energy from tides, winds and currents;
- (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the zone or for the convenience of shipping or for any other purpose;
- (c) exclusive jurisdiction to authorise, regulate and control scientific research;
- (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and
- (e) such other rights as are recognised by International law.

(5) No person (including a foreign Government) shall, except under, and in accordance with, the terms of any agreement with the Central Government or of a licence or a letter of authority granted by the Central Government, explore or exploit any resources of the exclusive economic zone or carry out any search or excavation or conduct any research within the exclusive economic zone or drill therein or construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device therein for any purpose whatsoever:

Provided that nothing in this sub-section shall apply in relation to fishing by a citizen of India.

(6) The Central Government may, by notification in the Official Gazette,—

- (a) declare any area of the exclusive economic zone to be a designated area; and
- (b) make such provisions as it may deem necessary with respect to,—
 - (i) the exploration, exploitation and protection of the resources of such designated area; or
 - (ii) other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents; or
 - (iii) the safety and protection of artificial islands, off-shore terminals, installations and other structures and devices in such designated area; or
 - (iv) the protection of marine environment of such designated area; or
 - (v) customs and other fiscal matters in relation to such designated area.

Explanation.—A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

(7) The Central Government may, by notification in the official Gazette,—

- (a) extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the exclusive economic zone or any part thereof; and
- (b) make such provisions as it may consider necessary for facilitating the enforcement of such

enactment, and any enactment so extended shall have effect as if the exclusive economic zone or the part thereof to which it has been extended is a part of the territory of India.

(8) The provisions of sub-section (7) of section 6 shall apply in relation to the laying or maintenance of submarine cables or pipelines on the seabed of the exclusive economic zone as they apply in relation to the laying or maintenance of submarine cables or pipelines on the seabed of the continental shelf.

(9) In the exclusive economic zone and the air space over the zone, ships and aircraft of all States shall, subject to the exercise by India of its rights within the zone, enjoy freedom of navigation and overflight.

Historic waters

8. (1) The Central Government may, by notification in the Official Gazette, specify the limits of such waters adjacent to its land territory as are the historic waters of India.

(2) The sovereignty of India extends, and has always extended, to the historic waters of India and to the seabed and subsoil underlying, and the air space over, such waters.

Maritime boundaries between India and States having coasts opposite or adjacent to those of India

9. (1) The maritime boundaries between India and any State whose coast is opposite or adjacent to that of India in regard to their respective territorial waters, contiguous zones, continental shelves, exclusive economic zones and other maritime zones shall be as determined by agreement (whether entered into before or after the commencement of this section) between India and such State and pending such agreement between India and any such State, and unless any other provisional arrangements are agreed to between them, the maritime boundaries between India and such State shall not extend beyond the line every point of which is equidistant from the nearest point from which the breadth of the territorial waters of India and of such State are measured.

(2) Every agreement referred to in sub-section (1) shall, as soon as may be after it is entered into, be published in the Official Gazette.

(3) The provisions of sub-section (1) shall have effect notwithstanding anything contained in any other provision of this Act.

Publication of charts

10. The Central Government may cause the baseline referred to in sub-section (2) of section 3, the limits of the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone and the historic waters of India and the maritime boundaries as settled by agreements referred to in section 9 to be published in charts.

Offences

11. Whoever contravenes any provision of this Act or of any notification thereunder shall (without prejudice to any other action which may be taken against such person under any other provision of this or of any other enactment) be punishable with imprisonment which may extend to three years, or with fine, or with both.

Offences by companies

12. (1) Where an offence under this Act or the rules made thereunder has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act or the rules

made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or the connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) 'company' means any body corporate and includes a firm or other association of individuals; and
- (b) 'director', in relation to a firm, means a partner in the firm.

Place of trial

13. Any person committing an offence under this Act or any rules made thereunder or under any of the enactments extended under this Act or under the rules made thereunder may be tried for the offence in any place in which may be found or in such other place as the Central Government may, by general or special order, published in the Official Gazette, direct in this behalf.

Previous sanction of the Central Government for prosecution

14. No prosecution shall be instituted against any person in respect, of any offence under this Act or the rules made thereunder without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf.

Power to make rules

15. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) regulation of the conduct of any person in the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone or any other maritime zone of India;
- (b) regulation of the exploration and exploitation, conservation and management of the resources of the continental shelf;
- (c) regulation of the exploration, exploitation, conservation and management of the resources of the exclusive economic zone;
- (d) regulation of the construction, maintenance and operation of artificial islands, off-shore terminals, installations and other structures and devices referred to in sections 6 and 7;
- (e) preservation and protection of the marine environment and prevention and control of marine pollution for the purposes of this Act;
- (f) authorisation, regulation and control of the conduct of scientific research for the purposes of this Act;
- (g) fees in relation to licences and letters of authority referred to in sub-section (4) of section 6 and sub-section (5) of section 7 or for any other purpose; or
- (h) any matter incidental to any of the matters specified in clauses (a) to (g).

(3) In making any rule under this section, the Central Government may provide that a contravention thereof shall be punishable with imprisonment which may extend to three years, or with fine which may extend to any amount, or with both.

(4) Every rule made under this Act and every notification issued under sub-section (5) of section 6 or sub-section (6) of section 7 shall be laid, as soon as may be after it is made or issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the

session or the successive sessions aforesaid both Houses agree in making any modification in the rule or the notification or both Houses agree that the rule or notification should not be issued, the rule or notification shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Removal of difficulties

16. (1) If any difficulty arises in giving effect to the provisions of this Act or of any of the enactments extended under this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or, as the case may be, such enactment, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section—

- (a) in the case of any difficulty arising in giving effect to any provision of this Act, after the expiry of three years from the commencement of such provision;
- (b) in the case of any difficulty arising in giving effect to the provisions of any enactment extended under this Act, after the expiry of three years from the extension of such enactment.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Bill is a sequel to the latest Constitution Amendment Bill relating to the substitution of article 297 by a new article. According to new article 297, all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, as well as all other resources of the exclusive economic zone, vest in the Union to be held for the purposes of the Union. The new article also provides that the limits of the territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of India shall be such as may be specified, from time to time, by or under any law made by Parliament.

2. At present, India does not have a comprehensive legislation on the Law of the Sea. The limits of the territorial waters and the continental shelf are governed by the Proclamations issued by the President. As envisaged by new article 297, it is intended to provide for the limits of the territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of India by a Parliamentary law. For safeguarding the interests of the nation, it is also necessary to provide for a general legal framework specifying the nature, scope and extent of India's rights, jurisdiction and control in relation to the various maritime zones, the maritime boundaries between India and other States whose coasts are opposite or adjacent to those of India, and for the exploration, exploitation and protection of the resources of our continental shelf and exclusive economic zone. Hence this Bill.

3. The maritime zones of India include the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone and the historic waters of India. The territorial waters and the continental shelf are traditional concepts in International Law and the national jurisdiction in these zones is well established. The concept of the exclusive economic zone which has been developed at the initiative of developing countries has gained acceptance of the international community of States. The concept of contiguous zone which is located within the exclusive economic zone and over which additional jurisdiction is claimed by coastal States has also been accepted by the international community of States. Provision has also been made in the Bill regarding the historic waters of India which are adjacent to its land territory and over which India has sovereignty. The limits of these waters, such as the waters in the Palk Bay and the Gulf of Manaar, will be specified by the Central Government by notification in the

Official Gazette. The limits of other maritime zones of India have been specified in the Bill itself. The Bill empowers the Central Government to alter, by notification in the Official Gazette, the limits of these maritime zones. It has been made clear that notifications for altering the limits as specified in the Bill shall not be issued unless both Houses of Parliament have passed resolutions approving the issue of such notifications.

4. It is proposed to undertake separate legislation in future as and when need arises for dealing in greater detail with the regulation, exploration and exploitation of particular resources or particular groups of resources of the continental shelf and the exclusive economic zone as well as with other matters in which India has jurisdiction in the maritime zones, and with regard to these matters the Bill makes only broad general provisions.

New Delhi;
The 25th May, 1976

Y.B. Chavan

FINANCIAL MEMORANDUM

The Bill provides for the limits of India's maritime zones and for the nature, scope and extent of India's rights, jurisdiction and control in relation to the various maritime zones. The Bill also makes provisions for the regulation, exploration and exploitation of the resources of the continental shelf and the exclusive economic zone of India.

2. Sub-clause (4) of clause 5 of the Bill relating to the contiguous zone of India empowers the Central Government to exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to security of India, and immigration, sanitation, customs and other fiscal matters.

3. Sub-clause (5) of clause 6 of the Bill relating to the continental shelf provides for the declaration of any area of the continental shelf and its superjacent waters to be a designated area and for the making of such provisions with respect to the exploration, exploitation and protection of the resources of the continental shelf within such designated area and other matters mentioned in the sub-clause, as may be deemed necessary by the Central Government. Sub-clause (6) of clause 7 of the Bill relating to the exclusive economic zone also makes similar provisions with regard to designation of areas in the exclusive economic zone and for the making of such provisions as the Central Government may deem necessary with respect to the exploitation, exploration and protection of such designated area and other matters mentioned in the sub-clause.

4. Clause 15 of the Bill provides for the making of rules, *inter alia*, with regard to the regulation and conduct of persons in any maritime zone of India, regulation of the exploration, exploitation, conservation and management of the resources of the continental shelf and the exclusive economic zone, the preservation and protection of the marine environment and the prevention and control of marine pollution, and the authorisation, regulation and control of the conduct of scientific research.

5. While the various measures which may be taken in pursuance of the aforementioned provisions of the Bill, when enacted and brought into operation, will involve expenditure, both of a recurring and non-recurring nature, from the Consolidated Fund of India, at the present stage it is not possible to indicate with any degree of accuracy the quantum of such expenditure. A carefully planned programme will have to be evolved with regard to the various maritime zones for the exploration and exploitation of their resources, and the priorities with regard to different matters will have to be fixed. Bearing these programmes and priorities in mind, and having regard to the available finances, the expenditure to be incurred will have to be determined. Any expenditure whether of a recurring or non-recurring nature, which may have to be incurred, will be met from out of the grants of the different Ministries and after due appropriation made by Parliament by law. It may also be mentioned in this connection that the intention is

to undertake separate legislation in future for dealing in greater detail with the regulation, exploration and exploitation of particular resources or particular groups of resources of the continental shelf and exclusive economic zone, and the Bill, as stated in the Statement of Objects and Reasons, is intended to provide only the broad general legal framework.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (5) of clause 5 of the Bill seeks to empower the Central Government to extend any enactment relating to the security of India, immigration, sanitation, customs and other fiscal matters for the time being in force in India or any part thereof to the contiguous zone. Sub-clause (6) of clause 6 of the Bill seeks to empower the Central Government to extend, by notification in the Official Gazette, any enactment for the time being in force in India or any part thereof to the continental shelf or any part thereof. Sub-clause (7) of clause 7 of the Bill makes a similar provision in respect of extension of enactments to the exclusive economic zone or any part thereof.

Sub-clause (5) of clause 6 of the Bill seeks to empower the Central Government to declare, by notification in the Official Gazette, any area of the continental shelf and the superjacent waters to be a designated area and to make such provisions as it may deem necessary in such notification with respect to the exploration, exploitation and protection of the resources of the continental shelf within such designated area, the safety and protection of artificial islands and other structures and devices in such designated area, the protection of marine environment of such designated area and customs and other fiscal matters in relation to such designated area. Sub-clause (6) of clause 7 of the Bill makes similar provisions in respect of the exclusive economic zone.

Clause 15 of the Bill empowers the Central Government to make rules of carrying out the purposes of this legislation. These relate, *inter alia*, to the regulation of the conduct of any person in the territorial waters, contiguous zone, continental shelf, exclusive economic zone or any other maritime zone, the exploration and exploitation, conservation and management of the resources of the continental shelf and of the exclusive economic zone, the construction, maintenance and operation of artificial islands, off-shore terminals. Installations and other structures and devices in the continental shelf and exclusive economic zone, preservation and protection of the marine environment and prevention and control of marine pollution, conduct of scientific research, fees for various purposes, etc. Sub-clause (3) of the clause provides that in making any rule, the Central Government may provide that a contravention thereof shall be punishable with imprisonment which may extend to three years, or with fine which may extend to any amount, or with both.

The nature, scope and extent of India's rights, jurisdiction and control in relation to the various maritime zones have been set out in the Bill itself. The rules and other provisions will be confined to specific measures for the regulation and conduct of persons in various zones, technical matters, matters of procedure and other matters of administrative detail. In the present stage of the scientific, technological and other developments, it is not practicable to visualise the various enactments which have to be extended to these zones and the specific measures which will have to be taken for the protection of the nation's interests in these zones and for the proper exploration and exploitation of the resources of the various zones to the best advantage of the nation. Having regard to the immense value of the resources of the zones, it is necessary to provide for effective sanctions against persons acting contrary to the national interests. Further, the rules and the notifications under clauses 6(5) and 7(6), when made or issued, will be laid before both Houses of Parliament. In the circumstances, the delegation of legislative power is of a normal character.

NOTIFICATIONS BY INDIA OF THE EXCLUSIVE ECONOMIC ZONE*
(15 January 1977)

India issued two Notifications today under the Maritime Zones Act, 1976 (The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976). The first Notification brought into force its provisions concerning the contiguous zone of India and the exclusive economic zone of India, and the second specified the limits of historic waters of India in the Palk Strait, Palk Bay and the Gulf of Manaar.

2. It will be recalled that Parliament of India passed the Constitution (40th Amendment) Act, 1976 which was assented to by the President on May 27, 1976. By this Act, Article 297 of the Constitution was amended by including therein reference to the exclusive economic zone of India and vesting rights therein in the Union.

3. Pursuant to this Act, Parliament also enacted 'The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976' on August 17, 1976, which was assented to by the President on August 25, 1976.

4. The Maritime Zones Act, 1976 is a comprehensive piece of legislation and makes provisions for a 12-mile territorial waters, contiguous zone, continental shelf, exclusive economic zone and historic waters of India. All its provisions except those concerning the contiguous zone of India and the exclusive economic zone of India came into force forthwith.

5. The provisions concerning the contiguous zone of India and the exclusive economic zone of India have been brought into force by the Central Government by a Gazette Notification published on January 15, 1977.

6. The contiguous zone of India extends into the sea outside the territorial waters upto a distance of 24 nautical miles measured from the appropriate baseline from which the breadth of territorial waters is measured. In this area the Central Government will have powers to take measures with regard to (a) the security of India, and (b) immigration, sanitation, customs and other fiscal matters.

7. The exclusive economic zone of India extends into the sea outside the territorial waters upto a distance of 200 nautical miles measured from the appropriate baseline from which the breadth of territorial water is measured. In this zone, the Union has sovereign rights for exploring and exploiting its living and non-living resources as well as for other economic uses, and exclusive jurisdiction to authorise, conduct and control scientific research and take measures to preserve and protect the marine environment.

8. For immediate purposes, exclusive jurisdiction in the economic zone will have bearing on exploitation of fishery resources, petroleum and natural gas, minerals, chemicals and plants, the establishment of offshore terminals, and on other economic uses. No person, including a foreign Government, shall explore or exploit the resources of the zone without an express agreement with the Government of India or without obtaining a licence or letter of authority from it. The Government of India will also be able to make measures against smuggling etc. in the contiguous zone. The Maritime Zones Act contains penal clauses for violation of its provisions.

9. The action taken by the Government of India in this regard is in conformity with the consensus which has emerged at the United Nations Conference on the Law of the Sea during its deliberations since 1973. State practice conforming to the consensus and trends has also emerged in favour of the establishment of these zones. Thus, in addition to action already taken by some Latin American and African States, during the past year or so, Mexico, Norway, Canada, Iceland and EEC countries have established economic zones or fishery jurisdiction extending to 200 miles from the coast. Their legislation came into

* Source: Ministry of External Affairs.

force on January 1, 1977. The USSR has also taken measures in December 1976 to establish the exclusive fishery jurisdiction upto 200 miles forthwith. The United States enacted a law establishing a 200-mile fishery jurisdiction in April 1976, which will come into force on March 1, 1977. Some of India's neighbours, including Sri Lanka and Pakistan, have also established economic zones. It was thus necessary for India to take measures to protect its essential interests in the maritime zones around its coast forthwith.

10. In the case of countries with which India's coast is either opposite or adjacent and the maritime zones overlap, maritime boundary will be settled to demarcate the respective zones. Such boundary has already been settled by agreements with Sri Lanka, Maldives and Indonesia. With other countries, namely, Thailand, Burma, Bangladesh and Pakistan, negotiations will be undertaken.

11. The second Notification issued on January 15, 1977 relates to the historic waters of India in Palk Strait, Palk Bay and the Gulf of Manaar between India and Sri Lanka. These waters have been under the jurisdiction of India and Sri Lanka respectively from historical times. The waters of the Palk Bay between the Indian coast and the maritime boundary will be the internal waters of India. The waters of the Gulf of Manaar between the Indian coast and the maritime boundary have the same status as the territorial waters of India. The waters in the Gulf of Manaar will be bounded by a line joining Tiruchendur on the Indian coast with a turning point on the boundary between the two countries. The limits of the historic waters in the Palk Strait and the Gulf of Manaar have been specified in the Notification.

12. The texts of the two Notifications read as follows:

I

'In exercise of the powers conferred by sub-section (2) of section 1 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby appoints the 15th day of January, 1977, as the date on which sections 5 and 7 of the said Act shall come into force.'

Text of Sections 5 and 7 of the Maritime Zones Act reads as follows:

'5. (1) The contiguous zone of India (hereinafter referred to as the contiguous zone) is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the contiguous zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to:

(a) the security of India, and

(b) immigration, sanitation, customs and other fiscal matters.

(5) The Central Government may, by notification in the Official Gazette:

(a) extend with such restrictions and modifications as it thinks fit, any enactment, relating to any matter referred to in clause (a) or clause (b) of sub-section (4), for the time being in force in India or any part thereof, to the contiguous zone, and

(b) make such provisions as it may consider necessary in such notification for facilitating the enforcement of such enactment and any enactment so extended shall have effect as if the contiguous zone is a part of the territory of India.

7. (1) The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical

miles from the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in subsection (1), the Central Government may whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the exclusive economic zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) In the exclusive economic zone, the Union has:

- (a) sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both living and non-living as well as for producing energy from tides, winds and currents;
- (b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of resources of the zone or for the convenience of shipping or for any other purpose;
- (c) exclusive jurisdiction to authorise, regulate and control scientific research;
- (d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and
- (e) such other rights as are recognised by International Law.

(5) No person (including a foreign Government) shall, except under and in accordance with the terms of any agreement with the Central Government or a licence or a letter of authority granted by the Central Government, exploit any resources of the exclusive economic zone or carry out and search or excavation or conduct any research within the exclusive economic zone or drill therein or construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device therein for any purpose whatsoever:

Provided that nothing in this sub-section shall apply in relation to fishing by a citizen of India.

(6) The Central Government may, by notification in the Official Gazette,

- (a) declare any area of the exclusive economic zone to be a designated area; and
- (b) make such provisions as it may deem necessary with respect to,
 - (i) the exploration, exploitation and protection of the resources of such designated area; or
 - (ii) other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents; or
 - (iii) the safety and protection of artificial islands, off-shore terminals, installations and other structures and devices in such designated area; or
 - (iv) the protection of marine environment of such designated area; or
 - (v) customs and other fiscal matters in relation to such designated area.

Explanation— A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

(7) The Central Government may, by notification in the Official Gazette,

- (a) extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the exclusive economic zone or any part thereof; and
- (b) make such provisions as it may consider necessary for facilitating the enforcement of such enactment,

and any enactment so extended shall have effect as if the exclusive economic zone or the part thereof to which it has been extended is a part of the territory of India.

(8) The provisions of sub-section (7) of section 6 shall apply in relation to the laying or maintenance of submarine cables or pipelines on the seabed of the exclusive economic zone as they apply in relation to the laying or maintenance of submarine cables or pipelines on the seabed of the continental shelf.

(9) In the exclusive economic zone and the air space over the zone, ships and aircraft of all States shall, subject to the exercise by India of its rights within the zone, enjoy freedom of navigation and overflight.'

THE TABLE

<i>S. No.</i>	<i>Description of the area of sea</i>	<i>Limits of historic waters of India</i>
<i>I</i>	<i>II</i>	<i>III</i>
1.	Palk Strait and Palk Bay	The area of sea bounded by: (a) the coast of the mainland of India, (b) the maritime boundary settled by the Agreement between India and Sri Lanka on the Boundary in Historic Waters between the two Countries and Related Matters, which came into force with effect from July 8, 1974, and (c) the arc of Great Circle between the following position defined by latitude and longitude in the Palk Strait: (i) 10 degrees 17.5 minutes North, 79 degrees 52.7 minutes East, (ii) 10 degrees 05.0 minutes North, 80 degrees 03.0 minutes East.
2.	Gulf of Manaar	The area of sea bounded by: (a) the coast of the mainland of (b) India, the maritime boundary settled by the Agreement between India and Sri Lanka on the Maritime Boundary between the two Countries in the Gulf of Manaar and the Bay of Bengal and Related Matters, which came into force with effect from May 10, 1976, and (c) the arc of Great Circle between the following positions defined by latitude and longitude: (i) 08 degrees 30.0 minutes North, 78 degrees 07.9 minutes East, (ii) 08 degrees 22.2 minutes North, 78 degrees 55.4 minutes East.

2. The historic waters of India in Palk Strait and Palk Bay area of sea are internal waters of India. The historic waters of India beyond the appropriate baseline referred to in section 3 (2) of the Act in the Gulf of Manaar area of sea have the same status as the territorial waters of India.'

II

'In exercise of the powers conferred by sub-section (1) of section 8 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) (hereinafter referred to as the Act), the Central Government hereby notifies that the limits of the historic waters of India in each of the areas of sea specified in column II of the Table below are as specified in the corresponding entry in column III of the Table.

Annex B8

Lieutenant Governor of Bengal, Notification of 4th July 1882, reprinted in *The Calcutta Gazette*, 5 July 1882, at p. 584.

[REGISTERED No. 29.]

No. 27 of 1882.



The Calcutta Gazette.

WEDNESDAY, JULY 5, 1882.

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PART I.

Orders and Notifications by the Lieut.-Governor of Bengal, the High Court, Government Treasury, &c.

ORDERS BY THE LIEUT.-GOVERNOR OF BENGAL.

No. 2451A.

GENERAL.—*The 12th June 1882.*—Mr. A. E. Staley, Officiating Joint Magistrate and Deputy Collector, Buxar, Shahabad, is allowed leave for six months, under section 60, chapter V of the Civil Leave Code, with effect from the 1st proximo.

The 24th June 1882.—Mr. J. C. Lloyd, Sub-Deputy Collector, Hooghly, is allowed leave for one month, under section 71, chapter V of the Civil Leave Code, with effect from the date on which he availed himself of it.

The 26th June 1882.—Mr. C. R. Marriott, Assistant Magistrate and Collector, Backergunge, is allowed leave for three months, under section 71, chapter V of the Civil Leave Code, with effect from the 18th proximo, or such subsequent date as he may avail himself of it.

Mr. H. M. Tobin, c.s., has been granted by Her Majesty's Secretary of State for India an extension of furlough for three months.

Mr. R. F. Rampini, District and Sessions Judge of Dacca, is allowed leave for two months, under section 60, chapter V of the Civil Leave Code, with effect from the afternoon of the 12th instant.

Mr. G. G. Dey, Joint-Magistrate and Deputy Collector, is re-appointed to act as District and Sessions Judge of Dacca, with effect from the afternoon of the 12th instant, during the absence, on leave, of Mr. R. F. Rampini, or until further orders.

Mr. J. G. Ritchie, Assistant Magistrate and Collector, 24-Pergunnahs, is allowed leave for three months, under section 71, chapter V of the Civil Leave Code, with effect from the 14th July next.

Moulvie Syed Obedullah, Deputy Magistrate and Deputy Collector, Noakholly, is allowed leave for three months, under section 127, chapter X of the Civil Leave Code, in extension of the leave granted to him under the orders of the 18th May last.

Annex B9

Government of Bengal, Notification 964 Jur. (24 January 1925), reprinted in *The Calcutta Gazette* (29 January 1925)

REGISTERED No. C207.No. 5 of 1925.

The Calcutta Gazette

THURSDAY, JANUARY 29, 1925.

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PART I.

Orders and Notifications by the Governor of Bengal, the Government of Bengal, the High Court, Government Treasury, etc.

ORDERS BY HIS EXCELLENCY THE GOVERNOR OF BENGAL.

No. 1318A.—*The 22nd January 1925.*—Whereas a vacancy has occurred in the Indian Tea Association constituency of the Bengal Legislative Council by reason of the resignation of Mr. A. D. Gordon, His Excellency the Governor is pleased, in pursuance of sub-rule (1) of rule 26 of the Bengal Electoral Rules, to call upon the Indian Tea Association constituency to elect a person for the purpose of filling the vacancy before the 25th February 1925.

L. BIRLEY,

Chief Secretary to the Government of Bengal.

Police-station.	Number and date of notification defining jurisdiction.
Janjira	... No. 10535P., dated the 9th November 1914, No. 3618P.J., dated the 17th October 1919, No. 3620P.J., dated the 17th October 1919, No. 1901Pl., dated the 18th May 1922, No. 3364Pl., dated the 14th September 1922, No. 2622Pl., dated the 25th October 1924, No. 1568Pl., dated the 8th May 1924, and Nos. 104Pl. and 106Pl., dated the 16th January 1925.
Palong	... No. 1151J., dated the 14th April 1913, No. 15611P., dated the 11th December 1917, No. 1725P.J., dated the 14th May 1918, and No. 3618P.J., dated the 17th October 1919.
Gosairhat	... No. 109, dated the 27th August 1874, No. 44J.D., dated the 26th April 1905, and Nos. 1725P.J., and 1726P.J., dated the 14th May 1918.
Bhedarganj	... No. 109, dated the 27th August 1874, No. 494J.D., dated the 26th April 1905, No. 15611P., dated the 11th December 1917, Nos. 1725P.J. and 1726P.J., dated the 14th May 1918, and No. 1725P.J., dated the 20th May 1919.
Lonesingh	... No. 15611P., dated the 11th December 1917, and No. 2352P.J., dated the 13th August 1918.

No. 964Jur.—The 24th January 1925.—In exercise of the power conferred by the Bengal Districts Act, 1864 (Bengal Act IV of 1864), and in modification of all previous notifications relating to the boundary between the districts of Khulna and the 24-Parganas, the Governor in Council is pleased to declare that the following shall be the boundary between the said two districts :—

From the south-west corner of village Chanduria, J. L. No. 1, the western boundary of district Khulna passes along the south-western boundary of Chandanpur, J. L. No. 2, western and southern boundaries of Sultanpur, J. L. No. 3, southern boundary of Hijaldi, J. L. No. 4 (all the above villages are in police-station Kalaroa), then along the midstream of the main channel for the time being of the river Sonai up to the south-west corner of Keragachhi, J. L. No. 14, then the boundary passes along the south-western boundary of Keragachhi, J. L. No. 14, in police-station Kalaroa up to the north-western corner of village Talaigachha, J. L. No. 1, in police-station Satkhira, then along the western boundary of Talaigachha, J. L. No. 1, north-western boundary of Satani Kushkhali, J. L. No. 8, northern and western boundaries of Kushkhali, J. L. No. 9, and north-western boundary of Chhaygharia, J. L. No. 11, western and southern boundaries of Kaliani, J. L. No. 12, south-western boundary of Chhaygharia, J. L. No. 11, western and southern boundaries of Baikari, J. L. No. 13, south-western boundary of Dantbhangarbil, J. L. No. 21, western boundary of Mahadebnagar, J. L. No. 24, and Mahmudpur, J. L. No. 35, northern and western boundaries of Lakshmidari, J. L. No. 26, western boundary of Bhomra, J. L. No. 27, and Padma Sakra, J. L. No. 28, and north-western boundary of Radhanagar J. L. No. 29 (all the above villages are in police-station Satkhira) till it meets the midstream of the main channel of the river Ichhamati, then along the midstream of the main channel for the time being of the rivers Ichhamati and Kalindi, Raimangal and Haribhanga till it meets the Bay.

W. S. HOPKYNs,

Secretary to the Government of Bengal (offg.).

JAILS.

No. 780 Jails.—The 20th January 1925.—Captain B. G. Mallya, I.M.S., officiating Superintendent, Dacca Central Jail, is allowed leave on average pay for twelve days, under article 100 of the Fundamental Rules, in extension of the leave granted to him under the orders of the 22nd October 1924.

W. S. HOPKYNs,

Secretary to the Government of Bengal (offg.).

Orders by the Conservator of Forests, Bengal.

No. 1For.—The 15th January 1925.—On return from leave granted to him in Bengal Government, Revenue Department, notifications Nos. 5361For., dated the 11th June 1924, and 578 T.R., dated the 1st October 1924, Babu Priya Nath Sarkar, Extra Assistant Conservator of Forests, is posted to the Sundarbans Division as an attached officer with headquarter at Khulna.

E. O. SHEBBEARF,

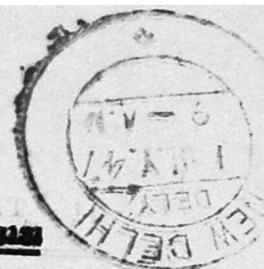
Conservator of Forests, Bengal (offg.).

Annex B10

Governor General of India, Notification No. D 50/7/47-R (30 June 1947), reprinted in *The Gazette of India* (extraordinary) (30 June 1947)

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REGISTERED No. L. 2128

The Gazette of India



EXTRAORDINARY
PUBLISHED BY AUTHORITY

NEW DELHI, MONDAY, JUNE 30, 1947

GOVERNMENT OF INDIA

SECRETARIAT OF THE GOVERNOR GENERAL (REFORMS)
NOTIFICATION

New Delhi, the 30th June 1947.

No. D. 50/7/47-R.—The following Announcement by the Governor-General is published for general information.

ANNOUNCEMENT BY THE GOVERNOR GENERAL.

Whereas in accordance with the provisions of paragraphs 5 to 8 of the Statement of His Majesty's Government dated the 3rd June 1947 it has been decided that the provinces of Bengal and the Punjab shall be partitioned:

Now therefore, in pursuance of paragraph 21 of the Statement, His Excellency the Governor-General is pleased to make the following announcement with reference to paragraphs 9 and 13 thereof:—

(1) There shall be two Boundary Commissions, one for Bengal and the other for the Punjab, consisting of the following:—

For Bengal:—

Chairman	.	.	To be appointed later.
Members	.	.	Mr. Justice Bijan Kuman Mukherjea. Mr. Justice C. C. Biswas. Mr. Justice Abu Saleh Mohamed Akram. Mr. Justice S. A. Rahman.

For the Punjab—

Chairman	.	.	To be appointed later.
Members	.	.	Mr. Justice Din Muhammad. Mr. Justice Muhammad Munir. Mr. Justice Mehr Chand Mahajan. Mr. Justice Teja Singh.

(NOTE.—It is intended to appoint the same person as Chairman of both the Boundary Commissions.)

(2) The two Boundary Commissions shall be summoned to meet as early as possible by the Governors of the respective Provinces, and shall submit their reports at the earliest possible date.

(3) The terms of reference for the two Commissions shall be as follows:—

For Bengal.—

The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.

14 THE GAZETTE OF INDIA EXTRAORDINARY, JUNE, 30, 1947

In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.

For the Punjab.—

The Boundary Commission is instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so it will also take into account other factors.

K. V. K. SUNDARAM

Officer on Special Duty.

Annex B11

Indian Independence Act (U.K.), 1947 (10 & 11 Geo. 6. Ch. 30) (18 July 1947)

Indian Independence Act, 1947.

10 & 11 GEO. 6. CH. 30.

ARRANGEMENT OF SECTIONS.

Section.

1. The new Dominions.
2. Territories of the new Dominions.
3. Bengal and Assam.
4. The Punjab.
5. The Governor-General of the new Dominions.
6. Legislation for the new Dominions.
7. Consequences of the setting up of the new Dominions.
8. Temporary provision as to government of each of the new Dominions.
9. Orders for bringing this Act into force.
10. Secretary of State's services, etc.
11. Indian armed forces.
12. British forces in India.
13. Naval forces.
14. Provisions as to the Secretary of State and the Auditor of Indian Home Accounts.
15. Legal proceedings by and against the Secretary of State.
16. Aden.
17. Divorce jurisdiction.
18. Provisions as to existing laws, etc.
19. Interpretation, etc.
20. Short title.

SCHEDULES :

First Schedule—Bengal Districts provisionally included in the new Province of East Bengal.

Second Schedule—Districts provisionally included in the new Province of West Punjab.

Third Schedule—Modifications of Army Act and Air Force Act in relation to British forces.



CHAPTER 30.

An Act to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.

[18th July 1947.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan. The new Dominions.

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions", and the said fifteenth day of August is hereafter in this Act referred to as "the appointed day".

2.—(1) Subject to the provisions of subsections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (2) of this section, are to be the territories of Pakistan. Territories of the new Dominions.

(2) Subject to the provisions of subsections (3) and (4) of this section, the territories of Pakistan shall be—

(a) the territories which, on the appointed day, are included in the Provinces of East Bengal and West Punjab, as constituted under the two following sections ;

- (b) the territories which, at the date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan ; and
- (c) if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that—

- (a) no area not forming part of the territories specified in subsection (1) or, as the case may be, subsection (2), of this section shall be included in either Dominion without the consent of that Dominion ; and
- (b) no area which forms part of the territories specified in the said subsection (1) or, as the case may be, the said subsection (2), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.

(4) Without prejudice to the generality of the provisions of subsection (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

Bengal and
Assam.

26 Geo. 5 &
1 Edw. 8. c. 2.

3.—(1) As from the appointed day—

- (a) the Province of Bengal, as constituted under the Government of India Act, 1935, shall cease to exist ; and
- (b) there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal.

(2) If, whether before or after the passing of this Act, but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the District of Sylhet are in favour of that District forming part of the new Province of East Bengal, then, as from that day, a part of the Province of Assam shall, in accordance with the provisions of subsection (3) of this section, form part of the new Province of East Bengal.

(3) The boundaries of the new Provinces aforesaid and, in the event mentioned in subsection (2) of this section, the boundaries after the appointed day of the Province of Assam, shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined—

- (a) the Bengal Districts specified in the First Schedule to this Act, together with, in the event mentioned in subsection (2) of this section, the Assam District of Sylhet, shall be treated as the territories which are to be comprised in the new Province of East Bengal ;
- (b) the remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories which are to be comprised in the new Province of West Bengal ; and
- (c) in the event mentioned in subsection (2) of this section, the District of Sylhet shall be excluded from the Province of Assam.

(4) In this section, the expression “award” means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission’s proceedings.

4.—(1) As from the appointed day—

The Punjab.

- (a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist ; and
- (b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab.

(2) The boundaries of the said new Provinces shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined—

- (a) the Districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of West Punjab ; and
- (b) the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as the territories which are to be comprised in the new Province of East Punjab.

(3) In this section, the expression “award,” means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission’s proceedings.

5. For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty and shall represent His Majesty for the purposes of the government of the Dominion :

The Governor-General of the new Dominions.

Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions.

Legislation
for the new
Dominions.

6.—(1) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extra-territorial operation.

(2) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion.

(3) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty's name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His Majesty's pleasure thereon shall not apply to laws of the Legislature of either of the new Dominions.

(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion unless it is extended thereto by a law of the Legislature of the Dominion.

(5) No Order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion.

(6) The power referred to in subsection (1) of this section extends to the making of laws limiting for the future the powers of the Legislature of the Dominion.

Consequences
of the setting
up of the new
Dominions.

7.—(1) As from the appointed day—

(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India ;

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions

exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise ; and

- (c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise :

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words " *Indiæ Imperator* " and the words " *Emperor of India* " and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

8.—(1) In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly. Temporary provision as to government of each of the new Dominions.

(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under subsection (1) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935 ; and the provisions of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly:

Provided that—

- (a) the said provisions shall apply separately in relation to each of the new Dominions and nothing in this subsection shall be construed as continuing on or after the appointed day any Central Government or Legislature common to both the new Dominions ;
- (b) nothing in this subsection shall be construed as continuing in force on or after the appointed day any form of control by His Majesty's Government in the United Kingdom over the affairs of the new Dominions or of any Province or other part thereof ;
- (c) so much of the said provisions as requires the Governor-General or any Governor to act in his discretion or exercise his individual judgment as respects any matter shall cease to have effect as from the appointed day ;
- (d) as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty's pleasure, and no Provincial Act shall be disallowed by His Majesty thereunder ; and
- (e) the powers of the Federal Legislature or Indian Legislature under that Act, as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers exercisable by that Assembly under subsection (1) of this section.

(3) Any provision of the Government of India Act, 1935, which, as applied to either of the new Dominions by subsection (2) of this section and the orders therein referred to, operates to limit the power of the legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provisions of subsection (1) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future the powers of that Legislature.

Orders for
bringing this
Act into force.

9.—(1) The Governor-General shall by order make such provision as appears to him to be necessary or expedient—

- (a) for bringing the provisions of this Act into effective operation ;
- (b) for dividing between the new Dominions, and between the new Provinces to be constituted under this Act, the powers, rights, property, duties and liabilities of the Governor-General in Council or, as the case may be, of the relevant Provinces which, under this Act, are to cease to exist ;

- (c) for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, and the Orders in Council, rules and other instruments made thereunder, in their application to the separate new Dominions ;
- (d) for removing difficulties arising in connection with the transition to the provisions of this Act ;
- (e) for authorising the carrying on of the business of the Governor-General in Council between the passing of this Act and the appointed day otherwise than in accordance with the provisions in that behalf of the Ninth Schedule to the Government of India Act, 1935 ;
- (f) for enabling agreements to be entered into, and other acts done, on behalf of either of the new Dominions before the appointed day ;
- (g) for authorising the continued carrying on for the time being on behalf of the new Dominions, or on behalf of any two or more of the said new Provinces, of services and activities previously carried on on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent ;
- (h) for regulating the monetary system and any matters pertaining to the Reserve Bank of India ; and
- (i) so far as it appears necessary or expedient in connection with any of the matters aforesaid, for varying the constitution, powers or jurisdiction of any legislature, court or other authority in the new Dominions and creating new legislatures, courts or other authorities therein.

(2) The powers conferred by this section on the Governor-General shall, in relation to their respective Provinces, be exercisable also by the Governors of the Provinces which, under this Act, are to cease to exist ; and those powers shall, for the purposes of the Government of India Act, 1935, be deemed to be matters as respects which the Governors are, under that Act, to exercise their individual judgment.

(3) This section shall be deemed to have had effect as from the third day of June, nineteen hundred and forty-seven, and any order of the Governor-General or any Governor made on or after that date as to any matter shall have effect accordingly, and any order made under this section may be made so as to be retrospective to any date not earlier than the said third day of June :

Provided that no person shall be deemed to be guilty of an offence by reason of so much of any such order as makes any provision thereof retrospective to any date before the making thereof.

(4) Any orders made under this section, whether before or after the appointed day, shall have effect—

- (a) up to the appointed day, in British India ;
- (b) on and after the appointed day, in the new Dominion or Dominions concerned ; and
- (c) outside British India, or, as the case may be, outside the new Dominion or Dominions concerned, to such extent, whether before, on or after the appointed day, as a law or the Legislature of the Dominion or Dominions concerned would have on or after the appointed day,

but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of that Dominion.

(5) No order shall be made under this section, by the Governor of any Province, after the appointed day, or, by the Governor-General, after the thirty-first day of March, nineteen hundred and forty-eight, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion.

(6) If it appears that a part of the Province of Assam is, on the appointed day, to become part of the new Province of East Bengal, the preceding provisions of this section shall have effect as if, under this Act, the Province of Assam was to cease to exist on the appointed day and be reconstituted on that day as a new Province.

Secretary
of State's
services, etc.

10.—(1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.

(2) Every person who—

- (a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof ; or
- (b) having been appointed by His Majesty before the appointed day to be a judge of the Federal Court or of any court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions,

shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or,

as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day.

(3) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under section two hundred and seventy-three of the Government of India Act, 1935, to be governed otherwise than by Orders in Council made (whether before or after the passing of this Act or the appointed day) by His Majesty in Council and rules made (whether before or after the passing of this Act or the appointed day) by a Secretary of State or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946.

9 & 10 Geo. 6.
c. 31.

11.—(1) The orders to be made by the Governor-General under the preceding provisions of this Act shall make provision for the division of the Indian armed forces of His Majesty between the new Dominions, and for the command and governance of those forces until the division is completed.

(2) As from the appointed day, while any member of His Majesty's forces, other than His Majesty's Indian forces, is attached to or serving with any of His Majesty's Indian forces—

(a) he shall, subject to any provision to the contrary made by a law of the Legislature of the Dominion or Dominions concerned or by any order of the Governor-General under the preceding provisions of this Act, have, in relation to the Indian forces in question, the powers of command and punishment appropriate to his rank and functions; but

(b) nothing in any enactment in force at the date of the passing of this Act shall render him subject in any way to the law governing the Indian forces in question.

12.—(1) Nothing in this Act affects the jurisdiction or authority of His Majesty's Government in the United Kingdom, or of the Admiralty, the Army Council, or the Air Council or of any other United Kingdom authority, in relation to any of His Majesty's forces which may, on or after the appointed day, be in either of the new Dominions or elsewhere in the territories which, before the appointed day, were included in India, not being Indian forces.

British forces
in India.

(2) In its application in relation to His Majesty's military forces, other than Indian forces, the Army Act shall have effect on or after the appointed day—

(a) as if His Majesty's Indian forces were not included in the expressions "the forces", "His Majesty's forces" and "the regular forces"; and

(b) subject to the further modifications specified in Parts I and II of the Third Schedule to this Act.

(3) Subject to the provisions of subsection (2) of this section, and to any provisions of any law of the Legislature of the Dominion concerned, all civil authorities in the new Dominions, and, subject as aforesaid and subject also to the provisions of the last preceding section, all service authorities in the new Dominions, shall, in those Dominions and in the other territories which were included in India before the appointed day, perform in relation to His Majesty's military forces, not being Indian forces, the same functions as were, before the appointed day, performed by them, or by the authorities corresponding to them, whether by virtue of the Army Act or otherwise, and the matters for which provision is to be made by orders of the Governor-General under the preceding provisions of this Act shall include the facilitating of the withdrawal from the new Dominions and other territories aforesaid of His Majesty's military forces, not being Indian forces.

(4) The provisions of subsections (2) and (3) of this section shall apply in relation to the air forces of His Majesty, not being Indian air forces, as they apply in relation to His Majesty's military forces, subject, however, to the necessary adaptations, and, in particular, as if—

(a) for the references to the Army Act there were substituted references to the Air Force Act; and

(b) for the reference to Part II of the Third Schedule to this Act there were substituted a reference to Part III of that Schedule.

Naval forces.

13.—(1) In the application of the Naval Discipline Act to His Majesty's naval forces, other than Indian naval forces, references to His Majesty's navy and His Majesty's ships shall not, as from the appointed day, include references to His Majesty's Indian navy or the ships thereof.

(2) In the application of the Naval Discipline Act by virtue of any law made in India before the appointed day to Indian naval forces, references to His Majesty's navy and His Majesty's ships shall, as from the appointed day, be deemed to be, and to be only, references to His Majesty's Indian navy and the ships thereof.

(3) In section ninety B of the Naval Discipline Act (which, in certain cases, subjects officers and men of the Royal Navy and Royal Marines to the law and customs of the ships and naval forces of other parts of His Majesty's dominions) the words " or of India " shall be repealed as from the appointed day, wherever those words occur.

14.—(1) A Secretary of State, or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, is hereby authorised to continue for the time being the performance, on behalf of whatever government or governments may be concerned, of functions as to the making of payments and other matters similar to the functions which, up to the appointed day, the Secretary of State was performing on behalf of governments constituted or continued under the Government of India Act, 1935.

Provisions
as to the
Secretary of
State and the
Auditor of
Indian Home
Accounts.

(2) The functions referred to in subsection (1) of this section include functions as respects the management of, and the making of payments in respect of, government debt, and any enactments relating to such debt shall have effect accordingly :

Provided that nothing in this subsection shall be construed as continuing in force so much of any enactment as empowers the Secretary of State to contract sterling loans on behalf of any such Government as aforesaid or as applying to the Government of either of the new Dominions the prohibition imposed on the Governor-General in Council by section three hundred and fifteen of the Government of India Act, 1935, as respects the contracting of sterling loans.

(3) As from the appointed day, there shall not be any such advisers of the Secretary of State as are provided for by section two hundred and seventy-eight of the Government of India Act, 1935, and that section, and any provisions of that Act which require the Secretary of State to obtain the concurrence of his advisers, are hereby repealed as from that day.

(4) The Auditor of Indian Home Accounts is hereby authorised to continue for the time being to exercise his functions as respects the accounts of the Secretary of State or any such other Minister of the Crown as is mentioned in subsection (1) of this section, both in respect of activities before, and in respect of activities after, the appointed day, in the same manner, as nearly as may be as he would have done if this Act had not passed.

15.—(1) Notwithstanding anything in this Act, and, in particular, notwithstanding any of the provisions of the last preceding section, any provision of any enactment which, but for the passing of this Act, would authorise legal proceedings to be taken, in India or elsewhere, by or against the Secretary of State in respect

Legal
proceedings
by and
against the
Secretary of
State.

of any right or liability of India or any part of India shall cease to have effect on the appointed day, and any legal proceedings pending by virtue of any such provision on the appointed day shall, by virtue of this Act, abate on the appointed day, so far as the Secretary of State is concerned.

(2) Subject to the provisions of this subsection, any legal proceedings which, but for the passing of this Act, could have been brought by or against the Secretary of State in respect of any right or liability of India, or any part of India, shall instead be brought—

(a) in the case of proceedings in the United Kingdom, by or against the High Commissioner ;

(b) in the case of other proceedings, by or against such person as may be designated by order of the Governor-General under the preceding provisions of this Act or otherwise by the law of the new Dominion concerned,

and any legal proceedings by or against the Secretary of State in respect of any such right or liability as aforesaid which are pending immediately before the appointed day shall be continued by or against the High Commissioner or, as the case may be, the person designated as aforesaid :

Provided that, at any time after the appointed day, the right conferred by this subsection to bring or continue proceedings may, whether the proceedings are by, or are against, the High Commissioner or person designated as aforesaid, be withdrawn by a law of the Legislature of either of the new Dominions so far as that Dominion is concerned, and any such law may operate as respects proceedings pending at the date of the passing of the law.

(3) In this section, the expression " the High Commissioner " means, in relation to each of the new Dominions, any such officer as may for the time being be authorised to perform in the United Kingdom, in relation to that Dominion, functions similar to those performed before the appointed day, in relation to the Governor-General in Council, by the High Commissioner referred to in section three hundred and two of the Government of India Act, 1935 ; and any legal proceedings which, immediately before the appointed day, are the subject of an appeal to His Majesty in Council, or of a petition for special leave to appeal to His Majesty in Council, shall be treated for the purposes of this section as legal proceedings pending in the United Kingdom.

Aden.

16.—(1) Subsections (2) to (4) of section two hundred and eighty-eight of the Government of India Act, 1935 (which confer on His Majesty power to make by Order in Council provision for the government of Aden) shall cease to have effect and the British Settlements Acts, 1887 and 1945, (which authorise His

Majesty to make laws and establish institutions for British Settlements as defined in those Acts) shall apply in relation to Aden as if it were a British Settlement as so defined.

(2) Notwithstanding the repeal of the said subsections (2) to (4), the Orders in Council in force thereunder at the date of the passing of this Act shall continue in force, but the said Orders in Council, any other Orders in Council made under the Government of India Act, 1935, in so far as they apply to Aden, and any enactments applied to Aden or amended in relation to Aden by any such Orders in Council as aforesaid, may be repealed, revoked or amended under the powers of the British Settlements Acts, 1887 and 1945.

(3) Unless and until provision to the contrary is made as respects Aden under the powers of the British Settlements Acts, 1887 and 1945, or, as respects the new Dominion in question, by a law of the Legislature of that Dominion, the provisions of the said Orders in Council and enactments relating to appeals from any courts in Aden to any courts which will, after the appointed day, be in either of the new Dominions, shall continue in force in their application both to Aden and to the Dominion in question, and the last mentioned courts shall exercise their jurisdiction accordingly.

17.—(1) No court in either of the new Dominions shall, by virtue of the Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940, have jurisdiction in or in relation to any proceedings for a decree for the dissolution of a marriage, unless those proceedings were instituted before the appointed day, but, save as aforesaid and subject to any provision to the contrary which may hereafter be made by any Act of the Parliament of the United Kingdom or by any law of the Legislature of the new Dominion concerned, all courts in the new Dominions shall have the same jurisdiction under the said Acts as they would have had if this Act had not been passed.

(2) Any rules made on or after the appointed day under subsection (4) of section one of the Indian and Colonial Divorce Jurisdiction Act, 1926, for a court in either of the new Dominions shall, instead of being made by the Secretary of State with the concurrence of the Lord Chancellor, be made by such authority as may be determined by the law of the Dominion concerned, and so much of the said subsection and of any rules in force thereunder immediately before the appointed day as require the approval of the Lord Chancellor to the nomination for any purpose of any judges of any such court shall cease to have effect.

(3) The reference in subsection (1) of this section to proceedings for a decree for the dissolution of a marriage include references to proceedings for such a decree of presumption of death and dissolution of a marriage as is authorised by section eight of the Matrimonial Causes Act, 1937.

(4) Nothing in this section affects any court outside the new Dominions, and the power conferred by section two of the Indian and Colonial Divorce Jurisdiction Act, 1926, to apply certain provisions of that Act to other parts of His Majesty's dominions as they apply to India shall be deemed to be power to apply those provisions as they would have applied to India if this Act had not passed.

Provisions as
to existing
laws, etc.

18.—(1) In so far as any Act of Parliament, Order in Council, order, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions, references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require :

Provided that nothing in this subsection shall be construed as continuing in operation any provision in so far as the continuance thereof as adapted by this subsection is inconsistent with any of the provisions of this Act other than this section.

(2) Subject to the provisions of subsection (1) of this section and to any other express provision of this Act, the Orders in Council made under subsection (5) of section three hundred and eleven of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions.

(3) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

(4) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor-General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935, relating to such Instruments of Instructions.

(5) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions.

19.—(1) References in this Act to the Governor-General shall, Interpretation, etc. in relation to any order to be made or other act done on or after the appointed day, be construed—

- (a) where the order or other act concerns one only of the new Dominions, as references to the Governor-General of that Dominion ;
- (b) where the order or other act concerns both of the new Dominions and the same person is the Governor-General of both those Dominions, as references to that person ; and
- (c) in any other case, as references to the Governors-General of the new Dominions, acting jointly.

(2) References in this Act to the Governor-General shall, in relation to any order to be made or other act done before the appointed day, be construed as references to the Governor-General of India within the meaning of the Government of India Act, 1935, and so much of that or any other Act as requires references to the Governor-General to be construed as references to the Governor-General in Council shall not apply to references to the Governor-General in this Act.

(3) References in this Act to the Constituent Assembly of a Dominion shall be construed as references—

- (a) in relation to India, to the Constituent Assembly, the first sitting whereof was held on the ninth day of December, nineteen hundred and forty-six, modified—
 - (i) by the exclusion of the members representing Bengal, the Punjab, Sind and British Baluchistan ; and
 - (ii) should it appear that the North West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province ; and
 - (iii) by the inclusion of members representing West Bengal and East Punjab ; and
 - (iv) should it appear that, on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members theretofore representing the Province of Assam and the inclusion of members chosen to represent the remainder of that Province ;
- (b) in relation to Pakistan, to the Assembly set up or about to be set up at the date of the passing of this Act under the authority of the Governor-General as the Constituent Assembly for Pakistan :

Provided that nothing in this subsection shall be construed as affecting the extent to which representatives of the Indian States take part in either of the said Assemblies, or as preventing the

filling of casual vacancies in the said Assemblies, or as preventing the participation in either of the said Assemblies, in accordance with such arrangements as may be made in that behalf, of representatives of the tribal areas on the borders of the Dominion for which that Assembly sits, and the powers of the said Assemblies shall extend and be deemed always to have extended to the making of provision for the matters specified in this proviso.

(4) In this Act, except so far as the context otherwise requires—

references to the Government of India Act, 1935, include references to any enactments amending or supplementing that Act, and, in particular, references to the India (Central Government and Legislature) Act, 1946 ;

“ India ”, where the reference is to a state of affairs existing before the appointed day or which would have existed but for the passing of this Act, has the meaning assigned to it by section three hundred and eleven of the Government of India Act, 1935 ;

“ Indian forces ” includes all His Majesty’s Indian forces existing before the appointed day and also any forces of either of the new Dominions ;

“ pension ” means, in relation to any person, a pension whether contributory or not, of any kind whatsoever payable to or in respect of that person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or other additions thereto, of subscriptions to a provident fund ;

“ Province ” means a Governor’s Province ;

“ remuneration ” includes leave pay, allowances and the cost of any privileges or facilities provided in kind.

(5) Any power conferred by this Act to make any order includes power to revoke or vary any order previously made in the exercise of that power.

9 & 10 Geo. 6.
c. 39.

Short title.

20. This Act may be cited as the Indian Independence Act, 1947.

SCHEDULES.**FIRST SCHEDULE.**

Section 3.

**BENGAL DISTRICTS PROVISIONALLY INCLUDED IN THE
NEW PROVINCE OF EAST BENGAL.**

In the Chittagong Division, the districts of Chittagong, Noakhali and Tippera.

In the Dacca Division, the districts of Bakarganj, Dacca, Faridpur and Mymensingh.

In the Presidency Division, the districts of Jessore, Murshidabad and Nadia.

In the Rajshahi Division, the districts of Bogra, Dinajpur, Malda, Pabna, Rajshahi and Rangpur.

SECOND SCHEDULE.

Section 4.

**DISTRICTS PROVISIONALLY INCLUDED IN THE NEW
PROVINCE OF WEST PUNJAB.**

In the Lahore Division, the districts of Gujranwala, Gurdaspur, Lahore, Sheikhpura and Sialkot.

In the Rawalpindi Division, the districts of Attock, Gujrat, Jhelum, Mianwali, Rawalpindi and Shahpur.

In the Multan Division, the districts of Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan and Muzaffargarh.

THIRD SCHEDULE.

Section 12.

**MODIFICATIONS OF ARMY ACT AND AIR FORCE ACT IN
RELATION TO BRITISH FORCES.****PART I.****MODIFICATIONS OF ARMY ACT APPLICABLE ALSO TO AIR FORCE ACT.**

1. The proviso to section forty-one (which limits the jurisdiction of courts martial) shall not apply to offences committed in either of the new Dominions or in any of the other territories which were included in India before the appointed day.

2. In section forty-three (which relates to complaints), the words "with the approval of the Governor-General of India in Council" shall be omitted.

3. In subsections (8) and (9) of section fifty-four (which, amongst other things, require certain sentences to be confirmed by the Governor-General in Council), the words "India or", the words "by the

3RD SCH.
—cont.

Governor-General, or, as the case may be ” and the words “ in India, by the Governor-General, or, if he has been tried ” shall be omitted.

4. In subsection (3) of section seventy-three (which provides for the nomination of officers with power to dispense with courts martial for desertion and fraudulent enlistment) the words “ with the approval of the Governor-General ” shall be omitted.

5. The powers conferred by subsection (5) of section one hundred and thirty (which provides for the removal of insane persons) shall not be exercised except with the consent of the officer commanding the forces in the new Dominions.

6. In subsection (2) of section one hundred and thirty-two (which relates to rules regulating service prisons and detention barracks) the words “ and in India for the Governor-General ” and the words “ the Governor-General ” shall be omitted except as respects rules made before the appointed day.

7. In the cases specified in subsection (1) of section one hundred and thirty-four, inquests shall be held in all cases in accordance with the provisions of subsection (3) of that section.

8. In section one hundred and thirty-six (which relates to deductions from pay), in subsection (1) the words “ India or ” and the words “ being in the case of India a law of the Indian legislature ”, and the whole of subsection (2), shall be omitted.

9. In paragraph (4) of section one hundred and thirty-seven (which relates to penal stoppages from the ordinary pay of officers), the words “ or in the case of officers serving in India the Governor-General ” the words “ India or ” and the words “ for India or, as the case may be ” shall be omitted.

10. In paragraph (12) of section one hundred and seventy-five and paragraph (11) of section one hundred and seventy-six (which apply the Act to certain members of His Majesty's Indian Forces and to certain other persons) the word “ India ” shall be omitted wherever it occurs.

11. In subsection (1) of section one hundred and eighty (which provides for the punishment of misconduct by civilians in relation to courts martial) the words “ India or ” shall be omitted wherever they occur.

12. In the provisions of section one hundred and eighty-three relating to the reduction in rank of non-commissioned officers, the words “ with the approval of the Governor-General ” shall be omitted in both places where they occur.

PART II.

MODIFICATIONS OF ARMY ACT.

Section 184B (which regulates relations with the Indian Air Force) shall be omitted.

PART III.

3RD SCH.
—cont.

MODIFICATIONS OF AIR FORCE ACT.

1. In section 179D (which relates to the attachment of officers and airmen to Indian and Burma Air Forces), the words “ by the Air Council and the Governor-General of India or, as the case may be,” and the words “ India or ”, wherever those words occur, shall be omitted.

2. In section 184B (which regulates relations with Indian and Burma Air Forces) the words “ India or ” and the words “ by the Air Council and the Governor-General of India or, as the case may be,” shall be omitted.

3. Sub-paragraph (e) of paragraph (4) of section one hundred and ninety (which provides that officers of His Majesty's Indian Air Force are to be officers within the meaning of the Act) shall be omitted.

CH. 30.

*Indian Independence
Act, 1947.*

10 & 11 GEO. 6.

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Annex B12

Bengal Boundary Commission, Report to His Excellency the Governor General of British India (12 August 1947)

REPORTHis Excellency the Governor-General.

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1. I have the honour to present the decision and award of the Bengal Boundary Commission, which, by virtue of section 3 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission. This award relates to the division of the Province of Bengal, and the Commission's award in respect of the District of Sylhet and areas adjoining thereto will be recorded in a separate report.

2. The Bengal Boundary Commission was constituted by the announcement of the Governor-General dated the 30th of June, 1947, Reference No. D50/7/47R. The members of the Commission thereby appointed were

Mr. Justice Bijan Kuman Mukherjea,

Mr. Justice C.C. Biswas,

Mr. Justice Abu Saleh Mohamed Akram, and

Mr. Justice S.A. Rahman.

I was subsequently appointed Chairman of this Commission.

3. The terms of reference of the Commission, as set out in the announcement, were as follows:-

"The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous areas of Muslims and non-Muslims. In doing so, it will also take into account other factors."

We were desired to arrive at a decision as soon as possible before the 15th of August.

-2-



4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. A very large number of memoranda and representations was received.

5. The public sittings of the Commission took place at Calcutta, and extended from Wednesday the 16th of July 1947, to Thursday the 24th of July 1947, inclusive, with the exception of Sunday, the 20th of July. Arguments were presented to the Commission by numerous parties on both sides, but the main cases were presented by counsel on behalf of the Indian National Congress, the Bengal Provincial Hindu Mahasabha and the New Bengal Association on the one hand, and on behalf of the Muslim League on the other. In view of the fact that I was acting also as Chairman of the Punjab Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Bengal Boundary Commission, I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and all material submitted for our consideration.

6. After the close of the public sittings, the remainder of the time of the Commission was devoted to clarification and discussion of the issues involved. Our discussions took place at Calcutta.

7. The question of drawing a satisfactory boundary line under our terms of reference between East and West Bengal was one to which the parties

M 21/2110/8 3

-3-



concerned propounded the most diverse solutions. The province offers few, if any, satisfactory natural boundaries, and its development has been on lines that do not well accord with a division by contiguous majority areas of Muslim and non-Muslim majorities.

8. In my view, the demarcation of a boundary line between East and West Bengal depended on the answers to be given to certain basic questions which may be stated as follows:-

(1) To which State was the City of Calcutta to be assigned, or was it possible to adopt any method of dividing the City between the two States?

(2) If the City of Calcutta must be assigned as a whole to one or other of the States, what were its indispensable claims to the control of territory, such as all or part of the Nadia River system or the Kulti rivers, upon which the life of Calcutta as a city and port depended?

(3) Could the attractions of the Ganges-Padma-Madhumati river line displace the strong claims of the heavy concentration of Muslim majorities in the districts of Jessore and Nadia without doing too great a violence to the principle of our terms of reference?

(4) Could the district of Khulna usefully be held by a State different from that which held the district of Jessore?

(5) Was it right to assign to Eastern Bengal the considerable block of non-Muslim majorities in the districts of Malda and Dinajpur?



-4-

(6) Which State's claim ought to prevail in respect of the Districts of Darjeeling and Jalpaiguri, in which the Muslim population amounted to 2.42 per cent of the whole in the case of Darjeeling, and to 23.08 per cent of the whole in the case of Jalpaiguri, but which constituted an area not in any natural sense contiguous to another non-Muslim area of Bengal?

(7) To which State should the Chittagong Hill Tracts be assigned, an area in which the Muslim population was only 3 per cent of the whole, but which it was difficult to assign to a State different from that which controlled the district of Chittagong itself?

9. After much discussion, my colleagues found that they were unable to arrive at an agreed view on any of these major issues. There were of course considerable areas of the Province in the south-west and north-east and east, which provoked no controversy on either side: but, in the absence of any reconciliation on all main questions affecting the drawing of the boundary itself, my colleagues assented to the view at the close of our discussions that I had no alternative but to proceed to give my own decision.

10. This I now proceed to do: but I should like at the same time to express my gratitude to my colleagues for their indispensable assistance in clarifying and discussing the difficult questions involved. The demarcation of the boundary line

m21/240/8



-5-

is described in detail in the schedule which forms Annexure A to this award, and in the map attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

11. I have done what I can in drawing the line to eliminate any avoidable cutting of railway communications and of river systems, which are of importance to the life of the province: but it is quite impossible to draw a boundary under our terms of reference without causing some interruption of this sort, and I can only express the hope that arrangements can be made and maintained between the two States that will minimize the consequences of this interruption as far as possible.

Cyril Radcliffe

New Delhi
12 August 1947.

THE SCHEDULE

See Annexures A and B.



ANNEXURE A.

1. A line shall be drawn along the boundary between the Thana of Phansidewa in the District of Darjeeling and the Thana Tetulia in the District of Jalpaiguri from the point where that boundary meets the Province of Bihar and then along the boundary between the Thanas of Tetulia and Rajganj; the Thanas of Pachagar and Rajganj, and the Thanas of Pachagar and Jalpaiguri, and shall then continue along the northern corner of the Thana Debiganj to the boundary of the State of Cooch-Bihar. The District of Darjeeling and so much of the District of Jalpaiguri as lies north of this line shall belong to West Bengal, but the Thana of Patgram and any other portion of Jalpaiguri District which lies to the east or south shall belong to East Bengal.

2. A line shall then be drawn from the point where the boundary between the Thanas of Haripur and Raiganj in the District of Dinajpur meets the border of the Province of Bihar to the point where the boundary between the Districts of 24 Parganas and Khulna meets the Bay of Bengal. This line shall follow the course indicated in the following paragraphs. So much of the Province of Bengal as lies to the west of it shall belong to West Bengal. Subject to what has been provided in paragraph 1 above with regard to the Districts of Darjeeling and Jalpaiguri, the remainder of the Province of Bengal shall belong to East Bengal.

No. 1010/8(1)

-2-

3. The line shall run along the boundary between the following Thanas:

Haripur and Raiganj; Haripur and Hemtabad; Ranisankail and Hemtabad; Pirganj and Hemtabad; Pirganj and Kaliganj; Bochaganj and Kaliganj; Biral and Kaliganj; Biral and Kushmundi; Biral and Gangarampur; Dinajpur and Gangarampur; Dinajpur and Kumarganj; Chirirbandar and Kumarganj; Phulbari and Kumarganj; Phulbari and Balurghat. It shall terminate at the point where the boundary between Phulbari and Balurghat meets the north-south line of the Bengal-Assam Railway in the eastern corner of the Thana of Balurghat. The line shall turn down the western edge of the railway lands belonging to that railway and follow that edge until it meets the boundary between the Thanas of Balurghat and Panchbibi.

4. From that point the line shall run along the boundary between the following Thanas:

Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamairhat; Tapan and Dhamairhat; Tapan and Patritala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.



-3-

5. The line shall then turn south-east down the River Ganges along the boundary between the Districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.
6. From the point on the River Ganges where the channel of the River Mathabanga takes off, the line shall run along that channel to the northern most point where it meets the boundary between the Thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.
7. From this point the boundary between East and West Bengal shall run along the boundaries between the Thanas of Daulatpur and Karimpur; Gangani and Karimpur; Meherpur and Karimpur; Meherpur and Tehatta; Meherpur and Chapra; Damurhuda and Chapra; Damurhuda and Krishnaganj; Chuadanga and Krishnaganj; Jibannagar and Krishnaganj; Jibannagar and Hanskhali; Maheshpur and Hanskhali; Maheshpur and Ranaghat; Maheshpur and Bongaon; Jhikargacha and Bongaon; Sarsa and Bongaon; Sarsa and Gaighata; Gaighata and Kalaroa; to the point where the boundary between those thanas meets the boundary between the districts of Khulna and 24 Parganas.
8. The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal.

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Annex B13

“Report by the Chairman of the Bengal Boundary Commission”, reprinted in *The Gazette of Pakistan*
(*extraordinary*) (17 August 1947)

REGISTERED No. RLS

The Gazette of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

KARACHI, SUNDAY, AUGUST 17, 1947

GOVERNMENT OF PAKISTAN
REPORT BY THE CHAIRMAN OF THE PUNJAB
BOUNDARY COMMISSION.

To
HIS EXCELLENCY THE GOVERNOR-GENERAL.

1. I have the honour to present the decision and award of the Punjab Boundary Commission which, by virtue of section 4 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission.

2. The Punjab Boundary Commission was constituted by the announcement of the Governor-General, dated the 30th of June 1947, Reference No. D.-50/7/47-R. The members of the Commission, thereby appointed were—

Mr. Justice Din Muhammad,
Mr. Justice Muhammad Munir,
Mr. Justice Mehr Chand Mahajan, and
Mr. Justice Teja Singh.

I was subsequently appointed Chairman of this Commission.

3. The terms of reference of the Commission, as set out in the announcement, were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.”

We were desired to arrive at a decision as soon as possible before the 15th of August.

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. Numerous memoranda and representations were received.

5. The public sittings of the Commission took place at Lahore, and extended from Monday the 21st of July 1947, to Thursday the 31st of July 1947, inclusive, with the exception of Sunday, the 27th of July. The main arguments were conducted by counsel on behalf of the Indian National Congress, the Muslim League, and the Sikh members of the Punjab Legislative Assembly: but a number of other interested parties appeared and argued before the Commission. In view of the fact that I was acting also as Chairman of the Bengal Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Punjab Boundary Commission, I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and of all material submitted for our consideration.

6. After the close of the public sittings, the Commission adjourned to Simla where I joined my colleagues, and we entered upon discussions in the hope of being able to present an agreed decision as to the demarcation of the boundaries. I am greatly indebted to my colleagues for indispensable assistance in the clarification of the issues and the marshalling of the arguments for different views, but it became evident in the course of our discussions that the divergence of opinion between my colleagues was so wide that an agreed solution of the boundary problem was not to be obtained. I do not intend to convey by this that there were not large areas of the Punjab on the west and on the east respectively which provoked no controversy as to which State they should be assigned to; but when it came to the extensive but disputed areas in which the boundary must be drawn, differences of opinion as to the significance of the term

The following Award given by the Punjab and Bengal Boundary Commissions is published for general information.

MOHAMMAD ALI,
Secretary General,

“other factors”, which we were directed by our terms of reference to take into account, and as to the weight and value to be attached to those factors, made it impossible to arrive at any agreed line. In those circumstances my colleagues, at the close of our discussions, assented to the conclusion that I must proceed to give my own decision.

7. This I now proceed to do. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

8. Certain representations were addressed to the Commission on behalf of the States of Bikaner and Bahawalpur, both of which States were interested in canals whose headworks were situate in the Punjab Province. I have taken the view that an interest of this sort cannot weigh directly in the question before us as to the division of the Punjab between the Indian Union and Pakistan since the territorial division of the province does not affect rights of private property, and I think that I am entitled to assume with confidence that any agreements that either of those States has made with the Provincial Government as to the sharing of water from these canals or otherwise will be respected by whatever Government hereafter assumes jurisdiction over the headworks concerned. I wish also to make it plain that no decision that is made by this Commission is intended to affect whatever territorial claim the State of Bahawalpur may have in respect of a number of villages lying between Sulemanke Weir and Gurka Ferry.

9. The task of delimiting a boundary in the Punjab is a difficult one. The claims of the respective parties ranged over a wide field of territory, but in my judgment the truly debatable ground in the end proved to lie in and around the area between the Beas and Sutlej rivers on the one hand, and the river Ravi on the other. The fixing of a boundary in this area was further complicated by the existence of canal systems, so vital to the life of the Punjab but developed only under the conception of a single administration, and of systems of road and rail communication, which have been planned in the same way. There was also the stubborn geographical fact of the respective situations of Lahore and Amritsar, and the claims to each or both of those cities which each side vigorously maintained. After weighing to the best of my ability such other factors as appeared to me relevant as affecting the fundamental basis of contiguous majority areas, I have come to the decision set out in the Schedule which thus becomes the award of the Commission. I am conscious that there are legitimate criticisms to be made of it: as there are, I think, of any other line that might be chosen.

10. I have hesitated long over those not inconsiderable areas east of the Sutlej River and in the angle of the Beas and Sutlej Rivers in which Muslim majorities are found. But on the whole I have come to the conclusion that it would be in the true interests of neither State to extend the territories of the West Punjab to a strip on the far side of the Sutlej and that there are factors such as the disruption of railway communications and water systems that ought in this instance to displace the primary claims of contiguous majorities. But I must call attention to the fact that the Dipalpur Canal, which serves areas in the West Punjab, takes off from the Ferozepore headworks and I find it difficult to envisage a satisfactory demarcation of boundary at this point that is not accompanied by some arrangement for joint control of the intake of the different canals dependent on these headworks.

11. I have not found it possible to preserve undivided the irrigation system of the Upper Bari Doab Canal, which extends from Madhopur in the Pathankot Tahsil to the western border of the district of Lahore, although I have made small adjustments of the Lahore-Amritsar district boundary to mitigate some of the consequences of this severance; nor can I see any means of preserving under one territorial jurisdiction the Mandi Hydro-electric Scheme which supplies power in the districts of Kangra, Gurdaspur, Amritsar, Lahore, Jullundur, Ludhiana, Ferozepore, Sheikhpura, and Lyallpur. I think it only right to express the hope that, where the drawing of a boundary line cannot avoid disrupting such unitary services as canal irrigation, railways, and electric power transmission, a solution may be found by agreement between the two States for some joint control of what has hitherto been a valuable common service.

12. I am conscious too that the award cannot go far towards satisfying sentiments and aspirations deeply held on either side but directly in conflict as to their bearing on the placing of the boundary. If means are to be found to gratify to the full those sentiments and aspirations, I think that they must be found in political arrangements with which I am not concerned, and not in the decision of a boundary line drawn under the terms of reference of this Commission.

(Signed) CYRIL RADCLIFFE.

New Delhi, 12th August 1947.

THE SCHEDULE.

See Annexures A and B attached.

ANNEXURE A.

1. The boundary between the East and West Punjab shall commence on the north at the point where the west branch of the Ujh river enters the Punjab Province from the State of Kashmir. The boundary shall follow the line of that river down the western boundary of the Pathankot Tahsil to the point where the Pathankot, Shakargarh and Gurdaspur tahsils meet. The tahsil boundary and not the actual course of the Ujh river shall constitute the boundary between the East and West Punjab.

2. From the point of meeting of the three tahsils above mentioned, the boundary between the East and West Punjab shall follow the line of the Ujh river to its junction with the river Ravi and thereafter the line of the river Ravi along the boundary between the tahsils of Gurdaspur and Shakargarh, the boundary between the tahsils of Batala and Shakargarh, the boundary between the tahsils of Batala and Narowal, the boundary between the tahsils of Ajnala and Narowal, and the boundary between the tahsils of Ajnala and Shadara, to the point on the river Ravi where the district of Amritsar is divided from the district of Lahore. The tahsil boundaries referred to, and not the actual course of the river Ujh or the river Ravi, shall constitute the boundary between the East and West Punjab.

3. From the point on the river Ravi where the district of Amritsar is divided from the district of Lahore, the boundary between the East and West Punjab shall turn southwards following the boundary between the tahsils of Ajnala and Lahore and then the tahsils of Tarn Taran and Lahore, to the point where the tahsils of Kasur, Lahore and Tarn Taran meet. The line will then turn south-westward along the boundary between the tahsils of Lahore and Kasur to the point where that boundary meets the north-east corner of village Theh Jharolian. It will then run along the eastern boundary of that village to its junction with village Chathianwala, turn along the northern boundary of that village, and then run down its eastern boundary to its junction with village Waigal. It will then run along the eastern boundary of village Waigal to its junction with village Kalia, and then along the southern boundary of village Waigal to its junction with village Panhuwan. The line will then run down the eastern boundary of village Panhuwan to its junction with village Gaddoke. The line will then run down the eastern border of village Gaddoke to its junction with village Nurwala. It will then turn along the southern boundary of village Gaddoke to its junction with village Katluni Kalan. The line will then run down the eastern boundary of village Katluni Kalan to its junction with villages Kals and Mastgarh. It will then run along the southern boundary of village Katluni Kalan to the north-west corner of village Kals. It will then run along the western boundary of village Kals to its junction with village Khem Karan. The line will then run along the western and southern boundaries of village Khem Karan to its junction with village Maewala. It will then run down the western and southern boundaries of village Maewala, proceeding eastward along the boundaries between village Mahaidepur on the north and villages Sheikhpura Kuhna, Kamalpuran, Fatehwala and Mahewala. The line will then turn northward along the western boundary of village Sahjra to its junction with villages Mahaidepur and Machhike. It will then turn north-eastward along the boundaries between villages Machhike and Sahjra and then proceed along the boundary between villages Rattoke and Sahjra to the junction between villages Rattoke, Sahjra and Mabbuke. The line will then run north-east between the villages Rattoke and Mabbuke to the junction of villages Rattoke, Mabbuke, and Gajjal. From that point the line will run along the boundary between villages Mabbuke and Gajjal, and then turn south along the eastern boundary of village Mabbuke to its junction with village Nagar Aimanpur. It will then turn along the north-eastern boundary of village Nagar Aimanpur, and run along its eastern boundary to its junction with village Masteke. From there it will run along the eastern boundary of village Masteke to where it meets the boundary between the tahsils of Kasur and Ferozepore.

For the purpose of identifying the villages referred to in this paragraph, I attach a map of the Kasur tahsil authorized by the then Settlement Officer, Lahore District, which was supplied to the Commission by the Provincial Government.

4. The line will then run in a south-westerly direction down the Sutlej River on the boundary between the Districts of Lahore and Ferozepore to the point where the districts of Ferozepore, Lahore and Montgomery meet. It will continue along the boundary between the districts of Ferozepore and Montgomery to the point where this boundary meets the border of Bahawalpur State. The district boundaries, and not the actual course of the Sutlej River, shall in each case constitute the boundary between the East and West Punjab.

5. It is my intention that this boundary line should ensure that the canal headworks at Sulemanke will fall within the territorial jurisdiction of the West Punjab. If the existing delimitation of the boundaries of Montgomery District does not ensure this, I award to the West Punjab so much of the territory concerned as covers the headworks, and the boundary shall be adjusted accordingly.

6. So much of the Punjab Province as lies to the west of the line demarcated in the preceding paragraphs shall be the territory of the West Punjab. So much of the territory of the Punjab Province as lies to the east of that line shall be the territory of the East Punjab.

**REPORT BY THE CHAIRMAN OF THE BENGAL
BOUNDARY COMMISSION.**

To

HIS EXCELLENCY THE GOVERNOR-GENERAL.

1. I have the honour to present the decision and award of the Bengal Boundary Commission, which, by virtue of section 3 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission. This award relates to the division of the Province of Bengal, and the Commission's award in respect of the District of Sylhet and areas adjoining thereto will be recorded in a separate report.

2. The Bengal Boundary Commission was constituted by the announcement of the Governor-General dated the 30th of June, 1947, Reference No. D.50/7/47R. The members of the Commission thereby appointed were—

Mr. Justice Bijan Kumar Mukherjea,
Mr. Justice C. C. Biswas,
Mr. Justice Abu Saleh Mohamed Akram, and
Mr. Justice S. A. Rahman.

I was subsequently appointed Chairman of this Commission.

3. The terms of reference of the Commission, as set out in the announcement, were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.”

We were desired to arrive at a decision as soon as possible before the 15th of August.

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. A very large number of memoranda and representations was received.

5. The public sittings of the Commission took place at Calcutta, and extended from Wednesday the 16th of July 1947 to Thursday the 24th of July 1947, inclusive, with the exception of Sunday, the 20th of July. Arguments were presented to the Commission by numerous parties on both sides, but the main cases were presented by counsel on behalf of the Indian National Congress, the Bengal Provincial Hindu Mahasabha and the New Bengal Association on the one hand, and on behalf of the Muslim League on the other. In view of the fact that I was acting also as Chairman of the Punjab Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Bengal Boundary Commission, I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and all material submitted for our consideration.

6. After the close of the public sittings, the remainder of the time of the Commission was devoted to clarification and discussion of the issues involved. Our discussions took place at Calcutta.

7. The question of drawing a satisfactory boundary line under our terms of reference between East and West Bengal was one to which the parties concerned propounded the most diverse solutions. The province offers few, if any, satisfactory natural boundaries, and its development has been on lines that do not well accord with a division by contiguous majority areas of Muslim and non-Muslim majorities.

8. In my view, the demarcation of a boundary line between East and West Bengal depended on the answers to be given to certain basic questions which may be stated as follows:—

(1) To which State was the City of Calcutta to be assigned, or was it possible to adopt any method of dividing the City between the two States?

(2) If the City of Calcutta must be assigned as a whole to one or other of the States, what were its indispensable claims to the control of territory, such as all or part of the Nadia River system or the Kulti rivers, upon which the life of Calcutta as a city and port depended?

(3) Could the attractions of the Ganges-Padma-Madhumati river line displace the strong claims of the heavy concentration of Muslim majorities in the districts of Jessore and Nadia without doing too great a violence to the principle of our terms of reference?

(4) Could the district of Khulna usefully be held by a State different from that which held the district of Jessore?

(5) Was it right to assign to Eastern Bengal the considerable block of non-Muslim majorities in the districts of Ma'da and Dinajpur?

(6) Which State's claim ought to prevail in respect of the Districts of Darjeeling and Jalpaiguri, in which the Muslim population amounted to 2.42 per cent. of the whole in the case of Darjeeling, and to 23.08 per cent. of the whole in the case of Jalpaiguri, but which constituted an area not in any natural sense contiguous to another non-Muslim area of Bengal?

(7) To which State should the Chittagong Hill Tracts be assigned, an area in which the Muslim population was only 3 per cent. of the whole, but which it was difficult to assign to a State different from that which controlled the district of Chittagong itself?

9. After much discussion, my colleagues found that they were unable to arrive at an agreed view on any of these major issues. There were of course considerable areas of the Province in the south-west and north-east and east, which provokes no controversy on either side: but, in the absence of any reconciliation on all main questions affecting the drawing of the boundary itself, my colleagues assented to the view at the close of our discussions that I had no alternative but to proceed to give my own decision.

10. This I now proceed to do: but I should like at the same time to express my gratitude to my colleagues for their indispensable assistance in clarifying and discussing the difficult questions involved. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

11. I have done what I can in drawing the line to eliminate any avoidable cutting of railway communications and of river system, which are of importance to the life of the province: but it is quite impossible to draw a boundary under our terms of reference without causing some interruption of this sort, and I can only express the hope that arrangements can be made and maintained between the two States that will minimize the consequences of this interruption as far as possible.

(Signed) CYRIL RADCLIFFE.

New Delhi,
12th August, 1947.

THE SCHEDULE.

See Annexures A and B.

ANNEXURE A.

1. A line shall be drawn along the boundary between the Thana of Phansidewa in the District of Darjeeling and the Thana Tetulia in the District of Jalpaiguri from the point where that boundary meets the Province of Bihar and then along the boundary between the Thanas of Tetulia and Rajganj; the Thanas of Pachagar and Rajganj, and the Thanas of Pachagar and Jalpaiguri, and shall then continue along the northern corner of the Thana Debiganj to the boundary of the State of Cooch-Bihar. The District of Darjeeling and so much of the District of Jalpaiguri as lies north of this line shall belong to West Bengal, but the Thana of Patgram and any other portion of Jalpaiguri District which lies to the east or south shall belong to East Bengal.

2. A line shall then be drawn from the point where the boundary between the Thanas of Haripur and Raiganj in the District of Dinajpur meets the border of the Province of Bihar to the point where the boundary between the Districts of 24 Parganas and Khulna meets the Bay of Bengal. This line shall follow the course indicated in the following paragraphs. So much of the Province of Bengal as lies to the west of it shall belong to West Bengal. Subject to what has been provided in paragraph 1 above with regard to the Districts of Darjeeling and Jalpaiguri, the remainder of the Province of Bengal shall belong to East Bengal.

3. The line shall run along the boundary between the following Thanas :—

Haripur and Raiganj; Haripur and Hemtabad; Ranisankail and Hemtabad; Pirganj and Hemtabad; Pirganj and Kaliganj; Bochaganj and Kaliganj; Biral and Kaliganj; Biral and Kushmundi; Biral and Gangarampur; Dinajpur and Gangarampur; Dinajpur and Kumarganj; Chirirbandar and Kumarganj; Phulbari and Kumarganj; Phulbari and Balurghat. It shall terminate at the point where the boundary between Phulbari and Balurghat meets the north-south line of the Bengal-Assam Railway in the eastern corner of the Thana of Balurghat. The line shall turn down the western edge of the railway lands belonging to that railway and follow that edge until it meets the boundary between the Thanas of Balurghat and Panchbibi.

4. From that point the line shall run along the boundary between the following Thanas :

Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamairhat; Tapan and Dhamairhat; Tapan and Patnitala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

5. The line shall then turn south-east down the River Ganges along the boundary between the District of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.

6. From the point on the River Ganges where the channel of the River Mathabanga takes off, the line shall run along that channel to the northern most point where it meets the boundary between the Thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.

7. From this point the boundary between East and West Bengal shall run along the boundaries between the Thanas of Daulatpur and Karimpur; Gangani and Karimpur; Meherpur and Karimpur; Meherpur and Tehatta; Meherpur and Chapra; Damurhuda and Chapra; Damurhuda and Krishnaganj; Chudanga and Krishnaganj; Jibannagar and Krishnaganj; Jibannagar and Hanskhali; Maheshpur and Hanskhali; Maheshpur and Ranaghat; Maheshpur and Bongaon; Jhikargacha and Bongaon; Sarsa and Bongaon; Sarsa and Gaighata; Gaighata and Kalaroa; to the point where the boundary between those Thanas meets the boundary between the districts of Khulna and 24 Parganas.

8. The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal.

**REPORT RELATING TO SYLHET DISTRICT AND THE
ADJOINING DISTRICTS OF ASSAM.**

To

HIS EXCELLENCY THE GOVERNOR-GENERAL.

1. I have the honour to present the report of the Bengal Boundary Commission relating to Sylhet District and the adjoining districts of Assam. By virtue of Section 3 of the India Independence Act, 1947, the decisions contained in this report become the decision and award of the Commission.

2. The Bengal Boundary Commission was constituted as stated in my report dated the 12th of August 1947 with regard to the division of the Province of Bengal into East and West Bengal. Our terms of reference were as follows :—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslim and non-Muslims. In doing so, it will also take into account other factors. In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.”

3. After the conclusion of the proceedings relating to Bengal, the Commission invited the submission of memoranda and representations by parties interested in the Sylhet question. A number of such memoranda and representations was received.

4. The Commission held open sittings at Calcutta on the 4th, 5th and 6th days of August 1947 for the purpose of hearing arguments. The main arguments were conducted on the one side by counsel on behalf of the Government of East Bengal and the Provincial and District Muslim Leagues; and on the other side, by counsel on behalf of the Government of the Province of Assam and the Assam Provincial Congress Committee and the Assam Provincial Hindu Mahasabha. I was not present in person at the open sittings as I was at the time engaged in the proceedings of the Punjab Boundary Commission which were taking place simultaneously, but I was supplied with the daily record of the Sylhet proceedings and with all material submitted for the Commission's consideration. At the close of the open sittings, the members of the Commission entered into discussions with me as to the issues involved and the decisions to be come to. These discussions took place in New Delhi.

5. There was an initial difference of opinion as to the scope of the reference entrusted to the Commission. Two of my colleagues took the view that the Commission had been given authority to detach from Assam and to attach to East Bengal any Muslim majority areas of any part of Assam that could be described as contiguous to East Bengal, since they construed the words “the adjoining districts of Assam” as meaning any districts of Assam that adjoined East Bengal. The other two of my colleagues took the view that the Commission's power of detaching areas from Assam and transferring them to East Bengal was limited to the District of Sylhet and contiguous Muslim majority areas (if any) of other districts of Assam that adjoined Sylhet. The difference of opinion was referred to me for my casting vote, and I took the view that the more limited construction of our terms of reference was the correct one and that the “adjoining districts of Assam” did not extend to other districts of Assam than those that adjoined Sylhet. The Commission accordingly proceeded with its work on this basis.

6. It was argued before the Commission on behalf of the Government of East Bengal that on the true construction of our terms of reference and section 3 of the Indian Independence Act, 1947, the whole of the District of Sylhet at least must be transferred to East Bengal and the Commission had no option but to act upon this assumption. All my colleagues agreed in rejecting this argument, and I concur in their view.

7. We found some difficulty in making up our minds whether, under our terms of reference, we were to approach the Sylhet question in the same way as the question of partitioning Bengal, since there were some differences in the language employed. But all my colleagues came to the conclusion that we were intended to divide the Sylhet and adjoining districts of Assam between East Bengal and the Province of Assam on the basis of contiguous majority areas of Muslims and non-Muslims, but taking into account other factors. I am glad to adopt this view.

8. The members of the Commission were however unable to arrive at an agreed view as to how the boundary lines should be drawn, and after discussion of their differences, they invited me to give my decision. This I now proceed to do.

9. In my view, the question is limited to the districts of Sylhet and Cachar, since of the other districts of Assam that can be said to adjoin Sylhet neither the Garo Hills nor the Khasi and Jaintia Hills nor the Lushai Hills have anything approaching a Muslim majority of population in respect of which a claim could be made.

10. Out of 35 thanas in Sylhet, 8 have non-Muslim majorities; but of these eight two—Sulla and Ajmiriganj (which is in any event divided almost evenly between Muslims and non-Muslims), are entirely surrounded by preponderatingly Muslim areas, and must therefore go with them to East Bengal. The other six thanas, comprising a population of over 530,000 people stretch in a continuous line along part of the southern border of Sylhet District. They are divided between two sub-divisions, of which one, South Sylhet, comprising a population of over 515,000 people, has in fact non-Muslim majority of some 40,000; while the other, Karimganj, with a population of over 568,000 people, has a Muslim majority that is a little larger.

11. With regard to the District of Cachar, one thana, Hailakandi, is a Muslim majority and is contiguous to the Muslim thanas of Badarpur and Kariganj in the District of Sylhet. This thana forms, with the thana of Katlichara immediately to its south, the sub-division of Hailakandi, and in the Sub-division as a whole Muslims enjoy a very small majority being 51 per cent. of the total population. I think that the dependence of Katlichara on Hailakandi for normal communications makes it important that the area should be under one jurisdiction, and that the Muslims would have at any rate a strong presumptive claim for the transfer of the Sub-division of Hailakandi, comprising a population of 166,536, from the Province of Assam to the Province of East Bengal.

12. But a study of the map shows, in my judgment, that a division on these lines would present problems of administration that might gravely affect the future welfare and happiness of the whole District. Not only would the six non-Muslim thanas of Sylhet be completely divorced from the rest of Assam if the Muslim claim to Hailakandi were recognised, but they form a strip running east and west where the natural division of the land is north and south and they effect an awkward severance of the railway line through Sylhet, so that, for instance, the junction for the town of Sylhet itself, the capital of the district, would lie in Assam, not in East Bengal.

13. In those circumstances I think that some exchange of territories may be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows:—

A line shall be drawn from the point where the boundary between the Thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those Thanas, then along the boundary between the Thanas of Patharkandi and Barlekha, then along the boundary between the Thanas of Karimganj and Bailekha, and then along the boundary between the Thanas of Karimganj and Beani Bazar to the point where that boundary meets the River Kusiya. The line shall then turn to the east taking the River Kusiya as the boundary and run to the point where that river meets the boundary between the Districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the District of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.

14. For purposes of illustration a map marked A is attached on which the line is delineated. In the event of any divergence between the line as delineated on the map and as described in paragraph 13, the written description is to prevail.

New Delhi,
13th August 1947.

(Signed) CYRIL RADCLIFFE.

**REPORT RELATING TO SYLHET DISTRICT AND THE
ADJOINING DISTRICTS OF ASSAM.**

To

HIS EXCELLENCY THE GOVERNOR-GENERAL.

1. I have the honour to present the report of the Bengal Boundary Commission relating to Sylhet District and the adjoining districts of Assam. By virtue of Section 3 of the Indian Independence Act, 1947, the decisions contained in this report become the decision and award of the Commission.

2. The Bengal Boundary Commission was constituted as stated in my report dated the 12th of August 1947 with regard to the division of the Province of Bengal into East and West Bengal. Our terms of reference were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslim and non-Muslims. In doing so, it will also take into account other factors. In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.”

3. After the conclusion of the proceedings relating to Bengal, the Commission invited the submission of memoranda and representations by parties interested in the Sylhet question. A number of such memoranda and representations was received.

4. The Commission held open sittings at Calcutta on the 4th, 5th and 6th days of August 1947 for the purpose of hearing arguments. The main arguments were conducted on the one side by counsel on behalf of the Government of East Bengal and the Provincial and District Muslim Leagues; and on the other side, by counsel on behalf of the Government of the Province of Assam and the Assam Provincial Congress Committee and the Assam Provincial Hindu Mahasabha. I was not present in person at the open sittings as I was at the time engaged in the proceedings of the Punjab Boundary Commission which were taking place simultaneously, but I was supplied with the daily record of the Sylhet proceedings and with all material submitted for the Commission's consideration. At the close of the open sittings, the members of the Commission entered into discussions with me as to the issues involved and the decisions to be come to. These discussions took place at New Delhi.

5. There was an initial difference of opinion as to the scope of the reference entrusted to the Commission. Two of my colleagues took the view that the Commission had been given authority to detach from Assam and to attach to East Bengal any Muslim majority areas of any part of Assam that could be described as contiguous to East Bengal, since they construed the words “the adjoining districts of Assam” as meaning any districts of Assam that adjoined East Bengal. The other two of my colleagues took the view that the Commission's power of detaching areas from Assam and transferring them to East Bengal was limited to the District of Sylhet and contiguous Muslim majority areas (if any) of other districts of Assam that adjoined Sylhet. The difference of opinion was referred to me for my casting vote, and I took the view that the more limited construction of our terms of reference was the correct one and that the “adjoining districts of Assam” did not extend to other districts of Assam than those that adjoined Sylhet. The Commission accordingly proceeded with its work on this basis.

6. It was argued before the Commission on behalf of the Government of East Bengal that on the true construction of our terms of reference and section 3 of the Indian Independence Act 1947, the whole of the District of Sylhet at least must be transferred to East Bengal and the Commission had no option but to act upon this assumption. All my colleagues agreed in rejecting this argument, and I concur in their view.

7. We found some difficulty in making up our minds whether, under our terms of reference, we were to approach the Sylhet question in the same way as the question of partitioning Bengal, since there were some differences in the language employed. But all my colleagues came to the conclusion that we were intended to divide the Sylhet and adjoining districts of Assam between East Bengal and the Province of Assam on the basis of contiguous majority areas of Muslims and non-Muslims, but taking into account other factors. I am glad to adopt this view.

8. The members of the Commission were however unable to arrive at an agreed view as to how the boundary lines should be drawn, and after discussion of their differences, they invited me to give my decision. This I now proceed to do.

9. In my view, the question is limited to the districts of Sylhet and Cachar, since of the other districts of Assam that can be said to adjoin Sylhet neither the Garo Hills nor the Khasi and Jaintia Hills nor the Lushai Hills have anything approaching a Muslim majority of population in respect of which a claim could be made.

10. Out of 35 thanas in Sylhet, 8 have non-Muslim majorities; but of these eight two—Sulla and Ajmiriganj (which is in any event divided almost evenly between Muslims and non-Muslims), are entirely surrounded by preponderatingly Muslim areas, and must therefore go with them to East Bengal. The other six thanas comprising a population of over 530,000 people stretch in a continuous line along part of the southern border of Sylhet District. They are divided between two sub-divisions, of which one, South Sylhet, comprising a population of over 515,000 people, has in fact a non-Muslim majority of some 40,000; while the other, Karimganj, with a population of over 568,000 people, has a Muslim majority that is a little larger.

11. With regard to the District of Cachar, one thana, Hailakandi, has a Muslim majority and is contiguous to the Muslim thanas of Badarpur and Karimganj in the District of Sylhet. This thana forms, with the thana of Katlichara immediately to its south, the sub-division of Hailakandi, and in the Sub-division as a whole Muslims enjoy a very small majority being 51 per cent. of the total population. I think that the dependence of Katlichara on Hailakandi for normal communications makes it important that the area should be under one jurisdiction, and that the Muslims would have at any rate a strong presumptive claim for the transfer of the Sub-division of Hailakandi, comprising a population of 166,536, from the Province of Assam to the Province of East Bengal.

12. But a study of the map shows, in my judgment, that a division on these lines would present problems of administration that might gravely affect the future welfare and happiness of the whole District. Not only would the six non-Muslim thanas of Sylhet be completely divorced from the rest of Assam if the Muslim claim to Hailakandi were recognised, but they form a strip running east and west where the natural division of the land is north and south and they effect an awkward severance of the railway line through Sylhet, so that, for instance, the junction for the town of Sylhet itself, the capital of the district, would lie in Assam, not in East Bengal.

13. In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows:—

A line shall be drawn from the point where the boundary between the Thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those Thanas, then along the boundary between the Thanas of Patharkandi and Barlekha, then along the boundary between the Thanas of Karimganj and Barlekha, and then along the boundary between the Thanas of Karimganj and Beani Bazar to the point where that boundary meets the River Kusiya. The line shall then turn to the east taking the River Kusiya as the boundary and run to the point where that river meets the boundary between the Districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the District of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.

14. For purposes of illustration a map marked A is attached on which the line is delineated. In the event of any divergence between the line as delineated on the map and as described in paragraph 13, the written description is to prevail.

New Delhi,
13th August 1947.

(Signed) CYRIL RADCLIFFE.



Annex B14

Government of India, Legislative Department, "Report of the Bengal Boundary Commission", Notification No. F 68/47-R, reprinted in *The Gazette of India (extraordinary)* (17 August 1947)

REGISTERED No. L. 312

The Gazette of India

EXTRAORDINARY
PUBLISHED BY AUTHORITY

NEW DELHI, SUNDAY, AUGUST 17, 1947

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT
(Reforms)

NOTIFICATION

New Delhi, the 17th August 1947

No. F. 68/47-R.—The Reports of the Bengal Boundary Commission and of the Punjab Boundary Commission are published for general information.

REPORT OF THE BENGAL BOUNDARY COMMISSION

To

HIS EXCELLENCY THE GOVERNOR-GENERAL.

1. I have the honour to present the decision and award of the Bengal Boundary Commission, which, by virtue of section 3 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission. This award relates to the division of the Province of Bengal, and the Commission's award in respect of the District of Sylhet and areas adjoining thereto will be recorded in a separate report.

2. The Bengal Boundary Commission was constituted by the announcement of the Governor-General, dated the 30th of June, 1947, Reference No. D50/7/47R. The members of the Commission thereby appointed were

Mr. Justice Bijan Kumar Mukherjea,
Mr. Justice C. C. Biswas,
Mr. Justice Abu Saleh Mohamed Akram, and
Mr. Justice S. A. Rahman.

I was subsequently appointed Chairman of this Commission.

3. The terms of reference of the Commission, as set out in the announcement, were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.”

We were desired to arrive at a decision as soon as possible before the 15th of August.

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. A very large number of memoranda and representations was received.

5. The public sittings of the Commission took place at Calcutta, and extended from Wednesday the 16th of July 1947, to Thursday the 24th of July 1947, inclusive, with the exception of Sunday, the 20th of July. Arguments were presented to the Commission by numerous parties on both sides, but the main cases were presented by counsel on behalf of the Indian National Congress, the Bengal Provincial Hindu Mahasabha and the New Bengal Association on the one hand, and on behalf of the Muslim League on the other. In view of the fact that I was acting also as Chairman of the Punjab Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Bengal Boundary Commission, I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and all material submitted for our consideration.

6. After the close of the public sittings, the remainder of the time of the Commission was devoted to clarification and discussion of the issues involved. Our discussions took place at Calcutta.

7. The question of drawing a satisfactory boundary line under our terms of reference between East and West Bengal was one to which the parties concerned propounded the most diverse solutions. The province offers few, if any, satisfactory natural boundaries, and its development has been on lines that do not well accord with a division by contiguous majority areas of Muslim and non-Muslim majorities.

8. In my view, the demarcation of a boundary line between East and West Bengal depended on the answers to be given to certain basic questions which may be stated as follows:—

(1) To which State was the City of Calcutta to be assigned, or was it possible to adopt any method of dividing the City between the two States?

(2) If the City of Calcutta must be assigned as a whole to one or other of the States, what were its indispensable claims to the control of territory, such as all or part of the Nadia River system or the Kulti rivers, upon which the life of Calcutta as a city and port depended?

(3) Could the attractions of the Ganges-Padma-Madhumati river line displace the strong claims of the heavy concentration of Muslim majorities in the districts of Jessore and Nadia without doing too great a violence to the principle of our terms of reference?

(4) Could the district of Khulna usefully be held by a State different from that which held the district of Jessore?

(5) Was it right to assign to Eastern Bengal the considerable block of non-Muslim majorities in the districts of Malda and Dinajpur?

(6) Which State's claim ought to prevail in respect of the Districts of Darjeeling and Jalpaiguri, in which the Muslim population amounted to 2.42 per cent. of the whole in the case of Darjeeling, and to 23.08 per cent. of the whole in the case of Jalpaiguri, but which constituted an area not in any natural sense contiguous to another non-Muslim area of Bengal?

(7) To which State should the Chittagong Hill Tracts be assigned, an area in which the Muslim population was only 3 per cent. of the whole.

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but which it was difficult to assign to a State different from that which controlled the district of Chittagong itself?

9. After much discussion, my colleagues found that they were unable to arrive at an agreed view on any of these major issues. There were of course considerable areas of the Province in the south-west and north-east and east, which provoked no controversy on either side: but, in the absence of any reconciliation on all main questions affecting the drawing of the boundary itself, my colleagues assented to the view at the close of our discussions that I had no alternative but to proceed to give my own decision.

10. This I now proceed to do: but I should like at the same time to express my gratitude to my colleagues for their indispensable assistance in clarifying and discussing the difficult questions involved. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map* attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

11. I have done what I can in drawing the line to eliminate any avoidable cutting of railway communications and of river systems, which are of importance to the life of the province: but it is quite impossible to draw a boundary under our terms of reference without causing some interruption of this sort, and I can only express the hope that arrangements can be made and maintained between the two States that will minimize the consequences of this interruption as far as possible.

CYRIL RADCLIFFE.

NEW DELHI,

The 12th August, 1947.

THE SCHEDULE
See Annexures A and B.

ANNEXURE A

1. A line shall be drawn along the boundary between the Thana of Phansidewa in the District of Darjeeling and the Thana Tetulia in the District of Jalpaiguri from the point where that boundary meets the Province of Bihar and then along the boundary between the Thanas of Tetulia and Raiganj; the Thanas of Pachagar and Raiganj, and the Thanas of Pachagar and Jalpaiguri, and shall then continue along the northern corner of the Thana Debiganj to the boundary of the State of Cooch-Bihar. The District of Darjeeling and so much of the District of Jalpaiguri as lies north of this line shall belong to West Bengal, but the Thana of Patgram and any other portion of Jalpaiguri District which lies to the east or south shall belong to East Bengal.

2. A line shall then be drawn from the point where the boundary between the Thanas of Haripur and Raiganj in the District of Dinajpur meets the border of the Province of Bihar to the point where the boundary between the Districts of 24 Farganas and Khulna meets the Bay of Bengal. This line shall follow the course indicated in the following paragraphs. So much of the Province of Bengal as lies to the west of it shall belong to West Bengal. Subject to what has been provided in paragraph 1 above with

regard to the Districts of Darjeeling and Jalpaiguri, the remainder of the Province of Bengal shall belong to East Bengal.

3. The line shall run along the boundary between the following Thanas :

Haripur and Raiganj; Haripur and Hemtabad; Ranisankail and Hemtabad; Pirganj and Hemtabad; Pirganj and Kaliganj; Bochaganj and Kaliganj; Biral and Kaliganj; Biral and Kushmundi; Biral and Gangarampur; Dinajpur and Gangarampur; Dinajpur and Kumarganj; Chirirbandar and Kumarganj; Phulbari and Kumarganj; Phulbari and Balurghat. It shall terminate at the point where the boundary between Phulbari and Balurghat meets the north-south line of the Bengal-Assam Railway in the eastern corner of the Thana of Balurghat. The line shall turn down the western edge of the railway lands belonging to that railway and follow that edge until it meets the boundary between the Thanas of Balurghat and Fanchbibi.

4. From that point the line shall run along the boundary between the following Thanas :

Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamaishat; Tapan and Dhamaishat, Tapan and Patnitala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

5. The line shall then turn south-east down the River Ganges along the boundary between the Districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.

6. From the point on the River Ganges where the channel of the River Mathabanga takes off, the line shall run along that channel to the northern most point where it meets the boundary between the Thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.

7. From this point the boundary between East and West Bengal shall run along the boundaries between the Thanas of Daulatpur and Karimpur; Gangani and Karimpur; Meherpur and Karimpur; Meherpur and Tehatta; Meherpur and Chapra; Damurhuda and Chapra; Damurhuda and Krishnaganj; Chuadanga and Krishnaganj; Jibannagar and Krishnaganj; Jibannagar and Hanskhali; Maheshpur and Hanskhali; Maheshpur and Rana-ghat; Maheshpur and Bongaon; Jhikargacha and Bongaon; Sarsa and Bongaon; Sarsa and Gaighata; Gaighata and Kalaroa; to the point where the boundary between those thanas meets the boundary between the districts of Khulna and 24 Parganas.

8. The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal.

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 REPORT OF THE BENGAL BOUNDARY COMMISSION (SYLHET DISTRICT)

To
 HIS EXCELLENCY THE GOVERNOR GENERAL.

1. I have the honour to present the report of the Bengal Boundary Commission relating to Sylhet District and the adjoining districts of Assam. By virtue of Section 3 of the Indian Independence Act, 1947, the decisions contained in this report become the decision and award of the Commission.

2. The Bengal Boundary Commission was constituted as stated in my report dated the 12th of August 1947 with regard to the division of the Province of Bengal into East and West Bengal. Our terms of reference were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.

In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.”

3. After the conclusion of the proceedings relating to Bengal, the Commission invited the submission of memoranda and representations by parties interested in the Sylhet question. A number of such memoranda and representations was received.

4. The Commission held open sittings at Calcutta on the 4th, 5th and 6th days of August 1947, for the purpose of hearing arguments. The main arguments were conducted on the one side by counsel on behalf of the Government of East Bengal and the Provincial and District Muslim Leagues; and on the other side, by counsel on behalf of the Government of the Province of Assam and the Assam Provincial Congress Committee and the Assam Provincial Hindu Mahasabha. I was not present in person at the open sittings as I was at the time engaged in the proceedings of the Punjab Boundary Commission which were taking place simultaneously, but I was supplied with the daily record of the Sylhet proceedings and with all material submitted for the Commission's consideration. At the close of the open sittings, the members of the Commission entered into discussions with me as to the issues involved and the decisions to be come to. These discussions took place at New Delhi.

5. There was an initial difference of opinion as to the scope of the reference entrusted to the Commission. Two of my colleagues took the view that the Commission had been given authority to detach from Assam and to attach to East Bengal any Muslim majority areas of any part of Assam that could be described as contiguous to East Bengal, since they construed the words “the adjoining districts of Assam” as meaning any districts of Assam that adjoined East Bengal. The other two of my colleagues took the view that the Commission's power of detaching areas from Assam and transferring them to East Bengal was limited to the District of Sylhet and contiguous Muslim majority areas (if any) of other districts of Assam that adjoined Sylhet. The difference of opinion was referred to me for my casting vote, and I took the view that the more limited construction of our

terms of reference was the correct one and that the "adjoining districts of Assam" did not extend to other districts of Assam than those that adjoined Sylhet. The Commission accordingly proceeded with its work on this basis.

6. It was argued before the Commission on behalf of the Government of East Bengal that on the true construction of our terms of reference and section 3 of the Indian Independence Act, 1947, the whole of the District of Sylhet at least must be transferred to East Bengal and the Commission had no option but to act upon this assumption. All my colleagues agreed in rejecting this argument, and I concur in their view.

7. We found some difficulty in making up our minds whether, under our terms of reference, we were to approach the Sylhet question in the same way as the question of partitioning Bengal, since there were some differences in the language employed. But all my colleagues came to the conclusion that we were intended to divide the Sylhet and adjoining districts of Assam between East Bengal and the Province of Assam on the basis of contiguous majority areas of Muslims and non-Muslims, but taking into account other factors I am glad to adopt this view.

8. The members of the Commission were however unable to arrive at an agreed view as to how the boundary lines should be drawn, and after discussion of their differences, they invited me to give my decision. This I now proceed to do.

9. In my view, the question is limited to the districts of Sylhet and Cachar, since of the other districts of Assam that can be said to adjoin Sylhet neither the Garo Hills nor the Khasi and Jaintia Hills nor the Lushai Hills have anything approaching a Muslim majority of population in respect of which a claim could be made.

10. Out of 35 thanas in Sylhet, 8 have non-Muslim majorities; but of these eight, two—Sulla and Ajmiriganj (which is in any event divided almost evenly between Muslims and non-Muslims), are entirely surrounded by preponderatingly Muslim areas, and must therefore go with them to East Bengal. The other six thanas comprising a population of over 530,000 people stretch in a continuous line along part of the southern border of Sylhet District. They are divided between two sub-divisions, of which one, South Sylhet, comprising a population of over 515,000 people, has in fact a non-Muslim majority of some 40,000; while the other, Karimganj, with a population of over 568,000 people, has a Muslim majority that is a little larger.

11. With regard to the District of Cachar, one thana, Hailakandi, has a Muslim majority and is contiguous to the Muslim thanas of Badarpur and Karimganj in the District of Sylhet. This thana forms, with the thana of Katlichara immediately to its south, the sub-division of Hailakandi, and in the Sub-division as a whole Muslims enjoy a very small majority being 51 per cent. of the total population. I think that the dependence of Katlichara on Hailakandi for normal communications makes it important that the area should be under one jurisdiction, and that the Muslims would have at any rate a strong presumptive claim for the transfer of the Sub-division of Hailakandi, comprising a population of 166,536, from the Province of Assam to the Province of East Bengal.

12. But a study of the map shows, in my judgment, that a division on these lines would present problems of administration that might gravely affect the future welfare and happiness of the whole District. Not only would the six non-Muslim thanas of Sylhet be completely divorced from

the rest of Assam if the Muslim claim to Hailakandi were recognised, but they form a strip running east and west whereas the natural division of the land is north and south and they effect an awkward severance of the railway line through Sylhet, so that, for instance, the junction for the town of Sylhet itself, the capital of the district, would lie in Assam, not in East Bengal.

13. In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows:—

A line shall be drawn from the point where the boundary between the Thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those Thanas, then along the boundary between the Thanas of Patharkandi and Barlekha, then along the boundary between the Thanas of Karimganj and Barlekha, and then along the boundary between the Thanas of Karimganj and Beani Bazar to the point where that boundary meets the River Kusiara. The line shall then turn to the east taking the River Kusiara as the boundary and run to the point where that river meets the boundary between the Districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the District of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.

14. For purposes of illustration a map* marked A is attached on which the line is delineated. In the event of any divergence between the line as delineated on the map and as described in paragraph 13, the written description is to prevail.

NEW DELHI,

CYRIL RADCLIFFE.

The 13th August 1947.

REPORT OF THE PUNJAB BOUNDARY COMMISSION

To

HIS EXCELLENCY THE GOVERNOR-GENERAL

1. I have the honour to present the decision and award of the Punjab Boundary Commission which, by virtue of section 4 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission.

2. The Punjab Boundary Commission was constituted by the announcement of the Governor-General dated the 30th of June 1947, Reference No. D50/7/47R. The members of the Commission thereby appointed were—

Mr. Justice Din Muhammad,

Mr. Justice Muhammad Munir,

Annex B15

Earl Mountbatten of Burma, *Mountbatten's Report on the Last Viceroyalty, 22 March-15 August 1947*, (Lionel Carter ed., 2003)

Mountbatten's Report on the Last Viceroyalty

22 March–15 August 1947

*with additional editing and a
new introduction by*

LIONEL CARTER

*Former Librarian, Centre of South Asian Studies,
University of Cambridge*



MANOHAR
2003

His Highness [of Bikaner], in the interests of his subjects, would have no option left but to opt for Pakistan." As I said this, I could see a change in the colour of the face of Lord Mountbatten. He said nothing and we left His Excellency's room. In the evening, we heard on the radio that the announcement of the Radcliffe Award would be delayed by a few days. Sardar Panikkar and myself wondered whether this had something to do with our interview with his Excellency....²⁵

Some time 'about 10th or 11th August' the Punjab authorities received a secraphone message from the Viceroy's House containing the words 'Eliminate Salient'.²⁶ They knew this meant the tahsils were to be allocated to India. In fairness to Mountbatten it must be said that he gives more powerful reasons for the delay in the publication of Radcliffe's awards.²⁷

* * *

Enough has been written to show that Mountbatten's *Report* is not the last word on the transfer of power (as he might have wished) but it is, nonetheless, a source of the first importance. We watch intrigued as Mountbatten spars with Jinnah; we see the warmth of his relationship with Nehru develop; we note his professional respect for Sardar Patel; and we admire his recognition of Mahatma Gandhi's intense spirituality. Despite all his shortcomings and vanities, Mountbatten emerges as a statesman of the very first rank. It was a remarkable historical situation. Without Jinnah, it is unlikely that there would ever have been a Pakistan. Without Mountbatten, it is unlikely that partition would have been accomplished by agreement or that the violence could have been kept to the level that it was.

The text of Mountbatten's *Report* is here reprinted in full and is taken from L/P&J/5/396/2 in the Oriental and India Office Collections of the British Library. Another copy is held at the Public Record Office at Kew under the reference PREM 8/1002. The text of Lord Mountbatten's *Report* is British Crown Copyright. Additional annotation by the present editor is shown within square brackets. It may be safely assumed that most of the official documents referred to by Lord Mountbatten will have been reproduced in the *Transfer of power* series. Cross references to the *Transfer of power* series are, therefore, only given in the case of documents of major importance such as Statements of Policy.

In conclusion, I wish to acknowledge the help and advice I have received from Mr Anthony Farrington who was, until his recent retirement, head of the India Office Records in the British Library. I would also like to thank my publisher, Mr Ramesh Jain, for his many kindnesses. It was my mother,

who died in January 2002, who pointed the way forward and encouraged me to take this project up. The months since her death have served to further illuminate her stature and the great debt I owe her.

Harrow, July 2002

LIONEL CARTER

NOTES

1. The figure of 200,000 is taken from Penderel Moon, *Divide and Quit*. (London: Chatto & Windus, 1964), p. 293.
2. Campbell-Johnson went on to run his own firm of public relations consultants for twenty-five years. I met him several times in the 1970s. He was a charming, good-natured person of decidedly liberal outlook (in marked contrast to today's 'spin doctors'). His book *Mission with Mountbatten* (London: Robert Hale, 1951) gives the flavour of the Mountbatten Viceroyalty.
3. See Part F, paragraph 139 below.
4. Denis Judd (Ed.), *A British tale of Indian and foreign service: the memoirs of Sir Ian Scott*. (London: Radcliffe Press, 1999), pp. 152-3.
5. Towards the end of his life, Mountbatten helped Larry Collins and Dominique Lapierre in the production of two journalistic-type books on the transfer of power (*Freedom at midnight*. (London: Collins, 1975) and *Mountbatten and the partition of India*. (New Delhi: Vikas, 1982)). Reviewing the first, Sarvepalli Gopal wrote: '... as time passes [Mountbatten] sees himself more and more at the centre of the stage, with superhuman god-like powers which reduce all others to pigmies His vanity has fed on itself till it borders on megalomania ...' Review reprinted in *The Book Review* (New Delhi), Vol: XXVI, No. 1 (January 2002), p. 28.
6. To be fair to Mountbatten he had previously written a *Report* on his time as Supreme Allied Commander, South-East Asia Command, 1943-6. This was eventually published: London, H.M.S.O., 1951.
It is clear from Mountbatten's 1949 correspondence with Attlee (see next paragraph) that Lieutenant-Colonel V.F. Erskine Crum played a considerable part in drafting the *Report on the last Viceroyalty*. Public Record Office: PREM 8/1002.
7. See Mountbatten's Preface below.
8. Nicholas Mansergh, E.W.R. Lumby and Penderel Moon, *Constitutional relations between Britain and India: the transfer of power 1942-7*. 12 vols. (London, H.M.S.O., 1970-83.) In subsequent footnotes this series is referred to as *Transfer of power*.
9. The correspondence and minuting referred to in this paragraph are on PREM 8/1002 at the P.R.O.
10. Undated letter from Mountbatten received in the Prime Minister's Office on 19 March 1949. PREM 8/1002.

11. See Part D, paragraphs 153-68 below.
12. See Part E, paragraph 7 below.
13. See Appendix VII, note 1 below.
14. See *Transfer of power*, Vol. XI, No. 561.
15. See Appendix VIII, note 1 below.
16. See Part B, paragraph 135 below.
17. See Part E, paragraph 66 below.
18. London: Longmans Green & Co., 1956, pp. 97-8.
19. See Part C, paragraphs 8 and 15-17 below.
20. **See Part E, paragraphs 38-41 below.**
21. **I had a talk with Sir Penderel Moon a short time before his death in 1987 on the subject of the boundary awards. Moon then said that he had come to the view that the Ferozepore boundary had been altered at Mounbatten's request. I believe Moon had reached this conclusion after receiving authoritative information.**
22. See *Transfer of power*, Vol. XII, No. 377, note 1.
23. M.M. Sadullah (Compiler), *The partition of the Punjab, 1947: a compilation of official documents*. 4 vols. (Lahore: National Documentation Centre, 1983.) The first volume contains an important article by S.S. Pirzada on the 'Radcliffe Award' which discusses all the available sources, pp. vii-xi.
24. See Pirzada's article referred to in the note above, pp. xvii-xviii. Munir's statement is also documented by Sain (see note below), p. 123.
25. Kanwar Sain, *Reminiscences of an engineer*. (New Delhi: Young Asia, 1978.) Chapter 11 'Mountbatten alters Punjab boundary (at eleventh hour)', p. 122.
26. See *Transfer of power*, Vol. XII, No. 377, note 1.
27. See Part F, paragraphs 152-68 below.

Preface

When I went out to India as Viceroy in March 1947, the Prime Minister, Mr. Attlee, asked me to send him regular reports on the progress I made in carrying out the policy which His Majesty's Government had laid down. The other members of the India and Burma Committee of the Cabinet, who included in particular Lord Pethick-Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander, who had formed the Cabinet Mission to India in 1946, also asked that I should keep them closely informed of all that occurred.

It was in any case customary for the Viceroy to send a weekly letter to the Secretary of State for India. I decided to attach to this letter copies of a weekly Report. These Reports, which were accordingly circulated to the Prime Minister and all the members of the India and Burma Committee of the Cabinet, were named Viceroy's Personal Reports.

His Majesty The King graciously consented to receive a copy of the Viceroy's Personal Report each week.

Seventeen Viceroy's Personal Reports, in all, were written and despatched. They form a full week-to-week record of events during my Viceroyalty, and show fully on what grounds the various decisions which had to be made, almost invariably with great speed, were based.

In order that there should be, apart from these weekly records of events, a more collected account of the last Viceroyalty, the attached Report has been prepared. In it an attempt is made to tell the full story, from my arrival in India on 22nd March, 1947, to the transfer of power to two new Dominion Governments on 15th August, 1947. It is based largely on the Viceroy's Personal Reports to which reference has been made above. It has been found convenient to divide this description of events into six parts, as follows:

Part A: 22nd March–15th April.

Part B: 15th April–6th May.

Part C: 6th May–4th June.

Part D: 4th June–5th July.

Part E: 5th July–25th July.

Part F: 25th July–15th August.

There is besides an Introduction at the beginning, which is intended briefly to explain the background of previous events for any who may read this Report in later years. At the end is a list of all persons named in the Report, with references to each paragraph in which their names occur; and three maps, one showing India before partition, and the others showing the boundaries in the Punjab and in Bengal and Assam which were used for voting purposes and the boundaries finally demarcated between the Dominions of India and Pakistan.

There are also conclusions, kept purposely brief, for there is no desire to justify the decisions taken, which will speak for themselves in the course of time.

London, September 1948

MOUNTBATTEN OF BURMA

at the Masthead and the R.A.F. Ensign at the Peak, was also followed in the case of the two Air Forces.

151. They further agreed that the two Governors-General should fly the recognised Dominion Governors-General flags – i.e. a blue flag with the King's crest on a crown, and the name of the Dominion inscribed upon it, all in gold or yellow. But it took us quite a lot of trouble to get Mr. Jinnah to accept this arrangement. When he was shown the design of the new flag he announced that he had changed his mind from his original agreement and now intended to design his own flag with his own monogram on it! However, I sent Lord Ismay round to convince him that as the King's representative he must have the King's device and not his own on the flag.

THE BOUNDARY COMMISSIONS

152. The issue which caused the most serious crisis in the last days of British rule in India was the awards of the Boundary Commissions. I had always anticipated that these could not possibly be popular with either party and that each party would probably accuse the Chairman of the Commissions as being biased against them.

153. I myself had taken the greatest pains not to get mixed up with the deliberations of the Boundary Commissions in any way.⁴⁰ Indeed, though I had repeatedly been asked both to interpret the Commissions' terms of reference, particularly with regard to Sylhet, and to put forward to them various points of view, for example, on behalf of the Sikh Princes, I resolutely refused to do any of these things, and firmly kept out of the whole business.

154. Nevertheless by the time that 15th August came round, it was apparent that there was still a large section of public opinion in India which was firmly convinced that I would personally settle the whole business finally. For this reason I made my position as regards the awards absolutely clear in my address on 15th August to the India Constituent Assembly⁴¹ by saying: "It was they (i.e. the Indian leaders) who selected the personnel of the Boundary Commissions including the Chairman;⁴² it was they who drew up the terms of reference;⁴³ it is they who shoulder the responsibility for implementing the award."

155. It will be recalled that at a meeting on 22nd July, the Partition Council had issued a statement in which both future Governments had pledged themselves to accept the awards of the Boundary Commissions whatever these might be; and as soon as these awards were announced to

enforce them impartially.⁴⁴ The expression “award” had been defined in the Indian Independence Bill with the agreement of the Indian leaders as “the decisions of the Chairman of the Commission contained in his report to the Governor-General at the conclusion of the Commission’s proceedings”.⁴⁵

156. The first indication that the response which the awards were likely to have was going to be even worse than anticipated was contained in a message which was given to Lord Ismay on behalf of Mr. Liaquat Ali Khan on 8th August. This was a verbal message, but very strongly worded. It was to the effect that, if it proved that Gurdaspur District in the Punjab or even a large part of it, had been allocated to East Punjab by the Boundary Commission, this would be regarded most seriously by Mr. Jinnah and the Pakistan Government. If it turned out that this was a political and not a judicial decision, then this would amount to so grave a breach of faith as to imperil future friendly relations between Pakistan and the British.

157. In answer to Mr. Liaquat Ali Khan on 11th August, Lord Ismay, while pointing out that I had not received the award concerned, reminded him that I had had nothing to do with the decisions of the Boundary Commissions; that I was determined to keep clear of the whole business; and that the Indian leaders themselves had selected the personnel of the Boundary Commissions, drafted their terms of reference, and undertaken to implement their awards.

158. It was on 12th August that Sir Cyril Radcliffe stated that his awards would be finally signed by noon the following day. For some time past I and my staff had been considering the question of when and how the awards should be published. From the purely administrative point of view, there were considerable advantages in immediate publication, so that the new boundaries could be effective from 15th August, and the officials of the right Dominion could be in their places to look after the districts which had been allotted to their side before that date.

159. The matter came to a head at the meeting which I held with members of my staff on the evening of 12th August. An advanced copy of the Bengal Award had been seen by my staff, but I had deliberately refrained from reading it. I was told, however, that it allotted the Chittagong Hill Tracts to Pakistan. My Reforms Commissioner, Mr. V.P. Menon, was present at the meeting and was able to warn us of the disastrous effect that this was likely to have on the Congress leaders – particularly as both Pandit Nehru and Sardar Patel had only recently assured a delegation from the Chittagong Hill Tracts that there was no question of their being allotted to Pakistan, although Mr. V.P. Menon admitted that they had no possible authority for

making such a statement. It was now clear that the awards were not only going to be even more unpopular with both sides than anticipated, but also that responsible leaders on both sides were in the mood to resist the awards. I felt that if the leaders of both the Dominions could be given the award simultaneously they would draw some consolation from the obvious annoyance of the other side and thus serious trouble might be avoided.

160. Mr. V.P. Menon went on to say that, if the details of the awards were given to the Congress leaders before 15th August, he thought that they might well refuse to attend the meeting of the Constituent Assembly which I was to address. If given to them on 15th August itself, he thought that they would refuse to come to the State banquet and the evening party which I intended to give. I had never known Mr. Menon to mislead me and I decided that it was essential to prevent the leaders from knowing the details of the awards until after 15th August; and that it was essential that I should not publish them as Viceroy otherwise the hope of starting off with good Indo/British relations on the day of the transfer of power would risk being destroyed.

161. On the morning of 13th August, I therefore wrote to Mr. Jinnah and Pandit Nehru informing them that I had not received the awards by the time I left for Karachi, although I expected them to be delivered to Viceroy's House shortly afterwards. I suggested that there should be a meeting at Government House, Delhi, as it would by then be re-named, on 16th August to decide upon the timing and method of publication, and also the method of implementing the undertaking of the Partition Council to accept the awards and to enforce the decisions contained in them.

162. Just as I was signing this invitation to Pandit Nehru a letter on the subject from Sardar Patel arrived. He said that he had received a deputation from the Chittagong Hill Tracts, who had expressed to him their grave apprehension that their area was going to be included in East Bengal under the Boundary Commission's award. He said that he felt that it was inconceivable that such a blatant and patent breach of the terms of reference should have been perpetrated by the Chairman of the Boundary Commission – "no fair reading of the terms of reference or appreciation of the factual position could make a 97 per cent non-Muslim area a part of the award relating to the boundary of East Bengal". He went on to state that "any award against the weight of local opinion and of the terms of reference, or without any referendum to ascertain the will of the people concerned, must be construed as a collusive or partisan award and will have therefore to be repudiated by us. I make this statement with a full sense of responsibility, as one who was a party to the setting up of the

Commission.” Sardar Patel also said that he had told the Delegation which he had seen that, if the Chittagong Hill Tracts were included in East Bengal, they would be justified in resisting this to the utmost of their power, and could count upon his maximum support in such resistance.

163. The ridiculous part about all this was that, as Sir Frederick Burrows had explained, the whole economic life of the people of the Chittagong Hill Tracts depended upon East Bengal; there were only one or two indifferent tracks through the jungle into Assam and in his opinion it would have been most disadvantageous for the people of the area themselves to have been cut off from East Bengal. The population of the Tracts consisted of less than a quarter of a million, nearly all tribesmen who, if they had any religion at all, were Buddhists. Chittagong, the only port of East Bengal, also depended upon the Hill Tracts in a sense; for, if the jungles of the latter were subject to unrestricted felling, Chittagong Port would silt up.

164. The awards themselves, which I examined on my return from Karachi on 14th August, did not depart very drastically from the notional boundaries.⁴⁶ In the Punjab about three-quarters of Gurdaspur District and a small part of Lahore District, were allotted to East Punjab. In Bengal, besides the allotment of the Chittagong Hill Tracts to East Bengal, the latter gained, in comparison with the notional boundaries, the whole of Khulna District and part of Jalpaiguri District; and lost the whole of Murshidabad District and parts of the Dinajpur, Malda, Nadia, and Jessore Districts. The award of the Bengal Boundary Commission regarding Sylhet resulted in the whole of that District being transferred to East Bengal with the exception of four thanas; no other part of the Province of Assam was transferred to East Bengal.

165. In view of the decision not to announce the awards before 15th August, there was no alternative but to send instructions to the Governors of Bengal and the Punjab that the Governments of the two halves of the split Provinces would have to take charge up to the notional boundary on 15th August, pending publication and implementation of the awards or of mutually agreed boundaries.

166. Whilst I was in Karachi, although Mr. Liaquat Ali Khan saw the absolute need for him to come to Delhi on 16th August, both to discuss the situation in the Punjab⁴⁷ and the awards of the Boundary Commissions, it took most of the evening of 13th August and part of the morning of 14th August to persuade Mr. Jinnah to let Mr. Liaquat Ali Khan come. In fact if the relations between us had not been so good, it is doubtful if Mr. Jinnah would have agreed.

167. The meeting to consider the Boundary Commissions' awards duly

took place on 16th August. There were present from India, the Prime Minister, Sardar Patel, Sardar Baldev Singh and Mr. V.P. Menon; and from Pakistan, the Prime Minister, Mr. Fazlur Rahman (the Home Minister), and Mr. Mohammed Ali. I gave the two sides three hours to read the Boundary Commissions' awards individually and we met together at 5 p.m. If it had not been so serious and rather tragic, their rival indignation would have been amusing.

168. Neither Congress, the Muslim League nor the Sikhs were in any way satisfied, or appreciative for any advantages they might have got out of the awards; they could only think of the disadvantages and complain bitterly. It was only after they had been complaining with great vehemence for some time that they appeared to realise that there must be some advantages to them on the points over which the other parties were loudly voicing their dissatisfaction; and so, after some two hours of very delicate handling, of the type which I had hoped to be spared once 15th August was past, the conclusion was reached that the awards must be announced and implemented loyally forthwith.

AUGUST THE 13TH, 14TH AND 15TH

169. My wife and I flew down to Karachi on the afternoon of 13th August to bid farewell and Godspeed to Pakistan. The route from the airfield to Government House was fairly thickly lined by cheering people, and Mr. Jinnah's Military Secretary, Colonel Birnie, informed me that the crowd was noticeably larger than that which lined the route for Mr. Jinnah's arrival: but this was hard to believe.

170. Colonel Birnie also announced that he had received the information of a plot⁴⁸ to throw a bomb at Mr. Jinnah in the State procession the following day, and that discussions had been going on as to whether to cancel the drive or alter the route; but that Mr. Jinnah had expressed the view that if I was prepared to go through with the drive then so was he. So it was of course agreed to leave everything as arranged.

171. On the evening of 13th August I presided over a meeting of the Pakistan Provisional Cabinet at which the final Orders-in-Council, amending the Government of India Act, 1935, for Pakistan, were passed. This was not, however, done without a final disagreement for the Pakistan Government wished me to include an order by which the Governor-General, on the advice of the Central Ministry, could instruct a Provincial Governor to dismiss his Ministry and could govern the Province directly by issuing orders to the Governor. I felt it impossible for a British Viceroy

Annex B16

Case concerning boundary disputes between India and Pakistan relating to the interpretation of the report of the Bengal Boundary Commission, 12 and 13 August 1947, Decision, 26 January 1950, reprinted in 21 RIAA 1

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Boundary disputes between India and Pakistan relating to the interpretation of
the report of the Bengal Boundary Commission**

26 January 1950

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PART I

**Case concerning boundary disputes between
India and Pakistan relating to the interpretation of
the report of the Bengal Boundary Commission,
12 and 13 August 1947**

Decision of 26 January 1950

**Affaire concernant les litiges frontaliers entre l'Inde
et le Pakistan, portant sur l'interprétation du rapport
de la Commission chargée de déterminer les frontières du
Bengale, en date des 12 et 13 août 1947**

Décision du 26 janvier 1950

**CASE CONCERNING BOUNDARY DISPUTES BETWEEN INDIA
AND PAKISTAN RELATING TO THE INTERPRETATION
OF THE REPORT OF THE BENGAL BOUNDARY COMMIS-
SION, 12 AND 13 AUGUST 1947**

**AFFAIRE CONCERNANT LES LITIGES FRONTALIERS ENTRE
L'INDE ET LE PAKISTAN, PORTANT SUR L'INTERPRÉTA-
TION DU RAPPORT DE LA COMMISSION CHARGÉE DE
DÉTERMINER LES FRONTIÈRES DU BENGAL, EN DATE
DES 12 ET 13 AOÛT 1947**

Interpretation of a report on demarcation of the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims—Right of the tribunal to hold hearings open to public

Interprétation d'un rapport sur la démarcation des frontières entre les deux parties du Bengale aux fins de la détermination des zones contiguës à majorité musulmane et non musulmane — droit du tribunal de tenir des audiences publiques

**DECISIONS GIVEN BY THE INDO-PAKISTAN BOUNDARY DISPUTES TRI-
BUNAL IN CONFORMITY WITH THE AGREEMENT CONCLUDED AT
THE INTER-DOMINION CONFERENCE AT DELHI ON DECEMBER
14TH, 1948**

I

By the Indian Independence Act, 1947, as from August 15th, 1947, two independent Dominions were set up in India, to be known respectively as India and Pakistan. According to Section 2 (2), it was provided that the territories of Pakistan should be *inter alia* the territories which, on the appointed day, were included in the Province of East Bengal, as constituted under Section 3. It was laid down in this section that the Province of Bengal, as constituted under the Government of India Act 1935, should cease to exist and that there should be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal. The boundaries of the New Province of East Bengal should be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor General in that behalf, and the expression "award" should mean, in relation to boundary commission, the deci-

sions of the Chairman of that commission contained in his report to the Governor General at the conclusion of the commission's proceedings.

The Commission, known as the Bengal Boundary Commission, was constituted by the Governor General on June 30th, 1947. The Commission presented to the Governor General the following two reports dated the 12th and 13th August, 1947, respectively:

REPORT OF THE BENGAL BOUNDARY COMMISSION

To

His Excellency the Governor General.

1. I have the honour to present the decision and award of the Bengal Boundary Commission, which, by virtue of section 3 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission. This award relates to the division of the Province of Bengal, and the Commission's award in respect of the District of Sylhet and areas adjoining thereto will be recorded in a separate report.

2. The Bengal Boundary Commission was constituted by the announcement of the Governor General, dated the 30th of June, 1947, Reference No. D50/7/47R. The members of the Commission thereby appointed were

Mr. Justice Bijan Kumar Mukherjea,

Mr. Justice C. C. Biswas,

Mr. Justice Abu Saleh Mohamed Akram, and

Mr. Justice S. A. Rahman.

I was subsequently appointed Chairman of this Commission.

3. The terms of reference of the Commission, as set out in the announcement were as follows: —

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.”

We were desired to arrive at a decision as soon as possible before the 15th of August.

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. A very large number of memoranda and representations was received.

5. The public sittings of the Commission took place at Calcutta, and extended from Wednesday the 16th of July 1947, to Thursday the 24th of July 1947, inclusive, with the exception of Sunday the 20th of July. Arguments were presented to the Commission by numerous parties on both sides, but the main cases were presented by counsel on behalf of the Indian National Congress, the Bengal Provincial Hindu Mahasabha and the New Bengal Association on the one hand, and on behalf of the Muslim League on the other. In view of the fact that I was acting also as Chairman of the Punjab Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Bengal Boundary Commission. I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and all material submitted for our consideration.

6. After the close of the public sittings, the remainder of the time of the Commission was devoted to clarification and discussion of the issues involved. Our discussions took place at Calcutta.

7. The question of drawing a satisfactory boundary line under our terms of reference between East and West Bengal was one to which the parties concerned propounded

the most diverse solutions. The province offers few, if any, satisfactory natural boundaries, and its development has been on lines that do not well accord with a division by contiguous majority areas of Muslim and non-Muslim majorities.

8. In my view, the demarcation of a boundary line between East and West Bengal depended on the answers to be given to certain basic questions which may be stated as follows: —

- (1) To which State was the City of Calcutta to be assigned, or was it possible to adopt any method of dividing the City between the two States?
- (2) If the City of Calcutta must be assigned as a whole to one or other of the States, what were its indispensable claims to the control of territory, such as all or part of the Nadia River system or the Kulti rivers, upon which the life of Calcutta as a city and port depended?
- (3) Could the attractions of the Ganges-Padma-Madhumati river line displace the strong claims of the heavy concentration of Muslim majorities in the districts of Jessore and Nadia without doing too great a violence to the principle of our terms of reference?
- (4) Could the district of Khulna usefully be held by a State different from that which held the district of Jessore?
- (5) Was it right to assign to Eastern Bengal the considerable block of non-Muslim majorities in the districts of Malda and Dinajpur?
- (6) Which State's claim ought to prevail in respect of the Districts of Darjeeling and Jalpaiguri, in which the Muslim population amounted to 2.42 per cent. of the whole in the case of Darjeeling, and to 23.08 per cent. of the whole in the case of Jalpaiguri, but which constituted an area not in any natural sense contiguous to another non-Muslim area of Bengal?
- (7) To which State should the Chittagong Hill Tracts be assigned, an area in which the Muslim population was only 3 per cent. of the whole, but which it was difficult to assign to a State different from that which controlled the district of Chittagong itself?

9. After much discussion, my colleagues found that they were unable to arrive at an agreed view on any of these major issues. There were of course considerable areas of the Province in the south-west and north-east and east, which provoked no controversy on either side; but, in the absence of any reconciliation on all main questions affecting the drawing of the boundary itself, my colleagues assented to the view at the close of our discussions that I had no alternative but to proceed to give my own decision.

10. This I now proceed to do: but I should like at the same time to express my gratitude to my colleagues for their indispensable assistance in clarifying and discussing the difficult questions involved. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

11. I have done what I can in drawing the line to eliminate any avoidable cutting of railway communications and of river systems, which are of importance to the life of the province: but it is quite impossible to draw a boundary under our terms of reference without causing some interruption of this sort, and I can only express the hope that arrangements can be made and maintained between the two States that will minimize the consequences of this interruption as far as possible.

NEW DELHI;
The 12th August, 1947.

Cyril RADCLIFFE

The schedule
(See Annexures A and B)

ANNEXURE A

1. A line shall be drawn along the boundary between the Thana of Phansidewa in the District of Darjeeling and the Thana Tetulia in the District of Jalpaiguri from the point where that boundary meets the Province of Bihar and then along the boundary between the Thanas of Tetulia and Rajganj; the Thanas of Pachagar and Rajganj, and the Thanas of Pachagar and Jalpaiguri, and shall then continue along the northern corner of the Thana Debiganj to the boundary of the State of Cooch-Behar. The District of Darjeeling and so much of the District of Jalpaiguri as lies north of this line shall belong to West Bengal, but the Thana of Patgram and any other portion of Jalpaiguri District which lies to the east or south shall belong to East Bengal.

2. A line shall then be drawn from the point where the boundary between the Thanas of Haripur and Raiganj in the District of Dinajpur meets the border of the Province of Bihar to the point where the boundary between the Districts of 24 Parganas and Khulna meets the Bay of Bengal. This line shall follow the course indicated in the following paragraphs. So much of the Province of Bengal as lies to the west of it shall belong to West Bengal. Subject to what has been provided in paragraph 1 above with regard to the Districts of Darjeeling and Jalpaiguri, the remainder of the Province of Bengal shall belong to East Bengal.

3. The line shall run along the boundary between the following Thanas:

Haripur and Raiganj; Haripur and Hemtabad; Ranisankail and Hemtabad; Pirganj and Hemtabad; Pirganj and Kaliganj; Bochaganj and Kaliganj; Biral and Kaliganj; Biral and Kushmundi; Biral and Gangarampur; Dinajpur and Gangarampur; Dinajpur and Kumarganj; Chiribandar and Kumarganj; Phulbari and Kumarganj; Phulbari and Balurghat. It shall terminate at the point where the boundary between Phulbari and Balurghat meets the north-south line of the Bengal-Assam Railway in the eastern corner of the Thana of Balurghat. The line shall turn down the western edge of the railway lands belonging to that railway and follow that edge until it meets the boundary between the Thanas of Balurghat and Panchbibi.

4. From that point the line shall run along the boundary between the following Thanas:

Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamairhat; Tapan and Dhamairhat; Tapan and Pathnitala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

5. The line shall then turn south-east down the River Ganges along the boundary between the Districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabhanga takes off from the River Ganges. The District boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.

6. From the point on the River Ganges where the channel of the river Mathabhanga takes off the line shall run along that channel to the northernmost point where it meets the boundary between the Thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.

7. From this point the boundary between East and West Bengal shall run along the boundaries between the Thanas of Daulatpur and Karimpur; Gangani and Karimpur; Meherpur and Karimpur; Meherpur and Tehatta; Meherpur and Chapra; Damurhuda and

Chapra; Damurhuda and Krishnaganj; Chuadanga and Krishnaganj; Jibannagar and Krishnaganj; Jibannagar and Hanskhali; Meheshpur and Hanskhali; Meheshpur and Ranaghat; Meheshpur and Bongaon; Jhikargacha and Bongaon; Sarsa and Bongaon; Sarsa and Gaighata; Gaighata and Kalarao; to the point where the boundary between those thanas meets the boundary between the districts of Khulna and 24 Parganas.

8. The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal.

REPORT OF THE BENGAL BOUNDARY COMMISSION
(SYLHET DISTRICT)

To

His Excellency the Governor General.

1. I have the honour to present the report of the Bengal Boundary Commission relating to Sylhet District and the adjoining districts of Assam. By virtue of Section 3 of the Indian Independence Act, 1947, the decisions contained in this report become the decision and award of the Commission.

2. The Bengal Boundary Commission was constituted as stated in my report dated the 12th of August, 1947, with regard to the division of the Province of Bengal into East and West Bengal. Our terms of reference were as follows: —

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.

“In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.”

3. After the conclusion of the proceedings relating to Bengal, the Commission invited the submission of memoranda and representations by parties interested in the Sylhet question. A number of such memoranda and representations was received.

4. The Commission held open sittings at Calcutta on the 4th, 5th and 6th days of August 1947, for the purpose of the hearing arguments. The main arguments were conducted on the one side by counsel on behalf of the Government of East Bengal and the Provincial and District Muslim Leagues; and on the other side, by counsel on behalf of the Government of the Province of Assam and the Assam Provincial Congress Committee and the Assam Provincial Hindu Mahasabha. I was not present in person at the open sittings as I was at the time engaged in the proceedings of the Punjab Boundary Commission which were taking place simultaneously, but I was supplied with the daily record of the Sylhet proceedings and with all material submitted for the commission's consideration. At the close of the open sittings, the members of the Commission entered into discussions with me as to the issues involved and the decisions to be come to. These discussions took place at New Delhi.

5. There was an initial difference of opinion as to the scope of the reference entrusted to the Commission. Two of my colleagues took the view that the Commission had been given authority to detach from Assam and to attach to East Bengal any Muslim majority areas of any part of Assam that could be described as contiguous to East Bengal, since they construed the words “the adjoining districts of Assam” as meaning any districts of Assam that adjoined East Bengal. The other two of my colleagues took the view that the Commission's power of detaching areas from Assam and transferring them to East Bengal was limited to the District of Sylhet and contiguous Muslim majority areas (if any) of other districts of Assam that adjoined Sylhet. The difference of opinion was referred to me for my casting vote, and I took the view that the more limited construction of our

terms of reference was the correct one and that the "adjoining districts of Assam" did not extend to other districts of Assam than those that adjoined Sylhet. The Commission accordingly proceeded with its work on this basis.

6. It was argued before the Commission on behalf of the Government of East Bengal that on the true construction of our terms of reference and section 3 of the Indian Independence Act, 1947, the whole of the District of Sylhet at least must be transferred to East Bengal and the Commission had no option but to act upon this assumption. All my colleagues agreed in rejecting this argument, and I concur in their view.

7. We found some difficulty in making up our minds whether, under our terms of reference, we were to approach the Sylhet question in the same way as the question of partitioning Bengal, since there were some differences in the language employed. But all my colleagues came to the conclusion that we were intended to divide the Sylhet and adjoining districts of Assam between East Bengal and the Province of Assam on the basis of contiguous majority areas of Muslims and non-Muslims, but taking into account other factors, I am glad to adopt this view.

8. The members of the Commission were however unable to arrive at an agreed view as to how the boundary lines should be drawn, and after discussion of their differences, they invited me to give my decision. This I now proceed to do.

9. In my view, the question is limited to the districts of Sylhet and Cachar, since of the other districts of Assam that can be said to adjoin Sylhet neither the Garo Hills nor the Khasi and Jaintia Hills nor the Lushai Hills have anything approaching a Muslim majority of population in respect of which a claim could be made.

10. Out of 35 thanas in Sylhet, 8 have non-Muslim majorities; but on these eight, two—Sulla and Ajmiriganj (which is in any event divided almost evenly between Muslims and non-Muslims), are entirely surrounded by preponderatingly Muslim areas, and must therefore go with them to East Bengal. The other six thanas comprising a population of over 5,30,000 people stretch in a continuous line along part of the southern border of Sylhet District. They are divided between two sub-divisions, of which, one, South Sylhet, comprising a population of over 5,15,000 people, has in fact a non-Muslim majority of some 40,000; while the other, Karimganj, with a population of over 5,68,000 people, has a Muslim majority that is a little larger.

11. With regard to the District of Cachar, one thana, Hailakandi, has a Muslim majority and is contiguous to the Muslim thanas of Badarpur and Karimganj in the District of Sylhet. This thana forms, with the thana of Katlichara immediately to its south, the sub-division of Hailakandi; and in the sub-division as a whole Muslims enjoy a very small majority being 51 per cent. of the total population. I think that the dependence of Katlichara on Hailakandi for normal communications makes it important that the area should be under one jurisdiction, and that the Muslims would have at any rate a strong presumptive claim for the transfer of the Sub-division of Hailakandi, comprising a population of 1,66,536, from the Province of Assam to the Province of East Bengal.

12. But a study of the map shows, in my judgment, that a division on these lines would present problems of administration that might gravely affect the future welfare and happiness of the whole District, not only would the six non-Muslim thanas of Sylhet be completely divorced from the rest of Assam if the Muslim claim to Hailakandi were recognised; but they form a strip running east and west whereas the natural division of the land is north and south and they effect an awkward severance of the railway line through Sylhet, so that, for instance, the junction for the town of Sylhet itself, the capital of the district, would lie in Assam, not in East Bengal.

13. In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows: —

A line shall be drawn from the point where the boundary between the Thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those Thanas, then along the boundary between the Thanas of Patharkandi and Barlekha, then along the boundary between the Thanas of Karimganj and Barlekha, and then along the boundary between the Thanas of Karimganj and Beani Bazar to the point where that boundary meets the River Kusiya. The line shall then turn to the east taking the River Kusiya as the boundary and run to the point where that river meets the boundary between the Districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the District of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.

14. For purposes of illustration a map* marked A is attached on which the line is delineated. In the event of any divergence between the line as delineated on the map and as described in paragraph 13, the written description is to prevail.

NEW DELHI;
The 13th August, 1947.

Cyril RADCLIFFE

Certain disputes arose out of the interpretation of this report, generally known as the Radcliffe Award.

By special agreement concluded on December 14th, 1948, at the Inter-Dominion Conference held at New Delhi the two Dominions agreed as follows for the settlement of these Disputes: —

(1) A tribunal should be set up at as early a date as possible and not later than January 31st, 1949, for the adjudication and final settlement of the following boundary disputes arising out of the interpretation of the Radcliffe Award and for demarcating the boundary accordingly: —

(A) East-West Bengal disputes concerning—

- (i) the boundary between the district of Murshidabad (West Bengal) and the district of Rajshahi including the thanas of Nawabganj and Shibganj of pre-partition Malda district (East Bengal); and
- (ii) that portion of the common boundary between the two Dominions which lies between the point on the River Ganges where the channel of the River Mathabhanga takes off according to Sir Cyril Radcliffe's award and the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

(B) East Bengal-Assam disputes concerning—

- (i) the Patharia Hill Reserve Forest; and
- (ii) the course of the Kusiya River.

(2) The Tribunal shall consist of three members as follows: —

One member nominated by each of the two Dominions of India and Pakistan, such person being one who is holding or has held high judicial office and a Chairman who is holding or has held high judicial office and is acceptable to both Dominions. In the event of disagreement between the members, the decision of the Chairman shall be final in all matters. The Tribunal shall report within three months from the date of its first sitting.

* Not attached.

(3) After the Tribunal has adjudicated upon the disputes, the boundaries shall be demarcated jointly by the experts of both Dominions. If there is any disagreement between the experts regarding the actual demarcation of the boundary *in situ*, such disagreement shall be referred to the Tribunal for decision and the boundary shall be demarcated finally in accordance with such decision.

(4) The Tribunal shall prescribe the procedure to be followed for adjudicating upon the disputes as well as for deciding the point or points of disagreement, if any arising from the demarcation of boundary.

According to the agreement the cost of the Tribunal and of implementing the agreement contained in paragraphs (1), (2) and (3) above other than that of the staff normally employed by the two Governments should be borne equally by both Dominions.

II

Pursuant to section (2) of the said Agreement the Governments of the two Dominions nominated as members of the Tribunal, the Government of India The Hon'ble Chandrasekhara Aiyar, retired judge of the Madras High Court, and the Government of Pakistan the Hon'ble M. Shahabuddin, judge of the High Court at Dacca in East Bengal. The two High Contracting Parties nominated as Chairman The Hon'ble Algot Bagge, former member of the Supreme Court of Sweden.

By Special agreements in November 1949, between the Government of the two Dominions it was settled that the Tribunal thus composed should be deemed to have been set up in terms of the Delhi agreement of December 14th, 1948, that the Tribunal should open its proceedings at Calcutta and that it should sit part of the time at Calcutta and part of the time at Dacca, the Headquarters of the Tribunal being wherever it is sitting for the time being. It was also agreed that the sittings at Calcutta and Dacca should be for approximately equal periods. All arrangements for the sittings at Calcutta should be made by the Government of India and those for the sitting at Dacca by the Government of Pakistan.

On December 3rd, 1949, the Tribunal held an informal meeting in the Great Eastern Hotel at Calcutta and, acting pursuant to the provisions of the Inter-Dominion Agreement of 1948, established the necessary rules for the procedure. It was decided—

- (i) that the Tribunal would be known as "The Indo-Pakistan Boundary Disputes Tribunal";
- (ii) that the hearings concerning East-West Bengal disputes should take place at Calcutta and the hearings concerning East Bengal-Assam disputes should take place at Dacca;
- (iii) that the hearings should be open to public, the Tribunal reserving to themselves the right to make exceptions to this rule;
- (iv) that the Tribunal should hear oral arguments by Counsel of each Party, in the dispute concerning the boundary between the district of Murshidabad and the district of Rajshahi, the

Indian Government beginning and the Pakistan Government replying; in the dispute concerning the River Mathabhanga the Pakistan Government beginning and the Indian Government replying; in the dispute concerning the Patharia Hill Reserve Forest, the Indian Government beginning and the Pakistan Government replying and in the dispute concerning the course of the River Kusiya, the Pakistan Government beginning and the Indian Government replying;

- (v) that the procedure should be informal; and
- (vi) that the proceedings should be recorded by the Secretary-General appointed by the Tribunal, a full shorthand report being also made.

The tribunal appointed as Secretary-General to the Tribunal the Hon'ble G. de Sydow, judge of the Court of Appeal at Stockholm.

The hearing took place in the West Bengal Legislative Assembly Buildings at Calcutta from December 5th until December 16th, 1949, and in the Legislative Building at Dacca from January 4th until January 12th 1950. The Government of the Dominion of India was represented by Sri S. M. Bose, Advocate-General, West Bengal, Bar-at-Law, assisted by Messrs. M. N. Ghosh, Bar-at-Law, M. M. Sen, Bar-at-Law, K. Bagchi, Advocate and K. K. Sen, Pleader. The Government of the Dominion of Pakistan was represented in Calcutta by Mr. W. W. K. Page, K.C., Bar-at-Law, assisted by Messrs. Fayyaz Ali, Advocate General, East Bengal, and Meshbahuddin, Advocate, and in Dacca by Mr. Fayyaz Ali, assisted by Messrs. Mansur Alam, Advocate, and Meshbahuddin, Advocate.

Oral arguments were presented on behalf of the Government of India by Sri S. M. Bose and on behalf of the Government of Pakistan by Messrs. Page and Ali.

An official report of the oral proceedings was prepared by the Secretary-General to the Tribunal. Also a complete shorthand report of the hearings was made under the supervision of the Tribunal and the Parties. When closing the hearings on January 12th 1950, the Chairman stated that the decisions of the Tribunal would be delivered to the two Governments in writing within about one month's time from that date.

III

The tribunal having carefully considered the cases, oral arguments, documents and maps presented by either side and finding a local inspection in Dispute II unnecessary, makes the following decisions:

DISPUTE I

The dispute concerns the boundary between the district of Murshidabad (West Bengal) and the district of Rajshahi including the

thanas of Nawabganj and Shibganj of pre-partition Malda district (East Bengal).

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix I.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

The district boundary on the date of the Award must be ascertained and demarcated. If this is impossible, the midstream line of the river Ganges and the land boundary will be demarcated within one year from the date of the publication of this Award.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix II.)

The conclusion of Mr. Justice Shahabuddin is as follows: —

The construction put by Pakistan on the Award in connection with this dispute is correct and reasonable and the boundary in this area, except over the Rampur-Boalia Char is flexible and not rigid and the boundary line shall run along the course described in the Pakistan statement of the case, subject only to such geographical variations as may result from changes occurring in the course of the river Ganges.

The Chairman opines as follows: —

(See Appendix III.)

The conclusion of the Chairman is as follows: —

In the area in dispute the district boundary line, consisting of the land boundary portion of the district boundary as shown on the map Annexure "B" and as described in the Notification No. 10413-Jur., of 11-11-40, and the boundary following the course of the midstream of the main channel of the river Ganges as it was at the time of the Award given by Sir Cyril Radcliffe in his Report of August 12th, 1947, is the boundary between India and Pakistan to be demarcated on the site.

If the demarcation of this line is found to be impossible, the boundary between India and Pakistan in this area shall then be a line consisting of the land portion of the above mentioned boundary and of the boundary following the course of the midstream of the main channel of the river Ganges as determined on the date of demarcation and not as it was on the date of the Award. The demarcation of this line shall be made as soon as possible and at the latest within one year from the date of the publication of this decision.

Having regard to the fact that the two Members have disagreed in their views and that the Chairman has agreed with Mr. Justice Chandrasekhara Aiyar, and giving effect therefore to the terms of section (2) of the Delhi Agreement under which the view of the Chairman has to prevail, the Tribunal gives the following: —

Decision

In the area in dispute the district boundary line, consisting of the land boundary portion of the district boundary as shown on the map Annexure "B" and as described in the Notification No. 10413-Jur., of 11-11-40, and the boundary following the course of the midstream of the main channel of the river Ganges as it was at the time of the Award given by Sir Cyril Radcliffe in his Report of August 12th, 1947, is the boundary between India and Pakistan to be demarcated on the site.

If the demarcation of this line is found to be impossible, the boundary between India and Pakistan in this area shall then be a line consisting of the land portion of the above mentioned boundary and of the boundary following the course of the midstream of the main channel of the river Ganges as determined on the date of demarcation and not as it was on the date of the Award. The demarcation of this line shall be made as soon as possible and at the latest within one year from the date of the publication of this decision.

DISPUTE II

The dispute concerns that portion of the common boundary between the two Dominions which lies between the point on the river Ganges where the channel of the river Mathabhanga takes off according to Sir Cyril Radcliffe's Award and the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix IV.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

(a) Sir Cyril's line in the Award map (Document No. 72) showing the bhanga river in red ink is to be adopted as the boundary.

(b) If this is not possible, the river Mathabhanga shall be taken as that which commences from the loop of the Ganges as found in the congregated air map (Document No. 164) and the boundary shall be along the middle line of the main stream from the point of the said off-take to the northernmost point where the line meets the boundary of the thanas of Daulatpur and Karimpur; the off-take point of the river as now demarcated shall be connected by a shortest straight line with the point nearest to it on the midstream of the main channel of the river Ganges. The centre line shall be a rigid boundary and demarcated accordingly as on the date of Sir Cyril's Award or, if this is found impossible, as on the date of this decision.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix V.)

The conclusion of Mr. Justice Shahabuddin is as follows: —

The boundary line in this case is a fluid boundary and not a rigid one, and it shall run on water along the course described in the statement of the case of Pakistan, subject only to such geographical variations as may result from changes occurring in the course of the river Mathabhanga.

The Chairman opines as follows: —

(See Appendix VI.)

The conclusion of the Chairman is as follows: —

The boundary between India and Pakistan shall run along the middle line of the main channel of the river Mathabhanga which takes off from the river Ganges in or close to the north-western corner of the district of Nadia at a point west-south-west of the police station and the camping ground of the village of Jalangi as they are shown on the air photograph map of 1948, and then flows southwards to the northernmost point of the boundary between the thanas of Daulatpur and Karimpur.

The point of the off-take of the river Mathabhanga shall be connected by a straight and shortest line with a point in the midstream of the main channel of the river Ganges, the said latter point being ascertained as on the date of the Award or if not possible as on the date of the demarcation of the boundary line in Dispute I. The said point so ascertained shall be the south-eastern most point of the boundary line in Dispute I, this point being a fixed point.

Having regard to the fact that the Members have disagreed and that the Chairman has disagreed with both of them and giving effect, therefore, to the terms of section (2) of the Delhi Agreement under which the view of the Chairman has to prevail, the Tribunal gives the following: —

Decision

The boundary between India and Pakistan shall run along the middle line of the main channel of the river Mathabhanga which takes off from the river Ganges in or close to the north-western corner of the district of Nadia at a point west-south-west of the police station and the camping ground of the village of Jalangi as they are shown on the air photograph map of 1948, and then flows southwards to the northernmost point of the boundary between the thanas of Daulatpur and Karimpur.

The point of the off-take of the river Mathabhanga shall be connected by a straight and shortest line with a point in the midstream of the main channel of the river Ganges, the said latter point being ascertained as on the date of the Award or if not possible as on the date of the demarcation of the boundary line in Dispute I. The said point so ascertained shall be the south-eastern-most point of the boundary line in Dispute I, this point being a fixed point.

DISPUTE III

The dispute concerns the Patharia Hills Reserve Forest.

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix VII.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

The portion to the west of the forest boundary line as drawn by Sir Cyril Radcliffe, Document No. 184, and shown in white in India's index map, Document No. 185, shall belong to East Bengal but the rest of the forest lying to the east of the said line shall belong to Assam.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix VIII.)

The conclusion of the Chairman is as follows: —

The boundary line delineated on the map of the Award accords with the description given in the Award, and that line shall be the boundary line in this area and the portion of the forest to the west of that line, *i.e.*, the portion shown in white in the index map shall be awarded to East Bengal (Pakistan) and the portion to the east of the line, *i.e.*, the portion shown in blue in the index map to the Province of Assam (India).

The Chairman opines as follows: —

(See Appendix IX.)

The conclusion of the Chairman is as follows: —

The line indicated in the map "A" attached to the Award is the boundary between India and Pakistan.

Now, therefore, in view of the unanimous conclusions of the Chairman and the Members, the Tribunal gives the following: —

Decision

The red line indicated in the map "A" attached to the Award given by Sir Cyril Radcliffe in his Report of August 13th, 1947, is the boundary between India and Pakistan.

DISPUTE IV

The dispute concerns the course of the Kusiya river.

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix X.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

The line drawn by Sir Cyril Radcliffe from the north-western corner of the Patharia Hills Reserve Forest up to the point "B" in the Award map (Document No. 342) is the correct boundary line.

The line BC in the Award map is correctly shown as the Kusiya river and will constitute the boundary between East Bengal and Assam.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix XI.)

The conclusion of Mr. Justice Shahabuddin is as follows: —

The boundary in this area shall run along the southern river, *i.e.*, the river wrongly described as Sonai in the Award map, from the point where the land boundary running from the south to the north meets the said river, to the point from where that river takes its waters through Noti Khal from the northern river, *i.e.*, the river named on the said map as Boglia, and thence along the latter river to the boundary between the districts of Sylhet and Cachar.

The Chairman opines as follows: —

(See Appendix XII.)

The conclusion of the Chairman is as follows: —

From the point where the boundary between the thanas of Karimganj and Beani Bazar meets the river described as the Sonai river on the map "A" attached to the Award given by Sir Cyril Radcliffe in his Report of August 13th, 1947 (Gobindapur) up to the point marked "B" on the said map (Birasri) the red line indicated on the said map is the boundary between India and Pakistan.

From the point "B" the boundary between India and Pakistan shall turn to the east and follow the river which according to the said map runs to that point from the point "C" marked on the said map on the boundary line between the districts of Sylhet and Cachar.

Having regard to the fact that the two Members have disagreed in their views and that the Chairman has agreed with Mr. Justice Chandrasekhara Aiyar, and giving effect, therefore, to the terms of section (2) of the Delhi Agreement under which the view of the Chairman has to prevail, the Tribunal gives the following.

Decision

From the point where the boundary between the thanas of Karimganj and Beani Bazar meets the river described as the Sonai river on the map "A" attached to the Award given by Sir Cyril Radcliffe in his Report of August 13th, 1947 (Gobindapur) up to the point marked "B" on the said (Birasri) the red line indicated on the said map is the boundary between India and Pakistan.

From the point "B" the boundary between India and Pakistan shall turn to the east and follow the river which according to the said map runs to that point from the point "C" marked on the said map on the boundary line between the districts of Sylhet and Cachar.

Done at DACCA in triplicate original, January 26, 1950.

Algot BAGGE.

N. CHANDRASEKHARA AIYAR.

M. SHAHABUDDIN.

APPENDIX I

Opinion of the Hon'ble Mr. Justice H. Chandrasekhara Aiyar on Dispute No. I

1. Sir Cyril Radcliffe was appointed Chairman of what is known as the Bengal Boundary Commission constituted for dividing Bengal and Assam between the Dominions of India and Pakistan. The Commission consisted of two Hindu members and two Moslem members, besides the Chairman. The members were unable to arrive at an agreed view on any of the major questions, and Sir Cyril as Chairman was invited to pronounce his own decision, which by virtue of Section 3 of the Indian Independence Act, 1947, was to become the award of the Commission as a whole. He did so on the 12th of August 1947 and sent up a report to His Excellency the Governor-General of India.

2. It may be mentioned even at the outset that Sir Cyril Radcliffe did not attend the public sittings of the Commission and did not hear the representations made on behalf of the contending parties. He did not make any local inspection. He tells us in paragraph 5 of his report that he however made arrangements "to study daily the record of the proceedings and all material submitted for our consideration". He discussed the issues with his colleagues.

3. To his report are appended annexures A and B. The demarcation of the boundary line between East and West Bengal is described in detail in annexure A. The boundary line is also shown in red in the map annexure B. In paragraph 10 of the report, Sir Cyril says, "The map is annexed for purposes of illustration; and if there should be any divergence between the boundary as described in annexure A and as delineated in the map annexure B, the description in annexure A is to prevail".

4. India and Pakistan were not agreed, after this award, on the interpretation to be placed on some parts or portions of it specifying the boundary line. So, an agreement was reached between them at Delhi in December 1949 that a Tribunal should be set up for the adjudication and final settlement of certain disputes arising out of the interpretation of the award and for demarcating the boundaries accordingly. The present Tribunal has come into existence as a result of this Delhi agreement.

5. The disputes to be decided by this Tribunal are referred to in paragraph 2 (A) and (B) of the Delhi agreement in the following terms: —

"(A) East-West Bengal disputes concerning—

- (i) the boundary between the district of Murshidabad (West Bengal) and the district of Rajshahi including the thanas of Nawabganj and Shibganj of pre-partition Malda district (East Bengal); and
- (ii) that portion of the common boundary between the two Dominions which lies between the point on the river Ganges where the channel of the River Mathabhanga takes off according to Sir Cyril Radcliffe's Award and the

northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

“(B) East Bengal-Assam disputes concerning—

- (i) the Patharia Hill Reserve Forest; and
- (ii) the course of the Kusiya river.”

6. The tribunal held part of its sittings at Calcutta and another part at Dacca. At the Calcutta sittings, the disputes between East and West Bengal were heard and at the Dacca sittings those between East Bengal and Assam were heard.

7. It is not improper on my part to do so, I must express deep gratitude to the Chairman, Herr Algot Bagge, Lord Justice of Sweden. He was a model of patience and kindness and conducted the proceedings of the Tribunal with dignity and in a spirit of sweet reasonableness. I must also express my thankfulness to my colleague, Mr. Justice Shahabuddin, for his unfailing courtesy and kindness. The leading Council for India and Pakistan, Sir S. M. Bose (Advocate General of West Bengal) and Messrs. W. W. K. Page, K. C., and Faiz Ali (Advocate General of East Bengal) deserve praise for the lucidity and brevity of their arguments and the help they rendered to the Tribunal in finishing its labours within a comparatively short period. The Secretary-General, Mr. Sydow, and the Joint Secretaries, as well as, the staff, were very helpful.

8. Before proceeding to discuss the points arising for decision, I may say a word about the map appended as annexure B to Sir Cyril's Award. It is marked Document No. 72 in these proceedings and will be generally referred to as the award map. The endorsement on the map shows that map was compiled in the Bengal Drawing Office in 1944. It is agreed between both parties that it was prepared on the basis of a Survey in the year 1915-16. Neither side is able to tell us how Sir Cyril got this map and from whom. There is not much point however in harping on these deficiencies. As arbitrator, Sir Cyril used this map and drew the boundary line in it between East and West Bengal in red ink. We are bound by it, except in so far as there is any discrepancy or divergence between the boundary line as drawn in the map and the line as specified in annexure A in which event the latter has to prevail.

9. Paragraphs 4 and 5 of annexure A run in these terms: —

“Paragraph (4). From that point, the line shall run along the boundary between the following Thanas:

“Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamairhat; Tapan and Dhamairhat; Tapan and Patnitala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

“Paragraph (5). The line shall then turn south-east down the river Ganges along the boundary between the districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges. The district boundaries, and not the actual course of the river Ganges, shall constitute the boundary between East and West Bengal.”

(The underlining is mine).

10. These two paragraphs have given rise to the first dispute between the parties and the question is whether the boundary indicated or specified in paragraph 5 is a rigid and fixed line as contended for India, or whether it is a fluid line shifting with the course of the river Ganges from time to time, which was the contention advanced on behalf of Pakistan. The trouble arises out of the fact that the boundary line specified in paragraph 5 as dividing the districts of Rajshahi and Murshidabad, and the districts of Rajshahi and

Nadia is along the course of the river Ganges, except in one part to which I shall refer later.

11. In view of the very clear language used by Sir Cyril Radcliffe, it appears to me that the position taken up by Pakistan to the effect that the boundary is a shifting or a fluid one, liable to change or alteration according as the river Ganges fluctuates or varies in its course, is untenable. The length in dispute would be about 60 to 70 miles according to the scale specified in the map (1" being equal to 8 miles). I shall briefly give my reasons for this conclusion.

12. We must presume or assume that Sir Cyril Radcliffe was in full possession of all the materials to enable him to pronounce the report. In fact, he says so. Therefore, we must take it that he had before him the several notifications and also maps relied on by either side giving the thana as district boundaries of various localities. He was also aware of the fact that in this particular portion the boundary line ran along the river Ganges. Express reference is made to this fact in the opening sentence of paragraph 5 "The line shall then turn south-east down the river Ganges". With all this knowledge, if Sir Cyril Radcliffe still said at the end of the paragraph that "The district boundaries and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal", he could have meant only one thing. He definitely intended to rule out a fluid boundary and to have a fixed or rigid boundary between the two States. Surely, Sir Cyril could have said, if Pakistan's contention is right, that the line shall then turn south-east down the river Ganges and go along its course "to the point in the north-western corner of the district Nadia". To accept the argument of Pakistan would be not only to neutralise the final sentence in the paragraph but to ignore it altogether. I am not prepared to hold that the last sentence in paragraph 5 is merely tautological, as Mr. Page had to contend it was.

13. Mr. Page referred in the course of his argument to the principle of international law that where a navigable river is a boundary between two sovereign States, the line of the midstream is regarded as the dividing line. The question before us however is whether it governs us in the present case or whether its application has been excluded by Sir Cyril Radcliffe. It is hardly necessary to point out that the doctrine applies only where there is no specific or express agreement between the parties, and there is nothing else to the contrary. It is open to the two States to vary it and have a different boundary if they so choose. In his book on International law (Third edition—1948), Mr. Fenwick says at page 373—

"In some European treaties, an effort has been made to give a great degree of stability to river boundary-lines by locating the *thalweg* definitely by means of fixed points which were to constitute permanent landmarks for the future. In the Treaty of Versailles of 1919, provision was made that the principal channel of navigable rivers should be the dividing line; but it was further provided that it should be left to the several boundary commissioners appointed by the Treaty to determine whether the boundary-line should follow subsequent changes of the channel or should be definitely fixed by the position of the channel at the time".

14. Instances have been referred to in the leading text-books where specific agreements between the States have deviated from the *thalweg* rule.

15. Several notifications were referred to on the side of Pakistan to reinforce the argument that the midstream or the flowing stream of the Ganges or the Padma or some other river was referred to as the boundary between districts or subdivisions. From this alone, it does not follow that the district boundaries, where they happen to coincide in whole or in part with the course of a river, must be ignored in favour of the middle stream or main stream theory. There might be valid reasons for holding on to the district boundaries despite a natural boundary like a river. Sir Cyril Radcliffe, undoubtedly know the principle of international law. He presumably knew of the notifications constituting rivers as boundaries in some cases. But still he took care to say in his award that the district boundaries and not the course of the river shall constitute the dividing line.

16. Up to the northern point where the boundary between Kaliachak and Shibganj Thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges, the river runs entirely in the Indian Dominion. From below the point on the river Ganges, where the channel of the river Mathabhanga takes off—which is referred to in paragraph 6 of the award—the river Ganges is entirely in the Pakistan territory of East Bengal. The dispute is only as regards the boundary line between the said two points, which is a comparatively small stretch of 60 to 70 miles as stated already.

17. It would be seen from the District map of Rajshahi (Document 77) and the notification of the boundaries of the District as found at page 187 of India's document (Doct. 67) and page 24 of Pakistan's documents (Doct. No. 105) (the relevant passage is at pages 189 and 26 respectively) that the boundary line specified by Sir Cyril Radcliffe in paragraph 5 consists in part of a land boundary, *i.e.* running over or through a *char* area thrown up by the Ganges in the course of its erratic flow. It is conceded by Pakistan in paragraph 5 of its case that this is a land boundary. The words used are "excepting in the *char* area in the river Ganges opposite the Rajshahi town where the boundary line runs over land". This land boundary is clearly delineated in the district map of Rajshahi filed by India. It is incorporated so to say and forms part and parcel of boundary line specified by Sir Cyril Radcliffe.

18. If we favour the construction placed by Pakistan and hold that Sir Cyril had in his mind a fluid line along the middle stream of the river Ganges as the boundary to demarcate the two sovereign States, we shall be face to face with the position that if and when the river Ganges changes its course, as it well might at any time, having regard to its extreme waywardness or eccentricity, the boundary will of course have to change with the river according to the principle of international law, and we may probably get disconnected from the land boundary in the *char* area at one or both ends. What is to happen then, unless we resort to some unauthorised process of joining the two *char* ends to the nearest points of the middle stream of the Ganges in its new or altered course, as indicated by Mr. Page in the two oil-painting sketches prepared and filed by him (Docts. 165 and 166)? In such an event, we may have to abandon the land boundary altogether. But can we do so? Obviously not.

19. It would be seen from the papers produced on behalf of and relied on by Pakistan before the Boundary Commission (Docts. 119 and 120) that there was an acute controversy over the Rampur-Boalia area to the south of the Rajshahi town. This is the *char* area, if we may roughly call it so. Is there anything unreasonable in thinking that Sir Cyril wanted to put an end to this fight about this area in particular once and for all by specifying the district boundaries and eliminating in express words the river course as a boundary so that the future of that area need not depend upon the whims and fancies or the fickle-mindedness of the river?

20. Regard must also be had to the use of the word "actual" in the sentence "and not the actual course of the river Ganges". If he had merely said, "the course of the river Ganges", two results would have followed; one is that a doubt might well have arisen whether he was not thinking of the possible, potential or future course of the river in the progress of time; another is that the *char* area, a portion of which he was now giving to India on the basis of the district boundary line, might cease to belong to India if the river changes its course; and he probably wanted to avoid this.

21. It is perfectly obvious that as regards the *char* stretch of territory in an around Rampur-Boalia, there is no room for any controversy. The river Ganges does not there flow between two States. It lies entirely within Indian territory; Pakistan has no claim to the river here; and, therefore, there is no scope for the application of any international law or for any theory about the main stream of a flowing river being the boundary. Faced with this difficulty, Mr. Page, the leading Counsel for Pakistan, whose services ceased to be available for that Dominion for reasons which are unnecessary to go into at present but which are found in a rather extraordinary petition filed on the side of Pakistan by its learned Advocate General Mr. Faiz Ali, had to resort to a rather inscrutable theory of

connecting *char* ends with the midstream points of the changed course of the Ganges along the shortest line or lines.

22. We have little to do with the reasons which might have led Sir Cyril to adopt this particular line of division. It is possible that the fight over the Rampur area might have influenced him. It is equally possible that having regard to the fact that he was here having only a small stretch of boundary, he did not want complicated questions of international law to arise based on assertions and counter-assertions, on the part of the two sovereign States (who were by no means friendly) about the future changes in the course of such a forceful and wayward river, which could be settled only by treaty or war, and not by resort to any courts of law. When the two parts of a territory or area belong to one sovereign State, the boundary line could be changed by appropriate orders in the shape of notifications or otherwise whenever it is found necessary owing to the boundary river altering its course. But no such change could be effected when the areas belong to different countries, unless they choose to agree on a particular line of action. It is not at all surprising, therefore, that Sir Cyril took care to say that the district boundaries and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal.

23. The overriding purpose or object of the division must be borne in mind in construing the award. The idea was to bring into existence two independent Sovereign States which would have nothing more to do with each other except as the result of treaty or agreement or adjustment. The interpretation of the boundary on the basis of a fluid line would definitely frustrate this idea if the river changes its course. Pakistan territory might become Indian territory and *vice versa*; and pockets might be created in each State of what must be regarded as foreign territory. How is the government to be carried on of such areas? What is to happen to the administration, and what would be the method of approach to the pockets situated in the centre of one State surrounded on all sides by an area belonging to an alien State? Surely, a person of the eminence and experience of Sir Cyril Radcliffe must have envisaged all these difficulties and made up his mind to provide for definite and inflexible boundaries. It is true that inconveniences may crop up as regards navigation and exchange of commerce, but such inconveniences will have to be faced by both the States; and if they are so minded as not to come to any agreement or treaty but desire to continue their hostilities or antagonistic propensities to the bitter end, they must suffer. The rigid boundary would probably bring the two States nearer each other than it would be otherwise; necessity will compel them to find a solution and come to an agreement about the user of the waters for purposes of navigation on the side of the other State. To me it appears that having regard to the primary object in view, the governing purpose, if we may use such an expression, the fluid line theory based on the principle of international law must be ruled out altogether in the present case and also as regards the Mathabhanga river to be dealt with presently under Dispute No. II.

24. Further, though it is theoretically possible to conceive of a boundary which is fixed in portions and flexible in other portions, yet when the stretch of boundary is found to be interspersed with land areas here and there, it would be extremely inconvenient, if not impossible, to work the boundary on the basis suggested by Pakistan. As indicated already, there is every possibility of the land area getting detached from the middle stream line if the river chooses to become erratic at any particular part or over a particular stretch, and the areas, though they belong to Pakistan or India according to the division, may suddenly come to belong to the other sovereign State, under a totally different set-up-political, economic and social. As I have pointed out already in the earlier portions of this opinion, matters would be quite different if the question arose as between two provinces under the same Government, or between two States not totally independent of each other, but owing adherence or allegiance to a central authority, and subject to the jurisdiction of a federal or supreme court, which could decide questions arising between the two States as if they were between two individuals.

25. If the middle stream of the river Ganges is the boundary, then *ex-hypothesi*, there can be no disruption of the line at any time. As the river changes, the middle stream

line will change and with it the boundary. There can be no break in the boundary—not abrupt or disappointed or disconnected ends.

26. So, on any given date, the boundary can be demarcated by joining the two ends of the middle stream—be the line straight or curved or wavy. This can be easily illustrated by simple pencil sketches.

27. Let us suppose that AB are flexible points whose connecting line divides two districts. If the districts have to be divided off from each other, all that has to be done is to draw a line between AB on the date of division. The flexibility of the two points has nothing to do with the possibility of actual division on a particular date by joinder of these two points.

28. What did Sir Cyril say? Here, again, let us take that AB is the district boundary line—A and B being flexible on that date. He said that the said line—as it could be not only envisaged but also demarcated on the date of the award—shall divide the two States. There is nothing to prevent two flexible points being converted into rigid points at a division. He went further and said “the actual course of the river” will not be the boundary. When he used these words he must have had in his mind the shifting nature of the river and probably did not want that the district boundary line as it may come into existence at any future date owing to the river altering its course should be taken to be the dividing line. Obviously he was thinking of putting an end to future trouble by making the district boundary line as it could be fixed or settled or determined on that date as the boundary. If he did not add the said words, doubts might well have arisen to the effect that as the district boundary line runs along the midstream of the river, flexibility will continue as regards the boundary. He wanted to avoid this and so took care to use express language to silence any doubts and put an end to arguments based on inference or implication.

29. Let me paraphrase Sir Cyril’s sentence. “The district boundaries” *i.e.*, the midstream of the river (as it exists today) and “not the actual course of the river”, *i.e.*, the midstream which will fluctuate from time to time (if the course of the river is taken as the boundary), shall divide the two States. In other words, he wanted to have a permanent boundary, not a shifting one.

30. Sir Cyril must have definitely intended that the two States should be left in no uncertainty about their boundary line and that what was flexible till then—and no harm or trouble could arise out of such fluidity of boundary when we had only one State and one rule—should become rigid of permanent as he had to deal with two States whose territorial limits had to be ascertained and settled without possibility of future wrangle.

31. The very Delhi agreement under which the Tribunal is constituted contemplates elaborate demarcation operations in connection with the boundary line to be conducted by experts of both the States. What is there to demarcate, if the boundary is a fluid one liable to change or alteration at any moment? Is all the trouble to be taken only to ascertain what the boundary is on a particular date, knowing full well that it may not be the boundary the next day? Surveys of the river, cadastral or otherwise, will then be a futile endeavour; and topographical maps prepared at elaborate expense and cost by means of aerial photographs have to be thrown aside every time the river changes. It is very difficult to see the purpose behind so much trouble or the usefulness of such undertakings, if Sir Cyril intended a fluid boundary.

32. Finally, arises the question on what basis we are now to determine and demarcate the rigid boundary line. Are we to take the notification line of 1940 based on the survey of 1915-16, or are we to go by what the line was on the date of the award (August 1947), or can we say that the boundary should be fixed as on the present date? The first alternative is out of the question at this distance of time. It is possible that the district boundary on the date of the award can be ascertained and demarcated; and if this assumption is correct, this is the next alternative. If, however, even this is not possible, the only other practical solution will be to demarcate the boundary line, *i.e.*, the midstream line of the Ganges and the land boundary within a particular period to be fixed—let us say, as soon as possible within one year from the date of the publication of the award. The

line has to be demarcated as contemplated in paragraph 3, sub-clause (3) of the Delhi agreement.

N. CHANDRASEKHARA AIYAR.

APPENDIX II

*Opinion of the Hon'ble Mr. Justice Shahabuddin
on Dispute No. I*

This dispute relates to the boundary between the two Dominions from the point on the river Ganges where the boundary between the thanas of Kaliachak and Shibganj meets the boundary between the districts of Malda and Murshidabad to the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges. The boundary between these two points as described in the concluding portion of paragraph 4 and in paragraph 5 of Annexure A to Sir Cyril Radcliffe's Bengal award runs down the river Ganges along the boundary between the districts of Malda and Murshidabad, Rajshahi and Murshidabad and Rajshahi and Nadia. The boundary between these districts according to the relevant notifications was the midstream of the Ganges except across Rampur-Boalia *char* where the boundary runs on land. This description is followed by the sentence on the interpretation of which the decision in this case rests, and that sentence is "The District Boundaries, and not the actual course of the river Ganges, shall constitute the boundary between East and West Bengal".

The case for India is to the following effect. The words "and not the actual course of the river Ganges" mean that the river could not be the boundary. Had these words not occurred in the award different considerations might have arisen, but these words clearly indicate that Sir Cyril ignored the river altogether because he knew it might shift its course. He therefore laid down a fixed line which he delineated on the map, and that is the line of demarcation to be worked out on the site.

Pakistan's case, on the other hand, is that the correct interpretation of the second sentence in paragraph 5 of Annexure A is that the district boundaries *i.e.*, the midstream of the river Ganges for the time being except across the Rampur-Boalia *char*, as distinguished from the factual existing course of the river at the date of the award, shall be the boundary. This boundary was not intended to be a fixed unalterable boundary. It is a river boundary subject to variations resulting from changes in its course. The words "and not the actual course" were used because Sir Cyril had decided to retain the fixed land boundary across the Rampur-Boalia *char* and also because he was not aware of the then existing course of the river Ganges, the map before him being one based on the survey of the river made as far back as 1915-16. The map is only an illustration and being divergent from the description in the award, the latter should prevail.

In order to decide which of the interpretations is correct it is necessary to determine what the expression "District Boundaries" in the sentence in question was intended to mean. Boundaries of districts are declared by notifications issued under Act IV of 1864. The relevant notifications prior to 1917 were of 1875 in which the boundary between the districts with which we are concerned was defined as the flowing stream of the Ganges, or river Ganges. After 1915-16 survey, when maps had to be prepared, the question arose whether the notifications should be interpreted according to the existing position of the river or according to the position it occupied when those notifications were made and if the former whether fresh notifications were necessary. The Government decided that maps should be prepared on the supposition that "the centre of the stream which for the time being is the main stream" of the Ganges is the boundary and that no fresh district notifications were necessary. (Documents 107, 125, and 108). Subsequently a district notification, regarding the boundaries of Rajshahi district was issued in 1940 and a similar notification about the boundaries of Malda district was issued in 1942, but these were not issued on account of any change in the course of the river. (Documents Nos. 105 and 106). They were issued in respect of changes in the land boundary only. In both these notifica-

tions it is stated that the village boundaries mentioned therein were the boundaries as demarcated at the survey operations that had taken place long before the notifications; but no such statement is made therein regarding the river boundary, which is referred to as "the midstream of the river Ganges" in the case of Rajshahi district and "the midstream of the main channel of the Ganges or Padma river" in the case of Malda district, and not as the midstream of the year of the Survey. These notifications were therefore based on the Cadastral Survey only in respect of the land boundaries and not in respect of the river boundary. From the above documents it is clear that the midstream when declared to be the boundary between districts means the midstream for the time being *i.e.*, the midstream wherever it may be whenever the question arises, and that no fresh notification is necessary when the midstream changes, as the midstream even after the change would still continue to be the district boundary, and that it is only when there is a change in the land boundaries of the district that a fresh notification is necessary.

In respect of other rivers which divided the districts of Mymensingh and Pabna in one case and Jessore and Khulna in another case the same principle was stated by the East Bengal and Assam Government in Document No. 109 and by the Government of India in Document No. 114.

Sir Cyril, when he decided to adopt the district boundaries, must have known that the district boundary in question was the midstream wherever it may be whenever the question arises, except across the Rampur-Boalia *char*. When he made the district boundary, the boundary, he could not have meant by the words "and not the actual course of the river" that the river should not be the boundary, for, if in the sentence in question, for the words "district boundary" the meaning of that expression stated above is substituted and the words "and not the actual course of the river" are taken to exclude the river altogether as boundary, the sentence does not make sense. The words "and not the actual course of the river" were evidently used to emphasise that the land boundary across Rampur-Boalia *char* should be maintained as against the river line in this area. These words therefore mean that wherever the district boundary is not the actual course of the river, the district boundary should be followed and not the actual course of the river. The district boundary itself no doubt recognised the land boundary across the *char*, but emphasis had to be laid on it owing to the keen controversy about the *char* before the Radcliffe Commission.

There is no reason to think that Sir Cyril was averse to making the river a boundary. It is clear from the language of paragraph 6 of the Annexure A that Sir Cyril intended the river Mathabhanga to be a boundary. In paragraph 8 of the same Annexure he made the district boundary the boundary between Khulna and 24 Pargans, although for about 50 to 60 miles the river formed part of that boundary. In the Sylhet award he made the river Kusiara a boundary between East Bengal and Assam. Paragraph 11 of his Bengal award indicates that he fully realised the importance of rivers to the life of provinces. Extracts from arguments advanced before the Radcliffe Commission show that the parties concerned preferred a river boundary and in fact pressed for it. Navigable rivers are of considerable importance and they constitute boundaries between independent states and are also recognised as good boundaries under the International Law. To people of both the Dominions living in the districts on both sides of the river Ganges, the river is of great importance. Sir Cyril must have kept this in view while determining the boundary line. In clause 2 of paragraph 8 of his award he set for himself the question whether the attractions of Padma-Madhamati river line displaced the strong claims of the heavy concentrations of Muslim majorities in the districts of Jessore and Nadia. He did not decide on a river boundary in that area as the other consideration was far weightier. But in the area with which we are concerned in this case there were no such considerations that could outweigh the advantages of a river boundary.

On the other hand, Sir Cyril must have considered it necessary and advantageous to both parties to have a flexible boundary in this area. He gave Murshidabad to West Bengal, although it was a predominantly Muslim area, because he took the view that it was essential for the life of Calcutta that West Bengal alone should have control over the territory in which Bhagirathi and its tributaries take off from the Ganges. Having done that, he could not have intended the boundary between East and West Bengal in this area

to be rigid for, if the Ganges were to flow into Pakistan in the region where the Bhagirathi and its tributaries take off, West Bengal would cease to have control over the head waters of these rivers.

That Bhagirathi and other rivers have been taking off from the Ganges even when it changed its course is seen from the last map in Document No. 136. Even if it so happens that when the Ganges changes its course the Bhagirathi and other rivers do not take off from the Ganges, still, West Bengal, if the boundary is flexible, can through canals secure sufficient supply of water to save the Bhagirathi and its tributaries from drying up.

It is true that when the river changes its course people living in the neighbourhood are inconvenienced, but this disadvantage pales into insignificance when the disadvantages of a fixed boundary are taken into consideration. The Ganges is an erratic river and when it shifts its course it does not do so uniformly in one direction but flows zig-zag with the result that if the boundary line is a fixed one the river will be flowing in some of its portions on the Pakistan side of the line and in some on the Indian side. This would raise serious difficulties for the passengers and goods of both the states not at one but at several places. Sir Cyril could not have failed to take notice of this important fact. If however he had the idea of fixing a rigid boundary he would in my opinion have definitely said that the line he was drawing would be a rigid line. If he had been averse to a river boundary he would not have made about ten miles of the river Mathabhanga the boundary in the second dispute or about 60 miles of the river a part of the boundary between Khulna and 24 Parganas or the river Kusiya the boundary in paragraph 13 of the Sylhet Award.

I am therefore of the opinion that the words "and not actual course of the river Ganges" were used, as already stated, only to emphasise that the land boundary across the *char* should not be disturbed and not to indicate a rigid boundary.

As for delineation on the map, Sir Cyril has made it clear in paragraph 10 of his award that the map was intended as an illustration and that, if there be any divergence between the description in Annexure A and the map, the former shall prevail. The map which was used by Sir Cyril was based on the Survey of 1915-16. Sir Cyril must have known that it did not represent the actual state of the river on the date of the award. The language in which he had described the boundary line in paragraphs 4, 5, and 6 of Annexure A (for example, "the point where the boundary between the last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the River Ganges"; "the line shall then turn south-east down the River Ganges."; "to the point . . . where the channel of River Mathabhanga takes off from the River Ganges"; and "where the channel of River Mathabhanga takes off to the northern most point where it meets the boundary between the thanas of Daulatpur and Karimpur") (underlining is mine) clearly indicates that Sir Cyril was referring to the position of the river on the date of the award and thereafter and not to the midstream of any of the past years, much less to the midstream of the survey of 1915-16. The telegram of the Prime Minister of India to the Prime Minister of Pakistan (Document No. 121) with regard to this very boundary states that ". . . since maps were last made there have been considerable changes in the position of rivers. It is essential therefore to prepare a proper topographical map of country three or four miles wide across the boundary. After the map has been prepared demarcation of boundary on the ground and marking of the boundary on map will be easy". In the joint proposals of Surveyor General of India and Director General of Surveys, Pakistan (Document No. 123) it is stated that ". . . the existing maps (including those which have evidently been used in defining the boundary for the Radcliffe Award) are inaccurate and out of date . . . It is therefore considered that any attempt to reach agreement as to the proper course of the boundary with the aid of these maps alone is almost certain to result in failure, since there are bound to be discrepancies between individual maps and between the maps and the ground . . .". In the circumstances delineation in Annexure B has to be considered as divergent from the description in Annexure A and cannot be relied on for the purposes of demarcation.

It was contented by the Learned Counsel for India that if the boundary be made flexible there might be difficulties in connecting the extremities of the land boundary on

Rampur-Boalia *char* with the midstream on either side. But as explained by the Learned Counsel for Pakistan, either end of the land boundary can always be connected with the midstream wherever it may be and in case the river takes a sudden turn and leaves its bed the principles of avulsion would apply. The Ganges however has not been known to take such sudden and violent turns. In any case the land boundary has to be connected with the midstream even if the entire boundary in this area is considered to be rigid, because the fixation of a rigid boundary should be made only with reference to the position of the river on the date of the award, and if for any reason that is not possible or convenient, with reference to the position of the river at the present day. The position of the river at the time of 1915-16 survey some thirty years back cannot be taken as the basis for demarcation, nor is the adoption of such a course practicable or just and reasonable. In the case of a flexible boundary the connecting lines in this part of the river would no doubt have to be readjusted whenever the midstream changes, but when once the initial connection is made and the pillars are planted, which has to be done in any case, readjustment in case the river changes would not be difficult.

I am therefore clearly of the opinion that the construction put by Pakistan on the award in connection with this dispute is correct and reasonable, that the boundary in this area, except over the Rampur-Boalia *char* is flexible and not rigid and that the boundary line shall run along the course described in the Pakistan statement of the case, subject only to such geographical variations as may result from changes occurring in the course of the river Ganges.

M. SHAHABUDDIN.

APPENDIX III

The opinion of the Chairman on Dispute No. I

The case submitted in this dispute on behalf of the Government of India is that the line marked by Sir Cyril Radcliffe in Annexure B of his award is the actual line of demarcation to be worked out on the site and that in consequence this line shall be rigid, not shifting according to the course of the river Ganges.

The case submitted by the Government of Pakistan is that upon a proper construction of the award, the district boundary is and is to remain the boundary between India and Pakistan subject only to such geographical variations as may result from changes occurring in the course of the river.

The relevant portion of the Award in Annexure A is in this respect as follows: —

“4. From that point a line shall run along the boundary between the following Thanas: —

“... Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

“5. The line shall then turn south-east down the River Ganges along the boundary between the districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabhanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.”

The boundary between Rajshahi and Murshidabad districts was last notified, before the Partition, under Bengal Act IV of 1864, by notification No. 10413-Jur., dated 11th November, 1940. This notification while describing the boundary between Rajshahi district and adjoining districts (Nadia and Murshidabad) going in the direction up the river Ganges States as follows: —

“thence along the south-western boundary of Naosara Sultanpur (209), southern boundary of Fatepur Palasi J.L. No. 190, up to the midstream of the Ganges, police-

station Charghat, thence along the midstream of the Ganges up to a point near the south-east corner of village Char Rajanagar (J.L. No. 99), police-station Raninagar in the district of Murshidabad; thence northward along the eastern boundary of Char Rajanagar up to the south-east corner of Diar Khidirpur (No. 243 of police-station Boalia), thence along the southern and western boundaries of Diar Khidirpur, thence along the southern boundary and part of western boundary of Char Khidirpur (235), thence along the southern boundary of Taranagar (232), thence along the eastern boundary of Majher Diar (231), up to the midstream of the Ganges, thence along the midstream of the Ganges up to the junction of the midstream of the Ganges and the Mahnanda, river, . . .”

The district boundary between Malda and Murshidabad was notified last, before the Partition, by notification No. 2667-Jur., dated 6th March, 1942, under Bengal Act IV of 1864. This notification, while describing the southern boundary of the district of Malda (*i.e.* the boundary between Malda and Murshidabad districts), states as follows: —

“up to the junction with the trijunction point of districts of Rajshahi, Malda and Murshidabad on the main channel of the Ganges or Padma river.

“South-western and western boundary of the district.

“Thence towards north-west and north along the midstream of the main channel of the Ganges or Padma river up to the junction with the trijunction point on the main channel of the districts of Malda, Santhal Parganas and Purnea . . .”.

The northern and north-eastern boundary of the Murshidabad district (*i.e.* the district boundary between Murshidabad on one side and Rajshahi and Malda on the other) was notified under the notification dated February 11th, 1875, as following the stream of the rivers “Ganges” and “Pudda”. After that there is no district notification of Murshidabad covering the disputed area, but if the Thana notifications up to 1931 are congregated then the line so formed will tally with the boundary line of Rajshahi and Malda.

According to these notifications the district boundary between Malda and Murshidabad was then “the midstream of the main channel” of the river Ganges and between Murshidabad and Rajshahi “the midstream of the river Ganges” with the exception of the *char* area in the river Ganges, opposite Rajshahi town, where the boundary line ran over land. The district boundary in consequence according to those notifications ran to about seven eighths in the Ganges and to about one eighth on land, *viz.*, the *char* area opposite Rajshahi town.

The first question to examine is whether the district notification line in the river Ganges consisting in “the midstream of the main channel of the river Ganges” or “the midstream of the river Ganges” was rigid and object of correction only through a new notification or if this line in the river Ganges was fluid line.

On behalf of the Indian Government it has been argued that the district boundary always was a rigid line, *i.e.*, when a notification declared the main stream of a river as the boundary, the main stream at the time of the notification was intended. The Pakistan Government on the other side contends that the district boundary in a river was not a fixed boundary in the sense of a demarcated line, but a notional boundary which depended on the existing course of the river. That will say that according to the Government of Pakistan if the main stream of the river left its old bed and formed a new one the district boundary line followed the new main stream of the river until and official notification made a change in the boundary.

The notifications contain no explicit disposition whether the notifications when talking of the midstream of the river Ganges mean the midstream of the Ganges at the time of the notification—rigid line—or the midstream of the river Ganges as it is any time until the next notification—a flexible line.

However, the correspondence in the Documents Nos. 110-118 indicates that the boundary between the districts by the Governmental authorities was held to be the centre

of the stream which at the time in question is actually the main stream, meaning thereby presumably at any time when the question of the boundary came up.

It seems therefore not possible to hold that the district boundary in the river Ganges in the disputed area was a rigid line.

Another question is however whether the boundary between India and Pakistan as established in the award is embodying the flexible line of the district boundaries or whether the boundary between India and Pakistan is according to the award a stationary line.

It is stated in the award that "the line shall then turn south-east down the river Ganges along the boundary between the Districts of Malda and Murshidabad etc., . . . to the point in the north-western corner etc. . . .". Supposing that the award had not gone beyond stating this, the boundary between India and Pakistan having incorporated the district boundary would have been a fluid line in the river Ganges down to the *char* area opposite Rajshahi town, a rigid line over the *char* and then a fluid line in the river Ganges down to the point where the river Mathabhanga takes off. But the award continues that "the district boundaries, and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal".

The flexible district boundaries which cover about seven-eighths of the boundary stretch now in question, were at the time of the award following the then actual course of the river Ganges.

To take the flexible district boundaries as the boundary between India and Pakistan would then be to have the flowing course of the river Ganges as the boundary on a great part of the boundary line. This would be contrary to the prescription in the award that the actual course of the river Ganges shall not constitute the boundary between East and West Bengal.

It has been maintained that another interpretation of the words "not the actual course etc." is possible, *viz.*, that the words have been used only to indicate that the boundary should run across the *char* area. But that should have been the result even without this sentence as it already has been stated in the description that the line should run along the boundary between the two districts, *i.e.*, across the *char* area. It is not possible that Sir Cyril Radcliffe who otherwise in the award has used very concise language just here should have expressed himself in terms which are purely tautological. These words must have a special meaning and according to my opinion the meaning is the one above explained.

The award then cannot mean the boundary to be a flexible line. Such an interpretation having been accepted, the question arises which rigid district boundary lines are meant in the description.

It would, in itself, seem to be a natural thing to interpret the expression "the district boundaries" in Annexure A with the help of the map in Annexure B. On this map there are drawn district boundaries on the stretch in dispute and Sir Cyril Radcliffe has followed these district boundaries in delineating the boundary between India and Pakistan on the stretch in question.

To consider the district boundaries drawn on the map as the district boundaries of the description offers no difficulty as regards the land boundaries. They are put down on the map as notified in the latest notifications and they show the district land boundaries at the time of the award.

But concerning the part of the district boundaries which are following the midstream of the river Ganges difficulties arise in making use of the map as regards the interpretation of the district boundaries of the description in Annexure A.

The map in Annexure B is a congregated map of the district maps used at the time of the latest notifications. As the district maps are based on a survey which was started in 1915 and completed in 1926, the map does not reproduce the position of the river at the

time of the notifications but at the time of the survey. The map, in fact, does on the stretch which is following the river Ganges not reproduce any other district boundaries than those determined by the position of the river Ganges at the time about thirty years ago when the survey maps were made on which the map in Annexure B is based. To interpret the words "district boundaries" in the description in Annexure A on this stretch as being the same as the district boundaries as determined by the position of the river Ganges as demarcated on the map in Annexure B does not seem possible. The district boundaries and the delineation of the boundary between India and Pakistan following these district boundaries in the river Ganges as demarcated on the map can therefore not be considered as having been meant as an illustration of the words "district boundaries" in the description so far as the district boundaries following the midstream of the river Ganges are concerned.

It remains then as regards the part of the district boundaries which is following the midstream of the river Ganges to decide whether to take the district boundaries as they were at the time of the latest notifications of the districts concerned or the district boundaries as they were at the time of the award.

The position of the district boundaries as they were at the time of the notifications depends so far as they are following the midstream of the river Ganges on the position of the river at the time of the different notifications. As the river Ganges certainly has shifted its course between the dates of these different notifications no continuous and common district boundary line can be taken as existing at the different dates of the notifications so far as the district boundaries of the notifications were determined by the midstream of the river Ganges.

The dates of the latest notifications therefore cannot be taken as the time for deciding the position of the district boundaries.

As regards then the time of the date of the award there is to be remembered the stipulation in Annexure "A" that the district boundaries and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal. The interpretation given of this stipulation is that the boundary as determined by the district boundaries is to be a rigid and not a flexible line.

By taking the district boundary line at the time of the award as a rigid line you do not then come into conflict with the stipulation that the actual flowing course of the river Ganges shall not constitute the boundary.

My conclusion is therefore that in the area in dispute the district boundary line consisting of the land boundary portion of the district boundary as shown on the map, Annexure "B", and as described in the Notification No. 10413-Jur., of 11-11-40, and the boundary following the course of the midstream of the main channel of the river Ganges as it was at the time of the award given by Sir Cyril Radcliffe in his Report of August 12th, 1947, is the boundary between India and Pakistan to be demarcated on the site.

If the demarcation of this line is found to be impossible, the boundary between India and Pakistan in this area shall then be a line consisting of the land portion of the above mentioned boundary and of the boundary following the course of the midstream of the main channel of the river Ganges as determined on the date of demarcation and not as it was on the date of the award. The demarcation of this line shall be made as soon as possible and at the latest within one year from the date of the publication of this decision.

Algot BAGGE.

APPENDIX IV

Opinion of the Hon'ble Mr. Justice N. Chandrasekhara Aiyar on Dispute No. II

This dispute arises as regards the interpretation to be placed upon paragraph 6 of Annexure "A" to Sir Cyril Radcliffe's award. The paragraph is a short one and is in these terms—

“From the point of the river Ganges where the channel of the river Mathabhanga takes off, the line shall run along that channel to the northern-most point where it meets the boundary between the thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary”.

The issue to be decided lies within a narrow compass but is a bit complicated. In his map Annexure “B”, Sir Cyril has drawn a red line between the two points mentioned by him and has shown the red line as the Mathabhanga. It is contended for Pakistan that the course of the Mathabhanga has not been correctly shown by Sir Cyril and that as a matter of fact it takes off from the Ganges at a much higher point to the north-west and flows down south-wards in the direction of what is specified in the plan as “Mathabhanga R.” with a dead end, so to say. Therefore it is argued for that Dominion that the red boundary line given by Sir Cyril from the northern point up to the point where it meets the boundary between the thanas of Daulatpur and Karimpur is a wrong demarcation of the boundary and that it should be really further west.

2. This claim is set out in paragraph 2 of Pakistan’s case as the second subject-matter of dispute and is in these terms—

“At and before the date of the said Award, the Mathabhanga river took off and now takes off from the Ganges near village Godagaridiar J.L. No. 170 of Daulatpur P.S. and flowed as it now flows through mauzas Udainagar Khanda, J.L. No. 169, and Muradpur Diar J.L. No. 172 of Daulatpur P.S. Muradpur Jalangi P.S. of Murshidabad district and Mauza Madhugari J.L. No. 108 of Karimpur P.S. meeting the boundary between thanas Daulatpur and Karimpur near the south-western corner of Char Sarkarpara J.L. No. 178 of Daulatpur P.S.”.

3. On the other hand, it is urged for India that the course of the Mathabhanga river is not what is claimed by Pakistan but is something different and that wherever the Mathabhanga might be, Sir Cyril has in fact assumed its course to be a particular one and as he has not merely fixed the northern and southern points of its course but has also drawn a line to indicate the dividing boundary between the two States, it is not open to us now, even if there is a mistake, to go beyond his award, and modify or rectify it.

4. The case for Pakistan that the river Mathabhanga takes off from the Ganges near the village of Godagaridiar and flows southwards through certain mauzas and thanas till it reaches the boundary between Daulatpur and Karimpur has not been made out from the documents filed on either side. At the best, the village and thak maps taken individually and pieced together take us a little to the north of Jalangi so far as a river course is concerned; but it is not the Mathabhanga as is claimed; it may be the Jalangi or some tributary for aught we know. It is seen from the Survey Map of 1854 and the annual River Reports produced by Pakistan (Docts. 140 to 150) that the Mathabhanga has been as eccentric and changeful as her mother the river Ganges and it is not possible to determine her course with any exactitude for any length of time.

5. The learned Advocate General of West Bengal was asked by us to state where according to him is the river Mathabhanga and where it takes off from the river Ganges. He was not able to give a definite answer and suggest anything constructive about his own case. He however conceded that according to the documents that were available to him and placed before the Tribunal the river does not take off from the point shown by Sir Cyril in his map and that the course of the river indicated by him may be taken to be wrong. But he urged that this did not conclude the case against India and that we were bound even by the wrong assumption on a question of fact by Sir Cyril, the arbitrator.

6. The position then is this. Pakistan is not correct in describing the course of the Mathabhanga river and in stating that it takes off from the Ganges near Godagaridiar. India is not able definitely to locate or delineate the course of the river, though it has many theories and suggestions as to what it might be, all of which put together do more to destroy the case for Pakistan than to build up an affirmative case for India. It is conceded that Sir Cyril’s Mathabhanga is wrong and that as a matter of fact no river with such a name takes off from the Ganges at the point indicated by him. It seems to me that Sir

Cyril's Mathabhanga is some old course of the river which he got from some of the numerous maps that must have been placed before him.

7. A doubt may arise if Sir Cyril's position was that of an arbitrator and if his pronouncement can be said to be an award as the two rival parties did not select him to decide any competing claims as between themselves. But such a doubt can only be a passing one. It is not necessary that the parties should have conflicting claims based on antecedent rights, alleged or real, nor is it essential that the person to decide between them should be chosen by them. Any two persons may agree that a third man to be chosen by an independent party should effect a division between them of properties and if that third man is not functioning as a judge in a court of law created or erected by the constitution subject to all the limitations of strict procedure, rules of evidence, appeal and revision, he is really an arbitrator, nothing more, nothing less.

8. It should be remembered that we are not sitting as a court of appeal or revision against Sir Cyril Radcliffe's Award. Our powers are very limited. We cannot remit the award for reconsideration or rectification. It is true that clerical errors and mistakes in an award can be set right and mistakes appearing on the face of the award can also be rectified by the arbitrator being asked to reconsider what he has done. But no such jurisdiction has been conferred on us under the terms of the Delhi agreement. All that we have to do is only to interpret his award and ascertain the common boundary as indicated by him. It cannot be said that Sir Cyril Radcliffe had no jurisdiction in assuming that a particular watercourse represented the Mathabhanga river and that it took off from the Ganges at a particular point. He might have been wrong in his assumptions. He has not only done so in the present case but has delineated the boundary line in a particular manner joining the northern point on the river Ganges with the southern point on the boundary between the thanas of Daulatpur and Karimpur. He has indicated this portion as the Mathabhanga and he did so notwithstanding the fact that he had before his eyes the map with the words "Mathabhanga R." at the dead end of the river to the west suggesting that the river had probably a different course. Can we under these circumstances substitute for Sir Cyril's Mathabhanga line the real Mathabhanga course, assuming that we are now able to ascertain it with precision and say that the latter shall constitute the boundary line of these two States? Such a power would be regarded as extraordinary EVEN FOR A COURT OF APPEAL OR REVISION. Even then, the award would have to be remitted to the arbitrator for reconsideration.

9. Two passages only need be quoted from the leading text-book on Arbitration and Award by Russel (twelfth edition) to illustrate the very restricted nature of this jurisdiction. One passage is on page 177:

"Where an arbitrator makes a mistake either in law or in fact in determining the matters referred, but such mistake does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted".

The other is at page 179:

"The decision to which the arbitrator really comes, as soon as he expresses it in his award, is final both as to law and fact. No decision, therefore, at which he arrived, if properly expressed in the award, can be a mistake or affect the finality of his award on that ground".

In the case of *In re Great Western Rail Co.*, and the *Postmaster General*, 19 Time L. Reports 136, where the figures on which the award had been based had been misapprehended and misunderstood, the award was still held binding. The decision in *Bland v. Russian Bank for Foreign Trade* (1960), 11 Com. Cas. 71, shows the extreme extent to which the courts have attached finality to the awards of the arbitrators. "An agreement provided for the reference of disputes to arbitration on the 'basis of Riga usance'. The arbitrator made an award which was regular on the face of it, but he had not the agreement for reference before him at the time of the arbitration and he had never heard of Riga usance, to which he had no regard in making his award. Held that it must be presumed in

the absence of evidence to the contrary, that the award was in accordance with Rigusaance.”

10. Mr. Page urged that this was a case of divergence between the boundary as described in Annexure “A” and as delineated on the map Annexure “B” and that consequently according to paragraph 10 of the Report of Sir Cyril, the description in Annexure “A” should prevail. As a matter of fact, however, there is no such divergence as is contemplated in the said paragraph. The boundary as described in Annexure “A” and as delineated on the map in Annexure “B” correspond with each other. What is defective or wrong is the assumption by Sir Cyril that the Mathabhanga river took off from the Ganges at the particular point mentioned by him. Both Annexures A and B proceed on this mistaken assumption, but there is no disagreement between them *inter se*. The mistake or error relied on is not apparent on the face of the award. It is to be inferred from a number of extraneous circumstances revealed by village maps and annual river reports, etc. Such a mistake is incapable of correction even by a court invested with jurisdiction by way of appeal or revision. Much less have we, sitting as a Tribunal under the specific agreement conferring on us very limited powers, any authority to interfere.

11. If Sir Cyril had merely stated that the boundary shall run from the point where the Mathabhanga takes off from the Ganges and to the point where it joins the boundary between the two thanas of Daulatpur and Karimpur, it may have been possible for us to interpret what he meant and give effect to his meaning by ascertaining as best as we can the course of the river between these two points as it existed on the date of the award. But he has gone further and drawn the boundary line between the two points imagining it to be along the course of the river Mathabhanga as he thought it was. The mistake is not one which can be said to vitiate the award and justify its rescission. To borrow the language of Lord Justice Vaughan Williams in *Re Baxters and the Midland Rail Co.* (1906), L.T. at page 22, “the Court would not remit an award to the arbitrator on the ground of a mistake by him if the mistake which is relied upon is one which involves an impeachment by him of a matter upon which he has made an adjudication”. It appears to me that we are bound by Sir Cyril’s map and his boundary line.

12. As the geographical features stand at present, and stood on the date of the award, presumably there is no point on the river Ganges from which the river Mathabhanga takes off. Had there been such a point, it was possible perhaps to argue that that point should be taken to be the starting point though in the description of the point and in the map, Sir Cyril indicated a different point. In the absence of such a point corresponding with natural features, we have to accept Sir Cyril’s point. The alternative of non-acceptance of the same leads to the consequence that the award has to be given up altogether as entirely meaningless so far as this particular boundary line is concerned. Mr. Page was good enough to concede in the course of his arguments, though his learned junior, the Advocate General of East Bengal, was not prepared to do so, that for all practical purposes the two points mentioned by Sir Cyril—the point on the river Ganges and the point where the Mathabhanga meets the boundary of the two thanas—may be taken as rigid or fixed points. On this basis, the boundary line drawn by Sir Cyril should govern us. Its mention as starting from the point where the river Mathabhanga takes off from the Ganges has to be regarded as an unessential, descriptive detail, a mistake in the statement of which cannot go to the root of the matter. This rule is embodied in Section 97 of the Indian Evidence Act, and is found in Brown’s *Legal Maxims* (9th edition, page 403) in this form: —“where the description is made up of more than one part, and one part is true but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise”.

13. The way in which the Delhi agreement is worded on this dispute appears to assume the correctness of the two points and seems only to raise the question what kind of a boundary it is—fluid or rigid. But I do not wish to be too technical on such a vital matter.

14. If however it is held that it is open to us now to find out which exactly is the Mathabhanga river and substitute the same as the boundary between the two States in

place of the Mathabhanga of Sir Cyril, we shall have to examine the available materials, in the shape of maps primarily, to see if we could find out the real Mathabhanga. I have already pointed out that the contention of Pakistan that the evidence establishes the fact that the river takes off somewhere to the north of Jalangi near or at the village of Godagaridiar or Dyrampur is really untenable. Apart from the earlier maps already referred to, the aerial maps of 1939 and 1948 (Documents Nos. 176 and 177 and 151 to 154 and 164) show clearly that the river takes off from the loop of the Ganges a little to the south-east of the Jalangi village. It is only the river commencing from this loop that can be taken as the real Mathabhanga. The boundary will then run from this offtake of the river to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur. As the boundary line must be a continuous one, we must connect the northern point mentioned by Sir Cyril and shown in his map with the offtake point of the river as now determined.

15. Where this boundary is a fluid line or a rigid one arises here also. For the reasons given by me already under Dispute No. I, which I do not wish to repeat, I hold that it is a rigid line along the middle line of the main channel of the river. The demarcation will have to be made accordingly with reference to the conditions prevalent on the date of the report, because the actual course of the river was not ruled out by Sir Cyril.

16. But as stated under Dispute No. I; if the experts of the two Dominions come to the conclusion that such a determination of the boundary will not be possible owing to the lapse of more than two years from the date of the award, we have no other alternative but to determine the middle line of the course of the river as it runs today.

17. The line has to be demarcated in execution proceedings as contemplated in paragraph 3, sub-clause (3) of the Delhi agreement.

18. The offtake point of the river as now determined shall be connected by a shortest straight line with the point nearest to it on the midstream of the main channel of the river Ganges.

N. CHANDRASEKHARA AIYAR.

APPENDIX V

Opinion of the Hon'ble Mr. Justice Shahabuddin on Dispute No. II

The boundary line concerned in this dispute is described in the concluding portion of the first sentence of paragraph 5 and in the whole of paragraph 6 of Annexure A to the Radcliffe Award. According to this description the boundary line in this case starts from the point in the north-western corner of Nadia district, where the river Mathabhanga takes off from the river Ganges and proceeds along the river Mathabhanga to the northernmost point, where that river meets the boundary between the thanas of Daulatpur and Karimpur. The last sentence in paragraph 6 is "The middle line of the main channel shall constitute the actual boundary".

The case for Pakistan is as follows: —

The boundary so described is a river boundary and Sir Cyril by this description intended the river Mathabhanga to be the boundary. Along the line delineated on the map (Annexure B) as the course of the river Mathabhanga, there was in fact no river flowing at any time. On the other hand, the river Mathabhanga before and at the date of the award took off, and at the present time takes off from the river Ganges near the village Godagaridiar, and flowed and still flows southwards as described in paragraph 2 of Pakistan's Statement of Case, and as shown in the Air Survey Map of 1948 filed by Pakistan. The delineation on the map is, therefore, clearly divergent from the description of the boundary and has consequently to be ignored.

On behalf of India, it is not disputed that there was no river flowing along the line marked on the award map as the course of the river Mathabhanga. But it is contended that

the river Mathabhanga did not, at the time of the award, even according to the air photograph map relied on by Pakistan, flow along the course that is now claimed for it by Pakistan. It is said that even according to the said air map the river takes off from the loop of the Ganges at Jalangi inside the district of Murshidabad, and that this river therefore does not conform to the description of the boundary. The Case for India is that in these circumstances what has been delineated by Sir Cyril must prevail, as he was an Arbitrator and his decision that the river Mathabhanga was flowing along the course indicated by him on the map cannot be questioned even if it be wrong. According to India, there is no divergence between the map and the description, and the boundary must therefore be a rigid boundary and it should be demarcated as per the delineation on the map.

Taking the entire description of the boundary concerned in this dispute along with the description of the boundary in the first dispute, and having regard to the fact that these two boundaries form a continuous boundary, the conclusion that the dominant idea in this description was to have a fluid boundary, appears to be irresistible. It is not necessary to repeat here the reasons, which I have already stated in my opinion on the first dispute, for my conclusion that the boundary in that case was intended by Sir Cyril to be a fluid boundary and not a rigid one. The boundary line being a continuous one and there being no ostensible reason for Sir Cyril to distinguish between the two cases when he was deciding to make the line run along the course of the river, it is only reasonable to infer that he intended the boundary in this case also to be fluid and not rigid.

The description in paragraph 6 with which we are directly concerned in this case by itself indicates that Sir Cyril intended the river Mathabhanga to be the boundary. The last sentence in that paragraph to which reference has already been made *i.e.*, "the middle line of the main channel shall constitute the actual boundary" indicates this clearly. Both the points of this boundary line *i.e.*, the point of the off-take as well as the point where the river cuts the thana boundary are, in my opinion, flexible points. It is seen from the Report of the River Engineers that the off-take has been oscillating from time to time (Document No. 146). Similarly, the other point is also subject to changes as the Mathabhanga, like its parent the Ganges, is erratic. It is no doubt true that in paragraph 5, as has already been indicated, the point of the off-take is mentioned as a point in the north-western corner of the district of Nadia, but that is only an indication of a direction and does not form an integral or essential part of the description. The indication there is of an area which was considered by Sir Cyril as the probable area within which the Mathabhanga was likely to take off from the river Ganges from time to time. He did not intend to fix any particular point of off-take or any particular area in which the river was to take off from the Ganges. The fact that the delineation on the map with regard to this river is admittedly of a course where no river was flowing indicates that Sir Cyril had an incorrect impression as to the exact course of the river Mathabhanga; but there can no doubt that he intended the river Mathabhanga to be the boundary. In the circumstances, the direction with regard to the area in which the river is likely to take off cannot be construed as restricting the dominant intention of making this boundary flexible.

There was good reason for Sir Cyril to decide upon a flexible boundary in this area as the river Mathabhanga is one of the rivers that ultimately feed the Bhagirathi, the importance of which to Calcutta was clearly realised by him. He had decided to give Calcutta to West Bengal and so he must naturally have also intended to keep this river as the boundary between the two States close to its source, so that this stretch on the river may not completely pass out of the control of the West Bengal Province. It is seen from the air photograph map (Document No. 151), the accuracy of which has not been questioned by India, that the Mathabhanga in the early part of its course gets silted and dried up at several points. This is also clear from the Report of the River Engineers (Document No. 137). It is therefore extremely unlikely that Sir Cyril would ever have favoured a rigid boundary line which would clearly open up the possibility of the head-waters of the Mathabhanga actually flowing inside the territory East Bengal. If Sir Cyril's idea had been to adopt a fixed boundary he would have selected the thana boundary from the starting point itself.

In these circumstances, the delineation on the map is clearly divergent from the description, as the delineation is not of any river but of an imaginary line. It does not seem necessary to discuss in this case whether an Arbitrator's decision has to be regarded as final even if it is based on a mistake of fact which goes to the root of the matter, for, Sir Cyril, in his award, has himself made it clear that the map is only an illustration of the boundary described and that in case of a divergence between it and the description, the latter should prevail. If the delineation in this case is preferred, it would amount to a complete disregard of his directions.

As regards the point of the off-take of the Mathabhanga the aerial photograph map of 1948 shows a channel flowing from Godagaridiar downwards which appears to be one of the loops of the river Ganges and it is also seen from the Report of the River Engineers that in some of the past years the Mathabhanga was flowing from the Ganges through this channel. There is in my opinion considerable force in the contention for Pakistan that this channel, though it forms part of the loop of the Ganges has been treated as part of the Mathabhanga itself. In this connection, the fact that reference in the description of the point of off-take is to the channel of the river Mathabhanga and not to the river Mathabhanga appears to be rather significant. However, even if the channel is regarded as distinct from the Mathabhanga and it is considered that the off-take was at the time of the award at the point mentioned by India *i.e.*, near Jalangi in Murshidabad, it cannot be said that there is no river in existence which conforms to the description. As stated already, the words "in the north-western corner of Nadia" are not a material part of the description and the off-take according to 1948 Air Survey maps is not at Jalangi itself but is almost on the north-western border of Nadia district. There is therefore a river called Mathabhanga which substantially accords with the description given by Sir Cyril.

Even if it is held that the Mathabhanga took off at Jalangi, the boundary line, which for reasons I have already stated has to be regarded as flexible, has got to pass through the channel, whether it is taken as a part of the Ganges or as a part of the river Mathabhanga. This will have to be so, even if the boundary is made rigid boundary, because, according to the description in paragraphs 5 and 6 of the annexure to the award the line is intended to be drawn from a point on the midstream of the Ganges to the off-take of the river Mathabhanga, not over land, but through this very loop of the Ganges. After all, the Mathabhanga is fed by the waters of the Ganges and I can see no objection to treating the loop through which it is fed as the channel of the Mathabhanga for all practical purposes.

I am, therefore, of the opinion that the boundary line in this case is a fluid boundary and not a rigid one, and that it should run on water along the course described in the Statement of the Case of Pakistan, subject only to such geographical variations as may result from changes occurring in the course of the river Mathabhanga.

M. SHAHABUDDIN.

APPENDIX VI

The opinion of the Chairman on Dispute No. II

The case submitted in this dispute on behalf of the Government of Pakistan is that the middle line of the channel of the river Mathabhanga within the limits prescribed in (II) 2 in the printed statement of the case of the Government of Pakistan is and is to remain the boundary between India and Pakistan, subject only to such geographical variations as may result from changes occurring in the course of the river Mathabhanga. The limits thus prescribed are as follows:

"At and before the date of the said Award, the Mathabhanga River took off and now takes off from the Ganges near village Godagaridiar J.L. No. 170 of Daulatpur P.S. and flowed as it now flows through mauzas Udainagar Khanda, J.L. No. 169 and Muradpur Diar J.L. No. 172 of Daulatpur P.S., Muradpur Jalangi J.L. No. 30, Sahebrampur J.L. No. 33, Ikuri. J.L. No. 31 of Jalangi P.S. of Murshidabad district, and mauza Madhugari J.L. No. 108 of Karimpur P.S., meeting the boundary between

thanas Daulatpur and Karimpur near the south-western corner of Char Sarkarpara J.L. No. 173 of Daulatpur P.S.”

The case submitted on behalf of the Government of India is that the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges can be ascertained by reference to Annexure B of Sir Cyril Radcliffe's Award, *i.e.*, his map, where he has shown the point at which the channel of the Mathabhanga takes off from the river Ganges. The other end of the dispute boundary is the northernmost point where the channel of the Mathabhanga meets the boundary between the thanas of Daulatpur and Karimpur. Having taken that point Sir Cyril has drawn the line from there up to the point where the river Mathabhanga according to his award, takes off from the river Ganges. The Government of India claims the land to the west of the line in Annexure B.

The relevant portion of the Annexure A of the award is as follows: —

“5. . . . to the point in the north-western corner of the District of Nadia where the channel of the River Mathabhanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.

“6. From the point on the River Ganges where the channel of the River Mathabhanga takes off, the line shall run along that channel to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.

“7. From this point the boundary between East and West Bengal shall run along the boundary between the thanas of Daulatpur and Karimpur; . . .”.

It is common ground that there is no dispute as to the boundary proceeding southwards from the point where the channel of the Mathabhanga meets the boundary between the thanas of Daulatpur and Karimpur.

The Government of India does not base their case on the presumption that there is, or was, at or about the time when Sir Cyril gave his award, a river Mathabhanga taking off from the river Ganges as indicated on the map attached to the award. They concede that there is no river at that place. They say that—river or no river—there is a rigid line as indicated on the map from the point where, according to the map, the river Mathabhanga takes off from the river Ganges and that the line which is to be followed at the demarcation is, so far as there is a main channel indicated on the map, the line which is equal in distance from both the shores as indicated on the map, and then the line representing the river until this line meets the northernmost point on the boundary between the thanas of Daulatpur and Karimpur.

The Government of Pakistan submit that there is a divergence between the boundary as described in Annexure A of the award and as delineated in the map in Annexure B thereof, in that, the position of the off-take and the channel of the river Mathabhanga as shown in the map is incorrect, and that, in accordance with the terms of paragraph 10 of the award, the description in Annexure A thereof must prevail.

The Government of India in this respect refers to what is said in clause 10 in the award: “The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award and in the map attached thereto, Annexure B”. The Government of India says: The demarcation is described in detail in the map as also in Annexure A. Therefore, the description is in detail in both. The map is not only for the purpose of illustration, but the demarcation of the boundary line is described in detail in the map. Sir Cyril's finding on a question of fact is conclusive. He finds the Mathabhanga channel and draws it on the map. There is no divergence between the boundary line in Annexure B and the description in Annexure A.

The Government of Pakistan replies: You must interpret a term in connection with its context. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the

map in Annexure B, the description in Annexure A is to prevail. In this case the author of the award has done two things: he has made a delineation and he has also made a description. Delineation is the marking of a red line. His delineation is quite obviously divergent from the description given in Annexure A.

I am of the opinion that it must be held that the award makes a difference between the description in Annexure A and the delineation on the map Annexure B. So far as it is possible to get a solution from the description in Annexure A the delineation on the map is only an illustration of that solution.

In this case such a solution can be found. According to the description in Annexure A Section 5 the line now in dispute shall begin at a point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges. From that point the line shall run along the channel to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur.

Air photograph maps established by way of photographs taken from the air in the year 1948 and submitted by the Government of Pakistan (Document No. 164) and an air map of 1939 submitted by the Government of India which is substantially the same as the 1948 air photograph maps, are showing a river taking off from a loop of the river Ganges not far from the point indicated on the Annexure B map. This same river is running south to the northernmost point where it meets the boundary between the thanas aforementioned.

There is no reason why this river should not be accepted as the river described in Annexure A.

The river, as reproduced on the 1948 air photograph maps (Document No. 164), corresponds with the description in Annexure A, with the exception that the place where this river takes off from the river Ganges possibly is situated in the district of Murshidabad, but anyhow quite close to the north-western corner of the District of Nadia. If there is such a difference this cannot however be considered as being of any importance. The river thus flowing must in consequence be taken as being the river Mathabhanga to which the description in Annexure A of the award refers.

The award, Annexure A, says that the boundary line shall be a line running along the channel of the river Mathabhanga and that the middle line of the main channel shall constitute the actual boundary.

The Annexure A must by that mean an existing river. The river with a channel as traced on the Annexure B map in reality does not exist.

The Government of India, however, has contended that the fact that a river with a channel, which takes off from the river Ganges drawn on the Annexure B map, must, even though there is no river at that place, be deemed a reality, the correctness of which cannot be challenged.

This would mean that where there is a divergence between what the description means, in this case an existing river, and what the map indicates *viz.*, a river existing though the river does in fact not exist, the map should prevail. This cannot be the meaning of the award.

To accept the line delineated on the Annexure B map as the boundary line would also mean to give this delineation of a line on the map the force of a description as mentioned in Annexure A. Nor would this be in conformity with the award as long as there is a description which is sufficient to give the necessary solution.

The contention of the Government of India that the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges can be ascertained by reference to the Annexure B map can therefore not be accepted.

According to my opinion the beginning of the boundary line shall therefore be the point in or close to the north-western corner of the district of Nadia where the channel of this river takes off from the river Ganges.

There has been some difference of opinion concerning the place where the off-take of the river Mathabhanga is situated. According to my opinion the river Mathabhanga must be held to take off from a loop which forms a part of the river Ganges. This off-take is situated west-south-west of the police station and the camping ground of Jalangi village as these are shown on the air photograph map (Document No. 164). The river Mathabhanga then flows from that off-take southwards to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur.

There is not, as in Dispute I, any expression in the award indicating that the boundary line should not follow the line of a flowing stream, with, as is said in the printed statement of the case of Pakistan, such geographical variations of that stream as may result from changes occurring in the course of the river.

There is of course the fact that in the description of the award the channel of the river Mathabhanga is mentioned as taking off from a point in the north-western corner of the district of Nadia. But the purpose of mentioning the area from which the river is flowing should be taken as being made more for an identifying purpose than for establishing any fixed point of off-take.

The boundary line in question shall therefore follow not a rigid line from the off-take of the river Mathabhanga but the middle line of the main channel as it is flowing, down to the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur.

The boundary line running along the boundaries between the districts of Rajshahi and Murshidabad and the districts of Rajshahi and Nadia must be connected with the boundary line beginning where the channel of the river Mathabhanga takes off from the river Ganges. The whole boundary line must of course be continuous. A connecting boundary line must therefore be drawn from the boundary line going along the district boundaries aforementioned, to the beginning of the boundary line formed by the middle line of the main channel of the river Mathabhanga beginning at the off-take of the river Mathabhanga as described.

This connecting boundary line must follow the shortest way from the beginning of the middle line of the main channel of the river Mathabhanga to the boundary line between the districts of Rajshahi and Nadia.

My conclusion is therefore that the boundary between India and Pakistan shall run along the middle line of the main channel of the river Mathabhanga which takes off from the river Ganges in or close to the north-western corner of the district of Nadia at a point west-south-west of the police station and the camping ground of the village of Jalangi as they are shown on the air photograph map of 1948, and then flows southwards to the northernmost point of the boundary between the thanas of Daulatpur and Karimpur.

The point of the off-take of the river Mathabhanga shall be connected by a straight and shortest line with a point in the midstream of the main channel of the river Ganges, the said latter point being ascertained as on the date of the award or if not possible as on the date of the demarcation of the boundary line in Dispute I. The said point so ascertained shall be the south-easternmost point of the boundary line in Dispute I, this point being a fixed point.

Algot BAGGE.

*APPENDIX VII**Opinion of the Hon'ble Mr. Justice N. Chandrasekhara Aiyar
on Dispute No. III*

This relates to the claim made by the contending States to the Patharia Hill Reserve Forest, which is shown in the coloured index map filed on the side of India (Doc. 185). Part of it is thana Kulaura (No. 5), but with this we are not concerned. Another part to the north indicated by the letter "B" and in thana Karimganj (marked I) is also beyond the scope of the present dispute. It has become a disforested area. We are concerned only with the white portion of the forest in thana Barlekha (No. 3) and the blue portion in thana Patharkandi (No. 4).

2. Thana Beani Bazar (No. 2) and thana Barlekha (No. 3) were originally one thana Jaldhup. The boundaries of thana Jaldhup are found in the notification of the 1st July 1880 (Doc. 200). The eastern boundary is the important one for our present purposes. This thana Jaldhup was split up into two thanas Beani Bazar and Barlekha by notification No. 5133-H, dated the 28th May 1940 (Doc. 204) and published in the Assam Gazette dated the 5th June 1940, Part II, page 991. The preliminary notification was No. 6214-H dated the 2nd September 1938 (Doc. 203) published in the Assam Gazette dated the 7th September 1938, page 1203.

3. Patharkandi was a police outpost till 1922 when it became a thana according to a notification dated the 10th January 1922 (Doc. 202).

4. The forest in question was declared to be a reserve forest with effect from the 15th May 1920 under section 17 of the Assam Forest Regulation 1891. The notification is No. 3698F of the 27th April 1920 (Doc. 201). The approximate area is given as 27,600 acres and the boundaries on all the four sides are mentioned in detail.

5. In making his award, Sir Cyril used the Sylhet district map signed by Mr. Creed, Superintendent of Assam Surveys, on the 22nd April 1937 (Doc. 184). It would be seen that it is the right-hand side portion of a fuller map. The full map has been filed by Pakistan (Doc. 256). It is said that a copy of it printed in 1947 and containing some minor alterations was actually before Sir Cyril.

6. In paragraph 13 of his report, Sir Cyril said—

"Accordingly I decide an award as follows—

"A line shall be drawn from the point where the boundary between the thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between these thanas, then along the boundary between the thanas of Patharkandi and Barlekha, then along the boundary between the thanas of Karimganj and Barlekha, and then along the boundary between the thanas of Karimganj and Beani Bazar to the point where the boundary meets the river Kusiya."

This is the red line in the map used by Sir Cyril and it would be seen that the line cuts across the Patharia Hill Forest leaving the white and the pink portions in the index map to the west of it and the remainder to the east of it.

7. Another sentence in paragraph 13 of the report is also relevant and important. It is this—

"So much of the district of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred."

("North of this line" is the Kusiya line involved in the next dispute.)

8. The case for India is that the whole of the forest, the white portion inclusive, belongs to them under the award inasmuch as the Barlekha notification of 1940 expressly excluded the forest from the Barlekha limits in giving the eastern boundary and that consequently the whole area forms part and parcel of Patharkandi, even though there was

no fresh notification or order including it in that thana. It is urged by them that in any event dominion of Pakistan can have no right or claim to the blue portion as it is to the east of the boundary line drawn by Sir Cyril who has taken special care to say that only so much of the district of Sylhet as lies to the west of this line shall go to East Bengal and that no other part of the Province of Assam shall be transferred.

9. The case for Pakistan is, on the other hand, that the whole area belongs to them. Their contention is that the notification of 1940 excluding the forest from the limits of Barlekha was based upon some error, confusion or mistake, that the notification itself was illegal or void, that it was never acted upon, and that despite its existence Barlekha exercised jurisdiction over the forest. In any event it is contended that they should get the white portion at least on the basis of Sir Cyril's Award.

10. It is true that Sir Cyril made a mistake in thinking that the thanas of Patharkandi and Barlekha had a common boundary line between them. As a matter of fact, there was no such boundary line. According to the 1940 notification the Patharia Hill Forest was the eastern boundary of Barlekha. The western boundary of Patharkandi thana as given in the 1922 notification was—

“Mauzas Sheoratali, Gramtala, Kechrigul, Dakingul, Barkhala in thana Jaldhup; Patharia Hills in thanas Jaldhup and Hingajiya; and Hill Tippera”.

11. The 1937 map which he had before him or its reprint or copy of 1947, apparently misled him into thinking that there was a common boundary line, while there was none in reality. This mistake on his part has given rise to the present trouble and the rival claims on behalf of India and Pakistan.

12. It would be seen from a comparison of the map of 1937 used by Sir Cyril and the map of the district of Sylhet alleged to have been prepared in 1947 for Sir Cyril's use in connection with his award that the red line he has drawn from south to north proceeds up to a particular distance on the subdivision boundary line, and on the forest boundary line from that point till we reach the extreme north-western limit of the forest (inclusive of bloc B). This north-western limit is a little to the south-east of Iatu and north-west of 222 with a triangle to its side. Sir Cyril assumed, for some reason not known to us, that this was the common boundary line between the two thanas of Barlekha and Patharkandi.

13. Certain facts are incontrovertible. The Patharia Hill Reserve Forest after it was constituted as such under the Forest notification of 1920 was comprised within four areas—Jaldhup, Karimganj, Patharkandi and Kulaura. This is made clear not only by the village boundaries of Jaldhup and Karimganj given in the first notification of 1880 (Doc. 200) but also by the Forest notification and the notification of 1922 where we find the Patharia Hills mentioned in Patharkandi, Jaldhup and Karimganj. This is also apparent from the Karimganj thana map filed on India's side (Doc. 184), where reference is made near the south-western corner to the Patharia Hills Reserve Forest within the thana limits and to the Patharia Hills Reserve Forest within thana Patharkandi limits. The Patharkandi outpost map (Doc. 189)—T-4—on India's side shows a part of the Patharia Hills within the boundary of that outpost and to the east of thanas Kulaura and Jaldhup. The Jaldhup thana map Ex. T-7 (Doc. 192) leads to the same result, if we have regard to the village boundaries given in the 1880 notification. A part of the Patharia Hills is within Jaldhup and there is a part to the east of it in the Patharkandi outpost. It may be taken as clear therefore that the reserve forest was comprised within the several thanas aforesaid. When Jaldhup thana was subdivided into two—viz., Beani Bazar and Barlekha—the eastern boundary of Barlekha was mentioned as the western boundary of the Patharia Hills Reserve Forest. This undoubtedly excludes the forest from Barlekha thana limits. It was admitted on the side of India that there was no corresponding inclusion of the forest area in the Patharkandi thana limits, but it was contended for that Dominion that as the forest lies between the two thanas it must belong to Patharkandi if it did not belong to Barlekha. The learned Advocate General of East Pakistan conceded that the forest must belong either to one or to the other of the two thanas.

14. What is important to remember is that at no time was the Patharia Hill or the reserve forest going by that name entirely within the jurisdiction of Jaldhup so that it could be said that when Barlekha thana was created it passed over into its jurisdiction. On the other hand, we find from the two express notifications of 1938 and 1940, the latter one based upon the former, that the Patharkandi Hill Forest was excluded from Barlekha.

15. The Dominion of Pakistan had consequently an uphill task to show how the entire forest could be said to belong to them. This was sought to be established on several lines of reasoning. The main argument was that the notifications of 1938 and 1940 excluding the forest from the Barlekha thana altogether were based on error and that the notifications were illegal in themselves. The second line of reasoning was that they had been exercising jurisdiction over the forest by way of police proceedings, census operations and registration of pedal cycles under the Defence of India Rules. It was lastly pointed out that the circle map of Patharkandi (Doc. 243) referred to the forest as beyond the circle limits to the west and north-west.

16. It is somewhat difficult to follow the argument that the notifications were illegal. It may be that there are rules to the effect that when an area is proposed to be transferred from one thana to another the officers concerned with the proposal should specify the area clearly, the reasons suggested for the transfer and the new station to which it is proposed to be transferred. Such rules are for the superior officers to make up their mind whether the transfer suggested is reasonable and should be made. The fact that there is an omission to specify the area may be a reason for returning the papers for the supply of the omission or for reprimand of the officer or officers concerned, but to say that because of the omission the notification of the Governor-in-Council is itself invalid or of no legal effect, is to say something which is wholly unacceptable and unsound. The Governor-in-Council has absolute powers to alter the limits of thanas, extinguish old thanas, and bring into existence new ones; and once we have a notification published in the Gazette, it is valid and binding until it is altered, modified, or set aside legally, by a fresh notification or other process laid down by law. It is a well-known principle of law that minor irregularities of procedure do not affect jurisdiction. The contention that the notification remained a dead letter and that the subordinate officers in the district—revenue, police or the census departments—acted on the footing that there was no such notification but treated the forest as within Barlekha limits, cannot, even if it be true on the facts, adversely affect the validity or legality of the notifications.

17. It may be that Barlekha police registered crime cases of the village called Patharia Test or the sannyasi settlement named Madhabkund—both of them alleged to be within the forest limits; it may also be that the census operations relating to those living in the forest were done by the Barlekha officials; but these are insignificant factors in themselves and are all of no avail in the face of the notification. So is the circumstance that under the Defence of India Rules some three or four cycles of Patharia Test were registered at the Barlekha police station. The maps would show that the Patharia Test is very near, if not almost on, the western border of the forest and there need be no surprise if Barlekha thought that it had jurisdiction over it notwithstanding the notification of 1940. It takes time for such notifications to filtrate to the subordinate officers in out-of-the-way stations, not to speak of the public, and there is nothing strange if the old state of affairs was continued as correct. Exercise of jurisdiction over a particular locality in a big forest area does not mean assumption of jurisdiction over the whole forest, much less would it be a case of possession.

18. Then we have the Patharkandi circle map (Doc. 243). The circle map is admittedly a map prepared for revenue purposes and sometimes comprises several thanas or parts of thanas. Its evidentiary value on a question like the one we have before us for decision is practically nil.

19. The resulting position is a simple one, rather. The forest was constituted a reserve forest with effect from the 15th May 1920, and according to the notification of 1922 there were Patharia Hills to the east of Jaldhup in the Patharkandi thana and Patharia Hills to the west of Patharkandi in the Jaldhup area. It is fairly apparent that the reserve

forest in Jaldhup represents the white portion and the reserve forest in Patharkandi represents the blue portion in the index map filed on the side of India. The 1940 notification removes the white portion altogether from Barlekha but does not say that it must go to Patharkandi. This, however, does not matter. Even Mr. Faiz Ali had to admit in the course of his arguments that if any portion of it did not belong to Barlekha, it must go to Patharkandi.

20. The claim of Pakistan to any portion east of the boundary line drawn by Sir Cyril is on the face of it unsustainable, as he had expressly said that it is only so much of the district of Sylhet as lies to the west of this line shall be transferred to the Province of East Bengal and no other part of the Province of Assam shall be transferred.

21. However untenable the case of Pakistan is even as regards the white portion of the forest, the fact still remains that Sir Cyril drew his line, which he thought mistakenly was the eastern boundary line of Barlekha, so as to include the said area within Pakistan territory. The line cuts the forest into two from south to north, and the white portion is to the west of his line. He says in so many words that all area which is to the west of the line shall go to Pakistan. With the map annexure "B" before him, there can be no doubt that he was aware that he was giving away a portion of the forest, viz., the white portion, to Pakistan. The mistake in describing the line as the boundary between Barlekha and Patharkandi need not stand in the way of his intention being carried out. I would, therefore, award the white bit of the forest—by the "white bit" I mean what is shown as such in the index map filed on the side of India—to Pakistan. The actual division shall be carried out accordingly.

N. CHANDRASEKHARA AIYAR.

APPENDIX VIII

Opinion of the Hon'ble Mr. Justice Shahabuddin on Dispute No. III

This dispute relates to a major portion of the Patharia Hills Reserve Forest. The following facts, for the sake of convenience, may be stated before setting out the contentions on both sides.

This forest, when it was constituted in 1920, comprised portions of Kulaura and Jaldhup thanas and of a portion of the old Karimganj thana. There is no dispute about the portion of the forest in Kulaura thana which is in East Bengal; nor is there any dispute about the south-west portion of the forest lying in the present Karimganj thana. Prior to the constitution of this forest, the area now in dispute fell partly in Jaldhup thana and partly in the old Karimganj thana, and the boundary line between those two thanas as defined in the notification of 1880 ran across the southern half of the forest. According to this boundary line a portion in dispute fell in the Jaldhup thana and the rest in the old Karimganj thana. In 1922 Patharkandi outpost of the old Karimganj thana was made into a thana and in this connection the boundaries of all the thanas in Sylhet district were notified. In the description of the boundaries of thana Jaldhup and the new Patharkandi thana no mention was made of the reserve forest, but it was stated that the western boundary of Patharkandi comprised the Jaldhup portion of Patharia Hills and the eastern boundary of Jaldhup thana comprised the Patharkandi portion of Patharia Hills. This description of the boundaries between Jaldhup and Patharkandi was considered by Police Officers as vague (Document No. 226) and the correspondence filed before us (Documents Nos. 227-233) shows that there was a proposal to renotify the boundaries of Patharkandi thana by stating clearly that its western boundary would be the eastern boundary of the Reserve Forest, but no notification to that effect was actually issued. In 1938 a preliminary notification was issued stating that it was proposed to divide the old Jaldhup thana into Barlekha and Beani Bazar thanas to transfer to Beani Bazar certain circles of Karimganj thana. In 1940 the final notification was issued, dividing the old Jaldhup thana into the present thanas of Beani Bazar and Barlekha, but although it was

not specifically stated that any portion of the Jaldhup thana was being excluded from the new thana of Barlekha, its eastern boundary was described as the western boundary of the forest. There was however nothing in the notification to indicate any intention of including the Jaldhup portion of the forest into the Patharkandi thana. In 1937, a map (Document No. 256) was drawn up showing the new thanas of Beani Bazar and Barlekha although the old Jaldhup thana had not till then divided, and in this map in which this division was apparently anticipated, the boundary between Barlekha and Patharkandi was shown to be the same as it was between the old Jaldhup and the old Karimganj thanas in accordance with the notification of 1880. In 1947 this map was brought up to date and printed, noting therein various changes that has occurred since 1937; but in this map also the boundary line between Patharkandi and Barlekha was delineated as it was in the old 1937 map. Sir Cyril used this 1947 map for delineating the boundary between East Bengal (Pakistan) and the Assam Province (India).

Both the Dominions—India and Pakistan—claim the entire portion of the reserve forest in dispute. India contends that the 1940 Notification excluded the old Jaldhup portion of the reserve forest from the new Barlekha thana, and that though there was no Notification including that portion of the forest into Patharkandi thana, it could not be regarded as still in Barlekha thana, as Sir Cyril in his award has definitely stated that no portion of Sylhet to the east of the boundary line described in the award should belong to Pakistan. The line delineated by Sir Cyril on the map corresponds to the boundary that existed according to the 1880 Notification which had included in Jaldhup thana a portion of what is now the reserve forest. It is contended that this delineation is divergent from the description and should be ignored and that the boundary should run according to the description in the 1940 Notification excluding Jaldhup portion of the Patharia Hills Reserve Forest from the thana of Barlekha.

The case of Pakistan, on the other hand, is to the following effect:

The 1940 Notification was not intended to exclude from the old Jaldhup thana any portion of its area. Its only purpose was to divide the old Jaldhup thana into the thanas of Beani Bazar and Barlekha. This is clear from both the preliminary and the final Notification. The description of the eastern boundary of Barlekha thana in both these Notifications was obviously due to an error, and that entry by itself cannot have the legal effect of excluding the Jaldhup portion of the forest from Barlekha. The 1940 Notification does not and cannot therefore affect the forest. The line delineated on the map however is divergent from the description, because the boundary between Barlekha and Patharkandi ran in fact along the eastern boundary of the reserve forest. The revised notification of 1929 was vague and indefinite about the boundaries of the forest, as it referred only to Patharia Hills and not to the forest. The Police Officers uniformly acted on the basis that the Barlekha thana had jurisdiction over the entire forest. This fact in view of the vagueness of the Notification of 1922, is of considerable importance and supports the claim of Pakistan not only to the Barlekha portion of the forest but also to the portion of forest which according to India is included in the Patharkandi thana.

The respective portion of the forest in question may conveniently be referred to hereafter with reference to the colour in which they have been shown in the Index Map filed for India. The portion of the forest which was in the old Jaldhup thana is shown in white, and that in the old Karimganj thana which according to India fell into the Patharkandi limits appears in blue.

The contention of Pakistan that the Notification of 1940 does not legally affect the white portion has in my opinion to prevail. It is clear from the Assam Police Rules that whenever any portion of a thana is to be excluded from its jurisdiction notice of such a proposal has to be given to the public and objections invited. Such a procedure is necessary as the convenience of the people has to be taken into consideration while changing the jurisdiction of a thana. As stated already there is nothing in the notification apart from the description of the boundaries which can be said to indicate that the intention of the Government issuing the notification was to exclude from thana Barlekha the old Jaldhup portion of the forest. If the Government had such an intention, it is unthinkable that they

would have failed to notify in the preliminary notification of 1938 that the forest portion of Jaldhup thana would be excluded in the formation of Barlekha thana. The mention in the preliminary notification of the proposal to transfer to the new Beani Bazar thana some of the circles of Karimganj thana shows that the rule that proposals to transfer an area should be notified was being followed. The fact that there was no corresponding notification transferring the white portion *i.e.* the forest area of old Jaldhup thana to Patharkandi thana in itself clearly indicates that the Government did not intend to exclude any forest area from thana Barlekha and transfer it to thana Patharkandi. Similarly the fact that the map of 1947 in which several changes that had occurred since 1937 were embodied continued to show that the Jaldhup portion of the forest fell inside thana Barlekha, is yet another strong indication that the notification of 1940 was not intended to, and did not in fact, exclude the said forest area from Barlekha thana. Documents Nos. 234-236 prove that Barlekha police exercised jurisdiction over the village of Patharia Test most of which, including the oil wells, lies in the white portion *i.e.*, the old Jaldhup portion of the forest. In the Census Operation of 1941 (Documents Nos. 237 and 257) the village Patharia Test was shown as lying within the jurisdiction of Barlekha.

In these circumstances, the conclusion that the description of the eastern boundary of Barlekha in the 1940 notification must be an error, becomes irresistible. The said description has, therefore, no legal effect as far as the forest in question, *i.e.*, the portion in white in the index map is concerned and the only legal effect of that notification was the division of old Jaldhup thana into the new thanas of Beani Bazar and Barlekha without any reduction of the original area.

Even if it is assumed for argument's sake that the notification of 1940 had the legal effect of excluding the forest portion of the old Jaldhup thana, that portion *i.e.*, the white portion cannot be claimed by India in view of the fact that there was no notification including that portion in the Patharkandi thana. Without such a notification that portion of the forest cannot be considered to have become part of the thana of Patharkandi. If the white portion, *i.e.*, the portion of the forest which according to India has been excluded from Barlekha by the 1940 Notification does not become part of Patharkandi, there can be no common boundary line between that thana and the thana of Barlekha. The boundary line in this area as described in paragraph 13 of the award runs along the boundary between these two thanas, and if there happens to be no boundary between those two thanas India cannot claim the intermediate area for Assam on the strength of the concluding part of paragraph 13 of the award, which is as follows: —

“So much of the district of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.”

The words “this line” refer to the line described in the earlier part of the paragraph as running along the boundaries of the thanas noted in that paragraph, including the thanas of Barlekha and Patharkandi. If this line fails, India cannot rely on paragraph 13 of the award, and under Section 3, sub-section 3 (a) and (c) of the Indian Independence Act 1947 this area shall have to be treated as part of East Bengal and as excluded from Assam.

I therefore consider that India's claim in this respect cannot be allowed either on facts or in law and that the portion in white must be regarded as part of Barlekha thana *i.e.* part of Pakistan.

It now remains to consider the claim of Pakistan to the portion of forest marked in blue on the Index Map, which according to India is in Patharkandi thana. On behalf of Pakistan reliance is placed in this respect on Documents Nos. 243-245 and 234-236 to show that the police of old Jaldhup prior to 1940 and the Barlekha police since that year have been exercising jurisdiction over the blue portion of the forest also. Document No. 237 has been filed to show that in the Census Operations of 1941, residents of Patharia Test, which extends into the blue portion also, were treated as within the jurisdiction of Barlekha thana. Reliance is placed on Documents No. 243 and 245 to prove that the two cases mentioned therein relating to Madhabkund village, which is on the eastern fringe of

the forest, were dealt with by the old Jaldhup and the Barlekha police respectively. The map of Patharkandi circle of the year 1934 has also been filed as it shows that the Patharia Hills Reserve Forest was not inside the circle but outside it as the western boundary of thana Patharkandi. No documents showing that Patharkandi police exercised jurisdiction over any portion of the forest has been filed for India.

These documents and the circle map no doubt support the position taken by Pakistan that in fact jurisdiction over the white and blue areas of the forest was exercised by Jaldhup and Barlekha police and that the Police Officers considered the description of boundaries in the 1922 notification as vague and regarded the forest as entirely outside Patharkandi limits. But on a consideration of the boundaries mentioned in the 1922 notification I am not satisfied that they are vague as Patharia Hills mentioned therein cannot be said to exclude the forest. Further the proposal made by the officers to renotify the boundaries so as to exclude the forest from Patharkandi limits was not ultimately followed by the required notification. In the circumstances it cannot be said that the notification of 1922 excluded from the Patharkandi thana the old Karimganj portion of the forest or that there was in law a transfer of that portion to thana Jaldhup. In the absence of a notification effecting such a transfer mere exercise of jurisdiction cannot legally alter the boundary.

I am, therefore, of the opinion that the boundary line delineated on the map of the award accords with the description given in the award, that that line should be the boundary line in this area and that the portion of the forest to the west of that line *i.e.*, the portion shown in white in the Index Map should be awarded to East Bengal (Pakistan) and the portion to the east of the line *i.e.*, the portion shown in blue in the Index Map to the Province of Assam (India).

M. SHAHABUDDIN.

APPENDIX IX

The opinion of the Chairman on Dispute No. III

The case submitted in this dispute on behalf of the Government of India is that India claims the portion of the forest being to the west of the boundary line demarcated on the map "A" attached to the award.

The case submitted on behalf of the Government of Pakistan is that the true interpretation of paragraph 13 in the award is a boundary running along the eastern boundary of the Patharia Hills Reserve Forest from the point at which the boundary between thanas Kulaura and Patharkandi, as determined by the award, cuts the south-eastern boundary of the Reserve Forest northward up to the point at which the eastern boundary of the Reserve Forest meets the southern boundary of thana Karimganj.

According to the award the line shall be drawn along the boundary between the thanas of Patharkandi and Barlekha, and then along the boundary between the thanas of Karimganj and Barlekha, and then along its boundary between the thanas of Karimganj and Beani Bazar.

The thana Patharkandi did not exist as such until 1922 and the thana of Barlekha was constituted in 1940. Before that there existed two thanas *viz.*, Jaldhup and Karimganj, which had a common boundary. This boundary coincides with the line delineated on the map "A" by Sir Cyril Radcliffe. In 1920 the Patharia Hills Reserve Forest was formed. It appears from the description of the boundaries of the forest that the boundary line of Jaldhup thana cut the forest into two, the major portion being to the east of the boundary line and a small portion to the south-west. In 1922 Patharkandi which was till then an outpost of the Karimganj thana was converted into a thana. The west boundary of Patharkandi was described *inter alia* as Patharia Hills in thana Jaldhup. In the same notification the east boundary of Jaldhup was described *inter alia* as Patharia Hills of thana Karimganj and Patharia Hills of thana Patharkandi. By a notification of May 28th

1940 the thana of Jaldhup was split up into two thanas, namely Barlekha and Beani Bazar. The eastern boundary of thana Barlekha was described *inter alia* as the western boundary of the Patharia Hills Reserve Forest. The Jaldhup portion of the forest was not included in the thana of Barlekha or in the thana of Beani Bazar. No corresponding notification of the thana of Patharkandi was made including this portion within its ambit.

The Government of India base their case on the facts that when the thana of Jaldhup was split up into two thana, namely, Barlekha and Beani Bazar, and when the notification of 1940 constituted these thanas and described their boundaries, the Jaldhup portion of the forest was excluded from the new thana of Barlekha. Sir Cyril Radcliffe has in his award described the Inter-Dominion line in terms of thana boundaries. The line shall run along the boundary between the thanas of Patharkandi and Barlekha. Sir Cyril's line of demarcation in his Map "A", which is attached to the award, leaves, however, the portion of the forest thus excluded from Barlekha as if it were in Barlekha. For the purpose of illustration Sir Cyril adopted the map of 1937. But he has provided that in case of any divergence between the map and his description, the description will prevail.

The Government of Pakistan submits as a basis for their claim to the whole of Patharia Hills Reserve Forest as follows: For a number of years up to the date of the award and thereafter when occasion arose for the exercise of police jurisdiction within the boundaries of Patharia Hills Reserve Forest, such jurisdiction was exercised by thana Jaldhup up to 1940 and thereafter by thana Barlekha. In the year 1934, when a circle map of Patharkandi Circle was made, that circle did not extend to any part of Patharia Hills Reserve Forest. In the year 1941, the official Census Report included in thana Barlekha persons resident within the boundaries of that forest.

As regards especially Barlekha the Government of Pakistan submit:

(a) that while the expression "along the boundary between the thanas of Patharkandi and Barlekha" in paragraph 13 of the Award is unambiguous, the delineation of that boundary in the map "A" attached to the Award is incorrect in that it does not show the boundary as stated in the Award; and that, in accordance with the terms of paragraph 14 of the Award, the description of the boundary in paragraph 13 of the Award must prevail;

(b) that the description of the eastern boundary of thana Barlekha in the preliminary notification, dated 2nd September 1938 and in the final notification, dated 28th May, 1940, was made by error; and the said notification was not made in accordance with the requirements of Rule 203 of the Assam Police Manual and the form thereby prescribed and was therefore illegal; and that it was also not acted upon;

(c) that if, on the other hand, the said notification is a valid and effective notification to alter the boundaries of thana Barlekha, there was, in such a case, at the date of the Award, no common boundary between thana Barlekha and thana Patharkandi.

As regards the claim of India to the Jaldhup portion of the forest excluded from Barlekha by the notification of 1940 and Pakistan's claim to that same portion it is established that there does not exist nor did it exist at the time of the award any such common boundary between the thanas of Patharkandi and Barlekha as provided in the award.

The boundary cannot therefore be decided only by reading the description in the award. It is true that generally the map "A" attached to the award only serves the purposes of illustration, but this principle involves a description in the award which is complete and which makes it possible to draw the line after it.

If the description is incomplete we must be allowed to use the map not only as an illustration to the description but also as affording the necessary completion of the description.

The Government of India has submitted that regard should be had to the prescription in the award that so much of the district of Sylhet as lies to the west and north of the described boundary line *i.e. inter alia*, the line running along the boundary between the

thanas of Patharkandi and Barlekha, shall be detached from the Province of Assam and transferred to the Province of East Bengal. This submission does not seem to solve the difficulty, as no such common boundary between the thanas Partharkandi and Barlekha does exist and the boundary line as demarcated on the map has been drawn along the old common boundary line between the thanas of Patharkandi and Jaldhup. With regard to that fact and to the fact that the description provides a common thana boundary line the Jaldhup portion of the forest must be treated as if it belonged to the thana of Barlekha.

As to the claim of Pakistan to the portion of the forest situated in the thana of Karimganj I cannot find that what has been put forward as arguments for such a claim are convincing. Even if there may have been police jurisdiction by the thana Barlekha exercised somewhere in the forest neither this nor the other circumstances relied on by the Pakistan Government can be considered to constitute a boundary thana line as provided in the description of the award. Even here replies what has been said as regards the portion of the forest claimed by India.

My conclusion is therefore that the line indicated in the map marked "A" attached to the award is the boundary between India and Pakistan.

Algot BAGGE.

APPENDIX X

Opinion of the Hon'ble Mr. Justice N. Chandrasekhara Aiyar on Dispute No. IV

Paragraph 13 of Sir Cyril's report is in these terms—

"In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows: —

"A line shall be drawn from the point where the boundary between the thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those thanas, then along the boundary between the thanas Patharkandi and Barlekha, then along the boundary between the thanas of Karimganj and Barlekha, and then along the boundary between the thanas of Karimganj and Beani Bazar to the point where that boundary meets the river Kusiya. The line shall then turn to the east taking the river Kusiya as the boundary and run to the point where that river meets the boundary between the districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the district of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred."

2. In his map—annexure "B" to the report—the line is drawn from A to B northwards and from B to C eastwards. B is above the place marked Birasri and C is to the east of Amalsid. According to Sir Cyril, B to C is the course of the Kusiya river.

3. The case for Pakistan is that B to C does not represent the course of the Kusiya river but that it is the course of the Boglia river. According to them, the real Kusiya runs to the south of Karimganj town from Nilam Bazar and that flowing westwards from there it joins some other stream or streams and becomes Kusiya from Bairagi Bazar downwards.

4. It is only out of deference to the learned Advocate General of East Bengal that I propose to take a few minutes over this contention. It is totally devoid of any substance.

5. We are not at all concerned with ancient maps (survey or thak) which give the name Kusiya to some other stream or channel, or which mention Pooran Kusiya or Langai or Sonai or Sonal. The map of 1937 which Sir Cyril had before him shows very

clearly the course of the stream. It lies to the north of Bairagi Bazar, and Birasri (which is slightly to the north-east of his point B), and from there the course is along the red line up to the point C. It has the name "Boglia R." given to it below Amalsid and above Bhanga in Badarput.

6. Sir Cyril had abundant material before him, apart from the particular map, to assume that BC represented the course of the Kusiya river; and his assumption was correct, whatever the remote history may have been.

7. The India documents mostly consisting of maps and notifications, and Imperial and District Gazetteers, establish this beyond doubt or controversy. I do not propose to refer to all of them. It is enough to draw attention to the revenue survey map, marked Doc. 338, —which is based upon the circuit maps which follow it (Docts. 384 to 395)—and the maps Doc. 396 and Doc. 397. The Karimganj Municipality map drawn in 1915 is Doc. 399. The topographical maps are Docs 410, 402 and 403. The Imperial Gazetteer of India 1887 by Sir William Hunter (Doc. 344) mentions that the river Barak which flows from Cachar forthwith bifurcates into two branches, Surma in the north and Kusiya in the south. To the same effect is the Imperial Gazetteer of 1909 (Doc. 346). The Assam District Gazetteer (Doc. 345) mentions the river from C to B as Kusiya. The Illam settlement officer's report (Doc. 351) at page 67 of India's documents confirmed by the order of the Governor of Assam in Council at page 69 shows Sir Cyril's river as the Kusiya. It is really futile, after all this, to contend that Sir Cyril was not justified in assuming that the river between B and C was Kusiya.

8. It is very common for the same river to be known by different names at different places or different sections of its course. Boglia may well be the name of Kusiya in some part of it. In fact, Sir Cyril had the name "Boglia R." before him when he drew his line.

9. But even conceding for a moment that Sir Cyril was wrong in thinking that BC was Kusiya, what follows? The river course was there, he took it to be Kusiya; and said that it should be the boundary between the two Dominions. He had every right to say so.

10. The position taken by Pakistan leads to a patent absurdity. Points B and C cannot be reached at all if Kusiya is what Pakistan would have it to be. The line BC would fail altogether and there is no alternative line to choose even if we are authorised to do so. It will be the substitution of a fresh line altogether. Mr. Faiz Ali had to admit this and settle down to the concession that on equitable grounds he was prepared to take a portion of the course BC as Kusiya.

11. The argument that under our terms of reference we have only to find out the course of the river Kusiya and not determine whether BC was properly determined as the boundary by Sir Cyril needs no serious attention much less refutation. It is because of the dispute between the two Dominions as regards BC that we have been asked to state or determine what is the course of the river. It is not for purposes of abstract geography or history or in the interests of antiquarian research that this Tribunal has been constituted.

12. BC is the correct course of the Kusiya river and Sir Cyril's award that it shall be the boundary between the two States must be given effect to.

13. I may add a word about the boundary line proceeding north from the north-western corner of the Patharia Hill Forest up to the point B in the map (near Birasri). There are no adequate grounds for holding that this is not a correct delineation of the boundary. Therefore, this portion of the western boundary line as shown in Sir Cyril's award map will also stand.

N. CHANDRASEKHARA AIYAR.

APPENDIX XI

*Opinion of the Hon'ble Mr. Justice Shahabuddin
on Dispute No. IV*

This dispute relates to a portion of the boundary line dividing, between East Bengal (Pakistan) and Assam (India), the district of Sylhet as it was prior to the partition of 1947. This boundary is described, in paragraph 13 of Sir Cyril Radcliffe's Report of the Bengal Boundary Commission relating to Sylhet district and the adjoining districts of Assam, as running along the Kusiya river.

In the map of the district of Sylhet Sir Cyril has delineated this boundary by a line coming from point "A" and extending up to the point "B" which lies on a river that flows from Cachar towards the west and thence in a south-westerly direction. The line then proceeds from point "B" to point "C" in the map where the river branches off from the Barak river of Cachar. Near point "C" in the map the river is described as Boglia river. There is no other name written on the map till the river turns in a south-westerly direction, and when it takes this turn its name is mentioned for the first time in the map as river Kusiya. Lower down to the south of point "B" the boundary between the thanas of Beani Bazar and Karimganj meets a river flowing from the east in a south-westerly direction and its name is noted on the map as river Sonai. This river at its eastern end near Karimganj town is a bifurcation from the river described as Boglia at its off-take from the river Barak. For the sake of convenience, the river named Sonai in the map will hereafter be referred to as the "southern river" and the other river *i.e.*, the one which is marked as the boundary between points "B" and "C" on the map, as the "northern river".

The case for Pakistan is as follows: —

The southern river was wrongly named in the map as Sonai. It is in fact the river Kusiya, and has been bearing that name both in the past and the present. On the other hand the northern river is named Boglia and not Kusiya. The description of the boundary in this area clearly refers to the Kusiya river and not to any other river, and also in the terms of reference to this Tribunal the specific question raised with regard to the dispute is about the course of the river Kusiya. It has, therefore, to be determined whether the northern river is the river Kusiya or the southern. The delineation of the boundary in the map is wrong on account of serious mistakes of facts which have resulted principally from the wrong naming of these rivers on the map. There is therefore a divergence between the map and the description and the map has to be ignored. The southern river turns eastwards after the boundary between the thanas of Karimganj and Beani Bazar meets it, but it does not, strictly speaking, by itself reach Cachar. This would result in the boundary remaining undetermined in part and in order to avoid that contingency a proper and equitable solution of the difficulty is that the boundary line should be held to run along the southern river up to the point where it draws its waters from the northern river through Noti Khal and thence along the eastern portion of the northern river to the Sylhet-Cachar boundary. This would amount to a just and reasonable implementation of the dominant intention of Sir Cyril which was to make the river Kusiya a boundary between Assam and East Bengal.

The case on behalf of India is that the southern river is known as Sonai or Pooran Kusiya, while the northern river is known not only as Boglia but also as Kusiya. There is therefore no divergence between the award and the map. Consequently the boundary as delineated on the map should be followed as the correct boundary.

On behalf of Pakistan three Government Notifications, and a number of documents executed by persons residing on the banks of the two rivers, have been filed. Several decrees of Civil Courts have also been filed. These documents prove that the northern river was called Boglia and the southern river Kusiya. The documents referred to range from 1871 down to 1947. A number of maps dating from 1772 down to 1922 have also been filed by Pakistan. On behalf of India also several Government Notifications, and several maps, old and recent, have been filed in support of its case that the northern river is known as Boglia or Kusiya, and the southern river as Pooran Kusiya or Sonai.

As contended on behalf of Pakistan it appears to me that with regard to the determination of the names of the rivers in question the statements made by persons living on their banks in deeds of transfer for a great number of years are of considerable importance. On behalf of India no such documents have been filed showing that the northern river was called Kusiya. In the notification of 1938 relating to Karimganj and other thanas (Document No. 354) the southern river which is named in Sir Cyril's map as Sonai has been described as the river Kusiya. In the notification of 1922 (Document No. 350) in which the boundaries of all police stations in the district of Sylhet are revised the northern river to the east of thana Karimganj is mentioned as Boglia. Similarly, in the same notification relating to the police station of Badarpur the northern river is again named Boglia. In a notification of 1928 filed by Pakistan (Document No. 260) in describing the boundaries of a piece of land notified for acquisition in the village Dasgram the southern river is described as Kusiya (Longai).

The northern river is not named as Kusiya in all the notifications though in most of those relied on by India it is mentioned as Boglia or Kusiya or Barak. But having regard to the importance which I think should be attached to the statements of the persons living in the locality and the ancient maps of high authority, it appears to me that the preponderance of evidence is in favour of the southern river being Kusiya and the northern river being Boglia, though it cannot be denied that the northern river has also been described as Kusiya in a number of maps, notifications and Gazetteers. I therefore think that the naming of the southern river as Sonai in the map was clearly a mistake, and that it should have been described as Kusiya. It also appears that Sir Cyril was under the wrong impression that the river which he was delineating on the map was flowing towards Cachar, while in fact it flows from Cachar westwards. This is clear from the fact that though the map before him described the northern river as river Boglia at its off-take he seems to have ignored that important fact and mistaken the river to be Kusiya, because he found the words "River Kusiya" written on the extreme west of the northern river and he wrongly presumed it to be flowing towards the east up to the point Birasri and also further east of that point. In these circumstances, there is considerable force in the contention of the learned Advocate-General of East Bengal that the delineation of the boundary was made on the map under a serious mistake of fact. It does not appear that there was before Sir Cyril an issue as to Kusiya, and evidently he was under the impression that there was only one river named Kusiya and was therefore misled by the map. Had the southern river been correctly described as Kusiya and not wrongly as Sonai on the map the delineation would presumably have been along that river as the land boundary meets that river first and it also provides a continuous boundary line eastwards up to Cachar, forming as it does one continuous river line from Barak through the eastern portion of the northern river and the Noti Khal up to the land boundary. The southern river had a preferential claim to be made the boundary as the land boundary meets it first and it has been known as Kusiya since 1772. However, if a strictly technical view is taken, the southern river may not be said to reach the borders of Cachar and this would result in a partial non-determination of the boundary. To avoid this, the contention of the learned Advocate-General of East Bengal that the boundary line should run along the southern river up to the point where it draws its waters from the northern river through Noti Khal and thence along that river deserves to be accepted on the broad principles of justice and equity. After all the head-waters of the southern river cannot be dissociated from the river itself.

I am therefore of the opinion that the boundary in this area should run along the southern river *i.e.*, the river wrongly described as Sonai in the Award map, from the point where the land boundary running from the south to the north meets the said river, to the point from where that river takes its waters through Noti Khal from the northern river *i.e.*, the river named on the said map as Boglia, and thence along the latter river to the boundary between the districts of Sylhet and Cachar.

M. SHAHABUDDIN.

*APPENDIX XII**The opinion of the Chairman on Dispute No. IV*

The case submitted in this dispute on behalf of the Government of Pakistan is that the black line on the map marked "A" attached to the award, going from Gobindapur to Karimganj town, just passing under a figure 32 on the map "A" shall form the boundary line between East Bengal and Assam. As to the boundary line delineated on the map from Karimganj to the boundary between the districts of Sylhet and Cachar the Government of Pakistan concede that this part of the boundary line is following a river which for equitable reasons may be deemed to be the river Kusiya.

The case submitted by the Government of India is that the red line delineated in the map "A" attached to the award as going from Gobindapur over Birasri to Karimganj town and continuing to the boundary between the districts of Sylhet and Cachar shall be the boundary line between East Bengal and Assam.

The base of the contention of the Government of Pakistan is that the course of the river Kusiya is running as shown by the black line afore-mentioned on the map "A" until the little stream Noti Khal which is joining the river Kusiya with the river which further on meets the boundary between the districts of Sylhet and Cachar and which river for equitable reasons may be deemed to be the river Kusiya.

The base of the claim of the Government of India is that the course of the River Kusiya is running along the red line aforementioned, delineated on the map "A".

There is in fact a certain confusion as regards the name of the river which according to the description and the map shall be taken as the boundary between India and Pakistan from the point where the boundary between the thanas of Karimganj and Beani Bazar meets this river until the point where the river meets the boundary between the districts of Sylhet and Cachar.

The river which the boundary delineated on the map "A" is following, has, according to evidence produced, been called from time to time Kusiya or Boglia or Barak, and the last stretch of the river which according to the Government of Pakistan ought to be taken as the boundary for arriving at a just and reasonable implementation of the dominant intention of Sir Cyril Radcliffe is on the map itself called the Boglia river. On the other side the name of Kusiya has been used also for the river relied upon by the Government of Pakistan which river through a stream called Noti Khal is connected with the river which on the map "A" is marked Boglia.

It seems to me that under such circumstances the name of the river used in the description does not give in itself a sufficient guidance. The fact, that Sir Cyril Radcliffe has in delineating the boundary followed the first-mentioned river, must then be taken as a sufficient proof that this river is the river referred to in the description.

My conclusion is therefore that from the point where the boundary between the thanas of Karimganj and Beani Bazar meets the river described as the Sonai river on the map "A" attached to the award (Gobindapur) up to the point marked "B" on the map (Birasri) the red line indicated on the map is the boundary between India and Pakistan.

From the point "B" on the map the boundary between India and Pakistan shall turn to the east and follow the river which according to the map runs to that point from the point on the boundary line between the districts of Sylhet and Cachar which has been marked "C" on the map.

Algot BAGGE.

Annex B17

Note Verbale from the High Commission of India, Dacca to the Bangladesh Ministry of Foreign Affairs, No. DAC/POL/111/1/74 (31 October 1974)

No. DAC/POL/111/1/74

The High Commission of India in Dacca presents its compliments to the Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh, and, upon instructions from the Government of India, has the honour to state as follows:

It will be recalled that at a meeting held in New Delhi on the 9th May, 1974, between the Foreign Secretaries of India and Bangladesh, it was agreed that the maritime boundary between India and Bangladesh should be settled. Official-level talks were to be held in Dacca, in early June 1974, in order to arrive at joint recommendations to be made to the two Governments on the Indo-Bangladesh maritime boundary. The Bangladesh Foreign Secretary had kindly undertaken to send an invitation for the talks on his return to Dacca. Since an invitation was not received in time for these talks, it was agreed that the talks may be held after the conclusion of the Caracas Conference on the Law of the Sea, and talks were contemplated about the middle of October 1974.

2. In the meantime, the Government of India's attention has been drawn to a Gazette notification issued by the Government of Bangladesh in April 1974, which establishes a 200-mile Bangladesh economic zone, to be measured from a straight baseline joining a series of eight baseline points from which the breadth of the territorial sea is to be measured. The Government of India came to know of these baseline points only at the end of September 1974. It appears that the baseline points follow the 10-fathom line, with respect to which the Bangladesh Government had also made a proposal at the end of the Caracas Conference on the Law of the Sea.

3. While appreciating the desire of the Bangladesh Government to reserve the waters adjoining their coast for the exclusive use of their citizens, the Government of India is constrained to point out that such baselines should not and cannot be used for determining the maritime boundary between Bangladesh and India. This maritime boundary is to be drawn

in accordance with the well-known and established rules of international law on the subject. Examination of the implications of the baseline points mentioned for the maritime boundary between Bangladesh and India shows that baseline point No. 1 extends substantially into the Indian area. The basis of the location of this point is not known to the Government of India.

4. It will be appreciated that a unilateral action taken by one party, however well-motivated, should not adversely affect the interests of its friendly neighbour. It is accordingly desirable that the question of the maritime boundary between India and Bangladesh should be discussed between officials of India and Bangladesh immediately so that joint recommendations can be made to the two Governments. This course of action would avoid any possible differences or disputes in the area, particularly when both Governments are eager to explore and exploit the resources of the sea and the continental shelf in their respective zones.

5. The attention of the Government of India has also been drawn to the fact that the Government of Bangladesh are entertaining applications or offers for award of contracts for exploration of the area, and that a Letter of Intent has already been issued to one Ashland Oil Company for off-shore oil exploration of the continental shelf adjoining the Indian area. It is suggested that, pending the settlement of the maritime boundary between the two countries, the Government of Bangladesh desist from any exploration of the area considered as Indian by the Government of India and ensure that no exploration work is carried out by any party, whether by the Ashland Oil Company or any other, on behalf of the Government of Bangladesh in such area.

6. The Government of India will be ready to hold technical-level talks with the Government of Bangladesh on the question of determining the maritime boundary between India and Bangladesh either at Dacca or at Delhi and at any time in the near future as may be convenient to the Government of Bangladesh.

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The High Commission of India in Dacca avails itself of this opportunity to renew to the Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh, the assurances of its highest consideration.

DACCA, the 31st October 1974.

Ministry of Foreign Affairs
Government of the People's Republic of Bangladesh
DACCA

Annex B18

Joint Press Statement of Bangladesh Minister of Foreign Affairs and Indian Minister of External Affairs (18 August 1980)

Government of Bangladesh
Ministry of Foreign Affairs
(External Publicity Division)
Dacca

Joint Press Statement issued at the end of the
visit of His Excellency, Mr. P. V. Narasimha Rao, Minister
for External Affairs of the Government of India to
Bangladesh from 16th to 18th August, 1980.

18th August, 1980.

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7. Both sides agreed that steps should be taken for early implementation of the 1974 Land Boundary Agreement and that a meeting would be held in October 1980 to work out the details for such implementation.
8. The two sides agreed that the talks on the delimitation of the maritime boundary between the two countries would be held in November, 1980 with a view to reaching a mutually acceptable solution as early as possible.
9. The question of the newly emerged island(s) (New Moore/ South Talpatty/ Purbasha) at the estuary of the border river Hariabhanga was also discussed. The two sides agreed that study of the additional information exchanged between the two governments further discussion would take place with a view to settling it peacefully at an early date.
10. The long term augmentation of the dry season flow of the Ganges at Farakka was discussed. Both sides explained the difficulties that they faced. It was agreed. It was agreed that **efforts** should be intensified to find a mutually acceptable solution at an early date.
11. The two sides agreed that efforts should be made to ensure that continued peace and tranquility is maintained on the border. It was reiterated that neither India nor Bangladesh would permit their territories to be used for hostile activities directed against the other. Both sides also noted the need to stop illegal movement of peoples across the border and agreed that the existing arrangement and cooperation in this regard would be further strengthened.
12. The two sides noted with satisfaction that a programme of cultural and academic exchange between the two countries would be signed shortly.
13. The improvement of tele-communications between the two countries was also discussed. Both sides noted with satisfaction that substantial progress has already been made and that further efforts in this direction would be continued.

Contd...P/3.

Joint Press Statement

1. At the invitation of His Excellency, Professor Muhammad Shamsul Huq, Foreign Minister of Bangladesh, His Excellency, Mr. P.V. Narasimha Rao, Minister for External Affairs of the Government of India paid a three-day visit to Bangladesh from 16th to 18th August, 1980.
2. During his stay His Excellency, the Minister for External Affairs of India called on His Excellency, President Ziaur Rahman of the People's Republic of Bangladesh. He also called on His Excellency, Professor Muhammad Shamsul Huq, the Foreign Minister of Bangladesh.
3. The Minister for External Affairs of India also paid homage to the martyrs of 1971 at the Jatiyo Shaheed Smriti Shoudha.
4. The two Foreign Ministers assisted by their respective aides held several rounds of talks. The talks were held in an atmosphere of mutual cordiality, trust and understanding. The two sides reviewed bilateral relations and also discussed regional and international matters of mutual interest.
5. The two sides viewed with deep concern the deteriorating international situation posing an increasing threat to peace and security of the region and of the world. They stressed the need for concerted action on the part of the peace-loving nations to eliminate the source of tension and conflict and uphold the principles of the United Nations Charter and the Non-Aligned Movement.
6. The two sides agreed that the two countries should continue their efforts to maintain a climate of mutual trust and understanding and further consolidate and strengthen the friendly relations between them.

- 3 -

14. As regards the establishment of further railway links between the two countries, the two sides agreed that a delegation from India will visit Bangladesh shortly.

15. It was noted that as neighbouring countries there was much scope for increasing cooperation in the economic commercial, scientific and technological fields. The two sides agreed to intensify their efforts for cooperation in these fields for mutual benefit.

16. The Bangladesh proposal for a South Asian forum and the holding of a Summit Meeting to consider this proposal for regional cooperation was discussed. The Indian side reiterated that they welcomed the proposal in principle and it was agreed that necessary preparatory work should be undertaken for this purpose.

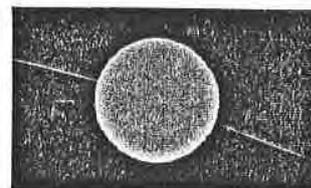
17. The Minister for External Affairs of India expressed his gratitude to the Foreign Minister of Bangladesh for the generous hospitality shown to him and to the members of his Delegation. He extended an invitation to the latter to pay an official visit to India which the Foreign Minister of Bangladesh accepted with pleasure.

Annex B19

Avtar Singh Bhasin, ed. *India-Bangladesh Relations: Documents 1971-2002*, Vol. IV (2003)



India



Bangladesh
Relations

Documents—1971-2002

Volume - IV

Edited & Introduced by
AVTAR SINGH BHASIN

804. Question in the Lok Sabha : "Agreement with Bangladesh on offshore and land boundaries".

New Delhi, February 20, 1975

Will the Minister of External Affairs be pleased to state :

- (a) whether any agreement has been reached between India and Bangladesh to determine their offshore and land boundaries;
- (b) if so, the particulars with regard to the areas of land that has to be transferred to Bangladesh or received from them in return and the ocean boundaries determined under the said agreement; and
- (c) whether the agreement seals the confusion over the right of the respective countries to undertake drilling operations in the sea bed for which some contracts have already been given by the Bangladesh Government to some foreign firm ?

The Deputy Minister in the Ministry of External Affairs (Shri Bipinpal Das):

- (a) An agreement on demarcation of the land boundary between India and Bangladesh was concluded on 16 May, 1974. The question of delimitation of the maritime boundary is under discussion between the two Governments¹.
- (b) and (c). The precise area of land that will be exchanged between India and Bangladesh as a result of the Agreement will become known when demarcation has been completed. As to the maritime boundary, an agreement has yet to be concluded.



1. A three-point Agreement on the principles of delineation of maritime boundary was evolved at the three-day Foreign Secretary-level talks between India and Bangladesh in Dacca on February 10, 1975.

The three points of the general agreement on the maritime boundary were :

- (1) The maritime boundary between the two countries should be delineated by mutual agreement.
- (2) It should be demarcated in a manner which should be equitable to India and Bangladesh.
- (3) The line of demarcation should be drawn in a manner which should safeguard the interests of both countries.

A Spokesman of the Indian High Commission said that further discussions would be held in New Delhi between the two sides before finalising plans for physical demarcation of the sea boundary. The issue assumed urgency to facilitate oil exploration by India and Bangladesh in the offshore waters in respective zones without overlapping of territory.

Annex B20

United States of America, Under Secretary of Defense for Policy, *Maritime Claims Reference Manual* (2005)



DoD 2005.1-M

MARITIME CLAIMS REFERENCE MANUAL

6/23/2005
UNDER SECRETARY OF DEFENSE FOR POLICY

INDIA

SUMMARY OF CLAIMS

TYPE	DATE	SOURCE	LIMITS	NOTES
TERRITORIAL SEA	Aug 76	Act No. 80 (Territorial Waters, Continental Shelf, Exclusive Economic Zone & Other Maritime Zones Act)	12nm	Foreign warships must provide notice before entering territorial sea. <i>This requirement is not recognized by the U.S.</i> U.S. protested requirement in 1976, 1983 and 1997 and conducted operational assertions in 1985-89, 1991-1994, 1996, 1997, 1999, and 2001.
ARCHIPELAGIC, STRAIGHT BASELINES, & HISTORIC CLAIMS	Aug 76	Act No. 80		Enables government to declare waters as historic.
	Jun 79	Law No. 41		Waters of Palk Bay between coast and boundary with Sri Lanka claimed as internal waters; waters of Gulf of Mannar between coast and maritime boundary claimed as historic waters. <i>This claim is not recognized by the U.S.</i> U.S. conducted operational assertions in 1993 and 1994, to Gulf of Mannar claim in 1999.
CONTIGUOUS ZONE	Aug 76	Act No. 80	24nm	Claims authority over area for security purposes. <i>This claim is not recognized by the U.S.</i> The U.S. conducted operational assertions in 2001.
CONTINENTAL SHELF	Aug 76	Act No. 80	200 /CM	
FISHING ZONE/EEZ	Aug 76	Act. No. 80	200nm	
	Jun 95	Declaration upon Ratification of 1982 LOS Convention		Requires prior consent for military exercises or maneuvers in EEZ or on continental shelf. <i>This requirement is not recognized by the U.S.</i> U.S. conducted operational assertions in 1999 and 2001.
	Jan 98	Naval HQ Navarea Notice		Requires 24-hour prior notice from vessels entering EEZ with cargoes "including dangerous goods and chemicals, oil, noxious liquid and harmful substances and radioactive material." <i>This requirement is not recognized by the U.S.</i> and was protested in 1998. U.S. conducted operational assertion in 1999.

DoD 2005.1-M

TYPE	DATE	SOURCE	LIMITS	NOTES
MARITIME BOUNDARIES	Jul 74	Agreement		Palk Strait boundary agreement with Sri Lanka EIF. See <u>LIS</u> No. 66.
	Dec 74 & Aug 77	Agreements		Continental shelf boundary agreements with Indonesia EIF. See <u>LIS</u> Nos. 62, 93.
	May 76	Agreement		Maritime boundary agreement with Sri Lanka (Gulf of Mannar and Bay of Bengal) EIF. See <u>LIS</u> No. 77.
	Jul 76	Agreement (supplemented Nov 76)		Established trijunction point in Gulf of Mannar between Sri Lanka, India, and the Maldives.
	Jan 77	Agreement		Continental shelf boundary agreement with Indonesia (Andaman Sea, Indian Ocean).
	Jun 78	Agreement		Maritime boundary agreement with the Maldives (Arabian Sea).
	Jun 78	Agreement		Established trijunction point in Andaman Sea between Thailand, India, and Indonesia.
	Dec 78	Agreement		Continental shelf boundary agreement with Thailand (Andaman Sea) EIF.
	Mar 79	Agreement		Boundary agreement with Indonesia and Malaysia EIF.
	Dec 86	Agreement		Maritime boundary agreement with Burma on the delimitation of the Andaman Sea in the Coco Channel and in the Bay of Bengal.
	Oct 93	Agreement		Established trijunction point in Andaman Sea between Burma, India, and Thailand.
	LOS CONVENTION	Dec 82		
Jul 94				Signed Part XI Agreement.
Jun 95				Ratified Convention and Part XI Agreement, with Declaration requiring prior consent for military exercises in EEZ, continental shelf.

MARITIME BOUNDARIES**INDIA - BURMA**

The following is extracted from the 23 December 1986 Agreement between India and Burma on the Delimitation of the Maritime Boundary in the Andaman Sea, the Coco Channel, and the Bay of Bengal.

Article I

The maritime boundary between Burma and India in the Andaman Sea and in the Coco Channel is the straight lines connecting points 1 to 14, the geographical co-ordinates of which are in the sequence given below:

**TABLE C1.T105.
INDIA - BURMA MARITIME BOUNDARY: ANDAMAN SEA AND COCO CHANNEL**

POINT	LATITUDE NORTH	LONGITUDE EAST
1	09° 38' 00"	95° 35' 25"
2	09° 53' 14"	95° 28' 00"
3	10° 18' 42"	95° 16' 02"
4	10° 28' 00"	95° 15' 58"
5	10° 44' 53"	95° 22' 00"
6	11° 43' 17"	95° 26' 00"
7	12° 19' 43"	95° 30' 00"
8	12° 54' 07"	95° 41' 00"
9	13° 48' 00"	95° 02' 00"
10	13° 48' 00"	93° 50' 00"
11	13° 34' 18"	93° 40' 59"
12	13° 49' 11"	93° 08' 05"
13	13° 57' 29"	92° 54' 50"
14	14° 00' 59"	92° 50' 02"

The extension of the maritime boundary beyond point 1 up to the maritime boundary trijunction point between Burma, India and Thailand will be done subsequently after the trijunction point is established by agreement between the three countries.

Article II

The Maritime Boundary between Burma and India in the Bay of Bengal is the straight lines connecting points 14 to 16, the geographical coordinates of which are in the sequence given below:

**TABLE C1.T106.
INDIA - BURMA MARITIME BOUNDARY: BAY OF BENGAL**

POINT	LATITUDE NORTH	LONGITUDE EAST
14	14° 00' 59"	92° 50' 02"
15	14° 17' 42"	92° 24' 17"
16	15° 42' 50"	90° 14' 01"

The extension of the maritime boundary beyond point 16 in the Bay of Bengal will be done subsequently.

INDIA - INDONESIA - THAILAND

The following is extracted from Limits in the Seas, No. 93, "Continental Shelf Boundaries: India-Indonesia-Thailand" of 17 August 1981.

India, Indonesia, and Thailand agreed upon a common trijunction point on June 22, 1978, and the agreement came into force March 2, 1979.

The "Common Trijunction Point" of the three bilateral boundaries, situated at 7° 47'00"N, 95° 31'48"E, is essentially equidistant from India and Indonesia, but not from Thailand; it is approximately 31.5 miles farther from Thailand. The relationship of this trijunction point to the nearest point on the respective coastlines is as follows:

**TABLE C1.T107.
INDIA - INDONESIA - THAILAND COMMON TRIJUNCTION POINTS**

BASEPOINT	STATE	DIST. TO TRIJUNCTION PT. (NM)
Great Nocobar Island (northeast coast)	India	103.9
Pulau Rondo	Indonesia	104.1
Ko Huyong (southernmost island of Mu Ko Similan)	Thailand	132.5

INDIA - SRI LANKA

Excerpts from the agreement and the comments following it are extracted from Limits in the Seas, No. 66, "Historic Water Boundary: India-Sri Lanka" of 12 December 1975.

The Governments of the Republic of India and the Republic of Sri Lanka agreed on June 26-28, 1974, to the delimitation of a boundary through the "historic waters" of Palk Bay. The agreement, which came into force on July 8, 1974, has been printed in the Government of India's Notice to Mariners, Edition No. 9, Notices 133 to 156, April 15, 1975. Selected portions of the text are as follows:

The boundary between India and Sri Lanka in the waters from Adam's Bridge to Palk Strait shall be arcs of Great Circles between the following positions, in the sequence given below, defined by latitude and longitude.

**TABLE C1.T108.
INDIA - SRI LANKA MARITIME BOUNDARY COORDINATES**

POINT	LATITUDE NORTH	LONGITUDE EAST
1	10° 05'	80° 03'
2	09° 57'	79° 35'
3	09° 40'.15	79° 22'.60
4	09° 21'.80	79° 30'.70
5	09° 13'	79° 32'
6	09° 06'	79° 32'

U.S. ANALYSIS

The India-Sri Lanka agreement delimits a maritime boundary containing two terminal and four turning points through the historic waters of Palk Bay. While the agreement does not specify the Palk Bay closing line, it may be inferred from the location of Position 1 and the geographic features of the adjacent coasts of India and Sri Lanka. On the north, the "natural entrance point" appears to be the low-water headland of Point Calimere, while the southern point is Palmyrah Point on the northeast coast of Ceylon. The total length of this closing line is approximately 35.107 nautical miles.

The total length of the maritime boundary is 85.375 nautical miles. Distances between the Positions of the treaty are as follows:

**TABLE C1.T109.
INDIA - SRI LANKA MARITIME BOUNDARY: U.S. ANALYSIS**

INDIA - SRI LANKA MARITIME BOUNDARY: U.S. ANALYSIS		
POSITIONS	DISTANCE (NM)	APPROXIMATE WATER DEPTHS
1 - 2	28.735	6.5 fathoms
2 - 3	20.832	6.5 - 7 fathoms
3 - 4	20.004	7 - 6.75 fathoms
4 - 5	8.883	6.75 - 6 fathoms

INDIA - SRI LANKA MARITIME BOUNDARY: U.S. ANALYSIS		
POSITIONS	DISTANCE (NM)	APPROXIMATE WATER DEPTHS
5 - 6	6.921	6 fathoms to low tide

The relationships between the positions and the national baselines of India and Sri Lanka are as follows:

TABLE C1.T110.
INDIA - SRI LANKA NATIONAL BASELINE POSITIONS

Position	Distance to Baseline (nm)		Baseline Points		Comments
	India	Sri Lanka	India	Sri Lanka	
1	15.748	19.360	Calimere	Palmyrah	No. 1 is situated approximately 15.748 nm, i.e., equidistant, between Pt. Calimere and an unnamed cape west of Kankesanturai (Ceylon). The ensuing line between Positions 1 and 2 may be deemed to be selectively but not strictly equidistant.
2	19.469	19.432	unnamed Island (09°57'N, 10°02'E)	Eluvativu Island	The slight discrepancy in the distances may stem from the determined positions of the base points. Position 2 may, as a result, be deemed to be selectively equidistant.
3	21.828	20.595	Pambar Delta	Delft I.	
4	10.879	12.279	Pamban I.	Delft I.	Position 4, of course, is situated much closer to the island of Kachchativu (1.187 nm). The island has been allocated to Sri Lanka by the maritime boundary.
5	5.815	6.921	unnamed		Position No. 5 is Adams Bridge Is. equidistant (12.163nm) from both Pamban (India) and Mannar (Sri Lanka).
6					According to USNHO chart No. 63250, Position 6 falls on a low-tide area which joins two small islands in Adams Bridge. The western island would fall to India; the eastern to Sri Lanka.

Summary

The delimitation reflects a selective, i.e. modified, application of the principle of equidistance. As noted, the maritime boundary divides the historic waters and the seabed of Palk Bay. Traditional fishing rights of both parties, however, are preserved. The boundary agreement further serves to settle peacefully the Kachchativu island dispute and to delimit the India-Sri Lanka boundary in the Adams Bridge region.

It is understood that further negotiations between the two States have begun to extend the maritime boundary eastward into the Bay of Bengal and southward through the Gulf of Mannar. The waters of the latter are also deemed to be "historic" by India and Sri Lanka.

Annex B21

Note Verbale from the Permanent Mission of Bangladesh to the United Nations to the Secretary-General of the United Nations, No. PMBNY-UNCLOS/2009 (23 July 2009)



1/3

**PERMANENT MISSION OF BANGLADESH
TO THE UNITED NATIONS**

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No. PMBNY-UNCLOS/2009-

Note Verbale

The Permanent Mission of the Peoples Republic of Bangladesh to the United Nations presents its compliments to the Secretary-General of the United Nations in his capacity as the depositary for the United Nations Convention on Law of the Sea ("UNCLOS"), and draws his attention to the following observations of the Government of Bangladesh arising from his communication of 23 December 2008, Ref. CLCS.16.2008.LOS (Continental Shelf Notification) concerning the submission presented by the Union of Myanmar to the Commission on the Limits of the Continental Shelf (the "Commission").

Based on its initial review of the Executive Summary of Myanmar's submission, the Mission has the honour to further convey the observation of the Government of Bangladesh that the submission fails to comply with UNCLOS on both substantive and procedural grounds and with the Rules of Procedure of the Commission (the "Rules"). Attention is drawn, in particular, to the following observations:

1. In Section IV (Relevant Maritime Delimitations) of the Executive Summary, Myanmar states:

"In accordance with paragraph 2(a) of Annex I to the Commission's Rules of Procedures, Myanmar wishes to inform the Commission that the area of continental shelf that is the subject of this submission is not subject to any dispute between Myanmar and other States. ... Delimitation negotiations between Myanmar and Bangladesh are ongoing and consistent with Article 76, paragraph 10, and [sic] this submission has been made without prejudice to the eventual delimitation."

2. In this regard, the Government of Bangladesh observes that the delimitation negotiations mentioned by Myanmar in its Executive Summary relate to the continental shelf (as well as to the EEZ) between Bangladesh and Myanmar and that such delimitation remains

2/3

unresolved and the subject of ongoing negotiation. The unresolved delimitation in the Bay of Bengal is therefore to be considered as a dispute for the purposes of Rule 46 of the Rules, and of Annex I thereto.

3. In accordance with UNCLOS, including Article 76 and Annex II thereto, and the Rules of Procedure of the Commission, and in particular Annex I thereto, the actions of the Commission may not prejudice matters relating to the delimitation of boundaries between States with adjacent or opposite coasts. Yet, Myanmar's submission invites the Commission to do just that, by claiming, incorrectly, that "the subject of this submission is not subject to any dispute between Myanmar and other States...." In fact, the areas claimed by Myanmar in its submission to the Commission as part of its putative continental shelf are the natural prolongation of Bangladesh and hence Myanmar's claim is disputed by Bangladesh.

4. The straight baselines claimed by Myanmar, as recently defined by Myanmar in The Law Amending the Territorial Sea and Maritime Zones Law enacted on 5 December 2008 (The State and Peace Development Council Law No. 8/2008), and identified by it in each of Figures 1, 2 and 3 of its Executive Summary, have been objected to by Bangladesh. In particular, by a Note Verbale dated 30 June 2009, the Government of Bangladesh has protested to the Government of Myanmar the straight baselines claimed by Myanmar for the Preparis and Co Co islands, and along the coast of Myanmar up to Oyster Island. They are, accordingly, disputed under Rule 46 and Annex I to the Rules.

5. The Government of Bangladesh is of the view that, having no competence over questions of baselines from which the breadth of territorial sea is measured, the CLCS should not be perceived as endorsing disputed baselines, including those proclaimed by the Government of Myanmar and protested by the Government of Bangladesh, which are, in any event, not consistent with UNCLOS or international law.

6. The Executive Summary, in Section III (General Description of the Continental Shelf Margin and Provisions of Article 76 Invoked), states that Myanmar has claimed a natural prolongation of its landmass through to the outer edge of the 'Rakhine Continental Margin' on the basis of morphology, geology, and tectonics. The Government of Bangladesh believes this assertion is not supported by persuasive morphological, geological, or tectonic evidence. Scientific research and analyses have established that the morphology of the seabed in the Bay of Bengal is marked by a regional slope where water depth gradually increases from north to

3/3

south. This characteristic contradicts the notion of a westward prolongation of Myanmar's landmass, which would imply a regional slope at a right angle; *i.e.*, from east to west. The characteristic also underscores the reality that the seabed in the northern Bay of Bengal owes much of its shape and composition to the high volumes of sediment that have emerged mostly from or across the landmass of Bangladesh over geological time.

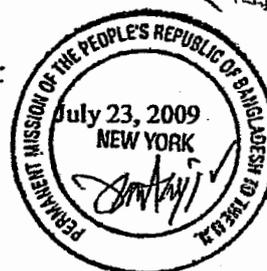
7. The Government of Bangladesh reserves its right to submit further comments in relation to the submission of Myanmar as and when a more qualified assessment can be conducted, including an assessment of relevant scientific data. Bangladesh also reserves its right to submit comments on Myanmar's contentions regarding the purported applicability of the Statement of Understanding set out at Annex II of the Final Act of UNCLOS III.

8. Recalling paragraph 5(a) of Annex I of the Rules, the Government of Bangladesh observes that, given the presence of a dispute between Bangladesh and Myanmar concerning entitlement to the parts of the continental shelf in the Bay of Bengal claimed by Myanmar in its submission, the Commission may not "consider and qualify" the submission made by Myanmar without the "prior consent given by all States that are parties to such a dispute."

9. In these circumstances, and in accordance with articles 76 and 83(3) of the Convention and Annex I to the Commission's Rules of Procedures, Bangladesh will make every effort to reach a practical arrangement with Myanmar that will allow the Commission, in accordance with paragraph 5(a) of Annex I to its Rules of Procedure, to consider both the submission of Myanmar and the submission that Bangladesh will make by July 2011.

The Permanent Mission of Bangladesh to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations assurances of its highest consideration.

Secretary General
The United Nations
New York, 10017
[Attn: Director (DOALOS)]
Fax: (212) 963 5847



Annex B22

Note Verbale from the Bangladesh Ministry of Foreign Affairs to the Indian Ministry of Foreign Affairs, No. MOFA/UNCLOS/320/1/187 (25 October 2009)

MINISTRY OF FOREIGN AFFAIRS
GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA



পররাষ্ট্র দফতর
গণপ্রজাতন্ত্রী বাংলাদেশ
সরকার
ঢাকা

No. MOFA/UNCLOS/320/1 / 187

Note Verbale

1. The Ministry of Foreign Affairs of the Government of the People's Republic of Bangladesh presents its compliments to the High Commission of the Republic of India in Dhaka, and has the honour to draw the attention of the latter to the coastal baselines declared by a Notification of Ministry of External Affairs of India, New Delhi, the 11th May 2009 [S.O. 1197 (E)] under section 10 read with Sub-section 2 of Section 3 of its *The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976*, which include straight baselines in certain parts of India's east coast after a lapse of 33 years during which India exclusively used the low water line as its coastal baseline in this region.

2. The Government of Bangladesh is of the view that the gazette notification specifying coordinates of the straight baselines to measure India's territorial sea, contiguous zone, exclusive economic zone and continental shelf in the Bay of Bengal does not conform to the established rules of international law applicable to the matter, as reflected in Article 7 of the United Nations Convention on Law of the Sea 1982 (UNCLOS), to which India is a Party, as well as customary international law. The Government of Bangladesh would like to recall that Article 7 (1) of UNCLOS states that straight baselines may be used only in two specific geographic circumstances, that is (a) in localities where the coastline is deeply indented and cut into, or (b) if there is a fringe of islands along the coast in the immediate vicinity of the coast. The Government of Bangladesh believes that neither of the circumstances exists to justify the straight baseline claims of India along its east coast. In addition, some of the base points for these straight baselines are completely at sea, (i) without reference to any low water mark of any proximate area of terra firma and (ii) not grounded on some form of coastline.

3. The Government of Bangladesh would like to mention that, while it is in the process of analyzing the possible ramifications of the baselines as gazetted by India, it has already been able to determine that the manner in which India has drawn its putative baselines will have serious impacts on the delimitation of a maritime boundary which has to be effected in accordance with equitable principles.

4. The Government of Bangladesh would also like to strongly protest the placing of base points, especially those numbered 88 and 89, by India within the maritime jurisdiction of Bangladesh. The Government of Bangladesh would like to remind India that, as per Paragraph 8 of Annexure A of the Report of *The Bengal Boundary Commission, 12 August 1947*, along with the map published in Annexure B, the boundary between Bangladesh and India runs southwards which bars India from using any feature that is situated east of such line (South Talpatty/New

Moore) as a base point or as part of an Indian baseline. It is also not acceptable to Bangladesh that India draws its straight baselines connecting these points to each other and to base point 87, which encroaches more than 5 nautical miles into the area which constitutes internal waters of Bangladesh as per the Report of *The Bengal Boundary Commission* as well as under the Territorial Waters and Maritime Zones Act 1974 of Bangladesh.

5. The Government of Bangladesh also expresses its deepest concern that India's establishment of these base points and its promulgation of straight baselines connecting them would impede the historic navigation rights and shipping of traditional Bangladeshi vessels.

6. The Government of Bangladesh reserves its rights in regard to the straight baselines gazetted by India that do not conform to established principles of international law including UNCLOS, and intends to preserve its rights to not to take the straight baselines of India into consideration, insofar as they might affect maritime boundary delimitation or navigational rights. The Government of Bangladesh would also like to request the Government of India to amend the Gazette Notification according to the observations made by the Government of Bangladesh and remove the base points 88 and 89 particularly, as these points infringe the sovereignty of Bangladesh.

7. The Ministry of Foreign Affairs of Bangladesh avails itself of this opportunity to renew to the High Commission of the Republic of India the assurances of its highest consideration.

High Commission of the Republic of India
Dhaka



Annex B23

Note Verbale from the Permanent Mission of Bangladesh to the Secretary-General of the United Nations, No. PMBNY-UNCLOS/2009-3135 (29 October 2009)



**PERMANENT MISSION OF BANGLADESH
TO THE UNITED NATIONS**

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No. PMBNY-UNCLOS/2009-

The Permanent Mission of the Peoples Republic of Bangladesh to the United Nations presents its compliments to the Secretary-General of the United Nations in his capacity as the depository for the United Nations Convention on Law of the Sea 1982 (“UNCLOS”), and draws his attention to the following observations of the Government of Bangladesh arising from his communication of 14 May 2009, Ref. No.CLCS.48.2009.LOS (Continental Shelf Notification) concerning the submission presented by the Republic of India to the Commission on the Limits of the Continental Shelf (the “Commission”).

2. Based on its initial review of the Executive Summary of India’s submission, the Government of Bangladesh observes that the submission fails to comply on both substantive and procedural grounds with UNCLOS and with the Rules of Procedure of the Commission (the “Rules”). Major elements of which are given below:

a. Delimitation of the continental shelf as well as the exclusive economic zone and the territorial sea in the Bay of Bengal between India and Bangladesh remains unresolved and the subject of conflicting claims and ongoing negotiations. Bangladesh has rejected and continues to reject all delimitations claimed by India in the Bay of Bengal, to the extent they infringe on the rights and claims of Bangladesh, as they are inconsistent with UNCLOS and general principles of international law. Bangladesh also objects to the proposed baselines as gazetted by India on 11 May 2009 and from which India purports to measure the breadth of its territorial sea, exclusive economic zone and continental shelf in the Bay of Bengal on the grounds that these too are inconsistent with UNCLOS and general international law. On 8 October 2009, Bangladesh initiated arbitration proceedings against India, pursuant to UNCLOS Article 287 and Annex VII, for the purpose of achieving a delimitation of the boundaries between Bangladesh and India in the territorial sea, exclusive economic zone and continental shelf. The unresolved delimitation in the Bay of Bengal is, therefore, to be considered as a dispute for the purposes of Rule 46 of the Rules, and of Annex I thereto.

b. In accordance with UNCLOS, including Article 76 and Annex II thereto, and the Rules of Procedure of the Commission, and in particular Annex I thereto, the actions of the Commission may not prejudice matters relating to the delimitation of boundaries between States with adjacent or opposite coasts. Yet, India's submission invites the Commission to do just that, because the areas claimed by India in its submission to the Commission as part of its putative continental shelf are the natural prolongation of Bangladesh and hence India's claim is disputed by Bangladesh.

c. India has claimed a natural prolongation of its landmass through to the outer edge of the 'Bay of Bengal sector' and the 'Western Andamans sector'. The Government of Bangladesh believes this assertion is not supported by morphological, geological, or tectonic evidences. Scientific research and analyses have established that the morphology of the seabed in the Bay of Bengal is marked by a regional slope where water depth gradually increases in a seaward direction from north to south. This characteristic contradicts the notion of an eastward prolongation of India's continental landmass, or of a westward prolongation of the landmass of the Andaman Islands, which would imply regional slopes at right angles to the coastlines of those two landmasses, i.e., from west to east, and from east to west, respectively. The characteristic also underscores the reality that the seabed in the northern and central Bay of Bengal owes much of its shape and composition to the high volumes of sediments that has emerged mostly from or across the landmass of Bangladesh over geological time. The entire central part of the Bay is known to overlies oceanic crust, as proven by seismic refraction and other geophysical studies and measurements. Hence for any State that borders upon the Bay of Bengal, the only natural prolongation that can be claimed is the one that arises from the accumulation of sediments over this oceanic crust in the seaward direction of its flow. In consideration of its location and shape of the sedimentary wedge, the accumulated sediments therefore comprise the exclusive natural prolongation of Bangladesh.

3. The Government of Bangladesh reserves its right to submit further comments in relation to the submission of India as and when a more qualified assessment can be conducted, including an assessment of emerging relevant scientific data. Bangladesh also reserves its right to submit comments on India's contentions regarding the purported applicability of the Statement of Understanding set out at the Annex II of the Final Act of UNCLOS III.



4. Recalling paragraph 5(a) of Annex I of the Rules, the Government of Bangladesh observes that, given the presence of a dispute between Bangladesh and India concerning entitlement to the parts of the continental shelf in the Bay of Bengal claimed by India in its submission, the Commission may not “consider and qualify” the submission made by India without the “prior consent given by all States that are parties to such a dispute.”

5. In these circumstances, and in accordance with articles 76 and 83(3) of the Convention and Annex I to the Commission’s Rules of Procedures, Bangladesh will make every effort to reach a practical arrangement with India that will allow the Commission, in accordance with paragraph 5(a) of Annex I to its Rules of Procedure, to consider both the submission of India and the submission that Bangladesh will make by July 2011.

6. The Permanent Mission of Bangladesh to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations assurances of its highest consideration.

The Secretary General of the United Nations
New York, NY 10017



Annex B24

Aide Memoire from the Government of Bangladesh to the Government of India (10 October 2010)

Aid Memoire

During the month of September 2010, Indian Maritime Patrol Aircrafts (MPA) of the Indian Navy contacted the Bangladesh Navy patrol ships, which were conducting routine patrols in the Bay of Bengal, in waters claimed by Bangladesh. The Indian aircraft instructed the Bangladesh Navy ships not to navigate to the west of the following coordinates:

21° 38' N - 89° 10' E

20° 00' N - 89° 55' E

19° 00' N - 90° 04' E

17° 37' N - 89° 36' E

Bangladesh wishes to draw attention to the following:

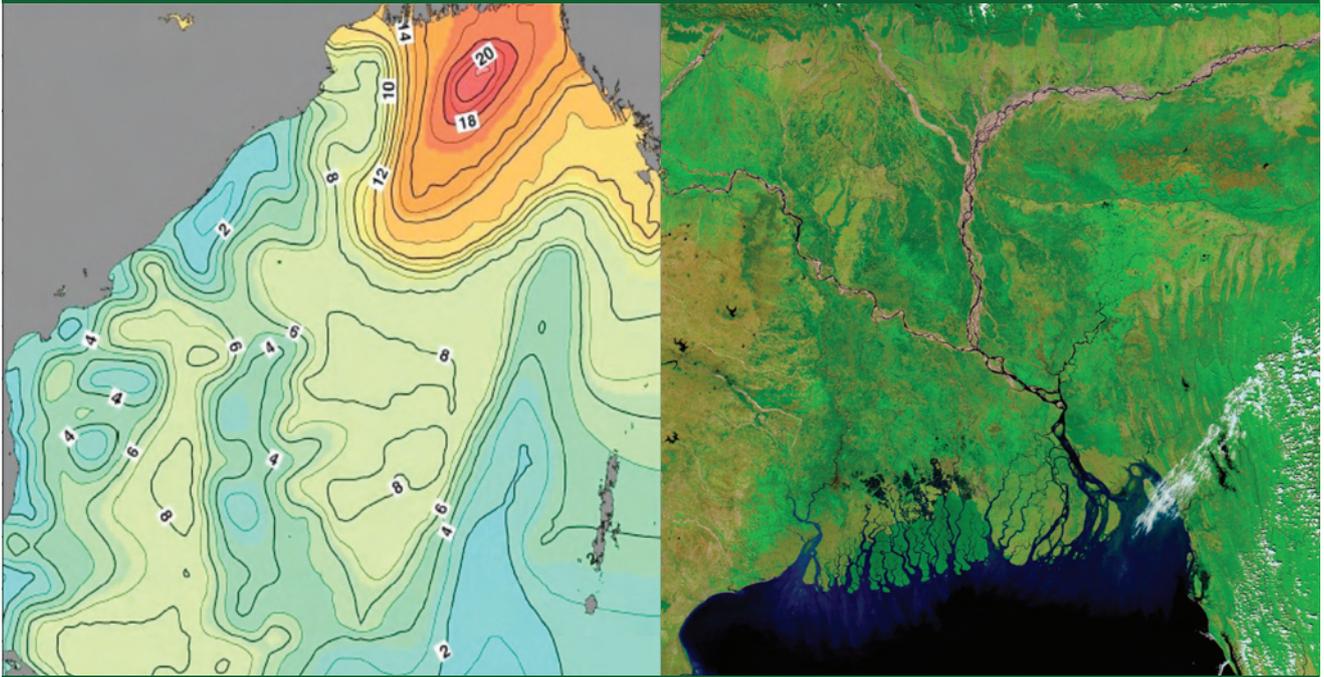
1. It is well-established that Bangladesh claims waters west of these coordinates as its territorial sea and exclusive economic zone. To the extent that Bangladesh and India have overlapping claims in this area, the resolution of this dispute is pending in accordance with international law by the Arbitral Tribunal that has been established pursuant to the 1982 United Nations Convention on the Law of the Sea to adjudicate the parties' respective claims. The message from India's MPA is not consistent with the agreed arbitral procedure, and with the requirements of Part XV of the 1982 Convention, including its Article 279 that provides that "States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations...".
2. Most of the maritime area west of the aforementioned coordinates extends to an area that lies more than 12 nautical miles from Bangladesh's or India's coasts, and therefore outside the territorial seas claimed by each State. This area therefore constitutes either the exclusive economic zone of one of the States under Part V of the Convention or (to the extent it is beyond 200 nautical miles from the coast) high seas under Part VII -- areas from which neither State has the right to preclude navigation by vessels of the other State.

Bangladesh would, therefore, appreciate receiving assurance that its naval and civilian vessels will not be discouraged or precluded in any way from exercising such navigation rights as are guaranteed by the 1982 United Nations Convention on the Law of the Sea and international law in waters located to the west of the aforementioned coordinates.

Dhaka
10 October 2010

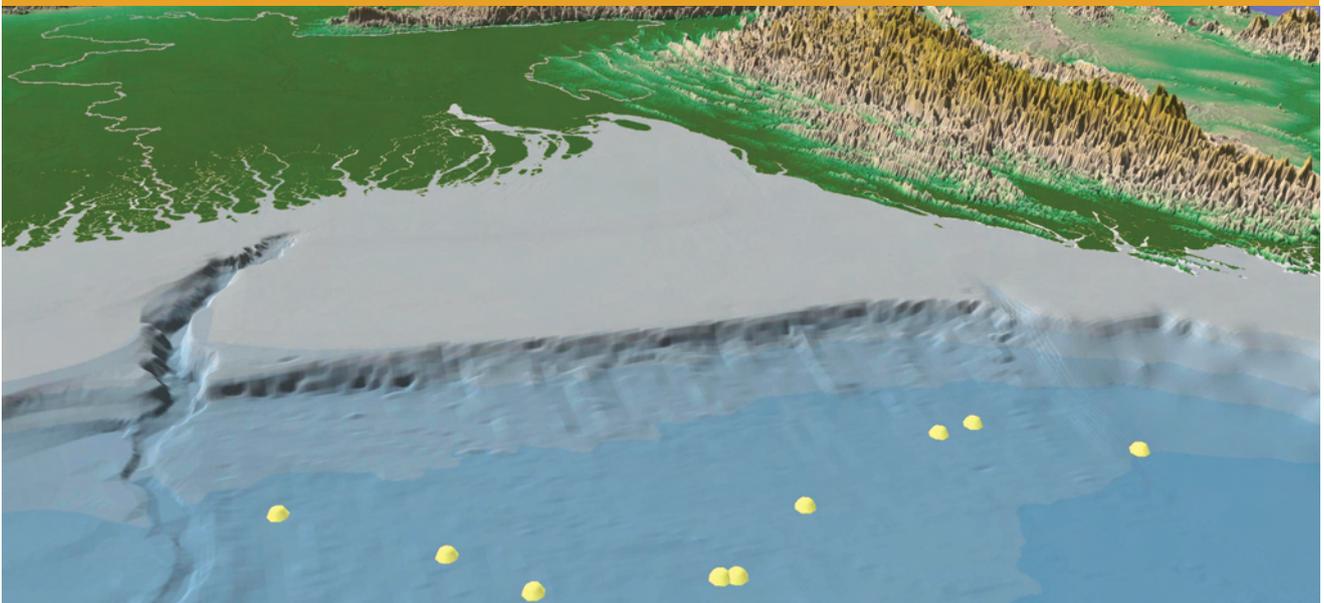
Annex B25

Government of Bangladesh, *Submission by the People's Republic of Bangladesh to the Commission on the Limits of the Continental Shelf: Executive Summary* (February 2011)



**SUBMISSION BY
THE PEOPLE'S REPUBLIC OF BANGLADESH**

EXECUTIVE SUMMARY
February 2011



**Commission on the Limits of the
Continental Shelf**





SUBMISSION BY
THE PEOPLE'S REPUBLIC OF BANGLADESH
TO THE COMMISSION ON THE LIMITS OF THE
CONTINENTAL SHELF

EXECUTIVE SUMMARY



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Preface

This submission (Submission) by the People's Republic of Bangladesh was prepared under the "UNCLOS 1982 Implementation Special Program" of the Ministry of Foreign Affairs.

The following institutions of the Government of Bangladesh were involved in the preparation of the Submission:

- Ministry of Foreign Affairs
- Bangladesh Navy
- Geological Survey of Bangladesh (GSB)
- Bangladesh Oil, Gas and Mineral Corporation (Petrobangla)
- Bangladesh Petroleum Exploration and Production Company Limited (BAPEX)
- Bangladesh Space Research and Remote Sensing Organization (SPARRSO)
- Bangladesh Inland Water Transport Authority (BIWTA)



The following advisors and experts provided legal and technical advice and assistance to the People's Republic of Bangladesh during the preparation of the Submission:

Mr Paul Hibberd

Legal Adviser
(Maritime Boundaries)
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Belbins Romsey, United Kingdom

Apart from the names mentioned above, the Government of Bangladesh consulted several institutions for technical and legal advice during the preparation of the Submission. The names of those institutions are as follows:

- **Centre for Coastal and Ocean Mapping, University of New Hampshire, USA**
- **Federal Institute of Geosciences and Natural Resources (BGR), Germany**
- **UNEP Shelf, GRID – Arendal, Norway**
- **Scripps Institute of Oceanography, USA (SIO)**
- **Lamont-Doherty Earth Observatory, USA**



Executive Summary

1. Introduction

- 1.1** This Executive Summary forms part of the Submission by the People's Republic of Bangladesh (Bangladesh) to the Commission on the Limits of the Continental Shelf (Commission) made pursuant to paragraph 8 of Article 76 of the 1982 United Nations Convention on the Law of the Sea (Convention).
- 1.2** Bangladesh is a unitary, independent, sovereign Republic located in a region of South Asia that straddles the fertile Ganges-Brahmaputra Delta. It is bordered by the Republic of India (India) on all sides, with the exception of a land/river boundary with the Union of Myanmar (Myanmar) to the far southeast and its southern coastline on the Bay of Bengal.
- 1.3** Bangladesh is a Contracting Party to the Convention, having signed it on 10 December 1982 and later ratified it on 27 July 2001 (see www.un.org/Depts/los/reference_files/status2010.pdf). The maritime zones of Bangladesh, including the territorial waters, the economic zone and the continental shelf, have been defined in the *Territorial Waters and Maritime Zones Act, 1974* (viewable online at www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BGD_1974_Act.pdf).
- 1.4** As provided for under paragraph 1 of Article 76, Bangladesh has a continental shelf comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, up to the limits provided for in paragraphs 4 to 6 of Article 76 or, to a distance of 200 nautical miles (M) from the baselines from which the breadth of the territorial sea of Bangladesh is measured (territorial sea baselines) where the outer edge of the continental margin does not extend beyond that distance.



- 1.5** The present Submission is made by Bangladesh in support of the establishment of the outer limits of the continental shelf where it extends beyond 200 M from the territorial sea baselines.
- 1.6** Bangladesh has for the purposes of preparing this Submission, applied the relevant provisions of Article 76 of the Convention, together with the *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (CLCS/40/Rev.1), adopted by the Commission on 17 April 2008 (Rules of Procedure), and the recommendations contained in the *Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf* (CLCS/11) adopted by the Commission on 13 May 1999 (the Guidelines).
- 1.7** The present Submission consists of three separate parts, as specified in Annex III to the Rules of Procedure and in paragraphs 9.1.3 to 9.1.6 of the Guidelines. The Submission is therefore organised and presented as follows:
- an Executive Summary;
 - a main analytical and descriptive part (Main Body); and,
 - the required supporting scientific and technical data (Supporting Scientific and Technical Data).
- 1.8** A separate section of this Executive Summary provides a brief outline of the region of continental shelf beyond 200 M from the territorial sea baselines, including a depiction of the outer limits of the continental shelf determined by Bangladesh.

2. Maps and Coordinates

- 2.1** The map on page 12 depicts the outer limit line of the continental shelf of Bangladesh by reference to the fixed points required in paragraph 7 of Article 76 (Article 76 fixed points).



2.2 A list of the coordinates, in decimal degrees, of the Article 76 fixed points that define the outer limits of the continental shelf of Bangladesh is supplied in the Annex to this Executive Summary. The provision of Article 76 invoked to support each Article 76 fixed point is indicated, together with the distance between adjacent points.

3. Provisions of Article 76 Invoked

3.1 Paragraphs 4 to 6 of Article 76 set out specific formula and constraints by which a coastal State such as Bangladesh may establish the outer edge of its continental margin, and its legal continental shelf, wherever that margin extends beyond 200 M from the territorial sea baselines.

3.2 As set out in paragraph 7 of Article 76, the coastal State is to delineate the outer limits of those portions of its continental shelf that extend beyond 200 M from the territorial sea baselines by straight lines not exceeding 60 M in length, connecting fixed points defined by coordinates of latitude and longitude.

3.3 Bangladesh invokes paragraphs 1, 2, 3, 4(a)(i), 5 and 7 of Article 76 of the Convention in support of the determination of the outer limits of the continental shelf included in the Submission, as outlined in Section 6 of this Executive Summary.

4. Advisory Assistance

4.1 Bangladesh was assisted in the preparation of the Submission by Dr. Harald Brekke (Norway), who is a member of the Commission.

4.2 A list of other advisers and organisations that provided legal or technical assistance to Bangladesh during the preparation of the Submission is included in the Preface to this Executive Summary.



5. Settled and Outstanding Delimitations

- 5.1** The maritime zones of Bangladesh overlap with those of the neighbouring coastal States of India and Myanmar. The extent of overlap varies with respect to the territorial sea, exclusive economic zone (EEZ) and, potentially, with respect to areas of continental shelf extending beyond 200 M from the territorial sea baselines.
- 5.2** With the exception of the Agreement between the People's Republic of Bangladesh and Myanmar in respect of their territorial waters boundary completed in 1974 and reaffirmed in 2008 (see **Annex 1** to the Main Body), Bangladesh has not yet delimited boundaries with India or Myanmar in respect of those areas where territorial sea or EEZ entitlements overlap, or where continental shelf entitlements beyond 200 M from the territorial sea baselines potentially overlap.
- 5.3** Article 9 of Annex II to the Convention provides that the actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts. The Commission has therefore adopted a practice, contained in Annex I to the Rules of Procedure, which is intended to prevent the consideration of a submission covering a disputed area of continental shelf without the consent of the parties in dispute.
- 5.4** In accordance with paragraph 2(a) of Annex I to the Rules of Procedure, Bangladesh wishes to inform the Commission that areas of the continental shelf submitted by Bangladesh are the subject of disputes with India and Myanmar respectively for the purposes of Rule 46 and Annex I to the Rules of Procedure.
- 5.5** Bangladesh recalls that India lodged a submission to the Commission on 11 May 2009. Bangladesh formally objected to the Indian submission by Note Verbale No. PMBNY-UNCLOS/2009 communicated to the Secretary-General of the United Nations on 29 October 2009 (viewable online at: http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/bgd_re_ind_clcs48_2009e.pdf). In the Note, Bangladesh



disputes the claim by India to areas of outer continental shelf noting that the areas claimed form part of the natural prolongation of Bangladesh.

5.6 Bangladesh also advises in the Note that dispute exists between Bangladesh and India for the purposes of Rule 46 of the Rules of Procedure in respect of:

- (a) the unresolved delimitation between the two countries in the Bay of Bengal; and,
- (b) the straight baselines of India gazetted on 11 May 2009 from which India purported to measure the breadth of its continental shelf, and to which Bangladesh objects.

5.7 Bangladesh has reserved the right to further comment upon the Submission by India as and when a more detailed assessment can be conducted.

5.8 Bangladesh notes further that, on 8 October 2009, it instituted arbitral proceedings pursuant to Article 287 and Annex VII of the Convention with respect to the delimitation of the territorial sea, EEZ and continental shelf between Bangladesh and India. As at the date of the lodgement of the present Submission, the proceedings remain ongoing.

5.9 With regard to Myanmar, Bangladesh recalls that Myanmar lodged a submission to the Commission on 16 December 2008. Bangladesh formally objected to the Myanmar submission by Note Verbale No. PMBNY-UNCLOS/2009 communicated to the Secretary-General of the United Nations on 23 July 2009 (viewable online at: http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_mr_bgd_e.pdf). In the Note, Bangladesh disputes the claim by Myanmar to areas of outer continental shelf noting that the areas claimed form part of the natural prolongation of Bangladesh.



5.10 Bangladesh also advises in the Note that a dispute exists between Bangladesh and Myanmar for the purposes of Rule 46 of the Rules of Procedure in respect of:

- (a) the unresolved maritime boundary delimitation between the two countries in the Bay of Bengal; and,
- (b) the straight baselines declared by Myanmar along its west coast abutting the Bay of Bengal, including around the Preparis and Co Co Islands, which Bangladesh disputes.

5.11 Bangladesh also formally reserved the right to further comment upon the submission by Myanmar as and when a more detailed assessment can be conducted.

5.12 Bangladesh notes further that on 8 October 2009 it initiated arbitral proceedings pursuant to Article 287 and Annex VII of the Convention concerning the delimitation of the territorial sea, the EEZ, and the continental shelf boundaries with Myanmar. Subsequently, and with the agreement of the Parties as expressed through their respective declarations made under Article 287 of the Convention, proceedings were instituted on 14 December 2009 before the International Tribunal for the Law of the Sea in respect of the *Dispute relating to the delimitation of the maritime boundary in the Bay of Bengal between the People's Republic of Bangladesh and the Union of Myanmar*. At the date of the lodgement of the present Submission, the case had been entered in the List of Cases of the International Tribunal for the Law of the Sea as Case no.16.

5.13 Bangladesh wishes to assure the Commission that the present Submission is made without prejudice to the delimitation of the relevant maritime boundaries with the coastal States concerned, including with respect to the matters that are presently the subject of third-party adjudication.



- 5.14** Furthermore, in accordance with paragraph 2(b) of Annex I to the Rules of Procedure, Bangladesh assures the Commission that, in its view, the consideration of this Submission will not prejudice the consideration of the matters in dispute outlined above, or prejudice the delimitation of boundaries between Bangladesh and any other State(s).
- 5.15** Having regard to the existence of the disputes referred to above and to the resulting uncertainty concerning the maritime zone boundaries of third States, Bangladesh has prepared this Submission strictly by reference to the application of Article 76 to its own continental margin. Accordingly, the maritime zones boundaries of other States are not shown.
- 5.16** The absence of third party maritime zones boundaries in this Submission does not affect the demonstration by Bangladesh of its outer continental shelf claim through the application of the provisions of Article 76, although areas covered by the Submission may be the subject of boundary negotiations.

6. Regional Overview and Outer Limits of the Continental Shelf

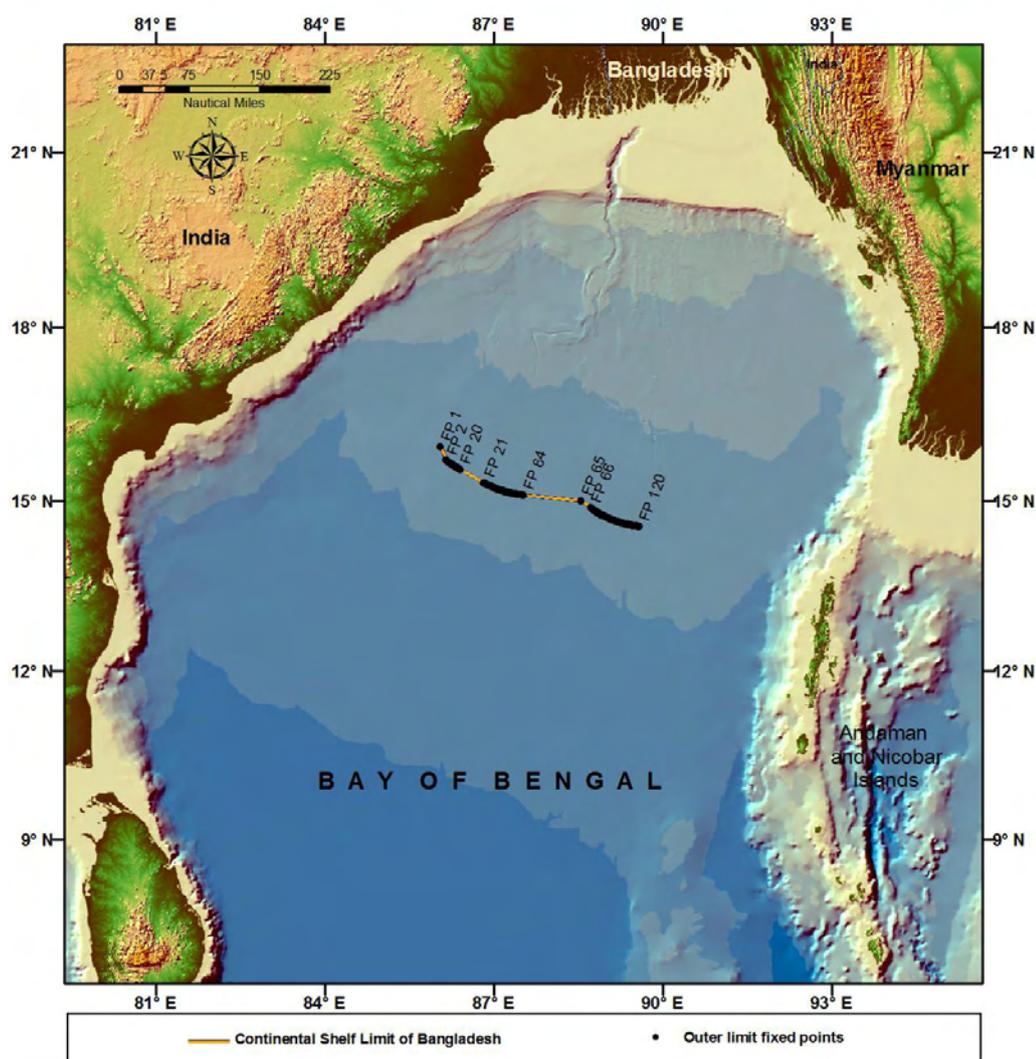
- 6.1** The landmass of Bangladesh, situated between the southern edge of the Himalaya Range and the northern limit of the Bay of Bengal, consists mainly of sediments deposited by the Ganges-Brahmaputra-Meghna (GBM) river systems and their ancestors.
- 6.2** The continental shelf of Bangladesh represents the submerged prolongation of the land territory of Bangladesh into the Bay of Bengal that covers an area of ocean space in the order of 2,172,000 km². Opening out to the Indian Ocean to the south, the Bay of Bengal is bordered by India and Sri Lanka to the west, Bangladesh and the Indian state of West Bengal to the north, and Myanmar together with the Andaman and Nicobar Islands of India to the east.



- 6.3** A number of large river systems, including the Ganges/Padma, Brahmaputra/Jamuna, Meghna, Godavari, Mahanadi, Krishna and Kaveri all flow into the Bay of Bengal. The accumulation of sediments discharged by these river systems and their ancestors over millions of years, especially from the GBM river systems, has resulted in the development within the Bay of Bengal of a prominent submarine feature known as the Bengal Fan. The Bengal Fan extends from 22°N to 8°S and from 80°E to 93°E and represents one of the world's largest sedimentary basins.
- 6.4** A detailed examination of the geology of the region is presented in the Main Body of the Submission. This includes a discussion that is intended to demonstrate clearly the natural prolongation from the Bangladesh landmass and the extension of the outer edge of the Bangladesh continental margin beyond 200 M measured from the territorial sea baselines. The Supporting Scientific and Technical Data submitted by Bangladesh support these findings.
- 6.5** Applying the relevant provisions of Article 76, a total of **120** fixed points (Article 76 fixed points) have been established by Bangladesh to determine the outer limits of the continental shelf. The Article 76 fixed points have been determined by applying the sediment thickness formula (Article 76, paragraph 4(a)(i)), together with the 2500m isobath plus 100 M depth constraint (Article 76, paragraph 5).
- 6.6** The 120 Article 76 fixed points are comprised of:
- **1** point defined by a point (BGD-SED-001) where the thickness of the sediment is not less than 1% of the distance from the point to the foot of the slope (Article 76, paragraph 4(a)(i)); and,
 - **119** points defined by the depth constraint line 100 M from the 2500m isobath (Article 76, paragraph 5).



- 6.7** The outer limits of the continental shelf extending beyond 200 M of the territorial sea baselines have been delineated by geodesic straight lines not exceeding 60 M in length used to connect the Article 76 fixed points, defined by coordinates of latitude and longitude expressed in decimal degrees.
- 6.8** The map below illustrates the line depicting the outer limits of the continental shelf of Bangladesh overlain on a gridded bathymetric of the northern Bay of Bengal.



MAP: The outer limits of the continental shelf of Bangladesh.



6.9 The list of Article 76 fixed points used to construct the outer limits of the continental shelf of Bangladesh is given in the Annex to this Executive Summary.

7. Authentication

7.1 All maps, charts and databases forming part of the present Submission were prepared by the Ministry of Foreign Affairs that, for the purpose of the present Submission, is responsible for preparing such material and for certifying its quality and reliability.

8. Notes

Map Notes

8.1 For the purpose of the maps contained in this Submission, and having regard to the existence of the disputes referred to above and to the resulting uncertainty concerning the maritime zone boundaries of third States, Bangladesh has prepared this Submission strictly by reference to the application of Article 76 to its own continental margin. Accordingly, the maritime zones boundaries of other States are not shown.

8.2 The absence of third party maritime zones boundaries in this Submission does not affect the demonstration by Bangladesh of its outer continental shelf claim through the application of the provisions of Article 76, although areas covered by the Submission may be the subject of future boundary delimitation.

Table Notes

8.3 The table included in the Annex to this Executive Summary lists by number (identifier) and coordinates (in decimal degrees, latitude and longitude) the fixed points that define the outer limits of the continental shelf of Bangladesh. The distance in nautical miles from one point on the outer limit line to the next is given in the seventh column of the table.



8.4 All coordinates of fixed points defined according to the provisions of Article 76 of the Convention are expressed in this document in the WGS84 geodetic reference system.

Abbreviations

8.5 The following abbreviations are used in the Annex to denote the Article 76 provisions invoked:

M: nautical mile (1852m).

2500m+100 M line: 2500m isobath plus 100 M depth constraint line (Article 76, paragraph 5).

1% line: 1% sediment thickness formula line (Article 76, paragraph 4(a)(i)).



Annex

Table listing the points defining the outer limits of the continental shelf of Bangladesh.

FP	Longitude (E)	Latitude (N)	Method	From FP	To FP	Dist (M)
1	86.057579	15.944318	Fixed Point on 1% line			
2	86.163834	15.712276	Fixed point on 2500m+100M line	1	2	15.166
3	86.166069	15.710494	Fixed point on 2500m+100M line	2	3	0.167
4	86.179527	15.699997	Fixed point on 2500m+100M line	3	4	1.000
5	86.193085	15.689631	Fixed point on 2500m+100M line	4	5	1.000
6	86.206749	15.679394	Fixed point on 2500m+100M line	5	6	1.000
7	86.220520	15.669290	Fixed point on 2500m+100M line	6	7	1.000
8	86.234390	15.659320	Fixed point on 2500m+100M line	7	8	1.000
9	86.248360	15.649482	Fixed point on 2500m+100M line	8	9	1.000
10	86.262428	15.639779	Fixed point on 2500m+100M line	9	10	1.000
11	86.276604	15.630212	Fixed point on 2500m+100M line	10	11	1.000
12	86.290871	15.620785	Fixed point on 2500m+100M line	11	12	1.000
13	86.305229	15.611491	Fixed point on 2500m+100M line	12	13	1.000
14	86.319687	15.602339	Fixed point on 2500m+100M line	13	14	1.000
15	86.334229	15.593326	Fixed point on 2500m+100M line	14	15	1.000
16	86.348869	15.584452	Fixed point on 2500m+100M line	15	16	1.000
17	86.363602	15.575720	Fixed point on 2500m+100M line	16	17	1.000
18	86.378410	15.567130	Fixed point on 2500m+100M line	17	18	1.000
19	86.393318	15.558683	Fixed point on 2500m+100M line	18	19	1.000
20	86.408302	15.550380	Fixed point on 2500m+100M line	19	20	1.000
21	86.830597	15.319216	Fixed point on 2500m+100M line	20	21	28.102
22	86.845650	15.311056	Fixed point on 2500m+100M line	21	22	1.000
23	86.860786	15.303043	Fixed point on 2500m+100M line	22	23	1.000
24	86.875999	15.295174	Fixed point on 2500m+100M line	23	24	1.000
25	86.891296	15.287453	Fixed point on 2500m+100M line	24	25	1.000
26	86.906670	15.279880	Fixed point on 2500m+100M line	25	26	1.000
27	86.922127	15.272454	Fixed point on 2500m+100M line	26	27	1.000
28	86.937645	15.265180	Fixed point on 2500m+100M line	27	28	1.000
29	86.953247	15.258055	Fixed point on 2500m+100M line	28	29	1.000
30	86.968918	15.251078	Fixed point on 2500m+100M line	29	30	1.000
31	86.984650	15.244256	Fixed point on 2500m+100M line	30	31	1.000
32	87.000458	15.237584	Fixed point on 2500m+100M line	31	32	1.000
33	87.016335	15.231064	Fixed point on 2500m+100M line	32	33	1.000
34	87.032272	15.224699	Fixed point on 2500m+100M line	33	34	1.000



FP	Longitude (E)	Latitude (N)	Method	From FP	To FP	Dist (M)
35	87.048279	15.218487	Fixed point on 2500m+100M line	34	35	1.000
36	87.064346	15.212429	Fixed point on 2500m+100M line	35	36	1.000
37	87.080475	15.206526	Fixed point on 2500m+100M line	36	37	1.000
38	87.096657	15.200779	Fixed point on 2500m+100M line	37	38	1.000
39	87.112900	15.195188	Fixed point on 2500m+100M line	38	39	1.000
40	87.130402	15.189214	Fixed point on 2500m+100M line	39	40	1.000
41	87.146706	15.183782	Fixed point on 2500m+100M line	40	41	1.000
42	87.163055	15.178503	Fixed point on 2500m+100M line	41	42	1.000
43	87.179459	15.173385	Fixed point on 2500m+100M line	42	43	1.000
44	87.195915	15.168425	Fixed point on 2500m+100M line	43	44	1.000
45	87.212425	15.163624	Fixed point on 2500m+100M line	44	45	1.000
46	87.228973	15.158979	Fixed point on 2500m+100M line	45	46	1.000
47	87.245575	15.154497	Fixed point on 2500m+100M line	46	47	1.000
48	87.262222	15.150176	Fixed point on 2500m+100M line	47	48	1.000
49	87.278908	15.146014	Fixed point on 2500m+100M line	48	49	1.000
50	87.295639	15.142014	Fixed point on 2500m+100M line	49	50	1.000
51	87.312408	15.138174	Fixed point on 2500m+100M line	50	51	1.000
52	87.329216	15.134496	Fixed point on 2500m+100M line	51	52	1.000
53	87.346062	15.130980	Fixed point on 2500m+100M line	52	53	1.000
54	87.362938	15.127626	Fixed point on 2500m+100M line	53	54	1.000
55	87.379852	15.124436	Fixed point on 2500m+100M line	54	55	1.000
56	87.396790	15.121408	Fixed point on 2500m+100M line	55	56	1.000
57	87.413765	15.118544	Fixed point on 2500m+100M line	56	57	1.000
58	87.430763	15.115843	Fixed point on 2500m+100M line	57	58	1.000
59	87.447792	15.113308	Fixed point on 2500m+100M line	58	59	1.000
60	87.464844	15.110936	Fixed point on 2500m+100M line	59	60	1.000
61	87.481918	15.108728	Fixed point on 2500m+100M line	60	61	1.000
62	87.499016	15.106684	Fixed point on 2500m+100M line	61	62	1.000
63	87.516136	15.104806	Fixed point on 2500m+100M line	62	63	1.000
64	87.533272	15.103093	Fixed point on 2500m+100M line	63	64	1.000
65	88.559441	14.999443	Fixed point on 2500m+100M line	64	65	59.899
66	88.730392	14.876838	Fixed point on 2500m+100M line	65	66	12.340
67	88.744308	14.866995	Fixed point on 2500m+100M line	66	67	1.000
68	88.758324	14.857288	Fixed point on 2500m+100M line	67	68	1.000
69	88.772438	14.847718	Fixed point on 2500m+100M line	68	69	1.000
70	88.786652	14.838285	Fixed point on 2500m+100M line	69	70	1.000
71	88.800957	14.828990	Fixed point on 2500m+100M line	70	71	1.000
72	88.815353	14.819832	Fixed point on 2500m+100M line	71	72	1.000
73	88.829849	14.810815	Fixed point on 2500m+100M line	72	73	1.000



FP	Longitude (E)	Latitude (N)	Method	From FP	To FP	Dist (M)
74	88.844429	14.801937	Fixed point on 2500m+100M line	73	74	1.000
75	88.859100	14.793202	Fixed point on 2500m+100M line	74	75	1.000
76	88.873863	14.784608	Fixed point on 2500m+100M line	75	76	1.000
77	88.888710	14.776158	Fixed point on 2500m+100M line	76	77	1.000
78	88.903641	14.767850	Fixed point on 2500m+100M line	77	78	1.000
79	88.918655	14.759687	Fixed point on 2500m+100M line	78	79	1.000
80	88.933746	14.751672	Fixed point on 2500m+100M line	79	80	1.000
81	88.948929	14.743801	Fixed point on 2500m+100M line	80	81	1.000
82	88.964180	14.736077	Fixed point on 2500m+100M line	81	82	1.000
83	88.979515	14.728502	Fixed point on 2500m+100M line	82	83	1.000
84	88.994926	14.721075	Fixed point on 2500m+100M line	83	84	1.000
85	89.010406	14.713797	Fixed point on 2500m+100M line	84	85	1.000
86	89.025963	14.706669	Fixed point on 2500m+100M line	85	86	1.000
87	89.041595	14.699691	Fixed point on 2500m+100M line	86	87	1.000
88	89.057289	14.692866	Fixed point on 2500m+100M line	87	88	1.000
89	89.073059	14.686192	Fixed point on 2500m+100M line	88	89	1.000
90	89.088890	14.679670	Fixed point on 2500m+100M line	89	90	1.000
91	89.104790	14.673303	Fixed point on 2500m+100M line	90	91	1.000
92	89.120750	14.667089	Fixed point on 2500m+100M line	91	92	1.000
93	89.136780	14.661028	Fixed point on 2500m+100M line	92	93	1.000
94	89.152863	14.655125	Fixed point on 2500m+100M line	93	94	1.000
95	89.169006	14.649375	Fixed point on 2500m+100M line	94	95	1.000
96	89.185204	14.643784	Fixed point on 2500m+100M line	95	96	1.000
97	89.201462	14.638348	Fixed point on 2500m+100M line	96	97	1.000
98	89.217773	14.633069	Fixed point on 2500m+100M line	97	98	1.000
99	89.234138	14.627948	Fixed point on 2500m+100M line	98	99	1.000
100	89.250557	14.622987	Fixed point on 2500m+100M line	99	100	1.000
101	89.267021	14.618182	Fixed point on 2500m+100M line	100	101	1.000
102	89.283531	14.613540	Fixed point on 2500m+100M line	101	102	1.000
103	89.300087	14.609055	Fixed point on 2500m+100M line	102	103	1.000
104	89.316696	14.604731	Fixed point on 2500m+100M line	103	104	1.000
105	89.333336	14.600567	Fixed point on 2500m+100M line	104	105	1.000
106	89.350021	14.596564	Fixed point on 2500m+100M line	105	106	1.000
107	89.366753	14.592724	Fixed point on 2500m+100M line	106	107	1.000
108	89.383514	14.589046	Fixed point on 2500m+100M line	107	108	1.000
109	89.400314	14.585528	Fixed point on 2500m+100M line	108	109	1.000
110	89.417152	14.582173	Fixed point on 2500m+100M line	109	110	1.000
111	89.434021	14.578982	Fixed point on 2500m+100M line	110	111	1.000
112	89.450920	14.575953	Fixed point on 2500m+100M line	111	112	1.000



FP	Longitude (E)	Latitude (N)	Method	From FP	To FP	Dist (M)
113	89.467850	14.573090	Fixed point on 2500m+100M line	112	113	1.000
114	89.484810	14.570389	Fixed point on 2500m+100M line	113	114	1.000
115	89.501793	14.567851	Fixed point on 2500m+100M line	114	115	1.000
116	89.518806	14.565478	Fixed point on 2500m+100M line	115	116	1.000
117	89.535835	14.563269	Fixed point on 2500m+100M line	116	117	1.000
118	89.552895	14.561226	Fixed point on 2500m+100M line	117	118	1.000
119	89.569969	14.559347	Fixed point on 2500m+100M line	118	119	1.000
120	89.587059	14.557632	Fixed point on 2500m+100M line	119	120	1.000

Annex B26

Government of Bangladesh, Statement of Claim and Notification under UNCLOS Article 287 and Annex
BVII, Article 1 (8 October 2009)

MINISTRY OF FOREIGN AFFAIRS
GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA



পররাষ্ট্র দফতর
গণপ্রজাতন্ত্রী বাংলাদেশ
সরকার
ঢাকা

No. MOFA/UNCLOS/320/1

Note Verbale

The Ministry of Foreign Affairs of the Government of the People's Republic of Bangladesh presents its compliments to the High Commission of the Republic of India in Dhaka and with respect to the dispute concerning the maritime boundary of Bangladesh and India in the Bay of Bengal, the Government of Bangladesh has the honour to submit herewith the attached Notification under Article 287 and Annex VII of the 1982 United Nations Convention on Law of the Sea and the Statement of Claim and Grounds on which it is Based, (containing pages 1 to 6) in order to initiate arbitral proceedings for the delimitation of the Bangladesh-India boundary in the Territorial Sea, Exclusive Economic Zone, and the Continental Shelf.

The Government of Bangladesh has initiated these proceedings in furtherance of friendly relations with India, mindful of its obligation under Article 279 of the Convention to seek a solution for the settlement of its maritime boundary dispute by the means indicated in Article 33(1) of the Charter of the United Nations.

Pending the Final Award of a Tribunal constituted under Annex VII of the Convention, the Government of Bangladesh remains committed to ongoing negotiations with India for the equitable settlement of its maritime boundary dispute.

The Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh avails itself of the opportunity to renew to the High Commission of the Republic of India the assurances of its highest consideration.

The High Commission of the Republic of India
Dhaka

Dhaka, 08 October 2009

**1982 UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA**

**IN THE DISPUTE CONCERNING
THE MARITIME BOUNDARY
BETWEEN BANGLADESH AND INDIA**

BANGLADESH v. INDIA

**NOTIFICATION UNDER ARTICLE 287
AND ANNEX VII, ARTICLE 1 OF UNCLOS**

**AND THE STATEMENT OF THE CLAIM
AND GROUNDS ON WHICH IT IS BASED**

08 OCTOBER 2009

Dipak Moni

1982 UNCLOS-ANNEX VII ARBITRATION**NOTIFICATION****AND STATEMENT OF CLAIM**

1. Pursuant to Articles 286 and 287 of the 1982 *United Nations Convention on the Law of the Sea* (“UNCLOS”), and in accordance with the requirements of Article 1 of Annex VII thereto, Bangladesh hereby gives written notification to India that, having failed to reach a settlement after successive negotiations and exchanges of views as contemplated by Part XV of UNCLOS, it has elected to submit the dispute concerning the delimitation of its maritime boundary with India to the arbitral procedure provided for in Annex VII of UNCLOS. A statement of claim and the grounds on which it is based accompany this notification, as required by Article 1 of Annex VII.
2. In accordance with the requirements of Annex VII, Article 3(b), Bangladesh hereby appoints Professor Vaughan Lowe QC as a member of the arbitral tribunal.

SUBJECT MATTER OF THE DISPUTE

3. The dispute concerns the delimitation of the maritime boundary of Bangladesh with India in the territorial sea, the exclusive economic zone (“EEZ”), and the continental shelf in the Bay of Bengal.
4. Despite the good faith efforts of both parties, and extensive negotiations over the past 35 years, Bangladesh and India have not succeeded in agreeing upon a maritime boundary in any part of the Bay of Bengal.
5. During these negotiations, including the most recent, which took place in March 2009, Bangladesh and India have exchanged their views regarding the settlement of the dispute, as required by Article 283 of UNCLOS.

Dipak Moni - 2 -

6. Accordingly, mindful of its obligation under Article 279 of UNCLOS to settle any dispute concerning the interpretation or application of the Convention by the means indicated in Article 33(1) of the UN Charter, and in furtherance of long-standing friendly relations with India, Bangladesh hereby initiates proceedings under Section 2 of Part XV of UNCLOS to settle its dispute with India on the maritime boundary in the territorial sea, the EEZ and the continental shelf, in the Bay of Bengal.

JURISDICTION

7. Bangladesh and India are both parties to UNCLOS, having ratified the Convention on 27 July 2001 and 26 June 1995 respectively. Part XV of UNCLOS establishes a regime for the settlement of disputes concerning the interpretation and application of the Convention. Article 279 requires parties to seek a solution by peaceful means in accordance with the UN Charter. Article 283(1) further requires that when a dispute arises between States Parties, the parties should proceed expeditiously to an exchange of views regarding a settlement by negotiation or other peaceful means. Bangladesh has complied with the requirements of Part XV fully and in good faith.
8. As Bangladesh and India have failed to settle the dispute between them by peaceful means of their own choice, Article 281(1) allows recourse to procedures provided for in Part XV, including compulsory procedures entailing binding decisions under Section 2 of that Part. Article 286 allows these compulsory procedures to be initiated by any party to the dispute in the court or tribunal having jurisdiction under Section 2.
9. Article 287 governs the choice of compulsory procedures. Article 287(1) allows a State Party, by means of a written declaration, to choose one or more of the means for the settlement of disputes listed in the paragraph, which includes recourse to an arbitral tribunal under Annex VII. Since Bangladesh and India have made no declarations pursuant to Article 287(1), they are deemed by operation of Article 287(3) to have accepted arbitration in accordance with Annex VII.

- 3 -
Dipen Mondal

10. It is further noted that Article 298 governing optional exceptions to applicability of Section 2 does not apply since neither Bangladesh nor India has declared in writing that it does not accept any one or more of the compulsory procedures referred to in Article 287.
11. Therefore, in conformity with Article 286, Bangladesh submits its dispute with India concerning the delimitation of their maritime boundary in the territorial sea, the EEZ and the continental shelf, in the Bay of Bengal, to an arbitral tribunal ("Tribunal") constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1).

THE FACTS

12. Bangladesh and India are States with adjacent coasts in the Bay of Bengal.
13. The claims of Bangladesh and India overlap throughout the territorial sea, EEZ, and continental shelf.
14. In 1974, the Parliament of Bangladesh adopted the *Territorial Waters and Maritime Zones Act*. This Act defines Bangladesh's maritime boundaries with India and Myanmar in the territorial sea, the EEZ, and the continental shelf. The boundaries consist of two parallel lines extending southward on the meridians of longitude, from baselines corresponding to Bangladesh's coastline up to the outer limits of the continental margin.
15. Since 1974, India has proposed delimitation based on what is claimed to be an equidistance line. Bangladesh has rejected India's proposed line of delimitation as inequitable because, *inter alia*, the line, in combination with Bangladesh's concave coastline at the northern end of the Bay of Bengal, severely cuts off and reduces Bangladesh's maritime entitlement.
16. Since a Protest Note of 2008 concerning Bangladesh's oil and gas concessions, India has asserted an even more inequitable maritime boundary that goes beyond the originally proposed 1974 line. This new line cuts Bangladesh off from even more of its maritime entitlement.

Dipu Moni

17. On 11 May 2009, India submitted to the Commission on the Limits of the Continental Shelf information on its extended continental shelf. India's claim, which denies Bangladesh any portion of its continental shelf whatsoever beyond 200 nautical miles, is inconsistent with the principles and rules established by UNCLOS. Bangladesh shall submit its claims to an extended continental shelf by July 2011. When it makes its submission, Bangladesh will describe and justify its entitlement to an extended continental shelf, beyond 200 nautical miles from its coastal baselines, in the very areas where India has asserted claims in its submission to the Commission.

GROUND ON WHICH BANGLADESH'S CLAIMS ARE BASED

18. Bangladesh's claim is based on the provisions of UNCLOS as applied to the relevant facts, including but not limited to Articles 15, 74, 76 and 83.
19. Bangladesh's claim is also based on its Territorial Waters and Maritime Zones Act, 1974, and the subsequent Notification No. LT - 1/3/74 of the Ministry of Foreign Affairs of 13 April 1974.
20. Details of these grounds will be particularized at the appropriate stage in this arbitration, as determined by the Tribunal.

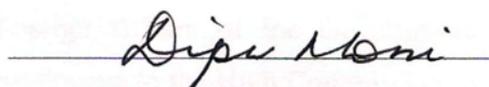
RELIEF SOUGHT

21. Bangladesh requests the Tribunal to delimit, in accordance with the principles and rules set forth in UNCLOS, the maritime boundary between Bangladesh and India in the Bay of Bengal, in the territorial sea, the EEZ, and the continental shelf, including the portion of the continental shelf pertaining to Bangladesh that lies more than 200 nautical miles from the baselines from which its territorial sea is measured.
22. Details of this claim will be particularized at the appropriate stage in this arbitration as determined by the Tribunal.

Dipankar

23. Bangladesh reserves the right to supplement and/or amend its claim and the relief sought as necessary, and to make such other requests from the arbitral tribunal as may be necessary to preserve its rights under UNCLOS.

Respectfully submitted,



Dr. Dipu Moni, MP
Foreign Minister
Ministry of Foreign Affairs, Dhaka
Government of the People's Republic of Bangladesh,
Agent

08 October 2009

Annex B27

Note Verbale from the Indian Ministry of External Affairs to the Bangladesh High Commission, New Delhi,
No. 3682/JS(BSM)09 (6 November 2009)



सत्यमेव जयते

No.3682/JS(BSM)09

विदेश मंत्रालय, नई दिल्ली
MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI

6 November 2009

Note Verbale

The Ministry of External Affairs of the Government of the Republic of India presents its compliments to the High Commission of the People's Republic of Bangladesh in New Delhi and with respect to the Note Verbale No. MOFA/UNCLOS/320/1 dated 8th October 2009 of the Ministry of Foreign Affairs of the Government of Bangladesh addressed to the High Commission of India in Dhaka, conveying the decision of Bangladesh to initiate Arbitral proceedings (under Article 287 and Annex VII of the 1982 United Nations Convention on the Law of the Sea) for the delimitation of the India-Bangladesh Boundary in the Territorial Sea, Exclusive Economic Zone and the Continental Shelf, and has the honour to state as follows:

1. The Ministry of External Affairs hereby appoints Dr. P. Sreenivasa Rao as Arbitrator in accordance with the provisions of Annex VII Article 3(c) of the Convention.
2. The decision of Bangladesh to refer the settlement of the India-Bangladesh Maritime Boundary to Arbitration is premature. Negotiations at the technical level, which were recently held between the Hydrographers, have been resumed after a gap of several years and after a mere two rounds of negotiations at the technical level, it is premature to conclude that this is a dispute which cannot be settled by negotiations.
3. It may be recalled that the land boundary is being resolved pursuant to the Agreement signed on 16 May 1974, that good progress has been made in demarcating the land boundary and that only a small area still remains to be demarcated, which includes the point on the coast from where the Maritime Boundary is to be delimited. The competence of the Arbitral Tribunal set up under Article 287 does not extend to determining the point at which the land boundary meets the coast. This needs to be determined prior to delimitation of the India-Bangladesh boundary in the Territorial Sea, Exclusive Economic Zone and the Continental Shelf.
4. Paragraph 19 of the document on the "Statement of the Claim and Grounds on which it is based", annexed to the Note Verbale of 8th October 2009, states that Bangladesh's claim is also based on its Territorial Waters and Maritime Zones Act, 1974, and the subsequent

Notification of 13 April 1974, However, under international law, the Maritime Boundaries between India and Bangladesh are to be settled in accordance with the rules of International Law, more specifically the provisions of the United Nations Convention on the Law of the Sea 1982, to which both India and Bangladesh are Parties.

5. The Government of India reserves it's right to raise the above preliminary issues before the Arbitral Tribunal.

The Ministry of External Affairs, Government of the Republic of India avails itself of the opportunity to renew to the High Commission of the People's Republic of Bangladesh, the assurances of its highest consideration.

**The High Commission of the
People's Republic of Bangladesh,
New Delhi.**



Annex B28

Note Verbale from the Bangladesh Ministry of Foreign Affairs to the Indian High Commission, Dhaka, No. MOFA/UNCLOS/320/1/121 (13 December 2009)

পররাষ্ট্র মন্ত্রণালয়
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
ঢাকা



MINISTRY OF FOREIGN AFFAIRS
GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA

No. MOFA/UNCLOS/320/1/121

Note Verbale

The Ministry of Foreign Affairs of the Government of the People's Republic of Bangladesh presents its compliments to the High Commission of the Republic of India in Dhaka, and has the honour to refer to earlier correspondences concerning the delimitation of the maritime boundary between Bangladesh and India in the Bay of Bengal.

Bangladesh appreciates India's efforts to reach agreement on the composition of an arbitral tribunal pursuant to the provisions of Annex VII of UNCLOS. Notwithstanding the parties' efforts, however, there has been no agreement on the remaining three members of the tribunal. The period stipulated in Article 3(d) of Annex VII has now expired. Accordingly, Bangladesh has today sent a letter to the President of the International Tribunal for the Law of the Sea ("ITLOS") asking him to assume the role of appointing authority as contemplated in Article 3(e) of Annex VII and act within 30 days to constitute the arbitral tribunal.

Alternatively, and acting pursuant to the terms of Article 287, paragraph 1, of UNCLOS, the Government of the People's Republic of Bangladesh has the honour to convey its consent to the jurisdiction of ITLOS over the dispute between Bangladesh and India. A declaration to that effect is submitted herewith and will be deposited with the Secretary General of the United Nations in due course. Should India also consent to ITLOS's jurisdiction, Bangladesh proposes that its Notification and Statement of Claim dated 08 October 2009 instituting proceedings against India be deemed to have been duly submitted to ITLOS on that date, and that all further proceedings in this matter be henceforth conducted in accordance with the rules and procedures of ITLOS.

The Ministry of Foreign Affairs of the Government of the People's Republic of Bangladesh avails itself of the opportunity to renew to the High Commission of the Republic of India the assurances of its highest consideration.

Dhaka, 13 December 2009



The High Commission of the Republic of India
Dhaka

Annex B29

Yearbook of the International Law Commission (1956), Vol. II

YEARBOOK
OF THE
INTERNATIONAL
LAW COMMISSION
1956

Volume II

*Documents of the eighth session
including the report of the Commission
to the General Assembly*

UNITED NATIONS
New York, 1957



REPORT OF THE INTERNATIONAL LAW COMMISSION TO THE GENERAL ASSEMBLY

DOCUMENT A/3159*

Report of the International Law Commission covering the work of its eighth session, 23 April—4 July 1956

<i>Chapter</i>	CONTENTS	<i>Paragraphs</i>	<i>Page</i>
I. Organization of the session		1—6	253
II. Law of the sea		7—33	254
I. Introduction		7—33	254
II. Articles concerning the law of the sea			256
III. Commentary to the articles concerning the law of the sea			265
III. Progress of work on other subjects under study by the Commission		34—36	301
IV. Other decisions of the Commission		37—51	301

CHAPTER I

ORGANIZATION OF THE SESSION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, and in accordance with the statute of the Commission annexed thereto, held its eighth session at the European Office of the United Nations, Geneva, Switzerland, from 23 April to 4 July 1956. The work of the Commission during the session is related in the present report. Chapter II of the report contains the Commission's final report on the law of the sea, as requested in General Assembly resolution 899 (IX), chapter III consists of progress reports on the work on the subjects of Law of treaties, State responsibility and Consular intercourse and immunities, while chapter IV deals with questions relating to the statute of the Commission and with administrative matters.

I. Membership and attendance

2. The Commission consists of the following members, which were all present at the session:

<i>Name</i>	<i>Nationality</i>
Mr. Gilberto Amado	Brazil
Mr. Douglas L. Edmonds	United States of America
Sir Gerald Fitzmaurice	United Kingdom of Great Britain and Northern Ireland
Mr. J. P. A. François	Netherlands
Mr. F. V. García Amador	Cuba
Mr. Shuhsi Hsu	China
Faris Bey el-Khoury	Syria
Mr. S. B. Krylov	Union of Soviet Socialist Republics
Mr. L. Padilla-Nervo	Mexico
Mr. Radhabinod Pal	India
Mr. Carlos Salamanca	Bolivia
Mr. A. E. F. Sandström	Sweden
Mr. Georges Scelle	France
Mr. Jean Spiropoulos	Greece
Mr. Jaroslav Zourek	Czechoslovakia

II. Officers

3. At its meetings on 24 and 25 April 1956, the Commission elected the following officers:

Chairman: Mr. F. V. García Amador;

First Vice-chairman: Mr. Jaroslav Zourek;

Second Vice-chairman: Mr. Douglas L. Edmonds;

Rapporteur: Mr. J. P. A. François.

4. Mr. Yuen-li Liang, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General and acted as Secretary of the Commission.

III. Agenda

5. The Commission adopted an agenda for the eighth session consisting of the following items:

1. Régime of the high seas.
2. Régime of the territorial sea.
3. Law of treaties.
4. Diplomatic intercourse and immunities.
5. Consular intercourse and immunities.
6. State responsibility.
7. Arbitral procedure: General Assembly resolution 989 (X).
8. Question of amending article 11 of the statute of the Commission: General Assembly resolution 986 (X).
9. Publication of the documents of the Commission: General Assembly resolution 987 (X).
10. Co-operation with inter-American bodies.
11. Date and place of the ninth session.
12. Planning of future work of the Commission.
13. Other business.

6. In the course of the session, the Commission held fifty-one meetings. It considered all the items on the above

* Also issued as *Official Records of the General Assembly, Eleventh Session, Supplement No. 9.*

III. Commentary to the articles concerning the law of the sea

PART I

TERRITORIAL SEA

SECTION I. GENERAL

Juridical status of the territorial sea

ARTICLE 1

1. The sovereignty of a State extends to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the conditions prescribed in these articles and by other rules of international law.

Commentary

(1) Paragraph 1 brings out the fact that the rights of the coastal State over the territorial sea do not differ in nature from the rights of sovereignty which the State exercises over other parts of its territory. There is an essential difference between the régime of the territorial sea and that of the high seas since the latter is based on the principle of free use by all nations. The replies from Governments in connexion with The Hague Codification Conference of 1930 and the report of the Conference's Committee on the subject confirmed that this view, which is almost unanimously held, is in accordance with existing law. It is also the principle underlying a number of multilateral conventions—such as the Air Navigation Convention of 1919 and the International Civil Aviation Convention of 1944—which treat the territorial sea in the same way as other parts of State territory.

(2) The Commission preferred the term "territorial sea" to "territorial waters". It was of the opinion that the term "territorial waters" might lead to confusion, since it is used to describe both internal waters only, and internal waters and the territorial sea combined. For the same reason, the Codification Conference also expressed a preference for the term "territorial sea". Although not yet universally accepted, this term is becoming more and more prevalent.

(3) Clearly, sovereignty over the territorial sea cannot be exercised otherwise than in conformity with the provisions of international law.

(4) Some of the limitations imposed by international law on the exercise of sovereignty in the territorial sea are set forth in the present articles which cannot, however, be regarded as exhaustive. Incidents in the territorial sea raising legal questions are also governed by the general rules of international law, and these cannot be specially codified in the present draft for the purposes of their application to the territorial sea. That is why "other rules of international law" are mentioned in addition to the provisions contained in the present articles.

(5) It may happen that, by reason of some special relationship, geographical or other, between two States, rights in the territorial sea of one of them are granted

to the other in excess of the rights recognized in the present draft. It is not the Commission's intention to limit in any way any more extensive right of passage or other right enjoyed by States by custom or treaty.

Juridical status of the air space over the territorial sea and of its bed and subsoil

ARTICLE 2

The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to its bed and subsoil.

Commentary

This article is taken, except for purely stylistic changes, from the regulations proposed by the 1930 Codification Conference. Since the present draft deals solely with the sea, the Commission did not study the conditions under which sovereignty over the air space, seabed and subsoil is exercised.

SECTION II. LIMITS OF THE TERRITORIAL SEA

Breadth of the territorial sea

ARTICLE 3

1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.

2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.

4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference.

Commentary

(1) At its seventh session the Commission had adopted certain guiding principles concerning the limits of the territorial sea, but before drafting the final text of an article on this subject, it had wished to see the comments of Governments.

(2) First of all, the Commission had recognized that international practice was not uniform as regards the traditional limitation of the territorial sea to three miles. In the opinion of the Commission, that was an incontrovertible fact.

(3) Next the Commission had stated that international law did not justify an extension of the territorial sea beyond twelve miles. In its opinion, such an extension infringed the principle of the freedom of the seas, and was therefore contrary to international law.

(4) Finally the Commission had stated that it took no decision as to the breadth of the territorial sea up to the limit of twelve miles. Some members held that as

the rule fixing the breadth at three miles had been widely applied in the past and was still maintained by a number of important maritime States, it should, in the absence of any other rule of equal authority, be regarded as recognized by international law and binding on all States. That view was not supported by the majority of the Commission; at its seventh session, however, the Commission did not succeed in reaching agreement on any other limit. The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach of international law. Such an extension would be valid for any other State which did not object to it, and *a fortiori* for any State which recognized it tacitly or by treaty, or was a party to a judicial or arbitral decision recognizing the extension. A claim to a territorial sea not exceeding twelve miles in breadth could be sustained *erga omnes* by any State, if based on historic rights. But, subject to such cases, the Commission by a small majority declined to question the right of other States not to recognize an extension of the territorial sea beyond the three-mile limit.

(5) At its eighth session, the Commission resumed its study of this problem in the light of the comments by Governments. Those comments showed a wide diversity of opinion, and the same diversity was noted within the Commission. Several proposals were made; they are referred to below in the order in which they were put to the vote. Some members were of the opinion that it was for each coastal State, in the exercise of its sovereign powers, to fix the breadth of its territorial sea. They considered that in all cases where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law; this would cover the case of those States which had fixed the breadth at between three and twelve miles. Another opinion was that the Commission should recognize that international practice was not uniform as regards limitation of the territorial sea to three miles, but would not authorize an extension of the territorial sea beyond twelve miles. On the other hand every State would have the right to extend its jurisdiction up to twelve miles. A third opinion was that the Commission should recognize that every coastal State was entitled to a territorial sea of a breadth of at least three, but not exceeding twelve, miles. If, within those limits, the breadth was not determined by long usage, it should not exceed what was necessary for satisfying the justifiable interests of the State, taking into account also the interests of the other States in maintaining the freedom of the high seas and the breadth generally applied in the region. In case of a dispute, the question should, at the request of either of the parties, be referred to the International Court of Justice. A fourth opinion was reflected in a proposal to state that the breadth of the territorial sea could be determined by the coastal State in accordance with its economic and strategic needs within the limits of three and twelve miles, subject to recognition by States maintaining a narrower belt. According to a fifth opinion and proposal, the breadth of the territorial sea would be three miles, but a greater breadth should be recognized if

based on customary law. Furthermore, any State might fix the breadth of its territorial sea at a higher figure than three miles, but such an extension could not be claimed against. States which had not recognized it or had not adopted an equal or greater breadth. In no case could the breadth of the territorial sea exceed twelve miles.

(6) None of these proposals managed to secure a majority in the Commission, which, while recognizing that it differs in form from the other articles, finally accepted, by a majority vote, the text included in this draft as article 3.

(7) The Commission noted that the right to fix the limit of the territorial sea at three miles was not disputed. It States that international law does not permit that limit to be extended beyond twelve miles. As regards the right to fix the limit between three and twelve miles, the Commission was obliged to note that international practice was far from uniform. Since several States have established a breadth of between three and twelve miles, while others are not prepared to recognize such extensions, the Commission was unable to take a decision on the subject, and expressed the opinion that the question should be decided by an international conference of plenipotentiaries.

(8) It follows from the foregoing that the Commission came out clearly against claims to extend the territorial sea to a breadth which, in its view, jeopardizes the principle that has governed maritime law since Grotius, namely, the freedom of the high seas. On the other hand, the Commission did not succeed in fixing the limit between three and twelve miles.

(9) The Commission considered the possibility of adopting a rule that all disputes concerning the breadth of the territorial sea should be submitted to the compulsory jurisdiction of the International Court of Justice. The majority of the Commission, however, were unwilling to ask the Court to undertake the settlement of disputes on a subject regarding which the international community had not yet succeeded in formulating a rule of law. It did not wish to delegate an essentially legislative function to a judicial organ which, moreover, cannot render decisions binding on States other than the parties. For those reasons it considered that the question should be referred to the proposed conference.

Normal baseline

ARTICLE 4

Subject to the provisions of article 5 and to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the low-water line along the coast, as marked on large-scale charts officially recognized by the coastal State.

Commentary

(1) The Commission was of the opinion that, according to the international law in force, the extent of the territorial sea is measured either from the low-water line along the coast, or, in the circumstances envisaged

in article 5, from straight baselines independent of the low-water mark. This is how the Commission interprets the judgement of the International Court of Justice rendered on 10 December 1951 in the Fisheries Case between the United Kingdom and Norway.¹¹

(2) The traditional expression "low-water mark" may have different meanings; there is no uniform standard by which States in practice determine this line. The Commission considers that it is permissible to adopt as the base line the low-water mark as indicated on large-scale charts officially recognized by the coastal State. The Commission is of the opinion that the omission of detailed provisions such as were prepared by the 1930 Codification Conference is hardly likely to induce Governments to shift the low-water lines on their charts unreasonably.

Straight baselines

ARTICLE 5

1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

2. The coastal State shall give due publicity to the straight baselines drawn by it.

3. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic.

Commentary

(1) The International Court of Justice, in its decision regarding the Fisheries Case between the United Kingdom and Norway, considered that where the coast is deeply indented or cut into, or where it is bordered by an insular formation such as the Skjaergaard in Norway, the baseline becomes independent of the low-water mark and can only be determined by means of a geometric construction. The Court said:

"[In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such

a rugged coast; the rule would disappear under the exceptions. Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines which, within reasonable limits, may depart from the physical line of the coast]...

"The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight baselines method and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters."¹²

(2) The Commission interpreted the Court's judgement, which was delivered on the point in question by a majority of 10 votes to 2, as expressing the law in force; it accordingly drafted the article on the basis of this judgement. It felt, however, that certain rules advocated by the group of experts who met at The Hague in 1953 (see introduction to chapter II, paragraph 17 above) might serve to round off the criteria adopted by the Court. Consequently, at its sixth session, it inserted the following supplementary rules in paragraph 2 of the article:

"As a general rule, the maximum permissible length for a straight baseline shall be ten miles. Such baselines may be drawn, when justified according to paragraph 1, between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. Longer straight baselines may, however, be drawn provided that no point on such lines is more than five miles from the coast. Baselines shall not be drawn to and from drying rocks and shoals."¹³

(3) Some Governments raised objections to this paragraph 2, arguing that the maximum length of ten miles for baselines and the maximum distance from the coast of five miles seemed arbitrary and, moreover, not in conformity with the Court's decision. Against this certain members of the Commission pointed out that the Commission had drafted these provisions for application "as a general rule" and that it would always be possible to depart from them if special circumstances justified doing so. In the opinion of those members, the criteria laid down by the Court was not sufficiently precise for

¹² *Ibid.*, pp. 129 and 130. The passage within brackets is a translation, provided by the Registry of the International Court of Justice, for the authoritative French text of the judgement; it is inserted here instead of the corresponding passage reproduced in the I.C.J. Reports 1951, which is somewhat distorted by printing errors.

¹³ *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*, p. 14.

¹¹ *International Court of Justice, Reports 1951*, p. 116.

general application. However, at its seventh session in 1955, after further study of the question the Commission decided, by a majority, that paragraph 2 should be deleted so as not to make the provisions of paragraph 1 too mechanical. Only the final sentence was kept and added to paragraph 1.

(4) At this same session, the Commission made a number of changes designed to bring the text even more closely into line with the Court's judgement in the above-mentioned Fisheries Case. In particular it inserted in the first sentence the words: "or where this is justified by economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage".¹⁴ Some Governments stated in their comments on the 1955 text that they could not support the insertion of "economic interests" in the first sentence of the article. In their opinion, this reference to economic interests was based on a misinterpretation of the Court's judgement. The interests taken into account in the judgement were considered solely in the light of the historical and geographical factors involved and should not constitute a justification in themselves. The application of the straight baseline system should be justified in principle on other grounds before purely local economic considerations could justify a particular way of drawing the lines.

(5) Although this interpretation of the judgement was not supported by all the members, the great majority of the Commission endorsed this view at the eighth session, and the article was recast in that sense.

(6) The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was, however, prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters. Paragraph 3 of the article is designed to safeguard that right.

(7) Straight baselines may be drawn only between points situated on the territory of a single State. An agreement between two States under which such baselines were drawn along the coast and connecting points situated on the territories of different States, would not be enforceable against other States.

(8) Straight baselines may be drawn to islands situated in the immediate vicinity of the coast, but not to drying rocks and drying shoals. Only rocks or shoals permanently above sea level may be used for this purpose. Otherwise the distance between the baselines and the coast might be extended more than is required to fulfil the purpose for which the straight baseline method

is applied, and, in addition, it would not be possible at high tide to sight the points of departure of the baselines.

Outer limit of the territorial sea

ARTICLE 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Commentary

(1) According to the committee of experts (see introduction to chapter II, paragraph 17 above), this method of determining the outer limit has already been in use for a long time. In the case of deeply indented coasts the line it gives departs from the line which follows the sinuosities of the coast. It is undeniable that the latter line would often be so tortuous as to be unusable for purposes of navigation.

(2) The line all the points of which are at a distance of T miles from the nearest point on the coast (T being the breadth of the territorial sea) may be obtained by means of a continuous series of arcs of circles drawn with a radius of T miles from all points on the coast line. The outer limit of the territorial sea is formed by the most seaward arcs. In the case of a rugged coast, this line, although undulating, will be less of a zigzag than if it followed all the sinuosities of the coast, because circles drawn from those points on the coast where it is most deeply indented will not usually affect the outer limit of the seaward arcs. In the case of a straight coast, or if the straight baseline method is followed, the arcs of circles method produces the same result as the strictly parallel line.

(3) The Commission considers that the arcs of circles method is to be recommended because it is likely to facilitate navigation. In any case, the Commission feels that States should be free to use this method without running the risk of being charged with a breach of international law on the ground that the line does not follow all the sinuosities of the coast.

Bays

ARTICLE 7

1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to certain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

¹⁴ *Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934)*, p. 17.

3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

4. The foregoing provisions shall not apply to so-called "historic" bays, or in any cases where the straight baseline system provided for in article 5 is applied.

Commentary

(1) Paragraph 1, which is taken from the report of the committee of experts mentioned above, lays down the conditions that must be satisfied by an indentation or curve in order to be regarded as a bay. In adopting this provision, the Commission repaired the omission to which attention had already been drawn by The Hague Codification Conference of 1930 and which the International Court of Justice again pointed out in its judgement in the Fisheries Case. Such an explanation was necessary in order to prevent the system of straight baselines from being applied to coasts whose configuration does not justify it, on the pretext of applying the rules for bays.

(2) If, as a result of the presence of islands, an indentation whose features as a "bay" have to be established has more than one mouth, the total length of the lines drawn across all the different mouths will be regarded as the width of the bay. Here, the Commission's intention was to indicate that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland, and this consideration may justify some alteration in the ratio between the width and the penetration of the indentation. In such a case an indentation which, if it had no islands at its mouth, would not fulfil the necessary conditions, is to be recognized as a bay. Nevertheless, islands at the mouth of a bay cannot be considered as "closing" the bay if the ordinary sea route passes between them and the coast.

(3) The Commission discussed at length the question of the conditions under which the waters of a bay can be regarded as internal waters. The majority considered that it was not sufficient to lay down that the waters must be closely linked to the land domain by reason of the depth of penetration of the bay into the mainland, or otherwise by its configuration, or by reason of the utility the bay might have from the point of view of the economic needs of the country. These criteria lack legal precision.

(4) The majority of the Commission took the view that the maximum length of the closing line must be stated in figures and that a limitation based on geographical or other considerations, which would necessarily be vague, would not suffice. It considered, however, that the limit should be more than ten miles. Although not prepared to establish a direct relationship between the length of the closing line and the breadth of the territorial sea—such a relationship was formally denied by certain members of the Commission—it felt bound to take some account of tendencies to extend the breadth of the territorial sea by lengthening the closing line of bays. As an experiment the Commission suggested,

at its seventh session, a distance of twenty-five miles; thus, the length of the closing line would be slightly more than twice the permissible maximum breadth of the territorial sea as laid down in paragraph 2 of article 3. Since, firstly, historic bays, some of which are wider than twenty-five miles, would not come under the article and since, secondly, the provision contained in paragraph 1 of the article concerning the characteristics of a bay was calculated to prevent abuse, it seemed not unlikely that some extension of the closing line would be more readily accepted than an extension of the breadth of the territorial sea in general. At the seventh session, the majority of the Commission rejected a proposal that the length of the closing line should be set at twice the breadth of the territorial sea, primarily because it considered such a delimitation unacceptable to States that have adopted a breadth of three or four miles for their territorial sea. At its eighth session the Commission again examined this question in the light of replies from Governments. The proposal to extend the closing line to twenty-five miles had found little support; a number of Governments stated that, in their view, such an extension was excessive. By a majority, the Commission decided to reduce the twenty-five miles figure, proposed in 1955, to fifteen miles. While appreciating that a line of ten miles had been recognized by several Governments and established by international conventions, the Commission took account of the fact that the origin of the ten-mile line dates back to a time when the breadth of the territorial sea was much more commonly fixed at three miles than it is now. In view of the tendency to increase the breadth of the territorial sea, the majority in the Commission thought that an extension of the closing line to fifteen miles would be justified and sufficient.

(5) If the mouth of a bay is more than fifteen miles wide, the closing line will be drawn within the bay at the point nearest to the sea where the width does not exceed that distance. Where more than one line of fifteen miles in length can be drawn, the closing line will be so selected as to enclose the maximum water area within the bay. The Commission believes that other methods proposed for drawing this line will give rise to uncertainties that will be avoided by adopting the above method, which is that proposed by the above-mentioned committee of experts.

(6) Paragraph 4 states that the foregoing provisions shall not apply to "historic" bays.

(7) The Commission felt bound to propose only rules applicable to bays the coasts of which belong to a single State. As regards other bays, the Commission has not sufficient data at its disposal concerning the number of cases involved or the regulations at present applicable to them.

Ports

ARTICLE 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Commentary

(1) The waters of a port up to a line drawn between the outermost installations form part of the internal waters of the coastal State. No rules for ports have been included in this draft, which is exclusively concerned with the territorial sea and the high seas.

(2) Permanent structures erected on the coast and jutting out to sea (such as jetties and coast protective works) are assimilated to harbour works.

(3) Where such structures are of excessive length (for instance, a jetty extending several kilometres into the sea), it may be asked whether this article could still be applied or whether it would not be necessary, in such cases, to adopt the system of safety zones provided for in article 71 for installations on the continental shelf. As such cases are very rare, the Commission, while wishing to draw attention to the matter, did not deem it necessary to state an opinion.

Roadsteads

ARTICLE 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must give due publicity to the limits of such roadsteads.

Commentary

In substance, this article is based on the 1930 Codification Conference text. With some dissenting opinions, the Commission considered that roadsteads situated outside the territorial sea should not be treated as internal waters. While appreciating that the coastal State must be able to exercise special supervisory and police rights in such roadsteads, the Commission thought it would be going too far to treat them as internal waters, since innocent passage through them might then be prohibited. It considered that the rights of the coastal State were sufficiently safeguarded by the recognition of such waters as territorial sea.

Islands

ARTICLE 10

Every island has its own territorial sea. An island is an area of land, surrounded by water, which in normal circumstances is permanently above high-water mark.

Commentary

(1) This article applies both to islands situated in the high seas and to islands situated in the territorial sea. In the case of the latter, their own territorial sea will partly coincide with the territorial sea of the mainland. The presence of the island will create a bulge in the outer limit of the territorial sea of the mainland. The same idea can be expressed in the following form: islands, wholly or partly situated in the territorial sea, shall be taken into consideration in determining the outer limit of the territorial sea.

(2) An island is understood to be any area of land surrounded by water which, except in abnormal circumstances, is permanently above high-water mark. Consequently, the following are not considered islands and have no territorial sea:

(i) Elevations which are above water at low tide only. Even if an installation is built on such an elevation and is itself permanently above water—a lighthouse, for example—the elevation is not an “island” as understood in this article;

(ii) Technical installations built on the sea-bed, such as installations used for the exploitation of the continental shelf (see article 71). The Commission nevertheless proposed that a safety zone around such installations should be recognized in view of their extreme vulnerability. It does not consider that a similar measure is required in the case of lighthouses.

(3) The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference for the Codification of International Law of 1930, the Commission was unable to overcome the difficulties involved. The problem is singularly complicated by the different forms it takes in different archipelagos. The Commission was prevented from stating an opinion, not only by disagreement on the breadth of the territorial sea, but also by lack of technical information on the subject. It recognizes the importance of this question and hopes that if an international conference subsequently studies the proposed rules it will give attention to it.

(4) The Commission points out, for purposes of information, that article 5 may be applicable to groups of islands lying off the coast.

Drying rocks and drying shoals

ARTICLE 11

Drying rock and drying shoals which are wholly or partly within the territorial sea, as measured from the mainland or an island, may be taken as points of departure for measuring the extension of the territorial sea.

Commentary

(1) Drying rocks and shoals situated wholly or partly in the territorial sea are treated in the same way as islands. The limit of the territorial sea will make allowance for the presence of such drying rocks and will show bulges accordingly. On the other hand, drying rocks and shoals situated outside the territorial sea, as measured from the mainland or an island, have no territorial sea of their own.

(2) It was suggested that the terms of article 5 (under which straight baselines are not drawn to or from drying rocks and shoals) might be incompatible with the present article. The Commission sees no incompatibility. The fact that for the purpose of determining the breadth of the territorial sea drying rocks and shoals are assimilated to islands does not imply that such rocks and shoals are treated as islands in every respect. In the comment to article 5 it has already been pointed out that if they were so treated, then, where straight baselines are drawn, and

particularly in the case of shallow waters off the coast, the distance between the baseline and the coast might be far greater than that required to fulfil the purpose for which the straight baseline method was designed.

Delimitation of the territorial sea in straits and off other opposite coasts

ARTICLE 12

1. The boundary of the territorial sea between two States, the coasts of which are opposite each other at a distance less than the extent of the belts of territorial sea adjacent to the two coasts, shall be fixed by agreement between those States. Failing such agreement and unless another boundary line is justified by special circumstances, the boundary is the median line every point of which is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured.

2. If the distance between the two States exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Nevertheless, if, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.

3. The first sentence of the preceding paragraph shall be applicable to cases where both coasts belong to one and the same coastal State. If, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may be declared by the coastal State to form part of its territorial sea.

4. The line of demarcation shall be marked on the officially recognized large-scale charts.

Commentary

(1) The 1955 draft contained an article (12) entitled "Delimitation of the territorial sea in straits", and another (14) entitled "Delimitation of the territorial sea of two States, the coasts of which are opposite each other". It was correctly pointed out that the text could be simplified by combining those two articles, since the delimitation of the territorial sea in straits did not present any different problem from that of the opposite coasts of two States generally. It is only the right of passage in straits that calls for special attention. The Commission has dealt with this in article 17, paragraph 4.

(2) The delimitation in case of disagreement between those States, of the territorial seas between two States the coasts of which are opposite each other, was one of the main tasks of the committee of experts which met at The Hague in April 1953 at the Commission's request. The Commission approved of the experts' proposals (A/CN.4/61/Add.1) and took them as a basis for this article. It considered, however, that it would be wrong to go into too much detail and that the rule should be fairly flexible. Consequently, it did not adopt certain points of detail laid down by the experts. Although the Commission noted that special circumstances would

probably necessitate frequent departures from the mathematical median line, it thought it advisable to adopt, as a general rule, the system of the median line as a basis for delimitation.

(3) Under the term "baselines" at the end of paragraph 1 the Commission includes both normal baselines and those applied under any straight baseline system adopted for the coast in question.

(4) The second paragraph deals with cases where parts of the high sea may be surrounded by the territorial seas of the two States. It was thought that there was no valid reason why these enclosed portions of sea—which may be quite large in area—should not be treated as high seas. If such areas are very small, however, their assimilation to the territorial sea may be justified on practical grounds. Such exceptions will be limited to enclaves of sea not more than two miles across, this being the width fixed by the Commission following the example of the 1930 Codification Conference, though it is not claimed that there is any existing rule of positive law to this effect.

(5) If both shores belong to the same State, the question of delimitation of the territorial sea can only arise if the distance between the two shores is more than twice the breadth of the territorial sea. The first sentence of paragraph 2 will then apply. In this case the question of enclaves may also arise. The enclave may then be assimilated to the territorial sea if it is not more than two miles across.

(6) The Commission is aware that the rules it has formulated in paragraphs 2 and 3 cannot be applied in all circumstances. Cases may arise in which, either by reason of differences in customary law or by reason of international conventions, it is necessary to apply a different rule to the sea between the two coasts. It is not impossible that the area of sea between two coasts of the same State may have the character of an internal sea subject to special rules. The Commission cannot undertake to study these special cases; it must confine itself to stating the principles which, in general, could serve as a point of departure for determining the legal status of the areas in question.

(7) The rule established by the present article does not provide any solution for cases in which the States opposite each other have adopted different breadths for their territorial seas. As long as no agreement is reached on the breadth of the territorial sea, disputes of this kind cannot be settled on the basis of legal rules; they must be settled by agreement between the parties.

Delimitation of the territorial sea at the mouth of a river

ARTICLE 13

1. If a river flows directly into the sea, the territorial sea shall be measured from a line drawn *inter fauces terrarum* across the mouth of the river.

2. If the river flows into an estuary the coasts of which belong to a single State, article 7 shall apply.

Commentary

The substance of this article is taken from the Report

of Sub-Committee II of the Second Committee of The Hague Conference of 1930 for the Codification of International Law. So far as paragraph 2 is concerned, the Commission has not the necessary geographical data at its disposal to decide whether this provision is applicable to all existing estuaries.

Delimitation of the territorial sea of two adjacent States

ARTICLE 14

1. The boundary of the territorial sea between two adjacent States shall be determined by agreement between them. In the absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidistance from the nearest points on the baseline from which the breadth of the territorial sea of each country is measured.

2. The boundary line shall be marked on the officially recognized large-scale charts.

Commentary

(1) The situation described in this article can be regulated in various ways.

(2) First, it would be possible to consider extending the land frontier out to sea as far as the outer limit of the territorial sea. This line can only be used if the land frontier meets the coast at a right angle; if the angle is acute, the result is impracticable.

(3) A second solution would be to draw a line at right angles to the coast at the point where the land frontier reaches the sea. This method is open to criticism if the coastline curves in the vicinity of the point in question; for in that case the line drawn at right angles may meet the coast again at another point.

(4) A third solution would be to adopt as the demarcation line the geographical parallel passing through the point at which the land frontier meets the coast. This solution is not applicable in all cases either.

5) A fourth solution would be to draw a line at right angles to the general direction of the coastline. The Norwegian and Swedish Governments drew attention to the arbitral award of 23 October 1909 in a dispute between Norway and Sweden, of which the statement of reasons contains the following sentence:

“The delimitation shall be made by tracing a line perpendicularly to the general direction of the coast.” (A/CN.4/71, p. 14 and A/CN.4/71/Add.1, p. 3.)

(6) The group of experts, mentioned above, was unable to support this last method of drawing the boundary line. It was of opinion that it was often impracticable to establish any “general direction of the coast”; the result would depend on the “scale of the charts used for the purpose and . . . how much coast shall be utilized in attempting to determine any general direction whatever”. Consequently, since the method of drawing a line at right angles to the general direction of the coastline is too vague for purposes of law, the best solution seems to be the median line which the group of experts suggested. Such a line should be drawn according to the principle of equidistance from the

respective coastlines. Where the coast is straight, a line drawn according to this method will coincide with one drawn at right angles to the coast at the intersection of the land frontier and the coastline. If, however, the coast is curved or irregular, the line takes the contour into account, while avoiding the difficulties of the problem of the general direction of the coast.

(7) The Commission agreed with the view taken by the group of experts. As in the case dealt with by the preceding article, however, it considers that the rule should be very flexibly applied.

SECTION III. RIGHT OF INNOCENT PASSAGE

(1) This section contains four sub-sections: sub-section A. General rules; sub-section B. Merchant ships; sub-section C. Government ships other than warships; sub-section D. Warships. The general rules laid down in sub-section A are fully applicable to merchant ships (sub-section B). They apply to the ships referred to in sub-sections C and D subject to the reservations stated there.

(2) The Commission wishes to point out that this section, like the whole of these regulations, is applicable only in time of peace. No provision of this section affects the rights and obligations of Members of the United Nations Organization under the Charter.

SUB-SECTION A. GENERAL RULES

Meaning of the right of innocent passage

ARTICLE 15

1. Subject to the provisions of the present rules, ships of all States shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage is innocent so long as a ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules, or to other rules of international law.

4. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

5. Submarines are required to navigate on the surface.

Commentary

(1) This article lays down that ships of all States, including fishing boats, have the right of innocent passage through the territorial sea. It reiterates a principle recognized by international law and confirmed by the 1930 Codification Conference.

(2) According to paragraph 2 the general rule recommended for ships passing through the territorial sea is equally applicable to ships proceeding to or from ports. In the latter cases, however, certain restrictions are necessary: these are mentioned in article 17, para-

sanitary regulations is fairly small, the Commission considers that, in view of the connexion between customs and sanitary regulations, such rights should also be recognized for sanitary regulations.

(4) The Commission did not recognize special security rights in the contiguous zone. It considered that the extreme vagueness of the term "security" would open the way for abuses and that the granting of such rights was not necessary. The enforcement of customs and sanitary regulations will be sufficient in most cases to safeguard the security of the State. In so far as measures of self-defence against an imminent and direct threat to the security of the State are concerned, the Commission refers to the general principles of international law and the Charter of the United Nations.

(5) Nor was the Commission willing to recognize any exclusive right of the coastal State to engage in fishing in the contiguous zone. The Preparatory Committee of The Hague Codification Conference found, in 1930, that the replies from Governments offered no prospect of an agreement to extend the exclusive fishing rights of the coastal State beyond the territorial sea. The Commission considered that in that respect the position has not changed.

(6) The Commission examined the question whether the same attitude should be adopted with regard to proposals to grant the coastal State the right to take whatever measures it considered necessary for the conservation of the living resources of the sea in the contiguous zone. The majority of the Commission were unwilling to accept such a claim. They argued, first, that measures of this kind applying only to the relatively small area of the contiguous zone would be little practical value and, secondly, that having provided for the regulation of the conservation of living resources in a special part of the present draft, it would be inadvisable to open the way for a duplication of these rules by different provisions designed to regulate the same matters in the contiguous zone only. Since the contiguous zone is a part of the high seas, the rules concerning conservation of the living resources of the sea apply to it.

(7) The Commission did not maintain its previous decision to grant the coastal State, within the contiguous zone, a right of control in respect of immigration. In its report on the work of its fifth session the Commission commented on this provision as follows:

"It is understood that the term 'customs regulations' as used in the article refers not only to regulations concerning import and export duties but also to other regulations concerning the exportation and importation of goods. In addition, the Commission thought it necessary to amplify the formulation previously adopted by referring expressly to immigration, a term which is also intended to include emigration."²²

Reconsidering this decision, the majority of the Commission took the view that the interests of the coastal State do not require an extension of the right of control to immigration and emigration. It considered that such con-

trol could and should be exercised in the territory of the coastal State and that there was no need to grant it special rights for this purpose in the contiguous zone.

(8) The Commission considered the case of areas of the sea situated off the junction of two or more adjacent States, where the exercise of rights in the contiguous zone by one State would not leave any free access to the ports of another State except through that zone. The Commission, recognizing that in such cases the exercise of rights in the contiguous zone by one State may unjustifiably obstruct traffic to or from a port of another State, considered that in the case referred to it would be necessary for the two States to conclude a prior agreement on the exercise of rights in the contiguous zone. In view of the exceptional nature of the case, however, the Commission did not consider it necessary to include a formal rule to this effect.

(9) The Commission considers that the breadth of the contiguous zone cannot exceed twelve miles from the coast, the figure adopted by the Preparatory Committee of The Hague Codification Conference (1930). Until such time as there is unanimity in regard to the breadth of the territorial sea, the zone should be measured from the coast and not from the outer limit of the territorial sea. States which have claimed extensive territorial waters have in fact less need for a contiguous zone than those which have been more modest in their delimitation.

(10) The Commission thought it advisable to clarify the expression "from the coast" by stating that the zone is measured from the baseline from which the breadth of the territorial sea is measured.

(11) The exercise by the coastal State of the rights enunciated in this article does not affect the legal status of the air space above the contiguous zone. The question whether the establishment of such an air control zone could be contemplated is outside the scope of these rules of the law of the sea.

SECTION III. CONTINENTAL SHELF

(1) At its third session, held in 1951, the Commission adopted draft articles on the continental shelf with accompanying comments. After the third session, the special rapporteur re-examined these articles in the light of comments received from the Governments of eighteen countries. The comments of the Governments are reproduced in Annex II to the report on the fifth session.²³ In March 1953, the special rapporteur submitted a further report on the subject (A/CN.4/60) which was examined by the Commission at its fifth session. The Commission adopted draft articles, which it re-examined at its eighth session, in the context of the other sections of the rules of the law of the sea. This examination did not give rise to any major changes, except with regard to the delimitation of the continental shelf (see article 67).

(2) The Commission accepted the idea that the coastal State may exercise control and jurisdiction over the continental shelf, with the proviso that such control and jurisdiction shall be exercised solely for the purpose of

²² *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456), para. 111.*

²³ *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456).*

exploiting its resources; and it rejected any claim to sovereignty or jurisdiction over the superjacent waters.

(3) In some circles it is thought that the exploitation of the natural resources of submarine areas should be entrusted, not to coastal States, but to agencies of the international community generally. In present circumstances, however, such internationalization would meet with insurmountable practical difficulties, and would not ensure the effective exploitation of natural resources necessary to meet the needs of mankind.

(4) The Commission is aware that exploration and exploitation of the seabed and subsoil, which involves the exercise of control and jurisdiction by the coastal State, may affect the freedom of the seas, particularly in respect of navigation. Nevertheless, this cannot be a sufficient reason for obstructing a development which, in the opinion of the Commission, can be to the benefit of all mankind. The necessary steps must be taken to ensure that this development affects the freedom of the seas no more than is absolutely unavoidable, since that freedom is of paramount importance to the international community. The Commission thought it possible to combine the needs of the exploitation of the seabed and subsoil with the requirement that the sea itself must remain open to all nations for navigation and fishing. With these considerations in mind, the Commission drafted the following articles.

ARTICLE 67

For the purposes of these articles, the term "continental shelf" is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres (approximately 100 fathoms), or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

Commentary

(1) In its first draft, prepared in 1951, the Commission designated the continental shelf as "the seabed and subsoil of the submarine areas contiguous to the coast, but outside the area of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil."²⁴ It followed from this definition that areas in which exploitation was not technically possible by reason of the depth of the water, were excluded from the continental shelf.

(2) The Commission had considered the possibility of adopting a fixed limit for the continental shelf in terms of the depth of the superjacent waters. It seemed likely that a limit fixed at a point where the sea covering the continental shelf reaches a depth of 200 metres would at present be sufficient for all practical needs. This depth also coincides with that at which the continental shelf in the geological sense generally comes to an end and the continental slope begins, falling steeply to a great depth. The Commission felt, however, that such a limit would have the disadvantage of instability. Technical developments in the near future might make it possible to exploit

the resources of the seabed at a depth of over 200 metres. Moreover, the continental shelf might well include submarine areas lying at a depth of over 200 metres, but susceptible of exploitation by means of installations erected in neighbouring areas where the depth does not exceed this limit. Hence the Commission decided not to specify a depth limit of 200 metres.

(3) At its fifth session, in 1953, the Commission reconsidered this decision. It abandoned the criterion of exploitability in favour of that of a depth of 200 metres. In the light of the comments submitted by certain Governments, the Commission came to the conclusion that the text previously adopted lacked the necessary precision and might give rise to disputes and uncertainty. The Commission considered that the limit of 200 metres would be sufficient for all practical purposes at present and probably for a long time to come. It took the view that the adoption of a fixed limit would have considerable advantages, in particular with regard to the delimitation of continental shelves between adjacent States or States opposite each other. The adoption of different limits by different States might cause difficulties of the same kind as differences in the breadth of the territorial sea. The Commission was aware that future technical progress might make exploitation possible at a depth greater than 200 metres; in that case the limit would have to be revised, but meanwhile there was every advantage in having a stable limit.

(4) At its eighth session, the Commission reconsidered this provision. It noted that the Inter-American Specialized Conference on "Conservations of Natural Resources: Continental Shelf and Oceanic Waters", held at Ciudad Trujillo (Dominican Republic) in March 1956, had arrived at the conclusion that the right of the coastal State should be extended beyond the limit of 200 metres, "to where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil". Certain members thought that the article adopted in 1953 should be modified. While agreeing that in present circumstances the limit adopted is in keeping with practical needs, they disapproved of a provision prohibiting exploitation of the continental shelf at a depth greater than 200 metres even if such exploitation was a practical possibility. They thought that in the latter case, the right to exploit should not be made subject to prior alteration of the limit adopted. While maintaining the limit of 200 metres in this article as the normal limit corresponding to present needs, they wished to recognize forthwith the right to exceed that limit if exploitation of the seabed or subsoil at a depth greater than 200 metres proved technically possible. It was therefore proposed that the following words should be added to the article, "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas". In the opinion of certain members this addition would also have the advantage of not encouraging the belief that up to 200 metres depth there is a fixed zone where rights of sovereignty other than those stated in article 68 below can be exercised. Other members contested the usefulness of the addition, which in their opinion unjustifiably and dangerously impaired the sta-

²⁴ *Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858)*, p. 17.

bility of the limit adopted. The majority of the Commission nevertheless decided in favour of the addition.

(5) The sense in which the term "continental shelf" is used departs to some extent from the geological concept of the term. The varied use of the term by scientists is in itself an obstacle to the adoption of the geological concept as a basis for legal regulation of this problem.

(6) There was yet another reason why the Commission decided not to adhere strictly to the geological concept of the continental shelf. The mere fact that the existence of a continental shelf in the geological sense might be questioned in regard to submarine areas where the depth of the sea would nevertheless permit of exploitation of the subsoil in the same way as if there were a continental shelf, could not justify the application of a discriminatory legal régime to these regions.

(7) While adopting, to a certain extent, the geographical test for the "continental shelf" as the basis of the juridical definition of the term, the Commission therefore in no way holds that the existence of a continental shelf, in the geographical sense as generally understood, is essential for the exercise of the rights of the coastal State as defined in these articles. Thus, if, as is the case in the Persian Gulf, the submarine areas never reach the depth of 200 metres, that fact is irrelevant for the purposes of the present article. Again, exploitation of a submarine area at a depth exceeding 200 metres is not contrary to the present rules, merely because the area is not a continental shelf in the geological sense.

(8) In the special cases in which submerged areas of a depth less than 200 metres, situated fairly close to the coast, are separated from the part of the continental shelf adjacent to the coast by a narrow channel deeper than 200 metres, such shallow areas could be considered as adjacent to that part of the shelf. It would be for the State relying on this exception to the general rule to establish its claim to an equitable modification of the rule. In case of dispute it must be a matter for arbitral determination whether a shallow submarine area falls within the rule as here formulated.

(9) Noting that it was departing from the strictly geological concept of the term, *inter alia*, in view of the inclusion of exploitable areas beyond the depth of 200 metres, the Commission considered the possibility of adopting a term other than "continental shelf". In considering whether it would not be better, in conformity with the usage employed in certain scientific works and also in some national laws and international instruments, to call these regions "submarine areas". The majority of the Commission decided to retain the term "continental shelf" because it is in current use and because the term "submarine areas" used without further explanation would not give a sufficient indication of the nature of the areas in question. The Commission considered that some departure from the geological meaning of the term "continental shelf" was justified, provided that the meaning of the term for the purpose of these articles was clearly defined. It has stated this meaning of the term in the present article.

(10) The term "continental shelf" does not imply that it refers exclusively to continents in the current

connotation of that word. It also covers the submarine areas contiguous to islands.

(11) Lastly the Commission points out that it does not intend limiting the exploitation of the subsoil of the high seas by means of tunnels, cuttings or wells dug from *terra firma*. Such exploitation of the subsoil of the high seas by a coastal State is not subject to any legal limitation by reference to the depth of the superjacent waters.

ARTICLE 68

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

Commentary

(1) While this article, as provisionally formulated in 1951 (article 2 of the draft), referred to the continental shelf as "subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources", the article as now formulated lays down that "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources".

(2) The Commission desired to avoid language lending itself to interpretations alien to an object which the Commission considers to be of decisive importance, namely, the safeguarding of the principle of the full freedom of the superjacent sea and the air space above it. Hence it was unwilling to accept the sovereignty of the coastal State over the seabed and subsoil of the continental shelf. On the other hand, the text as now adopted leaves no doubt that the rights conferred upon the coastal State cover all rights necessary for and connected with the exploration and exploitation of the natural resources of the continental shelf. Such rights include jurisdiction in connexion with the prevention and punishment of violations of the law. The rights of the coastal State are exclusive in the sense that, if it does not exploit the continental shelf, it is only with its consent that anyone else may do so.

(3) At its fifth session, the Commission decided after long discussion to retain the term "natural resources", as distinct from the more limited term "mineral resources". In its previous draft the Commission had only dealt with "mineral resources" and some members proposed adhering to that course. The Commission, however, came to the conclusion that the products of "sedentary" fisheries, in particular, to the extent that they were natural resources permanently attached to the bed of the sea should not be left outside the scope of the régime adopted, and that this aim could be achieved by using the term "natural resources". It is clearly understood that the rights in question do not cover so-called bottom-fish and other fish which, although living in the sea, occasionally have their habitat at the bottom of the sea or are bred there.

(4) At the eighth session it was proposed that the condition of permanent attachment to the seabed should be mentioned in the article itself. At the same time the opinion was expressed that the condition should be made less strict; it would be sufficient that the marine fauna and

flora in question should live in constant physical and biological relationship with the seabed and the continental shelf; examination of the scientific aspects of that question should be left to the experts. The Commission however decided to leave the text of the article and of the commentary as it stood.

(5) It is clearly understood that the rights in question do not cover objects such as wrecked ships and their cargoes (including bullion) lying on the seabed or covered by the sand of the subsoil.

(6) In the view of the Commission, the coastal State, when exercising its exclusive rights, must also respect the existing rights of nationals of other States. Any interference with such rights, when unavoidably necessitated by the requirements of exploration and exploitation of natural resources, is subject to the rules of international law concerning respect for the rights of aliens. However, apart from the case of acquired rights, the sovereign rights of the coastal State over its continental shelf also cover "sedentary" fisheries in the sense indicated above. As regards fisheries which are also sometimes described as "sedentary" because they are conducted by means of equipment fixed in the sea, but which are not concerned with natural resources attached to the seabed, the Commission refers to article 60 of these rules.

(7) The rights of the coastal State over the continental shelf do not depend on occupation, effective or national, or on any express proclamation.

(8) The Commission does not deem it necessary to expatiate on the question of the nature and legal basis of the sovereign rights attributed to the coastal State. The considerations relevant to this matter cannot be reduced to a single factor. In particular, it is not possible to base the sovereign rights of the coastal State exclusively on recent practice, for there is no question in the present case of giving the authority of a legal rule to a unilateral practice resting solely upon the will of the States concerned. However, that practice itself is considered by the Commission to be supported by considerations of law and of fact. In particular, once the seabed and the subsoil have become an object of active interest to coastal States with a view to the exploration and exploitation of their resources, they cannot be considered as *res nullius*, i.e., capable of being appropriated by the first occupier. It is natural that coastal States should resist any such solution. Moreover, in most cases the effective exploitation of natural resources must presuppose the existence of installations on the territory of the coastal State. Neither is it possible to disregard the geographical phenomenon whatever the term—propinquity, contiguity, geographical continuity, appurtenance or identity—used to define the relationship between the submarine areas in question and the adjacent non-submerged land. All these considerations of general utility provide a sufficient basis for the principle of the sovereign rights of the coastal State as now formulated by the Commission. As already stated, that principle, which is based on general principles corresponding to the present needs of the international community, is in no way incompatible with the principle of the freedom of the seas.

(9) Although for the reasons stated, as well as for practical considerations, the Commission was unable to endorse the idea of internationalization of the submarine areas comprised in the concept of the continental shelf, it did not discard the possibility of setting up an international body for scientific research and assistance with a view to promoting their most efficient use in the general interest. It is possible that some such body may one day be set up within the framework of an existing international organization.

(10) The proposals made by the Commission in its report for 1953 caused some anxiety in scientific circles, where it was thought that freedom to conduct scientific research in the soil of the continental shelf and in the waters above would be endangered. In so far as such researches are conducted in the waters above a continental shelf, this anxiety seems to be unjustified since the freedom to conduct research in these waters—which still form part of the high seas—is in no way affected. The coastal State will not have the right to prohibit scientific research, in particular research on the conservation of the living resources of the sea. The consent of the State will only be required for research relating to the exploration or exploitation of the seabed or subsoil. It is to be expected that the coastal State will only refuse its consent exceptionally, and in cases in which it fears an impediment to its exclusive rights to explore and exploit the seabed and subsoil.

ARTICLE 69

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Commentary

Article 69 is intended to ensure respect for the freedom of the seas in face of the sovereign rights of the coastal State over the continental shelf. It provides that the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas or of the airspace above the superjacent waters. A claim to sovereign rights in the continental shelf can only extend to the seabed and subsoil and not to the superjacent waters; such a claim cannot confer any jurisdiction or exclusive right over the superjacent waters, which are and remain a part of the high seas. The articles on the continental shelf are intended as laying down the régime of the continental shelf, only as subject to and within the orbit or the paramount principle of the freedom of the seas and of the airspace above them. No modification of or exceptions to that principle are admissible unless expressly provided for in the various articles.

ARTICLE 70

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables on the continental shelf.

Commentary

(1) The coastal State is required to permit the laying of submarine cables on the seabed of its continental shelf, but in order to avoid unjustified interference with the exploitation of the natural resources of the seabed and subsoil, it may impose conditions concerning the route to be followed.

(2) The Commission considered whether this provision should not be extended to pipelines. In principle, the answer must be in the affirmative. The question is, however, complicated by the fact that it would often be necessary to install pumping stations at certain points, which might hinder the exploitation of the soil more than cables. It follows that the coastal State might be less liberal in this matter than in the case of cables. As the question does not yet seem to be of practical importance, the Commission has not expressly referred to pipelines in the present article.

ARTICLE 71

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.

5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

Commentary

(1) While article 69 lays down in general terms the basic principle of the unaltered legal status of the superjacent sea and the air above it, article 71 applies that basic principle to the main manifestations of the freedom of the seas, namely, freedom of navigation and of fishing. Paragraph 1 of this article lays down that the exploration of the continental shelf must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea. It will be noted, however, that what the article prohibits is not any kind of interference, but only unjustifiable interference. The manner and the significance of that qualification were the subject of prolonged discussion in the Commission. The progressive development of international law, which takes place against the background of established rules, must often result in the modification of those

rules by reference to new interests or needs. The extent of that modification must be determined by the relative importance of the needs and interests involved. To lay down, therefore, that the exploration and exploitation of the continental shelf must never result in any interference whatsoever with navigation and fishing might result in many cases in rendering somewhat nominal both the sovereign rights of exploration and exploitation and the very purpose of the articles as adopted. The case is clearly one of assessment of the relative importance of the interests involved. Interference, even if substantial, with navigation and fishing might, in some cases, be justified. On the other hand, interference even on an insignificant scale would be unjustified if unrelated to reasonably conceived requirements of exploration and exploitation of the continental shelf. While, in the first instance, the coastal State must be the judge of the reasonableness—or the justification—of the measures adopted, in case of dispute the matter must be settled on the basis of article 73, which governs the settlement of all disputes regarding the interpretation or application of the articles.

(2) With regard to the conservation of the living resources of the sea, everything possible should be done to prevent damage by exploitation of the subsoil, seismic exploration in connexion with oil prospecting, and leaks from pipelines.

(3) Paragraphs 2 to 5 relate to the installations necessary for the exploration and exploitation of the continental shelf, as well as to safety zones around such installations and the measures necessary to protect them. These provisions, too, are subject to the overriding prohibition of unjustified interference. Although the Commission did not consider it essential to specify the size of the safety zones, it believes that generally speaking a maximum radius of 500 metres is sufficient for the purpose.

(4) Interested parties, i.e., not only Governments but also groups interested in navigation and fishing, should be duly notified of the construction of installations, so that these may be marked on charts. In any case, the installations should be equipped with warning devices (lights, audible signals, radar, buoys, etc.).

(5) There is, in principle, no duty to disclose in advance plans relating to contemplated construction of installations. However, in cases where the actual construction of provisional installations is likely to interfere with navigation, due means of warning must be maintained, in the same way as in the case of installations already completed, and as far as possible due notice must be given. If installations are abandoned or disused they must be entirely removed.

(6) With regard to the general status of installations, it has been thought useful to lay down expressly in paragraph 3 of this article, that they do not possess the status of islands and that the coastal State is not entitled to claim for installations any territorial waters of their own or treat them as relevant for the delimitation of territorial waters. In particular, they cannot be taken into consideration for the purpose of determining the baseline. On the other hand, the installations are under the juris-

diction of the coastal State for the purpose of maintaining order and of the civil and criminal competence of its courts.

(7) While, generally, the Commission, by formulating the test of unjustifiable interference, thought it advisable to eliminate any semblance of rigidity in adapting the existing principle of the freedom of the sea to what is essentially a novel situation, it thought it desirable to rule out expressly any right of interference with navigation in certain areas of the sea. These areas are defined in paragraph 5 of this article as narrow channels or recognized sea lanes essential to international navigation. They are understood to include straits in the ordinary sense of the word. The importance of these areas for the purpose of international navigation is such as to preclude, in conformity with the tests of equivalence and relative importance of the interests involved, the construction of installations or the maintenance of safety zones therein, even if such installations or zones are necessary for the exploration or exploitation of the continental shelf.

ARTICLE 72

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured.

Commentary

(1) For the determination of the limits of the continental shelf the Commission adopted the same principles as for the articles 12 and 14 concerning the delimitation of the territorial sea. As in the case of the boundaries of the territorial sea, provision must be made for departures necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels. This case may arise fairly often, so that the rule adopted is fairly elastic.

(2) There would be certain advantages in having the boundary lines marked on official large-scale charts. But as it is less important to users of such charts to have this information than to know the boundary of the territorial sea, the Commission refrained from imposing any obligation in the matter.

ARTICLE 73

Any disputes that may arise between States concerning the interpretation or application of articles 67-72 shall be

submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.

Commentary

(1) The text of the draft as adopted at the fifth session contained a general arbitration clause providing that any disputes which might arise between States concerning the interpretation or application of the articles should be submitted to arbitration at the request of any of the parties.

(2) At its eighth session the Commission amended this article to provide that disputes should be settled by the parties by a method agreed between them. Failing such agreement, each of the parties would have the right to submit the dispute to the International Court of Justice.

(3) The majority of the Commission considered that a clause providing for compulsory arbitration would not be of much practical value unless the Commission at the same time laid down the procedure to be followed, as in the case of disputes relating to conservation of the living resources of the sea. It was pointed out, however, that in the present context the disputes would not be of an extremely technical character as in the case of the conservation of the living resources of the sea. It was therefore considered that arbitration could be replaced by reference to the International Court of Justice.

(4) The Commission did not agree with certain members who were opposed to the insertion in the draft of a clause on compulsory arbitration or jurisdiction, on the ground that there was no reason to impose on States one only of the various means provided by existing international law, and particularly by Article 33 of the United Nations Charter, for the peaceful settlement of international disputes. These members also pointed out that the insertion of such a clause would make the draft unacceptable to a great many States. The majority of the Commission nevertheless considered such a clause to be necessary. The articles on the continental shelf are the result of an attempt to reconcile the recognized principles of international law applicable to the régime of the high seas, with recognition of the rights of the coastal State over the continental shelf. Relying, as it must, on the continual necessity to assess the importance of the interests at stake on either side, this compromise solution must allow for some power of discretion. Thus, it will often be necessary to rely on a subjective assessment—with the resultant possibilities of disagreement—to determine whether, in the terms of article 71 paragraph 1, the measures taken by the coastal State to explore and exploit the continental shelf result in “unjustifiable” interference with navigation or fishing; whether, as is laid down in paragraph 2 of that article, the safety zones established by the coastal State do not exceed a “reasonable” distance around the installation; whether, in the terms of paragraph 5 of the article, a sea lane is “recognized” and whether it is “essential to international navigation”; finally, whether the coastal State, when preventing the laying of submarine cables or pipelines, is really acting in the spirit of article 70, which only authorizes such action when it comes within

the scope of "reasonable" measures for the exploration and exploitation of the continental shelf. If it is not kept within the limits of respect for law and is not impartially complied with, the new régime of the continental shelf may endanger the higher principle of the freedom of the seas. Consequently, it seems essential that States which disagree concerning the exploration and exploitation of the continental shelf should be required to submit any dispute arising on this subject to an impartial authority. For this reason the majority of the Commission thought it necessary to include the clause in question. It is incumbent on the parties to decide the manner in which they wish to settle their differences; if the parties are unable to reach agreement on the manner of settlement, however, either party may refer the matter to the International Court of Justice.

CHAPTER III

PROGRESS OF WORK ON OTHER SUBJECTS UNDER STUDY BY THE COMMISSION

I. Law of treaties

34. The special rapporteur for the law of treaties, Sir Gerald Fitzmaurice, submitted a report (A/CN.4/101) at the eighth session. Because of lack of time, the Commission was unable to enter upon a full discussion of the report; at its 368th to 370th meetings, however, it considered certain general questions placed before it by the special rapporteur regarding the form and scope of the codification envisaged in this field. The special rapporteur was requested to continue his work in the light of the debate.

II. State responsibility

35. At its 370th to 373rd meetings the Commission considered the bases of discussion submitted by the special rapporteur, Mr. F. V. García Amador, in chapter X of his report entitled "International Responsibility" (A/CN.4/96). Without taking any decisions on the particular points the Commission requested the special rapporteur to continue his work in the light of the views expressed by the members.

III. Consular intercourse and immunities

36. At its 373rd and 374th meetings the Commission considered a number of questions submitted in a paper by the special rapporteur, Mr. J. Zourek, with a view to obtaining the opinion of the members thereon for his guidance in the preparation of his report for the next session. The special rapporteur was requested to continue his work in the light of the debate.

CHAPTER IV

OTHER DECISIONS OF THE COMMISSION

I. Question of amending article 11 of the statute of the Commission

37. By its resolution 986 (X) dated 3 December 1955 the General Assembly invited the Commission to com-

municate its opinion concerning the question whether article 11 of its statute relating to the filling of casual vacancies in its membership should be modified in view of the fact that the term of office of the members had been increased from three to five years.

38. Careful consideration was given by the Commission to a proposal to recommend to the General Assembly that article 11 should be amended to provide that casual vacancies should be filled by the General Assembly instead of by the Commission itself as has been the case under the present wording of the article. The Commission decided not to adopt that proposal, for the reason, *inter alia*, that, as the General Assembly meets shortly after the session of the Commission, the filling of such vacancies by the General Assembly would be delayed with the result that the Commission would have to work for at least one session with the vacancy unfilled.

II. Publication of the documents of the Commission

39. By its resolution 987 (X) dated 3 December 1955, the General Assembly gave instructions to the Secretary-General concerning the printing of the Commission's documents and invited the Commission to express its views for the guidance of the Secretary-General regarding the selection and editing of the documents to be printed and also invited it, if necessary, to re-submit the question of the printing of the documents to the General Assembly.

40. The matter was considered on the basis of a note prepared by the Secretariat (A/CN.4/L.67).

41. The Commission does not deem it necessary to re-submit the question of the printing of the documents to the Assembly.

42. The Commission recommends that the records and documents be published in the form of a year-book, consisting of one or two volumes *according to the size of the documentation of each session*. With respect to presentation, it is proposed that the year-book shall consist of three parts; namely:

(a) Reports of special rapporteurs, communications from Governments and memoranda and studies by the Secretariat (i.e., essentially documents *issued in preparation of each session*);

(b) Summary records, *including working documents issued during the session*;

(c) The report on the work of the session.

The Commission considers it indispensable that the report on each session be included in the year-book, and also that the latter be provided with an index.

43. The documents to be included shall be decided at the end of each session by the Chairman, acting under the authority of the Commission, in consultation with the Secretary.

44. The Commission suggests that the publication should be entitled: "Year-book of the International Law Commission".

45. Regarding the publication of the documents of previous sessions the Commission would recommend that priority should be given to those sessions at which the law of the sea was discussed.

Annex B30

Third United Nations Conference on the Law of the Sea, Summary records of plenary meetings, 36th meeting, U.N. Doc. A/CONF.62/SR.36 (10 July 1974)

36th meeting

Wednesday, 10 July 1974, at 3.55 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

General statements (*continued*)

1. Mr. AL-QADHI (Iraq) said that his country had participated in the United Nations Conferences on the Law of the Sea in 1958 and 1960. In his delegation's view the Conventions that had been adopted at Geneva did not reflect the needs of all the peoples of the world. For that reason, the present Conference was proceeding in a new spirit to meet the requirements of the contemporary world.

2. With regard to the question of the territorial sea, his delegation was of the view that the establishment of a limit not exceeding 12 miles might be approved by the majority of States, and it would therefore be advisable to adopt it. His country attached great importance to the question of freedom of navigation, since that was a basic principle of sea law and the major factor in the development of world trade and communications. In straits which had been used for international navigation since historical times and which connected two parts of the high seas, freedom of navigation must be maintained and guaranteed. As to the continental shelf, the development of marine technology proved that the previous exploitability criterion was no longer applicable. The delimitation of the continental shelf between two or more States was one of the vital questions before the Conference. Article 6 of the Geneva Convention on the Continental Shelf¹ set out the methods for making such a delimitation. And in its judgement on the North Sea Continental Shelf cases² the International Court of Justice had found that no single method of delimitation was likely to prove satisfactory in all cases. Special circumstances and the principles of equity and justice should therefore be taken into consideration in each case.

3. His delegation recognized the aspirations of coastal States to extend their marine jurisdiction to an economic zone or a

patrimonial sea beyond their territorial waters, but it believed that the interests of the land-locked and the geographically disadvantaged countries should be borne in mind, as should the need to secure freedom of navigation.

4. The concept of the economic zone or patrimonial sea should not be applied to semi-closed seas, where it was vitally important to recognize the rights of all the States in the area. For that reason, the solution of the fishing question in those areas was a high-priority matter. A proper solution would be the establishment of regional arrangements for conservation, exploration, management, protection from pollution and development of the living resources of the sea. The coastal States might establish, in consultation with the appropriate FAO commissions, regional and subregional regulations for the sector beyond their territorial waters; those regulations might be embodied in multilateral regional agreements to which all the coastal States would be parties.

5. His delegation was greatly concerned at the continuing degradation of the marine environment. In semi-closed areas like the Arabian Gulf, pollution might come from many sources. Regional and subregional conservation units should be established to prevent and control oil pollution, which was the most harmful. International measures were urgently needed, and the Inter-Governmental Maritime Consultative Organization might be of great help in that sphere.

6. There was an urgent need for scientific research and the transfer of technology to developing countries. His country gave a high priority to those questions, and it had actively participated in various projects. His delegation considered that research in waters under the jurisdiction of a coastal State was a legitimate activity of that State. Scientific research in the international zone should be undertaken in co-operation with the competent specialized agencies such as FAO, UNESCO and others. The participation of developing countries in inter-

¹ United Nations, *Treaty Series*, vol. 499, p. 312.

² *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

national programmes of scientific research was important if the results were to be disseminated throughout the world.

7. His delegation had observed with appreciation that many speakers had referred to the interests of the land-locked and the geographically disadvantaged countries, which represented a considerable number of States that had participated effectively in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. The future convention should not ignore their legitimate interest in having an access to the high seas and in benefiting from the living resources of the sea.

8. He wished to reaffirm his country's support for the Declaration of Principles adopted by the General Assembly in 1970, in its resolution 2749 (XXV), which was of great value for the elaboration of the concept of the "common heritage of mankind". The entire area beyond national jurisdiction should be used for peaceful purposes, and all exploration and exploitation activities should be governed by international rules and be subject to an established international régime which would comprise appropriate bodies. In that Authority, the assembly, in which each member State would have one vote, would supervise the activities of the council, in which the geographical groups, including the land-locked and the geographically disadvantaged countries, should be duly represented. In that connexion, he wished to point out that the exploration of that area and the exploitation of its resources should not be allowed to have an unfavourable impact on the prices of raw materials.

9. Lastly, he regretted that, although the importance of universality had been stressed by many speakers, no representatives of the national liberation movements, including that of Palestine, were present; they should be invited to the Conference.

10. Mr. YANKOV (Bulgaria) said that two major factors in the contemporary world—social and political change and the challenge of the technological revolution—called for a readjustment of the international legal order governing the world's oceans to fit the new realities. The peaceful uses of the sea had acquired new dimensions. The natural wealth of the sea now offered new opportunities in such critical fields of the world economy as the increasing demand for energy and raw materials, including minerals and protein. At the same time, the protection of the marine environment had become an essential part of the protection of the global environment.

11. The Conference was the most representative that had been held under United Nations auspices, but his delegation could not ignore the fact that the restrictive provisions of General Assembly resolution 3067 (XXVIII) had prevented a full application of the principle of universality. It was to be regretted that the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been invited to the Conference although it had been given official international recognition as a signatory of the Paris Agreements, had taken part in the Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973, and maintained diplomatic relations with various States. The requirement for universality of the present Conference, which had to deal with problems of vital importance to all, called for the participation of the representatives of the national liberation movements, which had legitimate political rights and the legal capacity to represent their peoples in international affairs. The Bulgarian delegation urged the Conference to invite the national liberation movements recognized by regional organizations.

12. Any new universal legal framework to lay down rules for the peaceful uses of the sea had to be established on the basis of an appropriate balance between the rights and obligations of the coastal States and the interests of the international community as a whole. While due regard must be paid to the legitimate economic, environmental and security considerations of the coastal States, the necessary arrangements should be made to

ensure that the benefits of the sea were accessible to all States in a spirit of equity and international understanding and co-operation. The lack of equity in the uses of the sea in the past had been due to the structure of the international community. The world process of social and political change had significantly altered the whole system of international relations and had provided ever-increasing safeguards against social injustice on a world scale. A satisfactory balance between the rights of the coastal States and the interests of the world community could be achieved only if a comprehensive approach to the problems was adopted, as stipulated in General Assembly resolution 3067 (XXVIII), which stated that the problems of ocean space were closely interrelated and needed to be considered as a whole. Such a package-deal approach presupposed a political will to enter into meaningful negotiations in a spirit of mutual accommodation. He believed that the best method was the consensus procedure, which represented a new trend in contemporary treaty-making and had proved its usefulness in the adoption of the rules of procedure.

13. Unfortunately there were one or two isolated voices at the Conference which should cause common concern. As some other representatives had already pointed out, the disturbing fact was that one of those voices had presented the Conference not as a negotiating gathering but rather as a battle-field for confrontations between different groups of States, in accordance with his own doctrinal schemes. The same representative who had made abundant use of the world "hegemony" when he attacked other States, had assumed the role of a self-appointed spokesman and leader of the third world and of all "small and medium-sized countries".

14. He expressed the hope that mutual respect, wisdom and goodwill would prevail at the Conference.

15. He then outlined the principal aspects of the régime of the territorial sea.

16. First, regarding the nature and characteristics of the territorial sea, the Bulgarian delegation had submitted to the seabed Committee a concrete proposal contained in document A/AC.138/SC.II/L.51 (A/9021 and Corr.1 and 3, vol. III, sect. 41) and he reiterated the view that, within the limits of its territorial sea, the coastal State exercised full sovereignty, subject to the principles and rules of international law, with special reference to the right of innocent passage through the territorial sea. While recognizing that the territorial sea was a prolongation of the State's territory, with all the legal implications that that involved, he emphasized that freedom of communications was an important exception.

17. Secondly, his delegation believed that a breadth of not more than 12 nautical miles for the territorial sea should be adopted as a universal rule for in its view there was no justification for the excessive expansion of the territorial sea based on economic, environmental or other considerations. Such claims could well be satisfied if the right of the coastal State to establish an economic zone extending up to 200 nautical miles was recognized. That zone could also be used to preserve the marine environment and to supervise scientific research.

18. Thirdly, his delegation maintained that the problem of the nature and characteristics of the territorial sea and its breadth should be considered together with related problems such as the régime of the straits used in international navigation and the régime of the economic zone.

19. Fourthly, the convention on the law of the sea should contain only general principles and rules regarding the delimitation of the territorial sea. The details relating to concrete cases might be settled by mutual agreement among the interested States.

20. The Bulgarian Government attached great importance to the establishment of a viable and equitable régime of transit through straits used in international navigation, and it urged that any extension of the limits of the territorial sea should not be detrimental to the global system of navigation, of which

international straits formed an integral part. That functional approach acquired particular importance with respect to straits which were the only communication lines between two parts of the high seas.

21. The Bulgarian delegation firmly believed that the régime of passage through straits used for international navigation should serve as a legal framework for the purpose of ensuring speedy, unimpeded and free transit and overflight. At the same time, it agreed that that régime should take account of the legitimate concern of coastal States for their security, territorial integrity and political independence, the observance of the international regulations for safety at sea and the prevention of pollution from ships. Special provisions should be envisaged concerning the responsibility of the flag State for damage caused to a straits State.

22. In the view of his delegation, the draft articles submitted by the Soviet Union in document A/AC.138/CS.II/L.7,³ with a few slight drafting changes, could provide a sound basis for discussion at the Conference.

23. With respect to the problem relating to the economic zone concept, his delegation, in a spirit of solidarity with the developing countries, was ready to co-operate in the elaboration of acceptable principles and rules of international law on the régime of the economic zone as an integral part of an over-all package together with the 12-mile limit of the territorial sea, free and unimpeded transit through straits used for international navigation, the regulation of marine scientific research, and international control for the protection of the marine environment.

24. Despite its concern that the economic zone concept might lend itself to abuses, his Government could accept it provided it took into account certain basic considerations. First, the limits of the economic zone should not exceed 200 nautical miles, measured from the baselines used for the delimitation of the territorial sea. Second, that economic zone should be established for the purpose of exploring and exploiting the living and mineral resources which were found in the waters, in the sea-bed and in the subsoil thereof. Third, the coastal State should exercise sovereign rights over the natural resources within the economic zone. Fourth, the rights of the coastal State in the economic zone should be exercised without prejudice to the rights of any other State, whether coastal or not, recognized by international law and by the provisions of the Convention on the law of the sea, taking into account the interests of mankind as a whole. In addition, the coastal State should ensure that any exploration and exploitation activities carried on within its economic zone had exclusively peaceful purposes. Fifth, the coastal State, when unable to use the available fishery resources in their entirety, should allow nationals of other States to have access to its economic zone under reasonable conditions. In that case it should take into consideration in particular the interests of developing countries, landlocked countries and countries with narrow continental shelves, as well as the interests of those States which had incurred substantial expenses for research, exploration and evaluation of the living resources or which had fished in the area until then. Sixth, in the exercise of its sovereign rights over the natural resources of the economic zone the coastal State should co-operate with the appropriate regional and world organizations. Seventh, within its economic zone the coastal State should have the right to apply appropriate measures to prevent or mitigate any serious imminent danger of hazards caused by marine pollution. Finally, marine scientific research within the economic zone should be carried out with the consent of the coastal State, which should have the right to take part in the research activities and should have access to the scientific data acquired as a result of such activities.

³ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, annex III, sect. 5.*

25. His delegation considered that the sea-bed and the subsoil thereof beyond the limits of national jurisdiction were the common heritage of mankind. Consequently, it maintained that an appropriate international régime for the exploration and exploitation of the mineral resources of that area should be established with a view to ensuring the equitable and rational management of those resources for the benefit of all States. The International Sea-bed Authority should be empowered to exercise regulatory and licensing functions and, where appropriate, enter into contractual arrangements with States or undertake exploration and exploitation activities if that was feasible and profitable. That Authority should represent the main groups of States and co-operate with all international agencies directly or indirectly involved in the exploration and exploitation of the marine resources in question.

26. The oceans were a determining factor with respect to climate and represented the major source of energy and raw materials. It was therefore necessary to establish effective international control of pollution and define clearly the nature and extent of the rights and obligations of States with respect to control of contamination and the preservation of the marine environment. That required a comprehensive approach to the identification and assessment of pollutants and their harmful effects. In his delegation's view, assessment, codification and effective operational control constituted the three dimensions of over-all action to prevent or minimize the risks of marine pollution.

27. Assessment procedures should be carried out by both national and international institutions. With reference to pollution caused by ships, he drew attention to the significant contribution made during the past decade by the Inter-Governmental Maritime Consultative Organization, which had adopted a number of international instruments relating to that question. Hence the experience and expertise of that agency should be used to prevent pollution and preserve the marine environment.

28. The promotion of marine scientific research and dissemination of knowledge and scientific data were a prerequisite for the peaceful uses of the sea. Therefore, freedom of scientific research in accordance with agreed rules and regulations should be encouraged.

29. Special attention should likewise be paid to the development of the technological capabilities of developing countries through the sharing of knowledge and technology and the training of personnel.

30. Finally, his delegation wished to express its conviction that the Conference would fulfil its main purpose with success and would adopt a convention providing a viable, universal, dynamic and equitable legal framework that would command the general support of the international community.

Mr. Appleton (Trinidad and Tobago), Vice-President, took the Chair.

31. Mr. NAJAR (Israel) said that the existing law of the sea was the product of a long process of evolution culminating in the 1958 Geneva Conventions, which had been ratified by a large number of States and were widely accepted. What must now be done was to erect the structure of the future on the foundations established as a result of past efforts.

32. Every State brought to the present undertaking a universal vision as well as a specific approach which reflected its national interests. Israel was a country of the eastern Mediterranean, a region of great civilizations from which the three great monotheistic religions—Judaism, Christianity and Islam—had embarked on the spiritual conquest of the world. The region was inhabited by ancient peoples which had sometimes been friends and sometimes enemies but nevertheless shared the memories of their long history and a deep aspiration to illuminate the present and the future as they had illuminated the past. Israel also had coasts on the Red Sea, which consti-

tuted its means of communication with Africa and Asia. Those two seas, to which access was gained through straits, were Israel's principal maritime horizons. As a country which communicated with the outside world only by air and by sea, Israel attributed vital importance to freedom of navigation on the seas. That special interest of Israel's coincided with the necessities of the modern world, in which interdependence had become the inexorable law of the economy, of security and even of survival. The trend to limit freedom of the seas ran counter to the realities of history, and it was within the framework of that freedom that legitimate national interests could be asserted rather than the converse. That was an essential order of priority which the Conference would have to formulate in appropriate legal terms.

33. His delegation thought that the concern of a large number of States to secure exclusive rights, for economic purposes, over a maritime zone up to 200 miles in breadth should be recognized, in principle, in a widely acceptable instrument of international law in order to give legal form to that general aspiration and at the same time avoid the risks of anarchy and of the conflicts which might arise because of the many interests which might be at stake.

34. Naturally, recognition of that aspiration should take into account the differences between the various seas of the world and the legitimate interests of the international community. The convention to be drafted should therefore be conceived in such a way as to be adaptable to the particular characteristics determined by the geographical and geophysical conditions of different areas of ocean space and of the States which depended on them. His delegation did not feel that the division of certain areas of ocean space should lead to the establishment of closed economic zones, for economic and technological interdependence was an irreversible fact of present-day international life. Newly recognized economic rights should, in particular, be regulated in such a way that the freedom of the seas, which was so increasingly essential to human society, was not impeded.

35. As early as the Geneva Conference of 1958, his Government had questioned the advisability of substantially broadening the territorial sea. It might well be asked whether that measure was really necessary, particularly in the light of the new concept of exclusive economic zones. It was obvious that, from the standpoint of territorial security, a zone of control subject to the absolute sovereignty of the coastal State was a necessity, but a territorial sea of six nautical miles was sufficient for that purpose. Within the new context of economic zones, the general trend in favour of a 12-mile limit had not yet been convincingly justified and his Government would support it only if it was definitively and generally accepted. Moreover, the extension of the territorial sea to a distance of 12 nautical miles would change the nature of the waters of more than 100 international straits measuring less than 24 miles in breadth and would accordingly necessitate new international definitions and innumerable local regulations. That was an undertaking which could well be dispensed with. At all events, his delegation reaffirmed its position that all straits without exception, both those which joined two parts of the high seas and those which linked the high seas to the territorial sea of a given State, should remain open to free navigation and overflight.

36. With regard to fishing, his delegation thought it was essential to take account of the interests of States which had only recently begun to fish at great distances from their own coasts, as in the case of Israel, and which therefore could not very well invoke traditional rights. That made it essential for any new convention to take into account the developing countries, such as Israel, which were increasingly dependent on fishing as a source of protein in the diet of their peoples and which, in addition, would not benefit from an exclusive fishing zone but, on the contrary, would be unfavourably affected if other States extended their exclusive jurisdiction to broader fishing zones.

37. The initiative taken by the United Nations General Assembly in proposing the exploitation of the riches of the seabed and ocean floor beyond the limits of national jurisdiction in the interests of all mankind was a very promising one. However, claims of exclusive economic rights over the continental shelf and an extensive area of the sea stressed the fact that the destiny of human beings differed according to the accidents of geography. In those circumstances, the General Assembly's initiative opened up the possibility of a more just distribution, in accordance with which the human person would appear to predominate over the accidents of geography. With regard to the appropriate international machinery, his Government was ready to co-operate and, in addition, accepted Jamaica's invitation to set up the headquarters of the organization in question in its territory.

38. In its search for a just system of distribution and a reduction of international tension, the Conference must also bear in mind the equally important question of the land-locked and geographically disadvantaged countries.

39. Another particularly important and immediate question was that of marine pollution, since existing international and regional marine pollution standards were insufficient. In the particular case of the Mediterranean Sea, it would be desirable for the coastal States, European, African and Asian, to recognize certain principles. First, it was of vital national and international importance to protect the Mediterranean Sea from the point of view of living resources, human health and the use of its coasts for tourism and other purposes. Secondly, the particular oceanic and ecological conditions of the Mediterranean Sea should be analysed and clearly recognized, as should the special nature of its marine traffic. Thirdly, in order to find an effective solution to ecological problems it was essential to co-ordinate, on the basis of co-operation between all the coastal States, programmes designed to establish a permanent control over environmental conditions, to set up research programmes and to evaluate the various strategies possible. Fourthly, the non-Mediterranean countries which made great use of the Mediterranean Sea and derived considerable benefit from it should join in the efforts to protect it and to prevent any deterioration of its ecology. His Government had noted with satisfaction the provisions of the International Convention for the Prevention of Pollution from Ships, adopted in 1973 under the auspices of the Inter-Governmental Maritime Consultative Organization. The Convention was of particular importance to Israel in that it declared the Mediterranean and Red Sea "special zones" which were considered particularly vulnerable to pollution and in which the discharge or dumping of oil was therefore categorically prohibited.

40. His Government was also concerned by the pollution of the eastern Mediterranean. That pollution, which came mainly from the international transport of oil from Asia and Africa, would doubtless increase when the Suez Canal came into operation. The problem was further aggravated by the discharge into the sea of urban and industrial waste. The volume of discharge would increase as a result of the growth of towns and the increasing industrialization going on in the region as well as the transport by sea of industrial products, including noxious chemical products. There was also the risk of accidental spillage at sea. His country therefore considered that it was necessary to set up as soon as possible a system for the exchange of information between all the Mediterranean countries concerned by which all States that might be affected would be informed immediately of any spillage or discharge at sea or on the coast of noxious materials that might endanger persons or property, and also of the results of the existing surveillance programmes and any future developments relating to the spillage of noxious products at sea. Multinational co-operation and assistance plans should also be drawn up to deal with accidents at sea that might cause serious pollution problems.

41. Those suggestions obviously did not affect the interest of his Government in the constructive consultations on protection against the pollution of the living fish resources of the Mediterranean Sea, held under the auspices of FAO. The guidelines agreed on during the consultations held not long before in Rome could serve as the basis for a Mediterranean convention, which, he hoped, would be concluded and put into effect as soon as possible.
42. He pointed out that, so long as a suitable international organization to combat marine pollution did not exist, the individual initiatives taken by States could impair the very freedom of the sea whose protection was being sought. He concluded by saying that freedom and co-operation must be the two poles of the peaceful, constructive work to which the Conference was called upon to contribute.
43. Mr. AL-JAMALI (Oman) said that his delegation had been following the activities of the sea-bed Committee as an observer since 1972. He felt that the old order of the sea required not a slight retouch but a complete recasting; justice, peace, and the well-being of all mankind should be the common thread linking the various parts of the new law of the sea. The starting point should be the Declaration of Principles appearing in General Assembly resolution 2749 (XXV).
44. The complex issues before the Conference did not allow of a simple and direct solution. There were however apparent contradictions, which could be eliminated through mutual trust and understanding, and real contradictions which could be resolved by negotiations, compromise and accommodation. Compromise was never perfect, but it would be preferable to the anarchy that currently prevailed at sea.
45. Oman was a party to the Declaration adopted at Algiers in September 1973, in which the Heads of State or Government of Non-Aligned Countries had reaffirmed the need to set up an International Authority to undertake effective control of all activities related to the exploration of the zone beyond national jurisdiction and to the exploitation of its resources, having due regard to economic and ecological implications, the needs and interests of the developing countries and the equitable distribution of the resulting benefits.
46. His Government's stand on the question of territorial waters had been defined in a decree dated 17 July 1972. Oman's territorial waters extended to a distance of 12 nautical miles, but, in a spirit of negotiation and accommodation, his country was ready to review its position if the mood prevailing at the Conference so dictated.
47. As far as the issue of straits used for international navigation was concerned, he suggested that the cardinal point was the protection of the legitimate interests of the coastal States and the promotion of international trade. Straits should not be subject to a special régime, because they were part and parcel of the territorial sea and should be viewed as such. The regulations formulated by the coastal State should be heeded and obeyed.
48. Oman endorsed the régime of innocent passage and had already passed legislation to that effect. However, it believed that the proposals submitted by Cyprus, Greece, Indonesia, Malaysia, Morocco, the Philippines, Spain and Yemen (*ibid.*, sect. 6) deserved serious consideration. He subscribed to the draft articles on the right of innocent passage and the draft rules regulating passage of ships, which had great merit.
49. The assertion that the exclusive economic zone or patrimonial sea would be a licence to the coastal States to annex large portions of the seaward territory was far from the actual state of affairs. Most of the States present at the Conference had not participated in the definition of the principles endorsed by the 1958 Geneva Conventions, including the concept of the continental shelf. For many delegations, the criterion of exploitability was doubtless ambiguous and even dangerous. The new States, on the other hand, had simply adopted the approach which consisted in measuring the zone, thereby doing away with the ambiguities of the earlier definition.
50. Consequently, his delegation viewed the concept of the exclusive economic zone as an improvement on the earlier concept, first declared by President Truman in 1945.
51. His country recognized the rights of each coastal State to establish such a zone for the exploitation of natural resources without prejudice to freedom of navigation, overflight, or the laying of cables and pipelines. He fully supported the proposals submitted by the 14 African States to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (*ibid.*, sect. 29).
52. He recognized that scientific research should be within the exclusive competence of the coastal State, which alone had the right to regulate and conduct such research and to take the necessary steps to prevent marine pollution.
53. The process of the transfer of marine science and technology should be accelerated, together with the training of personnel, especially personnel from developing countries. The United Nations agencies and the technologically advanced countries would play a vital role in that respect.
54. His country did not want the new Sea-Bed Authority to be a weak licensing body; the developing nations should be, as it were, privileged shareholders in it. Along those lines, it would be possible to produce a new law of the sea.
55. The PRESIDENT stated that, in accordance with Rule 64 of the rules of procedure, the non-governmental organizations attending the Conference had asked to make a statement. If there were no objections, he would take it that the Conference had agreed to allow a representative of those organizations to take the floor.
- It was so decided.*
56. Mr. SZEKELY (Non-governmental Organizations) said that he welcomed the provisions of paragraphs 2 and 3 of Rule 64 of the rules of procedure, which allowed representatives of non-governmental organizations to be invited by the Chairman of a Committee to participate as observers.
57. All the representatives at the Conference had become spokesmen for peace, understanding and co-operation but, if a true common heritage of mankind was to emerge that could be handed down to future generations, the words would have to be translated into action. The representatives of the non-governmental organizations were ready to help the Conference to a successful conclusion in every way.

The meeting rose at 5.40 p.m.

Annex B31

Third United Nations Conference on the Law of the Sea, *Summary records of plenary meetings, 37th meeting*,
U.N. Doc. A/CONF.62/SR.37 (11 July 1974)

37th meeting

Thursday, 11 July 1974, at 10.55 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

In the absence of the President, Mr. Medjad (Algeria), Vice-President, took the Chair.

General statements (*continued*)

1. Mr. KEDADI (Tunisia) said that while the presence of almost all the world's countries and many intergovernmental and non-governmental organizations did enhance the universal character which the Third Conference wished to give to its deliberations and final decisions, his delegation profoundly regretted the absence of the authentic representatives of a sizable fraction of the world's population which included the peoples of South Africa, Rhodesia, Angola, Mozambique and Palestine. The authentic representatives of those populations had already been formally recognized by African and Asian regional organizations, and had been invited to participate in numerous conferences by the General Assembly and the Economic and Social Council. To follow those precedents would be in keeping with the spirit of the United Nations, and Tunisia was convinced that the next session of the General Assembly would approve a decision along those lines by the Conference. To act otherwise would be to stand in the way of progress and universality. If the convention eventually adopted by the Conference was to command universal authority and remain in force for several decades, the authentic representatives of all mankind must participate in its elaboration. Tunisia therefore urgently recommended the participation of the national liberation movements recognized by the African and Asian continental and regional organizations.

2. Tunisia's position at the Conference would be dictated by its adherence to the Declaration on the Issues of the Law of the Sea adopted by the Organization of African Unity at Addis Ababa in 1973 (A/CONF.62/33) and the resolutions on the law of the sea adopted by the Conference of Heads of State or Government of Non-Aligned Countries in Algiers in 1973.

3. Many problems facing the Conference arose from the great diversity of the geographical position of States and their differing degrees of development. Those basic factors were a source of inequality among States, but the international community had the duty to re-establish a balance which would ensure more fairness in the relations among peoples and nations.

4. The rights and obligations of States, as well as their interests and needs, differed according to the geographical category to which they belonged and their level of development. Harmonizing the many divergent interests was the mammoth task to which the Conference should bend its efforts so as to obtain the spontaneous and universal acceptance of its final act.

5. The Mediterranean region was characterized by rising levels of pollution, by limited and diminishing fishing resources, by mineral resources which, by virtue of their division among the different coastal States, were insignificant, and by a high level of shipping activities.

6. Tunisia was in favour of a certain amount of freedom of navigation in so far as it promoted international trade and brought nations closer together, but the use of that freedom should not result in damage to its national sovereignty, its fishing resources, or its infant tourist industry.

7. Such was, as he saw it, the position of straits States on the question of passage through straits. Those States were justified in their desire to ensure that passage through straits used for

international navigation should not endanger their security or well-being and therefore wanted a régime of innocent passage.

8. His delegation believed that it would be wise for the Conference to establish new objective rules and criteria determining the nature of innocent passage which ensured the security of coastal States and the protection of their marine environment, and at the same time facilitated international navigation through straits.

9. Tunisia hoped the Conference would establish a territorial sea of 12 nautical miles. Tunisia had adopted legislation to that effect in 1972, but in doing so, it had kept in mind the economic and ecological concerns of those countries which supported the concept of an exclusive economic zone of up to 200 miles. Tunisia supported that new concept, as it did the concept of the archipelagic State. However, the nature and the limitation of the economic zone remained to be defined. Its proponents were, nevertheless, in agreement on three points: it should not extend beyond 200 miles; the competence of the coastal State should extend to the exploration and exploitation of the natural resources of the sea, the sea-bed and the subsoil thereof, pollution control, and the regulation of scientific research in the zone; freedom of navigation, of overflight, and of laying submarine cables and pipelines should be guaranteed.

10. In regard to fishing, the Tunisian delegation, like many others, favoured the exclusive sovereign rights of coastal States in relation to the management and exploitation of fishing resources, since protective measures of that nature were needed to protect its infant fishing industry and to prevent over-fishing which threatened certain species indispensable to the feeding of its population. To ensure the rational exploitation of the living resources of the sea, Tunisia was willing to conclude agreements with third countries for the creation of joint fishing companies. That kind of co-operation could be extended to the regional or subregional level by reorganizing and reinforcing already existing fishing organizations.

11. The line of equidistance should not be the only means of delineating the exclusive economic zone between adjacent or opposite States. Tunisia would suggest instead a line of fair-sharing which would take into account all special circumstances and relevant criteria, whether geological, geographical or geo-morphological. The presence of islands in the region of demarcation was one of those special circumstances. The determination of the maritime space of islands should take into account the area of the island, its population, its contiguity to the principal territory, its geographical structure and configuration, and the special interests of island States and archipelagic States. A growing number of delegations had expressed interest in that somewhat delicate problem, since if the relevant provisions of the 1958 Geneva Convention were retained, islands, reefs, and atolls would be accorded the same maritime space as the continental masses of States. If the 200-mile exclusive economic zone were accepted, and if an island was, as defined by the Geneva Convention on the Territorial Sea and the Contiguous Zone,¹ a natural stretch of land surrounded by water which was exposed at high tide, vast maritime spaces and the resources they contained would automatically be assigned to islands, reefs, and atolls, thus diminishing the content of the international zone.

12. In order to implement the concept of the common heritage of mankind, the International Authority should be vested

¹United Nations, *Treaty Series*, vol. 516, p. 206.

with wide powers. The international mechanism should concern itself above all with the equitable sharing in the benefits of the area and the rapid training of personnel from developing countries so that they might participate at all stages of management, exploration, exploitation and marketing of the mineral resources of the area.

13. Mr. JEANNEL (France) said that the Conference could well prove the most important since the San Francisco Conference of 1945. The law of the sea regulated a large part of the relations among peoples; without regulation those relations might be seriously affected, with harmful consequences for economic and cultural development, mutual understanding and peace. To retain its great importance the Conference must succeed in establishing a legal order acceptable to all States. If the eventual convention proved unacceptable for even a minority of States, the Conference would have failed in its mission. The efforts required for the completion of the overwhelming task facing the Conference would not bear fruit unless the Conference adopted sound working methods.

14. In his delegation's view, the problems should be arranged in groups. It had often been said that the law of the sea had been conceived by and for the maritime Powers. The truth was that the law of the sea had been established by the users of the oceans, who had felt a need for rules for the protection and development of their activities. But those rules did not protect only the rights of the maritime Powers to the detriment of other States. The Powers had been rivals and had also been concerned with their interests as coastal States. Those conflicting concerns had led in the nineteenth century to the striking of a balance between the rights of coastal States and the common interest by according the coastal States the right to exercise sovereignty over a narrow strip of sea then thought sufficient for the protection of their security and economic interests; in the common interest the right of innocent passage had been established within the territorial sea. It was also true that the existing rules had been drawn up by a small number of States. Thus, it would seem proper that the many new States should wish to examine the rules in the light of their own interests. However, the basic principles ensuring the reconciliation of the interests of individual States with those of international society must be retained, for they alone could preserve the necessary balance.

15. The traditional rules did not take account of the new activities born from the technological development which had taken place since the beginning of the twentieth century. Up to then, fish had been the main economic resource of the oceans; since then, the riches of the sea-bed and its subsoil had become accessible. In 1958 traditional law had been supplemented by the Convention on the Continental Shelf.² But techniques of exploitation were continually developing, and it seemed that the provisions of that Convention might permit an extension of the prerogatives of coastal States leading to a division of the resources of the sea, if not of the oceans themselves. That consideration had given birth to the noble idea of considering such resources as the common heritage of mankind.

16. At the same time, technological progress had disrupted the traditional conditions for the use of the seas. The growth of sea and air traffic and the enormous size of modern ships had increased the risk of accident and had transformed the underwater exploitation of hydrocarbons; the accompanying pollution posed a grave threat to the environment. Furthermore, improved fishing techniques had endangered the very existence of the living resources of the sea. The countries which saw such techniques being used along their coasts while they themselves were unable to exploit the resources experienced a feeling of frustration.

17. Turning to particular issues, he said that in his delegation's view the limit of three nautical miles for the territorial sea

was no longer justified. His country had come out in favour of a limit of 12 nautical miles from the baselines, which seemed sufficient to safeguard the security of the coastal States while protecting the interests of international society. A territorial sea of 12 miles seemed the largest area over which the coastal State could exercise the control essential to its sovereignty.

That sovereignty would remain subject to the right of innocent passage as traditionally defined. However, since that right could be suspended and the determination of the innocent nature of the passage left partly to the discretion of the coastal State, it was not sufficient for the protection of the interests of other States in straits used for international navigation. Such straits must therefore be covered by a right of free transit not dependent on the coastal States.

18. Since State sovereignty was indivisible, it was exercised in the same way over all the lands subject to it. It was not therefore possible to make a distinction between continental and insular territories. A sovereign State which was an island had the same right to a territorial sea as to its other territories. The problems of delimitation between neighbouring or facing countries must be solved on the basis of equity by bilateral arrangements. The same principle should be applied to the economic zone. He noted in that connexion that the 1969 decision of the International Court of Justice concerning the continental shelf in the North Sea³ proposed adequate legal guidelines for the solution of disputes.

19. His delegation thought that sympathetic consideration should be given to the special problems of archipelagos and that solutions should be found which were satisfactory to the Governments concerned. The solutions should not however hinder the freedom of communications over a large area of sea.

20. Within the framework of the status of the high seas, it now seemed necessary to grant the coastal States certain economic rights with regard to the mineral and living resources of the sea beyond the 12-mile limit. As to mineral resources, the nature and scope of the rights established in the 1958 Convention on the Continental Shelf should be confirmed and the areas in which they could be exercised should be defined. For reasons of simplicity and of fairness to the countries lacking a continental shelf, a distance criterion should be used. His country favoured a limit of 200 nautical miles from the baselines. The problem of living resources must be approached with greater flexibility because of the complex nature of the resources themselves and the method of exploiting them. The solution should be based on the following principles: the coastal State must control the living resources in a wide area beyond its territorial sea; full account must be taken of the problem of the conservation of species important to mankind as a whole; since the solution of the problem depended on data which varied according to species and region, it could not be universal; the establishment of a right of ownership over the resources before they were caught was difficult because of their mobility, particularly in the case of migratory species; the under-exploitation of the resources constituted a loss which could not be tolerated when many peoples were undernourished; ocean fishing, which provided a livelihood for small businessmen, must be protected.

21. In their economic zones States should have special rights with respect to the prevention of the pollution of their coasts. Since pollution knew no frontiers, individual States would not be able to determine the necessary regulations unilaterally. That could be done only at the international or regional level. The regional level seemed particularly suitable in the case of pollution not caused by transport, but universal regulations should apply when ships or aircraft were the source of the pollution. The Inter-Governmental Maritime Consultative Organization and the International Civil Aviation Organization seemed the bodies best equipped for drawing up the necessary

² *Ibid.*, vol. 499, p. 312.

³ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3.*

rules. A particular problem was that the principle of the exclusive jurisdiction of the State of registration gave that State alone the authority to compel the ships and aircraft of its registration to observe the rules. That principle must be retained, for it alone safeguarded the freedom of communications. But it did leave the coastal State without means of protection in the event of negligence by the flag State. The coastal State must therefore be allowed to intervene to ensure that the regulations were observed, and his delegation proposed two exceptions to the principle: a coastal State must have the power to establish the offence and draw up a report which would be valid in the courts of the flag State; it must then be permitted to prosecute and punish the offender if the flag State did not do so.

22. Turning to the area of the seas beyond national jurisdiction, he said that the Conference should base its approach on the principles set forth in resolution 2749 (XXV). Those principles fell into two categories: the first provided the bases for solutions and the second dealt with the means of applying them. There were four principles in the first category: the seabed and ocean floor and the subsoil thereof were the common heritage of mankind and should not be subject to appropriation by States or natural or juridical persons. All activities regarding exploration and exploitation must be exclusively for peaceful purposes and governed by an international régime which should not affect the superjacent waters but should ensure the orderly and safe exploitation of the resources. The exploration and exploitation should be carried out for the benefit of mankind as a whole, including the land-locked countries, and taking into particular consideration the interests and needs of the developing countries. Under the conditions laid down by the régime, States would carry out such exploration and exploitation, and share equitably the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries.

23. The second category included two principles to be observed by States in the exercise of the rights accorded them by the basic principles. They should promote international co-operation in scientific research exclusively for peaceful purposes and they should co-operate in the protection of the marine environment. The resolution also provided for the establishment of an international machinery to give effect to its provisions. The role of that machinery derived logically from those principles. An international organization of the traditional type should be established to ensure the fair distribution among States of exploration and exploitation zones and to oversee the application of the régime.

24. With regard to the question of scientific research, there should be as few obstacles as possible to such research and it should be carried out in the best conditions compatible with the legitimate interests of States and the users of the sea. Scientific research over extensive areas would involve considerable human and financial resources and would require international co-operation.

25. A distinction must be made between "open" scientific research carried out for the common good and research undertaken for economic or commercial purposes. The following comments applied only to the former. In the territorial sea research should be subject to the consent of the coastal State. For the zones under national jurisdiction, the principles of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone were a satisfactory starting point but needed to be improved in the light of current practice and of the efforts of international organizations to promote scientific research. Beyond the zones of national jurisdiction, research should remain free, subject to the precautions required for the protection of the environment. Scientific research should bring considerable benefits to the developing countries, which should have access to the results of the research. In addition, the transfer of technology was also of very great importance. The

solution to the problem was closely linked to the problem of the exploitation of resources.

26. As far as pollution was concerned the Conference should limit itself to the adoption of basic principles which should be translated into law by bodies better equipped technically for that purpose, and to the solution of problems related strictly to the law of the sea, such as the respective jurisdictions of the flag State and the coastal State. Appropriate provisions could in fact be drawn up only in the light of specific data which were not available to the Conference and which, in any event, varied in different parts of the world. Even if all delegations had properly qualified experts, the completion of such a complicated task might considerably delay the essential work of the Conference.

27. His delegation thought that in the consideration of some questions account should be taken of the concerns of land-locked or semi-land-locked countries. Application of the principle of the common heritage of mankind should enable those countries to be compensated for the disadvantages due to their geographical situation. The practical difficulties faced by land-locked countries should be overcome by pragmatic solutions, especially at the regional level.

28. He wished to comment briefly on the vital question of the peaceful settlement of differences. No regulations could be susceptible of only one interpretation, especially in the manner of their application. Thus, it was essential to provide means for the settlement of disputes. At the internal level, that work was done by the courts, which had a general and exclusive jurisdiction from which no one could escape. However, the adoption of a similar solution at the international level was clearly not compatible with the sovereignty of States. On the other hand, States might be willing to submit specific disputes to a mandatory settlement procedure. The Conference should set aside the notion of a court with general jurisdiction and think in terms of a series of procedures established *ratione materiae*. Such a solution would have the advantage of permitting recourse to qualified experts who would be most likely to consider cases objectively since they would be viewing them from a technical point of view; there would be no risk of having decisions based on considerations foreign to the dispute.

29. In conclusion, he pledged that his delegation would do everything it could to help to bring the work of the Conference to a successful conclusion in a spirit of mutual understanding. As the representative of the country at present occupying the presidency of the European Economic Community, he affirmed that his delegation would be working in co-operation with the States members of the Community.

30. Mr. AL-SAUD AL-SABAH (Kuwait) said that the preparatory work for the Conference had provided it with the necessary background for constructive decision-making. The law of the sea as it existed was inadequate since it was not unified. The paramount aim of the Conference was to formulate one single convention encompassing all aspects of the law of the sea which would create a proper balance between the various interests of the members of the international community.

31. The Conference should begin by establishing the maximum breadth of the territorial sea. Despite past failures to reach agreement on that point, there were favourable signs that the Conference would be able to resolve that issue. Kuwait favoured the 12-mile limit as the best possible compromise on the maximum breadth of the territorial sea.

32. If the 12-mile limit for the territorial sea were adopted, a number of straits would fall within the jurisdiction of coastal States. While the right of innocent passage had been adequate to protect navigation through the territorial sea, it was not practical in the case of straits, since the innocence of passage was subjectively determined by the coastal State. The freedom of transit for merchant ships through straits used for international navigation should be guaranteed at all times, while

different criteria should be applied to warships to protect the safety and security of the coastal State. The treaty articles to be adopted concerning straits used for international navigation should not in any measure detract from the provisions of the United Nations Charter pertaining to the right of self-defence and national security.

33. In regard to the continental shelf, Kuwait considered the 1958 Geneva Convention on that subject to be satisfactory on the whole. The exploitability criterion, however, clearly conflicted with the concept of the common heritage of mankind in that it gave the coastal State sovereign rights over the sea-bed and subsoil in the submarine areas adjacent to its coasts so long as the depth of the superjacent waters admitted the exploitation of the resources of these areas. With improvements in technology, coastal States would be able to exercise sovereign rights over increasingly wide areas. Thus if the concept of the common heritage of mankind was to become a reality, a definition of the outer limit of the continental shelf was urgently needed. The depth criterion recognizing the exclusive sovereign rights of the coastal State to the sea-bed and subsoil thereof to a depth of 200 metres outside the limits of the territorial seas should be retained, while the exploitability criterion should be discarded. For those coastal States disadvantaged by the application of the depth criterion alone, a supplementary distance criterion could be applied.

34. Kuwait upheld the provisions of article 6 of the Convention on the Continental Shelf with regard to the delimitation of the continental shelf between adjacent States.

35. Because of the large number of unilateral declarations relating to fisheries, there was a lack of uniformity in the fishing practices of States. Such unilateral declarations on fisheries could create serious conflict between neighbouring countries, cause considerable hardship to land-locked and other geographically disadvantaged States, and, being contrary to the principles and norms of international law, could not be granted recognition.

36. His delegation realized that the sea had always been an important source of food and that most countries would soon be capable of building better and larger fishing fleets. All States should be allowed to satisfy their animal protein requirements from the resources available in the sea and they had an equal interest in conserving those resources; thus, it was desirable to maintain the total yield from a stock at a high level. Existing conservation arrangements were not satisfactory; they were confined to a few States which were more interested in deciding what share each would take than in maximizing the total yield. The international community should devise a universal arrangement to prevent the depletion of living resources and determine the allowable catch. Only universal conservation measures could be effective. His delegation welcomed the suggestion that fisheries commissions should be established in enclosed and semi-enclosed seas to serve the interests of all the coastal States in a particular region.

37. Scientific research created a dichotomy between the interest of the international community in expanding its knowledge of the sea and the interest of the coastal State in ensuring that the activities conducted near its shores complied with established safeguards and rules. A distinction might usefully be drawn between research conducted by national and international institutions, with less stringent rules applying in the latter case. International institutions should train nationals from the developing countries to be able to make a contribution to the cause of scientific knowledge. All nations must be given access to the knowledge yielded by scientific research.

38. Both short-term and long-term solutions were needed for the problem of pollution. He commended the work of the Inter-Governmental Maritime Consultative Organization and hoped that the Third Committee would be able to integrate that organization's contribution in the articles on pollution. His own country had suffered from the pollution of the sea by

oil and was looking forward to acting as host for a conference on pollution to be held in October 1974. Although the conference would be confined to the States of the area, its purposes were universal.

39. Turning to the question of the régime in the area beyond the limits of national jurisdiction, he said that his delegation envisaged the régime as an integral whole and the international machinery as an indivisible part of it. The treaty concerning the régime should be open to all States and it should prohibit reservations incompatible with its purposes. The régime should be something more than a law-making treaty in the sense of the Geneva Conventions. It was impossible to contemplate a régime for the sea-bed to which some States were parties but which others were free to disregard. He noted that the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction⁴ stated specifically that the régime should be generally agreed upon.

40. The time had come to define the limits of the area to be subject to the régime in a manner that would do justice to the concept of the common heritage of mankind. The aim should be to establish the largest possible international area to be administered by an international machinery with the broadest possible powers. His delegation believed that the international machinery should be an autonomous, universal organization within the United Nations system. It should be able to conclude agreements with Governments and international organizations. It should be responsible for ensuring that the resources of the sea-bed were rationally exploited for the benefit of mankind as a whole, taking into account the special needs of the developing countries, and for ensuring the equitable sharing of the benefits derived from its exploitation of the resources of the sea-bed. The machinery should have broad regulatory and operational functions and its scope should be co-extensive with the régime and the area it governed. It should avoid creating glut on the world markets which depressed the economies of the developing countries, especially those dependent on one commodity.

41. In conclusion, he drew attention to the predicament of peoples which were denied their inalienable right to self-determination and independence and their fundamental civil and political rights, and had been forcibly deprived of the status which would allow them to be subject to international law. His Government, which had consistently championed the cause of freedom everywhere and supported the struggle of the oppressed peoples, demanded that all liberation movements, including the Palestine Liberation Organization, should be represented as observers at the Conference. That was the least the Conference could do to make them feel that even if they were not recognized as independent and sovereign States, they were at least worthy members of the family of nations.

Mr. Van der Essen (Belgium), Vice-President, took the Chair.

42. Mr. BAKULA (Peru) said that the main purpose of the Conference was to replace the present law of the sea, which had been established by a limited number of Powers to further their economic, political and military interests, by a new legal order which would ensure that the seas were used as an instrument of justice, peace and well-being for all nations in the world. As General Velasco Alvarado, President of Peru, had said, his country was in need of radical change to give the people of Peru a just social system. That was what had led the Government of Peru to make far-reaching changes in the traditional institutions relating to the law of the sea, in line with the demands of justice and the interests of the countries of the third world, and to defend the principle of the sovereignty and jurisdiction of the coastal States over their adjacent sea and the soil and subsoil thereof up to a distance of 200 miles. It had

⁴General Assembly resolution 2749 (XXV).

adopted that position because it was conscious of an age-old responsibility—that of protecting rights that were vital to the development of those countries. Like several previous speakers, he wished to draw attention to the role played by developing countries which, by laying claims to rights over the coastal seas up to a limit of 200 miles, had laid the foundation for a doctrine now shared by a majority of States. It was an important development that several nations which had formerly opposed that concept were now ready to accept it, even though there were substantial differences in their interpretation of the principle.

43. His Government's position was that the zone within the maximum limit of 200 miles should be subject to the sovereignty of the coastal State in order to ensure the protection of its legitimate interests. Sovereignty over that zone was a necessary corollary of the State's duty to provide for its survival and development by using its natural resources in accordance with reasonable criteria that took account of its geographical, geological, ecological, economic and social conditions. That imperative duty was reflected in a right for which it was entitled to demand respect from other States; but, at the same time, it recognized that the States opposite its own coast had equal rights and duties, just as it recognized that all peoples had an interest in protecting the freedom of international communications. The control of the coastal State was essential to the conservation and exploitation of renewable and non-renewable resources, the preservation of the marine environment, the control of scientific research and the emplacement of installations, as well as other economic and related uses.

44. It had been said that the recognition of those rights hampered international communications. But Peru, like other countries which had adopted those limits, strictly respected *jus communicationis* and facilitated navigation, transport and communication in general as instruments of peaceful coexistence and co-operation between States.

45. It was clear from the explanations he had given that the countries that favoured a patrimonial sea or an exclusive economic zone up to 200 miles in breadth had the same basic viewpoint as his own and were defending the same interests. He was sure that an understanding could be reached through the recognition of the sovereign rights of the coastal States over the sea and the sea-bed and the subsoil thereof under their national jurisdiction, without prejudice to the freedoms of international transit that was important to all countries.

46. Some of the maritime Powers, realizing that the preferential rights approach no longer had any possibility of success, had changed their strategy and declared themselves ready to accept a 200-mile economic zone, provided that the coastal States renounced certain essential rights and submitted to restrictions which would transform them into mere spectators or executors of the decisions of other States, based on standards established by international bodies which primarily respected the so-called historic rights of other States. They would be obliged to give up a percentage of the revenues derived from the exploitation of non-renewable resources and would have to guarantee the security of foreign investments in the area. They would be unable to adopt special measures for the protection of the marine environment but would have to ensure compliance with limited standards agreed upon internationally. The same would apply to artificial installations off their coasts and to scientific research, which would not be subject to their authority. They would have to allow inspection and supervision by an international authority and disputes arising from the interpretation and application of those provisions would be resolved not by their own courts but by arbitration commissions or other forms of procedure provided for in the convention. The coastal State would also have to ensure the exercise by other States of other uses of the sea, without restrictions of any sort, as if it had no rights in that zone.

47. It was therefore obvious that the peculiar institution described as a "non-exclusive economic zone" was in essence an "international economic zone" completely different from the zone of national jurisdiction advocated by progressive nations.

48. The maritime Powers also laid down certain conditions as part of the "package deal": a 12-mile limit for the territorial sea; free transit through straits used for international navigation and in archipelagic waters; traditional freedoms on the high seas; and a licensing system to enable companies from highly developed countries to explore and exploit the international zone of the sea-bed at will.

49. On the question of the common heritage of mankind, there were two radically different approaches. The majority were in favour of the International Authority itself carrying out the exploitation of the area and other related activities as the only way of ensuring that the so-called "common heritage" should be shared between all nations, irrespective of their degree of development. On the other hand, the industrialized countries favoured the licensing system, which would reduce the role of the developing countries to a mere collection of dividends. The compromise proposed by some developed countries which consisted in allowing both the International Authority and other juridical persons to exploit the resources of the sea was neither desirable nor practicable. The essence of the International Authority was its exclusive nature. Its essential purpose was to cater for the needs of the peoples, however small the country, of the international community in accordance with the notion of service rather than profit, since the property to be administered was social and universal. The ideas of international social property, service rather than profit, a co-operative system, full participation by all States, and democratic management and control constituted the firmest guarantee that the common heritage of mankind would really benefit all peoples, in other words, the whole human race. It was therefore indispensable to ensure the equal participation of all States in the assembly of the Authority, as well as their adequate representation in the council. All that presupposed the respect of the provisions of the 1970 Declaration of Principles and the resolutions of the General Assembly to the effect that the exploitation of the area might be carried out only in conformity with the régime to be established and that national and transnational firms would not appropriate those resources, as they seemed determined to do.

50. The maritime Powers, by resorting to the veto under the guise of consensus or threatening not to sign the convention, would try to persuade States to renounce or reduce their rights and aspirations and to sow discord among the developing countries, as if their interests were irreconcilable.

51. The new philosophy of the law of the sea would be inconsistent with the principles of justice and welfare upon which it was based if they were not applied to the land-locked and other geographically disadvantaged States. Peru considered that the land-locked countries should enjoy free access to and from the sea, free transit through neighbouring coastal States and equality of treatment in the latter's ports. It also considered that the land-locked countries and other geographically disadvantaged countries should participate in the usage and resources of the sea as well as in the benefits obtained from the exploitation of the sea-bed. Modern society, controlled by financial, economic and political power centres, had brought extraordinary material progress, to the detriment of human values. The developing countries had been obliged to combat the maritime Powers' control of the sea, formerly exercised through finance, transport and markets and recently through science and technology. The third world countries trusted that their claims for justice and equality would receive the same support at the present Conference as they had in various United Nations forums over the years.

52. The profit-seeking of multinational companies was the reason for the maritime Powers' insistence on reduction of the

economic zone, and their demands related to straits, occupation of canals or so-called strategic nuclear tests. The basis of that policy was, as in the past, the preparation for a possible war. The peoples of the third world, on the contrary, wanted solutions based on peace, justice, good-neighbourliness and international co-operation, in order to ensure full development for their countries and their inhabitants.

53. Present-day Peru was proving that a new form of society could be based on those values. Social justice and respect for human dignity were not bounded by frontiers but should prevail throughout the world in accordance with the principles of the United Nations. It was therefore essential that highly developed countries should respect the few areas of fishing wealth that had survived depredation. It would be logical and just for all goods to be placed on the common table if a new order of equity were to be established. Peru would not falter in its defence of its maritime sovereignty, which was indispensably linked to the development and welfare of its people, but was, as always, ready to seek reasonable solutions which would meet with universal agreement on the basis of justice and mutual respect.

54. Mr. BELLIZZI (Malta) reminded the Conference that it was Malta that had first raised the question of the sea-bed in the General Assembly and that it had since become closely identified with the development of a new legal order for ocean space. Like other small States entirely surrounded by sea, Malta had a vital interest in the surrounding waters. A people which extracted its livelihood equally from the resources of its limited land area and from its surrounding waters could not justly be denied exclusive jurisdiction over those waters. Few States of a total land area of barely 122 square miles supported a population of almost one third of a million and fewer still were utterly devoid, like Malta, of all land-based mineral resources. In Malta, even fresh water was scarce and, when the energy situation permitted, it was forced to distil large quantities of sea water.

55. The sincerity and frankness of the statements in the general debate had heightened the hopes and expectations with which his delegation had come to the Conference. Some delegations' changes in position regarding certain important issues indicated a positive dynamism in the approach of many participating States.

56. One of the concepts which had gained wide acceptance was that of the 200-mile economic zone in which the coastal State would exercise sovereign rights over the natural resources. His delegation had been the first to propose a maximum limit of 200 miles as a uniform demarcation line between national and international areas of ocean space and had no difficulty in accepting the concept of an exclusive economic zone. Although the breadth of the Mediterranean was nowhere such as to allow for a full 200-mile zone, his delegation sup-

ported that maximum limit as the one best suited for universal application. The concept of the continental shelf should be absorbed by that of the economic zone. His delegation also appreciated the arguments put forward in favour of regional arrangements that would provide access to the living resources of that zone by other States in the region, including land-locked States.

57. Owing to its vulnerable position at the crossroads of a busy and virtually enclosed sea, Malta was vitally concerned about the problem of marine pollution, not only because of its effect on the tourist trade but also in the wider context of the preservation of the marine environment, which was particularly essential in the Mediterranean, whose living resources were at best meagre. His country's position on that important issue was based on the Declaration of the United Nations Conference on the Human Environment⁵ and it looked to the United Nations Environment Programme to safeguard the seas from the scourge of pollution, especially land-based pollution. It was vitally important that the Conference should elaborate adequate and effective international standards to combat marine pollution as well as measures for their universal enforcement. In especially vulnerable areas, such as enclosed and semi-enclosed seas, provision must be made for even more stringent standards, preferably in the context of regional arrangements.

58. His delegation reaffirmed its belief that an effective international régime provided the only hope of avoiding the inevitable escalating tensions caused by the development of technology and gave the best assurance that the resources on and under the ocean floor would be exploited with harm to none and benefit to all. The Authority should exercise the jurisdiction entrusted to it as a trustee for the international community, based on the principle of sovereign equality of States. It must be flexible enough to be able to assume additional responsibilities in the future should the need arise.

59. His delegation still believed in the principle which had guided its approach to the issues before the Conference, namely that of an equitable balance between the interests of the coastal States and those of the international community, but it realized that there might be more than one way of attaining it. The path indicated by Malta in the past remained open, but his delegation would not be acting as guides. It must be borne in mind that any effective and lasting solution must take full account of the diverse and special interests involved. The success of the Conference depended on the conclusion of a treaty acceptable to all, even though it could not possibly satisfy all individual aspirations.

The meeting rose at 1.25 p.m.

⁵See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

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BANGLADESH POSITION ON THE QUESTION OF BASELINE

Caracas Session 1974

There is an increasing awareness in the international community that the present law of the sea, as it exists today, is inadequate to meet the legitimate interests of all countries. The unprecedented advances in science and technology and the emergence into sovereign independence of over sixty states in the past decade have clearly underscored the need for revision. There is growing recognition that the laws should protect, in particular, the interests of developing countries who, as a result of colonial subjugation and numerous past injustices were unable to have their interests reflected or safeguarded by the old traditional laws. The Third United Nations Conference on the Law of the Sea is, therefore, entrusted with the task of revising and formulating laws which indeed reflects the concern and safeguards the legitimate interests of all countries and particularly developing countries.

One of the issues of crucial interest to Bangladesh and which is indeed a fundamental starting point in the delimitation of the various zones of maritime jurisdiction of any state relates to the delineation of baselines. A close look at any map of our region clearly illustrates the peculiar characteristics of our coastline which is among the most heavily indented in the world.

Article 4 of the Geneva Convention on the Territorial Sea takes into account, among other things, the geographical configuration of the coast of states in determining baselines. We are all aware of the history and background leading to the formulation of this Article. The World Court in the Anglo-Norwegian Fisheries Case of 1951 observed that:

"A state must be able to determine the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements."

It is our submission that the motive spirit underlying Article 4 is the need to take into account the peculiarities of the coasts of littoral states in the matter of employing baselines. The essence of the provisions of Article 4 is that it is geography which will dictate the legal solution. Law cannot be divested from the facts of life and ought to be suited to local requirements. We are here to formulate a legal framework which will be durable, practical and equitable and which will indeed be universal in that it ensures the interests of all countries. If the formulation ignores these basic attributes there is a great danger that it will give impetus to unilateral action and open the door to chaos and conflict.

It was motivated by these considerations and the spirit underlying Article 4, that the leader of the Bangladesh delegation, H.E. Mr. Justice Abu Sayeed Chowdhury, stated at the Caracas Conference on 3rd July, 1974 that owing to the geo-morphological peculiarities of her coast Bangladesh favours a variation of the straight baseline on the depth method to suit its local requirements. Bangladesh takes the position that the régime of the straight baseline recognized by the 1958 Convention takes into account the diversity of facts and geographical and geological peculiarities of the coasts of littoral states and, therefore, implicitly permits the employment of baselines on the depth-method. On this consideration, Bangladesh introduced a proposal in the Second Committee which has been incorporated in the document of that Conference vide

provision 9 of document A/CONF.62/C.2/WP.1 of 15th October, 1974.

The specific considerations and basic interest that led Bangladesh to favour the depth-method of our baseline are detailed below. In this regard attention is drawn to the map of Bangladesh.

Almost the entire area of Bangladesh constitutes one integrated drainage basin involving a plain tract and a flood-plain which is the confluence of two mighty rivers - the Ganges and Brahmaputra. These two rivers meet and flow in meandering and braided channels into the Bay of Bengal. The combined delta of these two rivers and their numerous tributaries is larger than that formed by the Nile and is in fact the most spectacular and widest coastal plain on the planet. Geo-physical features play a major role in the evolution and behaviour of the coastal regions of Bangladesh which through the ages has been affected and dominated by the impact of nature on its regional hydrology. The dynamics of the rivers of Bangladesh are even more complicated because of the marked influence of the sea. The combined discharge of the Ganges and Brahmaputra system totally alters the flow of the current and the level and surface density of the Bay of Bengal. The rivers of Bangladesh carry down to the Bay a colossal discharge of 1.5 billion tons of silt a year. There is in fact no other sea in the world which is so wholly under the domination of its tributary rivers. The sea-level during the monsoon period rises by 4 feet at Chittagong, a world record - I am told. Through the mouth of this riverine system flows water swollen by the world's heaviest rainfall. The shores of Bangladesh have consequently experienced the massive impact of several natural phenomenon. The cumulative effects of river flood, monsoon rainfall, cyclonic storms and tidal surges have contributed to a continuous process of erosion and shoaling. The results of all the above-mentioned factors have been monumental on Bangladesh's coast and coastal front and may be summarized as follows:

(a) A highly shifting and unstable baseline. As a result of the continuous process of alluvium siltation and sedimentation, the submarine areas off the coast are being built up. Mud-banks and low-tide elevations appear and disappear over relatively short periods of time. The coastline is, therefore, constantly fluctuating.

(b) In terms of channel stability the situation is even more precarious. It is a known fact to most hydrographers and navigators concerned with the Bay of Bengal that off-shore waters of Bangladesh are among the most hazardous to navigate due to the shallowness of the waters and the shifting navigational channels. It is indeed a fact that no mechanized vessel can traverse the waters in a course parallel to the coast. Thus if a ship wanted to proceed within Bangladesh from Chittagong on the east coast to Khulna on the west coast of Bangladesh, it could not do so without proceeding due south from Chittagong to the open sea - then west across the Bay of Bengal and then north to reach Khulna.

An extremely important and remarkable feature for Bangladesh is that the huge amount of silt carried by its rivers into the Bay of Bengal has made it possible for Bangladesh ultimately to dyke and drain an area which is equal in size to almost two-thirds of Bangladesh. This is the Bangladesh estuarine fan adjoining our coast. This is where nature is patiently laying layer upon layer of sedimentation - the foundation of the extension of the Bangladesh delta. Satellites surveying this area have confirmed the possibility of this fact in the very near future.

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For a country with 75 million people on 55,000 square miles of land the development of this area will constitute not only a necessity but an imperative.

To sum up, Bangladesh coastal waters have the following characteristics:

(1) The estuary of Bangladesh is such that no stable water line or demarcation of landward and seaward area exists.

(2) The continual process of alluvion and sedimentation forms mud-banks and the area is so shallow as to be non-navigable by other than small boats.

(3) The navigable channels of land through the aforesaid banks are continuously changing their courses and require soundings and demarcation so that they pertain to the character of the river mouths and inland waters.

These basic geo-morphological peculiarities seek to justify the depth-method baseline from which the territorial water is to be measured is expressed by means of straight line linking geographical co-ordinates which lay on certain depth of coastal waters.

As it was submitted earlier that Article 4 implicitly recognizes this method of baseline. What Bangladesh delegation desires is that in the new convention, this article may be made more explicit and a formulation may be introduced to give expression to this idea. At Caracas Bangladesh introduced a formulation which reads as follows:

"In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding 10 fathom line."

After careful consideration, however, and taking account both of the need to reach one agreed text as also the fact that our previous formulation is not an innovation of Article 4, we would like to submit the following formulation for consideration in connection with paragraph 1 of Article 4.

"The localities where the coast line is deeply indented and cut into or if there is a fringe of island along the coast in its immediate vicinity or if the water adjacent to the coast is marked by continual process of alluvion and sedimentation creating a highly unstable low water line the method of the straight baseline joining appropriate points on the coasts or on the coastal waters may be employed in drawing the baseline from which the breadth of territorial sea is measured."

This is a proposal which Bangladesh delegation thought might meet the requirements of the coasts of littoral states like Bangladesh. The formulation can be improved upon by the Drafting Committee.

Annex B33

Third United Nations Conference on the Law of the Sea, *Verbatim records of plenary meetings, 186th meeting*,
U.N. Doc. A/CONF.62/PV.186 (6 December 1982)

186th meeting

Monday, 6 December 1982, at 3.05 p.m.

President: Mr. T. T. B. KOH (Singapore)

Statements by delegations (*continued*)

I. Mr. COLLINS (Ireland): At the outset I should like to pay a tribute to the officers of this Conference and to all those who have contributed to its success, in particular to you, Mr.

President, to Mr. Zuleta, the Special Representative of the Secretary-General and to his staff; to the present Chairmen of the Main Committees; to former Chairman, Mr. Galindo Pohl; to all those representatives who chaired informal groups during the many sessions; and to all the others who contri-

buted to the work of the Conference. I should also like to mention in particular Mr. Amerasinghe, who guided the Conference through many difficult negotiations. Not least I should like to thank the Government of Jamaica for providing such a fitting and beautiful setting for this historic occasion.

2. My delegation recalls that my country is a member of the European Economic Community and that it has transferred competence to the Community in certain matters governed by the Convention. Detailed declarations on the nature and extent of such competence will be made in due course in accordance with the provisions of annex IX of the Convention. Ireland, as a member of the Community, also endorses the statement which will be made on behalf of the Community by the representative of Denmark as President-in-Office.

3. This Conference has before it today the crystallization of its work over many years, a Convention whose achievement involved sacrifices and compromises on the vast majority of the issues involved. It is a complex package deal comprising many maxi- and mini-packages. It combines consolidation and codification with revision and innovation. It represents an enormous achievement in negotiation and diplomacy and furnishes the opportunity for one of the most significant advances ever achieved in the rule of international law.

4. It had always been my country's hope that this Conference would adopt by consensus a comprehensive convention which would subsequently be universally endorsed and thus become the charter for mankind's use of the seas. If we were disappointed in the first part of that hope, when the Convention was put to the vote for adoption we were encouraged by the huge majority in its favour and the very small number of delegations which voted against it. We continue to hope that the Convention will be universally accepted in due course. I am pleased to indicate that my country will be among those which will sign the Convention at this session, thus participating in the first step towards that universal acceptance.

5. Perhaps the most historic achievement of the Conference is the inclusion in the Convention of the régime for the international sea-bed area beyond the limits of national jurisdiction, an entirely new branch in the international law of the sea. Not surprisingly, this was one of the most controversial fields covered by the negotiations and is at the root of the misgivings of many of the countries hesitating to give their approval to the Convention. My country does not at this stage stand to benefit directly from the exploitation of the international area as we are neither among the countries having the technology to engage in and profit from exploitation nor among those that will be the primary beneficiaries of the wealth accruing to the International Authority from that exploitation. And, while our lack of technological expertise prevents us from making a detailed assessment of the scheme, our lack of direct interest probably enables us to take a more detached view of the broad features of the régime than many other countries can take. We accordingly think that it is worth making a general observation about it.

6. We doubt that any delegation at this Conference believes that the régime contained in the Convention is perfect. Indeed it would be unrealistic to expect that the international community, with inadequate experience of the practicalities of all the aspects of the exploitation which is envisaged, and faced with a multiplicity of conflicting national interests, could at the first attempt devise a perfect régime. It is clear that misgivings about the régime are not confined to any one group of countries, nor to those that are hesitating to give their approval to the Convention. The relatively tentative nature of the régime is recognized in the Convention itself by the provision for a review conference to deal with this part of the Convention only after the lapse of an interval sufficient to see how effective the régime is in practice. Bearing all this in mind, we believe that the sensible course for all countries is to put aside their misgivings and to join together in putting the régime into

practice. With the necessary goodwill and flexibility on all sides, this will be a successful venture despite any shortcomings that may be revealed by the practical operation of the scheme—shortcomings which may in the short term be met by adaptation and ultimately be remedied by the review conference. Both in the Preparatory Commission and later in the International Authority, my country's representatives will be guided by such considerations.

7. Ireland is of course an island State, and if we have no immediate direct interests affected by the international seabed régime, that is not the case in regard to the rest of the Convention. We have particular concern for the provisions dealing with the exclusive economic zone, the continental shelf, marine scientific research, protection of the environment, the delimitation of national zones of maritime jurisdiction and the peaceful settlement of disputes, and we played an active part in the negotiations on some of these issues. In all, the outcome was a compromise between the various interests, which usually resulted from many-sided and complex negotiations.

8. One of the clearest examples of the success of this process is the part of the Convention covering the exclusive economic zone, the development of a relatively new concept in international law. The provisions which have emerged represent a reconciliation of the interests of the coastal States and of other States through a careful combination of the jurisdiction of the former and balancing rights for the latter. Similarly the continental shelf provisions acknowledge the basic jurisdiction of the coastal State throughout its geographical continental margin, and this acknowledgment is balanced by the adoption of criteria and methods for identifying the coastal State's outer boundary, which in fact involve cutting off from national jurisdiction parts of the margin, and also by an obligation of the coastal State to share revenue from the outer shelf areas with the international community. In regard to marine scientific research, the Convention requires co-operation between States in promoting and encouraging research. Within this framework it safeguards the right of the coastal State to adequate control over research in its jurisdictional area while ensuring that research will not be unreasonably prevented or hampered in this area. All States are obliged by the Convention to protect the marine environment from pollution. The powers given to the coastal State to protect the environment in its zones of jurisdiction have been so framed as to balance adequacy for that purpose with the need to avoid unreasonable interference with navigation and other rights of other States.

9. The delimitation of maritime zones was one of the last issues to be resolved at the Conference, and the main difficulty arose in connection with setting out the criteria particularly for delimitation in the economic zone or on the continental shelf. And, while there was broad agreement that these should be as determined by relevant international law, several efforts to express that law in a provision failed to command support across the two groups representing most of the directly interested delegations. Finally, this statement was broken by abandoning efforts to express the relevant law substantively and the vast majority of the interested delegations, including the Irish delegation, endorsed the provision which now appears in the Convention.

10. This provides that delimitation shall be effected on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice. We are satisfied that the relevant principles of international law thus referred to are as identified by the International Court of Justice in its decision on the North Sea cases in 1969¹ and as confirmed by subsequent judicial and arbitral decisions.

¹ *North Sea Continental Shelf, Judgment, I.C.J. Reports, 1969, p. 3.*

11. My country is pleased at the general acceptance that disputes arising under the provisions of the Convention must be settled by peaceful means. The actual establishment of procedures which would ensure peaceful settlement, including compulsory and binding procedures, naturally proved more difficult because of the differing views among States as to what is appropriate in this field. We believe that the solutions reached, which necessarily involved stages and choices of procedures and variations according to subjects in order to accommodate the various preoccupations, will prove adequate. We welcome this additional assurance that the Convention will eliminate a significant area of potential conflict from the world scene.

12. In its statement at the opening of the general debate at this Conference my delegation urged that the States participating in the Conference should pursue the legitimate interests of their peoples in an enlightened manner so as not to damage the international community and ultimately their own peoples. We identified as the objective of the Conference the creation of rules of law which would be binding, just and reasonable, and the establishment of adequate machinery to secure their implementation. We now believe that the adoption of the Convention was a major step towards fulfilling that objective and that accordingly it is essential in the interests of the international community that it enter into force as soon as possible and that all countries become parties to it in due course.

13. Mr. KUSUMAATMADJA (Indonesia): At the outset I wish to express on behalf of the Indonesian delegation and on my own behalf, our deep feeling of gratitude to the Government and people of Jamaica for the excellent arrangements made for this session of the Law of the Sea Conference, in this beautiful resort town of Montego Bay. Since we set foot on this beautiful island we have felt the warm welcome and hospitality extended to us by the Government and people of Jamaica, with which Indonesia has always maintained cordial and friendly relations.

14. On this occasion I wish also to express our deep appreciation to you, Mr. President, to the members of the Bureau of the Conference and to the members of the Secretariat who have worked so hard for the past nine years. Furthermore, as a member of the Association of South-East Asian Nations, Indonesia is proud to see a representative of another member of the Association presiding over this concluding session, and we are fully appreciative of your lasting contribution to this Conference. We should also like to pay a tribute to our former President, Mr. Hamilton Shirley Amerasinghe, for his tireless efforts in bringing the Conference closer to its objectives.

15. Exactly nine years ago, in December 1973, the Third United Nations Conference on the Law of the Sea, after lengthy preparations, began its first session in New York, to deal with procedural matters. Having personally participated in the First and Second United Nations Conferences on the Law of the Sea, in 1958 and 1960, respectively, it had been evident to me that there was a need to take the historic decision to convene this Third Conference.

16. The world has for years endeavoured to solve problems of ocean affairs for the purpose of establishing law and order on the use of ocean space, its resources and the marine environment. Various international conferences have been held for this purpose, but they have not succeeded in dealing with all the issues. They have failed to solve such fundamental questions as the limit of the territorial sea, while achievements in other areas have been overtaken by progress in science and technology and the emergence of newly independent States.

17. Indonesia has a great stake in this Conference. As a nation comprised of islands forming an archipelago, it has viewed the developments in ocean affairs since the seventeenth century with mixed feelings. The rivalry among the

European Powers for trade in spices during that period led to daring explorations by courageous individuals from Europe looking for access to the East Indies, especially after the siege of Constantinople towards the end of the fifteenth century. In fact, Columbus set sail in search of a sea route to the spice islands in what was then known as the East Indies and today is known as Indonesia. However, by a quirk of fate, he would up here in the West Indies. Subsequent efforts by others to reach the East Indies brought various explorers and others to our islands, resulting in the colonization of Indonesia for centuries by various European Powers. Indonesia endured great suffering throughout that long period of colonialism. The waters and passage routes between our islands which have been an essential factor in unifying our country were transformed by outside Powers into avenues for conquest. Thus, from our point of view, we have suffered from the consequences of the freedom of the seas expounded by Grotius. Therefore, since independence it has become an extremely important task of my country to restore its unity by returning the waters between the islands to their traditional unifying role. For an archipelagic country like Indonesia, it is contrary to its national interest to allow these waters to be used by outside Powers for conquest, thereby destroying its unity.

18. On this basis, the Indonesian Government promulgated the concept of the archipelagic State in 1957, and to this effect it enacted a law in 1960. We are gratified to see that this concept, with some modifications, has now been incorporated in the United Nations Law of the Sea Convention, thus obtaining universal recognition and acceptance in international law. We are confident that the countries with similar geographical characteristics and history will avail themselves of the provisions of the Convention relating to archipelagic States thus safeguarding their national unity, stability and development, without infringing upon the legitimate concerns and interests of others.

19. The progress of science and technology and the differences in the level of development of various States in the past have also led to the inequitable use of the ocean resources. Indonesia, like many other developing coastal countries, views with serious concern the increasing exploitation of the resources of the sea along its coast by distant advanced countries. We consider that this unfettered freedom of the sea, particularly relating to the exploitation of its resources, has given more advantages to those countries with advanced technological and scientific capability than it has to the developing countries, which have a greater and more urgent need for those resources. The emergence of newly independent States after the 1958 and 1960 Law of the Sea Conferences has accentuated these differences. It is therefore appropriate that the use of the resources of the sea should be made more equitable between the far-distant advanced States and the developing coastal countries. I believe that on the whole an equitable balance has been achieved in this Convention, as it has taken into account the legitimate interests of the coastal States without neglecting those of the far-distant and landlocked countries.

20. Perhaps it was the rapid developments in science and technology in deep sea-bed exploration and exploitation that prompted the need to devise new laws with regard to deep sea-bed mining as well as to clarify and redefine rules covering the outer limits of the continental shelf. I should like to express our satisfaction that the Conference has been able to solve these delicate problems, thus eliminating another possible source of confusion and conflict.

21. The problems relating to deep sea-bed mining have caused some anxiety. Indonesia, like many other developing countries, is dependent to a great extent on the export of its minerals for its economic development. The minerals to be produced from the Area would compete in the world market

with those produced in developing countries. Since the markets for these minerals are primarily in the highly industrialized countries, complete freedom to mine and market the sea-bed resources would create very serious dislocations in the already frail and fragile economies of the developing countries. It is therefore essential that the International Authority regulate the development and exploitation of sea-bed resources which, after all, have been declared the common heritage of mankind. The Conference has exerted tremendous efforts and long years of negotiations to achieve a balance that would protect the economies of the developing countries, bring benefits to the rest of the world and, at the same time, guarantee the industrialized countries access to the resources. In this endeavour, the developing countries have offered numerous concessions. We are hopeful that after all these concessions the industrialized countries will finally recognize that the present Convention would provide all States with the best legal framework for the exploitation of the resources of the deep sea-bed area. We are deeply disappointed, however, that after these efforts to reach a compromise, certain industrialized countries are still demanding more concessions which go beyond the limits of possible accommodation.

22. It is the sincere hope of the Indonesian Government that all States will become parties to this Convention. We believe that the present text is the maximum that could be achieved by the world community. Each and every one of us has made concessions to achieve a universally acceptable Convention. We further believe that, on the whole, this Convention is much better than no Convention at all. The failure to make the Convention effective would lead to incalculable chaos and confusion, to the detriment of the world community.

23. My delegation believes that the present text of the United Nations Convention on the Law of the Sea has significance for the orderly development of the international law of the sea in three aspects. First, it codifies the existing law of the sea which has developed either through customary or through conventional law. Many provisions dealing with the high seas fall under this category. For this reason, the provisions of the Convention in this category are applicable to non-party States by virtue of the fact that they are essentially a part of existing international law.

24. Secondly, there are provisions that clarify and redefine rules on issues that are the result of political, scientific and technological developments. These include provisions relating to archipelagic States, to exclusive economic zones, to the continental shelf and to protection and preservation of the marine environment. While the provisions of the Convention dealing with these issues are gaining universal acceptance as new law, it cannot be claimed that a country may benefit from them without being a party to the Convention. It should be recalled that the world community agreed in 1970 that the Convention should be comprehensive, covering all issues, to constitute a grand package. Acceptance of the compromise is, therefore, predicated upon the assumption that it will in the end be accepted and adhered to by all, in its entirety.

25. Thirdly, there are provisions which are completely and totally new in international law and without any precedent in State practice. The provisions dealing with deep sea-bed mining fall under this category and should be the only valid law applicable to these matters. The world community has agreed since 1970, that the exploration and exploitation of deep sea-bed resources beyond the limits of national jurisdiction can be undertaken only under an international régime yet to be established. Thus, there has never been any régime in international law dealing with deep sea-bed mining. Moreover, the world community has also declared on a number of occasions the illegality of unilateral national legislation on deep sea-bed mining and has declared reciprocal arrangements, such, for example, as the so-called mini-treaty among a few like-minded industrialized countries, to be illegal and unaccept-

able. It is therefore the conviction of my Government that the exploration and exploitation of deep sea-bed resources can be legally undertaken only under the régime established by this Convention.

26. My Government believes that after nine years of deliberations the Third United Nations Conference on the Law of the Sea has achieved a monumental success in formulating the present text of the new Convention. It is a tribute to the multilateral negotiating process through the United Nations. It is a tribute to men and women of good will who have been working hard to devise a system of law and order and to avoid chaos and confusion in ocean affairs. It is a tribute to States which participated in the negotiations in good faith and which see their national interests to be better protected through a multilateral co-operative effort than through unilateral nationalistic action. My Government believes that this Convention will contribute to the maintenance of world peace and security, the promotion of co-operation among States and the orderly and rational use of ocean space, resources and the environment.

27. My Government, therefore, will sign, and work for the speedy ratification of, the Convention.

28. Mr. SVOBODA (Czechoslovakia) (*interpretation from Spanish*): Czechoslovakia welcomes the successful conclusion of the 15 years of intensive work which were required to prepare the new Convention. The Government of Czechoslovakia always supported efforts aimed at the elaboration of an international convention which in a single document would regulate all aspects of the use of the sea. In this we felt that previous maritime law had been superseded not only because of the evolution of mankind's technological capabilities, but also, and especially, of the changes which had taken place on the political map of the world.

29. Had we accepted the existing legal arrangements, we would have virtually been allowing the riches of the sea and the oceans to be monopolized by a few States which were more developed industrially, consequently, the gap between the rich and the poor countries would have widened. Changes in the law of the sea were required also because of the need to ensure the prudent exploitation of the sea's resources, which are not inexhaustible, and because of the need to adopt measures to protect the sea against growing pollution which threatens to turn this common heritage of mankind into the refuse dump of mankind.

30. In our view, the new Convention responds to present needs. In general, it is a well-balanced document which takes into account the needs and legitimate interests of all groups of States. The coastal States are given the right to the resources of the exclusive economic zone and of the continental shelf. To less developed countries it offers the hope of obtaining a just share of the riches of the sea-bed through membership of a new international organization. It ensures preservation of the conditions for maritime navigation, which is of interest to States with their own fleets. To land-locked States it clearly grants the right of access to the sea through the territory of transit States. Despite the fact that the granting of this right is largely of a symbolic nature, it is the end result of 50 years of efforts to codify that law in a universal international convention, and as such is of great political and moral significance for the entire group of 30 land-locked States.

31. The delegation of Czechoslovakia therefore supports and warmly welcomes the present Convention in the spirit in which it was prepared in the course of previous sessions of this Conference. My delegation is authorized by the President and the Government of the Czechoslovak Socialist Republic to sign the present Convention. Through its participation in the Conference and its signing of the Convention Czechoslovakia is pursuing political objectives: it hopes that the elaboration and implementation of the Convention will elim-

inate causes of the conflict and tension which have existed in the past in various parts of the world. We are convinced that this Convention will become an instrument for peaceful cooperation among all countries, large and small, rich and poor, land-locked and coastal, in the exploitation of the resources of the sea, in which mankind is increasingly interested in order to meet its needs.

32. The present Convention will eliminate past chaos and the old system based on taking advantage of economic supremacy and, at times, military supremacy, replacing an unjust system with a new system, one offering possibilities to all States.

33. Previous experience has shown us that the law of the sea must be codified into a single legal document. The new Convention is one and indivisible; it should be considered as an integral whole. All the parts of the Convention are interrelated and have the same legal value. As such, the Convention represents a well-balanced compromise. For that reason it would be unacceptable for some countries to make use of some articles of the Convention and deny the validity of others, thereby trying to obtain certain unjust advantages. Such behavior would have negative consequences for the rights of other States and would undermine the importance of this Convention.

34. At the same time, our delegation wishes to appeal to other delegations not to misuse article 310 in order to make declarations in contradiction with the spirit and the objectives of this Convention.

35. On this occasion I wish to express the conviction that those States which for the moment do not consider it possible to sign the present Convention will reassess their position. The new Convention is by its very nature a universal document. Its entry into force and its implementation by all States of the world respond to the interests of the international community.

36. In conclusion, I wish to echo previous speakers and express our gratitude to the Government and the people of Jamaica for the warm welcome given the Conference and delegations. I thank the officials working at the Conference; they deserve the greater credit for the success of our common work. I am referring to the President, the Chairmen of the Main Committees, the Chairman of the Drafting Committee, the General Rapporteur and the officials of the United Nations Secretariat who, in demanding conditions, have ensured progress in the work of the Conference.

37. Mr. EVENSEN (Norway): We are gathered here in Jamaica for a ceremony of truly historic proportions. Its importance for the United Nations, the Organization's Member States and all peoples of the world is apparent. The Government of Norway will sign the Convention on this unique occasion.

38. I have been allowed to participate in this endeavour from its very outset. I am fully aware of the privilege that I enjoy in being allowed to take part in this crowning event of the Third United Nations Conference on the Law of the Sea. We have had dreams fulfilled, but also frustrations. However, viewed in a historic perspective, the Third United Nations Conference on the Law of the Sea and the Convention which has emerged from our efforts will stand as a monument to mankind's struggle to create a unified and peaceful world through the United Nations and thus realize our aspirations to the true brotherhood of men.

39. We must not be unduly discouraged by the fact that consensus eluded us in the final stage of our Conference. Admittedly it was a severe disappointment, but our accomplishments have been enormous and we must not abandon our efforts to obtain a universal convention.

40. On 17 December 1970, at the end of the twenty-fifth session of the General Assembly, under the presidency of the late Mr. Hambro, the United Nations adopted the Declara-

tion of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction,² in itself a unique accomplishment. No votes were cast against that resolution; as a matter of fact, all the main Western industrialized countries voted in favour of it. The Declaration proclaimed among its main tenets that the international sea-bed area was thereby established; that that area and its resources were the common heritage of mankind; and that no State, juridical or natural persons could appropriate any part of that area or exercise sovereignty or sovereign rights therein. Thus the main principles in the Convention pertaining to the international area, in Part XI, have a significant historical background which we must not lose sight of.

41. During the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, it became apparent that, owing to the technological revolution and the fundamental international political evolution stemming from the dissolution of the colonial empires, a number of time-honoured principles governing the law of the sea had become obsolete and inadequate. The United Nations therefore decided to proceed with the elaboration of a comprehensive and universal convention on the law of the sea.

42. The Convention produced by the United Nations and adopted on 30 April 1982 by an overwhelming majority is nothing less than a modern and comprehensive constitution covering five sevenths of the surface of our globe. It is the greatest international legislative effort undertaken by the United Nations and probably the greatest ever undertaken in the annals of international law as a whole.

43. At the same time our Convention possesses crucial and universal peace-promoting aspects, both in providing detailed provisions with regard to all main peaceful activities in ocean space and in enhancing the prestige and effectiveness of the United Nations as the universal international peace-building Organization of our troubled globe. Also, the Convention is in reality the first concrete attempt to implement the new economic world order.

44. During our deliberations in 1973 and 1974 a special decision-making procedure was adopted by the Law of the Sea Conference, summed up as "the gentleman's agreement". It contained certain innovations, and expectations were high in regard to its beneficial effectiveness. As we are all aware, the three pillars of the gentleman's agreement were first, the consensus principle; secondly, no voting until all reasonable possibilities of consensus had been exhausted; and, thirdly, the package deal. These three elements were of equal validity and importance.

45. It was a disappointment that we were not able to arrive at a consensus last April. The risk of conflicts inherent in the present situation is obvious. Those of us who have participated in the work of the Conference in its various stages realize the extent to which our Convention is permeated by and based on compromises regarded as a comprehensive package deal. This is an indisputable reality and the potential conflicts arising therefrom may be legion. It must be assumed that a majority of States will accede to the Convention, while a certain minority has expressed its preference for remaining outside for the time being. How can a package deal function justly in such a situation?

46. Consequently, we must not cease our efforts to make our Convention a universal, international instrument. The work of the Preparatory Commission may be crucial in these efforts. We must strive to establish rules and regulations for the exploration and exploitation of the riches of the area that are sufficiently impartial and wise to inspire general confidence.

²General Assembly resolution 2749 (XXV).

In order to create such propitious conditions, participation in the work of the Preparatory Commission is essential not only by States that sign the Convention proper but also by States that may participate as observers in their capacity of signatories of the Final Act. Indeed, it is especially important that this latter category of States participate in good faith in the work of the Preparatory Commission. At this present stage the Preparatory Commission is the only viable instrument we now possess to achieve a convention which is as universal as possible.

47. The Norwegian Government reserves its right to revert in due time to the question of the optional exceptions under article 298 of the Convention.

48. In concluding, the Government of Norway takes this opportunity to express its sincere thanks to you, Sir, for the unique manner in which you have performed your tremendous task as President of our Conference and for the wisdom, tact and skill with which you filled the deplorable void created by the sudden demise of our friend and colleague, Mr. Hamilton Shirley Amerasinghe. We extend our thanks also to the Special Representative of the Secretary-General and to his excellent staff, which has worked so untiringly for these many years.

49. Miss TAN POH CHOO (Singapore): I should like first of all to thank our gracious host, the Government of Jamaica, for having spared no effort to ensure that our stay in Montego Bay will be a fruitful one.

50. My delegation is pleased to participate in this historic final session of the Third United Nations Conference on the Law of the Sea to sign the Final Act and to open the United Nations Convention on the Law of the Sea for signature. It is the culmination of the most ambitious and comprehensive international law-making effort in history, a convention seeking to regulate almost every aspect of human activity on and beneath the ocean.

51. This Conference was the brainchild of Mr. Arvid Pardo of Malta. Some of us still remember the historic speech he made at the 1516th meeting of the First Committee of the United Nations General Assembly on 1 November 1967.³ He enunciated the principle that the sea-bed and subsoil beyond the limits of national jurisdiction and the resources therein should be declared the common heritage of mankind. He warned of the danger of unrestrained extension of national jurisdiction by coastal States. Mr. Pardo was a visionary; he was ahead of his time. Although he is critical of the Convention we have produced, we should nevertheless acknowledge our debt to him.

52. The concept of the common heritage of mankind has been the guiding light of this Conference. In my delegation's view, the concept of the common heritage of mankind is a seminal contribution of the twentieth century to political theory and international law.

53. The adoption of the United Nations Convention on the Law of the Sea is a historic landmark. Its significance to the international community in general and for developing countries in particular cannot be overemphasized. The Convention will promote peace and minimize conflict among nations; it will lead to the more rational and equitable use of the sea and its resources; and it has created novel concepts of international law. What are some of these concepts?

54. The first and perhaps the most significant contribution, to which I have already referred, is the concept of the common heritage of mankind. The second is the concept of a public international institution—the International Sea-Bed Authority—which is capable of generating revenue, imposing international taxation and ensuring the equitable distribution

of technology among developed and developing States. The third is the concept of the exclusive economic zone. Coastal States would have sovereign rights in a 200-mile-wide zone with respect to natural resources and certain economic activities. The fourth is the concept of international environmental law. States would be bound to use the best practical means at their disposal to prevent and control marine pollution from all sources. Other new concepts include archipelagic States, transit passage through straits used for international navigation and archipelagic sea lanes passage.

55. The Convention that we are signing at this final session will not completely satisfy any States present here. This is because the Convention, after a nine-year gestation period, is the result of countless political compromises made in the spirit of give-and-take. These compromises are reflected, sometimes glaringly, sometimes subtly, in the ambiguities, the loopholes and even the contradictions in the text.

56. On 30 April this year at the eleventh session, the United Nations Conference on the Law of the Sea adopted the text of the United Nations Convention on the Law of the Sea by a recorded vote of 130 in favour, 4 against and 17 abstentions. The final result was not what we had worked so hard for. The Conference had striven for a convention by consensus. Notwithstanding the negative votes and the abstentions, the achievement cannot be described otherwise than as monumental. After 11 sessions since December 1973, in all 93 weeks of meetings and thousands of hours of private consultations, a broad agreement was reached on all matters relating to the law of the sea.

57. The longest part of the Convention, and the part to which the Conference devoted more of its energy and time than to any other, concerns the exploration and exploitation of the deep sea-bed, that area beyond the exclusive economic zone and the continental shelf. And it was precisely over this part that the Conference met with its greatest difficulties. The United States felt unable to accept that part of the Convention. Its refusal and that of a few other States to join in support of this Convention is a set-back to an otherwise very successful Conference.

58. There are few countries indeed that do not have serious objections of one kind or another to particular parts of the Convention. The Group of 77 tried, as far as it could, to meet the American concerns. It was only the good sense and responsible leadership of the Group of 77 which prevented the negotiating sessions held in 1981 and 1982 from being turned into forums of chaos. Very determined efforts were made to seek a compromise acceptable to all delegations, including the United States. It is therefore all the more regrettable that after so much effort the goal of a universally acceptable convention could not be achieved. This failure was certainly not due to the lack of trying. Singapore has objections to a number of articles in the Convention, particularly those relating to the exclusive economic zone and the continental shelf. They do not deal equitably with the resources of the sea. They give some States much too much and others little or nothing at all. Indeed the international community has lost a golden opportunity to give effect through this Convention to the new international economic order. The common heritage of mankind has been greatly diminished by the unilateral claims of coastal States. A more equitable sharing of the resources of the exclusive economic zones and the continental shelf would have been a more effective means of bringing about the new international economic order. Nevertheless, Singapore also strongly believes that it is in the interest of the international community that there should be law and order on the oceans.

59. This Convention, as stated before, contains many inadequacies. But it is the best that could be achieved. We must not allow the best to become the enemy of the good. Imperfect rules are certainly better than no rules at all: where unilateral action is the order of the day. We would therefore urge

³See *Official Records of the General Assembly, Twenty-second Session, First Committee*, vol. 1.

all States which are committed to the observance of international law to rally round this Convention. It is for that reason that the Government of Singapore has empowered its delegation to sign the Convention.

60. During these four days we shall be hearing the statements of approximately 130 Governments outlining their positions with respect to the Convention and their intentions with regard to signing it. At the time of signing or ratification they may also make declarations or statements with a view to harmonizing their national laws and regulations with the provisions of this Convention. We would appeal to such Governments, however, not to use their declarations as a back-door method to express reservations concerning certain provisions or to interpret the provisions in a manner inconsistent with their letter and spirit. As article 310 of the Convention expressly stipulates, such declarations or statements must not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State party.

61. It is now logical to ask what the future holds for the new Convention. My delegation's view is that, while there may be a period of some initial hesitation, the Convention will, in a relatively short period, be widely accepted. Some of the provisions of the Convention have already become part of conventional international practice and have thus acquired the status of customary law. We are confident that a sufficient number of countries will shortly sign the Convention so as to activate the Preparatory Commission. The Convention, including Part XI, will in time become general international law. As for those countries that have either voted against or abstained, we would urge them to review their decision, for they include countries that are traditionally strong advocates of international law. We are confident that they will want to re-examine their positions on the Convention in the light of their specific interests in the law of the sea and their general position of support for the rule of law in relations between States. The Convention will be open for signature for two years. There is therefore time enough for those whose present position is negative or uncertain to come round and support this legal landmark.

62. We should be remiss if we did not express our appreciation to the late President, Mr. Hamilton Shirley Amerasinghe, for his immense contribution to the success of this Conference. He guided the Conference for the most part of its nine-year period and without his wisdom and wise counsel it could not be where it is today.

63. Finally, we should like to extend a well-deserved vote of thanks to the selfless dedication and hard work of the members of the United Nations Secretariat who have serviced the Conference. Without any doubt their co-operation and assistance have greatly facilitated the work of this Conference and helped bring it to a successful conclusion.

64. Mr. TSANOV (Bulgaria) (*interpretation from Russian*): The Government of the People's Republic of Bulgaria expresses its satisfaction with the successful conclusion of the work of the Third United Nations Conference on the Law of the Sea. As a result of long negotiations, this new comprehensive Convention on the Law of the Sea was elaborated and adopted. We regard this Convention as the first international code of its kind governing various areas of the sea and the régime for the utilization and preservation of its resources. The Convention represents the only possible compromise, taking into account existing conditions, for the solution of the whole complex of problems of the law of the sea. It takes into account the basic interests of all States and does not neglect the substantive interests of any group of States. As the text of the Convention provides in the seventh paragraph of the preamble, "... the codification and progressive development of the law of the sea achieved in this Convention will con-

tribute to the strengthening of peace, security, co-operation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world...".

65. An undoubted contribution of the new Convention is the establishment of the maximum breadth of the territorial sea at 12 nautical miles as a general norm of international law, as also is the determination of maximum limits of those areas of the sea where respective coastal States exercise the jurisdiction envisaged in the Convention. The Bulgarian Government considers very positive also the provisions of the Convention which concern the delimitation of the areas of the sea between neighbouring States through an agreement between the countries concerned in accordance with international law and taking into account geographic features and special circumstances with a view to achieving a just solution.

66. The United Nations Convention on the Law of the Sea, as indicated in the fourth paragraph of the preamble, is aimed at establishing a legal order for the seas and oceans which would facilitate international communication and promote their peaceful uses, the equitable and efficient exploitation of their resources, the study, protection and preservation of the marine environment and the conservation of the living resources thereof. This complex approach is based on the desire to establish, and efforts to establish, the best possible harmony between the different uses of the areas of the sea, equitable consideration being given to the interests of all States. In this connection we should like to stress that, notwithstanding the establishment of the exclusive economic zone and certain expansion of the jurisdiction of coastal States, this new international legal régime strengthens freedom of navigation in the interest of the development of sea transport and communications, as a milestone in the overall global system of the law of the sea. We should view in the same light the basic provisions of the Convention concerning the régime of innocent passage of all kinds of ships through the territorial sea and the archipelagic waters, transit and unimpeded passage through straits used for international navigation and flights by aircraft over these areas. The freedom of the high seas has been confirmed, including the freedom of navigation on the high seas, overflights, the building of submarine cables and pipelines, the construction of artificial islands and installations, fishing, the conducting of scientific research and other uses recognized by international law.

67. The establishment of exclusive 200-mile economic zones by which coastal States are granted sovereign rights for the exploration and exploitation of living and non-living resources and the carrying out of economic activities, as well as certain rights relating to the establishment and use of artificial islands and installations, scientific research and the preservation of the marine environment, is one of the most essential innovations of the Convention. This régime should not, however, lead to any limitations of the freedoms on the high seas generally recognized by the Convention; more specifically, freedom of navigation, overflight and the building of submarine cables and pipelines—nor should it lead to unjustified limitation of the reasonable utilization of living resources and access by other interested countries; first of all countries which are geographically disadvantaged or have limited fishing resources and whose national economies depend largely on fishing and which have made considerable investments in the development of long-distance fishing. This is the position of the People's Republic of Bulgaria. We accept the establishment of the régime of the exclusive economic zone as an essential concession in favour of coastal countries, and we think that they, for their part, will stand by the application in good faith of the relevant provisions of the Convention and will thus avoid causing unjustified damage to

other interested States. We feel that they will thus promote international understanding and co-operation.

68. Another particularly significant innovation in the law of the sea is the establishment of an international régime for the exploration and exploitation of the sea-bed in the area beyond the limits of national jurisdiction of States. The Government of the People's Republic of Bulgaria considers that the declaration of the sea-bed and its subsoil and their mineral resources in the international area as the common heritage of mankind is a new principle of international law in general and of the law of the sea in particular which should be applied for the benefit of all the peoples of the world. In this connection we should like to emphasize the particular importance we attach to the provisions of article 150 (g) of the Convention, which explicitly states as one of the basic principles of the régime "the enhancement of opportunities for all States parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of the monopolization of activities in the Area". At the same time, the deriving of unilateral advantages from the international régime by States not parties to the Convention that do not wish to be bound by it should not be allowed. No State has the right to appropriate the mineral resources in the international area outside and against the provisions of the Convention. Such unilateral actions should be described as gross violations of the basic provisions of the United Nations Convention on the Law of the Sea and a challenge to the international community of States.

69. Unfortunately, there are sufficient grounds to express concern that such situations will arise, bearing in mind the claims of the United States for a privileged position and unilateral advantage in the exploitation of the sea-bed in the international area. With that in mind, efforts have been made to establish through separate deals a parallel and alternative régime in contradiction of the Convention. As is well known, in resolution 37/66 adopted at its thirty-seventh session, the United Nations General Assembly called upon the Governments of all States to refrain from undertaking actions which would be incompatible with the Convention or would frustrate its purposes.

70. The Government of Bulgaria has a positive attitude also towards the other basic provisions of the United Nations Convention on the Law of the Sea, pertaining to the protection and preservation of the marine environment, the carrying out of scientific oceanographic research and the promotion of scientific technological co-operation in the study and exploitation of the areas of the sea.

71. We also attach great importance to the provisions of the Convention concerning co-operation between States bordering enclosed or semi-enclosed seas for the solution of problems of general interest through mutually acceptable agreements. The Bulgarian Government will begin to apply the provisions of the Convention in co-operation with the neighbouring countries of the Black Sea.

72. The new Convention contains detailed provisions on the settlement of disputes, and our Government has always stood by the principle of the peaceful settlement of international disputes in accordance with the United Nations Charter. It is from this principled position that we regard the relevant regulations of the Convention and confirm the guiding principle contained in article 279 that "States parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the United Nations Charter", that is, through peaceful means chosen by the parties concerned. Hence, the Government of the People's Republic of Bulgaria will reserve its right to make the relevant declarations of non-recognition of the obligatory procedures envisaged in article 287 of the Convention and the optional

exceptions concerning the compulsory procedures entailing binding decisions envisaged in article 298 of the Convention.

73. As far as participation in the Convention is concerned, we think that the sole representative of Kampuchea is the lawful Government of the People's Republic of Kampuchea. We should also like to confirm our principled position on the rightful participation of national liberation movements such as the Palestine Liberation Organization, the South West Africa People's Organization and others.

74. In implementation of my mission for the Government of Bulgaria, I express our country's readiness to join its efforts with those of all other countries motivated by the common aim of establishing an equitable, efficient and stable legal order for the utilization of the areas of the sea and their natural resources for the benefit of all mankind. The new Convention could serve as a good legal basis for the establishment of this régime and for the conclusion of multilateral and bilateral treaties that would turn the régime into a viable reality and a reliable factor for the consolidation of peace and co-operation among peoples.

75. In conclusion, I should like to express our gratitude to you, Mr. President, for presiding over our Conference, as well as to all others who have helped in achieving its success. We would also like to express our gratitude to the Government of Jamaica for its hospitality and for having ensured such good conditions for the work of the Conference. We hope that the sunny weather we are enjoying will continue throughout the session.

76. Mr. AMEGA (Togo) (*interpretation from French*): Twelve years ago, on 17 December 1970, the United Nations General Assembly adopted resolutions 2749 (XXV) and 2750 C (XXV), which set forth the precise parameters for the United Nations Conference on the Law of the Sea, and its effective work, which began in 1973, came to an end only this year.

77. During that same year of 1973, the General Assembly, in resolution 3067 (XXVIII) of 16 November, decided that the Conference should adopt a convention dealing with all matters relating to the law of the sea. In implementation of that resolution, the first session of the Conference was held in New York to deal with organizational matters. Afterwards, at the invitation of the Government of Venezuela, the Conference held its first substantive session in Caracas. Now, finally, the Convention and the Final Act will be signed here in Jamaica.

78. In recalling the important role played by Venezuela in the preparation of this Convention, it is a pleasure for me once again to greet and to thank the Government and the people of that country.

79. It was hoped that the new Convention would be ready for signature at the Caracas session. Unfortunately, however, that session became another link in a long chain stretching across nine years of discussions. Following Caracas, nine sessions were required, not to mention five resumptions of the seventh, eighth, ninth, tenth and eleventh sessions, to arrive at the adoption of the text of the Convention, the signing of which explains our presence here in Jamaica, this enchanted island, the pearl of the Caribbean.

80. I should like to take this opportunity to pay a warm tribute to the Government of Jamaica for the dynamic role it has played in the preparation of this Convention. In this connection, it is my pleasure to congratulate that Government and to thank it for its decision to act as host to this session, as well as for the warm, fraternal welcome my delegation has been accorded. Could we find a better place than this magnificent island, where land and sea blend into one harmonious whole, in which to sign our Convention on the Law of the Sea? It is to be hoped that work will not occupy all of the time of delegations so that their members will be able to

appreciate the beauties of this land that will be the headquarters of a very important body of our Convention.

81. On this formal occasion of the signing of the Final Act of our Conference, we cannot but feel some emotion as we look back over the past and over the path we have traversed, while looking ahead to the future as well.

82. The past recalls for us the presence of the agreeable and sympathetic Hamilton Shirley Amerasinghe of Sri Lanka, the well-liked and friendly man who presided with such dedication, conviction and selflessness over the work of the Conference. The present Convention evokes his name. It also brings to mind the long discussions and ups and downs of hopes, illusions and disillusionments that marked nine years of patience. Thanks, however, to our collective efforts and thanks to the political will of all States, the important source of law embodied in this new Convention has been adopted. It is a time for us to congratulate ourselves and to state that for the first time a good number of developing countries, particularly African countries, have decided on rules that will govern their relations with other States in the realm of maritime communications and the exploitation of undersea and fishery resources. It is with great satisfaction and hope, therefore, that my delegation is taking part in this historic session establishing a new law. It is impossible to envisage the future implementation of the provisions of this important instrument without recalling those who have made its adoption possible.

83. It is therefore fitting at this time to salute Mr. Tommy Koh, of Singapore, for the outstanding work he has done as President of the Conference. He has shown perspicacity, far-sightedness and a great deal of the spirit of compromise in leading us to the final form of the 320 articles and nine annexes of the Convention. In accomplishing that task, Mr. Koh has had the co-operation and has enjoyed the support of the Vice-Presidents, Committee Chairmen, members of the Drafting Committee, Rapporteurs—in short, all the members of a very well-structured Bureau. I wish to thank them all. We should also recall those anonymous but efficient participants, the interpreters, secretaries and other members of the Secretariat.

84. It is a particular pleasure for me to stress the personal action of the Secretary-General, Mr. Javier Pérez de Cuéllar, who has always paid due attention to questions pertaining to preparations for this Convention. The delegation of Togo is convinced that he will devote the same attention and efforts to the implementation of its relevant provisions.

85. After the historic vote which led to the adoption of the text of the Convention, the President stated:

“Now that we have adopted the Convention, we must return to our respective countries and promote public understanding of its importance so that our Governments and our Parliaments will be persuaded to sign and ratify the Convention in a timely manner. I hope that those delegations that voted against the Convention or abstained in the voting will, after further reflection, find it possible to support the Convention.”

86. The presence of many delegations at this signing session is highly significant. It is to be hoped that the procedures for ratification will also be welcomed with enthusiasm in order that the Convention may enter into force as soon as possible. It is also to be hoped that this Convention, whose importance needs no further demonstration, will be supported by all, because for once, going beyond the interests of developing and industrialized countries, it is the interest of future generations that is here being protected. Indeed, the concept of the common heritage of mankind applied to the sea-bed and ocean floor beyond the limits of national jurisdiction has become a legal reality, requiring that the exploitation of the resources of that area be carried out in the interests of mankind as a whole. Future generations will therefore inherit a

marine environment that will be a source of life and not the seed of destruction or the source of conflicts among nations.

87. If only because of this concept of the common heritage of mankind, which has become an international legal entity, the Convention deserves to be supported by all States which cherish peace and justice.

88. In conclusion, the delegation of Togo would like to reaffirm that this Convention is the cornerstone on which States must endeavour to build a better world.

89. Consequently, the Republic of Togo will sign the Convention and all subsequent acts.

90. Mr. GHARBI (Morocco) (*interpretation from Arabic*): Mr. President, allow me at the outset on this lofty occasion to convey to you and to the Conference the greetings of the people and Government of the Kingdom of Morocco, as well as the deep regrets and apologies of the Foreign Minister of Morocco, for his inability to be present at this historic event in person. I am certain that you know that his absence is due to extremely important and urgent commitments on the Arab level in the Middle East.

91. I wish also to express my delegation's gratitude to the Government of Jamaica for its very warm welcome and the hospitality which we have enjoyed since our arrival in these splendid, warm surroundings overlooking one of the most beautiful beaches in the world, and our admiration and appreciation for the arrangements made so efficiently by the authorities of Jamaica in organizing this final session of the Conference at such relatively short notice.

92. At the outset of my statement, I must refer on behalf of my country to the invaluable services provided throughout the years by the Collegium and the skilled secretariat of the Conference, under the supervision of the Special Representatives of the Secretary-General, Mr. Constantin Stavropoulos and his successor, Mr. Bernardo Zuleta.

93. I would also pay a tribute to you, Mr. President, for the great services you have provided this Conference since that memorable day when it unanimously chose you to preside over it and when you thus undertook, with exemplary courage, to guide its work at that most critical stage when it was being sorely tested, in an atmosphere of terrible confusion, by the death of that great man who had contributed so much by leading it skilfully and with determination out of the initial labyrinth. His memory will always live in our hearts and in our minds. At that time, Mr. President, you found a Conference fraught with what seemed to be intractable problems and beset by the terrible risk of fragmentation and even collapse. You sought to rally the participants and, with an outstanding sense of responsibility, you persisted in moving the Conference forward along the right path. You have now discharged fully the responsibility entrusted to you, and you have done so thanks to your qualities: your brilliance; your sharp mind, which combines equally and uniquely a talent for analysis and a talent for synthesis; your gentleness and your sense of humour, derived from an abundant source of ancient Oriental wisdom.

94. Since gaining independence in the mid-1950s, Morocco has been extremely interested in the developments of the law of the sea. This interest stems naturally from its geographical location at the confluence of a sea and an ocean and also from its awareness, shared from an early time with many developing countries, that the resources and uses of the neighbouring seas or oceans have become a vital factor in the development strategy, whether from the point of view of economic security or from the more general point of view of national security. Thus, Morocco participated in the first United Nations Conference on the Law of the Sea, but it had to abstain from acceding to the Geneva Convention of 1958 because that Convention was limited, for the most part, to codifying the basic provisions of the conventional law of the sea and did not

set out the desired provisions in a comprehensive international law of the sea taking into account the subtleties and requirements of our time, and because of its conspicuous failure to establish a régime for the seas and the oceans on the basis of equity and interdependence that would ensure stability and wide acceptance.

95. Small wonder, then, that the first Conference was followed only two years later by the second Conference, in 1960. Moreover, it is no wonder the genie sprang out of the bottle a few years after the failure of that second Conference, which will no doubt remain a lesson in the history of multilateral international relations and the sociology of international law.

96. Despite the inevitable fragmentation that afflicted the legal régime for the seas in view of the wide gap separating it from the dictates of reality and the requirements of equity, Morocco displayed moderation when it undertook in 1973, after waiting patiently for a long time, to adopt national legislation claiming a 12-mile territorial sea and a 70-mile exclusive fishing limit. By confining itself to this limit, which was defined on the basis of objective oceanographic research with the assistance of the Food and Agriculture Organization of the United Nations, by confining itself to an exclusive fishing zone and by providing in its legislation that the extension of its jurisdiction over this contiguous maritime zone threatened with depletion did not preclude the application of the principles of international co-operation—subject to the maintenance of its national interests and respect for its sovereign rights—Morocco was in fact among the pioneers that adopted the compromise which was finally crystallized and given shape within the Conference.

97. In the same year, 1973, Morocco had the honour of being the Rapporteur of the Addis Ababa meeting of the African group which led to the Declaration of the Organization of African Unity on the law of the sea.⁴ That, in its term, had an indisputable effect on the progress of the subsequent negotiations in the Conference, especially concerning the areas of national jurisdiction, in the interest of striking a real balance between the rights of the coastal States and those of the land-locked States on the basis of that fundamental principle which Morocco has been advocating since the beginning of the review of the law of the sea in the late 1960s—that is, the right of all States in the region to have access to the sea and to use it and, as far as possible, its living resources to meet the needs of all the neighbouring States in the area of that sea.

98. It has been said about cultures that they do not die but merge into each other and that they are constantly inherited even if they seem to die out. In our time, this applies in the first place to the general principles of the law of the sea—the indispensable basis in establishing a universal culture. Thus, the achievements of the codification of the law of the sea in the 1958 Convention were not disregarded but were placed in the proper perspective, as they should have been, when the foundations for the new legal régime were laid, brick by brick. We retained the concept of the contiguous zone when we became convinced that it still had functional usefulness in view of the differing natures of the jurisdictions which may be exercised in the territorial sea and in the exclusive economic zone.

99. Moreover, we introduced the concept of straits used for international navigation and the concept of archipelagic States. As a result of this, we arrived at and included separately—purely for reasons of methodology—the concept of the right of transit passage and the right of passage in the archipelagic sea lanes, without eliminating the concept of innocent passage in either of the two cases and without introducing an essential difference, which may be alien to sound legal logic, between the concept of transit passage and the

concept of passage in the archipelagic lanes, on the one hand, and the concept of innocent passage on the other, except as relating to the absence of any political control of passage on the part of the coastal State. If I have dwelt at some length on the right of transit passage and the right of passage in the archipelagic lanes—points which are related to the area defined for national jurisdiction—it is because these points have commanded priority in the concerns of my country in view of the central position they have occupied for the last 10 years in its national plans and foreign relations.

100. The Conference succeeded, after strenuous efforts in finding compromise solutions—felicitous at times, not so felicitous at other times—in reconciling the interests of the coastal State and those of other States, or the interests of the coastal State and those of the entire international community, whether in regard to participation in living resources, passage through straits used for international navigation, passage of warships through the territorial waters, delimitation of adjacent or opposite areas of national jurisdiction, the conduct of marine or archeological research activities or the limit of the continental shelf. The process of finding these compromise solutions was indeed, in most cases, by way of “squaring the circle”. So we can say that these complicated solutions all have one quality in common: they are dependent upon and subject to the complete good will of the parties concerned in their application. I would like to emphasize here that Morocco, which made a modest contribution to finding most of these solutions, is determined for its part to honour its commitment and to show complete good will.

101. “Do not feel embarrassed when you speak of the Sea”, the ancient Arabs used to say. With this wise proverb they succinctly described the scope of a subject which had fascinated men of letters, including poets, before commanding the attention of diplomats and jurists—that is, the generous sea which nurtures dreams and raises hopes with its glittering promise of flowing riches and hidden treasures, and the cruel sea which is a source of fear with its dark depths and violent storms. For years on end we have all been talking about the sea as though we had forgotten time, and that time has no mercy for those who forget it. But disaster followed on the heels of disaster, reminding us that the sea may not be generous forever if we exploit it without constraint or restriction and that protection of the marine environment is now at the forefront of our major concerns since it is the core of the maintenance of life on this blue planet, called by some knowledgeable geologist “the planet oceanis”.

102. Thus we may consider all the provisions adopted by the Conference on the protection and preservation of the marine environment and on marine scientific research the pride of the Conference, not only because of their outstanding technical content and the prospects they hold out for the evolution and advancement of the law of the sea, but also because they highlight the ability of the international community to rise above narrow, transient interests and to be convinced in the long range of the priority of the common good

103. If the noblest definition of law is that it is but reason in action, then the application of the concept of the common heritage of mankind to the sea-bed and the ocean floor beyond the limits of national jurisdiction was no doubt prompted by reason and not by emotion. Since the beginning of the review of the international law of the sea, this has been an indispensable basis for the new legal régime. It is no coincidence that the first Head of State who commended this concept publicly was the President of the United States, Lyndon B. Johnson, two or three years before the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction adopted by the General Assembly in resolution 2749 (XXV) of 17 December 1970. The strong belief in this principle since the days of the Committee on the Peaceful Uses of the Sea-

⁴ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III, document A/CONF. 62/33.

Bed and the Ocean Floor beyond the Limits of National Jurisdiction was the greatest incentive for continuing constructive negotiations in the framework of a package deal, and at the same time was the greatest challenge to creative legal intelligence. Perhaps at times our imagination blurred the reality, when we were working to translate this lofty concept in detail into concrete terms, but finally we reached the greatest possible degree of consensus without sacrificing any factor guaranteeing, as is only fair and just, the greatest benefit for the largest number, and without compromising any acquired right.

104. It is no wonder that we call the comprehensive convention which was the fruit of the Third United Nations Conference on the Law of the Sea "The United Nations Convention on the Law of the Sea". This official designation summarizes in fact the significance of the comprehensive, universal approach which we have adopted since the inception of the Sea-Bed Committee, on the basis of our collective awareness that the problems of maritime space are closely related and must inevitably be considered as an integral whole, in contrast with the scattered, piecemeal approach adopted by the 1958 Convention. This designation also reveals the magnitude of the strenuous efforts exerted to obtain the widest consensus—and we deeply regret the fact that some States did not join in the consensus. We consider that the adoption of the draft Convention on 30 April last, by a majority vote unprecedented in any conference on the codification of international law, constitutes in itself a legal landmark at the international level and leaves no room for any legal challenge to the interrelated principles which are at the basis of the new and sole legal régime for the seas and oceans.

105. The United Nations Convention on the Law of the Sea, like every human endeavour, falls short of perfection. Indeed it only enjoys such wide and varied—and almost unanimous—support because it naturally does not satisfy anyone fully, even in its formulation. In its last three sessions the Conference accelerated its work, having proceeded slowly for years and then, thus suddenly, overburdening the Drafting Committee. In spite of that, the Committee has to its credit a great achievement. If there are still some minor errors in the concordance of the texts in all the official languages, we can depend on the correction of any such discrepancies in the future, following the example of the praiseworthy progress made by the International Law Commission during its recent thirty-fourth session, when it adopted the draft articles on the law of treaties between States and international organizations or between international organizations. Among these articles, article 33—on the interpretation of treaties originally drafted in two or more languages—states in paragraph 3 that it is assumed that the terms of a treaty have the same meaning in the various original texts.

106. In conclusion, I should like to say the following: The preparation of an international convention in which various interests of major significance are of necessity interwoven, as is the case in the United Nations Convention on the Law of the Sea, has tested at every moment the ability of the international community to curb the selfish tendencies inherent in national chauvinism, and the sincerity of this competing community in its adherence to the principles of interdependence and co-operation and in its commitment to the objectives of the Charter of the United Nations. But the hour of the real test will surely come, as we are all aware in view of the deterioration of the international economic and political situation, in the implementation of the Convention, in putting it into effect, and especially in the establishment of the international bodies provided for in the Convention. We are certain that the numerous signatures to be affixed to the Convention on Friday, 10 December—which through a happy coincidence is the anniversary of the adoption of the Universal Declaration of Human Rights—will be not only a traditional diplomatic commitment but also will be an expression of a

firm belief that reason will prevail, that hopes will not be dashed and that this comprehensive, universal Convention will belong to the future of mankind, as a basic, necessary element of an organized, civilized international life in which the law reigns supreme.

107. Mr. FADIKA (Ivory Coast) (*interpretation from French*): I am both happy and moved to be representing the Government and people of the Ivory Coast at this solemn ceremony.

108. First of all, on behalf of the Ivory Coast I should like to turn to our Jamaican friends and brothers and express sincere thanks to the Government and people of Jamaica, which have offered us hospitality whose warmth and generosity we appreciate all the more since the holding of this session in this country was decided on at a very late date and very quickly prepared.

109. The Ivory Coast feels that there could be no place more appropriate than Jamaica to sign our new Convention and then to harbour the future International Sea-Bed Authority. It is surrounded on all sides by the ocean; it contributes in a very decisive way to the dynamism and coherence of our Group of 77; it has always been active and effective in the negotiations on the law of the sea; it is in a privileged geographic location where North and South meet; it harbours a marvelous blend of cultures and has a great respect for differences. Jamaica thus offers every possible chance for the success of our Convention by serving as the headquarters for its bodies and instruments. I am pleased to recall here that since 1974 the Ivory Coast, with the group of African States, has been rightly supporting the candidacy of this beautiful country as the seat of the International Sea-Bed Authority.

110. That is why, dear friends and brothers of Jamaica, we are happy to congratulate you on the wise choice of your country and at the same time fraternally to salute you.

111. In expressing my joy at being here among all these friends and brothers, I must say that I feel deep emotion about this event we are all experiencing today. I fear that words cannot express the solemn importance of the ceremony that will be held in a few days, when we shall be signing the Final Act of the Third United Nations Conference on the Law of the Sea, as well as the new Convention on the Law of the Sea, adopted in New York on 30 April 1982.

112. This is one of those exceptional events which offer a rare opportunity to live intensely a great historic moment. This is one of those great times when we stand face to face with history and see the rich prospect of a future of solidarity, a future that will be better for everyone and that the people of our own time will have the immense honour of leaving as a legacy to future generations.

113. May the hope for this reconciliation of man with other men and with himself and for this regained solidarity and fraternity soon replace the terrifying images that the world presents at the end of the twentieth century.

114. Even if we wish to be resolutely optimistic about the world of today, our attention must focus on the deteriorating condition of life on our planet. We see the spectre of generalized crisis that seems to be incapable of solution with its retinue of harm and mutilation to man. With each day that passes the tragedy continues and amplifies till the world is asphyxiating and the crisis, far from being resolved, feeds on itself. At the end of the chain there are to be found, of course, the poorest States, that is, the overwhelming majority of the States in the world. It is they that are the most affected. Thus, it is obvious that a deep and tragic effect of the crisis is that each day the independence of the developing countries, already fragile, becomes even more fragile, as does the quality of life everywhere in the world.

115. The French philosopher La Bruyère said, "There is a kind of shame in being happy in the presence of misery".

What would that great writer say if providence made it possible for him to cast his penetrating gaze on the misery of our time? Is it not perhaps time to prevent man's world from dying? The remedies that have been proposed, tried out and applied by the great of our planet, even if they have seemed reasonable, indeed indispensable in certain cases, have in no way been able to cure the evils they have been supposed to cure. Mankind, since the establishment in 1945 of the present world economic order, has shown itself truly incapable of meeting the challenges of this fabulous shrinking of the globe and the corresponding interrelationship of the world's political, economic, social and human problems.

116. But everything is not so gloomy; we need not despair. The sea is pointing the way for us; there is light at the end of the tunnel because of the new law of the sea and its new maritime order, of which our Convention on the Law of the Sea is the focal point. There are good reasons to hope that a new world order, more just, more humane and more fraternal, is coming.

117. The President of the Republic of the Ivory Coast, Mr. Félix Houphouët-Boigny, stated this clearly on 7 October last in the message he addressed to the nation on the occasion of the fifth International Day of the Sea. He said: "I am happy that this message, which sums up the actions taken towards a new international maritime order, allows us to entertain some hope for a brighter future, despite the grayness of the present world".

118. What regenerative and pure air we breathe from those words. We are here at last proposing a remedy that seems to respond to the ills from which mankind is suffering and that suggests a comprehensive world-wide solution—the only kind that can be envisaged in a world crisis of such magnitude. And this remedy is being proposed to mankind by the united third world and all the peoples of goodwill. It presages the advent of an era of peace, of new solidarity, of restored fraternity among men, in regard to the sea, and above all thanks to the sea.

119. What a tremendous transformation has taken place. Only a short while ago the sea that today offers such great hope for the future was above all a source of conflict among the Powers. In this respect we need only recall the Phoenicians, the Greeks, the Carthaginians and the Romans, for whom domination of the seas and of maritime trade was the source of power and prosperity. Following the Arab epoch, the Christian West in its turn based its power and economic development on the domination of the seas—in particular the Hanseatic League of the Baltic region and the maritime republics of Genoa and Venice. And then, beginning in the fifteenth century, the great discoveries gave even further importance to domination of the sea, because of the extraordinary developments in navigation.

120. This search for maritime supremacy led, in its turn, to a situation of constant conflict on the sea. Out of this was born a law of the sea based on the principle of the freedom of the seas, which was to govern international maritime relations from the seventeenth century to our day. Its first theoretician was the Dutchman Hugo Grotius, in the sixteenth century.

121. In fact, from the beginning this doctrine was an instrument for the maintenance of the predominance of the most powerful maritime nations. Great Britain in the seventeenth century understood this, and, in 1651, through Cromwell's Navigation Act, rejected this principle of the freedom of the seas.

122. Thus it comes as no surprise that the new nations, discovering the considerable role of the sea in their development process, rejected, like England in the seventeenth century, this pseudo-freedom of the seas which really served only to maintain their dependence. As the third world saw itself deprived of its freedom of action, first by the unjust application of the

mare liberum doctrine to the sea as a vector of world trade, it was in the field of maritime transport that the first stage of the international community's historic action took place, at the prodding of the third world, with the establishment of the empire of justice and peace on the seas, for the benefit of all nations.

123. Hence, in April 1974 in Geneva, under the auspices of the United Nations Conference on Trade and Development [UNCTAD], a code of conduct for maritime conferences was adopted. Although this is still not applicable as an international instrument with the force of law, its essential principles have been introduced since 1974 into the maritime legislation of many third-world countries, particularly in West and Central Africa.

124. Need I recall here the very positive results achieved in the implementation of the norms of the UNCTAD code in our harmonized global maritime policies without failing to draw attention to the indispensable measures accompanying this process; namely, a more rational use of maritime resources, technical training, agreement on the distribution of sea traffic in accordance with the 40/40/20 formula? And what can we say about the difficult path we have all followed together, within UNCTAD, towards ensuring an equitable distribution between developing and industrialized countries of world bulk traffic, which constitutes almost 80 per cent of world cargo tonnage and in which the third world, the main generating force of the flow of trade, has an insufficient share?

125. The new law of the sea, whose universal and irreversible advent we are going to enshrine here in Jamaica, was born precisely to strengthen the already large legal arsenal of our maritime policies. This has been made possible with the movement towards a reconquest of the seas which has been gathering force from the 1960s to the 1980s thanks to the genius and the courage of men who from now on are going to use, explore and exploit the oceans in all their dimensions, and not just for international trade. This will be done on the surface of the oceans, in deep water, on the sea-bed and in the subsoil thereof. Thus the oceans will be made the necessary and decisive element in the approach to the major problems facing men, all men, in the North and in the South, in the coming centuries—food, energy, mineral resources, lifestyle—against a background of the insistent problem of inequality in the present distribution of the riches of the planet between North and South.

126. We should add to this the efforts carried on at the same time and under United Nations auspices by the third world and the international community to give concrete form to the concept of the sea for all people and for peace and to achieve the objective of better and greater maritime well-being for each nation. The sea had to become the privileged field for the reconciliation of man with himself, particularly by introducing the concept of the common heritage of mankind, under which the *res nullius* of conflicts and of squatters is resolutely rejected. We had to banish for ever the idea of the sea as an area of conflict and as private property for the exclusive profit of some maritime Powers, and finally open the way to the concept of the sea as something to be shared and developed for all, in peace and solidarity. We had to completely remodel the legal framework inherited from Grotius which had governed the ocean spaces for almost four centuries, as well as the treaties resulting from the first two United Nations conferences on the law of the sea.

127. Thus we have the four objectives that the third world and all peoples of good will have tried to pursue in the particular field of the renewal of the law of the sea through the Third United Nations Conference on the Law of the Sea. The first objective is to build a new law that really meets the general interest, that is, attentive to the concerns of the great Powers as well as to those of the developing nations, which

constitute the vast majority of the States in the world, particularly since the 1960s. The second objective is to build a new law of the sea rejecting power as a basis and laying the bases of the empire of justice and law, recognized by all or the majority of nations. The third objective is to build a definitive law, going beyond the abstract notion of the sovereign equality of States and taking into account that the affirmation and specific establishment of an objective, real equality among States must be based on precise rules and well-defined machinery and must constitute the essential prerequisite for the advent of the ideal represented by sovereign equality. The fourth objective is to instil deeply, everywhere, the spirit of genuine fraternity into the new law of the sea, so as to allow for the effective establishment among States of the new terms of trustful, dynamic, fruitful and mutually beneficial co-operation that would guarantee that the interests of each country would be taken into consideration. The new law of the sea that we are going to enshrine at the end of this session meets these concerns very well.

128. President Houphouët-Boigny was not mistaken when he stated on 7 October last:

“By approving this Convention at the United Nations in New York on 30 April 1982, the international community wished, in the sphere of the sea, so vital for the future of all nations and especially the developing ones, to replace the law of the strongest by the practice of lawful solutions in the settlement of disputes. It wished to set up a new and more balanced global order instead of the outdated, unsuitable and unjust norms, thus conferring upon the oceans the role of a real future bastion of world peace, if I may express myself in this way.”

This places us right at the heart of this rendezvous with history that we previously mentioned.

129. Because it has made it possible, in a single legal document, to deal with the oceans, which cover 71 per cent of the globe's surface, and to incorporate all their aspects and their dimensions; because it challenges four centuries of unfair maritime legal practices, well rooted in custom; because it involves the entire international community through all political systems, all regions of the world and all types of States, capitalist or socialist, industrialized or developing, coastal or land-locked, this colossal undertaking has no parallel in history. For that reason alone, it will remain for ever one of the glories of the men of our time.

130. This historic dimension of the new law of the sea is not merely formalistic; it derives not only from the context that we have just described; it is the product above all of the contents of the new treaty, which replaces pseudo-freedom by equitable sharing, ingrained selfishness by fraternity and solidarity, and gives all this concrete form through precise machinery.

131. The new Convention is also historic in its contents because, in opposition to the hegemony of the strongest, it calls for joint progress towards more and better well-being for all men and all peoples and because it makes it possible, through regained fraternity, to restore glory to the principles of freedom and equality.

132. And if our new Convention is historic because of its new style—I would even say because of the new morality that it establishes—it is historic also because of the almost complete unanimity that it met with in the human community. For the first time since the establishment of the United Nations, almost all the peoples of the world came together to draw up this immense, beneficial, concrete draft. Only the sea has been able to achieve this true miracle, this source of so much hope.

133. Finally, the historic nature of the new Convention is the result of the style of the initiatives that led to its adoption, initiatives in which consensus and a balance of interests were constantly sought. If, despite everything, some States—I would

even say all States—have not been satisfied, it is nevertheless true that everything has been done to harmonize the various interests. That made it possible to conceive of innovative solutions, such as the concept of the exclusive economic zone and the pragmatic measures benefiting pioneer investments. On the whole, the treaty, although it has not achieved perfection, meets the aspirations of the entire international community. Nothing on the seas will ever be the same. A fantastic future awaits all the States of the planet.

134. To conclude on this subject, we can say that only the States of the North and the South can master that future—and only if they are motivated by the true political will to give their development processes a maritime dimension, to carry out development strategies with a clear view of the prospects offered by the oceans; if they show that they are capable of transcending the selfishness that comes from technological power and are prepared to work hand in hand with all other nations in order to avoid catastrophe for mankind; if they avoid widening the gap dangerously separating them, on the seas as elsewhere, from the third world—that is, from three fourths of the globe.

135. Before I conclude, I wish to pay a tribute to all those who have enabled the international community to achieve these results, and first and foremost to the third world, which has affirmed its consistency and solidarity here, not against any group of States but in order to attain a positive goal.

136. I wish to pay a tribute also to the first President of the Conference, Mr. Amerasinghe, for the work he did. Having devoted all his time and strength to this cause, he may today, in his eternal rest, contemplate this colossal task to which he contributed so powerfully.

137. I pay a tribute, too, to President Koh, who helped us to achieve success by his qualities as a diplomat, which we have all been able to appreciate, particularly during the discussions on the question of pioneer investments.

138. I remain convinced that the appeal made by the President of the Ivory Coast to the countries that still do not intend to ratify this Convention will be heeded. We ask those countries to reconsider their position, because our work will only have impact if it is global, and there will be a true spirit of fraternity only if all the peoples of the earth are united behind that work.

139. I call on all countries to adhere without reservations to the new Convention, for it is the only significant, successful, universal example of North-South dialogue and thereby should be the moving force of a more humane and just world order. All of us together must heed the call of the seas to replace force by true law; conflicts by peaceful agreement; selfishness by fraternity; and a policy made for all mankind, in the service of what Aristotle called the noblest goals, for a short-sighted policy defined by André Soares as the art of living with the help and at the expense of others.

140. The final solution—and this is my conclusion—to the North-South dispute will, as the President of the Ivory Coast said, come from settlements reached in friendship and equality and in the common interest. He added that the sea is the true hearth of this dialogue and this harmony.

141. May our new Convention be the repository of all the hopes of the African countries, the developing countries—indeed, the entire international community.

142. Mr. YONDON (Mongolia) (*interpretation from Russian*): First, I should like to join previous speakers in expressing the deep satisfaction of the Mongolian delegation at the successful conclusion of the Third United Nations Conference on the Law of the Sea. The documents we are to sign are the culmination of many years of determined work by the participants in the Conference.

143. The Government of the People's Republic of Mongolia attaches great importance to the signing of the United

Nations Convention on the Law of the Sea. This new charter of the seas is indeed a comprehensive document that will regulate all issues relating to the activities of States in the utilization of the seas and oceans and their tremendous resources and riches for the benefit of mankind. This Convention is distinguished by the fact that it has been worked out with the direct participation of more than 150 States as well as the representatives of peoples fighting for their independence and that account has been taken of the changes that have resulted from the scientific and technological revolution.

144. As we see it, the Convention draws its authority and force from the fact that all its provisions have been adopted as a package and by general agreement and constitute a carefully balanced compromise. We can say with complete justification that the Convention not only codifies contemporary international maritime law but was progressively developed in accordance with the realities of today's world. It takes into account the interests of all groups of States regardless of their social and economic systems, their size or geographical locations.

145. We feel it is of enormous political and legal importance to solve the difficult issues relating to the activities of States on the broad expanses of the seas and oceans. Thus, for instance, the breadth of the territorial waters to which the sovereignty of coastal States extends is established up to a limit of not more than 12 nautical miles. During lengthy negotiations clear criteria were worked out for a precise and definite definition of the outer boundary of the continental shelf.

146. The most important freedoms of the high seas have been consolidated in the Convention. For example, unobstructed overflight by aircraft and passage for all vessels through international straits, as well as the carrying out of scientific research and protection of the maritime environment from pollution, are provided for, as is the right of land-locked States to access to the sea. The Convention also creates and elaborates the legal status of the exclusive economic zone of coastal States as a progressive development of the law of the sea. Another new feature is the establishment of the international sea-bed area and the solemn declaration that its resources are the common heritage of mankind as stated by the General Assembly in 1970.² According to the Convention, no State can claim sovereignty or sovereign rights or implement such rights with regard to any part of the international area or its resources, and no State or physical or legal entity may arrogate to itself any part of that area. No such claims or exercise of sovereignty or sovereign rights, and no such arrogation or acquisition, are recognized. Activities in the area should be carried out for the benefit of all mankind and exclusively for peaceful purposes, without any discrimination whatsoever.

147. The international body that will be established in accordance with the provisions of Part XI of the Convention is assigned an important role in organizing and implementing the exercise of control over activities in the international sea-bed area. The parallel activities for the exploration and exploitation of the sea-bed resources is a flexible compromise that takes into account the interests of various groups of countries. Also of great importance is the inclusion in the Convention of provisions to prevent the monopolization of activities with regard to the exploration and exploitation of the sea-bed resources and on the inadmissibility of discrimination against any States or social-economic systems. The establishment of production limits of metals, taken from the sea-bed, is to protect the interests of land-based producers of nickel, manganese, cobalt and copper, as well as to respond to the ever-growing demand for metals.

148. The text of the Convention as prepared is the product of compromise and it naturally cannot therefore completely satisfy each and every participant in the Conference. Like some other States, the People's Republic of Mongolia is not

satisfied with certain of the Convention's provisions, particularly those on the rights of land-locked States. We feel that some provisions do not fully protect the rights and interests of that group of States. For example, under the Convention a land-locked State has only very limited rights vis-à-vis the exclusive economic zone of a coastal State. The People's Republic of Mongolia feels that the provisions of resolution II, which regulates the preparatory investments in initial activities relating to polymetallic resources, discriminates, by its nature, against socialist States. The view of the Mongolian delegation on this issue was put forward in detail on 30 April of this year at the Conference's 182nd meeting.⁵ It is that discriminatory provision of the resolution that has forced our delegation to abstain from voting on the entire package of documents.

149. In spite of the foregoing comments, which are by no means exhaustive, the Mongolian People's Republic feels that the Convention is on the whole an important instrument for regulating the multifarious activities of States on the seas and oceans and on the sea-bed and the depths of the world's oceans, as well as for the development of broad international co-operation in accordance with the principles of justice and of the sovereign equality of States. The United Nations Convention on the Law of the Sea can erect a safe barrier against the unilateral claims of the imperialist Powers and their monopolies to the expanses and resources of the world oceans and can promote the establishment of a new, just international economic order and the strengthening of international peace and security.

150. The Third United Nations Conference on the Law of the Sea is one of the major international forums of our times. During the sessions of the Conference a vast amount of experience was accumulated in carrying out complex negotiations. The Conference has clearly shown that, given the political will of States, the most complicated global problems can be solved around the negotiating table in a mutually acceptable way and that objective difficulties and artificially created obstacles can be overcome. The Conference has once again demonstrated that any attempts to impose narrow and selfish interests upon the international community or to conduct negotiations from a position of force are doomed to failure. In this connection, the Mongolian delegation would like to state that the provisions of the Convention should be regarded as a unified whole, and that any attempts to take unilateral, separate actions to circumvent or contradict the Convention on the Law of the Sea will constitute a gross violation of the principles and rules of contemporary international law. We also feel that States that have not signed the Convention and undertaken commitments may not enjoy the rights and privileges accorded States under the Convention.

151. The Mongolian delegation fully supports the appeals made by preceding speakers to all States to sign and ratify the Convention quickly. This would be in the interests of maintaining, supporting and strengthening international peace and security and of developing comprehensive, mutually beneficial co-operation among States.

152. In conclusion, I should like to express the sincere gratitude of the delegation of the People's Republic of Mongolia to the Government of Jamaica for its invitation to hold the final session of the Conference in this beautiful and hospitable Caribbean country, an event that makes the ceremony of signing the Convention and the Final Act a twofold pleasure.

153. Mr. SAHNOUN (Algeria) (*interpretation from French*): The Third United Nations Conference on the Law of the Sea has travelled a very long road, and today, at last, we find ourselves here on the soil of the generous and hospitable country of Jamaica.

⁵ *Ibid.*, vol. XVI.

154. In choosing Jamaica to act as host to this final session, the international community has honoured a country and a delegation that have contributed to a high degree to the emergence of a new law of the sea. Through Jamaica, we pay a deserved tribute to the countries of the Caribbean region which, from the very outset, have been in the vanguard of the struggle of the third world to restore to the seas and oceans their vocation as a link between different civilizations and a haven for an equitably shared well-being.

155. I wish to pay a tribute, Mr. President, to your personal activities in leading the work of the Conference towards this successful conclusion since the death of the lamented Hamilton Shirley Amerasinghe, and I wish also to express the Algerian delegation's great appreciation to the members of the Collegium, to the members of the Bureau, to the Secretary-General and his Special Representative, and to all the Secretariat staff, as well as to the successive chairmen of the Group of 77, all of whom have shown such outstanding devotion, the best reward for which is the event which brings us together here. I wish also to pay tribute to Mr. Arvid Pardo, whose contribution has already been highlighted along with his important concept of the sea as the common heritage of mankind.

156. It redounds to the honour of the Third United Nations Conference on the Law of the Sea that it willingly placed its work in the perspective of the link between international law and the social and economic development of the peoples of the third world. It also redounds to its honour that it used the liberation of creative imagination and a persevering quest for agreement as the essential tools in particularly difficult negotiations which will have earned their letters patent as a model of an exacting search for agreed solutions to other major problems of our times. This is all the more praiseworthy since our Conference has been innovative in undertaking a vast joint task of codification, with the participation of all States concerned. That is one significant outcome of the implementation of the principle of the democratization of international relations, a principle we should like to see implemented in other bodies, especially in that serving as the framework for the North-South dialogue.

157. The birth of a new legal régime for the maritime and ocean spaces and their resources, imbued but imperfectly it is true with the principle of equity, opens up the way for the establishment of a legal and economic order likely to promote relations of friendship and co-operation among States and to strengthen the fabric of effective solidarity among nations. Recognition of the specific interests of developing countries in general, and those of geographically disadvantaged countries; the embodiment of the inalienable rights of the peoples of Non-Self-Governing Territories extended by the signature of the Final Act by national liberation movements—which I warmly welcome to this room; the provisions of the Convention relative to the transfer of technology: these are a few of the positive features of this new régime. Like other geographically disadvantaged countries, Algeria is highly aware of certain inadequacies and inequities, which my delegation and others of the Group of 77 have on several occasions pointed out.

158. Without attempting to be exhaustive in this statement, which is subject to a time-limit, I wish to mention the serious distortion of the principle of equity regarding the régime of islands, especially those in enclosed or semi-enclosed seas, and the extension of the continental shelf of certain coastal States beyond the limits of the exclusive economic zone. In

this connection, I might also mention the régime of the right of innocent passage of warships in territorial seas, which, in view of the work of our Conference, must bring relief concerning the sovereignty and security of the States concerned. My delegation wishes also to stress that developing countries have gone very far to meet the position of their negotiating partners in determining the régime of the sea-bed and of spaces, beyond national jurisdiction. Whether it is a matter of the parallel system, of the protection of preparatory investments, or, to a lesser extent, of the composition and functioning of the organs of the International Sea-Bed Authority, the provisions which have been agreed upon grant to developed countries advantages which are at times quite far removed from the principles and objectives of the new international economic order which the Group of 77 would like to see enshrined in the new law of the sea.

159. In these negotiations, among the longest and hardest of modern times, developing countries have shown a high sense of their national and international responsibilities. Desirous of an equitable organization of the maritime and ocean spaces and of breaking with a history built on take-overs and confrontation, our countries have lent themselves to the drafting of compromises which have not always been consonant with the interests of some among us; but concessions were necessary if the United Nations Convention on the Law of the Sea was to be an instrument for development and peace.

160. In these negotiations, developing countries have been able, to paraphrase a well-known quotation, to have the serenity to accept that which they could not change, the courage to change that which they could change, and the wisdom to know the difference. Their massive support for the Convention shown on 30 April 1982, when it had proved impossible to achieve consensus despite all the concessions they had made, will live on in our annals as concrete testimony to their attachment to the purposes and principles of the United Nations Charter.

161. The commitment of third-world countries today to preserve the Convention along with its goals and objectives, and their condemnation of all arrangements and actions which violate the Convention, are another illustration of their respect for international legality. Any attitude aimed at undermining the universality of this Convention can only reflect a narrow vision of the balance of interests within the international community. Any initiative contrary to the Convention and, specifically, to the régime of the common heritage of mankind, is, we are convinced, doomed to failure.

162. While reserving for the competent authorities of the People's Democratic Republic of Algeria the possibility of availing themselves of the opportunities recognized in the relevant provisions of the Convention regarding any declaration or interpretation they may deem it appropriate to make as they proceed to ratification, I have the honour to announce that the Algerian Government, through me, will sign the United Nations Convention on the Law of the Sea. By so doing, Algeria affirms its readiness to participate as a full member in the work of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal of the Law of the Sea, and to continue to make its contribution towards the establishment of the rule of law over the maritime and ocean spaces, over their utilization and over the exploitation of their resources.

The meeting rose at 5.40 p.m.

Annex B34

United Nations Convention on the Law of the Sea, Meeting of States Parties, *Report of the Sixth Meeting of States Parties*, U.N. Doc SPLOS/20 (20 March 1997)

**UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA**

SPLOS



**MEETING OF
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REPORT OF THE SIXTH MEETING OF STATES PARTIES

Prepared by the Secretariat

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I. INTRODUCTION

1. The sixth Meeting¹ of States Parties to the United Nations Convention on the Law of the Sea was convened from 10 to 14 March 1997 in accordance with article 319, paragraph 2 (e), of the Convention and the decision taken at the fifth Meeting.² Pursuant to that decision, and in accordance with rule 5 of the rules of procedure adopted by the Meeting of States Parties,³ invitations to participate in the Meeting were addressed by the Secretary-General of the United Nations to all States Parties to the Convention, and also to the observers referred to in rule 18 of the rules of procedure.

2. The Meeting was held primarily to prepare for and conduct the first election of the 21 members of the Commission on the Limits of the Continental Shelf in accordance with the Convention and its annex II. It was also to review the draft Agreement on Privileges and Immunities of the Tribunal with a view to its adoption.

3. The Meeting had before it the following documents:

- Report of the fifth Meeting of States Parties, 24 July to 2 August 1996 (SPLOS/14);
- Schedule for the nomination and election of the members of the Commission on the Limits of the Continental Shelf: note by the Secretariat (SPLOS/L.2);
- Election of the members of the Commission on the Limits of the Continental Shelf: note by the Secretary-General (SPLOS/15);
- List of candidates submitted by States Parties for election to the Commission on the Limits of the Continental Shelf: note by the Secretary-General (SPLOS/16);
- Curricula vitae of candidates nominated by States Parties for election to the Commission on the Limits of the Continental Shelf: note by the Secretary-General (SPLOS/17);
- Curricula vitae of candidates nominated by States Parties for election to the Commission on the Limits of the Continental Shelf: Additional list circulated in accordance with the decision of the Meeting of States Parties adopted on 11 March 1997 (SPLOS/17/Add.1);
- Provisional agenda (SPLOS/L.4/Rev.1);
- Draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea (SPLOS/WP.2 and Add.1);
- Final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/WP.16/Add.3);

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- Germany: Proposals relating to the draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea (SPLOS/CRP.8);
- Germany: Proposals relating to the draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea (SPLOS/CRP.10);
- Recommendations and conclusions of the International Tribunal for the Law of the Sea on the draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea (SPLOS/CRP.11).

II. ORGANIZATION OF WORK

A. Opening of the sixth Meeting by the Representative of the Secretary-General

4. The Meeting was opened by the Representative of the Secretary-General, Mr. Hans Corell, the Under-Secretary-General for Legal Affairs, the Legal Counsel of the United Nations.

B. Election of the President

5. The Meeting elected Mr. Orlando R. Rebagliati (Argentina) as President by acclamation and, under an informal arrangement reached, Mr. Helmut Türk (Austria) will serve as President of the seventh Meeting of States Parties. It was also understood that neither the Latin American and Caribbean States nor the Western European and Other States would seek the presidency in 1998.

C. Introductory statement by the President

6. In his opening statement, the President said that the Meeting faced a heavy programme of work, mainly in terms of the election of the members of the Commission on the Limits of the Continental Shelf. He pointed out that certain issues, such as the allocation of seats among the regional groups, nominations received after the established deadline and a candidature submitted by a State not yet party to the Convention, must be dealt with as a priority.

D. Adoption of the agenda for the sixth Meeting

7. The Meeting adopted the provisional agenda for the sixth Meeting (SPLOS/L.4/Rev.1).

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E. Election of the Vice-Presidents

8. The Meeting elected the representatives of Australia, the Czech Republic, Indonesia and Togo as the Vice-Presidents of the sixth Meeting of States Parties.

F. Appointment of the Credentials Committee

9. On 10 March 1997, the Meeting of States Parties appointed a Credentials Committee consisting of the following members: Cameroon, Croatia, Germany, Malta, Micronesia (Federated States of), Philippines, Senegal, Trinidad and Tobago and Uruguay.

G. Organization of work

10. The President outlined the programme of work for the Meeting and identified the following as the priority issues:

(a) Consultations within and among regional groups, as well as the Bureau, on issues related to the election of the Commission on the Limits of the Continental Shelf;

(b) Election of the 21 members of the Commission;

(c) Consideration of the draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea in the Working Group established for that purpose at the fifth Meeting;

(d) Draft rules of procedure of the Commission on the Limits of the Continental Shelf.

11. The President stressed that the election of the Members of the Commission on the Limits of the Continental Shelf was the highest priority for the Meeting. He indicated that the Meeting could deal with other issues, such as proposals concerning the rules of procedure of the Meeting, only if the priority issues had been dealt with.

III. ESTABLISHMENT OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

A. Understandings for the purpose of conducting the first election of the members of the Commission

12. The President drew attention to the provisions of the Convention concerning the representation of geographical regions on the Commission. He noted that in accordance with article 2, paragraph 3, of annex II to the Convention, not less than three members shall be elected from each geographical region.

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13. The Meeting agreed to the President's suggestion that informal consultations be convened within and among the regional groups to deal with issues related to the election. The President held several consultations with the Chairmen of the regional groups and the members of the Bureau. On the basis of the informal consultations, the following understanding was proposed by the President and agreed to by the Meeting on 13 March 1997:

"Note by the President

"The sixth Meeting of States Parties to the United Nations Convention on the Law of the Sea has reached the following understandings for the purpose of conducting the first election of the members of the Commission on the Limits of the Continental Shelf:

"1. These understandings are on a purely ad hoc basis and relate only to the first election of the members of the Commission. They shall not be interpreted as derogating from the relevant provisions of the United Nations Convention on the Law of the Sea. They shall not affect nor prejudice arrangements for future elections and do not constitute a precedent.

"2. In accordance with the provisions of article 2, paragraph 3, of annex II to the United Nations Convention on the Law of the Sea, not less than three members of the Commission shall be elected from each geographical region, including the Eastern European States region.

"3. For the purpose of the first election only, the Group of Eastern European States has decided not to fill the third seat to which it is entitled in accordance with the provisions referred to above.* In these circumstances, the Meeting decided that for the first election, the Commission shall be elected as follows:

- Five members from the African States Group;
- Five members from the Asian States Group;
- Two members from the Eastern European States Group;
- Four members from the Latin American and Caribbean States Group;
- Five members from the Western European and Other States Group.

"4. The Meeting also decided that the candidates nominated by States Parties, whose names were submitted after the deadline established by the fifth Meeting of States Parties (i.e. 5 February 1997), will be eligible for election to the Commission.

* ", and to permit that seat to be filled by a member from the Western European and Other States Group."

"5. The Meeting further decided that the name of the candidate nominated by the Russian Federation, which deposited its instrument of ratification on 12 March 1997, will be included in the list of candidates for election to the Commission. However, the Meeting also agreed that if the candidate is elected, he will be considered officially elected only after the 30-day period from the date of deposit of the instrument has elapsed."

B. Election of the 21 members of the Commission

14. The Meeting then proceeded to the conduct of the election in accordance with the understandings and article 2, paragraph 3, of annex II to the Convention. The President informed the Meeting that Kuwait had withdrawn its candidate. Austria, Honduras, Kuwait, Romania and Tunisia were appointed tellers for the election.

15. Three rounds of balloting were conducted.

16. In the first round, 107 valid ballots were cast. There were three invalid ballots and no abstentions. The required majority was 72 votes and the following 17 candidates were elected: ALBUQUERQUE, Alexandre Tagore Medeiros De (Brazil) (81); AWOSIKA, Lawrence Folajimi (Nigeria) (102); BELTAGY, Aly I. (Egypt) (102); BETAH, Samuel Sona (Cameroon) (97); CARRERA HURTADO, Galo (Mexico) (83); CHAN CHIM YUK, André C. W. (Mauritius) (107); FRANCIS, Noel Newton St. Claver (Jamaica) (81); HAMURO, Kazuchika (Japan) (90); HINZ, Karl H. F. (Germany) (73); JAAFAR, A. Bakar (Malaysia) (76); JURČIĆ, Mladen (Croatia) (89); KAZMIN, Yuri Borisovitch (Russian Federation) (89); LAMONT, Iain C. (New Zealand) (77); LU, Wenzheng (China) (73); M'DALA, Chisengu Leo (Zambia) (100); PARK, Yong-Ahn (Republic of Korea) (76); SRINIVASAN, K. R. (India) (77).

17. In the second round of balloting, 108 valid ballots were cast, with no invalid ballots and no abstentions. The required majority was 72 votes and the following three candidates were elected: ASTIZ, Osvaldo Pedro (Argentina) (72); BREKKE, Harald (Norway) (86); CROKER, Peter F. (Ireland) (77).

18. In the third round of balloting, 97 valid ballots were cast with no invalid ballots and one abstention. The required majority was 64 votes and one candidate was elected: RIO, Daniel (France) (68).

19. The President then announced that the following candidates had been elected members of the Commission on the Limits of the Continental Shelf:

Mr. ALBUQUERQUE, Alexandre Tagore Medeiros De (Brazil); Mr. ASTIZ, Osvaldo Pedro (Argentina); Mr. AWOSIKA, Lawrence Folajimi (Nigeria); Mr. BELTAGY, Aly I. (Egypt); Mr. BETAH, Samuel Sona (Cameroon); Mr. BREKKE, Harald (Norway); Mr. CARRERA HURTADO, Galo (Mexico); Mr. CHAN CHIM YUK, André C. W. (Mauritius); Mr. CROKER, Peter F. (Ireland); Mr. FRANCIS, Noel Newton St. Claver (Jamaica); Mr. HAMURO, Kazuchika (Japan); Mr. HINZ, Karl H. F. (Germany); Mr. JAAFAR, A. Bakar (Malaysia); Mr. JURČIĆ, Mladen (Croatia); Mr. KAZMIN, Yuri Borisovitch (Russian Federation); Mr. LAMONT, Iain C. (New Zealand); Mr. LU, Wenzheng (China); Mr. M'DALA, Chisengu Leo (Zambia);

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Mr. PARK, Yong-Ahn (Republic of Korea); Mr. RIO, Daniel (France);
Mr. SRINIVASAN, K. R. (India).

20. The representative of Mexico made a statement on behalf of the Latin American and Caribbean States with respect to that region's position regarding the distribution of seats and modalities of election of members of the Commission on the Limits of the Continental Shelf. She indicated that those States had maintained a position of strict respect of the United Nations Convention on the Law of the Sea and that the Convention, as a document establishing legal order for the seas and oceans, should be applied without exceptions. At the same time, the group attached a great importance to the prompt establishment and full functioning of the Commission.

21. In order to achieve this objective, the group had participated in the negotiations in a constructive and flexible manner, recognizing that specific circumstances had to be taken into account on this occasion. However, the agreement achieved was exceptional and did not constitute a precedent. Distribution of seats and acceptance of all the candidatures submitted applied only to this election. The agreement did not imply that the same could be repeated in the future and was without prejudice to the right of any regional group to seek a different number of seats in future elections, based on the Convention's fundamental principle of equitable geographical representation of States Parties and on the right for each region to have not less than three seats. Finally, the group stressed that at the end of the fourth year after the establishment of the Commission, the States Parties should start negotiating the distribution of seats for the next elections.

IV. CONSIDERATION OF THE DRAFT AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

22. In accordance with the decision of the fifth Meeting of States Parties, the sixth Meeting continued the consideration of the draft Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea in the open-ended Working Group under the chairmanship of one of the Vice-Presidents of the Meeting, Mr. Martin Šmejkal (Czech Republic).

23. The Working Group held five meetings, as well as informal consultations among interested delegations under the coordination of its Chairman. The Working Group had before it a number of documents on privileges and immunities of the Tribunal, as listed in paragraph 3 above. During its deliberations, the Working Group also took into consideration written and oral suggestions and proposals made by delegations.

24. The Working Group adopted ad referendum the majority of the draft articles of the Agreement, as contained in document SPLOS/WP.2/Rev.1.

25. In a statement to the Meeting, the Chairman of the Working Group urged interested delegations to consult during the inter-sessional period with a view to formulating consensus provisions on pending articles. The Chairman also said that the Working Group, at the seventh Meeting, would consider substantively

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only those provisions which appeared in square brackets, namely, article 4, paragraph 4; article 12, paragraph 6; article 13, paragraph 3; article 16 bis; article 18; and article 29. The Working Group, prior to submitting the draft Agreement for adoption by the Meeting of States Parties, would review the draft Agreement as a whole for the purposes of ensuring consistency between articles and, if necessary, for stylistic changes.

26. The Meeting took note of the statement and decided to make time available during the seventh Meeting to enable the Working Group to meet with a view to finalizing the draft Agreement.

V. OTHER MATTERS

A. Reports of the Credentials Committee

27. The Credentials Committee held its first meeting on 11 March and elected Ms. Joanna Darmanin (Malta) as its Chairman. At that meeting, it examined the credentials of representatives to the sixth Meeting of States Parties. Additional credentials were examined by the Committee at its second, third and fourth meetings, held on 13 March 1997. The reports of the Committee on its work are contained in documents SPLOS/18 and SPLOS/19.

28. In all, the Committee, during its four meetings, examined and accepted credentials submitted by representatives of 110 States Parties to the Convention.

29. The Meeting of States Parties, on 13 March 1997, approved the reports of the Committee.

B. Other proposals and statements

30. The Meeting, acting on the recommendation of a number of delegates, expressed its gratitude to the Governments of the Federal Republic of Germany and of Jamaica for the facilities and other forms of assistance they had provided to the International Tribunal for the Law of the Sea and for the International Seabed Authority respectively.

31. The Meeting also took note of a statement made by the Honourable Thomas Mensah, President of the International Tribunal for the Law of the Sea, in which he reported on progress made in negotiations with the Federal Republic of Germany concerning a headquarters agreement, the elaboration of the rules of the Tribunal, the selection of the various chambers that would deal with submissions to the Tribunal, and the preparation of the draft budget of the Tribunal for the future consideration by the Meeting.

32. The Meeting then decided that the draft budget of the Tribunal should be submitted to the United Nations Secretariat as soon as possible to enable the Secretariat to process the document and to circulate it to States Parties well in advance of the seventh Meeting in May.

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33. The representative of New Zealand proposed a new agenda item for consideration at the next Meeting, namely the role of the Meeting of States Parties in reviewing ocean and law of the sea issues.

34. The observers from the World Wildlife Fund for Nature and the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (IOC/UNESCO) made statements to the Meeting.

C. Dates and programme of work for the seventh Meeting

35. The seventh Meeting of States Parties will be held in New York from 19 to 23 May 1997.⁴

36. Based on the proposals made by the President of the sixth Meeting of States Parties, the seventh Meeting will have on its agenda, inter alia, the following items:

(a) Draft budget of the International Tribunal for the Law of the Sea, as submitted by the Tribunal;

(b) Draft Agreement on Privileges and Immunities of the International Tribunal for the Law of the Sea;

(c) Rules of procedure of the Meeting of States Parties, in particular, the rules dealing with the participation of observers (rule 18) and with decision-making on questions of substance (rule 53);

(d) Draft rules of procedure of the Commission on the Limits of the Continental Shelf;

(e) Role of the Meeting of States Parties in reviewing ocean and law of the sea issues.

Notes

¹ The previous five Meetings of States Parties were held on 21 and 22 November 1994, from 15 to 19 May 1995, from 27 November to 1 December 1995, from 4 to 8 March 1996 and from 24 July to 2 August 1996.

² SPLOS/14, paras. 50 and 51.

³ SPLOS/2/Rev.3.

⁴ SPLOS/14, para. 52.

Annex B35

United Nations, Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries* (2000)



Handbook on the Delimitation of Maritime Boundaries



**Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs
United Nations • New York, 2000**

(d) Concave or convex shape

143. The relevance of the convexity or concavity of the relevant coastline was highlighted by the International Court of Justice in the 1969 North Sea Continental Shelf cases. The distorting effects of the equidistance method in the presence of a concave or convex coastline is shown in the following illustrations:

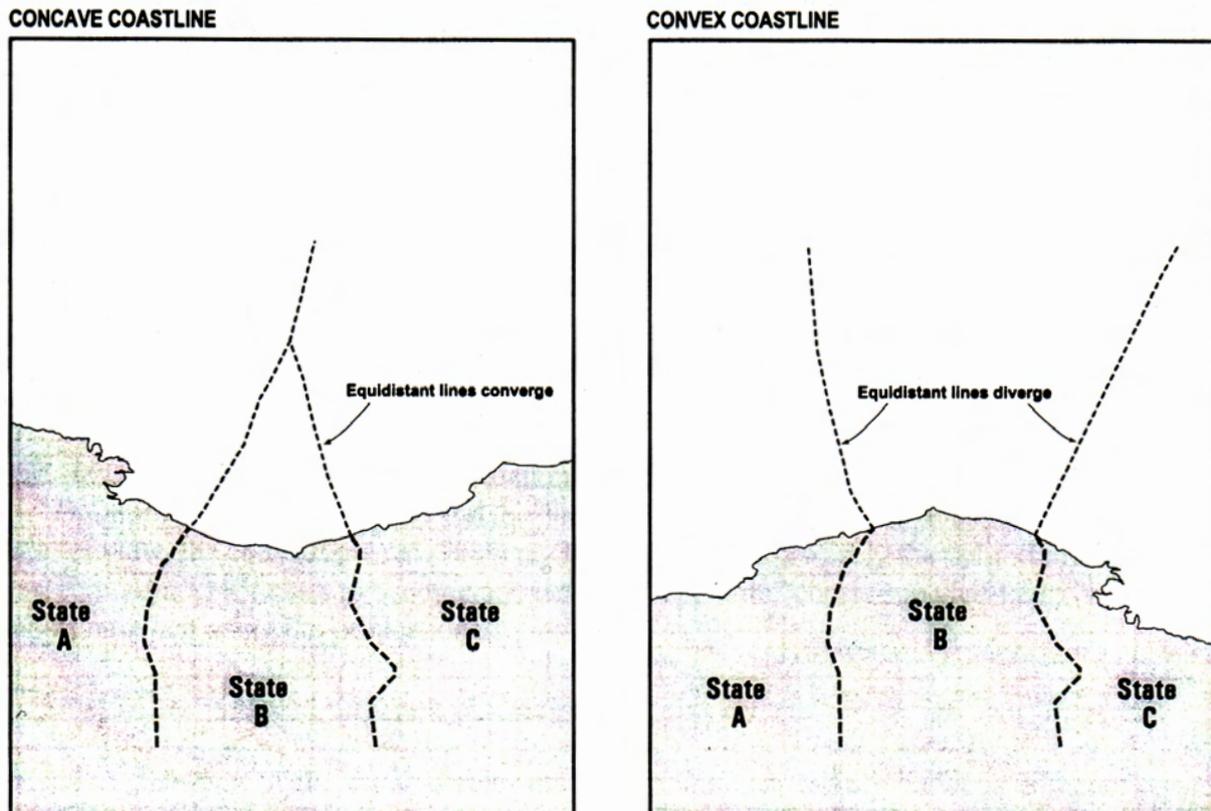


Illustration No. 1 ⁴⁸

⁴⁸ Illustration Nos. 1, 5, 6, 7, 9, 10, 11, 12 and 17 have been prepared by Scott B. Edmonds, Director of Cartographic Operations, The Boundary Litigation Group, A Division of MapQuest.Com, Inc., Maryland, United States of America.

Annex B36

Commission on the Limits of the Continental Shelf, Twenty-sixth session, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, U.N. Doc. CLCS/68 (17 September 2010)

**Commission on the Limits of the
Continental Shelf**Distr.: General
17 September 2010

Original: English

Twenty-sixth session

New York, 2 August-3 September 2010

**Statement by the Chairperson of the Commission on the
Limits of the Continental Shelf on the progress of work in
the Commission**

1. The Commission on the Limits of the Continental Shelf held its twenty-sixth session at United Nations Headquarters from 2 August to 3 September 2010, pursuant to the decisions taken at its twenty-fourth¹ and twenty fifth² sessions and to General Assembly resolution 64/71.³ The plenary part of the session was held from 16 to 23 August. The periods from 2 to 13 August and from 24 August to 3 September were used for the technical examination of submissions at the Geographic Information System (GIS) laboratories and other technical facilities of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs.
2. The following members of the Commission attended the session: Osvaldo Pedro Astiz, Lawrence Folajimi Awosika, Harald Brekke, Galo Carrera Hurtado, Francis L. Charles, Peter F. Croker, Indurlall Fagoonee, Abu Bakar Jaafar, Emmanuel Kalngui, Yuri Borisovitch Kazmin, Wenzheng Lu, Isaac Owusu Oduro, Yong Ahn Park, Sivaramakrishnan Rajan, Michael Anselme Marc Rosette, Philip Alexander Symonds and Kensaku Tamaki. Alexandre Tagore Medeiros de Albuquerque, Mihai Silviu German, George Jaoshvili and Fernando Manuel Maia Pimentel could not attend the session for reasons beyond their control.
3. The Commission had before it the following documents and communications:
 - (a) Provisional agenda (CLCS/L.29/Rev.1);
 - (b) Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission at its twenty-fifth session (CLCS/66);

¹ CLCS/64, para. 138.

² CLCS/66, para. 97.

³ Para. 55.

(c) Submissions made pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea and addressed through the Secretary-General of the United Nations to the Commission by coastal States;⁴

(d) Communications received from Bangladesh (29 October 2009), Barbados (13 July 2010), Myanmar (4 August 2009), Oman (19 May 2010), Palau (22 July 2010), the Philippines (4 August 2009) and Somalia (19 August 2009);

(e) Decision of the twentieth Meeting of States Parties to the Convention regarding the workload of the Commission on the Limits of the Continental Shelf (SPLOS/216);

(f) Report of the twentieth Meeting of States Parties to the Convention (SPLOS/218).

Item 1

Opening of the twenty-sixth session by the Chairperson of the Commission

4. The Director of the Division informed the Commission that its Chairperson, Mr. Albuquerque, had advised the Secretariat that he could not attend the session for reasons beyond his control. Recalling rule 14 of the Rules of Procedure of the Commission (CLCS/40/Rev.1), the Director invited the members of the Commission to designate one of the Vice-Chairpersons as acting Chairperson for the session. The Commission designated Mr. Awosika to act in that capacity.

5. The Director of the Division made a brief statement.

Item 2

Adoption of the agenda

6. The Commission considered the provisional agenda (CLCS/L.29/Rev.1) and adopted it, with amendments (CLCS/67).⁵

Item 3

Organization of work

7. The Chairperson outlined the programme of work and the schedule for the deliberations, which the Commission approved with amendments. In view of the decision by four coastal States to defer the presentation of their respective submissions to a later session,⁵ the Commission decided to close its plenary session on 23 August and devote the remainder of that week to subcommission work with a

⁴ For a full list of the submissions made to the Commission, see www.un.org/Depts/los/clcs_new/commission_submissions.htm.

⁵ In response to an invitation by the Chairperson of the Commission to present their submissions at the twenty-sixth session, France (in respect of La Réunion Island and Saint-Paul and Amsterdam Islands), Iceland, Pakistan and Sri Lanka had indicated their preference to make their presentations at a later session. The deferrals of the presentations of the submissions to a later time were communicated to the Chairperson of the Commission on the understanding that they would not affect the position of the submissions in the queue.

view to expediting the examination of submissions utilizing the GIS laboratories and other technical facilities of the Division.

Item 4

Submission made by Indonesia in respect of North West of Sumatra Island⁶

Report of the Chairperson of the Subcommittee regarding the progress of work during the twenty-sixth session

8. The Chairperson of the Subcommittee, Mr. Croker, informed the Commission that the Subcommittee had met from 2 to 16 August 2010. The Subcommittee had considered the new material that had been received from Indonesia during the intersessional period, in response to its request for additional information. The Subcommittee had held two meetings with the delegation of Indonesia, during which it had presented its preliminary findings with respect to the new material. On 16 August 2010, the Subcommittee had adopted its recommendations by consensus.

Consideration of recommendations

9. On 17 August 2010, the Subcommittee submitted to the Commission the “Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Indonesia in respect of the area North West of Sumatra on 16 June 2008” and the Chairperson of the Subcommittee introduced them by delivering a presentation to the plenary of the Commission, together with another member of the Subcommittee, Mr. Tamaki.

10. On the same day, a meeting was held, at the request of Indonesia, between its delegation and the Commission, pursuant to paragraph 15 (1 bis) of annex III to the Rules of Procedure of the Commission. At that meeting, the presentation of Indonesia was made by Arif Havas Oegroseno, Director General for Law and International Treaties, Ministry of Foreign Affairs, and head of delegation. The delegation also included a number of advisers. In his presentation, Mr. Oegroseno referred to the agreement between the Subcommittee and the delegation on the outer limits.

11. The Commission then continued its meeting in private. Following a detailed discussion of the recommendations prepared by the Subcommittee and of the presentation made by the delegation, the Commission decided to defer the consideration of the recommendations prepared by the Subcommittee to the twenty-seventh session in order to provide its members with further time to examine them.

⁶ Submission made on 16 June 2008; see www.un.org/Depts/los/clcs_new/submissions_files/submission_idn.htm.

Item 5

Submission made by Japan

Report of the Chairperson of the Subcommittee regarding the progress of work during the twenty-sixth session

12. The Chairperson of the Subcommittee, Mr. Brekke, informed the Commission that during the intersessional period, the members of the Subcommittee had continued the examination of the submission individually. He also informed the Commission that during the course of the twenty-sixth session, the Subcommittee had met from 2 to 13 and from 24 to 27 August 2010. During that period, the Subcommittee had continued its examination of the submission and had held two meetings with the delegation of Japan with a view to providing it with preliminary views on selected regions of the submission and to exchanging views. Mr. Brekke stated that the members of the Subcommittee would continue working intersessionally and that the Subcommittee would meet from 22 November to 3 December 2010 during a resumed twenty-sixth session, as well as from 11 to 21 April 2010 during the twenty-seventh session and from 1 to 12 August 2011 during the twenty-eighth session.

Item 6

Joint submission made by Mauritius and Seychelles in respect of the Mascarene Plateau⁷

Report of the Chairperson of the Subcommittee regarding the progress of work during the twenty-sixth session

13. The Chairperson of the Subcommittee, Mr. Tamaki, informed the Commission that the Subcommittee had met from 9 to 13 August 2010. The Subcommittee had considered data and information supplied during the intersessional period by Mauritius and Seychelles in response to questions raised by the Subcommittee. The Subcommittee had held three meetings with the delegations of Mauritius and Seychelles. In the course of the meetings, the Subcommittee had updated the delegations on the work carried out to date and posed three additional questions. In response to those questions, further material and clarifications had been provided by the delegations. The Subcommittee had continued its work from 24 August to 3 September 2010. During that period, the Subcommittee had transmitted to the delegations its preliminary views and considerations regarding certain issues arising from the examination of the joint submission. The Subcommittee had decided that its members would continue to work individually on the joint submission during the intersessional period and to meet from 6 to 10 December 2010 during a resumed twenty-sixth session. The Subcommittee had also decided that it would meet from 14 to 25 March 2011 during the twenty-seventh session.

⁷ Submission made on 1 December 2008; see www.un.org/depts/los/clcs_new/submissions_files/submission_musc.htm.

Item 7

Submission made by Suriname⁸

Report of the Chairperson of the Subcommission regarding the progress of work during the twenty-sixth session

14. The Chairperson of the Subcommission, Mr. Rajan, informed the Commission that the Subcommission had met from 24 August to 3 September 2010, commencing its consideration of the submission made by Suriname. The Subcommission had verified the format and completeness of the submission and had then proceeded to undertake a preliminary analysis of the submission, concluding that further time would be required to examine all the data and prepare recommendations for transmittal to the Commission.

15. The Subcommission had prepared a series of questions addressed to the delegation of Suriname and had held two meetings with the delegation during which clarifications had been provided. The Subcommission had decided that its members would continue to work individually on the submission during the intersessional period and that the Subcommission would meet from 14 to 25 March 2011 during the twenty-seventh session.

Item 8

Consideration of other submissions made pursuant to article 76, paragraph 8, of the Convention

(a) Submission made by Yemen, in respect of south-east of Socotra Island⁹

16. The presentation of the submission to the Commission was made on 20 August 2010 by Captain Ali Mohammed Alsubhi, Deputy Minister of Transport, Ports and Maritime Affairs, Head of Yemen Continental Shelf Technical Committee and head of delegation, and Khaled Mohamed Omer Khanbari, Geologist, Sana'a University. The delegation of Yemen also included Abdullah Fadhel Al-Saadi, Deputy Permanent Representative of Yemen to the United Nations, and a number of advisers.

17. In addition to elaborating on substantive points of the submission, Mr. Alsubhi observed that no member of the Commission had assisted Yemen by providing scientific or technical advice.

18. Mr. Alsubhi stated that the area of continental shelf that was included in the submission was not the subject of any dispute. In respect of the communication from the Transitional Federal Government of Somalia, dated 19 August 2009, Mr. Alsubhi stated that consultations between Somalia and Yemen had been initiated to allow the Commission to proceed with the examination of their respective submissions, adding that the Commission would be informed of the developments with respect to those consultations.

⁸ Submission made on 5 December 2008; see www.un.org/depts/los/clcs_new/submissions_files/submission_sur.htm.

⁹ Submission made on 20 March 2009 and amended on 15 July 2010; see www.un.org/Depts/los/clcs_new/submissions_files/submission_yem.htm.

19. The Commission then continued its meeting in private. Addressing the modalities for the consideration of the submission and taking into account the communication referred to above and the presentation made by the delegation, the Commission decided to defer further consideration of the submission and the communication until such time as the submission would be next in line for consideration as queued in the order in which it was received. The Commission adopted this decision in order to take into account any further developments that might occur throughout the intervening period, during which the States concerned may wish to take advantage of the avenues available to them, including provisional arrangements of a practical nature as contained in annex I to its Rules of Procedure.

(b) Submission made by South Africa, in respect of the mainland of the territory of the Republic of South Africa¹⁰

20. The presentation of the submission to the Commission was made on 23 August 2010. Baso Sangqu, Permanent Representative of the Republic of South Africa to the United Nations and head of delegation, introduced the delegation of South Africa. Sandea de Wet, Chief State Law Adviser, delivered the presentation. The delegation of South Africa also included a number of advisers.

21. In addition to elaborating on substantive points of the submission, Ms. De Wet observed that a member of the Commission, Mr. Brekke, had assisted South Africa by providing scientific and technical advice.

22. Ms. De Wet stated that South Africa had unresolved maritime boundaries with Mozambique in the east and with Namibia in the west and that, for practical convenience, the median line had been used in the submission. She noted, however, that formal understandings had been reached with the two States so that the respective submissions would be considered by the Commission without prejudice to future delimitations. In this connection, Ms. De Wet recalled that no notes verbales had been addressed to the Secretary-General.

23. The Commission then continued its meeting in private. Addressing the modalities for the consideration of the submission, the Commission decided that, as provided for in article 5 of annex II to the Convention and in rule 42 of the Rules of Procedure, the submission would be addressed by a subcommission to be established in accordance with rule 51, paragraph 4 ter, of the Rules of Procedure, at a future session. The Commission decided to revert to the consideration of the submission at the plenary level when the submission was next in line for consideration as queued in the order in which it was received.

(c) Joint submission made by France and South Africa, in respect of the Crozet Archipelago and the Prince Edward Islands¹¹

24. The presentation of the submission to the Commission was made on 19 August 2010 by Elie Jarmache, Chargé de mission, Secrétariat général de la mer, France, and Sandea de Wet, Chief State Law Adviser, South Africa, heads of their respective

¹⁰ Submission made on 20 March 2009; see www.un.org/Depts/los/clcs_new/submissions_files/submission_zaf_31_2009.htm.

¹¹ Submission made on 20 March 2009; see www.un.org/Depts/los/clcs_new/submissions_files/submission_frazaf_34_2009.htm.

delegations. The delegations of France and South Africa also included a number of advisers.

25. In addition to elaborating on substantive points of the submission, Mr. Jarmache and Ms. De Wet observed that no member of the Commission had assisted France and South Africa by providing scientific or technical advice.

26. Mr. Jarmache stated that the area of the continental shelf included in the submission was not the subject of any dispute and that no notes verbales had been received from other States in this regard. He also specified that the submission was without prejudice to the future delimitation of maritime boundaries between the two coastal States. He further stated that the two coastal States reserved their right to submit additional information involving the depth constraint as soon as the analysis of recently acquired bathymetry data for the region was completed. In this connection, he specified that the inclusion of the depth constraint would affect the outer limit of the continental shelf currently included in the submission.

27. The Commission then continued its meeting in private. Addressing the modalities for the consideration of the submission, the Commission decided that, as provided for in article 5 of annex II to the Convention and in rule 42 of the Rules of Procedure, the submission would be addressed by a subcommission to be established in accordance with rule 51, paragraph 4 ter, of the Rules of Procedure, at a future session. The Commission decided to revert to the consideration of the submission at the plenary level when the submission was next in line for consideration as queued in the order in which it was received.

(d) Submission made by Palau¹²

28. The presentation of the submission to the Commission was made on 20 August 2010 by Hersey Kyota, Ambassador to the United States of America, and Alain Murphy, Adviser. The delegation of Palau also included Joan Yang, Deputy Permanent Representative of Palau to the United Nations.

29. In addition to elaborating on substantive points of the submission, Mr. Kyota observed that a member of the Commission, Mr. Symonds, had assisted Palau by providing scientific and technical advice.

30. Mr. Kyota referred to note verbale No. 000820, dated 4 August 2009, in which the Philippines had requested the Commission to refrain from considering the submission in view of the dispute brought about by an overlap in the jurisdictional continental shelves of the two coastal States. Mr. Kyota also referred to note verbale No. 030/PMSG/10 from Palau, dated 22 July 2010, in which it was noted that, although Palau and the Philippines shared an overlapping exclusive economic zone, this did not constitute a dispute. He added that Palau had requested the Philippines to engage in bilateral consultations aimed at achieving maritime boundary demarcation. Mr. Kyota informed the Commission that Palau had formally notified the Federated States of Micronesia, Japan and Indonesia in advance of its submission and that no notes verbales had been received from those States. He specified that, accordingly, the submission was made without prejudice to the question of the delimitation of the continental shelf between Palau and other States.

¹² Submission made on 20 March 2009; see www.un.org/Depts/los/clcs_new/submission_files/submission_plw_41_2009.htm.

31. The Commission then continued its meeting in private. Addressing the modalities for the consideration of the submission and taking into account the notes verbales referred to above and the presentation made by the delegation, the Commission decided to defer further consideration of the submission and the notes verbales until such time as the submission would be next in line for consideration as queued in the order in which it was received. The Commission adopted this decision in order to take into account any further developments that might occur throughout the intervening period, during which the States concerned may wish to take advantage of the avenues available to them, including provisional arrangements of a practical nature as contained in annex I to its Rules of Procedure.

(e) Submission made by India¹³

32. The presentation of the submission to the Commission was made on 16 August 2010 by Shailesh Nayak, Secretary, Ministry of Earth Sciences, head of delegation, Anil Kumar Chaubey, Scientist, National Institute of Oceanography, and Narinder Singh, Joint Secretary and Legal Adviser, Ministry of External Affairs. The delegation of India also included Manjeev Singh Puri, Deputy Permanent Representative of India to the United Nations, and a number of advisers.

33. In addition to elaborating on substantive points of the submission, Mr. Nayak stated that the submission of India was a partial submission, and that India would shortly be making another submission regarding the area. He also observed that a member of the Commission, Mr. Rajan, had assisted India by providing scientific and technical advice.

34. Mr. Singh stated that in the area of continental shelf included in the submission there were a number of outstanding delimitations with Pakistan and Oman, as well as with Bangladesh and Myanmar, specifying, however, that the submission had been made without prejudice to the question of delimitation of the continental shelf between India and those States. In this connection, it was recalled that, in accordance with India's domestic legislation (Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act of 1976, section 9), the maritime boundaries between India and any State whose coast was opposite or adjacent to that of India in regard to their respective territorial waters, contiguous zones, continental shelves, exclusive economic zones and other maritime zones shall be determined by agreement between India and such State, and pending the conclusion of agreements the maritime boundaries shall not extend beyond the equidistance line. With regard to the notes verbales received from Myanmar on 4 August 2009, from Bangladesh on 29 October 2009 and from Oman on 19 May 2010, he reiterated that the submission made by India was without prejudice to matters relating to delimitation of maritime boundaries with the neighbouring States, as stated in the executive summary of its submission.

35. The Commission then continued its meeting in private. Addressing the modalities for the consideration of the part of the submission that relates to the western offshore region of India in the Arabian Sea, the Commission took note of the note verbale from Oman dated 19 May 2009 and decided that, as provided for in article 5 of annex II to the Convention and in rule 42 of the Rules of Procedure, this

¹³ Submission made on 20 March 2009; see www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm.

part of the submission would be addressed by way of a subcommission to be established in accordance with rule 51, paragraph 4 ter, of the Rules of Procedure, at a future session. The Commission decided to revert to the consideration of this part of the submission at the plenary level when the submission was next in line for consideration as queued in the order in which it was received.

36. Addressing the modalities for the consideration of the part of the submission that relates to the eastern offshore region of India, comprising the eastern offshore region of mainland India in the Bay of Bengal and the western offshore region of the Andaman Islands, the Commission took note of the communications addressed to the Secretary-General of the United Nations received in relation to this part of the submission, namely, the note verbale from Myanmar dated 4 August 2009 and the note verbale from Bangladesh dated 29 October 2009. The note verbale from Bangladesh invoked, inter alia, paragraph 5 (a) of annex I to the Rules of Procedure with reference to disputes in this part of the submission. The Commission also took note of the views relating to these notes verbales expressed in the presentation by India. Taking into account these notes verbales and the presentation made by the delegation, the Commission decided to defer further consideration of this part of the submission and the notes verbales until such time as the submission would be next in line for consideration as queued in the order in which it was received. The Commission adopted this decision in order to take into account any further developments that might occur throughout the intervening period during which the States concerned may wish to take advantage of the avenues available to them including provisional arrangements of a practical nature as contained in annex I to its Rules of Procedure.

Item 9

Report of the Chairperson of the Commission on the twentieth Meeting of States Parties to the United Nations Convention on the Law of the Sea

37. In the absence of the Chairperson, Mr. Albuquerque, at the session, the Director of the Division provided a brief overview of the developments at the twentieth Meeting of States Parties and the work carried out by the Informal Working Group, facilitated by the Bureau of the Meeting of States Parties. He then invited the Commission to give full consideration to the measures suggested in the decision of the twentieth Meeting of States Parties regarding the workload of the Commission (SPLOS/216). The acting Chairperson supplemented the information provided by the Director.

38. The Commission took note of the decision of the twentieth Meeting of States Parties and reiterated that article 76 and annex II to the Convention established the Commission as an independent body. The Commission recalled that it had already had the opportunity to convey its views on several of the measures proposed in document SPLOS/216 through the presentations made to the Bureau of the nineteenth Meeting of States Parties, on 1 September 2009,¹⁴ and to the Informal Working Group, on 14 April 2010.¹⁵ It was further recalled that, following the latter,

¹⁴ Available online at www.un.org/depts/los/clcs_new/workload/presentation_to_bureau_msp_2009.pdf.

¹⁵ See www.un.org/depts/los/clcs_new/clcs_workload.htm.

on 25 May 2010, the Chairperson of the Commission had provided written responses to questions posed by some States through the Informal Working Group.¹⁶ In those responses, the Chairperson had already addressed several of the measures that the twentieth Meeting of States Parties had later included in document SPLOS/216. In addition, the Chairman of the Commission had addressed several of the same measures in both his letter to the President of the twentieth Meeting (SPLOS/209) and his presentation to the twentieth Meeting of States Parties.¹⁷

39. With regard to the measures proposed under items (a) to (c) of paragraph 1 of the decision contained in document SPLOS/216, the Commission emphasized that it had already taken the following actions in the short, medium and long term:

- In order to ensure expediency and efficiency in the light of the large number of submissions, the Commission had decided to establish subcommissions additional to the three subcommissions actively examining submissions, as an exception to the general provision contained in rule 51 (4 bis) of the Rules of Procedure. This had happened on four consecutive occasions since 2008, namely, with the establishment of the subcommissions for consideration of the submissions made by Mexico in respect of the western polygon in the Gulf of Mexico, Indonesia in respect of the area North West of Sumatra, Japan, and France in respect of the French Antilles and the Kerguelen Islands. The membership of every subcommission was decided taking into account the need to ensure, to the extent possible, balanced scientific and geographical representation.
- The Commission had extended to its maximum current capacity the number of work weeks conducted annually by members of the subcommissions both at United Nations Headquarters and in their respective home countries.

40. In this connection, the Commission noted that without financial support, the most important suggestions made by the Informal Working Group and the Meeting of States Parties could not be implemented.

41. With regard to the measures proposed under items (d) to (f) of paragraph 1 of the decision SPLOS contained in document 216, the Commission highlighted that:

- It had already adopted and implemented flexible arrangements of plenary and subcommission meetings.
- It had often tasked members of the Commission with more than one submission subject to simultaneous consideration, as far as practicable, and whenever capacity allowed.
- Remote work by the members of the Commission had consistently taken place since 1997 for the preparation of several official documents. Similarly, members of subcommissions remotely consulted throughout intersessional periods with regard to the submissions under their consideration. Practical and confidentiality issues limited the potential application of teleconferencing approaches.

42. The Commission highlighted the fact that it had advised the Meeting of States Parties on the potential delays that could affect the consideration of submissions as

¹⁶ Ibid.

¹⁷ Ibid.

early as 2005, at the fifteenth Meeting of States Parties, and that it had consistently given presentations to the Meeting of States Parties on an annual basis from 2005 to 2010 with a view to addressing its workload.

43. The Commission underscored that, in the light of the experience accumulated over the years in considering submissions, working on a full-time basis at United Nations Headquarters was the most efficient and effective way to address its growing workload.

Item 10

Report of the Chairperson of the Committee on Confidentiality

44. The Chairperson, Mr. Croker, reported that the Committee had held no meetings during the twenty-sixth session, since no circumstances had arisen requiring a meeting.

Item 11

Report of the Chairperson of the Editorial Committee

45. The Chairperson, Mr. Jaafar, reported that the Committee had held no meetings during the twenty-sixth session. However, he reiterated that there ought to be an ongoing exercise to standardize the terms used in the documents and work of the Commission.

Item 12

Report of the Chairperson of the Scientific and Technical Advice Committee

46. The Chairperson, Mr. Symonds, reported that the Commission had not received any formal requests for scientific and technical advice and that the Committee had therefore held no meetings during the twenty-sixth session. He reiterated the willingness to assist States and encouraged them to make an official request for such assistance, if needed, through the Secretariat.

47. He also encouraged the members of the Commission to provide information regarding coastal States to which they had provided advice, as such information would assist the Commission, *inter alia*, in the establishment of subcommissions as provided for in chapter X of the Rules of Procedure. In this connection, it was decided that such information would be provided by 31 December 2010.

Item 13

Report of the Chairperson of the Training Committee and other training issues

48. The Chairperson of the Committee, Mr. Carrera, reported that the Committee had not held any meetings during the twenty-sixth session. Mr. Carrera recalled that the eleventh meeting of the United Nations Open-ended Informal Consultative Process, held from 21 to 25 June 2010, had placed emphasis on the need for further

capacity-building activities. In this connection, he shared with the Commission a presentation on capacity-building related to the implementation of article 76 of the Convention that had been delivered on his behalf to the Consultative Process.

49. Responding to a question, the Director indicated that, to date, the Division had not received any requests from States to conduct training courses and the Division was not planning any training activities related to the delineation of the outer limits of the extended continental shelf.

Establishment of a new Subcommission

Submission by Myanmar

50. After the completion of the work by the Subcommission established for the examination of the submission made by Indonesia in respect of the area of North West of Sumatra, the Commission decided that, in order to ensure expediency and efficiency in the light of a large number of submissions, a fourth subcommission might be established as an exception to the general rule contained in rule 51, paragraph 4 bis, of the Rules of Procedure.

51. The Commission noted that the submission made by Myanmar was at the top of the queue. Recalling its decision with regard to the submission,¹⁸ and noting that there had been no developments to indicate that consent existed on the part of all States concerned allowing the consideration of the submission notwithstanding the existence of a dispute in the region, the Commission decided to further defer the establishment of a subcommission for the consideration of the submission made by Myanmar. It was also decided that, since the submission remained next in line for consideration as queued in the order in which it was received, the Commission would revisit the situation at the time of establishment of its next subcommission.

Submission by France in respect of the French Antilles and the Kerguelen Islands

52. The Commission then proceeded with establishing a subcommission to examine the submission next in the queue, namely, the submission made by France in respect of the French Antilles and the Kerguelen Islands.¹⁹ The Subcommission was established in accordance with the established procedure (CLCS/42, paras. 19 and 20). The Subcommission is composed of Messrs. Brekke, Charles, Croker, Fagoonee, Jaafar, Lu and Oduro. The Commission requested the Subcommission to meet with a view to organizing its work and electing its officers. The Subcommission elected Mr. Jaafar as its Chairperson and Messrs. Croker and Oduro as Vice-Chairpersons. On 27 August 2010, the Subcommission met with a view to organizing its future work.²⁰

¹⁸ CLCS/64, para. 40.

¹⁹ On the decision to examine this submission by way of a subcommission, see CLCS/66, para. 36.

²⁰ See paras. 54 and 55.

Item 14

Other matters

Submissions by Mozambique and Maldives and preliminary information from Nicaragua

53. The Commission took note of the two new submissions received, from Mozambique on 7 July 2010 and from Maldives on 26 July 2010, which had brought the total number of submissions received to date to 53. The Commission also took note of one set of preliminary information that on 7 April 2010 Nicaragua had submitted to the Secretary-General, in accordance with paragraph 1 (a) of the decision of the Meeting of States Parties contained in document SPLOS/183.²¹

Future sessions of the Commission

54. The Commission decided that it would resume its twenty-sixth session to allow the Subcommission established to examine the submission made by France in respect of the French Antilles and the Kerguelen Islands to meet from 15 to 19 November 2010, the Subcommission established to examine the submission of Japan to meet from 22 November to 3 December 2010 and the Subcommission established to examine the joint submission made by Mauritius and Seychelles to meet from 6 to 10 December 2010.

55. The Commission decided that the twenty-seventh session would be held from 7 March to 21 April 2011. The dates of the plenary part of that session, subject to their approval by the General Assembly, would be 28 March to 8 April 2011. The Commission also decided that the Subcommission established to examine the submission made by Japan would meet from 11 to 21 April; the Subcommission established to examine the joint submission made by Mauritius and Seychelles would meet from 14 to 25 March; the Subcommission established to examine the submission made by Suriname would meet from 14 to 25 March; and the Subcommission established to examine the submission made by France in respect of the French Antilles and the Kerguelen Islands would meet from 7 to 11 March 2011.

56. The Commission decided that the twenty-eighth session would be held from 1 August to 2 September 2011. The dates of the plenary part of that session, subject to their approval by the General Assembly, would be 15 to 26 August 2011. The Commission also decided that the Subcommission established to examine the submission made by Japan would meet from 1 to 12 August and that the Subcommission established to examine the submission made by France in respect of the French Antilles and the Kerguelen Islands would meet from 29 August to 2 September. Additional decisions on the dates for meetings to be held by subcommissions that might be established at the twenty-seventh or twenty-eight sessions would be made during those sessions.

Revised submissions

57. The Commission discussed the order in which potential revised submissions would be considered, and decided that should any such submission be made to the

²¹ Details on all submissions received by the Commission and on preliminary information are available on the website of the Commission, at, respectively, www.un.org/depts/los/clcs_new/commission_submissions.htm and www.un.org/Depts/los/clcs_new/commission_preliminary.htm.

Commission in future, it would be considered on a priority basis notwithstanding the queue.

Publication of recommendations

58. The Commission recalled that, in accordance with rule 54, paragraph 3, of its Rules of Procedure, upon giving due publicity to the charts and relevant information, including geodetic data, permanently describing the outer limits of the continental shelf deposited by the coastal State in accordance with article 76, paragraph 9, of the Convention, the Secretary-General shall also give due publicity to the recommendations of the Commission which in the view of the Commission are related to those limits. The Commission invited the Secretary-General to give due publicity to the recommendations adopted in regard to the submission made by Ireland in respect of the Porcupine Abyssal Plain and the submission made by Mexico in respect of the western polygon in the Gulf of Mexico. The Commission also requested the Secretary-General to inform the Commission each time a deposit was made with regard to the outer limits of the continental shelf established on the basis of its recommendation, with a view to giving effect to rule 54, paragraph 3, of the Rules of Procedure. In addition, the Commission took note that the Secretary-General, prior to giving due publicity to the recommendations, would ascertain that the recommendations do not contain any data considered by the submitting State as confidential or of a proprietary data.

Summary of recommendations

59. Following the decision taken by the Commission at its twenty-fifth session,²² summaries of the recommendations in regard to the submissions made by the Russian Federation and by Brazil were prepared by the Chairperson of the Subcommissions established for the consideration of those two submissions. The summaries were circulated to allow the members of the Commission to review them intersessionally. The Commission decided to include the consideration of this matter in the agenda of the twenty-seventh session.

Attendance of members of the Commission

60. Bearing in mind its increasing workload, the Commission underscored the importance of the attendance of each member and recalled that, in accordance with article 2, paragraph 5, of annex II to the Convention, the State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties. The Commission further recalled that the General Assembly, in paragraph 49 of its resolution 64/71, reiterated this provision and called upon the nominating States “to do their utmost to ensure the full participation of those experts in the work of the Commission”. In this connection, the Commission emphasized that full attendance by the members was necessary to ensure that all existing Subcommissions have the required quorum for their deliberations as well as the technical expertise required for the examination of submissions.

61. The Commission also recalled that, in accordance with rule 7, paragraph 4, of the Rules of Procedure, the absence of a member of the Commission during two

²² CLCS/66, para. 104.

consecutive sessions of the Commission without justification shall be brought to the attention of the Meeting of States Parties. With a view to ensuring the efficient planning and organization of the work of the Commission, members were urged to confirm their attendance well in advance of each session, in response to letters of invitation to sessions of the Commission and meetings of the subcommissions.

Trust funds

62. The Director of the Division briefed the Commission on the status of the trust fund for the purpose of defraying the cost of participation of the members of the Commission from developing States in the meetings of the Commission. He informed the Commission that in 2010 Argentina, China, Ireland, Mexico, New Zealand, Norway and the Republic of Korea had made contributions to the trust fund, and Japan had pledged to contribute to it. According to the provisional statement of accounts, as at the end of June 2010, the balance of the trust fund was approximately \$540,000. The contribution pledged by Japan was received in August 2010.

63. The Director provided an overview of the status of the trust fund for the purpose of facilitating the preparation of submissions indicating that, during the first half of 2010, a contribution was received from Ireland. According to the provisional statement of accounts, as at the end of June 2010, the balance of the trust fund was approximately \$602,000.

Presentation of submissions to the plenary of the Commission

64. The Commission, while recognizing that it was the prerogative of States to choose when to present their submissions to the plenary in accordance with paragraph 2 (a) of annex III to the Rules of Procedure, encouraged States that have not yet presented them to do so as early as practicable.

Response to the letter dated 13 July 2010 from Barbados

65. The Government of Barbados addressed a letter to the Chairperson of the Commission concerning the “Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Barbados on 8 May 2008”. Barbados attached to the letter a document containing certain information on the precise location of a fixed point so that it could establish the outer limits of its continental shelf on the basis the recommendations.

66. After deliberations, the Commission decided to inform Barbados that it was not in a position to reconsider the submission and the recommendations adopted on 15 April 2010 but that it remained open to providing clarification on the substance of the recommendations, upon request.

Availability of correspondence to all members of the Commission

67. With a view to increasing efficiency in the work of the Commission, members of the Commission reiterated that all official correspondence received by the Chairperson and other officers of the Commission should be made available to all members of the Commission, through the established secure means of communication, as soon as practicable. Similarly, all official correspondence received by the Chairpersons of Subcommissions shall be made available to all

members of the respective Subcommissions, through the established secure means of communication, as soon as practicable.

Acknowledgement to the Secretariat

68. The Commission noted with appreciation the high standard of secretariat services rendered to it by the Division. It expressed its appreciation to the staff of the Division and other members of the Secretariat for the assistance provided to the Commission during the twenty-sixth session, and noted the high professional standards of interpretation in the official languages of the United Nations and the assistance provided by the conference room officers.

Annex B37

W. W. Hunter, ed., *The Imperial Gazetteer of India*, Vol. VII (1881)

THE IMPERIAL GAZETTEER OF INDIA.

W. W. HUNTER, C.I.E., LL.D.,

DIRECTOR-GENERAL OF STATISTICS TO THE GOVERNMENT OF INDIA.

VOLUME VII.

NAAF TO RANGMAGIRI.

2 TRÜBNER & CO., LONDON, 1881.

recognised her nephew and adopted son, Imám Bakhsh Khán, as heir to her estate and to the title of Rái. He is still (1876) alive, and has three sons. Besides the revenues of Ráikot and Mallah, he receives from Government a pension of £200 a year. The town is surrounded by a wall, and substantially built. It contains several handsome houses, the property of the Rái and of Sikh gentlemen of the neighbourhood. Police station, post office, dispensary. Municipal revenue in 1876-77, £163, or 4½d. per head of population (8262) within municipal limits.

Rai-laing.—Revenue circle in Tavoy District, Tenasserim Division, British Burma. Pop. (1876-77), 2770; gross revenue, £470.

Ráimangal.—Estuary in the Sundarbans, Bengal. Its entrance is situated about 12 miles eastward of the GUASUBA RIVER; and about 6 miles from the sea it receives the united streams of three rivers—the Háriábhángá being the westernmost, the Ráimangal proper the next, and the Jamuná the easternmost. The point of land on the west side of the entrance is situated in lat. 21° 37' N., with a depth of 5 or 6 fathoms in the channel close to it, and with from 10 to 12 fathoms inside towards the Háriábhángá river. From the point to seaward, the depth decreases gradually to 4 fathoms in the western channel, the outer part of which is separated from the Guásubá by a sandbank which stretches out from the land between them. The eastern channel leads directly to the entrance of the Ráimangal and Jamuná rivers, having a sandbank between it and the western channel, with deep water inside. According to Captain Horsburgh's *Sailing Directions*, two considerable reefs of breakers have formed on the western side of the channel leading to these rivers, situated respectively at 5 and 10 miles from the land.

Ráimatlá.—River in the District of the Twenty-four Parganá, Bengal.—See MATLA.

Ráiná.—Village and *tháná* or police station in Bardwán District, Bengal. Lat. 23° 4' 20" N., long. 87° 56' 40" E.; pop. under 5000.

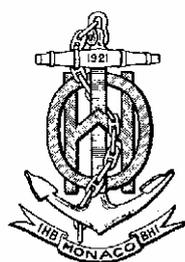
Ráingarh.—Fort in Keunthál State, Punjab. Lat. 31° 7' N., long. 77° 48' E. Crowns a peak on the left bank of the river Pábar, which is here crossed (according to Thornton) by a wooden bridge. Belonged to Bashahr before the Gúrkha invasion; surrendered to the British in 1815, and transferred to Keunthál in exchange for territory now forming part of Simla District. Small community of Bráhmans hold the surrounding valley, and have charge of two temples of Thibetan architecture. Elevation of fort above sea level, 5408 feet.

Ráipur.—A British District in the Chief Commissionership of the Central Provinces, lying between 19° 48' and 21° 45' N. lat., and between 80° 28' and 82° 38' E. long.; bounded on the north by Biláspur, on the south by Bastar, on the east by petty States attached to the Sambalpur District, and on the west by Chánda and Bálághát.

Annex B38

International Hydrographic Organization, *Limits of Oceans and Seas* (3d ed. 1953)

INTERNATIONAL HYDROGRAPHIC ORGANIZATION



LIMITS OF OCEANS AND SEAS

(Special Publication N° 28)



3rd EDITION 1953

IMP. MONÉGASQUE - MONTE-CARLO

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INTERNATIONAL HYDROGRAPHIC ORGANIZATION



LIMITS OF OCEANS AND SEAS

(Special Publication N° 28)

3rd EDITION 1953

IMP. MONÉGASQUE - MONTE-CARLO

Limits of Oceans and Seas

PREFACE TO THIRD EDITION

The 3rd Edition of this publication has been drawn up and generally approved by the 1952 International Hydrographic Conference taking into account proposals put forward at various International Hydrographic Conferences up to and including that of 1952, and by certain scientific Institutions, including the Report of a Sub-Committee of the Association of Physical Oceanography on "The Criteria and Nomenclature of the Major Divisions of the Ocean Bottom" issued in 1940.

The Limits proposed, as described in the text and shown in the three accompanying diagrams, have been drawn up solely for the convenience of National Hydrographic Offices when compiling their Sailing Directions, Notices to Mariners, etc. so as to ensure that all such publications headed with the name of an Ocean or Sea will deal with the same area, and they are not to be regarded as representing the result of full geographic study; the bathymetric results of various oceanographic expeditions have however been taken into consideration so far as possible, and it is therefore hoped that these delimitations will also prove acceptable to Oceanographers.

These limits have no political significance whatsoever.

Straits joining two seas have been allotted to one of them in accordance with the resolution of the International Hydrographic Conference held in London in 1919. Meridians and Parallels or Rhumb Lines have been used as far as possible for the limits.

The principal alterations proposed to the limits shown in the previous edition of this publication are listed on the opposite page.

J.D. N.

NOTE

The following are the principal alterations to the limits shown in the previous edition 1937 of this publication:

(a) *The Oceans*.—The southern limit of the Arctic Ocean (17) has been amended in places.

The boundary line between the North and South Atlantic Ocean (23 and 32) has been altered to the Equator.

The eastern limit of Magellan Strait, described in (32) and (61) has been slightly amended.

As stated on page 4, the Antarctic or Southern Ocean has been omitted, and the southern limits of the Atlantic, Pacific and Indian Oceans have been extended to the Antarctic Continent.

(b) *Baltic Sea* (1).—The limits have been amended to include all waters bordered by the coasts of Denmark (eastward of the Little and Great Belts and The Sound), Sweden, Finland, Russia, Estonia, Latvia, Lithuania, Poland and Germany.

Three subdivisions of the Baltic have been delimited.

(c) Separate limits have been proposed for the *Greenland Sea* (5) and the *Norwegian Sea* (6).

(d) The limits of Beaufort Sea (13) have been amended.

(e) *Mediterranean Sea* (28).—The limits of the Western (A) and Eastern (B) Basins are described, also those of the eight principal subdivisions. (These include an additional area Strait of Gibraltar.)

(f) *The North West Passages* (14).—The Eastern and Southern limits have been amended, and new areas Baffin Bay (14), Labrador Sea (15 A) and Lincoln Sea (17 A) added. Hudson Bay and Strait has been divided into two separate areas (16) and (16 A) and the limits amended.

(g) The Southwestern limit of the Gulf of Guinea (34) has been amended.

(h) A new area Mozambique Channel (45 A) has been added.

(i) *East Indian Archipelago* (48).—The limits of fourteen seas and one strait comprising this Archipelago have been defined, taking into consideration the Report of the Snellius Expedition, Vol. II, 1934, and suggestions received from the Netherlands Hydrographer and Professor Kuenen of the Geologisch Instituut, Groningen (Netherlands).

(j) *China Seas* (49-51).—The limits of these have been individually described.

(k) *Great Australian Bight* (62).—The Eastern limit has been amended and a new area Bass Strait (62 A) added.

(l) *Coral Sea* (64).—The limits have been amended to include the Torres Strait on the West, and the New Hebrides and the Duff or Wilson Group of Islands on the East. The Eastern limits of Arafura Sea (48 h) and the limits of the Solomon Sea (65) and Bismarck Sea (66) have been amended accordingly.

The above has resulted in a re-numbering of the Oceans and Seas.

LIMITS OF OCEANS AND SEAS

NOTE.—All latitudes and longitudes given below are approximate only and place-names are shown in the form in which they appear on the largest scale charts in the possession of the Bureau.

Where the expressions “a line joining X and Y” or “a line running from X to Y” are used they should be taken to signify the rhumb line between X and Y.

THE OCEANS

The limits given of the Arctic (17), Atlantic (23) and (32), Pacific (57) and (61), and Indian (45) Oceans exclude the seas lying within each of them, the limits of which are elsewhere described in this publication, thus bringing it into general conformity with those adopted in Notices to Mariners and other Hydrographic publications as at present issued.

The boundary line between the North and South Atlantic and Pacific Oceans is the Equator.

The Southern boundary line between the South Atlantic (32) and South Pacific (61) Oceans is the meridian of Cape Horn (67°16' W).

The Antarctic or Southern Ocean has been omitted from this publication as the majority of opinions received since the issue of the 2nd Edition in 1937 are to the effect that there exists no real justification for applying the term Ocean to this body of water, the northern limits of which are difficult to lay down owing to their seasonal change. The limits of the Atlantic, Pacific and Indian Oceans have therefore been extended South to the Antarctic Continent.

Hydrographic Offices who issue separate publications dealing with this area are therefore left to decide their own northern limits. (Great Britain uses the Latitude of 55° South).

1.—Baltic Sea.

Bordered by the coasts of Denmark, Sweden, Finland, Russia, Estonia, Latvia, Lithuania, Poland and Germany extends north-eastward of the following limits:

In the Little Belt.

A line joining Falshöft (54°47' N, 9°57'·5 E) and Vejsnæs Nakke (Ærø: 54°49' N, 10°26' E).

— 5 —

In the Great Belt.

A line joining Gulstav (South extreme of Langeland Island) and Kappel Kirke (54°46' N, 11°01' E) on Island of Laaland.

In Guldborg Sound.

A line joining Flinthorne-Rev and Skjelby (54°38' N, 11°53' E).

In the Sound.

A line joining Stevns Lighthouse (55°17' N, 12°27' E) and Falsterbo Point (55°23' N, 12°49' E).

SUB-DIVISIONS OF THE BALTIC SEA

(a) Gulf of Bothnia.

On the South.

From Simpnäsklubb (59°54' N) in Sweden, to Flötjan, Lagskær, Fæstörne, Kökarsörn, and Vænö-Kalkskær to the SW point of Hangöudde (Hangö Head, 59°49' N) in Finland, thus including the Åland islands and adjacent shoals and channels in the Gulf of Bothnia.

(b) Gulf of Finland.

On the West.

A line running from Spithamn Point (59°13' N), in Estonia, through the island of Odensholm from SE to NW and on to the SW extreme of Hangöudde (Hangö Head, 22°54' E) in Finland.

(c) Gulf of Riga.

On the West.

A line running from Lyser Ort (57°34' N), in Latvia, to the S extreme of Æsel Island, through this island to Pammerort (22°34' E), thence to Enmast Point, the S extreme of Dagö, through Dagö to Takhkona Point, the N extreme thereof, and on to Spithamn Point in Estonia.

2.—Kattegat, Sound and Belts.

On the North.

A line joining Skagen (The Skaw, North Point of Denmark) and Paternoster Skær (57°54' N, 11°27' E) and thence Northeastward through the shoals to Tjörn Island.

On the South.

The limits of the Baltic Sea (1) in the Belts and Sound.

3.—Skagerrak.*On the West.*

A line joining Hanstholm (57°07' N, 8°36' E) and the Naze (Lindesnes, 58° N, 7° E).

On the Southeast.

The Northern limit of the Kattegat (2).

4.—North Sea.*On the Southwest.*

A line joining the Walde Lighthouse (France, 1°55' E) and Leathercoat Point (England, 51°10' N).

On the Northwest.

From Dunnet Head (3°22' W) in Scotland to Tor Ness (58°47' N) in the Island of Hoy, thence through this island to the Kame of Hoy (58°55' N) on to Breck Ness on Mainland (58°58' N) through this island to Costa Head (3°14' W) and to Inga Ness (59°17' N) in Westray through Westray, to Bow Head, across to Mull Head (North point of Papa Westray) and on to Seal Skerry (North point of North Ronaldsay) and thence to Horse Island (South point of the Shetland Islands).

On the North.

From the North point (Fethaland Point) of the Mainland of the Shetland Islands, across to Graveland Ness (60°39' N) in the Island of Yell, through Yell to Gloup Ness (1°04' W) and across to Spoo Ness (60°45' N) in Unst Island, through Unst to Herma Ness (60°51' N), on to the SW point of the Rumbings and to Muckle Flugga (60°51' N, 0°53' W) all these being included in the North Sea area; thence up the meridian of 0°53' West to the parallel of 61°00' North and eastward along this parallel to the coast of Norway, the whole of Viking Bank being thus included in the North Sea.

On the East.

The Western limit of the Skagerrak (3).

5.—Greenland Sea.*On the North.*

A line joining the Northernmost point of Spitzbergen to the Northernmost point of Greenland.

On the East.

The West coast of West Spitzbergen.

— 7 —

On the Southeast.

A line joining the Southernmost point of West Spitzbergen to the Northern point of Jan Mayen Island, down the West coast of that island to its Southern extreme, thence a line to the Eastern extreme of Gerpir (65°05' N, 13°30' W) in Iceland.

On the Southwest.

A line joining Straumness (NW extreme of Iceland) to Cape Nansen (68°15' N, 29°30' W) in Greenland.

On the West.

The East and Northeast coasts of Greenland between Cape Nansen and the northernmost point.

6.—Norwegian Sea.*On the Northeast.*

A line joining the Southernmost point of West Spitzbergen to North Cape of Bear Island, through this island to Cape Bull and thence on to North Cape in Norway (25°45' E).

On the Southeast.

The West coast of Norway between North Cape and Cape Stadt (62°10' N, 5°00' E).

On the South.

From a point on the West coast of Norway in Latitude 61°00' North along this parallel to Longitude 0°53' West thence a line to the NE extreme of Fuglö (62°21' N, 6°15' W) and on to the East extreme of Gerpir (65°05' N, 13°30' W) in Iceland.

On the West.

The Southeastern limit of Greenland Sea (5).

7.—Barentsz Sea.*On the West.*

The Northeastern limit of the Norwegian Sea (6).

On the Northwest.

The Eastern shore of West Spitzbergen, Henlopen Strait up to 80° lat. North; South and East coasts of North-East Land to Cape Leigh Smith (80°05' N, 28°00' E).

On the North

Cape Leigh Smith across the Islands Bolshoy Ostrov (Great Island), Gilles and Victoria; Cape Mary Harmsworth (Southwestern extremity of Alexandra Land) along the northern coasts of Franz-Josef Land as far as Cape Kohlsaas (81°14' N, 65°10' E).

On the East.

Cape Kohlsaak to Cape Zhelaniya (Desire); West and Southwest coasts of Novaya Zemlya to Cape Kussov Noss and thence to Western entrance Cape, Dolgaya Bay (70°15' N, 58°25' E) on Vaigach Island.

Through Vaigach Island to Cape Greben; thence to Cape Belyi Noss on the main land.

On the South.

The northern limit of the White Sea (8).

8.—White Sea.*On the North.*

A line joining Svyatoi Nos (Murmansk Coast, 39°47' E) and Cape Kanin.

9.—Kara Sea.*On the West.*

The Eastern limit of Barentsz Sea (7).

On the North.

Cape Kohlsaak to Cape Molotov (81°16' N, 93°43' E) (Northern extremity of Severnaya Zemlya on Komsomolets Island).

On the East.

Komsomolets Island from Cape Molotov to South Eastern Cape; thence to Cape Vorochilov, Oktiabrskaya Revolutziya Island to Cape Anuchin. Then to Cape Unslicht on Bolshevik Island. Bolshevik Island to Cape Yevgenov. Thence to Cape Pronchishchev on the main land (see Russian chart No. 1484 of the year 1935).

10.—Laptev Sea (or Nordenskjöld Sea).*On the West.*

The Eastern limit of Kara Sea (9).

On the North.

A line joining Cape Molotov to the Northern extremity of Kotelni Island (76°10' N, 138°50' E).

On the East.

From the Northern extremity of Kotelni Island—through Kotelni Island to Cape Madveji. Then through Malyi Island, to Cape Vaguin on Great Liakhov Island. Thence to Cape Sviatoy Noss on the main land.

11.—East Siberian Sea.*On the West.*

The Eastern limit of Laptev Sea (10).

On the North.

A line from the Northernmost point of Wrangel Island (179°30' W) to the Northern sides of the De Long Islands (including Henrietta and Jeannette Islands) and Bennett Island, thence to the Northern extremity of Kotelni Island.

On the East.

From the Northernmost point of Wrangel Island through this island to Cape Blossom thence to Cape Yakan on the main land (176°40' E).

12.—Chuckchi Sea.*On the West.*

The Eastern limit of East Siberian Sea (11).

On the North.

A line from Point Barrow, Alaska (71°20' N, 156°20' W) to the Northernmost point of Wrangel Island (179°30' W).

On the South.

The Arctic Circle between Siberia and Alaska.

13.—Beaufort Sea.*On the North.*

A line from Point Barrow, Alaska, to Lands End, Prince Patrick Island (76°16' N, 124°08' W).

On the East.

From Lands End through the Southwest coast of Prince Patrick Island to Griffiths Point, thence a line to Cape Prince Alfred, the Northwestern extreme of Banks Island, through its West coast to Cape Kellet, the Southwestern point, and thence a line to Cape Bathurst on the mainland (70°36' N, 127°32' W).

14.—The Northwestern Passages.*On the West.*

The Eastern limit of Beaufort Sea (13).

On the Northwest.

The Arctic Ocean (17) between Lands End, Prince Patrick Island, and C. Columbia, Ellesmere Island.

On the Northeast.

The Coast of Ellesmere Island between C. Columbia and C. Sheridan the Northern limit of Baffin Bay (14 A).

On the East.

The East Coast of Ellesmere Island between C. Sheridan and Cape Norton Shaw (76°29' N, 78°30' W), thence across to Phillips Point (Coburg Island) through this Island to Marina Peninsula (75°55' N, 79°10' W) and across to Cape Fitz Roy (Devon Island) down the East Coast to Cape Sherard (Cape Osborn) (74°35' N, 80°30' W) and across to Cape Liverpool, Bylot Island (73°44' N, 77°50' W); down the East coast of this island to Cape Graham Moore, its southeastern point, and thence across to Cape Macculloch (72°29' N, 75°08' W) and down the East coast of Baffin Island to East Bluff, its Southeastern extremity, and thence the Eastern limit of Hudson Strait (16 A).

On the South.

The mainland coast of Hudson Strait (16 A); the Northern limits of Hudson Bay (16); the mainland coast from Beach Point to Cape Bathurst.

14 A.—Baffin Bay.*On the North.*

A line from Cape Sheridan, Grant Land (82°35' N, 60°45' W) to Cape Bryant, Greenland.

On the East.

The West Coast of Greenland.

On the South.

The parallel of 70° North between Greenland and Baffin Land.

On the West.

The Eastern limits of the North-West Passages (14).

15.—Davis Strait.*On the North.*

The Southern limit of Baffin Bay (14 A).

On the East.

The Southwest coast of Greenland.

On the South.

The parallel of 60° North between Greenland and Labrador.

On the West.

The Eastern limit of the Northwestern Passages (14) South of 70° North and of Hudson Strait (16 A).

15 A.—Labrador Sea.*On the North.*

The South limit of Davis Strait.

On the East.

A line from Cape St. Francis 47°45' N, 52°27' W (Newfoundland) to Cape Farewell (Greenland).

On the West.

The East Coast of Labrador and Newfoundland and the Northeast limit of the Gulf of St. Lawrence (24).

16.—Hudson Bay.*On the North.*

A line from Nuvuk Point (62°21' N, 78°06' W) to Leyson Point, the Southeastern extreme of Southampton Island, through the Southern and Western shores of Southampton Island to its Northern extremity, thence a line to Beach Point (66°03' N, 86°06' W) on the Mainland.

16 A.—Hudson Strait.*On the West.*

A line from Nuvuk Point to Leyson Point, thence by the Eastern shore of Southampton Island to Seahorse Point, its Eastern extreme, thence a line to Lloyd Point (64°25' N, 78°07' W) Baffin Island.

On the North.

The South coast of Baffin Island between Lloyd Point and East Bluff.

On the East.

A line from East Bluff, the Southeast extreme of Baffin Island (61°53' N, 65°57' W), to Point Meridian, the Western extreme of Lower Savage Islands, along the coast to its Southwestern extreme and thence a line across to the Western extreme of Resolution Island, through its Southwestern shore to Hatton Headland, its Southern point, thence a line to Cape Chidley, Labrador (60°24' N, 64°26' W).

On the South.

The mainland between Cape Chidley and Nuvuk Point.

17.—Arctic Ocean.

Between Greenland and West Spitzbergen—the Northern limit of Greenland Sea (5).

Between West Spitzbergen and North East Land—the parallel of lat. 80° N.

From Cape Leigh Smith to Cape Kohlsaas—the Northern limit of Barentsz Sea (7).

From Cape Kohlsaas to Cape Molotov—the Northern limit of Kara Sea (9).

From Cape Molotov to the Northern extremity of Kotelni Island—the Northern limit of Laptev Sea (10).

From the Northern extremity of Kotelni Island to the Northern point of Wrangel Island—the Northern limit of East Siberian Sea (11).

From the Northern point of Wrangel Island to Point Barrow—the Northern limit of Chuckchi Sea (12).

From Point Barrow to Cape Land's End on Prince Patrick Island—the Northern limit of Beaufort Sea (13), through the Northwest coast of Prince Patrick Island to Cape Leopold M'Clintock, thence to Cape Murray (Brook Island) and along the Northwest coast to the extreme Northern point; to Cape Mackay (Borden Island); through the Northwesterly coast of Borden Island to Cape Malloch, to Cape Isachsen (Ellef Ringnes Island); to the Northwest point of Meighen Island to Cape Stallworthy (Axel Heiberg Island) to Cape Colgate the extreme West point of Ellesmere Island; through the North shore of Ellesmere Island to Cape Columbia thence a line to Cape Morris Jesup (Greenland).

17 A.—Lincoln Sea.

On the North.

Cape Columbia to Cape Morris Jesup (Greenland).

On the South.

Cape Columbia through Northeastern shore of Ellesmere Island to Cape Sheridan to Cape Bryant (Greenland) through Greenland to Cape Morris Jesup.

18.—Inner Seas off the West Coast of Scotland.

On the West and North.

A line running from Bloody Foreland (55°10' N, 8°17' W) in Ireland to the West point of Tory Island, on to Barra Head, the Southwest point of the Hebrides, thence through these islands, in such a manner that the West coasts of the main islands appertain to the Atlantic Ocean (23) and all the narrow waters appertain to the Inner Seas, as far as the Butt of Lewis (North Point), and thence to Cape Wrath (58°37' N) in Scotland.

On the South.

A line joining the South extreme of the Mull of Galloway (54°38' N) in Scotland and Ballyquintin Point (54°20' N) in Ireland.

19.—Irish Sea and St. George's Channel.

On the North.

The Southern limit of the Scottish Seas (18).

On the South.

A line from Wooltack Point (Wales, 51°44' N) through Skomar Island, and the Smalls (51°43' N), thence Northwesterly to Carnsore Point (52°10' N, 6°22' W) in Ireland.

20.—Bristol Channel.

A line joining Trevoze Head (5° W) in Cornwall and the Smalls, on to the Garland Stone (Skomar Island) and thence to Wooltack Point (51°44' N) on the coast of Wales.

21.—English Channel.*On the West.*

From the coast of Brittany Westward along the parallel (48°28' N) of the East extreme of Ushant (Lédénès), through this island to West extreme thereof (Pointe de Pern), thence to the Bishop Rock, the Southwest extreme of the Scilly Isles, and on a line passing to the Westward of these Isles as far as the North extreme (Lion Rock) and thence Eastward to the Longships (50°04' N) and on to Lands End.

On the East.

The Southwestern limit of the North Sea (4).

22.—Bay of Biscay.

A line joining Cape Ortegal with the West extreme of Ushant (Pointe de Pern) through this island to the East extreme thereof (Lédénès) and thence Eastward on the parallel 48°28' N to the coast of Brittany.

23.—North Atlantic Ocean.*On the West.*

The Eastern limits of the Caribbean Sea (27), the Southeastern limits of the Gulf of Mexico (26) from the North coast of Cuba to Key West, the Southwestern limit of the Bay of Fundy (25) and the Southeastern and Northeastern limits of the Gulf of St. Lawrence (24).

On the North.

The Southern limit of Davis Strait (15) from the coast of Labrador to Greenland and the Southwestern limit of the Greenland Sea (5) and Norwegian Sea (6) from Greenland to the Shetland Islands.

On the East.

The Northwestern limit of the North Sea (4), the Northern and Western limits of the Scottish Seas (18), the Southern limit of the Irish Sea (19), the Western limits of the Bristol (20) and English (21) Channels, of the Bay of Biscay (22) and of the Mediterranean Sea (28).

On the South.

The equator, from the coast of Brazil to the Southwestern limit of the Gulf of Guinea (34).

24.—Gulf of St. Lawrence.*On the Northeast.*

A line running from Cape Bauld (North point of Kirpon Island, 51°40' N, 55°25' W) to the East extreme of Belle Isle and on to the Northeast Ledge (52°02' N, 55°15' W). Thence a line joining this ledge with the East extreme of Cape St. Charles (52°13' N) in Labrador.

On the Southeast.

A line from Cape Canso (45°20' N, 61° W) to Red Point (45°35' N, 60°45' W) in Cape Breton Island, through this Island to Cape Breton and on to Pointe Blanche (46°45' N, 56°11' W) in the Island of St. Pierre, and thence to the Southwest point of Morgan Island (46°51' N, 55°49' W).

On the West.

The meridian of 64°30' W, but the whole of Anticosti Island is included in the Gulf.

25.—Bay of Fundy.*On the Southwest.*

A line running northwesterly from Cape St. Mary (44°05' N) Nova Scotia, through Machias Seal Island (67°06' W) and on to Little River Head (44°39' N) in the State of Maine.

26.—Gulf of Mexico.*On the Southeast.*

A line joining Cape Catoche Light (21°37' N, 87°04' W) with the Light on Cape San Antonio in Cuba, through this island to the meridian of 83° W and to the Northward along this meridian to the latitude of the South point of the Dry Tortugas (24°35' N), along this parallel Eastward to Rebecca Shoal (82°35' W) thence through the shoals and Florida Keys to the mainland at eastern end of Florida Bay, all the narrow waters between the Dry Tortugas and the mainland being considered to be within the Gulf.

27.—Caribbean Sea.*In the Yucatan Channel.*

The same limit as that described for the Gulf of Mexico (26).

*On the North.**In the Windward Channel.*

A line joining Caleta Point (74°15' W) and Pearl Point (19°40' N) in Haïti.

In the Mona Passage.

A line joining Cape Engano and the extreme of Agujereada (18°31' N, 67°08' W) in Puerto Rico.

Eastern limits.

From Point San Diego (Puerto Rico) Northward along the meridian thereof ($65^{\circ}39'$ W) to the 100 fathom line, thence Eastward and Southward, in such a manner that all islands, shoals and narrow waters of the Lesser Antilles are included in the Caribbean Sea as far as Galera Point (Northeast extremity of the island of Trinidad). From Galera Point through Trinidad to Galeota Point (Southeast extreme) and thence to Baja Point ($9^{\circ}32'$ N, 61° W) in Venezuela.

28.—Mediterranean Sea.

Is bounded by the coasts of Europe, Africa and Asia, from the Strait of Gibraltar on the West to the entrances to the Dardanelles and the Suez Canal on the East.

It is divided into two deep basins as follows:

A.—Western basin.*On the West.*

A line joining the extremities of Cape Trafalgar (Spain) and Cape Spartel (Africa).

On the Northeast.

The West Coast of Italy. In the Strait of Messina a line joining the North extreme of Cape Paci ($15^{\circ}42'$ E) with Cape Peloro, the East extreme of the Island of Sicily. The North Coast of Sicily.

On the East.

A line joining Cape Lilibeo the Western point of Sicily ($37^{\circ}47'$ N, $12^{\circ}22'$ E), through the Adventure Bank to Cape Bon (Tunisia).

B.—Eastern basin.*On the West.*

The Northeastern and Eastern limits of the Western Basin (28-A).

On the Northeast.

A line joining Kum Kale ($26^{\circ}11'$ E) and Cape Helles, the Western entrance to the Dardanelles.

On the Southeast.

The entrance to the Suez Canal.

On the East.

The coasts of Syria and Palestine.

SUB-DIVISIONS OF THE MEDITERRANEAN SEA

(a) Strait of Gibraltar.

On the West.

A line joining Cape Trafalgar to Cape Spartel.

On the East.

A line joining Europa Point to P. Almina (35°54' N, 5°18' W).

(b) Alboran Sea.

On the West.

The Eastern limit of the Strait of Gibraltar (a).

On the East.

A line joining Cape de Gata (Spain) to C. Fegalo (Africa) (35°36' N, 1°12' W).

(c) Balearic (Iberian Sea).

Between the Islas Baleares and the coast of Spain, bounded:

On the Southwest.

A line from Cape San Antonio, Spain (38°50' N, 0°12' E) to Cabo Berberia, the Southwest extreme of Formentera (Islas Baleares).

On the Southeast.

The South Coast of Formentera, thence a line from Punta Rotja, its Eastern extreme, to the Southern extreme of Isla Cabrera (39°07' N, 2°54' E) and to Isla del Aire, off the Southern extreme of Minorca.

On the Northeast.

The East coast of Minorca up to Cabo Favaritx (40°00' N, 4°14' E) thence a line to Cabo San Sebastian (Spain) (41°54' N, 3°10' E).

(d) Ligurian Sea.

On the Southwest.

A line joining Cape Corse (Cape Grosso, 9°23' E) the Northern point of Corsica to the frontier between France and Italy (7°31' E).

On the Southeast.

A line joining Cape Corse with Tinetto Island (44°01' N, 9°51' E) and thence through Tino and Palmaria Islands to San Pietro Point (44°03' N, 9°50' E) on the Coast of Italy.

On the North.

The Ligurian Coast of Italy.

(e) Tyrrhenian Sea.*In the Strait of Messina.*

A line joining the North extreme of Cape Paci (15°42' E) with the East extreme of the Island of Sicily, Cape Peloro (38°16' N).

On the Southwest.

A line running from Cape Lilibco (West extreme of Sicily) to the South extreme of Cape Teulada (8°38' E) in Sardinia.

In the Strait of Bonifacio.

A line joining the West extreme of Cape Testa (41°14' N) in Sardinia with the Southwest extreme of Cape Feno (41°23' N) in Corsica.

On the North.

A line joining Cape Corse (Cape Grosso, 9°23' E) in Corsica, with Tinetto Island (44°01' N, 9°51' E) and thence through Tino and Palmaria Islands to San Pietro Point (44°03' N, 9°50' E) on the coast of Italy.

(f) Ionian Sea.*On the North.*

A line running from the mouth of the Butrinto River (39°44' N) in Albania, to Cape Karagol in Corfu (39°45' N), along the North Coast of Corfu to Cape Kephali (39°45' N) and from thence to Cape Santa Maria di Leuca in Italy.

On the East.

From the mouth of the Butrinto River in Albania down the coast of the mainland to Cape Matapan.

On the South.

A line from Cape Matapan to Cape Passero, the Southern point of Sicily.

On the West.

The East coast of Sicily and the Southeast coast of Italy to Cape Santa Maria di Leuca.

(g) Adriatic Sea.*On the South.*

A line running from the mouth of the Butrinto River (39°44' N) in Albania to Cape Karagol in Corfu, through this island to Cape Kephali (these two capes are in lat. 39°45' N) and on to Cape Santa Maria di Leuca.

(h) Aegean Sea (The Archipelago).*On the South.*

A line running from Cape Aspro (28°16' E) in Asia Minor, to Cum Burnù (Capo della Sabbia) the Northeast extreme of the Island of Rhodes, through the island to Cape Prasonisi, the Southwest point thereof, on to Vrontos Point (35°33' N) in Skarpanto, through this island to Castello Point, the South extreme thereof, across to Cape Plaka (East extremity of Crete), through Crete to Agria Grabusa, the Northwest extreme thereof, thence to Cape Apolitares in Antikithera Island, through the island to Psira Rock (off the Northwest point) and across to Cape Trakhili in Kithera Island, through Kithera to the Northwest point (Cape Karavugia) and thence to Cape Santa Maria (36°28' N, 22°57' E) in the Morea.

In the Dardanelles.

A line joining Kum Kale (26°11' E) and Cape Helles.

29.—Sea of Marmara.*On the West.*

The Dardanelles limit of the Ægean Sea (28 h).

On the Northeast.

A line joining Cape Rumili with Cape Anatoli (41°13' N).

30.—Black Sea.*On the Southwest.*

The Northeastern limit of the Sea of Marmara (29).

In the Kertch Strait.

A line joining Cape Takil and Cape Panaghia (45°02' N).

31.—Sea of Azov.*In the Kertch Strait.*

The limit of the Black Sea (30).

32.—South Atlantic Ocean.*(*) On the Southwest.*

The meridian of Cape Horn (67°16' W) from Tierra del Fuego to the Antarctic Continent; a line from Cape Virgins (52°21' S, 68°21' W) to Cape Espiritu Santo, Tierra del Fuego, the Eastern entrance to Magellan Strait.

(*) These limits have not yet been officially accepted by Argentina and Chile.

On the West.

The limit of the Rio de La Plata (33).

On the North.

The Southern limit of the North Atlantic Ocean (23).

On the Northeast.

The limit of the Gulf of Guinea (34).

On the Southeast.

From Cape Agulhas along the meridian of 20° East to the Antarctic continent.

On the South.

The Antarctic Continent.

33.—Rio de La Plata.*To the Eastward.*

A line joining Punta del Este, Uruguay (34°58',5 S, 54°57',5 W) and Cabo San Antonio, Argentina (36°18' S, 56°46' W).

34.—Gulf of Guinea.*On the Southwest.*

A line running Southeastward from Cape Palmas in Liberia to Cape Lopez (0°38' S, 8°42' E).

35.—Gulf of Suez.*On the South.*

A line running from Ràs Muhammed (27°43' N) to the South point of Shadwan Island (34°02' E) and thence Westward on a parallel (27°27' N) to the coast of Africa.

36.—Gulf of Aqaba.*On the South.*

A line running from Ràs el Fasma Southwesterly to Requin Island (27°57' N, 34°36' E) through Tiran Island to the Southwest point thereof and thence Westward on a parallel (27°54' N) to the coast of the Sinai Peninsula.

37.—Red Sea.

On the North.

The Southern limits of the Gulfs of Suez (35) and Aqaba (36).

On the South.

A line joining Husn Murad (12°40' N, 43°30' E) and Ras Siyan (12°29' N, 43°20' E).

38.—Gulf of Aden.

On the Northwest.

The Southern limit of the Red Sea (37).

On the East.

The meridian of Cape Guardafui (Ras Asir, 51°16' E).

39.—Arabian Sea.

On the West.

The Eastern limit of the Gulf of Aden (38).

On the North.

A line joining Ràs al Hadd, East point of Arabia (22°32' N) and Ràs Jiyùni (61°43' E) on the coast of Pakistan.

On the South.

A line running from the South extremity of Addu Atoll (Maldives), to the Eastern extreme of Ràs Hafun (Africa, 10°26' N).

On the East.

The Western limit of the Laccadive Sea (42).

40.—Gulf of Oman.

On the Northwest.

A line joining Ràs Limah (25°57' N) on the coast of Arabia and Ràs al Kuh (25°48' N) on the coast of Iran (Persia).

On the Southeast.

The Northern limit of the Arabian Sea (39).

41.—Gulf of Iran (Persian Gulf).*On the South.*

The Northwestern limit of Gulf of Omàn (40).

42.—Laccadive Sea.*On the West.*

A line running from Sadashivgad Lt. on West Coast of India (14°48' N, 74°07' E) to Corah Divh (13°42' N, 72°10' E) and thence down the West side of the Laccadive and Maldivé Archipelagos to the most Southerly point of Addu Atoll in the Maldives.

On the South.

A line running from Dondra Head in Ceylon to the most Southerly point of Addu Atoll.

On the East.

The West coasts of Ceylon and India.

On the Northeast.

Adams Bridge (between India and Ceylon).

43.—Bay of Bengal.*On the East.*

A line running from Cape Negrais (16°03' N) in Burma through the larger islands of the Andaman group, in such a way that all the narrow waters between the islands lie to the Eastward of the line and are excluded from the Bay of Bengal, as far as a point in Little Andaman Island in latitude 10°48' N, longitude 92°24' E, and thence along the Southwest limit of the Burma Sea (44).

On the South.

Adam's Bridge (between India and Ceylon) and from the Southern extreme of Dondra Head (South point of Ceylon) to the North point of Poeloe Bras (5°44' N, 95°04' E).

44.—Andaman or Burma Sea.*On the Southwest.*

A line running from Oedjong Raja (5°32' N, 95°12' E) in Sumatra to Poeloe Bras (Breuëh) and on through the Western Islands of the Nicobar Group to Sandy Point in Little Andaman Island, in such a way that all the narrow waters appertain to the Burma Sea.

On the Northwest.

The Eastern limit of the Bay of Bengal (43).

On the Southeast.

A line joining Lem Voalan (7°47' N) in Siam, and Pedropunt (5°40' N) in Sumatra.

45.—Indian Ocean.

On the North.

The Southern limits of the Arabian Sea (39) and the Laccadive Sea (42), the Southern limit of the Bay of Bengal (43), the Southern limits of the East Indian Archipelago (48), and the Southern limit of the Great Australian Bight (62).

On the West.

From Cape Agulhas in 20° long. East, Southward along this meridian to the Antarctic Continent.

On the East.

From South East Cape, the Southern point of Tasmania down the meridian 146°55' E to the Antarctic Continent.

On the South.

The Antarctic Continent.

45 A.—Mozambique Channel.

On the North.

A line from the estuary of the River Rovuma (10°28' S, 40°26' E) to Ras Habu, the Northern point of Ile Grande Comore, the Northern of the Comore (Comoro) Islands, to Cap d'Ambre (Amber) the Northern extremity of Madagascar (11°57' S, 49°17' E).

On the East.

The West coast of Madagascar.

On the South.

A line from Cap Sainte-Marie, the Southern extreme of Madagascar to Ponto do Ouro on the mainland (26°53' S, 32°56' E).

On the West.

The mainland of South Africa.

46.—Malacca and Singapore Straits.**(a) Malacca Strait:***On the West.*

A line joining Pedropunt, the Northernmost point of Sumatra (5°40' N, 95°26' E) and Lem Voalan the Southern extremity of Goh Puket in Siam (7°45' N, 98°18' E).

On the East.

A line joining Tanjong Piai (Bulus), the Southern extremity of the Malay Peninsula (1°16' N, 103°31' E) and The Brothers (1°11',5 N, 103°21' E) and thence to Klein Karimoen (1°10' N, 103°23',5 E).

On the North.

The Southwestern coast of the Malay Peninsula.

On the South.

The Northeastern coast of Sumatra as far to the eastward as Tanjong Kedabu (1°06' N, 102°58' E) thence to Klein Karimoen.

(b) Singapore Strait:*On the West.*

The Eastern limit of Malacca Strait (a).

On the East.

A line joining Tanjong Datok, the Southeast point of Johore (1°22' N, 104°17' E) through Horsburgh Reef to Pulo Koko, the Northeastern extreme of Bintan Island (1°13'5 N, 104°35' E).

On the North.

The Southern shore of Singapore Island, Johore Shoal and the Southeastern coast of the Malay Peninsula.

On the South.

A line joining Klein Karimoen to Pulo Pemping Besar (1°06',5 N, 103°47',5 E) thence along the Northern coasts of Batam and Bintan Islands to Pulo Koko.

47.—Gulf of Thailand (Siam).*On the South.*

A line running from the Western extreme of Cambodia or Camau Point (8°36' N) to the Northern extreme of the point on the East side of the estuary of the Kelantan River (6°14' N, 102°15' E).

48.—East Indian Archipelago (Indonesia) includes the following Seas and Strait:

(a) Sulu Sea:

On the Northwest.

From Tanjong Sampanmangio, the North point of Borneo, along the Eastern limit of South China Sea (49) to Cape Calavite, the Northwest point of Mindoro.

On the Northeast.

The Southwest coast of Mindoro to Buruncan Point, its Southern extreme, thence a line through Semirara and Kaluya Islands to Nasog Point (11°53' N, 121°53' E) the Northwestern extreme of Panay, along the West and Southeast coast of that island to Tagubanhag Island (11°08' N, 123°07' E), thence a line to the Northern extreme of Negros and down the West coast to Siaton Point, its Southern extreme, thence across to Tagolo Point (8°44' N, 123°22' E), Mindanao.

On the Southeast.

From Tagolo Point, down the West coast of Mindanao to the Southwest extremity thence to the North coast of Basilan Island (6°45' N, 122°04' E), through this island to its Southern extremity, thence a line to Bitinan Island (6°04' N, 121°27' E) off the Eastern end of Jolo Island, through Jolo to a point in long. 121°04' E on its South coast, thence through Tapul and Lugus Islands and along the North coast of Tawitawi Island to Bongao Island off its Western end (5°01' N, 119°45' E), and from thence to Tanjong Labian, the Northeastern extreme of Borneo.

On the Southwest.

The North coast of Borneo between Tanjong Labian and Tanjong Sampanmangio.

(b) Celebes Sea:

On the North.

The Southern limit of Sulu Sea (48 a) and the Southwest coast of Mindanao.

On the East.

A line from Tanjong Tinaka, the Southern point of Mindanao, to the North point of Sangi (3°45' N, 125°26' E) thence through the Sangi Islands to Tanjong Poeisan, the Northeast extreme of Celebes.

On the South.

The North coast of Celebes between Tanjong Poesian and Stroomenkaap (Cape Rivers) (1°20' N, 120°52' E) and thence a line to Tanjong Mangkalihat in Borneo, the Northern limit of Makassar Strait (48 m).

On the West.

The East coast of Borneo between Tanjong Mangkalihat and Tanjong Labian, the Southern limit of the Sulu Sea (48 a).

(c) Molukka Sea:*On the North.*

By a line from the Northeast extreme of Celebes through the Siau Islands to the South point of Sangi (3°21' N, 125°37' E) thence to the Southern extreme of the Talaud Group, through these islands to their Northeastern extreme (4°29' N, 126°52' E) and thence a line to Tanjong Sopi, the Northern point of Morotai Island.

On the East.

By the West coast of Morotai from Tanjong Sopi as far South as Wajaboela (2°17' N, 128°12' E), thence a line to the Northern point of Halmahera and down its West coast to Tanjong Libolo, its Southern extreme.

On the South.

A line from the Southern extreme of Halmahera to the North point of Bisa (Setile) Island, thence to the Northern extreme of Obi Major, through this island to Tanjong Ake Lamo, its Southwestern point, thence to Tanjong Dehekolano, the Eastern extremity of the Soela Islands, along their Northern coasts to Tanjong Marikasoe, the Western extreme, thence a line to the Southeast point of Banggai Island (1°43' S, 123°36' E).

On the West.

The East coasts of Banggai and Peleng Islands to North Bangkalan (1°10' S, 123°18' E) thence a line to Tg. Botok (Celebes) (1°04' S, 123°19' E) round the coast to Tg. Pasir Pandjang (0°39' S, 123°25' E) and across to Tg. Tombalilatoe (123°21' E) on the opposite coast, thence up the East coast to Tg. Poesian, the Northeastern extreme of Celebes.

(d) Gulf of Tomini:*On the East.*

The Western limit of Molukka Sea (48 c).

(e) Halmahera Sea:*On the North*

A line from Wajaboela (Morotai) to Tg. Djodjefa, the Northern point of Halmahera.

On the East.

A line from Tg. Gorango, the Northeastern point of Morotai Island, through Sajang and Kawé Islands to the Western extremes of Waigeo and Batanta Islands across to the Northwest point of Samawati Island, down the coast to Tg. Menonket its Southwest point, and thence to Tg. Sele, New Guinea (1°26' S, 130°56' E).

On the South.

The Northern limit of Ceram Sea (48 f) between Obi Major and New Guinea.

On the West.

The Southern limit of Molukka Sea (48 c) between Halmahera and Obi Major.

(f) Ceram Sea:*On the North and Northeast:*

A line from Tanjong Dehekolano, the Eastern extreme of the Soela Islands to the Western extreme of Obi Major, along its Southern coast to Tanjong Seranmaloleo its Eastern extreme, thence through Tobalai, Kekek, Pisang and Kofiau Islands to Tanjong Sele (1°26' S, 130°55' E), the Western point of New Guinea, down the coast to Karoefa (3°51',5 S, 133°27' E).

On the Southeast.

A line from Karoefa, New Guinea, to the Southeastern extreme of Adi Island, thence to Tg. Borang, the Northern point of Noehoe Tjoet (5°17' S, 133°09' E).

On the Southwest and South.

From the Northern point of Noehoe Tjoet (Groot Kai) through the Watoebela and Gorong Islands to the Southeastern extreme of Ceram, along its Northern shore to Tanjong Tandoeroe Besar, the Northwest point, thence a line to Tanjong Batoe Noeham, the Northern extreme of Boeroe, and along the coast to Tanjong Palpetoe, the Northwest point of the Island.

On the West.

A line from Tanjong Palpetoe to Tanjong Waka, the Southern point of Sanana, through this island to its Northern point, thence across the Mangoli Strait to the South coast of Mangoli (Soela Islands) in lat. 1°56' S, long. 125°55' E.

(g) Banda Sea:*On the North*

The Southern limits of the Molukka Sea (48 c) and the Western and Southern limits of the Ceram Sea (48 f).

On the East.

From Tg Borang, the Northern point of Noehoe Tjoet, through this island to its Southern point, thence a line to the Northeast point of Fordata, through this island and across to the Northeast point of Larat, Tanimbar Islands (7°06' S, 131°55' E), down the East coast of Jamdena Island to its Southern point, thence through Anggarmasa to the North point of Selaroe and through this island to Tg Aro Oesoe its Southern point (8°21' S, 130°45' E).

On the South.

A line from Tanjong Aro Oesoe, through Sermata to Tanjong Njadora the Southeast point of Lakov (8°16' S, 128°14' E) along the South coasts of Lakov, Moa and Leti Islands to Tanjong Toet Pateh, the West point of Leti, thence a line to Tanjong Sewirawa the Eastern extremity of Timor and along the North coast as far as longitude 125° East.

On the West.

From a point on the North coast of Timor in 125° East up this meridian to Alor Island, thence round the East point and along the North coasts of the Alor, Pantar, Lomblen and Adoenara Islands and thence across the Northern end of Flores Strait to Tanjong Serbete the Eastern extreme of Flores, thence a line from its Northern point (8°04' S, 122°52' E) to Kalaotoa Island (7°24' S, 121°52' E) and through the chain of islands lying between it and the South point of Pulo Salayar, through this island and across the Strait to Tanjong Lassa, Celebes (5°37' S, 120°28' E), thence along the Southern limit of the Gulf of Boni (48 k) and up the East coast of Celebes to Tanjong Botok (1°04' S, 123°19' E).

(h) Arafura Sea:*On the North*

The Southeastern limit of the Ceram Sea (48 f) and the Eastern limit of the Banda Sea (48 g).

On the East.

The Southwest coast of New Guinea from Karoefa (133°27' E) to the entrance to the Bensbak River (141°01' E), and thence a line to the Northwest extreme of York Peninsula, Australia (11°05' S, 142°03' E).

On the South.

By the North coast of Australia from the Northwest extreme of York Peninsula to Cape Don (11°19' S, 131°46' E).

On the West.

A line from Cape Don to Tanjong Aro Oesoe, the Southern point of Selaroe (Tanimbar Islands).

(i) Timor Sea:*On the North.*

The Southeastern limit of the Savu Sea (48 o) the Southeastern coast of Timor and the Southern limit of the Banda Sea (48 g).

On the East.

The Western of the Arafura Sea (48 h).

On the South.

The North coast of Australia from Cape Don to Cape Londonderry (13°47' S, 126°55' E).

On the West.

A line from Cape Londonderry to the Southwest point of Roti Island (10°56' S, 122°48' E).

(j) Flores Sea:*On the North.*

The South coast of Celebes from the West point of Laikang Bay (5°37' S, 119°30' E) to Tanjong Lassa (120°28' E).

On the East.

The Western limit of the Banda Sea (48 g) between Flores and Celebes.

On the South.

The North coasts of Flores, Komodo, Banta and a line to Tanjong Naroe the Northeast point of Soembawa, thence along its North coast to Tanjong Sarokaja (8°22' S, 117°10' E).

On the West.

A line from Tg Sarokaja to the Western Paternoster Island (7°26' S, 117°08' E) thence to the Northeastern Postiljon Island (6°33' S, 118°49' E) and to the West point of Laikang Bay, Celebes.

(k) Gulf of Boni.*On the South.*

A line from Tg. Lassa, Celebes, to the North point of Kabaena 5°05' S, 121°52' E) and thence up this meridian to the coast of Celebes.

(l) Bali Sea.*On the North.*

A line from the Western Paternoster Island to the East point of Sepandjang and thence through this island to the West point of Gedeh Bay on the South coast of Kangean (7°01' S, 115°18' E).

On the West.

A line from the West point of Gedeh Bay, Kangean Island, to Tg Sedano, the Northeast extreme of Java and down the East coast to Tg Bantenan, the Southeast extreme of the island.

On the South.

A line from Tanjong Bantenan through the Southern points of Balt and Noesa Islands to Tanjong Bt Gendang, the Southwest extreme of Lombok, and its South coast to Tanjong Ringgit the Southeast extreme, thence a line to Tanjong Mangkoen (9°01' S, 116°43' E) the Southwest extreme of Soembawa.

On the East.

The West and North coasts of Soembawa as far East as Tanjong Sarokaja (8°22' S, 117°10' E), thence the Western limit of Flores Sea (48 j).

(m) Makassar Strait:

The channel between the East coast of Borneo and the West coast of Celebes, is bounded:

On the North.

By a line joining Tanjong Mangkalihat, Borneo (1°02' N, 118°57' E) and Stroomen Kaap (Cape Rivers), Celebes (1°20' N, 120°52' E).

On the South.

By a line from the Southwestern extreme of Celebes (5°37' S, 119°27' E), through the Southern point of Tana Keke, to the Southern extreme of Laoet (4°06' S, 116°06' E) thence up the West coast of that island to Tanjong Kiwi and thence across to Tanjong Petang, Borneo (3°37' S, 115°57' E) at the Southern end of Laoet Strait.

(n) Java Sea:*On the North.*

By the Southern limit of the South China Sea (49), the South coast of Borneo and the Southern limit of Makassar Strait (48 m).

On the East.

By the Western limit of Flores Sea (48 j).

On the South.

By the Northern and Northwestern limits of Bali Sea (48 l), the North and West coasts of Java to Java Hoofd (6°46' S, 105°12' E) its Western point, and thence a line to Vlakke Hoek (5°55' S, 104°35' E) the Southern extreme of Sumatra.

On the West.

The East coast of Sumatra between Vlakke Hoek and Lucipara Point (3°14' S, 106°05' E).

(o) Savu Sea:*On the North.*

By the Southern limits of Flores Sea (48 j) and Banda Sea (48 g).

On the East.

By the meridian of 125° East between Alor and Timor.

On the South.

By a line from the Southwest point of Timor to the Northeast point of Roti, through this island to its Southwest point, thence a line to Poeloe Dana (10°49' S, 121°17' E) and to Tanjong Ngoendjoe, the Southern extreme of Soemba and through this island to Tanjong Karosso, its Western point.

On the West.

A line from Tanjong Karosso (Soemba) to Toro Doro (8°53' S, 118°30' E) on the South coast of Soembawa.

49.—South China Sea (Nan Hai).*On the South.*

The Eastern and Southern limits of Singapore and Malacca Straits (46) as far West as Tanjong Kedabu (1°06' N, 102°58' E) down the East coast of Sumatra to Lucipara Point (3°14' S, 106°05' E) thence to Tanjong Nanka, the Southwest extremity of Banka Island, through this island to Tanjong Berikat the Eastern point (2°34' S, 106°51' E), on to Tanjong Djemang (2°36' S, 107°37' E) in Billiton, along the North coast of this island to Tanjong Boeroeng Mandi (2°46' S, 108°16' E) and thence a line to Tanjong Sambar (3°00' S, 110°19' E) the Southwest extreme of Borneo.

On the East.

From Tanjong Sambar through the West coast of Borneo to Tanjong Sampanmangio, the North point, thence a line to West points of Balabac and Secam Reefs, on to the West point of Bancalan Island and to Cape Buliluyan, the Southwest point of Palawan, through this island to Cabuli Point, the

Northern point thereof, thence to the Northwest point of Busuanga and to Cape Calavite in the island of Mindoro, to the Northwest point of Lubang Island and to Point Fuego ($14^{\circ}08'$ N) in Luzon Island, through this island to Cape Engano, the Northeast point of Luzon, along a line joining this cape with the East point of Balintang Island (20° N) and to the East point of Y'Ami Island ($21^{\circ}05'$ N) thence to Garan Bi, the Southern point of Taiwan (Formosa), through this island to Santyo (25° N) its North Eastern Point.

On the North.

From Fuki Kaku the North point of Formosa to Kiushan Tao (Turnabout Island) on to the South point of Haitan Tao ($25^{\circ}25'$ N) and thence Westward on the parallel of $25^{\circ}24'$ North to the coast of Fukien.

On the West.

The Mainland, the Southern limit of the Gulf of Thailand (47) and the East coast of the Malay Peninsula.

50.—Eastern China Sea (Tung Hai).

On the South.

The Northern limit of the South China Sea (49), thence from Santyo the Northeastern point of Formosa to the West point of Yonakuni Island and thence to Haderuma Sima ($24^{\circ}03'$ N, $123^{\circ}47'$ E).

On the East.

From Haderuma Sima a line including the Miyako Retto to the East point of Miyako Sima and thence to Okinan Kaku, the Southern extremity of Okinawa Sima, through this island to Ada-Ko Sima (Sidmouth Island) on to the East point of Kikai Sima ($28^{\circ}20'$ N) through Tanegra Sima ($30^{\circ}30'$ N) to the North point thereof and on to Hi-Saki ($31^{\circ}17'$ N) in Kyusyu.

On the North.

From Nomo Saki ($32^{\circ}35'$ N) in Kyusyu to the South point of Hukae Sima (Goto Retto) and on through this island to Ose Saki (Cape Goto) and to Hunan Kan, the South point of Saisyu To (Quelpart), through this island to its Western extreme and thence along the parallel of $33^{\circ}17'$ North to the mainland.

On the West.

The mainland of China.

51.—Yellow Sea (Hwang Hai).

On the South.

The parallel of $33^{\circ}17'$ North from Saisyu To (Quelpart) to the mainland.

On the Southeast.

From the Western extreme of Quelpart to Ka Nyo or West Pinnacle Island (34°13' N) in the Mengoru Group, thence to the North point of Oku To (34°22' N), to the West point of Small South Stone Island (Syo-Zyonan To) and the North point of Great South Stone Island (Zyonan To) (34°24' N) to a point on the coast of Tin To (34°25' N) along the Northwest coast of this island to the North point thereof, and thence on a line in a Northeasterly direction to the mainland of Tyosen (Korea).

52.—Japan Sea.*On the Southwest.*

The Northeastern limit of the Eastern China Sea (50) and the Western limit of the Inland Sea (53).

On the Southeast.

In Simonoseki Kaikyo.

A line running from Nagoya Saki (130°49',5 E) in Kyûsyû through the islands of Uma Sima and Muture Sima (33°58',5 N) to Murasaki Hana (34°01' N) in Honsyû.

On the East.

In the Tsugaru Kaikô.

From the extremity of Siringa Saki (141°28' E) to the extremity of Esan Saki (41°48' N).

On the Northeast.

In La Perouse Strait (Sôya Kaikyô).

A line joining Sôni Misaki and Nishi Notoro Misaki (45°55' N).

On the North.

From Cape Tuik (51°45' N) to Cape Sushcheva.

53.—Seto Naikai or Inland Sea.*On the West.*

The Southeastern limit of the Japan Sea (52).

On the East (Kii Suidô).

A line running from Takura Saki (34°16' N) in Honsyû to Oishi Hana in the island of Awazi, through this island to Sio Saki (34°11' N) and on to Oiso Saki in Sikoku.

On the South (Bungo Suidô).

A line joining Sada Misaki (33°20' N) in Sikoku and Seki Saki in Kyûsyû.

54.—Sea of Okhotsk.*On the Southwest.*

The Northeastern and Northern limits of the Japan Sea (52).

On the Southeast.

A line running from Nosyappu Saki (Cape Noshap, 43°23' N) in the Island of Hokusyû (Yezo) through the Kuril or Tisima Islands to Cape Lopatka (South point of Kamchatka) in such a way that all the narrow waters between Hokusyû and Kamchatka are included in the Sea of Okhotsk.

55.—Bering Sea.*On the North.*

The Southern limit of the Chuckchi Sea (12).

On the South.

A line running from Kabuch Point (54°48' N, 163°21' W) in the Alaskan Peninsula, through the Aleutian Islands to the South extremes of the Komandorski Islands and on to Cape Kamchatka in such a way that all the narrow waters between Alaska and Kamchatka are included in the Bering Sea.

56.—Philippine Sea.

Is that area of the North Pacific Ocean off the Eastern coasts of the Philippine Islands. It is bounded:

On the West.

By the Eastern limits of the East Indian Archipelago (48) South China Sea (49) and the Eastern China Sea (50).

On the North.

By the Southeast coast of Kyushu, the Southern and Eastern limits of the Inland Sea (53) and the South coast of Honshu Island.

On the East.

By the ridge joining Japan to the Bonin, Volcano and Ladrone (Mariana) Islands, all these being included in the Philippine Sea.

On the South.

By a line joining Guam, Yap, Pelew (Palau) and Halmahera Islands.

57.—North Pacific Ocean.*On the Southwest.*

The Northeastern limit of the East Indian Archipelago (48) from the Equator to Luzon Island.

On the West and Northwest.

The Eastern limits of the Philippine Sea (56) and Japan Sea (52) and the Southeastern limit of the Sea of Okhotsk (54).

On the North.

The Southern limits of the Bering Sea (55) and the Gulf of Alaska (58).

On the East.

The Western limit of Coastal waters of Southeast Alaska and Br. Columbia (59), and the Southern limit of the Gulf of California (60).

On the South.

The Equator, but excluding those islands of the Gilbert and Galapagos Groups which lie to the Northward thereof.

58.—Gulf of Alaska.*On the North.*

The coast of Alaska.

On the South.

A line drawn from Cape Spencer, the Northern limit of (59) to Kabuch Point, the Southeast limit of (55), in such a way that all the adjacent islands are included in the Gulf of Alaska.

59.—The Coastal Waters of Southeast Alaska and British Columbia.*On the Southwest.*

A line running from the Northwest extremity of Cape Flattery to Tatoosh Island (48°23' N) and thence to the Southern extreme of Bonilla Point (124°42' W) in Vancouver Island.

On the West.

A line running westerly from Black Rock Point (50°44'.5 N) in Vancouver Island through the Scott Islands in such a way that all the narrow waters between these islands are included in the Coastal Waters, thence to Cape St. James (Southern extremity of Queen Charlotte Islands), through this group in the same way, then from Cape Knox (54°10' N, 133°06' W) Northward to the Western extreme of Langara Island and on to Point

Cornwallis (132°52' W) in the Prince of Wales group, thence along the Western shores of this group, of Baranof, Kruzof, Chicagof, and Yakobi Islands, so that all the narrow waters between them are included in the coastal waters, and, finally, from Cape Bingham (58°04' N) in Yakobi Island to Cape Spencer (58°12'N, 136°39' W).

60.—Gulf of California.

On the South.

A line joining Piastla Point (23°38' N) in Mexico, and the Southern extreme of Lower California.

61.—South Pacific Ocean.

On the West.

From Southeast Cape, the Southern point of Tasmania, down the meridian of 146°55' E to the Antarctic continent.

On the Southwest and Northwest.

The Southern, Eastern and Northeastern limits of the Tasman Sea (63), the Southeastern and Northeastern limits of the Coral Sea (64), the Southern, Eastern and Northern limits of the Solomon (65) and Bismark (66) seas, and the Northeastern limit of the East Indian Archipelago (48) from New Guinea to the Equator.

On the North.

The Equator, but including those islands of the Gilbert and Galàpagos Groups which lie to the Northward thereof.

(* *On the East.*

The meridian of Cape Horn (67°16' W) from Tierra del Fuego to the Antarctic Continent; a line from Cape Virgins (52°21' S, 68°21' W) to Cape Espiritu Santo, Tierra del Fuego, the Eastern entrance to Magellan Strait.

On the South.

The Antarctic continent.

62.—Great Australian Bight.

On the North.

The South coast of Australia.

(* These limits have not yet been officially accepted by Argentina and Chile.

On the South.

A line joining West Cape Howe (35°08' S, 117°37' E) Australia to South West Cape, Tasmania.

On the East.

A line from Cape Otway, Australia, to King Island and thence to Cape Grim, the Northwest extreme of Tasmania.

62 A.—Bass Strait.*On the West.*

The Eastern limit of the Great Australian Bight (62).

On the East.

The Western limit of the Tasman Sea (63) between Gabo Island and Eddystone Point.

63.—Tasman Sea.*On the West.*

A line from Gabo Island (near Cape Howe, 37°30' S) to the Northeast point of East Sister Island (148° E) thence along the 148th meridian to Flinders Island; beyond this Island a line running to the Eastward of the Vansittart Shoals to Barren Island, and from Cape Barren (the Easternmost point of Barren Island) to Eddystone Point (41° S) in Tasmania, thence along the East coast to South East Cape, the Southern point of Tasmania.

On the North.

The parallel of 30° S from the Australian coast Eastward as far as a line joining the East extremities of Elizabeth Reef and South East Rock (31°47' S, 159°18' E) then to the Southward along this line to the South East Rock.

On the Northeast.

From the South East Rock to the North point of Three Kings Islands (34°10' S, 172°10' E) thence to North Cape in New Zealand.

On the East.

In Cook Strait.

A line joining the South extreme of the foul ground off Cape Palliser (Ngawi) and the Lighthouse on Cape Campbell (Te Karaka).

In Foveaux Strait (46°45' S).

A line joining the Light on Waipapapa Point (168°33' E) with East Head (47°02' S) of Stewart Island (Rakiura).

On the Southeast.

A line running from South West Cape, Stewart Island, through The Snares (48° S, 166°30' E) to North West Cape, Auckland Island (50°30' S, 166°10' E), through this island to its Southern point.

On the South.

A line joining the Southern point of Auckland Island (50°55' S, 166° E) to South East Cape, the Southern point of Tasmania.

64.—Coral Sea.*On the North.*

The South coast of New Guinea from the entrance to the Bensbak River (141°01' E) to Gado-Gadoa Island near its Southeastern extreme (10°38' S, 150°34' E), down this meridian to the 100 fathom line and thence along the Southern edges of Uluma (Suckling) Reef and those extending to the Eastward as far as the Southeast point of Lawik Reef (11°43',5 S, 153°56',5 E) off Tagula Island, thence a line to the Southern extreme of Rennell Island and from its Eastern point to Cape Surville, the Eastern extreme of San Cristobal Island, Solomons; thence through Nupani, the Northwestern of the Santa Cruz Islands (10°04' S, 165°40',5 E) to the Northernmost Island of the Duff or Wilson Group (9°48',5 S, 167°06' E).

On the Northeast.

From the Northernmost island of the Duff or Wilson Group through these islands to their Southeastern extreme, thence a line to Mera Lava, New Hebrides Islands (14°25' S, 168°03' E) and down the Eastern coasts of the islands of this Group to Aneityum Island (20°11' S, 169°51' E) in such a way that all the islands of these Groups, and the straits separating them, are included in the Coral Sea.

On the Southeast.

A line from the Southeastern extreme of Aneityum Island to Southeast (Nokanhui) Islets (22°46' S, 167°34' E) off the Southeast extreme of New Caledonia, thence through the East point of Middleton Reef to the Eastern extreme of Elizabeth Reef (29°55' S, 159°02' E) and down this meridian to Latitude 30° South.

On the South.

The parallel of 30° South to the Australian Coast.

On the West.

The Eastern limit of the Arafura Sea (48 h) and the East Coast of Australia as far South as Latitude 30° South.

65.—Solomon Sea.

On the Northwest.

By the Southeast limit of Bismarck Sea (66).

On the Northeast.

By a line from the Southern point of New Ireland to the North point of Buka Island, through this island to the Northwest point of Bougainville Island, along the Southern coasts of Bougainville, Choisel, Ysabel, Malaita and San Cristobal Islands.

On the South.

The Northern limit of the Coral Sea (64) between San Cristobal Island, Solomons, and Gado-Gadoa Island, off the Southeast extreme of New Guinea.

On the Southwest.

By the coast of New Guinea and a line from its Southeasternmost point through the Louisiade Archipelago to Rossel Island.

66.—Bismarck Sea.

Is that area of the South Pacific Ocean off the Northeast coast of New Guinea. It is bounded:

On the North and East.

By the Northern and Northeastern coasts of the islands of New Ireland, New Hanover, the Admiralty Islands, Hermit Island, and the Ninigo Group, through Manu and Aua Islands to Wuvulu Island and thence a line to Baudissin Point in New Guinea (142°02' E).

On the Southeast.

A line from the Southern point of New Ireland along the parallel of 4°50' South to the coast of New Britain, along its Northern coast and thence a line from its Western extreme through the Northern point of Umboi Island to Teliata Point, New Guinea (5°55' S, 147°24' E).

On the Southwest.

By the Northeast coast of New Guinea.

Corrections

Corrections to pages 12 and 13

19.- Irish Sea and St. George's Channel.

On the North.

The Southern limit of the Scottish Seas (18).

On the South.

A line joining St. David's Head ($51^{\circ}54'N$, $5^{\circ}19'W$) to Carnsore Point ($52^{\circ}10'N$, $6^{\circ}22'W$).

20.- Bristol Channel.

A line joining Hartland Point ($51^{\circ}01'N$, $4^{\circ}32'W$) to St. Govan's Head ($51^{\circ}36'N$, $4^{\circ}55'W$).

-13-

21.- English Channel.

On the West.

A line joining Isle Vierge ($48^{\circ}38'23''N$, $4^{\circ}34'13''W$) to Lands End ($50^{\circ}04'N$, $5^{\circ}43'W$).

On the East.

The Southwestern limit of the North Sea (4).

21 A.- Celtic Sea.

On the North.

The Southern limit of the Irish Sea (19), the South coast of Ireland, thence from Mizen Head a line drawn to a position $51^{\circ}N$, $11^{\circ}30'W$.

On the West and South.

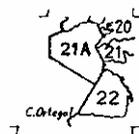
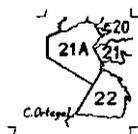
A line from the position $51^{\circ}N$, $11^{\circ}30'W$ South to $49^{\circ}N$, thence to latitude $46^{\circ}30'N$ on the Western limit of the Bay of Biscay (22), thence along that line to Penmarch Point.

On the East.

The Western limit of the English Channel (21) and the Western limit of the Bristol Channel (20).

22.- Bay of Biscay.

A line joining Cap Ortegal ($43^{\circ}46'N$, $7^{\circ}52'W$) to Penmarch Point ($47^{\circ}48'N$, $4^{\circ}22'W$).



21A. Celtic Sea.
Mer Celtique.

Annex B39

M. Habibur Rahman, "Delimitation of Maritime Boundaries: A Survey of Problems in the Bangladesh Case,"
Asian Survey, Vol. 24, No. 12 (1984)

DELIMITATION OF MARITIME BOUNDARIES

A Survey of Problems in the Bangladesh Case

M. Habibur Rahman

The Law of the Sea has developed over the years, and is presently codified in the United Nations Convention on the Law of the Sea, 1982,¹ which was the outcome of the Third United Nations Conference on the Law of the Sea (UNCLOS III). Basically, the Convention does not differ from the four previous Geneva Conventions, 1958,² except that it extends jurisdiction of the coastal state over baselines, territorial sea, and the continental shelf and provides for a new sea zone such as the 200 nautical mile (n.m.) exclusive economic zone (EEZ). The delineation of sea zones gives rise to problems between adjacent and opposite states, and has created problems between Bangladesh and its adjacent neighbors—India and Burma. This study will deal with how Bangladesh designates different sea zones, and in particular the difficulties encountered in prescribing sea zones under UNCLOS III and in delimiting the zones between Bangladesh and its neighbors.

Delimitation of Maritime Boundaries—General Approach

Delimitation means the determination of a boundary line by treaty or otherwise, whereas demarcation means the actual laying down of a bound-

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1. U.N. Doc.A/CONF.62/122, October 7, 1982.

2. Convention on the Territorial Sea and the Contiguous Zone, U.N. Doc.A/CONF.13/L.52 (hereafter cited as the TS&CZ Convention); Convention on the High Seas, U.N. Doc.A/CONF.13/L.53 and Corr. 1; Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N. Doc.A/CONF.13/L.54; Convention on the Continental Shelf, U.N. Doc.A/CONF.13/L.55.

dary line on the ground. It is a fact that every coastal state is entitled to prescribe maritime zones, but the breadth of the zones is a concern of international law—that is to say, the coastal state has a right to extend maritime zones up to the limits permitted under international law. According to the LOS Convention, the coastal state is entitled to extend its territorial sea 12 n.m. (Article 3), its contiguous zone 24 n.m. (Article 33[2]), its EEZ 200 n.m. (Article 57), and the continental shelf up to 200 n.m. or up to the natural prolongation (Article 76) reckoning from the baselines from which the territorial sea is measured.³

One of the fundamental starting points of the various zones of maritime jurisdiction is the delineation of baselines. Article 3 of the 1958 Convention on the Territorial Sea and the Contiguous Zone (TS&CZ Convention) deals with normal baselines, Article 4 of the Convention gives the broad guidelines for determining straight baselines, and, in the *Fisheries Case*,⁴ the International Court of Justice had laid down its judgment relating to baselines. A close analysis of the Court's judgment establishes certain important factors. First, the Court underscored one major precept—namely, that any solution was to be dictated by geographic realities and that the coastal state would seem to be in the position to appraise the local conditions dictating the determination of its baselines. Second, the Court to some extent recognized the Norwegian contention that rules of international law ought to take into account the diversity of facts and therefore concede that the drawing of baselines must be adapted to the special conditions obtaining in different regions. Norway's method of drawing straight baselines was an adaptation rendered necessary by local conditions. The Court, therefore, stated that in its opinion all it could do was to apply general international law to a specific case.

3. A baseline is the line (whether straight, curved or indented) taken as the inner line of sea zones such as the territorial sea, contiguous zone, exclusive economic zone, and the continental shelf. All these sea zones are measured from the baselines. The continental shelf of a coastal state is the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 n.m. from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

4. *United Kingdom v. Norway*, ICJ, General List, No. 5, December 18, 1951. The baseline is normally the coast itself, so the normal baseline is the low-water line along the coast. Where the coast is deeply indented or cut into or fringed with islands in its immediate vicinity, the baseline is regarded as independent of low-water marks. In these special cases, baselines are determined by joining the appropriate points on the coast and are known as straight baselines.

Thus, the Court gave effect to Norway's claim that its case was based on considerations, which, *inter alia*, related to geographical conditions prevailing on the Norwegian coast and the safeguarding of the vital interests of inhabitants of the northernmost parts of the country. It is important to note that though the judgment of the Court was initially subject to severe criticism, the International Law Commission only a few years later recommended incorporating it in the 1958 Geneva Conventions, and Article 4 was adopted.

Under general international law, the determination of the boundary is left to the agreement of the parties concerned. As a practical consideration, the purpose of this is to facilitate a mutually acceptable solution, but if the provision is not precise and certain, it will be a source of further conflict. Care must be taken to avoid such a situation.

The determination of boundaries has assumed a great importance for various reasons. One is that since the late 1940s, the exploration and exploitation of maritime resources has grown at an accelerating rate, and consequently national claims to areas of the seabed previously held to have been either common property or the property of no one have been increasing. Another factor is the conceptual change in claims to national jurisdiction. In the past, national jurisdiction generally embraced a whole region and was relatively uncomplicated, but today the situation is different. A state may claim to exercise control over a number of jurisdictions with varying legal regimes in adjoining coastal seas. In addition, the 200 n.m. claim of EEZs and the continental shelf as natural extensions of boundaries has introduced a new dimension to the subject. The complex issue has been made more difficult as the world becomes increasingly conscious of the importance of natural resources and development.

It is significant that physical factors often make the delimitation of maritime boundaries, in particular the continental shelf, a difficult undertaking. The coastline of a country may be irregular, and either convex or concave; there may be uninhabited offshore islands that do not really deserve to be given full effect as basepoints for the measurement of distance; and there may be a trench or a canyon.

The 1958 Geneva Conventions are of very limited help to the parties confronting the delimitation issue (Article 12 of the TS&CZ and Article 6 of the Continental Shelf Conventions). During the Geneva Conference, delimitation was discussed in the context of narrow belts of territorial sea or of a continental shelf of 200 meters. It was from this perspective that the equidistance method was applied. But this method is not even remotely applicable to all situations, in particular when greater distances such as the 200 n.m. EEZ or continental shelf up to the outer

edge of the continental margin⁵ are involved. The shortcomings are insignificant near the coast but can become monumental far offshore.

The present international legal disputes over the delimitation of territorial seas and continental shelves originate in large part from the ambiguities of the Geneva Conventions, and have been further complicated by the varying interpretations sought on the 1969 judgment of the International Court of Justice in the *North Sea Continental Shelf Cases*,⁶ since there has been a tendency to misinterpret certain portions of this judgment.

Several contentions in this judgment are appropriate and relevant in considering delimitation and close analysis establishes certain factors of particular importance. First, the Court regarded the equidistance method as one of several methods of drawing a boundary under certain geographical configurations. Second, the Court held that the equidistance method is not a customary rule of international law. Third, the Court distinguished, in the principle of delimitation, between opposite states and adjacent states. Fourth, the Court emphasized the application of principles of equity for delimitation of shelf boundary. Fifth, the Court recommended that in order to achieve a fair and equitable boundary, various combinations of methods could be applicable; no rigid application of any method was permissible.

A decade later, the LOS Convention has come into being. States appear to be complying with the Convention; as time passes, they are enacting its provisions into law. Bangladesh is a signatory to this Convention, but has not ratified it; nevertheless, Bangladesh is complying with the Convention's provisions.

Law of the Sea: Bangladesh's Practices

Bangladesh emerged as an independent and sovereign republic on December 16, 1971. With a population of 84,655,207⁷ squeezed into about 55,598 square miles, it is one of the most densely populated countries of the world. Bangladesh is surrounded by India on the north, west, and east and shares a considerable length of border with Burma in the east. To the south lies the deeply indented coastline of the Bay of Bengal. The soils of Bangladesh's excessively humid plains are swampy, and most of

5. The continental margin is the submerged prolongation of the land mass of the coastal state and consists of the seabed and subsoil of the shelf, the slope, and the rise; it does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

6. *Federal Republic of Germany v. Denmark, Federal Republic of Germany v. Netherlands*, ICJ, General List, Nos. 51 and 52, February 20, 1969.

7. This figure is correct up to July 1, 1978. See *U.N. Demographic Yearbook, 1979* (1980), p. 222.

the delta regions possess young alluvial soils of considerable fertility. Older, less fertile alluvium also occurs, notably in Barind, between the Ganges and Brahmaputra rivers in the northwest corner of the country.

Bangladesh is a land of rivers. They flow from the Himalayas, the highest mountains in the world, and carry down to the bay a colossal discharge of silt. Heavy monsoon rainfall, cyclonic storms, and tidal surges, together with the silt, have contributed to a continuous process of erosion and shoaling both on land and in the mouths of the mighty rivers. The 310-mile concave coastline⁸ is unstable, broken, and irregular, and the presence of river deltas and islands in the bay have put Bangladesh into a peculiar situation when it comes to deciding the boundaries of different sea zones.

The Bay of Bengal and the rivers are the source of various kinds of fish, and there are extensive fishing grounds in the northern region of the bay. From the coastal bay, fish such as the hilsa (a major food of the rice-eating Bangladesh people) migrate to the rivers and from there to other inland waters for breeding. The people of the coastal area live by fishing, and the country depends on its fishery resources for foreign exchange.⁹ The Bay of Bengal is also rich in seaweed and mineral resources. Bangladesh has no mineral ores, but it does produce salt from the bay waters. The bay is the only channel linking Bangladesh with other countries, and Bangladesh's trade and commerce depend solely on these sea routes. Thus, the entire country is the hinterland of the Bay of Bengal and the importance of the bay to Bangladesh is unquestioned.

Bangladesh is classified as one of the least developed countries under U.N. General Assembly Resolution 3487 (XXX). It is now generally assumed that the country will have to explore and exploit both its mineral and food resources in order to save its millions from starvation and possible extinction. Under these circumstances, the country is becoming very much concerned with the Law of the Sea.

Bangladesh initially followed the Law of the Sea provisions as these had been applied by Pakistan. Following independence in 1947, Pakistan complied with the Territorial Waters Jurisdiction Act, 1878, and the Fisheries Act, 1897, of Great Britain. While different states began to pass laws soon after the Truman Proclamations, 1945,¹⁰ it was only on March 9, 1950, by the Declaration of the Governor-General, that Paki-

8. See Aaron L. Danzic, "A Funny Thing Happened to Common Heritage on the Way to the Sea," 12:3 (1975), *The San Diego Law Review*, p. 661.

9. See *FAO Trade Yearbook*, 1980, p. 331.

10. Proclamation with respect to the natural resources of the subsoil and seabed of the continental shelf (10 Fed. Reg. 12303); Proclamation with respect to coastal fisheries in certain areas of the High Seas (10 Fed. Reg. 12304).

stan specified that the seabed extending to the 100-fathom contour into the open sea belonged to its territory.¹¹ It only signed the Continental Shelf Convention on October 31, 1958, but did not ratify it.¹² The February 19, 1966, Proclamation of the President of Pakistan asserted claims to the 12 n.m. exclusive fishing zone and the 100 n.m. conservation zone in the areas of the high seas adjacent to the territorial waters.¹³

However, as an independent state, Bangladesh felt the need to apply the Law of the Sea provisions to its own situation. Accordingly, it enacted the Territorial Waters and Maritime Zones Act on February 24, 1974. The act was promulgated before the second session of the UNCLOS III. Originally the act did not prescribe the breadth of the territorial sea and the EEZ, but it specified the contiguous zone to extend up to 6 n.m. beyond the outer limit of the territorial sea (Section 4[1]) and the seabed and subsoil of the submarine areas adjacent to the coast that extended beyond the limits of the territorial waters, up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor. The seabed and subsoil of the rock or any composite group thereof were declared as constituting part of the territory (Section 7[1]). Furthermore, as authorized by this act, the Ministry of Foreign Affairs announced on April 15, 1974, that the country would exercise the 12 n.m. limit for the territorial sea and 200 n.m. for the EEZ, measuring from the baselines.¹⁴

Delineation of Bangladesh Maritime Zones—Issues of Conflict

As a coastal state, Bangladesh is entitled to prescribe its sea zones as permitted by the international Law of the Sea and, if there are no geographical constraints, it will have no problem delineating even extensive sea zones such as the 200 n.m. EEZ and the continental shelf beyond this limit. It is evident that in the case of two adjacent states, every sea zone must be delimited between them. But for two opposite states, the delimitation cannot be effected unless the sea zone in question is at a distance less than twice the breadth of the zone from the baselines of these states. For example, no question of delimiting the 200 n.m. EEZ between two opposite states arises unless this zone is less than 400 n.m. from the baselines of these states. In any case, every sea zone between Bangladesh, India, and Burma must be delimited.

11. *United Nations Legislative Series* ST/LEG/SER.B/6(1957) 38.

12. E. D. Brown, "The Outer Limit of the Continental Shelf," *The Juridical Review* (1968), p. 144.

13. S. H. Lay, R. Churchill, and M. Nordquist (eds.), *New Directions in the Law of the Sea*, Vol. I. (Dobbs Ferry, N.Y.: Oceana Publications, 1973), p. 99.

14. Ministry of Foreign Affairs Circular No. LT-1/3/74, para. 2; LT-1/3/74, p. 1.

The delimitation of maritime zones creates a conflict between Bangladesh and its neighbors. Disagreement arose mainly with India when the Bangladesh government in 1974 signed contracts to share production with six oil companies, granting them oil and natural gas exploration rights in its territorial waters in the Bay of Bengal. Thus, the Bangladesh line moved toward the south from the edge of its land boundary, while the Indian line took a southeasterly direction, thus creating an angle within which lie thousands of square miles of the bay claimed by each country as its economic zone. This overlapping has become a critical problem between the two neighboring countries. Thus the delimitation of maritime boundaries is an all-important matter for Bangladesh and India, and their areas of authority in the seas—for example, the territorial sea, EEZs, and the continental shelf—will depend on how it is resolved.

Although negotiations have been going on since 1974, Bangladesh and India have not been able to settle the delimitation problem, mainly because of the concave nature of the Bangladesh coast. Bangladesh's position is that no rigid principle can be applied in the present case and that the basic guideline is equity. India, on the other hand, applies the principle of "equidistance" in delimiting the boundary, ignoring the physical features of the coast.

Furthermore, new islands are rising in the coastal bay. Both Bangladesh and India have claimed ownership of these newly emerging island(s)—New Moore/South Talpatty/Purbasha—in the estuary of the Haribhanga River on the border between the two countries. The boundary between Bangladesh and India in this area is the midstream of the main channel of the Haribhanga. The island, formed in the estuary of the Haribhanga and the Raimangal rivers, most probably after the cyclone and tidal bore of 1970, is new terrain, rising initially as a low-tide elevation.¹⁵ Known as South Talpatty Island in Bangladesh, it is a U-shaped formation with the eastern arm elongated toward the north. In 1978 its approximate area at low tide was about two square miles, but this may have increased. It was uninhabited at that time, though fishermen from the Bangladesh mainland were observed on the island during the dry season.

The Indian authorities named this island New Moore and claim to have notified the British Admiralty about its location in 1971, during the period that the people of Bangladesh were engaged in their struggle for independence. On achieving independence, Bangladesh was faced with

15. *Keesing's Contemporary Archives—Record of World Events*, September 18, 1981, p. 31090.

the equally challenging task of rehabilitation and national reconstruction. At no time during this period did the Indian government specifically draw to the attention of the Bangladesh government their claim upon this island as required under international law and practice despite the close and friendly relations existing between the two countries. Bangladesh lays claim to this island on the assumption that the midstream of the border river Haribhanga flows to the west of the island, while India claims it on the assumption that the midstream flows to the east of the island.

When the Indian Prime Minister visited Bangladesh on April 16–18, 1979, the President of Bangladesh took up the matter with him. In the interest of good neighborly relations, Bangladesh proposed a joint survey to dispel any misgivings about the actual location and rightful ownership of the island with the aim of peacefully settling this problem between the two countries. The Indian Prime Minister in a demonstration of the two countries' friendly relations and in a spirit of understanding, agreed to the Bangladesh proposal for a joint survey. This commitment was confirmed by the Indian Prime Minister when the Bangladesh Deputy Prime Minister called on him in New Delhi in the second week of May 1979. Since then, the Indian side has been asked repeatedly to expedite the proposed joint survey. The Bangladesh High Commissioner in New Delhi, in his message of May 30, 1980, informed Dhaka that he had had three meetings in the Indian External Affairs Ministry and that the Indian side had decided to study the situation more thoroughly before taking up a joint survey.

Moreover, in March 1980, the Indian daily *Ananda Bazar Patrika* and other West Bengal newspapers carried news of the emergence of a second island on the estuary of the Haribhanga River, reportedly detected by the Indian Naval Hydrographic Survey some time in 1975. It was also reported that the state government of West Bengal called this new island Purbasha. From the description in the West Bengal Press, it appeared that the new island was situated very near to South Talpatty Island on its western side. Satellite images available to Bangladesh indicated the presence of a low-tide elevation conforming to the location of Purbasha Island mentioned in the West Bengal press. And a satellite photograph sent by the Indian Ministry of External Affairs in their Note of April 9, 1980, to the Bangladesh Ministry of Foreign Affairs also showed a similar low-tide elevation in the midstream of the Haribhanga.

The Indian government subsequently denied that there was, indeed, a second island and adopted the position that New Moore and Purbasha

were one and the same island.¹⁶ At this stage it is important to point out that all misgivings regarding the location of newly emerged islands in the estuary of the Haribhanga and their rightful ownership could be easily dispelled by a joint physical survey of this area. This would also remove existing confusion over the names and would establish facts on the ground regarding the number of islands, their location, and ownership. It is clear that if the flow of the mainstream of the Haribhanga is determined, there will be no question of the island's ownership. There seems to be no doubt that the conflict between Bangladesh and India over the newly emerged island is concerned with matters of fact rather than of law.

Application of Conventional Provisions for Delineating Maritime Zones

Bangladesh borders on two adjacent coastal states, India and Burma. Consequently, every sea zone will be subject to the delimitation between Bangladesh and the adjacent state concerned. The following pages will present the problems Bangladesh faces in applying conventional provisions in different circumstances.

BASELINES

The topography of the Bay of Bengal adjoining Bangladesh and its neighbors is very peculiar. The bay is neither a closed bay nor a bay as defined under the semicircle criterion.¹⁷ It is not a historic bay and, as such, no coastal state can exercise territorial rights.¹⁸ A close look at a map clearly illustrates the characteristics of the coastline. Most of Bangladesh constitutes one integrated river basin with an area of plains. Geological features and climatic conditions, as discussed above, have played a major role in the evolution and characteristics of the coastal regions. The effects of erosion and shoaling have been monumental:

1. The estuary of Bangladesh is such that no stable water line or landward and seaward demarcation exists.

16. This has been stated in the *White Paper on the South Talpatty* (hereafter cited as *White Paper*) by the Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh, Dhaka, May 26, 1981.

17. "An indentation shall not . . . be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation." See Article 10 of the LOS Convention.

18. C. J. Colombos, *The International Law of the Sea*, sixth edition (New York: Longmans, 1972), p. 185.

2. The continual process of alluvion and sedimentation forms mudbanks, and the area is so shallow only small boats can navigate it;
3. The navigable channels through the aforesaid banks continually change course and require soundings to establish their demarcation.

Because of these considerations, neither the “normal baseline” nor the “straight baselines” as contemplated in articles 3 and 4 of the TS&CZ Convention fit the “local requirements.” Bangladesh, therefore, took the view that Article 4 needed to be amended to incorporate these basic attributes, and proposed amendments at past sessions of UNCLOS III. The basic thrust of these amendments was to delineate the baseline by the depth-method—i.e., geographic coordinates at specific depths of the coastal waters are linked by straight lines to effectively demarcate the landward and seaward areas.

In the Caracas session of the UNCLOS III in 1974, the Bangladesh delegation submitted a proposal asserting that Article 4 of the TS&CZ Convention implicitly recognizes the depth-method of determining baselines, and suggesting that the article be made explicit. Moreover, geomorphological considerations justify the depth-method baseline.¹⁹ It was under the compulsion of both law and fact then that Bangladesh presented its case, and it was not its intention to take unilateral action in a matter of general international interest. This was precisely the reason Bangladesh placed its case before the international community for consideration.²⁰

Article 7(2) of the LOS Convention, 1982, is unclear as to whether delineation of baselines by depth-method is permitted. The text says:

Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

The article does not specify the term “mudflats,”²¹ and the question of whether they should be taken into consideration in fixing baselines may

19. See Official Records of the Third United Nations Conference on the Law of the Sea, 1(1974) UNCLOS III OR 102, para. 54.

20. See 4(1975) UNCLOS III OR 13, para. 20.

21. The bed of the coastal bay adjoining Bangladesh is becoming a region of alluvial deposits, and mudflats are forming. The large deltaic fans such as those of the Ganges in the Bay of Bengal are very expansive and represent natural prolongations of the continental sediment of greatest depth. See E. D. Brown, “The Continental Shelf and the Exclusive Economic Zone: The Problem of Delimitation at UNCLOS III,” *Marine Policy and Management*, 4(1977), p. 388.

arise. Although there is no express indication in the text that baselines may be fixed by depth-method, the vague phrase, "other natural conditions," and the fact that international law does not restrict drawing baselines according to the "local requirements" of a coastal state, lead to the conclusion that the text does not prohibit the depth-method. In essence, Bangladesh has adopted this method because of its peculiar geographical, geological, and geomorphological situation. From a practical point of view, the formula as incorporated in the LOS Convention, Article 7(2), does not meet Bangladesh's requirements, though it appears to have taken into account certain attributes of a deltaic state like Bangladesh.²²

Bangladesh also faces a peculiar situation on its coastal bays. On the western coast bordering India, a few miles away from the joint estuary of the Haribhanga and Raimangal rivers, are neighboring deltas. From the mouth of the rivers, a deep channel with a depth from 8 to 20 meters forms a low bank between the deltas. A small area dries up at low water.²³ A similar situation arises with the river Naaf near its eastern coastal border with Burma. The river discharges into the sea between Shapura Point and Cypress Point about a mile southeastward. Where the river enters the sea, two shallow flats have been formed, one known as Shapura Flat and the other, south of Cypress, as Cypress Sands.²⁴ Near them is St. Martin's Island, which is surrounded by a considerable region of very shallow water.²⁵ All these have posed perennial problems for Bangladesh in delineating baselines. However, Dhaka passed the Territorial Waters and Maritime Zones Act in 1974, an act concerning this, and in addition certain rules have been prescribed with particular reference to the UNCLOS III provisions in the Territorial Waters and Maritime Rules of 1977.

Taking into account the geological and topographical peculiarities of the coast and bay, Bangladesh has drawn baselines on the basis of the depth-method. The baselines so formulated have been fixed at ten fathoms extending 16 to 30 miles from the coastline.²⁶ The baselines from which territorial waters shall be measured seaward are straight lines successively linking the baseline points set out in Table 1.

22. However, in the Eleventh Session of UNCLOS III, Bangladesh expressed the position that Article 7 of the LOS Convention cannot preclude the founding of its baseline on depth criteria and bathymetric factors (UNCLOS III Doc. A/CONF. 62/L.140, April 28, 1981). The president of the Conference communicated this as an official document.

23. See 1(1958) UNCLOS I OR 210.

24. See 1(1958) UNCLOS I OR 210.

25. *Ibid.*

26. *The Bangladesh Observer* (Dhaka), May 9, 1977, editorial.

TABLE 1 *Depth-method Baselines Drawn by Bangladesh*

<i>Baseline Point</i>	<i>Geographical Latitude</i>	<i>Coordinates Longitude</i>
No. 1	21°12'00"N	89°06'45"E
No. 2	21°15'00"N	89°16'00"E
No. 3	21°29'00"N	89°36'00"E
No. 4	21°21'00"	89°55'00"E
No. 5	21°11'00"	89°33'00"E
No. 6	21°07'30"N	91°06'00"E
No. 7	21°10'00"N	91°56'00"E
No. 8	20°21'45"N	92°17'30"E

NOTE: Soon after the enactment of the Territorial Waters and Maritime Zones Act, 1974, these baselines were declared by the Bangladesh Ministry of Foreign Affairs (Circular No. Lt-1/3/74).

If the coastline is the baseline of two adjacent states, no conflict will arise in the delimitation of internal waters between them, and the territorial sea will be the water areas in the immediate vicinity of the coastline. Given the topographical features of the coastal sea on the immediate border of Bangladesh and its neighbors, it seems that a part of the coastal sea exists on the landward side of the baselines. The internal waters so formed must be demarcated between the states by some boundary extending from the end of their land boundaries to the extent of the baselines.

Territorial Sea and Contiguous Zone

Bangladesh has taken an active part in the proceedings of UNCLOS III. From the inception of the conference, the country seems to have complied with its provisions. Bangladesh is a supporter of the 12 n.m. territorial sea, and has been observing this limit since 1974. According to the LOS Convention (Article 33), every coastal state is entitled to prescribe a 24 n.m. contiguous zone extending from baselines. But Bangladesh has enacted its contiguous zone to extend 6 n.m. beyond the territorial sea, so it extends only 18 n.m. beyond the baselines. From Bangladesh's baselines, the territorial sea ranges from 28 to 42 n.m. beyond the coast of the country, and its contiguous zone ranges from 34 to 48 n.m. from the coast. These sea zones must be delimited between Bangladesh and its neighbors.

There are no provisions for delimiting sea zones landward of the baselines between two adjacent or opposite states. Delimitation of the

territorial sea between two adjacent or opposite states is covered by Article 15 of the LOS Convention, but the Convention has not adopted provisions for the delimitation of the contiguous zone beyond the territorial sea. Bangladesh's neighbors, India and Burma, are designating sea zones in conformity with the UNCLOS III provisions. From the Bangladesh point of view, the contiguous zone delimited between its neighbors should be 6 n.m. beyond the 12 n.m. territorial sea, but India and Burma say this distance should be 12 n.m. The extent of the contiguous zone beyond the territorial sea must conform to the provisions dealing with this zone, so Bangladesh will have to delimit a 6 n.m. contiguous zone and India and Burma a 12 n.m. zone beyond their 12 n.m. territorial seas. The EEZ for these countries will have to be delimited at 188 n.m. beyond their territorial seas.

In reality, the coastal states are more concerned with the 200 n.m. EEZ than with the 24 n.m. contiguous zone, so it would not be unfair if the boundary of the EEZ between two adjacent states is assumed to be the boundary of the contiguous zone existing outside the territorial sea. Since UNCLOS III does not specify any principle for delimitation of the contiguous zone between two adjacent or opposite states, it is possible to assume that the boundary should be determined according to provisions applicable to delimitation of the territorial sea. However, it would be much more convenient if the boundary for the EEZ and the contiguous zone between two adjacent states were the same. Then the boundary of the contiguous zone between Bangladesh and its neighbors would be delimited subject to the principle for delimiting the EEZs. In any case, there is scope for Bangladesh's neighbors to contradict its stand in connection with the delineation of baselines and the contiguous zone, and it is not surprising that India and Burma object to the Bangladesh stand. It is apparent that the defining of baselines, territorial seas, and the contiguous zones poses problems for Bangladesh.

Exclusive Economic Zone (EEZ) and Continental Shelf

The EEZ extends 200 n.m. from baselines (LOS Convention, Article 57). At present every coastal state can prescribe the continental shelf up to 200 n.m. from baselines, and the regime of the 200 n.m. continental shelf subsumes that of the EEZ. If the continental shelf/margin extends beyond 200 n.m., the coastal state is entitled to fix the outer edge subject to paragraphs 4–8 of Article 76 of the LOS Convention. Where the topography is highly complicated, it is not easy to fix the outer edge of the continental shelf/margin.

The topography of the Bay of Bengal varies greatly. Its sediments, at

16.5 km, are as thick as any in the world.²⁷ The entire territory of Bangladesh is a monsoon area—a low-lying plain—and monsoon rains can fragment soil components, which along with sediment-carrying mountain rivers and tidal surges, cause the enormous deposits in the bay.

The Bay of Bengal occupies an area of 879,375 square miles, and its mean depth is 2,586 meters. The continental slope terminates at less than 3,000 meters depth. To the west of the bay are the Indian states of West Bengal and Orissa, on its southern part is Sri Lanka, and to the east lies Burma. To the south of Burma, and also in the bay, are the Indian Andaman and Nicobar islands. Geologically, these rocky and hilly islands are regarded as the submerged continuation of the outer fold ranges of the Arakan Yoma of Burma.²⁸ To the north and east lies Bangladesh.

The Ganges-Brahmaputra Delta of the Bay of Bengal located at the combined mouths of the Ganges and Brahmaputra rivers is a subject important to both Bangladesh and India on the issues of the continental shelf. To this end, J. P. Morgan and W. G. McIntire state:

[The] plain is subject to excessive flooding by storm surges, causing great loss of life to the fishing population living on the higher sand bars. The tides scour out deep channels and produce much overlapping of sediment on the inside. Huge quantities of sediments are brought in by rivers from the Himalayas and other high mountain ranges to the north. Many of the braided channels in the flood plain have been abandoned, leaving large masses of sands According to J. Morgan (1970) old channels should be ideal places for oil reservoirs if such deposits have been preserved in ancient rocks. The Ganges plain is subject to tectonic activity and small recent faults are found, some of them producing basins.²⁹

As time passes, claims and counterclaims to this area are being advanced by the adjacent states, and its importance is unquestioned in relation to the delimitation of maritime boundaries. In sum, the adjacent location and the concave configuration of the coasts, the presence of islands and mud banks, and the rise of new islands near and off the coasts have made the delimitation of maritime boundaries between Bangladesh and its neighbors an area of conflict.

As a successor state, Bangladesh is complying with certain laws adopted by Pakistan. It may be mentioned that Pakistan is one of the states that claims the continental shelf belongs to its territory.

27. Francis P. Shepard, *Submarine Geology*, third edition (New York: Harper & Row, 1973), pp. 334, 418.

28. See F. J. Monkhouse, *Principles of Physical Geography*, fourth edition (London: London University Press, 1972), p. 342.

29. See Shepard, *Submarine Geology*, p. 168.

Bangladesh has prescribed the continental shelf extending up to the margin and adopted the right to explore the margin and exploit its natural resources, so it regards the continental shelf as part of its territory.³⁰

Geographically, geologically, and geomorphologically it is not easy to apply depth cum distance criteria (LOS Convention, Article 76[4][i]) for fixing basepoints to help measure the outer limit of the continental margin lying in the Bay of Bengal adjoining Bangladesh and its neighbors. That means that the 60 n.m. distance criterion provided for in the convention appears to be applicable.³¹ But it is not possible for Bangladesh or for India to freely extend the continental margin to 350 n.m. from the baselines or 100 n.m. from the 2500-meter isobath (Article 76[5]). Using these criteria, if Bangladesh extends the continental margin, it will overlap the continental margin of India that extends from its mainland and the Andaman and Nicobar islands as well.

From the geological point of view, the continental margin in the Bay of Bengal adjoining Bangladesh extends close to Sri Lanka,³² so while Bangladesh and India will take measures to delimit the continental margin, Sri Lanka may also take an interest in the matter.

While in relation to the Andaman and Nicobar Islands it is necessary for India to delimit the continental margin with Bangladesh, Burma may not stay aloof. Since the Andaman and Nicobar islands are geologically the continuation of the Arakan Yoma, Burma may regard the continental shelf surrounding these islands as a "natural prolongation" of its territory.

From these observations it is clear that there are valid grounds for Bangladesh, India, and Burma to assert claims and counterclaims as to the delimitation of boundaries of the EEZ and the continental shelf/margin.

Conclusion

It goes without saying that the Law of the Sea Convention of 1982 has extended the jurisdiction of the coastal state. The extended sea zones such as the 200 n.m. EEZ and the continental shelf have made the coastal states closer neighbors. Consequently, delimitation of maritime boundaries between adjacent and opposite states has been a burning issue in the Law of the Sea.

30. Territorial Waters and Maritime Zones Act (No. XXVI) 1974, Section 7.

31. The coastal state is entitled to establish the outer edge of the continental margin by drawing a line through fixed points not more than 60 n.m. from the foot of the continental slope. See LOS Convention, Article 76(4)(7).

32. See Shepard, *Submarine Geology*, p. 394.

In this regard Bangladesh is not an exception since it must delimit each of the sea zones and maritime boundaries with its neighbors, India and Burma. As an adjacent state, Bangladesh faces the delimitation of sea zones with India extending from the coast of the latter's mainland—the states of West Bengal and Orissa. Moreover, with respect to the continental shelf/margin, the country must fix the boundary with India as an opposite state, also taking into account the Andaman and Nicobar islands. The situation could also arise with Sri Lanka. India is in an advantageous position because of the convex configuration of its coast. When it comes to delimiting the continental shelf/margin with Bangladesh, the Andaman and Nicobar islands also place India in a favorable position.

Burma is known to have circumscribed a maximum area of sea landward of baselines.³³ In regard to the delimitation of sea zones, particularly the continental shelf/margin between Bangladesh and Burma, interests arising from the Andaman and Nicobar islands must be taken into account. It seems that because of these islands, Bangladesh will have to fix the boundary at a four-point junction measured from the Bangladesh coast, the coast of India's mainland, the coast of the Andaman and Nicobar islands, and the coast of Sri Lanka. It is also true that the boundary of the continental shelf/margin will have to be fixed at a tri-junction measured from the coast of Bangladesh, Burma, and the Andaman and Nicobar islands. Obviously, the delimitation of maritime boundaries is a perennial problem for Bangladesh and its neighbors.

33. See Barry Hart Dubner, *The Law of Territorial Waters of Mid-Ocean Archipelagic States* (The Hague: Martinus Nijthoff, 1976), p. 11. See also Ross D. Eckert, *The Enclosure of Ocean Resources: Economics and the Law of the Sea* (Stanford, Calif.: Hoover Institution Press, 1979), p. 28.

Annex B40

Lucius Caflisch, “Règles générales du droit des cours d’eau internationaux”, *Recueil des Cours: Collected Courses of the Hague Academy of International Law*, Vol. 219 (1989)

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l'Etat auquel elle n'appartenait pas. Lorsque deux îles s'unissent, la question de la souveraineté est résolue en fonction du thalweg. L'emplacement de ce dernier est également déterminant lorsqu'une nouvelle île émerge.

Jurisprudence mince et peu éclairante, pratique conventionnelle disparate, voilà les facteurs qui ont empêché le développement de règles coutumières. D'où la conclusion que les principes généraux de l'acquiescement/estoppel et ceux du titre/exercice effectif de la puissance publique pourraient être appelés à jouer un rôle. Etant donné les difficultés — soulignées à plusieurs reprises — que peut susciter le recours à ces derniers principes, il est toutefois préférable de résoudre la question par traité. Pour assurer le minimum indispensable de stabilité aux frontières fluviales, celles-ci ne devraient se modifier qu'au gré des changements naturels de caractère graduel. Il paraît également indiqué de prévoir une procédure de vérification périodique pour de telles frontières afin d'opérer les ajustements requis.

iv) *Pluralité de bras*

Souvent les fleuves se divisent en plusieurs bras. On se demandera alors lequel de ces bras forme le fleuve principal et quels sont les bras secondaires ou les affluents du cours d'eau. Cette question, examinée au chapitre I¹⁹⁸, se pose avec une acuité particulière lorsqu'une frontière est rattachée à un fleuve sans que l'artère principale de ce dernier soit identifiée: en l'absence d'indication contraire, la frontière doit en effet suivre la branche principale du cours d'eau, c'est-à-dire la plus importante¹⁹⁹. Pour identifier celle-ci, on choisira l'artère la plus large ou profonde²⁰⁰, ou celle dont le débit est le plus élevé²⁰¹, ou le bras le plus facilement navigable²⁰²,

198. Cf. ci-dessus, pp. 34-35.

199. Schroeter, *op. cit.* (note 119), p. 43; sentence arbitrale rendue le 9 décembre 1966 par la reine Elizabeth II, rapport du tribunal arbitral du 24 novembre 1966 en l'affaire de la *Frontière entre l'Argentine et le Chili*, RSA, vol. 16, p. 109 (177).

200. Schroeter (*op. cit.* (note 119), p. 44, n. 188) cite à titre d'exemple l'article 2 du Traité franco-badois du 5 avril 1840.

201. Le même auteur donne en exemple le Traité de limites conclu le 24 mars 1760 entre la France et la Sardaigne, CTS, vol. 41, 1757-1760, p. 401. Cependant, l'article 1 de cet instrument ne semble pas concluant puisqu'il fixe la frontière «naturelle» sur le Rhône au «milieu de son plus grand cours».

202. *Iowa v. Illinois*, 147 US 1, 13 (1893).

en utilisant les critères dégagés dans l'arbitrage de 1966 concernant la *Frontière entre l'Argentine et le Chili*, dont il a été question au chapitre I²⁰³.

v) *Embouchures de fleuves*

Un premier problème qui peut surgir consiste à identifier dans une embouchure la limite formée par le thalweg, au fur et à mesure que l'on passe du milieu fluvial au domaine maritime²⁰⁴.

Un second problème qu'il convient d'examiner est l'incidence du déplacement de l'embouchure d'un fleuve contigu sur la frontière. S'il relève de la question générale de l'effet des altérations physiques subies par les cours d'eau, traitée précédemment²⁰⁵, ce problème comporte cependant un aspect particulier: le point terminal de la frontière fluviale est en principe le point de départ de la limite maritime. Autrement dit, cette dernière est conditionnée par la frontière fluviale qui, toutefois, peut se déplacer. Ce problème se pose, à l'heure actuelle, dans le cadre du *Différend frontalier terrestre, insulaire et maritime entre le Honduras et le Salvador* porté devant une chambre de la Cour internationale de Justice par le compromis du 24 mai 1986²⁰⁶. Le litige a trait au Rio Goascoran qui, depuis son embouchure dans le golfe de Fonseca, est censé former la frontière entre les deux Etats (croquis 12). Le point litigieux est celui de savoir s'il faut retenir le cours actuel du fleuve, comme prétend le Honduras, ou son ancien lit, comme le dit le Salvador. La décision que rendra la Chambre — à supposer qu'elle se prononce sur ce point — contribuera à résoudre le problème, antérieurement évoqué²⁰⁷, de l'effet des modifications subies par les fleuves sur les

203. Voir p. 35.

204. Un problème différent était celui soulevé par le Nicaragua dans le cadre de l'affaire, portée devant la Cour internationale de Justice, relative à la *Sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906* (Honduras/Nicaragua) (sentence reproduite dans *RSA*, vol. 11, p. 101). La sentence de 1906 ayant identifié comme point terminal de la frontière sur l'Atlantique l'« embouchure » du fleuve Segovia ou Coco, le Nicaragua soutint que l'embouchure d'un fleuve n'était pas un point déterminé et qu'en conséquence la sentence n'était pas susceptible d'exécution. La Cour internationale de Justice rejeta cet argument en relevant que le point en cause était précisé par la référence au thalweg du fleuve, également contenue dans la sentence de 1906 (*Sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906*, arrêt du 18 novembre 1960, *CIJ Recueil 1960*, p. 192 (216-217)).

205. Voir ci-dessus, pp. 80-87.

206. *CIJ Recueil 1987*, p. 10.

207. Cf. ci-dessus, pp. 80-87.

Annex B41

W. Michael Reisman & Gayl S. Westerman, *Straight Baselines in Maritime Boundary Delimitation* (1992)

Straight Baselines in Maritime Boundary Delimitation

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C. THE THIRD CONFERENCE ON THE LAW OF THE SEA: THE EXPANSION OF THE STRAIGHT BASELINE REGIME INTO DELTAS AND ARCHIPELAGOS

The Third Law of the Sea Conference, which produced the Law of the Sea Convention of 1982, undertook to revolutionize many features of the public order of the oceans. Unlike the prior Conferences, the Third was not preceded by the consideration of the topic and preparation of a draft by the International Law Commission. Nevertheless, Article 4 of the 1958 Convention served, in a functional sense, as the draft of LOSC Article 7, into which a number of changes were incorporated. Research on the evolution of the changes and additions to the straight baseline regime in the 1982 Convention is more difficult than in prior Conventions because LOS III decided, early in its history, to forgo a complete *procès verbal*. As a result, developments in the Conference must be reconstructed from the documents that were circulated at the time.

The issue of straight baselines commanded relatively little attention, and what little attention it did receive was due entirely to a small group of states. In 1974, during the Caracas Session, the Government of Bangladesh raised the question of baselines largely in terms of its own coastline.

According to the Bangladeshi representative, almost the entire area of Bangladesh constitutes one integrated drainage basin involving a plain tract and a flood-plain which is the confluence of two mighty rivers – the Ganges and Brahmaputra. These two rivers meet and flow in meandering and braided channels into the Bay of Bengal. The combined delta of these two rivers and their numerous tributaries is larger than that formed by the Nile and is in fact the most spectacular and widest coastal plain on the planet. Geo-physical features play a major role in the evolution and behaviour of the coastal regions of Bangladesh which through the ages has been affected and dominated by the impact of nature on its regional hydrology. The dynamics of the rivers of Bangladesh are even more complicated because of the marked influence of the sea. The combined discharge of the Ganges and Brahmaputra system totally alters the flow of the current and the level and surface density of the Bay of Bengal. The rivers of Bangladesh carry down to the Bay a colossal discharge of 1.5 billion tons of silt a year. There is in fact no other sea in the world which is so wholly under the domination of its

tributary rivers. The sea-level during the monsoon period rises by 4 feet at Chittagong, a world record – I am told. Through the mouth of this riverine system flows water swollen by the world's heaviest rainfall. The shores of Bangladesh have consequently experienced the massive impact of several natural phenomena. The cumulative effects of river flood, monsoon rainfall, cyclonic storms and tidal surges have contributed to a continuous process of erosion and shoaling . . .⁶⁸

The results of this geographical and ecological configuration on Bangladesh's coast and coastal front were summarized as follows:

(a) A highly shifting and unstable baseline. As a result of the continuous process of alluvium siltation and sedimentation, the submarine areas off the coast are being built up. Mud-banks and low-tide elevations appear and disappear over relatively short periods of time. The coastline is, therefore, constantly fluctuating.

(b) In terms of channel stability the situation is even more precarious. It is a known fact to most hydrographers and navigators concerned with the Bay of Bengal that off-shore waters of Bangladesh are among the most hazardous to navigate due to the shallowness of the waters and the shifting navigational channels. It is indeed a fact that no mechanized vessel can traverse the waters in a course parallel to the coast. Thus if a ship wanted to proceed within Bangladesh from Chittagong on the east coast to Khulna on the west coast of Bangladesh, it could not do so without proceeding due south from Chittagong to the open sea – then west across the Bay of Bengal and then north to reach Khulna.

An extremely important and remarkable feature for Bangladesh is that the huge amount of silt carried by its rivers into the Bay of Bengal has made it possible for Bangladesh ultimately to dyke and drain in an area which is equal in size to almost two-thirds of Bangladesh. This is the Bangladesh estuarine fan adjoining our coast. This is where nature is patiently laying layer upon layer of

68. *Bangladesh Position on the Question of Baselines, Second Committee Informal Proposals* (Caracas Session, 1974), reprinted in 4 R. PLATZÖDER, *THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA: DOCUMENTS 180* (1983) [hereinafter cited as R. PLATZÖDER].

sedimentation – the foundation of the extension of the Bangladesh delta. Satellites surveying this area have confirmed the possibility of this fact in the very near future. For a country with 75 million people on 55 000 square miles of land the development of this area will constitute not only a necessity but an imperative.⁶⁹

Bangladesh submitted that this configuration meant that there was no stable waterline for the demarcation of landward and seaward areas; that the continual process of alluvion and sedimentation formed mud banks which were so shallow as to be non-navigable by anything other than small boats; that the navigable channels through these mudbanks changed continuously and were more characteristic of river mouths and inland waters.⁷⁰

To deal with this situation, Bangladesh proposed that Article 4 be amended to permit the drawing of straight baselines between points determined by reference to a predetermined depth. At a meeting on 9 July 1974⁷¹ the Bangladeshi representative specifically asked that this method be considered. Two days later, a more general discussion took place, in which a familiar range of views on the baseline regime was expressed. The representative of the Federal Republic of Germany, sounding a theme reminiscent of the ILC discussions, expressed a concern that territorial sea delimitation preserve “as much ocean space as possible for common use.”⁷² In a similar vein, the representative of Honduras said that, “he considered the method using the arc of a circle best suited to the different geographical characteristics of different coastlines and also the most desirable, since it would facilitate navigation.”⁷³ The representative of the United Kingdom, historically a strong proponent of more disciplined baseline delimitation, expressed general satisfaction with the existing regime. But Madagascar, openly acknowledging a preference for larger national maritime zones for economic development purposes, recommended that even more power be given to the coastal state to determine the pertinent

69. *Id.* at 180–1.

70. *Id.* at 181.

71. *Second Committee Summary Records, 2nd Meeting* (1974), reprinted in 5 R. PLATZÖDER para. 16, at 235 (1984).

72. *Second Committee Summary Records, 3rd Meeting* (1974), reprinted in 5 R. PLATZÖDER para. 4, at 236 (1984).

73. *Id.* at 237.

boundaries.⁷⁴ On 16 July the discussion expanded to broader conceptions of boundary delimitation. The representative of Tonga aligned his government with the Indonesian initiative to link the outermost islands of archipelagos with straight baselines.⁷⁵ That afternoon, Bangladesh reaffirmed its initiative to amend the baseline regime to “take account of such geographical and hydrographical peculiarities of the coastal States as had legal relevance.”⁷⁶

In the informal working paper circulated on 17 July 1974, the alternative formulas for a baseline regime reflected these historic antitheses. One alternative formulation would have suppressed the requirement of Article 4 of the 1958 Convention that a coastline be “deeply indented and cut into” and would have replaced it with the less demanding requirement that “the coastline is indented.”⁷⁷ In parallel fashion, that proposed formula would have discarded the requirement that there be “a fringe of islands” and henceforth require only that “there are islands”. This sort of revision would have facilitated straight baseline delimitation and probably have increased its use.

Another alternative formula proposed a mix and match approach.

2. A coastal State with coasts of great lengths and complicated topography may employ the method of mixed baselines, i.e. [*sic*] drawing the baseline in turn by the methods provided for in article . . . and this article to suit different conditions.⁷⁸

Since Article 4 had already conceived of a coastline in terms of possibly varying “localities,” only certain of which would qualify for application of the straight baselines option, it is difficult to see what additional benefits this formula would have provided. The alternative formula would also have relaxed the limitation in Article 4(3) of the 1958 Territorial Sea Convention by permitting baselines to be drawn to and from low-tide elevations “where States have historically and

74. *Id.* at 236–8.

75. *Second Committee Summary Records, 4th Meeting* (1974), reprinted in 5 R. PLATZÖDER para. 44, at 243 (1984).

76. *Second Committee Summary Records, 5th Meeting* (1974), reprinted in 5 R. PLATZÖDER para. 10, at 245 (1984).

77. *Formulation of Main Trends, Informal Working Paper No. 1, Second Committee, Formula B* (1974), reprinted in 3 R. PLATZÖDER 206 (1982).

78. *Id.* at 207.

consistently applied low-tide elevation for the purpose of drawing straight baselines.”⁷⁹ Since the practice of straight baselines had only been given a conditional official sanction in 1951 and a codified and authoritative form in 1958, the qualifications “historically and consistently” would appear to have been intended to have little limiting effect.

On 17 July the representative of Indonesia reaffirmed his government’s commitment to a concept of archipelagic waters, to be enclosed by straight lines.⁸⁰ That afternoon, the representative of the Republic of Vietnam expressed support for the Bangladeshi initiative and, going even further, said that “baselines should be drawn between the outermost points of the national territory, whether continental or insular.”⁸¹

Five days later, another informal working paper again summarized the emerging areas of agreement and disagreement in the baseline regime. In this document, the effort to relax the geographical restrictions of Article 4(1) of the 1958 Convention and to extend Article 4(3) to low-tide elevations which are not the sites of lighthouses or similar installations are still only alternatives. But the Bangladeshi initiative now appears as an apparently uncontested “single formula.”

In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding 10 fathom line.⁸²

In another “single formula,” the prohibition in Article 4(5) against straight baselines being applied “to cut off from the high seas the territorial sea of another State” was relaxed. The new formula would apparently permit straight baselines to have this consequence, subject

79. *Id.*

80. *Second Committee Summary Records, 6th Meeting (1974), reprinted in 5 R. PLATZÖDER para. 7, at 250 (1984).*

81. *Second Committee Summary Records, 7th Meeting (1974), reprinted in 5 R. PLATZÖDER para. 11, at 255 (1984).*

82. *Formulation of Main Trends, Informal Working Paper No. 1/Rev. 1, Second Committee, Provision VIII (1974), reprinted in 3 R. PLATZÖDER 213 (1982).*

to a functional easement of necessity, operating *eo ipso*, in favor of the state that would otherwise be cut off. On the positive side, the earlier concern of Lauterpacht that transit rights be preserved through newly created internal waters was finally addressed:

Where the establishment of a straight baseline in accordance with article . . . has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles . . . to . . . shall exist in those waters.⁸³

On 25 July, Greece submitted draft articles, whose major innovation would have been a blanket extension of the straight baseline option of Article 4 of the 1958 Convention to archipelagos.⁸⁴

Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway had been consulting informally on certain issues and, on 26 July, submitted their draft articles as a framework for discussion. These articles essentially endorsed the 1958 straight baseline regime, but would have extended it to an archipelagic state "constituted wholly or mainly by one or more archipelagos."⁸⁵ Article 6(1) of this document provided:

1. An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the baselines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured.⁸⁶

Article 7 of the same document territorialized the waters on the inner side of the archipelagic baseline, subject to a right of innocent passage for a general and undifferentiated category of "foreign ships".

Periodically, there were counteractions. On 29 July, the Soviet bloc submitted a draft which would have incorporated the language of

83. *Id.* at 214.

84. *Second Committee Proposals, Greece: Draft Article*, U.N. Doc. A/CONF.62/C.2/L.22 (1974), reprinted in 5 R. PLATZÖDER 143 (1984).

85. *Document A/CONF.62/L.4; Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway: Working Paper*, 3 THIRD U.N. CONFERENCE ON THE LAW OF THE SEA, OFFICIAL DOCUMENTS 81-3, U.N. Sales No. E.75.V.5.

86. *Id.* at 82.

Article 4 of the 1958 Convention.⁸⁷ This appeared to be, by implication, a demurrer to the proposals to relax the restraints on straight baselines. On 30 July, Fiji, New Zealand, Tonga and Western Samoa proposed a provision which would have allowed atolls or islands with fringing reefs to use the seaward edge of the reef as the baseline.⁸⁸ On 31 July, a heterogeneous group of developed and developing, coastal and landlocked states submitted a draft indicating a preference for the baseline regime of 1958.⁸⁹

The intermittent efforts at integrating the various proposals into a more coherent form produced another informal working paper on August 1.⁹⁰ This document reflected the key differences that had emerged. On 9 August, four island states circulated a draft with a detailed archipelagic straight baseline regime. The parallels between the language of this draft article and Article 4 of the 1958 Territorial Convention are quite striking.

Article 2

1. An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the baselines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured.
2. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

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87. *Second Committee Proposals, Bulgaria, German Democratic Republic, Poland, Union of Soviet Socialist Republics: Draft Articles on the Territorial Seas*, U.N. Doc. A/CONF.62/C.2/L.26 (1974), reprinted in 5 R. PLATZÖDER 146 (1984).
 88. *Second Committee Proposals, Fiji, New Zealand, Tonga and Western Samoa: Draft Articles on Islands and on Territories Under Foreign Domination or Control*, U.N. Doc. A/CONF.62/C.2/L.30 (1974), reprinted in 5 R. PLATZÖDER 153–4 (1984).
 89. *Second Committee Proposals, Austria, Belgium, Bolivia, Burundi, Byelorussian Soviet Socialist Republic, Czechoslovakia, Finland, Germany (Federal Republic of), Hungary, Laos, Lesotho, Luxembourg, Mali, Mongolia, Netherlands, Paraguay, Singapore, Swaziland, Sweden, Switzerland, Uganda, Upper Volta and Zambia: Draft Articles on the Territorial Sea*, U.N. Doc. A/CONF.62/C.2/L.33 (1974), reprinted in 5 R. PLATZÖDER 155 (1984).
 90. *Formulation of Main Trends, Informal Working Paper No. 1/Rev.2, Second Committee* (1974), reprinted in 3 R. PLATZÖDER 226–43 (1982).

3. Baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

4. The system of straight baselines shall not be applied by an archipelagic State in such a manner as to cut off the territorial sea of another State as determined under article . . . of chapter . . . of this Convention.

5. If the drawing of such baselines encloses a part of the sea which has traditionally been used by an immediately adjacent neighbouring State for direct communication, including the laying of submarine cables and pipelines, between one part of its national territory and another part of such territory, the continued right of such communication shall be recognized and guaranteed by the archipelagic State.

6. An archipelagic State shall clearly indicate its straight baselines on charts to which due publicity shall be given.⁹¹

All the waters on the inner side of these baselines, regardless of their depth or distance from the coast, were to belong to the archipelagic state.

At a meeting on 12 August the issue of archipelagos dominated the discussion. Japan appeared willing to accept the archipelagic concept, but proposed objective limitations in the form of a predetermined water/land ratio and a limitation on the maximum length of baselines to 48 nautical miles, subject to exceptions in some circumstances.⁹² Bulgaria opposed the use of drying reefs as basepoints.⁹³ The Netherlands expressed general sympathy for the demands of archipelagic states.⁹⁴ India, as well, expressed sympathy, on the condition that the areas enclosed be reasonable and that prior rights of free transit in the areas be respected.⁹⁵

91. *Second Committee Proposals, Fiji, Indonesia, Mauritius and Philippines: Draft Articles Relating to Archipelagic States*, U.N. Doc. A/CONF.62/C.2/L.49 (1974), reprinted in 5 R. PLATZÖDER 169 (1984).

92. *Second Committee Summary Records, 36th Meeting* (1974), reprinted in 5 R. PLATZÖDER para. 15, at 397 (1984).

93. *Id.* para. 21, at 397-8.

94. *Id.* paras. 25-7, at 398.

95. *Id.* para. 41, at 399.

At the conclusion of the meeting, Portugal expressed itself in favor of the archipelagic baseline regime under discussion. Burma was sympathetic, but supported the archipelagic baseline regime only for mid-ocean archipelagos, constituting a state, not for oceanic archipelagos belonging to a continental state. Burma was also concerned that a quantitative limitation on the length of lines not be applied to Article 4 baseline applications.⁹⁶ The Soviet Union expressed itself in favor of archipelagic baselines, subject to some quantitative limitation.⁹⁷ Pakistan expressed sympathy and felt that any delimitation regime should be based ultimately on the organic unity of archipelagic states.⁹⁸ Canada also was favorable but felt that clear criteria would have to be prescribed.⁹⁹ Laos supported a regime of straight baselines from the outermost points of an archipelago, with no limitations.¹⁰⁰ Argentina expressed sympathy with the concerns of archipelagic states, but cautioned that the interests of the international community with regard to passage had to be protected.¹⁰¹

Separate documents circulated by Thailand¹⁰² on 15 August and Malaysia on 16 August raised issues concerning protection of the affected rights of proximate states when archipelagic baselines were drawn.¹⁰³ They are not of concern to a study of the emerging regime of delimitation, but do serve to confirm the general perception that a consensus in favor of such baselines was emerging. On 20 August the Bahamas, in draft Article 2, proposed that the archipelagic state might use outermost islands, drying reefs, low-tide elevations, non-navigable continuous reefs or shoals as basepoints.¹⁰⁴

96. *Second Committee Summary Records, 37th Meeting* (1974), reprinted in 5 R. PLATZÖDER para. 8, at 402 (1984).

97. *Id.* paras. 9–14, at 402–3.

98. *Id.* paras. 45, 47, at 406.

99. *Id.* para. 61, at 407.

100. *Id.* para. 79, at 408.

101. *Id.* paras. 82–3, at 408–9.

102. *Second Committee Proposals, Thailand: Draft Articles on Archipelagos*, U.N. Doc. A/CONF.62/C.2/L.63 (1974), reprinted in 5 R. PLATZÖDER 176 (1984).

103. *Second Committee Proposals, Malaysia: Amendments to Document A/CONF.62/C.2/L.49*, U.N. Doc. A/CONF.62/C.2/L.64 (1974), reprinted in 5 R. PLATZÖDER 176 (1984).

104. *Second Committee Proposals, Bahamas: Draft Articles on Archipelagic States*, U.N. Doc. A/CONF.62/C.2/L.70 (1974), reprinted in 5 R. PLATZÖDER 180 (1984).

By 22 August, a successor informal working paper summarized areas of emerging consensus and disagreement, this time addressing the specific straight baseline regime for archipelagos. Agreement appears to have been reached with regard to the requirement that archipelagic straight baselines not depart to any appreciable extent from the general configuration of the archipelago, with regard to basepoints and with regard to consequences for third states. But there was still disagreement on which states qualified for this regime. Formula A restricted the option to archipelagic states. Formula C would have extended it to a state which included but was not exclusively composed of an archipelago.¹⁰⁵

A comparable working paper on straight baselines in the regime established in Article 4 of the 1958 Territorial Sea Convention was issued on 26 August.¹⁰⁶ It continued to reflect the pattern of agreement and disagreement found in its predecessor. The differences were still not resolved in a working paper prepared by the Second Committee on 15 October, "to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted."¹⁰⁷ But some progression was noted with regard to archipelagic straight baseline regimes. The controversy over which states could benefit from the regime continued, as did the question of appropriate basepoints.

By April 1975, some progress in negotiations could be detected. A revised consolidated text on baselines of 9 April 1975 discarded the alternative formula which would have suppressed the requirement that a coastline be "deeply indented and cut into" and that there be a "fringe" of islands.¹⁰⁸ But the effort to amend Article 4(3) to allow low-tide elevations without lighthouses or similar installations to be used as basepoints won approval. The criteria of historical and

105. *Formulation of Main Trends, Informal Working Paper No. 8/Rev. 1*, Second Committee, Provision I (1974), reprinted in 3 R. PLATZÖDER 452 (1984). See *infra* Chapter 5, text accompanying note 373, for a discussion of state practice re: archipelagos.

106. *Formulation of Main Trends, Informal Working Paper No. 1/Rev. 2**, Second Committee (1974), reprinted in 3 R. PLATZÖDER 244-62 (1982).

107. *Main Trends, Second Committee* U.N. Doc. A/CONF.62/C.2/WP.1 (1974), reprinted in 4 R. PLATZÖDER 3 (1983).

108. *Second Committee Blue Papers, Revised Consolidated Text on Baselines*, U.N. Doc. C.2/Blue Paper No. 4 (1975), reprinted in 4 R. PLATZÖDER 126-8 (1983).

consistent application, which might well have deprived the innovation of wide application, were, however, replaced by a criterion that the basepoints from and to which baselines have been drawn must have received “general international recognition.”¹⁰⁹ The compromise solution is interesting and, as we shall see in our discussion of possible interpretations, may have significance in the construction of the new regime. Provision 5, paragraph 2 affirmed an earlier initiative and permitted the coastal state to mix and match.

A coastal State may employ the method of mixed baselines i.e. [*sic*] drawing the baseline in turn by the method provided for in article . . . [provision 4] and this article to suit different conditions.¹¹⁰

But the effort to extend the coastal state’s option of using straight baselines and closing off theretofore high seas in return for an easement of necessity was not incorporated. This essential formula was confirmed in a text presented by the Chairman of the Second Committee on 7 May 1975.¹¹¹ In that same document, a consolidated regime for archipelagic straight baselines was set out in then Articles 117 and 118. For the first time, the essential contours of this part of the straight baseline regime emerged. The option for its use was limited to a state constituted wholly by one or more archipelagos and might include other islands.¹¹²

Article 118 provided:

1. An archipelagic State may draw straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that such baselines enclose the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between one to one and nine to one.
2. The length of such baselines shall not exceed 80 nautical miles, except that up to . . . per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

109. *Id.* at 126.

110. *Id.*

111. *Internal Single Negotiating Text/Part II*, pt. I, sec. II, art. 6 [straight baselines]; pt. VII, sec. I, arts. 117–35 [archipelagic baselines], U.N. Doc. A/CONF.62/WP.8/PART II (1975), *reprinted in* 1 R. PLATZÖDER 21, 37–40 (1982).

112. *Id.* at article 117(2)a.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
4. Baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
5. The system of straight baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
6. The archipelagic State shall clearly indicate its straight baselines on large-scale charts, deposited with the Secretary-General of the United Nations, who shall give due publicity thereto.
7. If the drawing of such baselines encloses a part of the sea which has traditionally been used by an immediately adjacent neighbouring State for direct access and all forms of communication, including the laying of submarine cables and pipelines, between two or more parts of the territory of such State, the archipelagic State shall continue to recognize and guarantee such rights of direct access and communication.
8. For the purposes of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.¹¹³

Discussions at the Conference after May, 1975 tended to concentrate on the maximum length of straight baselines in the archipelagic context and the percentage of lines which may exceed that maximum. Thus, in April 1976, the Philippines proposed that the maximum length of archipelagic straight baselines not exceed 100 nautical miles with a 5 per cent allowance for lines of up to 125 nautical miles.¹¹⁴ On 29 April 1976, Malaysia, virtually acknowledging the certainty of the archipe-

113. *Id.* article 118.

114. *Second Committee Informal Proposals, Part VII: Archipelagos, Section I, Archipelagic States, Article 118* (1976), reprinted in 4 R. PLATZÖDER para. 2, at 335 (1983).

logic baseline regime, sought to protect its existing rights against a new seaward maritime zone which might prejudice them by advocating the use of a text based on “all existing rights which *that* State has traditionally exercised . . .”¹¹⁵

In Article 119 of the revised single negotiating text,¹¹⁶ the new archipelagic regime was set forth without, however, the protections which states in the position of Malaysia had sought. Some remedy for Malaysia’s problem was found in the ICNT of 15 July 1977, where Article 47(5) appears:

The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.¹¹⁷

By 1980, those rights were reinforced in the draft Convention (informal text) Article 47(7):

If a certain part of the archipelagic water of an archipelagic State lies between two parts of an immediately adjacent neighboring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated under agreement between those States shall continue and be respected.¹¹⁸

With regard to the straight baseline regime of Article 4 of the 1958 Territorial Sea Convention, the equivalent provision in the 1982 Convention, Article 7, relaxed several restraints. Paragraphs 1, 3, 5 and 6 replicate the earlier Convention. Paragraph 2 deals with unstable coastlines and, in effect, allows baselines to be established offshore, as Bangladesh had urged.

115. *Second Committee Proposals, Malaysia: Amendment to Document A/CONF.62/C.2/L.49**, U.N. Doc. A/CONF.62/C.2/L.92 (1976), reprinted in 5 R. PLATZÖDER 200 (1984).

116. *Revised Single Negotiating Text/Part II*, art. 119, U.N. Doc. A/CONF.62/WP.8/REV.1/PART II (1976), reprinted in 1 R. PLATZÖDER 234 (1982).

117. *Informal Composite Negotiating Text/Revision 1*, UNCLOS III, U.N. Doc. A/CONF.62/WP.10/Rev.1 (1979), reprinted in 1 R. PLATZÖDER 408 (1982).

118. *Informal Composite Negotiating Text, Part IV: Archipelagic States*, U.N. Doc. A/CONF.62/WP.10 (1977), reprinted in 1 R. PLATZÖDER art. 47, para. 7, at 312 (1982).

Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.¹¹⁹

Paragraph 4 relaxes the prohibition on locating basepoints on land which is not consistently above water.

Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of base-lines to and from such elevations has received general international recognition.¹²⁰

D. CONCLUSION

The concern of many states about the unlimited length of straight baselines, which had fuelled many of the International Law Commission debates in the 1950s, surfaced again during LOS III. But this time, the debate centered on the length of *archipelagic* straight baselines, resulting in the complex land/water ratio and baseline length provisions of LOSC Article 47. LOSC Article 7 remains free of any limitation on the length of straight baseline segments or their distance from the coast. This absence of limitation, combined with the other relaxations noted above, has resulted in even broader interpretations of the straight baseline regime, despite the fact that many explicit proposals to widen its application by deleting the “deeply indented and cut into” and “fringe of islands” requirements were rejected by LOS III. In Chapter 4, we advocate a strict interpretation of the straight baseline regime over a permissive one and illustrate how the language of Article 4 (LOSC Article 7) can be used effectively to restrain baseline abuse.

119. *Informal Composite Negotiating Text/Revision 2*, UNCLOS III, U.N. Doc. A/CONF.62/WP.10/Rev. 2 (1980), reprinted in 2 R. PLATZÖDER 24 (1982).

being used to enclose very wide bays and indentations along virtually smooth coasts (see Fig. 5.31). The lines closing Pond Inlet, Lancaster Sound, Lady Ann Strait, and the indentations on Devon Island would appear to be impermissible.¹⁰⁷

Although portions of the Canadian coast along the Labrador Sea are both deeply indented and fringed with islands (see Fig. 5.32), many baseline segments¹⁰⁸ depart very appreciably from the general direction of the coast. Most segments make use of islets or rocks as basepoints, rather than points on the mainland or an appropriate island fringe. There appears to be no justification for the lines drawn between segments 151–60.

(2) *Burma*¹⁰⁹

Portions of the coast of Burma meet the deeply-indented or island-fringe tests but the baseline system is only marginally related to the coast. Except for a thirty-mile section from the Pakistan border at the Naaf River to point (a) on Oyster Island (not pictured) where the baseline is the low-water mark, the remainder of the Burmese coast has been replaced by 21 straight baseline segments totalling 826.4 n.m. The average length of the segments is nearly 40 n.m.

The most reasonable part of the system has been established along the Arakan coast on the Bay of Bengal (not pictured), sections of which, however, only arguably meet the deeply indented test. Here, straight baseline segments have been drawn which deviate from the general direction of the coast from 4° to 15° and are located from eight to 20 nautical miles off-shore. The Burmese system violates Article 4 (LOSC Article 7) most flagrantly between points (A) and (B) across the Gulf of Martaban, where the world's longest straight baseline claim has been established (222.3 nautical miles), and between segments (A) and (K) along the so-called Mergui Archipelago, where the baselines deviate radically from the coast to pick up small non-fringing islands (see Fig. 5.33). For example, segment (E)–(F)

107. See *infra* Fig. 5.31, segs. 105–13.

108. See *infra* Fig. 5.32, segs. 19–44 (not pictured), 151–2, 153–4 and 158–60.

109. See DOD REFERENCE MANUAL, *supra* note 8, at 2-56 to 2-62 and accompanying map; BUREAU OF INTELLIGENCE & RESEARCH, U.S. DEPT OF STATE, PUB. NO. 14, LIMITS IN THE SEAS (1978). Readers should note that Burma has changed its name to *Myanmar*. Because all standard geographical references have to date retained its former name, we have retained it herein.

deviates 38° from the general direction of the coast. Segment (B)–(C) is 80.8 n.m. long, is located nearly 20 n.m. from the mainland, and deviates 13° from the general direction of the coast. Basepoint (F) is located on an island over 75 n.m. from the coast. Segment (F)–(G) is 71.1 n.m. long and is totally unrelated to any island fringe. The increase in continental shelf/EEZ area gained by these excessively long baselines, represented by the striated area on Fig. 5.33, amounts to almost 6000 square nautical miles. The increase in area of waters improperly internalized is correspondingly large.

(3) *Cambodia*¹¹⁰

Although an argument might be made that the Cambodian coast is deeply indented or fringed with islands in the immediate vicinity in certain localities, the Cambodian straight baseline claim does not use *these* islands as basepoints. Segments 1 through 4 in the Gulf of Thailand (see Fig. 5.34), produce an extreme departure from the general direction of the coast. The waters enclosed could not have been legitimately internalized under any prior boundary regime. The common boundary with Vietnam in the Gulf has yet to be negotiated, but it is possible that the two baseline claims will be joined in some way between the Vietnamese island of Dao Tho Chu and the Cambodian island of Poulo Wai. This combination of impermissibly seaward baselines will significantly affect future negotiations with Thailand over continental shelf rights in the Gulf of Thailand. Based on the approach taken to the continental-shelf dispute between Libya and Malta by the ICJ in 1985,¹¹¹ it is highly unlikely that the putative Cambodian claim will be given full weight either in negotiations between Thailand and Cambodia on the delimitation of a common shelf/EEZ boundary or in any case brought before an international tribunal.

(4) *Chile*¹¹²

Parts of the Chilean coastline plainly fall within the conception of the threshold tests of the straight baseline provision (see Fig. 5.35). In

110. See DOD REFERENCE MANUAL, *supra* note 8, at 2-63 to 2-67 and accompanying map.

111. Concerning the Continental Shelf (Libya v. Malta), 1985 I.C.J. 13.

112. See DOD REFERENCE MANUAL, *supra* note 8, at 2-93 to 2-97 and accompanying map; ATLAS OF THE STRAIGHT BASELINES, *supra* note 9, at 31-2.

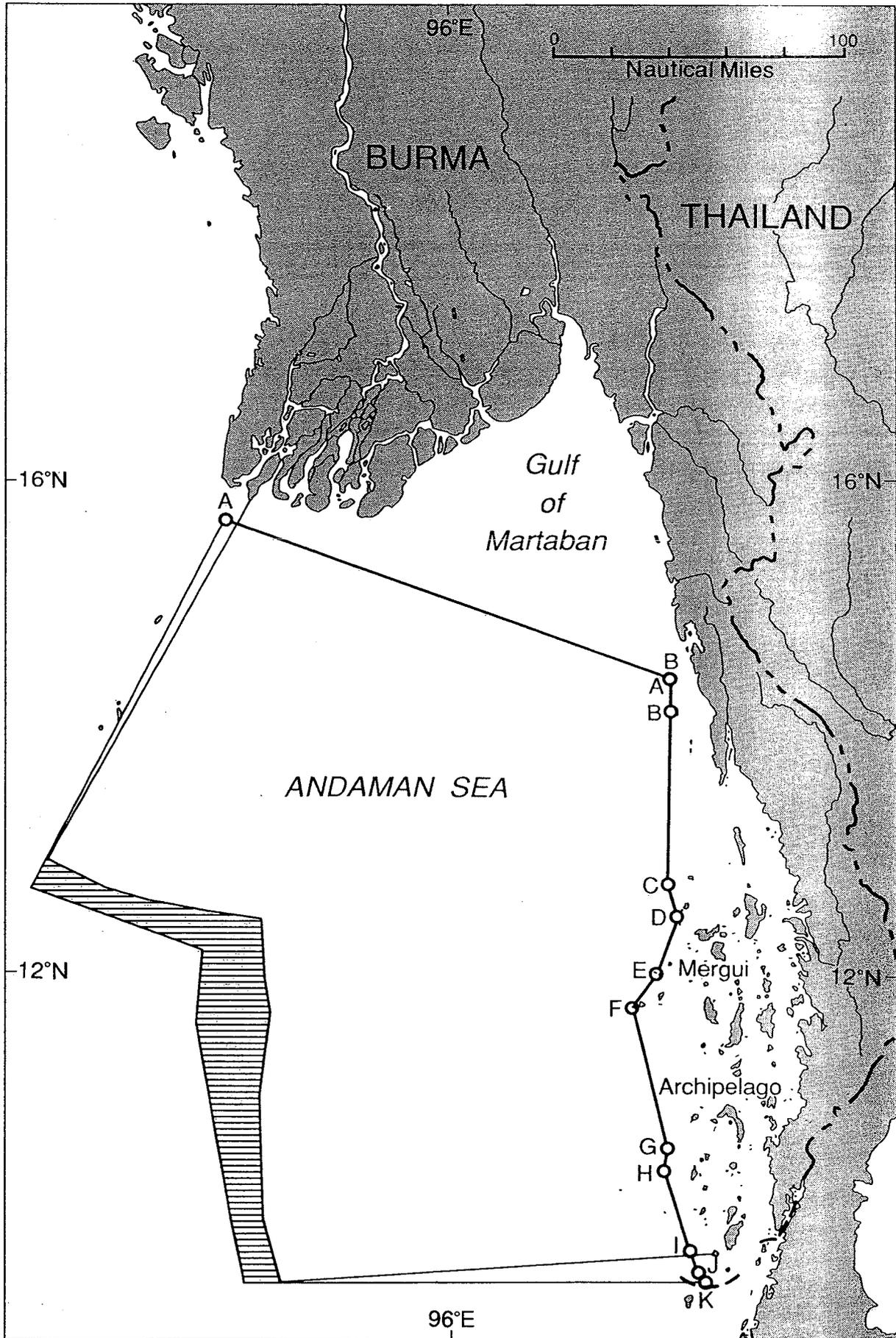


Figure 5.33 Burma

Annex B42

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**Center for Oceans Law and Policy
University of Virginia School of Law**

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ON THE LAW OF THE SEA
1982**

A COMMENTARY

Volume II

**Articles 1 to 85
Annexes I and II
Final Act, Annex II**

Satya N. Nandan and Shabtai Rosenne

Volume Editors

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Assistant Editor



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*Article 76**Definition of the continental shelf*

1. The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by

straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by co-ordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

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

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

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Drafting Committee

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34. United States (1975, mimeo.). Reproduced in XI Platzöder 500.
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38. Japan ([1976], mimeo.), article 64 (RSNT II). Reproduced in IV Platzöder 468.
39. C.2/Informal meeting/14 (1978, mimeo.), article 76 (USSR). Reproduced in V Platzöder 20.
40. NG6/1 (1978, mimeo.), article 76 (Ireland). Reproduced in IX Platzöder 370.
41. NG6/2 (1978, mimeo.), article 76 [para. 1] (The Arab Group). Reproduced in IX Platzöder 371.
42. NG6/3 (1978, mimeo.), article 76 (Seychelles). Reproduced in IX Platzöder 372.
43. NG6/4 (1979, mimeo.), article 76 (Denmark). Reproduced in IX Platzöder 372.
44. NG6/5 (1979, mimeo.), article 76, paras. 3(c) and 5 (Sri Lanka). Reproduced in IX Platzöder 374.
45. NG6/8 (1979, mimeo.), article 76 (USSR). Reproduced in IX Platzöder 377.
46. NG6/9 (1979, mimeo.), article 76, para. 5 (USSR). Reproduced in IX Platzöder 379.
47. NG6/10 (1979, mimeo.), article 76, para. 4(a) (Sri Lanka). Reproduced in IX Platzöder 379.
48. NG6/11 (1979, mimeo.), article 76, para. 5 (Argentina, Australia, Canada, India, Ireland, New Zealand, Norway, United Kingdom, United States of America, and Uruguay). Reproduced in IX Platzöder 380.
49. NG6/14 (1979, mimeo.), article 76, para. 5 (Bulgaria). Reproduced in IX Platzöder 382.
50. NG6/16 (1979, mimeo.), article 76, paras. 3 and 5 (Japan). Reproduced in IX Platzöder 383.
51. NG6/17 (1979, mimeo.), article 76, paras. 5 and 7 (Singapore). Reproduced in IX Platzöder 384.
52. NG6/18 (1979, mimeo.), article 76, paras. 1 and 3 (China). Reproduced in IX Platzöder 384.
53. Group of 43 Margineers (1980, mimeo.), article 76, para. 3. Reproduced in IV Platzöder 524.
54. Australia ([1980], mimeo.), article 76, para. 3. Reproduced in IV Platzöder 524.
55. NG6/21 (1980, mimeo.), article 76, paras. 3 and 5 *bis*. Reproduced in IX Platzöder 389.

56. Soviet Union (1980, mimeo.), article 76, paras. 3 and 5 *bis*. Reproduced in XI Platzöder 574; and IV Platzöder 524.
57. Anonymous (1980, mimeo.) [Chairman NG6]. Reproduced in XI Platzöder 576; and IV Platzöder 525.
58. Federal Republic of Germany (1980, mimeo.), article 76, para. 8. Reproduced in IV Platzöder 527.
59. C.2/Informal Meeting/72 (1982, mimeo.), article 76, paras. 1 and 3 (China). Reproduced in V Platzöder 76.

COMMENTARY

76.1. Article 76 provides the new definition of the continental shelf. It establishes that the continental shelf comprises the seabed and subsoil beyond the territorial sea of a coastal State “throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines . . . where the outer edge of the continental margin does not extend up to that distance.” Thus a coastal State may apply either a geomorphological criterion or a distance criterion in determining the outer limit of its continental shelf. On the basis of the geomorphological criterion, coastal States have rights beyond 200 nautical miles to the outer edge of the continental margin. On the basis of the distance criterion, where the continental margin does not extend up to 200 nautical miles, the continental shelf of a coastal State extends to that distance, regardless of the geomorphology of the seabed and subsoil. The introduction of these criteria represents a significant change from the 1958 Convention on the Continental Shelf, which describes the continental shelf in relation to water depth and exploitability (see paras. VI.5 and VI.6 above).

Article 76 also introduces some precision with respect to the delineation of the outer limits of the continental shelf, based on the determination of the outer edge of the continental margin. In particular, the article prescribes the technical criteria by which a coastal State is to establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles.

76.2. Article 1 of the 1958 Convention on the Continental Shelf (Source 1) describes the “continental shelf,” for the purposes of that Convention, as referring:

- (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

The basic criteria in that description involved the depth of the submarine area and exploitability of its natural resources beyond that depth. The

inherent ambiguity and imprecision of the exploitability criterion was subsequently recognized in General Assembly resolution 2574 A (XXIV) of 15 December 1969 (see further para. VI.6 above).

76.3. From the beginning of the work of the Sea-Bed Committee, there was widespread agreement that the establishment of an international regime for the seabed beyond the limits of national jurisdiction would require a more precise definition of the outer limits of the continental shelf.¹ On this issue, the major division was between those States which wanted to base the outer limits of the continental shelf on a criterion of distance from the coast, and those wishing to introduce geomorphological criteria.²

Proposals were submitted which envisaged coastal States making claims beyond 200 miles. The Declaration of Santo Domingo retained the definition of the continental shelf contained in the 1958 Convention. It also urged the Latin American delegations in the Sea-Bed Committee to promote “a study concerning the advisability and timing for the establishment of precise outer limits of the continental shelf taking into account the outer limits of the continental rise.”³

76.4. At the 1973 session of the Sea-Bed Committee, draft treaty articles submitted by three Latin American States (Source 2) went a step further in describing the continental shelf as “the sea-bed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to the outer limits of the continental rise bordering on the ocean basin or abyssal floor.”

A proposal by the USSR (Source 3) contained the following “basic provisions” on the outer limit of the continental shelf:

1. The outer limit of the continental shelf may be established by the coastal State within the 500-metre isobath.
2. In areas where the 500-metre isobath referred to in paragraph 1 hereof is situated at a distance less than 100 nautical miles measured from the baselines from which the territorial sea is measured, the outer limit of the continental shelf may be established by the coastal State by a line every point of which is at a distance from the nearest point of the said baselines not exceeding 100 nautical miles.
3. In areas where there is no continental shelf, the coastal State may have the same rights in respect of the sea-bed as in respect of the continental shelf, within the limits provided for in paragraph 2 hereof.

¹ See, e.g., SBC Report 1969, Part Two, para. 34, at 16; and I SBC Report 1973, Annex I (Report of Sub-Committee I), para. 2, at 13.

² The latter position led to the establishment of the Group of Broad-Shelf States, also known as the “Margineers.” Its membership included Argentina, Australia, Brazil, Canada, Iceland, India, Ireland, Madagascar, New Zealand, Norway, Sri Lanka, the United Kingdom and Venezuela. See further Volume I of this series, at 76.

³ A/AC.138/80, Continental Shelf, para. 3, reproduced in SBC Report 1972, at 70, 72 [approved by the Specialized Conference of the Caribbean Countries on Problems of the Sea].

The maximum outer limit was to be the 500-meter isobath. Where a coastal State had a narrow continental shelf or no continental shelf, the same rights would apply to the seabed, to a maximum distance of 100 nautical miles.

A proposal by China (Source 4) made provision for the limits of the continental shelf in general, more flexible terms. That proposal read:

(1) By virtue of the principle that the continental shelf is the natural prolongation of the continental territory, a coastal State may reasonably define, according to its specific geographical conditions, the limits of the continental shelf under its exclusive jurisdiction beyond its territorial sea or economic zone. The maximum limits of such continental shelf may be determined among States through consultations.

That was the first proposal which referred to the continental shelf as the “natural prolongation” of the continental territory.⁴ Its limits were to be defined “according to [the coastal State’s] specific geographical conditions” and through consultations among States. It also applied to the limits of the continental shelf beyond the territorial sea or economic zone.

Australia and Norway (Source 5) defined the area of the continental shelf over which a coastal State has rights by reference to the economic zone:

the coastal State has the right to retain, where the natural prolongation of its land mass extends beyond the (economic zone—patrimonial sea), the sovereign rights with respect to that area of the sea-bed and the subsoil thereof which it had under international law before the entry into force of this convention: such rights do not extend beyond the outer edge of the continental margin.

That proposal also referred to the “natural prolongation” of the land territory, and provided that coastal State rights to that area did not extend beyond the “outer edge of the continental margin.”

A proposal by Argentina (Source 6) made express mention of the two principal criteria to be considered—geomorphology and distance—in providing that:

The continental shelf comprises the bed and subsoil of the submarine areas adjacent to the territory of the State but outside the area of the territorial sea, up to the outer lower edge of the continental margin

⁴ Reference to the continental shelf as the “natural prolongation” of the land territory was first made in the judgment of the International Court of Justice in the *North Sea Continental Shelf* cases, in which the Court wrote:

[W]hat the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it—namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land.

1969 ICJ Reports 3, 22, para. 19.

During these debates the point was made that:

The only solution was to recognize the sovereign rights of coastal States in the continental shelf right up to the continental margin or rise. Where that margin was at a distance exceeding 200 miles from the baseline, provision could be made for the requirements of developing land-locked States and developing geographically disadvantaged States by using a revenue-sharing system.¹²

Although the concept of revenue sharing had been raised in the Sea-Bed Committee (see para. 82.2 below), this was the first suggestion to limit its benefits to developing landlocked States and geographically disadvantaged States. As the Conference proceeded, it became increasingly clear that there was a close link between acceptance of coastal State jurisdiction over the resources of the continental shelf and a system of revenue-sharing with respect to the exploitation of the continental shelf beyond 200 miles.

A proposal submitted directly to the Plenary by nine States (Source 8) contained, *inter alia*, a definition of the continental shelf which read:

2. The continental shelf of a coastal State extends beyond its territorial sea to a distance of 200 miles from the applicable baselines and throughout the natural prolongation of its land territory where such natural prolongation extends beyond 200 miles.

That definition also employed the notion of the continental shelf as the “natural prolongation” of a coastal State’s land territory, including where it extends beyond 200 miles. Introducing those draft articles, Canada observed that the definition reflected both customary and conventional international law. “It was both a legal and geomorphological concept and . . . was intended as a basis of discussion to replace the elastic and open-ended exploitability criterion.”¹³ It drew on the language used by the International Court of Justice (ICJ) in the 1969 *North Sea Continental Shelf* cases. That judgment was significant in that it referred, in more than half a dozen instances, to the natural prolongation of the land territory of the coastal State. The States sponsoring the proposal felt that it would be “unrealistic and inequitable to ignore the legal position of coastal States which had long ago established their sovereign rights to the edge of the continental margin through State practice, legislation, the issue of permits, bilateral agreements and even incorporation into their constitution.”¹⁴ For States which had legislated to that effect, the issue was one of “territoriality and national integrity.” A note attached to that proposal indicated that further provisions would be required on the subject including, *inter alia*, provisions to cover the precise demarcation of the limits of the continental margin beyond 200 miles.

¹² See the statement by Mauritius at the 20th meeting, para. 42, *ibid.* 163.

¹³ See 46th plenary meeting (1974), para. 63, I Off. Rec. 203.

¹⁴ *Ibid.*

North Sea Continental Shelf cases. In that judgment, the Court held, *inter alia*, that article 6 of the 1958 Convention on the Continental Shelf

did not embody or crystallize any pre-existing or emergent rule of customary law, according to which the delimitation of continental shelf areas between adjacent States must, unless the Parties otherwise agree, be carried out on an equidistance–special circumstances basis.⁵

At the same time, the Court stressed that

delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles.⁶

The second factor that influenced the negotiations at UNCLOS III was—as noted by the General Assembly in resolution 2574 A (XXII) of 15 December 1969 (see Volume I of this series, at 169)—that “developing technology is making the entire sea-bed and ocean floor progressively accessible and exploitable for scientific, economic, military and other purposes.” This reflected the expansion of continental shelf claims as technology developed.

In consequence, it became necessary to reexamine the approach to the delimitation of overlapping claims to the continental shelf. The protracted negotiations which followed on this issue revealed the existence of two virtually irreconcilable approaches, namely: (i) delimitation should be effected by the application of the median line or equidistance line coupled with an exception for special circumstances; and (ii) delimitation should involve a more emphatic assertion of equitable principles. Common to both approaches was recognition that delimitation by agreement is the most satisfactory way of resolving issues arising from overlapping claims.

The negotiations at UNCLOS III regarding the delimitation of the continental shelf and those regarding the delimitation of the exclusive economic zone were conducted together. A major difference existed, however, in that article 83 had a predecessor in article 6, paragraphs 1 and 2, of the 1958 Convention on the Continental Shelf, while article 74 had no predecessor. In some respects, there is a conceptual link between the two—in effect, both address delimitation of maritime zones in which the coastal State has sovereign rights with respect to natural resources. For the most part, however, the factors determining the different positions of delegations on the issue of delimitation were their concerns over the delimitation of the continental shelf (see para. VI.4 above).

83.4. At the 1973 session of the Sea-Bed Committee, proposals regarding the delimitation of overlapping claims to the continental shelf generally

⁵ *North Sea Continental Shelf* cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), 1969 ICJ Reports 3, para. 69.

⁶ *Ibid.*, para. 85. For an indication of how application of the equidistance method alone could lead to inequity, see paras. 89 and 91 of that judgment.

4. Nothing provided herein shall prejudice the existing agreements between the coastal States concerned relating to the delimitation of the boundary of their respective continental shelf (coastal sea-bed area).

Paragraph 4 provided, for the first time, that existing agreements between the coastal States concerned would not be affected by delimitation proceedings.

Two proposals would have established equitable principles as the primary element in reaching agreement on delimitation, but also provided for use of the principle of equidistance. A proposal by the Netherlands (Source 8) read:

1. Where the determination of sea areas under articles . . . (territorial sea, continental shelf, economic zone) by adjacent or opposite States up to the maximum limit would result in overlapping areas, the marine boundaries between those States shall be determined, by agreement between them, in accordance with equitable principles, taking into account all relevant circumstances.

2. Pending such agreement, neither of the States is entitled to establish its marine boundaries beyond the line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each State is measured.

3. If a State concerned refuses to enter into or to continue negotiations, or if no agreement is reached within . . . after negotiations have been commenced, the procedure of conciliation of the type provided for in article 66(b) and the annex of the 1969 Vienna Convention on the Law of Treaties may be set in motion by any of the States concerned.

4. If agreement is not reached within . . . after the Conciliation Commission has made its final recommendations, the question of delimitation may be submitted, by any of the States concerned, to the procedure for the compulsory judicial settlement of disputes, provided for in article . . . of the present Convention.

Paragraph 1 called for the application of equitable principles in determining all maritime boundaries between States. Paragraph 2 set out that, pending an agreement on overlapping claims, neither State could establish its maritime boundaries beyond the median line. Paragraph 3 made provision for the case in which one party refused to enter into or continue negotiations, or where no agreement was reached within a certain period of time, and envisaged conciliation procedures as provided in article 66(b) and the annex of the 1969 Vienna Convention on the Law of Treaties.⁸ Paragraph 4 provided for the case in which an agreement could not be reached within a certain time period after the conciliation commission had made its

⁸ See 1155 UNTS 331; UKTS No. 58 (1980), Cmnd. 7964; 63 Am. J. Int'l L. 875 (1969); 8 ILM 679 (1969).

be effected by agreement in accordance with equitable principles. Regard has also been had to the frequent use of the equidistance criterion as a starting-point in negotiations between States and the special problems that have frequently arisen concerning islands. It is generally agreed that off-shore islands should not be used as the base-point for measuring an equidistance boundary line in all circumstances. The draft article proposes an objective criterion to determine what islands should generally be taken into account in delimiting areas of continental margin (or shelf) on the basis of equidistance. It also seeks to ensure that no exploration or exploitation activities take place in areas, jurisdiction over which is the subject-matter of *bona fide* dispute between neighbouring States.

Other proposals suggested alternative methods of reaching agreement on delimitation. Romania (Source 9) proposed that delimitation of "all the marine or ocean space between two neighbouring States" should be effected by agreement in accordance with equitable principles, taking into account "all relevant geographical, geological or other factors" including islands. According to that proposal, delimitation was to be "governed by the method or combination of methods which provides the most equitable solution." This was the first proposal to refer to the result of delimitation—reaching an "equitable solution"—as compared to the method to be used, namely the application of equitable principles or the median or equidistance line.

A proposal by Kenya and Tunisia (Source 12) would have established an "equitable dividing line," providing:

1. The delimitation of the continental shelf or the exclusive economic zone between adjacent and/or opposite States must be done by agreement between them, in accordance with an equitable dividing line, the median or equidistance line not being necessarily the only method of delimitation.
2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all the special circumstances, including the existence of islands or islets in the area to be delimited.

That proposal indicated that the median or equidistance line was not the only method of delimitation, and that "geological and geomorphological criteria" should be considered in the delimitation agreement. Similar language was included in a proposal by France (Source 15).

In the Main Trends Working Paper (Source 16), Provision 82 incorporated several of the earlier proposals on the delimitation of the continental shelf. Formula A repeated article 6 of the 1958 Convention on the Continental Shelf. Formulas B, C and D incorporated language similar to the proposals made at the second session by Turkey (Source 10), Greece and Japan (Sources 11 and 13), and Kenya and Tunisia (Source 12), respectively. Provision 83 referred to the use of existing agreements

3. Pending agreement or settlement in conformity with paragraph 2, the parties in the dispute shall refrain from exercising their jurisdiction beyond the median or equidistant line, unless they agree on alternative interim measures of mutual restraint.

A proposal by a group of 19 States (Source 33) included both the reference to the median or equidistance line as the general principle and the consideration of special circumstances. It also included a provision on provisional measures in terms similar to the proposal by Spain.

In contrast, a proposal by a group of 11 States (Source 34) stressed the role of equitable principles, making no reference to equidistance and suggesting that “any method or methods . . . which lead to an equitable solution” should be employed. Turkey (Source 35) advocated consideration of “the general configuration of the respective coasts, and the existence of islands, islets or rocks within the area to be delimited.”

A proposal by Morocco (Source 31) combined both elements. It provided that delimitation should be by agreement in accordance with equitable principles, “employing where appropriate, the median or equidistant line, and taking account of all the relevant circumstances.” It then listed several factors to be taken into account in the delimitation, including geomorphological factors and natural resources in the zone to be delimited, and also provided for the consideration of “the present or possible future effects of any other delimitation effected between adjacent States in the same region.”

In the ICNT (Source 19), where the provision was renumbered as article 83, article 71 of the RSNT was repeated verbatim (with the substitution of “equidistance” for “equidistant” in paragraph 1). In the introduction to that text, the President of the Conference explained the absence of change in all of the delimitation articles, noting that:

On the question of the delimitation of the territorial sea, the exclusive economic zone and the continental shelf between adjacent or opposite States, the Chairman [of the Second Committee] decided that the relevant articles as appearing in the revised single negotiating text should be retained as it had not been possible to devise a formula which would narrow the differences between the opposing points of view.¹⁵

The ICNT did contain a change in the provision relating to dispute settlement regarding the delimitation of sea boundary delimitations. The “determination of any claim to sovereignty or other rights with respect to continental or insular land territory” was to be excluded from all compulsory dispute settlement procedures (see Volume V, at 112, para. 298.9).

¹⁵ A/CONF.62/WP.10/Add.1 (1977), “Part II of the [RSNT],” VIII Off. Rec. 65, 69 (President).

favoring the use of the median or equidistance line proposed the following text (Sources 61 and 62):

1. The delimitation of the Exclusive Economic Zone/Continental Shelf between adjacent or opposite States shall be effected by agreement employing, as a general principle, the median or equidistance line, taking into account any special circumstances where this is justified.

2. If no agreement can be reached, within a period of . . . from the time when one of the interested parties asks for the opening of negotiations on delimitation, the States concerned shall resort to the procedures provided for in part . . . (settlement of disputes) or any other third party procedure entailing a binding decision which is applicable to them.

3. Pending agreement or settlement in conformity with paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint.

That text was identical to the group's proposal at the seventh session (with four additional sponsors; see para. 83.10 above). Spain, representing the delimitation group favoring the median line or equidistance, considered paragraph 1 of that group's proposal to be a better basis on which to reach consensus than the provision contained in the ICNT/Rev.1.³⁷

The group of States supporting the use of equitable principles as the primary criterion in delimitation suggested the following provisions (Sources 63 and 64):

1. The delimitation of the exclusive economic zone [or continental shelf] between adjacent or/and opposite States shall be effected by agreement, in accordance with equitable principles taking into account all relevant circumstances and employing any methods, where appropriate, to lead to an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures of settlement of disputes provided for in Part XV of this Convention or such other procedures agreed upon in accordance with Article 33 of the Charter of the United Nations Organization.

3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone [or continental shelf] shall be determined in accordance with the provisions of that agreement.

³⁷ See 126th plenary meeting (1980), para. 24, XIII Off. Rec. 13.

Annex B43

Jonathan I. Charney, "Progress in International Maritime Boundary Delimitation Law," *American Journal of International Law*, Vol. 88, No. 227 (1994)

PROGRESS IN INTERNATIONAL MARITIME BOUNDARY DELIMITATION LAW

*By Jonathan I. Charney**

I. INTRODUCTION

Judgments of the International Court of Justice (ICJ) and awards of ad hoc arbitration tribunals carry special weight in international maritime boundary law. On its face, the international maritime boundary law codified in the 1982 Convention on the Law of the Sea is indeterminate. For the continental shelf and the exclusive economic zone, the legal obligation of coastal states is to delimit the boundary "by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."¹ The article on the delimitation of maritime boundaries in the territorial sea is no more determinative despite the fact that it makes direct references to the equidistant line, special circumstances and historic title.² In spite of this indeterminacy, if not because of it, coastal states have found that third-party dispute settlement procedures can effectively resolve maritime boundary delimitation disputes. As a consequence, there are more judgments and awards on maritime boundary disputes than on any other subject of international law, and this trend is continuing.³

Owing to the relative scarcity of authoritative pronouncements, ICJ judgments and even ad hoc arbitration awards generally assume considerable importance in international law. In international maritime boundary law, the judgments and awards take on even greater salience. There are two reasons for this situation: first, the existence of a unique line of jurisprudence made possible by a continuing series of decisions and, second, the absence of clearer guidance from codifica-

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¹ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, Arts. 74, 83, UN Doc. A/CONF.62/122 (1982), *reprinted in* UNITED NATIONS, OFFICIAL TEXT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH ANNEXES AND INDEX, UN Sales No. E.83.V.5 (1983) (to enter into force Nov. 16, 1994) [hereinafter 1982 LOS Convention].

² *Id.*, Art. 15. The equidistant line is defined as "[a] line composed of relatively short segments connecting points that are equidistant from the normal baselines, or from claimed (or assumed) baselines from which the breadth of the territorial sea is measured. This is sometimes called a median line [when the coastlines are opposite]." INTERNATIONAL MARITIME BOUNDARIES at xix (Jonathan I. Charney & Lewis M. Alexander eds., 1993).

³ Jonathan I. Charney, *Introduction to INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 2, at xxiii, xxvii. The pending cases (as of January 1994) are Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), 1992 ICJ REP. 237 (Order of June 26); East Timor (Port. v. Austl.), 1992 ICJ REP. 32 (Order of May 19); and Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Sen.), Application of Mar. 12, 1991.

cases—those in which detailed resource management solutions are crafted. It is practical for the Court to establish a single line even though some difficulties *de jure* may be presented.

Maximum Reach

Another trend that may exist in fact, if not in law, is exhibited by the tribunals: to delimit maritime boundaries so that all disputants are allotted some access to areas approaching the maximum distance from the coast permitted for each zone. This trend received an early start in the 1969 *North Sea Continental Shelf* cases where the Federal Republic of Germany was released from the cutoff effect of the equidistant line generated by the coasts of its neighbors.¹⁰³ The ultimate solution, which was based on the Court's Judgment, took the form of an agreement giving the Federal Republic a seaward window that approaches the middle of the North Sea and connects directly with the opposite zone of the United Kingdom.¹⁰⁴ No subsequent award or judgment has had the effect of fully cutting off a disputant's access to the seaward limit of any zone. Thus, while Malta was not able to get a boundary equidistant from the Libyan and Maltese coasts, it got something close to it.¹⁰⁵ In the recent *Gulf of Fonseca* Judgment, the Court avoided subjecting Honduras to a cutoff effect in the gulf by finding a historically established, undivided condominium there. The Court also recognized a right of all the littoral states to a share of the zones in the ocean seaward of the gulf closing line.¹⁰⁶

In the *St. Pierre and Miquelon* case, the tribunal awarded the small French islands close to the coast of Canada a very narrow corridor, which it constructed seaward from their coastline to the 200-nautical-mile limit.¹⁰⁷ Certainly, proportionality and other considerations could have been equally well met by a more compact and manageable delimitation.¹⁰⁸ The tribunal appeared to place value on access to a lengthy distance seaward, even though the corridor may be too narrow for French commercial fishing. Since the corridor does not seem to include a

¹⁰³ *North Sea*, 1969 ICJ REP. at 45, para. 81.

¹⁰⁴ See the case study of this matter in D. H. Anderson, *Federal Republic of Germany-United Kingdom*, Report No. 9-12, in *INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 2, at 1851; D. H. Anderson, *Denmark-Federal Republic of Germany*, Report No. 9-8, in *id.* at 1801; D. H. Anderson, *Federal Republic of Germany-The Netherlands*, Report No. 9-11, in *id.* at 1835 and map (Regional Overview North and West Europe, Region Number 9), in *id.* at 343.

¹⁰⁵ See the case study of this matter in Tullio Scovazzi, *Libya-Malta*, Report No. 8-8, in *INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 2, at 1649.

¹⁰⁶ *Maritime Frontier Dispute*, 1992 ICJ REP. at 606-09, paras. 415-20. If the area seaward of the gulf is divided by maritime boundaries, Honduras may find itself with a long, thin corridor sandwiched between El Salvador and Nicaragua.

¹⁰⁷ See 31 ILM at 1169-71, paras. 66-74. See also Jonathan I. Charney, *Canada-France*, Report No. 1-2 Addendum, in *INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 2, at 399. The corridor runs south from the islands, reflecting the direction of their coastal front. While this cardinal direction is hard to justify on the basis of coastal geography, cardinal directions have been used elsewhere. See Legault & Hankey, *supra* note 52, at 202, 211-12. An 88-km.-long and 3.160-km.-wide maritime boundary was established by the France-Monaco agreement of Feb. 16, 1984. Tullio Scovazzi, *France-Monaco*, Report No. 8-3, in *INTERNATIONAL MARITIME BOUNDARIES*, *supra*, at 1580.

¹⁰⁸ In some rare cases, states have drawn maritime boundaries that create narrow corridors. See Scovazzi, *supra* note 107, at 1581; Tullio Scovazzi, *Cyprus-U.K. (Akrotiri, Dhekelia)*, Report No. 8-1, in *INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 2, at 1559; Kaldone G. Nweihed, *Dominica-France (Guadeloupe and Martinique)*, Report No. 2-15, in *id.* at 705; and Kaldone G. Nweihed, *Netherlands (Antilles)-Venezuela*, Report No. 2-12, in *id.* at 615. See also Highet, *supra* note 10, at 462. A narrow corridor may be more viable if established by agreement to address specific concerns or if created in the context of other amicable arrangements.

valuable fishery, the tribunal appears to have focused on the delimitation of area, as opposed to economic and resource-based interests.¹⁰⁹ Viewed another way, the tribunal denied France a victory in regard to its economic objective—access to substantial fisheries. As a consolation, the tribunal awarded France the symbolic victory of an area reaching seaward toward the 200-nautical-mile limit. This delimitation may make fisheries and resource management in the area difficult without agreements between France and Canada.

The *Jan Mayen* case presented a similar issue. Although both states and their related territories have undisputed access to the full 200-nautical-mile limit in areas adjacent to the area disputed in the case, access to the middle of the waters between Greenland and Jan Mayen was at the core of the controversy. Denmark (Greenland) sought a full 200-nautical-mile zone in the area directly between the two territories, limiting Norway (Jan Mayen) to a maximum of about 50 nautical miles in that area. On the other hand, Norway claimed an equidistant line that would equally split the distance separating the two territories. Denmark's geographical argument was based principally upon the short coastline of Jan Mayen and the island's territorial insignificance, as opposed to the extremely long coastline of eastern Greenland.¹¹⁰

It was impossible to give both coastal states access to the full 200-nautical-mile limit of their potential entitlements in the disputed area. The Court could have given each such access in different parts of the area, but that solution was not even mentioned in the Judgment. It could have awarded Denmark its full 200-nautical-mile claim, limiting Norway to the remainder, but this option was rejected, notwithstanding that this division would have more closely reflected the relative lengths of the relevant coastlines than the solution in the Judgment. The rejection of the line based on Denmark's claim apparently stemmed, in part, from the desire of the Court not to cut off either state's access to the middle of the area.¹¹¹ It could even have selected the equidistant line, which, by definition, would run through the middle of the waters separating Jan Mayen and Greenland, giving both states equal access to the disputed area. Although the Court adopted the equidistant line provisionally, in the end it delimited the boundary by drawing a line between the equidistant line and the 200-nautical-mile line that was the limit of Denmark's entitlement¹¹² (line AONM on map 3, p. 232). Thus, Norway was given limited geographical access to the middle of the disputed area. This result

¹⁰⁹ See Gélinas, *supra* note 58; and Valerie Hughes, Remarks at "The Law of the Sea: Recent Delimitation Cases," *supra* note *, at 227.

The tribunal refused to decide whether the French corridor would go beyond 200 nautical miles from the coastline of St. Pierre and Miquelon. This seaward access for St. Pierre and Miquelon may not, however, be unlimited since the area beyond 200 nautical miles from the French islands is within 200 nautical miles of the Canadian coastline of Nova Scotia and Newfoundland. Thus, the French zone may be encapsulated within the Canadian coastal zones. St. Pierre and Miquelon, 31 ILM at 1171-73, paras. 75-82.

¹¹⁰ See Den. Memorial, *supra* note 38, at 95-97, 117-21, paras. 295-301, 365-78; 1 Den. Reply, *supra* note 31, at 5, 165-73, paras. 10, 452-80.

¹¹¹ Denmark (Greenland) sought the same maritime boundary solution that was reached in the maritime area between Iceland and Jan Mayen (Norway). Iceland obtained its full 200-nautical-mile entitlement and Jan Mayen was left with the remainder, which was far less than its full 200-nautical-mile potential entitlement. Iceland/Norway, *supra* note 56; Den. Memorial, *supra* note 38, at 91-92, para. 289; Anderson, *supra* note 56, at 1755. The ICJ, however, produced a maritime boundary in the *Greenland-Jan Mayen* case that is marginally set off from the equidistant line to favor the state with the longer relevant coastline (Denmark), just as it did in the *Libya/Malta* case. See Scovazzi, *supra* note 105, at 1649.

¹¹² Jan Mayen, 1993 ICJ REP. at 79-81, paras. 91-92.

can be explained by the substantial differences in the lengths of the relevant coastlines;¹¹³ the presence of pack ice, which often prevents vessels from reaching much of the area;¹¹⁴ and the limited region in which commercial fishing has taken place in recent years.¹¹⁵ Furthermore, in other nearby areas both territories have access to their full 200-nautical-mile entitlements. These facts may make the *Jan Mayen* case unusual.

The interests to be served by the idea of maximum reach are not clear. The idea may be viewed as geographical and status based, meaning that the coastal state's offshore zones are not limited to areas near the shore but, rather, run a considerable distance seaward like those of its better-situated neighbors. It may even reflect an interest in having rights in an area, albeit limited, which would permit the state to participate in international arrangements as an equal. This interest may have motivated the Federal Republic of Germany in the *North Sea Continental Shelf* cases. Alternatively, maximum reach may relate to navigation and other kinds of access to the high seas or the waters of third states. In that sense it may be connected to security interests in transportation and mobility. This was certainly the interest that was pressed by the United Kingdom for the Channel Islands in the *Anglo-French* case but rejected in the award.

The recent cases do not even acknowledge this consideration, much less its core values. In *St. Pierre and Miquelon*, the long corridor may have served some status interests of the French, but this benefit appears to be limited. As for French navigational and security interests, they do not appear to be threatened, even though the islands are deeply tucked into the Canadian coast. As a matter of law, France's access to and from the islands is protected even without the corridor. If French security or navigational interests were at risk, the corridor could be of value, but only if it reached the high seas beyond all Canadian zones. As described in the award, the corridor does not reach that point since the tribunal believed that its jurisdiction did not reach further seaward.¹¹⁶ Although navigation and security were not implicated in the *Jan Mayen* case, status and participation were important to Norway. It had enjoyed a long history of resource exploitation in the area and laid claim to equal status and participation. These interests could be recognized, however, without granting Norway rights to the geographic middle of the area between Jan Mayen and Greenland. In the *Gulf of Fonseca* case, both interests were at the core of Honduras's maritime claims. Absent a condominium, the maritime boundary delimitation might well have cut off all Honduran maritime zones at a location substantially landward of the mouth of the gulf, obviating distant reach. That result could have precluded Honduras's exploitation of the marine resources immediately outside the gulf (and perhaps within it) and might have created access problems for navigation, overflight and security. From the perspective of the two categories of interests served by maximum reach, the three cases were correctly decided. It is unfortunate that the analyses paid scant attention to this apparently important consideration.

The Wider Perspective

Third states. Despite the similarities and convergencies of the three new cases that are the focus of this article, the ICJ and arbitration panels often have been

¹¹³ *Id.* at 65–69, paras. 61–70. See the discussion in the subsection “Proportionality,” *supra* p. 241.

¹¹⁴ 1993 ICJ REP. at 72–73, paras. 77–78. ¹¹⁵ *Id.* at 72, para. 76.

¹¹⁶ *St. Pierre and Miquelon*, 31 ILM at 1171–73, paras. 75–82.

reluctant to look beyond the dispute before them to relationships with nearby third states, regional implications of the delimitation, and other maritime boundary settlements involving similar circumstances. This reluctance serves the autonomy interests of states but handicaps the community's interests in the coherent resolution of maritime boundaries and impedes a common-law progression toward a more coherent body of maritime boundary law.

Maritime boundaries do not always involve the interests of only two states. Often several states have maritime space interests that intersect or overlap with each other. Thus, maritime boundaries separating the maritime zones of three states have been negotiated to meet at tri-points.¹¹⁷ Third states have also attempted to intervene in adjudications involving two states. Although Italy's application to intervene in the *Libya/Malta* case was denied, its efforts were rewarded when the ICJ excluded from consideration maritime areas claimed by Italy as against the parties to the litigation.¹¹⁸ In *Maritime Frontier Dispute*, the ICJ Chamber granted Nicaragua the right to intervene as a nonparty.¹¹⁹ While Nicaragua was permitted to express its views on the issues involving the Gulf of Fonseca, the Chamber held that Nicaragua was not legally bound by the Judgment.¹²⁰

Most maritime boundaries established by agreement are the product of bilateral negotiations. Third-party procedures also are usually limited to boundaries between two state parties. Maritime boundaries, however, must be seen as well in a regional context in which other states' maritime zones may be relevant. International tribunals have considered the regional context even when only two states were before them. The tribunal in the *Guinea/Guinea-Bissau* arbitration was most explicit in this regard.¹²¹ The ICJ has considered the regional perspective in maritime boundary delimitations in the Mediterranean Sea.¹²² Nevertheless, the Court has been reluctant to permit neighboring states to intervene in such cases even though the claims of the parties may overlap those of a third state.¹²³ The only exception to this practice was in the *Maritime Frontier Dispute* case, where Nicaragua was permitted to intervene under Article 62 of the ICJ Statute on the basis that it had "an interest of a legal nature which may be affected by the Chamber's decision on the question of the existence or nature of a régime of condominium or community of interests within the Gulf of Fonseca."¹²⁴ In contrast, the Court decided that if no condominium were found, the mere fact that a delimitation might be related to Nicaragua's boundary claims would not be a

¹¹⁷ See Beazley, *supra* note 52, at 243, 256-59; Colson, *supra* note 52, at 41, 61-62.

¹¹⁸ *Continental Shelf (Libya/Malta)*, Application to Intervene, 1984 ICJ REP. 3, 25-27, paras. 41-44 (Mar. 21); *Libya/Malta*, 1985 ICJ REP. at 24-28, paras. 20-23.

¹¹⁹ *Maritime Frontier Dispute (El Sal./Hond.)*, Application to Intervene, 1990 ICJ REP. 92 (Sept. 13); *Maritime Frontier Dispute*, 1992 ICJ REP. at 609-10, paras. 421-24.

¹²⁰ *Maritime Frontier Dispute*, 1992 ICJ REP. at 609-10, paras. 421-24.

¹²¹ 77 I.L.R. at 683-84, 25 ILM at 297-98, paras. 108-10. For comparable domestic U.S. disputes in which a regional perspective was considered, see Jonathan I. Charney, *The Delimitation of Lateral Seaward Boundaries Between States in a Domestic Context*, 75 AJIL 28 (1981).

¹²² *Continental Shelf (Libya/Malta)*, Application to Intervene, 1984 ICJ REP. 3, 25-27, paras. 40, 41, 43 (Mar. 21); *Libya/Malta*, 1985 ICJ REP. at 20-22, 40, 50-51, paras. 14-17, 47, 69-72; *Tunisia/Libya*, 1982 ICJ REP. at 91, para. 130.

¹²³ *Continental Shelf (Libya/Malta)*, Application to Intervene, 1984 ICJ REP. 3 (Mar. 21); *Libya/Malta*, 1985 ICJ REP. 13 (June 3).

¹²⁴ *Maritime Frontier Dispute (El Sal./Hond.)*, Application to Intervene, 1990 ICJ REP. at 125, para. 79.

sufficient basis for intervention.¹²⁵ This latter determination is consistent with prior judgments denying intervention to states concerned about the effects of a judgment delimiting a maritime boundary between their neighbors.¹²⁶

As mentioned above, one request to intervene did lead the ICJ to exclude areas claimed by the third state from the adjudication.¹²⁷ Even in the exceptional case where intervention may be allowed, unless there is a particular basis for jurisdiction, the intervenor will not be granted party status. The judgment will not be *res judicata* in regard to that third state.¹²⁸ At most, the intervention provides the Court and parties with the benefit of the views of the third state without imposing any obligations on it (much like an *amicus curiae*). Since third-party dispute settlement procedures require the consent of the participating parties, a liberal approach to third-state intervention is unlikely. Nevertheless, many maritime boundaries ought to be seen in a regional context in order to avoid additional conflict and confusion.¹²⁹ Express consideration of that context along the lines of the *Guinea/Guinea-Bissau* award should be emulated and, perhaps, greater encouragement should be given to third-state participation.¹³⁰ In a sense, the ICJ promotes greater involvement by excluding areas claimed by third states from consideration. This practice could be seen as *de facto* making the interested third state a necessary party, and might encourage states in the future to include closely related third states in the dispute settlement process.¹³¹

Other boundary settlements. In the *Jan Mayen* case between Denmark and Norway, the former sought to invoke as a specially relevant precedent the maritime boundary established between Iceland and Norway (*Jan Mayen*) by conciliation and agreement. That boundary allowed Iceland a full 200-nautical-mile continental shelf and fishery zone between it and Jan Mayen, which limited Norway to the remaining 106 nautical miles separating them.¹³² Denmark argued that the critical elements of coastal geography in the Greenland/*Jan Mayen* situation were essen-

¹²⁵ *Id.*

¹²⁶ *Continental Shelf (Libya/Malta), Application to Intervene*, 1984 ICJ REP. at 22, 25–27, paras. 35, 41–44; *Libya/Malta*, 1985 ICJ REP. at 24–28, paras. 20–23; *Tunisia/Libya*, 1982 ICJ REP. at 91, para. 130.

¹²⁷ *Continental Shelf (Libya/Malta), Application to Intervene*, 1984 ICJ REP. at 25–27, paras. 41–44; *Libya/Malta*, 1985 ICJ REP. at 24–28, paras. 20–23.

¹²⁸ *Maritime Frontier Dispute (El Sal./Hond.)*, Application to Intervene, 1990 ICJ REP. at 134–36, paras. 99–104; *Maritime Frontier Dispute*, 1992 ICJ REP. at 609–10, paras. 421–24.

¹²⁹ The ruling denying Italy's request to intervene in the *Libya/Malta* case drew five dissents arguing for a more liberal application of the right to intervene in maritime boundary cases. See dissents of Judges Sette-Camara, Oda, Ago, Schwebel, and Jennings in *Continental Shelf (Libya/Malta), Application to Intervene*, 1984 ICJ REP. at 71, 90, 115, 131, & 148, respectively. See generally Lori Fisler Damrosch, *Multilateral Disputes*, in *INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS* 377 (Lori Fisler Damrosch ed., 1987).

¹³⁰ *Guinea/Guinea-Bissau*, 77 I.L.R. at 683–84, 25 ILM at 297–98, paras. 108–10.

¹³¹ The ICJ did find joinder to be required in *Case of the monetary gold removed from Rome in 1943 (Italy v. Fr., UK, U.S.)*, Preliminary Question, 1954 ICJ REP. 19 (June 15), where the legal interests of the absent state would form the very subject matter of the decision. See *Maritime Frontier Dispute (El Sal. v. Hond.)*, Application to Intervene, 1990 ICJ REP. at 114–16, paras. 52–56. But the Court has otherwise been opposed to compulsory third-party joinder on the ground that, without an independent basis for jurisdiction, it would conflict with the Court's consent-based jurisdiction. *Continental Shelf (Libya/Malta), Application to Intervene*, 1984 ICJ REP. at 20–22, paras. 32–33.

¹³² See *Iceland/Norway*, *supra* note 56; Den. Memorial, *supra* note 38, at 91–92, para. 289; Anderson, *supra* note 56, at 1755.

tially indistinguishable from the Iceland/Jan Mayen situation.¹³³ In the face of those arguments, Norway maintained that the maritime boundary agreement with Iceland was based largely on political considerations (especially Iceland's heavy dependence on fishing and lack of other potential hydrocarbon resources) and other *quid pro quos*; thus, it should not serve as a relevant precedent.¹³⁴

The Court rejected the relevance of the Iceland/Jan Mayen settlements as a basis for delimiting the Greenland/Jan Mayen boundary by a 200-nautical-mile line drawn from Greenland's coastline.¹³⁵ It did, however, limit the relevant area in the south by the Icelandic 200-nautical-mile line.¹³⁶ By rejecting the relevance of the Iceland/Jan Mayen maritime boundary settlement, as well as the Denmark/Norway settlement of the maritime boundary in the Faroe Islands¹³⁷ and the Norwegian actions regarding Bear Island,¹³⁸ the Court stressed the uniqueness of each maritime boundary delimitation, the freedom of states to use different methods for different boundaries, and the rights of states to take political considerations into account when reaching a maritime boundary settlement.

Even though these are legitimate values, the Court's emphasis on autonomy and uniqueness may have gone further than necessary in the instant case. By casting off highly similar settlements for all aspects of its analysis, the Court further diminishes the role of state practice in this area.¹³⁹ Even though every boundary has unique elements and political considerations do intrude, prior settlements may help the Court appreciate the values and methods taken into account in similar situations.

By basing its decision to disregard the Iceland/Jan Mayen agreement in the context of the *Greenland/Jan Mayen* dispute on the ground that it was the product of a political compromise, the Court necessarily accepts the proposition that all maritime boundary settlements are irrelevant to other delimitations. Although factual and political circumstances do vary, there are also common elements among maritime boundary agreements that will help to inform diplomats, judges and arbitrators called upon to resolve controversies and to restrain states from overreaching.¹⁴⁰ The ICJ should acknowledge this value with a view to furthering "the rule of law; which is to say that its application should display consistency and

¹³³ Bowett Oral Presentation, *supra* note 39, at 19–23 (pt. II.B); Lehman Oral Presentation, *supra* note 39, at 22–25.

¹³⁴ See 1 Nor. Counter-Memorial, *supra* note 30, at 71–72, 160, paras. 250–52, 553; Tresselt Oral Presentation, *supra* note 39, at 46–51 (pt. 4); Haug Oral Presentation, *supra* note 95, at 34, 66–67 (Jan. 18, 1993); Tresselt Oral Presentation, *supra*, at 13–17 (Jan. 27, 1993).

¹³⁵ Jan Mayen, 1993 ICJ REP. at 76–77, para. 86.

¹³⁶ *Id.* at 47, para. 18. The parties were in agreement with respect to this limitation.

¹³⁷ *Id.* at 55, para. 37.

¹³⁸ *Id.* at 76, para. 85.

¹³⁹ Arguably, maritime boundary settlements would become more difficult if the Court drew more from state practice in the course of deciding maritime boundary disputes. The precedent-setting impact would add a complication to an already-complicated issue. To the contrary, state practice as a key element in international lawmaking is pervasive and has not been considered an unacceptable threat to negotiated settlements of international disputes. In fact, the resulting focus on state practice may help to define the limits of disputes and the context for their solutions. That may limit the number of disputes that will arise and the range of differences between the parties, while facilitating the development of solutions.

¹⁴⁰ Thus, in the North Sea all the other coastal states had an interest in limiting the seaward spread and reach of the Federal Republic of Germany. Only international law declared by the ICJ in the *North Sea Continental Shelf* cases kept those interests in check and preserved Germany's rights. See the three reports by Anderson, in *INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 104.

a degree of predictability; even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application."¹⁴¹

From the perspective of coastal geography, the Iceland/Jan Mayen maritime boundary was indubitably relevant to the *Greenland/Jan Mayen* dispute. In the Iceland case, the very short coastal front of Jan Mayen faced the substantially larger coastal front of Iceland. Iceland obtained its full 200-nautical-mile entitlement and Norway received the remainder. The fact that the Icelandic coastline facing the area is shorter than the relevant Greenland coastline suggests that the Danish claim against Norway may be geographically stronger than Iceland's. Since coastal geography is preponderant in maritime boundary delimitation law, the Iceland settlement should have been more thoroughly considered in the *Greenland* case, notwithstanding the potential relevance of other considerations.¹⁴²

The ICJ and other tribunals sitting on maritime boundary matters ought to begin to bring together the lines of state practice. While state practice has been put forward in many maritime boundary cases, tribunals have often treated that information superficially.¹⁴³ Thus, in *Jan Mayen* the parties adverted to a variety of maritime boundary settlements that they maintained were representative of state practice in support of their positions.¹⁴⁴ They had a full opportunity to comment on each other's evidence.¹⁴⁵ This access to the relevant state practice placed the Court in an advantageous position to follow up its declaration in the *Libya/Malta* case with results predicated upon an acknowledged analysis of the state practice. By this step the ICJ would have promoted both attention to prior practice and a convergence of state practices that would further the "consistency and . . . predictability"¹⁴⁶ previously endorsed by the Court. Its failure to do so in the *Jan Mayen* case is disappointing.

In theory, the Court is called upon to draw connections between state practices when it searches for customary international law. A fundamental assumption of that law is that linkages can be drawn between autonomous actions of states. This is difficult, indeed, since all actions of states have political and other dimensions. But those dimensions do not necessarily disqualify them from serving as evidence of state practice. Increasingly, the Court's judgments avoid analyzing state practice before pronouncing on customary law. Rather, as I argued in a prior issue of this *Journal*, it has turned to other, more readily available information to find general international law, whose establishment is not necessarily dependent on positive state practice.¹⁴⁷ But general international law derives from resolutions of

¹⁴¹ *Libya/Malta*, 1985 ICJ REP. at 39, para. 45.

¹⁴² E.g., the distance between Iceland and Jan Mayen is greater, the socioeconomic conditions of Iceland and eastern Greenland are different, and the settlement was the product of a conciliation that resulted in the establishment of a joint development zone. *Iceland/Norway*, *supra* note 56; Anderson, *supra* note 56, at 1755.

¹⁴³ For a study of the international maritime boundary settlements, see INTERNATIONAL MARITIME BOUNDARIES, *supra* note 2.

¹⁴⁴ Den. Memorial, *supra* note 38, at 91–95, paras. 289–93; 1 Nor. Counter-Memorial, *supra* note 30, at 176–83, paras. 619–58.

¹⁴⁵ 1 Den. Reply, *supra* note 31, at 86–108, paras. 216–98; Nor. Rejoinder, *supra* note 38, at 140–48, paras. 462–96; Bowett Oral Presentation, *supra* note 39, at 31–35 (pt. III); Brownlie Oral Presentation, *supra* note 71, at 72–86 (Jan. 19, 1993); Bowett Oral Presentation, *supra*, at 63–68 (Jan. 25, 1993); Brownlie Oral Presentation, *supra*, at 47–49 (Jan. 27, 1993).

¹⁴⁶ *Libya/Malta*, 1985 ICJ REP. at 39, para. 45.

¹⁴⁷ Jonathan I. Charney, *Universal International Law*, 87 AJIL 529 (1993).

international organizations, treaties and other consensus-reporting declarations that contain normative rules. Unfortunately, in maritime boundary law and practice no such articulations exist. In their absence the Court has little choice but to consider the evidence of state practice to flesh out the relatively general statements of the law. The state practice will not readily give guidance to the Court. The international maritime boundary study made clear how difficult this task may be.¹⁴⁸

Nevertheless, the Court should begin to take account of the rich information available to it about the maritime boundary settlements. It may find that in situations highly similar to the one before it certain types of solutions are common or trends exist that present themselves as appropriate for use in the instant case. Reliance on that information would strengthen the authority of the Court's judgments and at the same time promote convergence toward more coherent maritime boundary law. Its own call for a degree of predictability and certainty in maritime boundary law makes it incumbent on the Court to facilitate this result through an increasing convergence of its judgments and reliance on the maritime boundaries established by agreement whenever possible.

Compulsory Jurisdiction of the ICJ

Finally, perhaps the element of the *Jan Mayen* case that might have been most damaging to the advancement of maritime boundary law and practice was the effort by Norway to establish that the ICJ should exercise prudence and not delimit the boundary between Jan Mayen and Greenland.¹⁴⁹ This appeal was based on the fact that the case was brought unilaterally by Denmark under the compulsory jurisdiction of the Court and not on the basis of a contemporary mutual agreement. Norway argued that maritime boundary delimitation is so difficult, so technical, and so fraught with danger that the Court should only declare the principles on which the delimitation should be based. It should avoid delimiting the boundary itself, absent mutual agreement by the coastal states to submit that very dispute to the Court for delimitation. Norway also argued that international maritime boundary law requires states only to settle their maritime boundaries by agreement and not according to any specific rule or principle.¹⁵⁰

The Court rejected these arguments and proceeded to delimit the boundary. It found a duty to decide the dispute on the basis of the applicable international law. Thus, the obligation to establish the maritime boundary by agreement was construed as merely a preliminary obligation; once efforts to negotiate a settlement were exhausted, the substantive international maritime boundary law became applicable and provided the rules pursuant to which the boundary must be delimited. In the end, the Judgment defined the maritime boundary line by straight lines connecting points identified by geographical coordinates so that only technical questions remained.¹⁵¹

¹⁴⁸ See Charney, *supra* note 3, at xlii.

¹⁴⁹ 1 Nor. Counter-Memorial, *supra* note 30, at 197, para. 704; Nor. Rejoinder, *supra* note 38, at 192, para. 654; Haug Oral Presentation, *supra* note 95, at 12–14 (Jan. 15, 1993); *id.* at 57–59 (Jan. 27, 1993).

¹⁵⁰ Oral Presentation by Mr. Highet, Agent for Norway, Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.), ICJ Verbatim Record at 58–78 (Jan. 21, 1993).

¹⁵¹ Jan Mayen, 1993 ICJ REP. at 78, 81, paras. 89, 93.

Annex B44

D. Freestone et al., "Legal Implications of Global Climate Change for Bangladesh" in *Implications of Climate and Sea-Level Change for Bangladesh* (R.A. Warrick & Q.K. Ahmad eds., 1996)

Briefing Document No. 5

Legal Implications of Global Climate Change for Bangladesh

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cultural input supplies (fertilisers, seeds, irrigation equipment, etc.) but its functions have largely been handed over to the private sector in recent years. Agricultural extension services and technical assistance is the responsibility of the Department of Agricultural Extension (DAE), but more specialised aspects are covered by other specialist institutions (e.g. BWDB, cotton, tobacco, sugar cane and tea agencies). There are legal controls of pesticide manufacture and import but they are widely flouted, notably by unofficial cross-border trade.

The Bangladesh Agricultural Bank and some other Banks provide mortgages for agricultural land and loans for agricultural purposes.

Fisheries

This comes under the responsibility of the Ministry of Fisheries and Livestock, although some ten thousand closed fisheries are administered by the Ministry of Land. Marine fisheries are governed by the 1983 Marine Fisheries Ordinance which established a sea fishery licensing system for motorised vessels. The Ordinance is technically enforced by the Fisheries Department, although in practice this work is done by the Bangladesh Navy.

Navigation

Navigation is the responsibility of the Ministry of Port Shipping and Inland Water Transport (IWT). Inland navigation is regulated by the Inland Water Transport Authority. Maritime navigation is the responsibility of the Bangladesh Shipping Department. The Navy performs coast guard and shipping enforcement functions. There are two Port Authorities, at Chittagong and Mongla. The Bangladesh Shipping Department is also responsible for marine pollution control in Bangladesh waters.

Forests

The Ministry of Environment and Forest has overall control of such forest areas as have been transferred to it by the Ministry of Land. Forests are managed at District Commissioner level. The Forestry Department within the Ministry is responsible for general conservation and management of forests. It is responsible for:

- the coastal afforestation programme and the afforestation of embankments.
- protected and reserved forests including the Sundarban mangrove forest.
- designation of National Parks and Wildlife Sanctuaries under the 1974 Wildlife (Preservation) (Amendment) Act.

Some four parks and a number of sanctuaries have been designated. No effective management regime is yet in place for the administration of estuarine reserved forests.

Offshore energy exploration and exploitation

This is under the Control of the Ministry of Energy which administers the continental shelf resources under the 1974 Act.

Environment and pollution control

The Ministry of Environment and Forest is responsible for the environment and pollution control. It executes its programmes through the Department of the Environment, operating under the Environmental Pollution Control Ordinance, 1977. However, other agencies are also empowered to control pollution through their respective laws, e.g., Department of Shipping (above), Road Transport Authority, Ministry of Industries, etc.

Relief and rehabilitation

There is no permanent mechanism within the Government structure to deal with disaster response and relief. The Department of Meteorology issues forecasts, but these often use technical terms and scales of severity which are not well understood in the population at large. The Ministry of Relief and Rehabilitation is responsible for disaster response and relief. In the past it has not dealt specifically with disaster preparedness. It is, however, the government agency responsible for the cyclone shelter programmes, for the promulgation of cyclone warnings (handled through the Bangladesh Red Crescent Society) and the for the publication of Standing Orders for Flood, Cyclones and Relief - a codification of procedures for all government agencies, including the Armed Forces, and Non Government Organisations (NGOs). Under the Flood Action Plan a Disaster Management Co-ordination Unit has recently been set up in the Ministry of Relief and Rehabilitation. Recommendations for the expansion and strengthening of this Unit as a permanent organisation are currently under discussion, as are arrangements for more effective inter-Ministerial co-ordination for disaster preparedness and response.

INTERNATIONAL LAW ASPECTS

International law governs the relations between states, including internal actions that can have an impact on other states. It can therefore provide either a constraint on policy options or an enabling mechanism for co-operative activities.

A large variety of international law issues come into play in relation to possible climate change in Bangladesh. Changes in temperature, rainfall, river flows, and cyclone frequency and severity seem likely to affect the present patterns of monsoon inundation and flooding problems. Changes in land and coastal form from sea-level rise are quite possible (see Briefing Document 6) and would un-

doubtedly precipitate further problems of population displacement and migration.

In general terms, sea-level rise could affect the horizontal configuration of the coast line, principally through erosion (indeed, some areas of the Bangladesh coast already have very high erosion rates). In normal circumstances, this would affect the delineation of baselines from which maritime zones (territorial sea, contiguous zone, exclusive economic zone, and continental shelf) are measured (the particular position of the Bangladesh baseline is considered after the general principles are discussed below). Movement of the coast and the erosion or deposition of islands may also affect the delimitation of putative maritime boundaries with neighbouring states, although boundaries settled by treaty will remain as agreed.

International law may also require co-operation from neighbours in certain situations or impose responsibility for failure to meet international obligations. It imposes a clear obligation on states not to cause direct harm to other states, but the situation is less clear in relation to indirect harm or to actions by neighbours which exacerbate the effects of harm caused by natural forces.

In relation to shared natural resources, such as rights to water (or other resources) from international water courses, case law makes it clear that the basic principle is that of equity. States through which an international river passes may use its renewable resources, but should treat it in an equitable and reasonable way. These principles will be relevant in considering the situation of damming or otherwise changing international water courses. Preventing water (or possibly even sediment) from getting through to the lower reaches may adversely affect land usage and habitation downstream but, similarly, increasing water or sediment flows may also have detrimental effects downstream.

A growing network of global and regional treaties protects critical ecosystems and wildlife habitats. Protection of forest areas and of marine ecosystems, such as coral reefs and mangroves, which may provide natural buffers and thus protection from cyclone impacts and coastal erosion, is an important response strategy for which international treaty law may provide constraints and opportunities.

International law does not currently possess a regime for dealing with populations forced to leave their native country for environmental reasons. This is an issue that may need to be addressed in the near future in relation to desertification and in the face of sea-level rise for low-lying islands as well as for coastal areas (Freestone, 1991b).

MARITIME ZONES

Article 143 of the Bangladesh Constitution vests in the Republic all lands, minerals and other things of value

under the oceans within territorial waters or on the continental shelf. By the 1974 Territorial Waters and Maritime Zones Act, Bangladesh claimed a territorial sea of 12 nautical miles (nm), a contiguous zone of 6nm from the outer limit of the territorial sea and a continental shelf to the outer limit of the continental margin, as well as an Exclusive Economic Zone (EEZ) extending to 200 nautical miles from the baseline. Indeed, Bangladesh was the first state to claim such a zone. Bangladesh is a signatory to the Final Act of the Third United Nations Conference on the Law of the Sea (UNCLOS III) and to the 1982 Law of the Sea Convention (LOSC), which means that it accepts the principles contained in the Convention and intends to ratify it at some future date.

Coastal baseline delineation

Articles 3-16 of the 1982 Law of the Sea Convention set out the regime for drawing baselines from which maritime zones can be measured. Article 5, which is taken to represent customary international law, provides that:

... the normal base line for measuring the breadth of the territorial sea is the low water line along the coast as marked on large scale charts officially recognised by the coastal state.

Although in certain specified circumstances¹ the LOSC and customary international law permit coastal states to depart from the low water line and use straight baselines joining headlands, islands, rocks and other features (discussed below), the low water line remains the basic and most important baseline for measuring the breadth of all maritime zones² The use of the low water line generally ensures that the maximum maritime area is included within the zones.

In broad terms, rises - or indeed any changes - in sea level which affect high and low water lines will obviously have a "knock-on" effect on the measurement of maritime jurisdictional zones. If the low water line shifts landward, the outward limits of maritime zones will similarly move landward and the coastal state's maritime zone limits will shrink proportionately, because all maritime zones are measured from that baseline. Where a broad coastline regresses rapidly (as in the case of areas of Bangladesh) the cumulative effect could quite substantial.

It was in recognition of this problem that, on 13 April 1974, the Bangladesh Government issued a Declaration announcing a baseline that consists of seven straight lines extending for 221 nautical miles (see Figure 1). None of the eight points that define these lines is located on land and, except for the sector immediately west of Cox's Bazar (where there is a steep landward indentation of the isobath), the lines are closely aligned with the 10 fathom isobath. These baselines, drawn according to what Habibur Rahman (1991) calls "the depth-method", were developed, he says, to take account of "the geological peculiarities of the coast and the peculiar topographical features of the coastal bay".

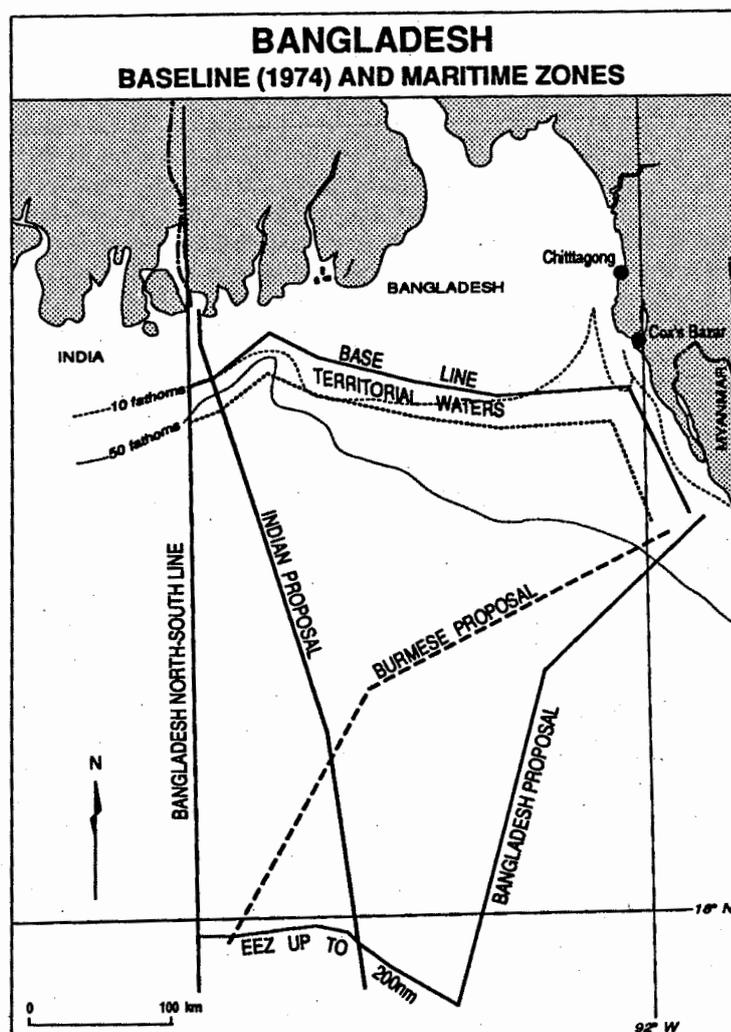


Figure 1 Map showing Bangladesh baseline of 1974 and maritime zones measured from it. Also shown are outstanding proposals for maritime boundary delimitation lines with adjacent states made by Bangladesh and its neighbours.

On the 30 April 1974 the Governments of both India and of Burma (as it then was) protested at these baselines. It might be noted in passing that Prescott (1985) considers the Burmese/Myanmar baseline, promulgated in 1968 and amended in 1977 to be contrary to both the "letter and spirit of the new Convention."

During the course of the Law of the Sea Conference, the Bangladesh delegation made a number of proposals - with the offshore waters of the Ganges delta clearly in mind - in an attempt to secure provisions within the text of the Convention addressing the particular problems of low water lines which move land-ward and seaward in unpredictable ways. The history of these proposals has been set out in detail elsewhere (Prescott and Bird 1989). Art 7(2) LOSC provides that:

Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points [i.e. for straight baselines] may be selected along the furthest seaward extent of the low-water line and, notwithstanding the subsequent regression [sic] of the low-water line,

the straight baseline shall remain effective until changed by the coastal state in accordance with this Convention.

Habibur Rahman (1991) comments that :

From a practical point of view, the formula as incorporated in the LOS Convention (Article 7(2)) does not meet the demands of the situation of Bangladesh, although it appears to have taken into account certain attributes of a delta country like Bangladesh.

Maritime boundaries

Sea-level rise may affect the base points from which maritime boundaries may be measured. In the negotiation of maritime boundaries it is open to the parties to determine which points shall be used in the delimitation and how much weight will be attributed to them. For example, inhabited islands have been given half effect in cases before international tribunals, (such as the *Anglo-French Continental Shelf Arbitration* 1979 and the *Tunisia/Libya Case* of 1982) and ignored completely in some treaty settlements.

Bangladesh has maritime zones adjacent to India and Myanmar (see Figure 2). The configuration of the Bay of Bengal and the position of Bangladesh within it is not entirely dissimilar to the position of Germany in the 1969 *North Sea Continental Shelf* cases. Hence, in a boundary delimitation agreement, it would expect to receive (like Germany in the North Sea) a larger zone than that calculated by equidistance alone.

No maritime boundaries have yet been agreed with either of Bangladesh's neighbours, India or Myanmar. Both neighbours have refused to accept the 1974 baseline declaration. Therefore, despite the fact that the 1974 Declaration protects Bangladesh from the erosion of its baselines and thus of its maritime zones it is not axiomatic that neighbours would accept those baselines in bilateral talks. Hence de facto erosion and regression of the horizontal baseline might adversely affect its negotiating position in future talks.

The case of South Talpatty Island

In 1971 a new island in the shape of a "U" was reported as having formed off the Ganges River delta. In 1978 this island, called South Talpatty in Bangladesh and New Moore or Purshaba in India, was reported to have an area of some three square nautical miles and to be growing. This geographical feature, is some five nautical miles offshore from the mouth of the Harinbhanga River, which marks the boundary between India and Bangladesh.³ India is reported to claim the feature on the basis that the flow of the Harinbhanga River is to the east and that the area is within

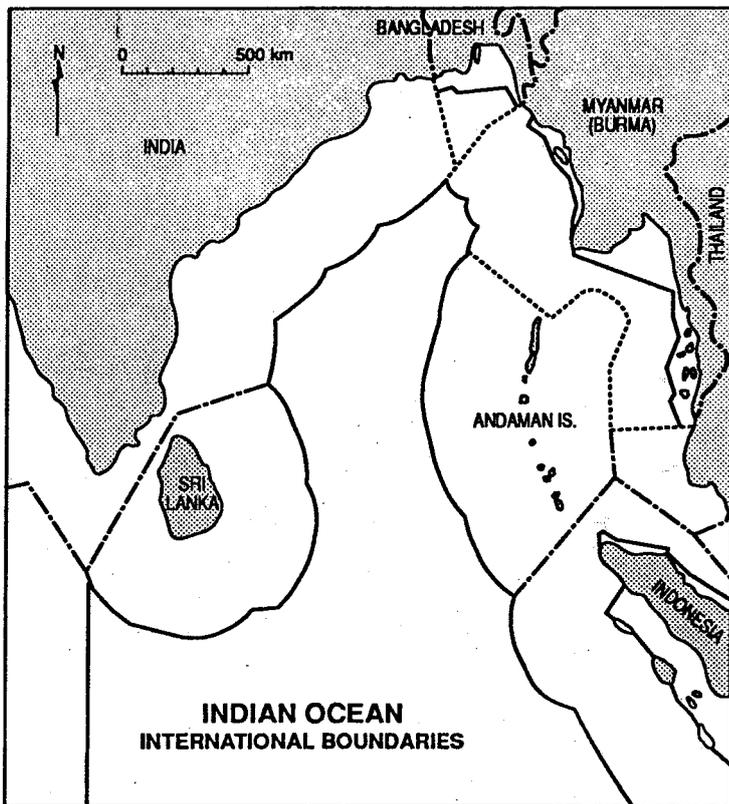


Figure 2: Map showing international boundaries in Indian Ocean.
(Source: Prescott, 1985)

the natural prolongation of India. The Bangladesh view is that the river flows to the west of Talpatty and that it is not possible to distinguish the natural prolongation of India from that of Bangladesh in the Ganges Delta. As Talpatty is within the territorial sea/internal waters of either state (pending a determination of ownership) it would serve to extend the territorial sea of the state which established ownership. Obviously, its effect on outward limits of zones would be small but its potential effect in a maritime boundary negotiation could be disproportionate. However, as ownership is disputed, it would be difficult to argue that the extra maritime space that it might generate had received "general recognition" and could thus continue after the inundation of the island itself, as may well be the case in relation to island states such as the Maldives (see Soons 1990, Freestone, 1991b).

If the feature is already a low-tide elevation, sea-level rise might well result in its total inundation, thus removing a

CLIMATE CHANGE AND MARITIME ZONES

The coastline serves as the basis from which all national maritime zones are defined. Climate change and sea-level rise threaten to change the coastline in the future, causing jurisdictional difficulties and problems delineating borders with neighbours.

political problem between the two countries. It should, however, be remembered that the impact of sea-level rise would not simply be vertical and features may be nourished by erosion elsewhere. Similarly, although this is not settled law, Soons takes the view that the artificial conservation of such features "should be permissible" (Soons, 1990).

MARINE SCIENTIFIC RESEARCH

Under customary international law and the 1958 Geneva Conventions on the Law of the Sea, permission has been required for marine scientific research (MSR) by foreign vessels within the territorial sea and on the continental shelf. Research has suggested (Wooster, 1981) that prior to the Third UN Conference on the Law of the Sea (UNCLOS III), a number of pure research projects in maritime zones had been jeopardised, or even abandoned, as a result of the difficulties of obtaining requisite consents for projects in the territorial sea of other states, particularly in the zones of developing countries. The difficulties ranged from a complete failure to respond to requests, to permission being granted at too late a stage for the planned project to go ahead. It seemed that such difficulties and delays arose most commonly not for political reasons, but for purely bureaucratic reasons. It was also clear that research organisations avoided including within their ongoing research plans the waters of those countries with which they had encountered difficulties or, at an early planning stage, they excluded those states which had not replied to their requests for permission.

It was also clear at UNCLOS III that with the inclusion of control over MSR within the newly developed 200 nautical mile Exclusive Economic Zone, these problems were likely to continue and increase. The proposal was therefore made that, in the EEZ, the consent regime should be reversed so that a bona fide "pure" research project application made in proper form would be deemed to be accepted after a six month period if no reply had been received.

The 1982 Convention is not yet in force. Bangladesh has signed but not ratified the Convention; therefore it is not binding upon it. The 1974 Act - enacted before the finalisation of the text of the Convention - requires express consent for MSR projects in both the territorial sea and EEZ.

In the context of developing awareness of the problems of global climate and sea-level rise change, it is important that Bangladesh be included in any MSR projects seeking to collect data relevant to climate change. It is therefore important that the national legal regime - especially institutional practice and procedure - should be efficient and flexible enough to ensure that appropriate ocean-based

international research projects can be carried out in Bangladesh waters.

There is considerable advantage to Bangladesh in having its waters included in such international research efforts.

SHARED RIVERINE RESOURCES

Shared riverine resources are of significance to Bangladesh as it lies in the delta of the Ganges, the Brahmaputra and the Meghna river systems, all of which rise in, and flow through, other states. Diversion of water by an upstream state may decrease agricultural output in areas consequently deprived of previous levels of water and supply of nutrients. The diversion may generate environmental hazards too. Other upstream changes, such as increases in volume and velocity of river flow, may also have deleterious effects by exacerbating problems of erosion and floodings.

In 1975, India commissioned the barrage at Farakka on the Ganges (18 km upstream from the Bangladesh border) to divert a larger part of its discharge in order to increase the flow of water through the port of Calcutta, which was silting up. The allocation of waters between the two countries resulting from this project was the subject of a detailed Agreement on Sharing of the Ganges' Waters between the two Governments. This agreement, which came into force on 5 November 1977, was for five years and renewable. The Agreement (without the "guarantee clause" of the 1977 agreement) was extended twice by Memorandum of Understanding for two years (signed in October, 1982 for the next two dry seasons and expired in 1984) and then three years (signed in November, 1985 for the next three dry seasons and expired in 1988). Since then, the alleged resultant water shortages in western areas of Bangladesh have been the source of considerable dispute between the two countries and are currently the subject of discussions between the them.

In a number of cases, notably the *Diversion of Water from the Meuse case* [1937] and the *Lake Lanoux Arbitration* [1957], international tribunals have held that there would be a breach of international law if a joint watercourse were used by one riparian user in a way that is detrimental to the rights of another riparian state. In 1966 the International Law Association (ILA) adopted the Helsinki Rules on the Uses of International Rivers as a statement of then current customary international law. These rules propounded what they termed the "principle of equitable utilisation of the waters of an international drainage basin." Article IX defined "water pollution" as "any detrimental change resulting from human conduct in the natural composition, content or quality of the waters". States are in breach of international law if they increase existing water pollution, or introduce new forms of pollution into shared water resources so as to cause "substantial injury to a co-basin state"

The principles developed by the ILA are now contained in the new Helsinki Convention on the Protection and Use of Transboundary Watercourses and Lakes, signed in Helsinki, 17 March 1992. This imposes an obligation on parties:

To ensure that transboundary waters are used in a reasonable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact" (art. 2(2)(c)

"Transboundary Impacts" are widely defined and would cover virtually any change in the conditions of transboundary waters (Art. 1 (2)). Although this Convention is not yet in force, international environmental lawyers widely regard it as a statement of existing customary law.

The 1991 Convention on Environmental Impact Assessment in a Transboundary Context, signed in Espoo (Finland), requires parties to conduct environmental impact assessments (EIAs) on projects likely to effect neighbours and to notify them of the results in Prior Consultation Procedures. This Convention, while not in force either, is also regarded as existing "good practice".

LEGAL PROTECTION OF ECOSYSTEMS

A growing network of global and regional treaties address the problem of the conservation of ecosystems. These regimes were initially developed for the protection of wildlife, but modern conservation thinking is directed increasingly towards the protection of habitats and critical ecosystems. Bangladesh has, since 20 November 1981, been party to the 1973 Washington Convention on the International Trade in Endangered Species of World Fauna and Flora (CITES), but does not as yet appear to have become party to all the key habitat protection conventions. In March 1992 Bangladesh became a party to the 1971 Ramsar Convention on Wetlands of International Importance; the Sundarban mangrove forest has been designated as a protected site under that convention. Bangladesh has also been a party (since 3 November 1983) to the 1972 UNESCO Convention concerning the World Cultural and Natural Heritage. Designation of sites under these conventions imposes legal obligations to provide protection and management of them; but such designation also opens opportunities for international funding to assist state parties in this process.

If environmental changes brought about by global climate change result in the displacement of people, there is considerable risk that existing forest areas would suffer from unregulated settlement by landless refugees. In the context of sea-level rise, wetland ecosystems, particularly mangrove systems, can provide important natural buffers to assist coastlines to adjust naturally (see Briefing Document 6). Participation in the international treaty network

protecting both terrestrial and marine ecosystems does impose obligations to provide effective management regimes for threatened ecosystems, but conservation of these systems may as well be an important aspect of a response strategy to global climate change. The treaty frameworks can provide important advantages in terms of financial assistance and management expertise.

STATE RESPONSIBILITY AND THE ISSUE OF CLIMATE CHANGE

International customary law imposes a clear obligation on states not to use their own territory in a way that will cause harm to their neighbours. This principle is established in the much quoted *Trail Smelter Arbitration* (1938 & 1941) and the 1949 *Corfu Channel Case* before the International Court of Justice. As discussed above, there is also increasing evidence that international law requires prior assessment and consultation before a state undertakes actions that may have environmental impacts on other states. Violation of any of these duties may give rise to the liability - or as international lawyers term it, responsibility - of the offending state under international law with a commensurate obligation to make reparation. In addition, the 1972 Stockholm Declaration Principle 21 (which many international lawyers now think represents customary international law) provides that states have:

the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

Indeed this Principle was recently reiterated in the 1992 UNCED Rio Declaration (Principle 2).

Can it therefore be argued that, if a low-lying state such as Bangladesh suffers harm as a result of global warming and sea-level rise, that a claim could be mounted for compensation against those states which contributed the most (or overwhelmingly) to the emissions of greenhouse gases?

Such an argument was discussed within the context of the Intergovernmental Negotiating Committee and there is clearly a strong moral argument involved. However, in the current state of international law, it is difficult to sustain an argument of liability. Primarily, climate change has still to be definitely proven. The 1992 Climate Convention, like the 1985 Vienna Convention on the Ozone Layer, is based on precautionary action. Secondly, the harm suffered is indirect, in that emissions of greenhouse gases (the majority of historic emissions of which took place before the greenhouse effect was recognised) have altered the composition of the atmosphere (a shared resource) and it is this altered atmosphere which may cause global warming. However, what was proposed at the INC by the Association of Island States (AOSIS) was the conclusion of an insurance protocol, against sea-level rise. Under such a protocol the states most vulnerable to sea-level rise would

be insured against damage to, or ultimately the loss of, their coastal resources or low-lying territory, the costs of the premiums being met by levies pro rata on the major greenhouse-emitting states in the developed world. The insurance industry apparently regard this as economically feasible, and the proposal was discussed at the IPCC Coastal Zone Management Subgroup and is still on the table for consideration in the forthcoming negotiations on possible protocols to the 1992 Convention, discussed below.

What the Rio meeting did accept, however, was the principle, which is contained within both the Rio Declaration and the 1992 UN Framework Convention on Climate Change, of the "common but differentiated responsibilities" of States. This expressly recognises that the developed world has played a much larger role in contributing to global environmental degradation by their contribution to the greenhouse effect. Thus, it imposes upon them a disproportionate obligation to respond, both by curbing their own emissions of greenhouse gases and by providing finance and technology to developing countries and "countries whose economies are in a state of transition" for assistance in reducing emissions and in responding to the problems caused by climate change. In this sense, the general principle of strict legal responsibility is avoided but a new legal mechanism is devised to recognise the moral responsibility of those involved. In the fullness of time, the details of the financial implications of this "differential responsibility" will have to be negotiated within the context of protocols to the Framework Convention. In this respect, the example of the way that the Montreal Protocol on Substances that Deplete the Ozone Layer (discussed below) has been put into effect is likely to be highly significant.

CLIMATE CHANGE, STATE RESPONSIBILITY AND INTERNATIONAL COOPERATION

Many environmental problems will be felt across national borders. Treaties and customary law impose obligations to co-operate with neighbours in facing common hazards and to avoid uses of shared resources that are detrimental to neighbours - as in the case of shared riverine resources.

THE "ATMOSPHERE CONVENTIONS"

The Vienna Convention for the Protection of the Ozone Layer

The Vienna Convention for the Protection of the Ozone Layer was concluded in March 1985. Bangladesh ratified, and became a party to, the Vienna Convention and its 1987 Montreal Protocol (discussed below) on 2 August 1990.

Article 2 of this Convention imposes general obligations on each party "in accordance with the means at their disposal and their capabilities" to:

- (a) Co-operate by means of systematic observation, research and information exchange in order to better understand and assess the effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer;
- (b) adopt appropriate legislative or administrative measures and co-operate in harmonising appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;
- (c) co-operate in the formulation of agreed measures, procedures and standards for the implementation of the Convention, with a view to the adoption of protocols and annexes;
- (d) co-operate with competent international bodies to implement effectively the Convention and protocols to which they are party.

The Vienna Convention was supplemented by the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, itself adjusted and amended by the London Meeting of 1990 and most recently by the Copenhagen Meeting of November 1992. Article 2 of the Protocol requires parties to impose controls on ozone-depleting chemicals, namely CFCs (Art. 2A); Halons (Art. 2B); other fully halogenated CFCs (Art. 2C); Carbon Tetrachloride (Art. 2D); and 1,1,1-trichloroethane (methyl chloroform) (Art. 2E). However, under Article 5, special exemption is given to any party which is a developing country and whose annual calculated level of consumption of controlled substances in Annex A is less than 0.3 kilograms per capita from the time of the coming into force or until 1 Jan. 1999. Such parties may delay the implementation of these controls "to meet its basic domestic needs" for up to ten years, subject to certain provisos set out in Art 5(2)(3). Such parties are not, however, exempted from the duty to report data to the Secretariat (Art. 7). The Protocol also provides for technical and financial co-operation for developing country parties claiming exemption under Art. 5. A Multilateral Fund was agreed to assist such parties to research and to meet their obligations (Art 10) but did not come formally into existence until the London Amendments themselves came into force - which was not until 10 August 1992, some seven months later than expected (Gehring and Oberthur, 1993). The Fund has, however, begun to operate on an interim basis and has already financed some 40 country studies.

In the light of the 1991 Scientific Assessment of Ozone Depletion which found that there was new evidence of

ozone decreases in both hemispheres at middle and high latitudes, a number of new measures were agreed in Copenhagen in November 1992. These are subject, of course, to the general regime outlined above (delays under Article 5 are still possible for developing states). All parties were required to cease using Halons by 1994, and CFCs, HBFCs (added latter in the list of the substances of the Montreal Protocol that deplete the ozone layer), carbon tetrachloride, and methyl chloroform by 1996. The use of HCFCs should be frozen by 1996, reduced 90% by 2015 and eliminated by 2030. Methyl bromide - still used as a fruit and grain preservative - was subjected to voluntary controls; contracting parties agreed to "make every effort" to freeze its use by 1995 at 1991 levels. As Figure 3 shows, the measures agreed in Copenhagen aim to stabilise atmospheric chlorine loading by the year 2000 and then reduce them to below critical levels by about 2060.

Table 1: Coverage of the Montreal Protocol

Parties	Instruments of Ratification etc. as of 1 November			
	1989	1990	1991	1992
Industrial Countries	29 incl. EC	33	33	36
Developing Countries	20	33	41	55
Total	49	66	74	91

(Source: Gehring and Oberthur 1993. Figures from UN Doc.UNEP/OZI.Rat 18.0.)

Developing countries were concerned that, even with the ten-year period of grace built into Article 5 of the Montreal Protocol, they would have difficulty meeting these new obligations if the relevant technology and finance was not made available to them. The Copenhagen Meeting agreed

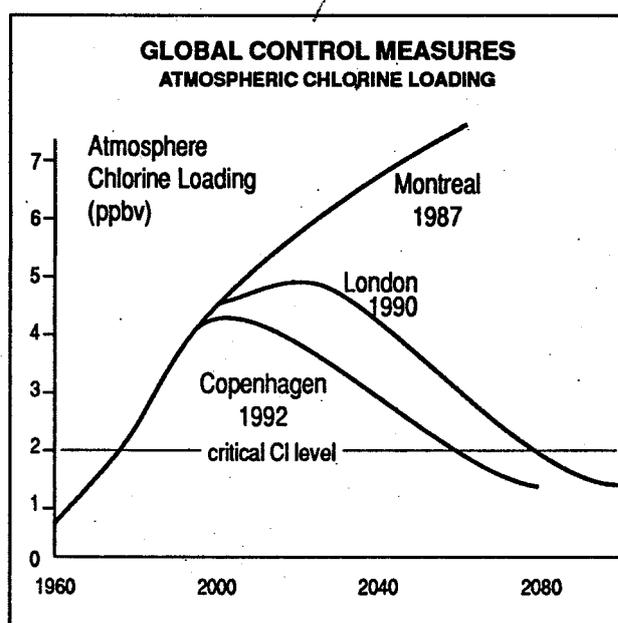


Figure 3: The impact of control measures on the atmospheric chlorine loading (Source: World Meteorological Organization).

Annex B45

Keith Hightet, “The Use of Geophysical Factors in the Delimitation of Maritime Boundaries”, in J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries*, Vol. 1 (1996)

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VII

The Use of Geophysical Factors in the Delimitation of Maritime Boundaries

KEITH HIGHET

I HISTORICAL BACKGROUND

The physical realities of geography, and submarine features such as bathymetry and thalwegs, have long been recognized as traditional components of maritime delimitation. Originally it was only the territorial sea, the contiguous zone and, to a certain extent, 'fisheries zones' that were capable of being delimited by states.¹ However, in the years following World War II the physical characteristics of the sea-floor began to acquire fresh importance. The development of submarine technological capability during World War II had made it possible to conceive of major hydrocarbon exploitation on the seabed in areas adjacent to the coast and within an exploitable depth.

The recognition of the continental shelf as a legal and physical entity was given its first major expression in the Truman Proclamation of 1945, which specified that:

. . . the Government of the United States regards the natural resources of the *subsoil and seabed* of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.²

The regime of the 200-mile exclusive economic zone had to await creation some four decades later. From 1945 through the mid-1960s, therefore, attention naturally came to be focused on the physical – and consequentially legal – characteristics and circumstances of the continental shelf, i.e., the realities of the 'subsoil and seabed.' Thirteen years later, the Geneva Convention on the Continental Shelf of 1958³ was to define the term 'continental shelf' as referring to:

¹ See the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, Art. 7, para. 5, containing a *renvoi* to Art. 12 (delimitation) of the Convention on the Territorial Sea and the Contiguous Zone. The Fishing Convention does not itself presuppose delimitation, although it recognizes the existence of special interests 'in any area of the high seas *adjacent to* . . . [the] territorial sea' (Art. 6, para. 1).

² Truman Proclamation, 28 September 1945, 59 Stat. 884, 10 Fed. Reg. 12303 (Emphasis added). See 2 AMERICAN LAW INSTITUTE RESTATEMENT THIRD OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, 58, Section 515, Reporters' Note 1 (1987); and CHURCHILL AND LOWE, THE LAW OF THE SEA 122 and 120–24 (2d rev. ed. 1988).

³ (The '1958 Continental Shelf Convention'.) See United Nations, Laws and Regulations in

IV CONCLUSIONS

A review of the State practice, therefore, leads to the following conclusions:

(a) Geophysical factors have been used on occasion, but nonetheless in a minority of the cases where they existed, or could have been thought to be relevant. In most instances where they were used, the conditions included relevant elements such as navigational channels, equidistance from isobaths, or the geological formations relating to oil and gas deposits. In a number of delimitations, the reflection of geophysical facts took the form of reticence (of the parties) concerning the precise indication of the outward limit of the respective continental shelves.¹³³ This is congruent with the expansive formulation of Article 76 of the 1982 Convention in respect of physical shelves extending further than 200 n.m. from the baseline.

(b) Of the 132 maritime boundary delimitations reviewed to date, geological and geomorphological factors were present in between 47 and 58 cases, or from roughly 36 to 44 percent of the total. Of those 47 to 58 cases, the delimitations took geological or geomorphological factors into account in from 15 to 21 instances (and thus between 32 and 36 percent). It is therefore safe to say that in *approximately one-third of the cases where geological or geomorphological features were noted the parties took account of them in their delimitations*, and that in *roughly two-thirds of those cases such features were ignored*.

(c) Moreover, of the 21 instances where geological or geomorphological factors were – or might have been – used, only 2 delimitations were based squarely on them;¹³⁴ 9 have partial recognition of those factors as influencing delimitation;¹³⁵ 7 acknowledged expressly or by implication that the outer limits of the boundary and the continental shelves would fall for subsequent determination on geological or geomorphological grounds;¹³⁶ and 4 were territorial sea agreements adopting essentially navigational approaches.¹³⁷

(d) The total of delimitations where geological or geomorphological considerations were influential, then, adds up to a total of about *one in six of all delimitations surveyed*, and roughly *one in three of all delimitations where geological or geomorphological features were noted as being present*. In almost half of the cases there was no cogent record of the existence or influence of geological or geomorphological factors. By contrast: the parties ignored the

¹³³ See *supra* notes 108–16 and supporting text.

¹³⁴ Australia–Indonesia (Timor and Arafura Seas) (1972), No. 6–2(2); and Australia–Indonesia (Timor Gap) (1989), No. 6–2(5).

¹³⁵ Of these nine, five recognized bathymetric lines for obvious or practical reasons, two were petroleum-based, and two others were sedimentary in concept.

¹³⁶ Indonesia–Thailand (Malacca and Andaman Sea) (1971), No. 6–13(1); Argentina–Uruguay (1973), No. 3–2; India–Indonesia (Andaman Sea and Indian Ocean) (1977), No. 6–6(2); Australia–France (New Caledonia) (1982), No. 5–1; Australia (Heard/McDonald Islands)–France (Kerguelen Island) (1982), No. 6–1; Australia–Solomon Islands (1988), No. 5–4; and Ireland–United Kingdom (1988), No. 9–5.

¹³⁷ See *supra* notes 103–106.

geological or geomorphological factors present in two-thirds of the instances where they were detectable.

(e) In the 17 cases of shelf delimitation where such features were, or may have been, taken into account, moreover, 1 was signed before the date of the decision in the *North Sea* cases (1969); 12 were signed after it but before the decision in *Libya/Malta* (1985); and only 4 were signed since *Libya/Malta*. Three-quarters of these delimitations, then, were agreed before the Court in 1985 had clarified the law as to the relevance and applicability of physical features.

(f) Moreover, it is particularly interesting to note that in none of the 7 instances where there was a delimitation pursuant to an adjudication or third party settlement were geomorphological or geological factors influential,¹³⁸ even though, in 5 out of those 7 cases, the parties had argued more or less strenuously for determining a boundary on geological or geomorphological grounds.¹³⁹

(g) *The conclusion must therefore be that geophysical factors have been ignored far more frequently than they have been used.* When they have been used, geological or geomorphological factors have only been used partially, and not as complete indicators for a boundary delimitation.

(h) They have also, in general, been used only *indirectly*. For example, it is more for the convenience of navigation than for the purpose of finding a boundary that isobathic boundaries, or thalwegs, or shipping channels, are employed.

(i) It is also for reasons of commercial practicability that existing petroleum fields indicate, in a few instances, the maritime boundaries. In neither case is it because of any inherent geological or geomorphological characteristic or value.

(j) Since the 1982 Convention on the Law of the Sea and the law laid down by the delimitation cases since 1977 have in effect eliminated most physical tests for appurtenance in the delimitation of maritime areas, geophysical factors will probably not be used much for future delimitations.

¹³⁸ (i) *North Sea Continental Shelf Cases* (Den/FRG; Neth./FRG), 1969 I.C.J. REPS. 3 (*see* Delimitations Nos. 9–8 and 9–11 (FRG–Netherlands and FRG–Denmark)); (ii) U.K./France Arbitration of 1976: Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf (Decisions of the Court of Arbitration dated 30 June 1977 and 14 March 1978), Cmd. 7438, Misc. No. 15 (1978) (*see* Delimitation No. 9–3); (iii) Report and Recommendations to the Governments of Iceland and Norway of the Conciliation Commission on the Continental Shelf Area between Iceland and Jan Mayen (1981), 20 I.L.M. 797 (1981) (*see* Delimitation No. 9–4); (iv) Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1982 I.C.J. REPS. 18 (*see* Delimitation No. 8–9); (v) Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can./US), 1984 I.C.J. REPS. 246 (*see* Delimitation No. 1–3); (vi) Court of Arbitration for the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, Award of 14 February 1985 (Translation from Official French Text), 25 I.L.M. 252–307 (March 1986) (*see* Delimitation No. 4–3); and (vii) Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. REPS. 13 (*see* Delimitation No. 8–8).

¹³⁹ Channel Arbitration, Jan Mayen, Tunisia/Libya, Gulf of Maine, and Libya/Malta.

(k) The principal exception to this will be, wherever appropriate, in the relatively less common instances of continental shelf areas extending more than 200 n.m. from the coast. In such instances it is clear that geological and geomorphological factors will not merely be important; they will be of the essence, in accordance with the intricate provisions of Article 76 of the LOS Convention – themselves an artistic and complex compromise between conflicting interests. To establish sovereign rights in shelf areas between 200 n.m. and 350 n.m. from the baselines will require, yet again, enthusiastic expeditions into geological and geomorphological proof.

(l) Nonetheless, at least some definitive criteria have been established by Article 76 that were not present in the wide-ranging and hotly-disputed continental shelf litigations of the 1970s and 1980s. Thus an element of scientific objectivity may have been introduced into the inquiry, by the side door or, one might say, by the crack in the lid of Pandora's box.

(m) A further, but more theoretical, exception may still perhaps remain in maritime areas between *adjacent* states. It is, however, difficult to imagine how applications in these situations could survive both the case law on the application of the rule of distance *out to* 200 n.m. from the baselines and the relentless demands of logic, seen against the background of the Court's analysis of the issues in this general area.

ANNEX A

Section 1

The delimitation agreements referred to in note 76 are as follows:

- (1) Canada–United States (Gulf of Maine) (1984), No. 1–3;
- (2) Colombia–Dominican Republic (1978), No. 2–2;
- (3) Colombia–Honduras (1986), No. 2–4;
- (4) Costa Rica–Panama (1980), No. 2–6;
- (5) Cuba–Haiti (1977), No. 2–7;
- (6) Cuba–Mexico (1976), No. 2–8;
- (7) Dominican Republic–Venezuela (1979), No. 2–9;
- (8) France (Martinique)–Saint Lucia (1981), No. 2–10;
- (9) France (Guadeloupe and Martinique)–Venezuela (1980), No. 2–11;
- (10) Netherlands (Antilles)–Venezuela (1978), No. 2–12;
- (11) United States–Venezuela (1978), No. 2–14;
- (12) Argentina–Uruguay (1973), No. 3–2;
- (13) Cameroon–Nigeria (1975), No. 4–1;
- (14) Australia–France (New Calendonia) (1982), No. 5–1;
- (15) Australia–Papua New Guinea (1978), No. 5–3;
- (16) Australia–Solomon Islands (1988), No. 5–4;
- (17) United Kingdom (Sarawak, North Borneo, Brunei) (1958), No. 5–2;
- (18) Papua New Guinea–Solomon Islands (1989), No. 5–16;

Annex B46

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VOLUME I

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Dominica–France (Guadeloupe and Martinique)

Report Number 2–15

Agreement on Maritime Delimitation between The Government of Dominica and the Government of the French Republic

Signed: 7 September 1987

Entered into force: 23 December 1988

Published at: The Government of Dominica
Revue Générale de Droit International
Public 486–90 (1989)

I SUMMARY

This is the first maritime boundary delimitation agreement in the Middle American and Caribbean region based 'on the rules and principles of International Law as they are expressed in the Convention of the United Nations on the Law of the Sea.' It constitutes a significant step towards the consolidation of the maritime boundaries of the French Caribbean departments. It stands, moreover, as a very special case in which geographic considerations normally associated with 'special circumstances' were fundamental in determining the course of the maritime boundary.

The Commonwealth of Dominica, the southernmost island in the Leeward chain, lies between French territory on both sides. To the north is located the insular department of Guadeloupe; to the south is the insular department of Martinique, which is considered geographically part of the Windward Islands. Both territories, Guadeloupe and Martinique, enjoy equal and separate political status within the French community as overseas departments. The conduct of their international relations is vested in the French Republic. Faced with the choice of negotiating two separate agreements, the parties chose to consolidate their negotiations in one single instrument applicable to both departments, and reserved the option of future cooperation among themselves.

Thus, this agreement is (a) one of double frontage for Dominica, (b) one that creates third party relationships for Dominica with Guadeloupe and Martinique, and (c) a bilateral agreement under international law between Dominica and the French Republic. The overall boundary delimits the maritime areas in which the parties exercise their sovereignty or sovereign rights.

On the west side the 62° 48' 50" W meridian already used in the French-Venezuelan 1980 agreement (No. 2-11) provided a fixed reference to serve as 'a straight baseline' in the sea. The double-frontage boundary has the shape of a railway track running in a southwest-northeast direction. It is wide-gauged in the Caribbean sector and narrow-gauged in the Atlantic sector, as it approaches the 200-nautical mile (n.m.) limit. The area between the rails is Dominica's maritime jurisdiction; on the north would be Guadeloupe's and on the south, the maritime jurisdiction of Martinique. The latter would stretch to the sector already delimited with St. Lucia ((1981) No. 2-10). The northern boundary (Dominica-Guadeloupe) runs a distance of approximately 298 n.m., the southern boundary (Dominica-Martinique), runs a distance of about 294 n.m.

It would be difficult to anticipate which specific method would be applied in such a situation. The delimitation may be described as based on equitable principles, with modified equidistance applied in the absence of special circumstances. In fact, such special circumstances, particularly geographic considerations (islands, coastal configuration, and adjacency/oppositeness) were so substantial that they create a very interesting case.

Similar to other agreements in the region to which France is party, this agreement does not establish any collateral regimes for functional cooperation on fisheries, preservation of the maritime environment, or scientific research.

Disputes over the interpretation or application of the agreement are to be settled by peaceful means in accordance with international law.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

The political facts that might have led to the negotiation and conclusion of this agreement most probably arose out of a French initiative to establish the maritime boundaries for all its overseas possessions. Its objectives were (a) to secure the access of their inhabitants to all the marine resources which they gained from new developments in the Law of the Sea, and (b) to avoid fishery or other jurisdictional disputes with the governments of the region and their nationals. The French government well recalls the so-called Lobster War with Brazil in the early 1960s.¹

¹ In 1980 France delimited maritime boundaries with Venezuela to be followed by an agreement with Saint Lucia in 1981. During that same year France signed a maritime boundary

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Dominica, as well as the remaining members of the English-speaking Caribbean community, approached the issue of ocean resource management and the Law of the Sea with some caution. Nevertheless, they shifted from the traditional British institutional LOS attitudes towards new policies reflected in developments at UNCLOS III. In fact, some international institutions, including Canadian and American universities, encouraged these developments during the early 1980s.² According to Freestone, the Dominica–France agreement was negotiated over a protracted period during the 1980s.³

It is quite probable that certain political perceptions favored that account be taken of the legitimate rights and interests of the islands' populations (Dominica's population of 80,000 is quite low compared to the 360,000 persons in each French department), France's prestige as a solid member of the EEC, and its conciliatory position in relations with the Third World (particularly within the framework of the Lomé Convention).

Prime Minister Maria Eugenia Charles signed the agreement with French Prime Minister Jacques Chirac on a visit to Paris.

2 *Legal Regime Considerations*

Invoking the rules and principles embodied in the 1982 United Nations Convention on the Law of the Sea, the signatories declared in the preamble their desire to 'effect a precise and equitable delimitation of the respective maritime areas in which [they] exercise their sovereignty or sovereign rights in accordance with international law.' Thus, the boundary produced is overall and multipurpose. It separates all legal regimes that each state has established or may establish according to the principles and rules set in the 1982 LOS Convention at the time of signature (the LOS Convention was not yet in force). (France signed the LOS Convention in 1982, but not Dominica.) These states had already made their respective claims to a 12-mile territorial sea and a 200-mile exclusive economic zone. The French claim applicable to Guadeloupe and Martinique was made in 1978; Dominica's was made in 1981.

The movement from the continental shelf to an economic zone evidently sparked the delimitation issue and could have given rise to the importance of economic considerations. The three political entities involved were making efforts to promote fishing, expand their harvesting activities, and increase their capture. The decision to establish an all-purpose universal line reduced the available delimitation methods. Still, some economic considerations might have helped to influence the choices between equity and equidistance. If there

agreement with Brazil (No. 3–3) and a year later, concluded a 25-year process whereby the land boundary between Brazil and French Guyana was demarcated.

² Gold, Letalik and Mitchell, *Problems of Development and Ocean Management in the Eastern Caribbean – Economic, Legal, Environment and Planning Aspects* (Proceedings of an International Seminar held in Kingstown, 11–13 May 1981), Dalhousie Ocean Studies Programme, Halifax, N.S.

³ Freestone, *Maritime Boundaries in the Eastern Caribbean*, Coastal Zone Symposium, Charleston, South Carolina (1989).

was an extrajudicial or extra-technical factor that influenced the drawing of the line, such a factor would have been closely linked to the economic zone concept. A boundary between territorial seas and continental shelves would have used different and shorter segments in both sectors. This is a case where the boundary between political considerations and economic considerations becomes difficult to detect.

No other collateral regimes for any functional purpose were established. Disagreements arising with respect to the interpretation or the application of the agreement are to be resolved by peaceful means in accordance with international law (Article 3). Article 4 carries the mutual obligation of each party to notify the other when it has completed its constitutional procedures necessary to bring the agreement into force. It may be recalled that the France–St. Lucia ((1981) No. 2–10) Agreement was scheduled to enter into force upon signature. The present agreement took a year and a half to enter into force.

3 Economic and Environmental Considerations

Economic and political factors tend to interact with one another when the states concerned are developing and recently independent. The France–St. Lucia Agreement ((1981) No. 2–10) does not name Martinique as the overseas dependency concerned. The Dominica–France agreement affixes the relevant names but not in their juridical capacity which would identify the respective overseas departments. The text merely uses their plain geographic names to identify the islands relevant to the delimitation: Martinique, on one hand, and Guadeloupe, Saintes, and Marie Galante, on the other. The naming of the last two islands, situated between Dominica and Guadeloupe and administratively belonging to the latter, reflects their obvious relevance to the delimitation, but also indicates the intention of the signatories that these small islands, heavily dependent on fish, were reaffirming their economic areas. Technically speaking, the strict mention of the ‘Departments of Guadeloupe and Martinique’ would have served the purpose.⁴ These smaller islands were given full effect in the short inter-island sectors where a modified equidistant line was deemed to satisfy equity.

The boundary does not directly reflect a comparison of economic factors. Dominica which was the only former island colony with a poor plantation economy, impaired by its accidented terrain, fared worse as a colony than its French neighbors on both sides. No environmental considerations seem to have prevailed.

⁴ The Department of Guadeloupe, juridically and administratively, includes the island of St. Barthelemy and the northern half of St. Martin, separated from the main group by (British) Montserrat, St. Kitts–Nevis and Antigua and Barbuda. This relatively distant portion of the department will have to delimit eventually with (a) The Netherlands, (b) St. Kitts–Nevis, (c) Antigua and Barbuda, (d) (British) Anguilla.

Dominica–France (Guadeloupe and Martinique) 709*4 Geographic Considerations*

This is a case in which geographic considerations, particularly the coastal configuration as a function of the insular territories concerned, have been decisive. The equidistant line was not used except for 40 percent of the Dominica–Martinique boundary and for a much shorter distance between Dominica and Guadeloupe where simplified equidistance was applied. The main geographic features have to be considered jointly.

In the first place, the French island of Marie-Galante is situated between Guadeloupe and Dominica in a relationship of oppositeness, but it extends further eastward than the latter. Second, Dominica's coastline on the Atlantic is generally convex. But in the delimitation with Guadeloupe, due to the convexities of Marie-Galante on one side and Martinique on the other, the relationship turns into adjacency, as the boundary advances to the Atlantic Ocean. The equidistant line would enclose Dominica's economic zone within a triangle whose seaward extension would lie less than 55 n.m. east of the island. In the *North Sea Continental Shelf* cases, this result was found to have been inequitable (see (1969) No. 9–8 and (1969) No. 9–11).

The Dominica–France Agreement avoided such an inequitable result by directing the Atlantic sector of each boundary line northeastwards in a quasi-parallel formation seaward to Points 8 and 9, in order to allow each party to have a full 200-mile jurisdiction in the ocean. The special circumstance of the boundary in the Atlantic sector is not found in the Caribbean sector.

Apparently, in order to compensate Guadeloupe for this compromise in the Atlantic sector, the boundary in the Caribbean was drawn from the France–Venezuela meridian a few miles to the south. In the narrow waters between Les Saintes and Marie Galante, on the French side, and Dominica on the other, the short segments between Points 3, 4, 5 and 6 do not precisely coincide with a true equidistant line. On the other hand, since no special features distort the line between Dominica and Martinique, 40 percent of the boundary course is an equidistant line.

5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations

The island factor in this particular case had a definite effect on the layout of the boundary between Dominica and Guadeloupe. This is discussed above at geographic considerations. La Désirade, a third island off Guadeloupe on the northeast, does not seem to have been considered as a basepoint.

6 Baseline Considerations

None of the territories concerned appears to have established a system of straight baselines. It is obvious that Guadeloupe's two main islands may be joined at their entrances by what looks like an indivisible bay. Such a closure was not necessary because Marie Galante is actually the salient

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island that faces Dominica, not Guadeloupe proper. It should be added that the outer Atlantic limit for boundaries was set at a radius of 200 n.m. (Points 8 and 9) by the arc of a geodetic circle centered at latitude $15^{\circ} 29' 30''$ N and longitude $61^{\circ} 14' 52''$ W, located at a point seaward from the coast of Dominica.

7 Geological and Geomorphological Considerations

The quasi-parallel boundary sectors traverse seabeds of considerable depths, but do not follow any specific geomorphological feature that might have influenced the boundary, not even shallow Macouba Bank between Dominica and Martinique. The northern line starts in an area about 2000 meters (m) deep and travels over still deeper seabed until it penetrates the shallow waters between Guadeloupe and Dominica. It then traverses the 1000 m isobath at a short distance in the Atlantic, into waters deeper than 5000 m. The southern line starts in the same area as the former, traverses the Martinique Passage over shallow (73 m) Macouba bank, extends towards the 1000 m isobath, and ends at waters deeper than 5000 m. These geological and geomorphological facts did not influence the course of the boundary.

8 Method of Delimitation Considerations

As has already been suggested, the present delimitation may be described as based on equitable principles, while simplified equidistance was partially applied only in the absence of special circumstances (see Geographic Considerations). Equidistance was used for approximately 40 percent of the boundary on the southwest (Dominica–Martinique). In those areas, special circumstances were absent between the two opposite islands. In the Atlantic sector, on the contrary, the opposite relationship of Martinique and Dominica turns into adjacency and so does the Guadeloupe–Dominica relationship. Thus, the boundary diverges from equidistance and reaches the open ocean, in order to avoid a premature enclosure of Dominica's waters.

Commander Peter Beazley, who was involved in the negotiations, has suggested that simplified equidistance was applied westwards of approximately longitude 61° W, adding that such simplified equidistant lines were based on computed turning points.⁵

Both sectors start at meridian $62^{\circ} 48' 50''$ W (France–Venezuela (1980) No. 2-11) and end up in the open Atlantic at Points 8 and 9. The northern boundary is made up of eight turning points, defined by geographical coordinates and joined by rhumb lines; the southern is composed of six such points.

⁵ Peter B. Beazley to K.G. Nweihed (12 May 1989).

Dominica–France (Guadeloupe and Martinique) 7119 *Technical Considerations*

The geographical coordinates are expressed in terms of the geodetic system adopted by the French National Geographic Institute (IGNF) for Martinique in 1953. It is the same system adopted for the agreement between France and St. Lucia in 1981 (No. 2–10). According to Beazley, ‘because of the age of the nautical chart, Dominica’s basepoint coordinates were determined mainly from the British Directorate of Overseas Survey map on a scale of 1 : 50,000, and corrections applied to place them on, the IGNF Martinique Datum. Differences in vertical datums were ignored.’⁶

The official map attached to the agreement depicts Atlantic Points 8 and 9 joined by a line which would be the seaward limit of Dominica’s coastal zones and not the boundary between the island and either territory.

10 *Other Considerations*

None.

III CONCLUSIONS

This is the first agreement based on the Convention of the United Nations on the Law of the Sea to be concluded in the East Caribbean, as part of France’s effort to provide its overseas departments with maritime boundaries. It became the first agreement of this kind to involve Dominica. Delimitation between Venezuela and Dominica has been recently reported to have registered some favorable signs, especially as a result of a visit by the Venezuelan president to the island and October 1991.⁷

The Guadeloupe and Martinique boundary is a double-frontage maritime boundary, given the fact that Dominica lies between the French department of Guadeloupe on the north and the French department of Martinique on the south. The delimited area develops the shape of a railway track, extending from the Caribbean to the Atlantic, besides a central, intra-insular sector in between.

The boundary delimits what the agreement denominates ‘maritime areas,’ understood to encompass all the rights and jurisdictions recognized under international law. Thus it is an overall universal line meant, in practice, to separate the areas resources-wise.

Equity predominated as the basis for the drawing of the line. In the Caribbean sector, and westwards from the meridional axis of the islands, equidistance was ‘equitably’ applied. In the Atlantic sector, the line had to be guided in such a way as to avoid having Dominica suffer from the same

⁶ *Id.*

⁷ Mandatarios de Venezuela y Dominica trataron sobre delimitación Marítima, *El Nacional*, Caracas, 29 October 1991.

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enclosure effect which led the Federal Republic of Germany to the ICJ in the late 1960s.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

Dominica: Party to none of the 1958 Geneva Conventions; signatory to the 1982 LOS Convention

France: Party to the 1958 Geneva Convention on the Continental Shelf (with a declaration affecting Article 6) and the Convention on Fisheries and Conservation; signatory to the 1982 LOS Convention with a declaration

B *Maritime Jurisdiction Claimed at the Time of Signature*

Dominica: 12-n.m. territorial sea, 24-n.m. contiguous zone, 200-n.m. exclusive economic zone, 1981 (Act No. 26)

France: 12-n.m. territorial sea (1971), 200-n.m. exclusive economic zone and exclusive fishing and fishery conservation, applicable to Guadeloupe by Decree No. 78-276 and to Martinique by Decree No. 78-277, both of 3 June 1978

C *Maritime Jurisdiction Claimed Subsequent to Signature*

No change

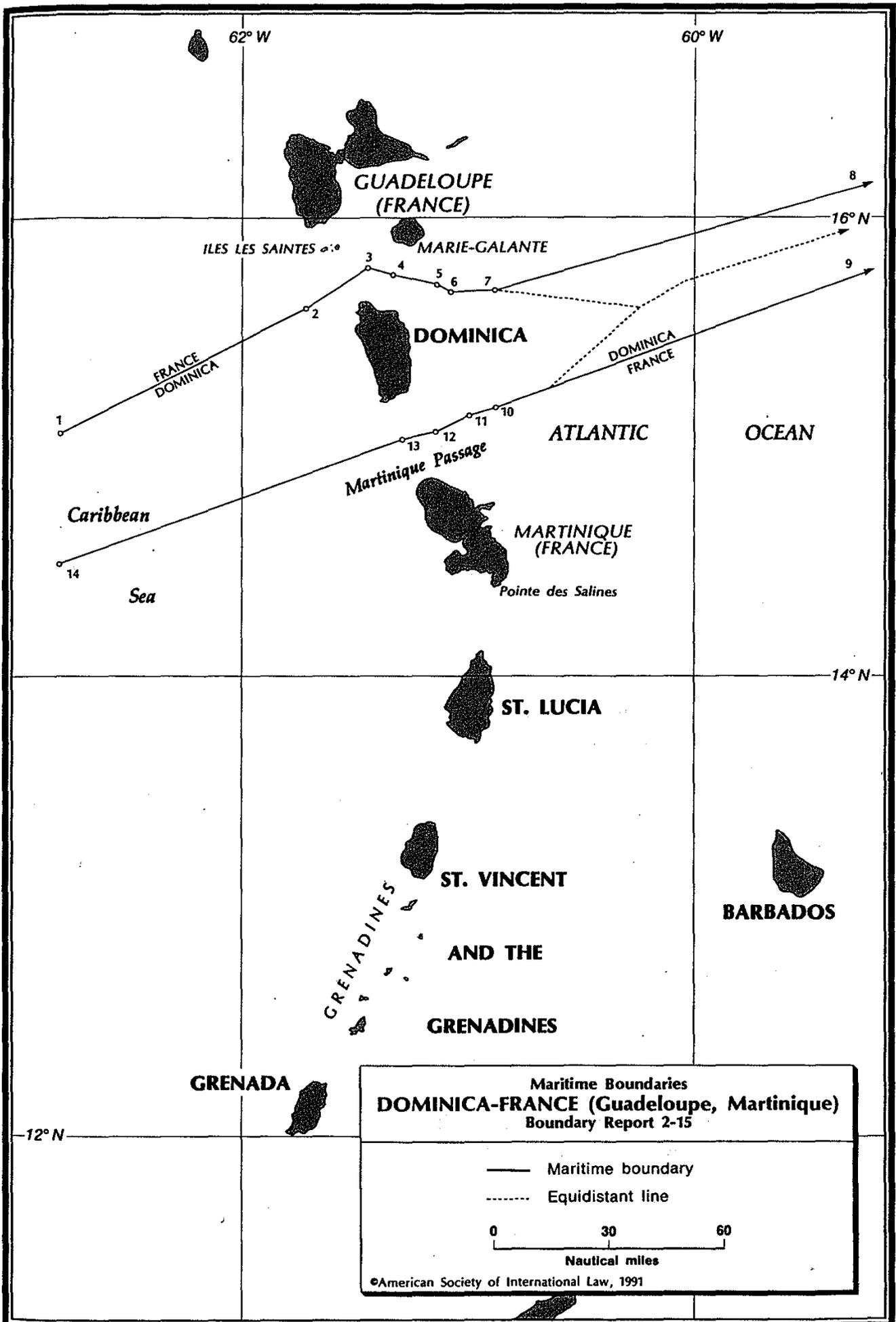
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J.R.V. PRESCOTT, THE MARITIME POLITICAL BOUNDARIES OF THE WORLD (1985)

Prepared by Kaldone G. Nweihed



The Gambia–Senegal

Report Number 4–2

Agreement between The Gambia and the Republic of Senegal

Signed: 4 June 1975

Entered in force: 27 August 1976

Published at: Limits in the Seas No. 85 (1979)
Maritime Boundary Agreements (1970–84) 100 (1987)
I Canadian Annex 377 (1983)
II Libyan Annex No. 43 (1983)
II Conforti & Francalanci 39 (1987)
VIII New Directions 104 (1980)

I SUMMARY

This agreement establishes the northern and southern maritime boundaries of The Gambia and Senegal. The northern boundary follows the parallel of latitude 13° 35' 36" N. The southern boundary follows, after a small curve, the parallel of latitude 13° 03' 27" N. The parties deliberately chose to use this delimitation method instead of the equidistance method which could have had a cut-off effect on the Gambian exclusive economic zone.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

There was no particular political, historical, or strategic reason which led to the actual delimitation of the boundary in question. As indicated in the agreement, the two governments were motivated to fix the maritime boundary between them in an effort to establish and maintain favorable conditions for development and cooperation between them and to preempt possible future problems.

2 Legal Regime Considerations

The agreement establishes both the northern and the southern maritime boundaries between The Gambia and Senegal, without distinguishing between the different zones of jurisdiction. It may be considered as an all-purpose boundary. No outer limit to the boundaries is specified in the delimitation.

3 Economic and Environmental Considerations

There is no evidence that specific economic or environmental considerations influenced the decision of the parties regarding the locations of the boundaries.

4 Geographic Considerations

The coasts of The Gambia and Senegal are adjacent and, apart from the Gambia River, the coasts of the two parties run in a roughly north-south direction. Since Senegalese territory extends both north and south of The Gambia, two maritime boundaries were established. To avoid a cut-off effect on the Gambian maritime area, the equidistant line method of delimitation was not used.

5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations

The decision to use parallels of latitude in the delimitation in order to achieve an equitable delimitation was intended to avoid the influence which offshore features would have on the location of the boundary had other methods of delimitation been used.

6 Baseline Considerations

There is no evidence that baselines other than those from which the territorial sea is normally measured were taken into account in the delimitation of the boundaries in question. Since the boundary was based on parallels of latitude and not on the use of the equidistance method, no baseline controlled the course of the boundary beyond the starting point.

7 Geological and Geomorphological Considerations

If the equidistant line were used, the coastal configuration of the two adjacent states would have dictated a delimitation that was bound to cut off the maritime area of The Gambia close to shore. There is no evidence that known subsoil resources influenced the choice of the delimitation method for the boundary.

8 *Methods of Delimitation Considerations*

The northern boundary is a straight line following the parallel of latitude 13° 35' 36" N and is an extension of the land boundary. The southern boundary, except for a very small portion at its beginning which constitutes a slight curve, extends along the parallel of latitude 13° 03' 27" N.

9 *Technical Considerations*

The boundaries were defined on the basis of the French chart No. 6125 on the scale of 1 : 300,500 (latitude 13° 40').

10 *Other Considerations*

None.

III CONCLUSIONS

This is another example of a maritime boundary delimitation negotiated by the parties outside the context of a specific dispute. By agreeing to use the parallels of latitude, instead of an equidistance method, which could have resulted in a cut-off of the Gambian maritime area, the parties confirmed their aim of achieving an equitable delimitation. The delimitation was to be considered permanent and not to have an adverse effect on the delimitation of the maritime boundary between Senegal and Guinea-Bissau, which was the subject of a third party procedure which also resulted in a boundary aimed at avoiding cut-off effects ((1989) No. 4–4). It also indicates that parties may agree to use the land boundary in the delimitation of their maritime boundary.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

The Gambia: Ratified the 1982 LOS Convention

Senegal: Party to all four 1958 Geneva Conventions; ratified the 1982 LOS Convention

B *Maritime Jurisdiction Claimed at the Time of Signature*

The Gambia: 12-mile territorial sea, 18-mile contiguous zone, 100-mile fishing zone

852 *Report Number 4-2*

Senegal: 12-mile territorial sea, 200-meter depth for the outer edge of the continental shelf

C Maritime Jurisdiction Claimed Subsequent to Signature

The Gambia: 200-mile exclusive economic zone

Senegal: 200-mile exclusive economic zone

V REFERENCES AND ADDITIONAL READINGS

LIMITS IN THE SEAS No. 85 (1979)

Prepared by Andronico O. Adede

Annex B47

J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries*, Vol. II (1996)

International Maritime Boundaries

VOLUME II

Edited by

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and

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Denmark–Federal Republic of Germany

Report Number 9–8

Agreements between Denmark and the Federal Republic of Germany Concerning the Delimitation of the Continental Shelf between the Two Countries in the North Sea

(1) Agreement on a Partial Boundary

Signed: 9 June 1965

Entered into force: 27 May 1966

Published at: 570 UNTS 91 (1965)
National Legislative Series, UN Doc. No.
ST/LEG/SER. B/15, p. 777 (1970)
I Canadian Annex 113 (1983)
II Libyan Annex No. 10 (1983)
I Conforti & Francalanci 49 (1979)

(2) Agreement Referring a Question to the ICJ

Signed: 2 February 1967

Published at: National Legislative Series, UN Doc. No.
ST/LEG/SER. B/15, p. 783 (1970)

(3) Judgment by ICJ

20 February 1969 (1969 ICJ 31)

Published at: 1969 ICJ Reports 31
8 ILM 340 (1969)

(4) Agreement on Remainder of Boundary

Signed: 28 January 1971

Entered into force: 7 December 1972

1802 *Report Number 9-8*

Published at: National Legislative Series, UN Doc. No.
 ST/LEG/SER B./16 p. 424 (1974)
 Maritime Boundary Agreements (1970-84) 65 (1987)
 Limits in the Seas No. 10 (1979)
 I Canadian Annex 195 (1983)
 II Libyan Annex No. 10 (1983)
 I Conforti & Francalanci 50 (1979)

I SUMMARY

The Agreement of 1965 established a continental shelf boundary in the North Sea extending in a straight line for 26 nautical miles (n.m.) from the terminus of the territorial sea boundary established by an agreement of 10 April 1922 to a point defined by coordinates of latitude and longitude. Each side reserved its position regarding the remainder of the boundary in the North Sea, while agreeing upon the use of the method of equidistance in the Baltic Sea. Denmark took the position that equidistance should be used also in the North Sea, but the Federal Republic of Germany (FRG) argued that its continental shelf extended to the center of the North Sea and opposed the use of equidistance there. On 2 February 1967, an agreement was signed between Denmark and the FRG submitting the question of the applicable principles to the International Court of Justice (ICJ). An exactly similar agreement was signed by The Netherlands and the FRG. On 20 February 1969, the ICJ gave its decision in the two *North Sea Continental Shelf* cases. Denmark and the FRG signed an agreement on 28 January 1971, completing their continental shelf boundary by extending it to the center of the North Sea: this line is not a median line, being based on equitable principles, and is 169 n.m. long (making a total of 195 n.m.). The principles were taken from the ICJ's decision, but they were applied in a pragmatic way, so as to permit some existing Danish licensees to remain on Danish continental shelf. Thus, between Points S2 and S5 the boundary curves southward around areas provisionally drilled by Danish licensees.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

The course of the agreed boundary was affected by the FRG's contention that its jurisdiction should extend to the center of the North Sea. The contention was substantially vindicated before the ICJ and realized in the agreements signed by the FRG in 1971 with Denmark, The Netherlands (No. 9-11) and the United Kingdom (UK) (No. 9-12). An historical consideration was the agreement of 1922 on the boundary in the territorial sea which provided the starting point for the continental shelf boundary. A further historical factor

Denmark–Federal Republic of Germany 1803

which may be noted was the generally reserved attitude towards the concept of the continental shelf adopted by the FRG at the First UN Conference on the Law of the Sea in 1958, partly because the FRG's prospects of gaining access to large areas with oil potential in the North and the Baltic seas were not good. The FRG signed, but did not ratify, the Convention on the Continental Shelf.

2 Legal Regime Considerations

The areas delimited were continental shelves. In 1965 and 1971, the parties had narrow territorial seas and fishery limits.

3 Economic and Environmental Considerations

During most of the 1960s, Denmark took the view that the continental shelf should be delimited by using the method of equidistance. Denmark had acted on this view and issued licenses to certain companies in areas which fell to Denmark according to this method. After the ICJ held that this method was not applicable between Denmark and the FRG, Denmark concluded an agreement with the FRG whereby the latter agreed to grant licences under German law to some of those companies.

At the same time, the agreed line, in giving the FRG areas of continental shelf extending towards the center of the North Sea, ran in an irregular way so as to leave some Danish licensees undisturbed on the Danish side of the line. The licensees had drilled in the area (Lagoni, *Oil and Gas Deposits across National Frontiers*, 73 AJIL 241 (1979)). The agreement made provision for recourse to arbitration in the event of disputes about minerals straddling the boundary or about licences.

4 Geographic Considerations

In the southern North Sea, the FRG's coast is concave and Denmark's straight. The coasts are of similar length and adjacent. The ICJ held that a factor to be taken into account in further negotiations was 'the general direction of the coasts of the Parties.' Equidistance was considered unsuitable in the case of a concave coast such as the FRG's, since it would not lead to an equitable result. Rather, delimitation should leave as much as possible to each party of the areas of the shelf which constitute a natural prolongation of its land territory into the sea, without encroaching on the similar prolongation of the other party.

5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations

The boundary agreed in 1965 is an equidistant line for its first section. The

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basepoint in the FRG was the island of Sylt, whereas that on the Danish side was a headland (Blaavands Huk) on Jutland. Sylt is one of several islands lying close to the coast of the mainland.

6 Baseline Considerations

The low-water line was used. Both sides had drawn systems of straight baselines, but they did not affect the drawing of the equidistant line between Points S and S1.

7 Geological and Geomorphological Considerations

The ICJ noted that the continental shelf was a species of platform, the natural prolongation of land territory into and under the sea. However, the southern North Sea bears no distinguishing features as between Denmark and the FRG.

8 Method of Delimitation Considerations

In simple terms, the entire issue in the *North Sea Continental Shelf* cases concerned the method of equidistance: was it obligatory for the FRG; even though it had not ratified its signature of the 1958 Geneva Convention on the Continental Shelf? The ICJ gave a negative response. The line agreed between Denmark and the FRG in 1971 is not an equidistant line; it runs throughout to the north of the equidistant line and represents a purely pragmatic solution. In particular, the line runs slightly north of due east as far as Point S2 and there turns sharply through about 90° to describe an 'arc' between S3, S4, S5, and S6 before resuming the original general direction or the final section between S6 and S7. This line satisfied the FRG's contention that its continental shelf stretched to the center of the North Sea, giving the FRG a boundary with the UK's shelf.

9 Technical Considerations

The Agreement of 1965 defines a point defined by coordinates of latitude and longitude according to European Datum and corresponding to slightly different Danish and German geographical coordinates. The agreement of 1971 similarly relies on the European Datum (First Adjustment 1950). The sections of the boundary are arcs of great circles.

10 Other Considerations

None.

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III CONCLUSIONS

Apart from its inner section, this boundary is a pragmatic, negotiated line which took account of the ICJ's decision in the *North Sea* cases, to the effect that the use of equidistance was not an obligatory legal principle. The FRG succeeded in its contention that its shelf extended to the center of the North Sea in such a way as to meet that of the UK and the resulting boundary is more favorable to the FRG than an equidistant line. The boundary has to be viewed in the context of the line between The Netherlands and the FRG.

IV RELATED LAW IN FORCE

A Law of the Sea Conventions

At the time of the negotiations, Denmark was a party to the Convention on the Continental Shelf 1958, but the FRG had not ratified its signature.

B Maritime Jurisdiction Claimed at the Time of Signature

Denmark: 4 n.m. territorial sea until 1966, then 3 n.m.

Federal Republic of Germany: 3 n.m. territorial sea

Both states claimed a continental shelf extending to the 200-meter line or the limits of exploitability.

C Maritime Jurisdiction Claimed Subsequent to Signature

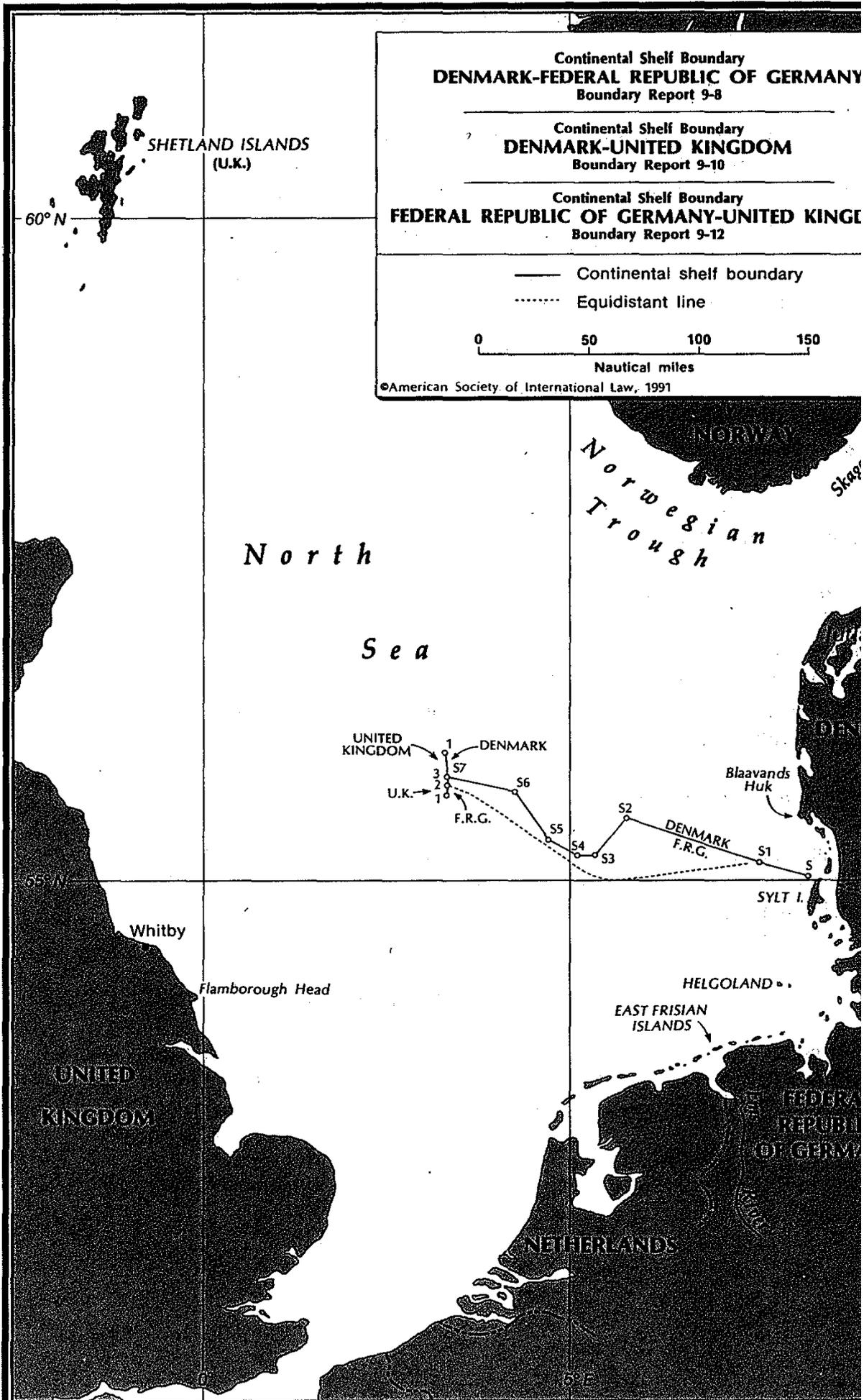
Both states have extended their fishery limits in the North Sea to a maximum of 200 n.m. The Federal Republic of Germany extended the breadth of the territorial sea to 12 n.m. in 1985.

V REFERENCES AND ADDITIONAL READINGS

J.R.V. PRESCOTT, *THE MARITIME POLITICAL BOUNDARIES OF THE WORLD* 285–86 (1985)

US Department of State, *Continental Shelf Boundary: The North Sea*, *LIMITS IN THE SEAS* No. 10 Revised (1974)

Prepared by D.H. Anderson



France–Monaco

Report Number 8–3

Maritime Delimitation Agreement between the Government of His Most Serene Highness the Prince of Monaco and the Government of the French Republic

Signed: 16 February 1984

Entered into force: 22 August 1985

Published at: Jour. Off. Rép. Fr. of 6 July 1985, p. 11600 (French)
Jour. Mon. of 11 October 1985 (French)
9 LOS Bull. 58 (1987) (English)
II Conforti & Francalanci 17 (1987) (French)
Leanza & Sico 137 (1988) (French, English)

I SUMMARY

The French–Monaco maritime boundary agreement delimits the territorial seas and the other maritime spaces of two adjacent countries, one of which is totally enclosed by the other. Monaco is delimited by a five-sided figure whose shape is very long and narrow, measuring 88 kilometers (km) in length and 3.160 km in width. Monaco has a land territory of little more than 1.5 square kilometers (sq. km.) (while European France is 543,965 sq. km.), and a maritime area of about 280 sq. km.

With the sole exception of one segment, the parties disregarded equidistance, in order to reach an equitable delimitation with respect to the concave and enclosed coastline of Monaco. The convention relates to both the ‘territorial waters of the two States’ (Article 1) and the ‘maritime areas situated beyond the territorial sea of Monaco over which the Principality of Monaco exercise or shall exercise sovereign rights in accordance with international law’ (Article 2), namely at present the continental shelf.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*A *Between the Parties*

Monaco is the second smallest state in the world (after the Vatican) and the ~~smallest coastal state~~. Since 1519 it was a seigniorship of the family Grimaldi and was annexed by France for a short period from 1793 to 1814. In 1861 Monaco ceded to France the cities of Mentone and Roquebrune, reducing its territory from 24 to 1.8 sq km.

The convention, binding on a major power and a micro-state, expressly mentions the 'privileged relations of friendship' existing between them (preamble). As stated by Mr Paul Robert, rapporteur for the convention before the French Senate, 'because of the tight and exceptional nature of the French-Monegasque relations, France has accepted provisions that the rules of international law did not oblige it to accept.'¹ This is probably a reference to equidistance, which was not used although it would have favored France.

The parties were previously bound by a joint declaration of 20 April 1967, which delimited their 3-mile territorial seas. The convention, adopted in order to meet the new situation arising after the extension to 12 nautical miles (n.m.) of their territorial seas, repeals the declaration (Article 5, para. 2).

In order to ensure that the convention does not prejudice the established fishing practices of the two countries' professional fishermen, Article 4, para. 1, permits the Monegasque and French coastal fishing vessels to continue their activities in the traditional fishing areas located within Monegasque territorial waters and the adjacent French territorial waters. Fishing in such waters seems, however, to have little economic relevance.

B *Between the Parties and Third States in the Region*

The east border between France and Monaco is not far from the border between France and Italy. There is no treaty delimiting the maritime boundary between Italy and France in this region.

If the territorial sea of Monaco had been measured according to equidistance, it would not have overlapped with the territorial sea over which Italy could claim rights based upon the equidistant line between Italy and France. If Monaco were given the 12-mile corridor having as its base the Monegasque coastline, as well as a further possible area of Monegasque continental shelf, it could have overlapped with the Italian territorial sea and continental shelf.

Due to the change in direction of the eastern delimitation line after turning point A1 and the parallelism between segments A1-A3 and B0-B3, the

¹ Records of the meeting of the French Senate of 26 June 1985.

boundary line avoids any possible interference with the Italian coastal zones. Mr Robert has pointed out that the convention ‘does not encroach in any manner on the waters that could be claimed by Italy or by Spain.’²

2 *Legal Regime Considerations*

Article 1, para. 3, provides that ‘the Monegasque territorial waters shall extend to the same outer limit as French territorial waters.’ This could be interpreted in the sense that Monaco is prevented from unilaterally establishing a width of its territorial sea different from that of France. Moreover, Mr Robert has stated that ‘the terms employed are sufficiently general in order to apply to the possible creation of economic zones in the Mediterranean.’³ The convention is thus intended to establish an all-purpose delimitation. The boundary lines will remain the same, if and when exclusive economic zones are proclaimed by the parties.

Article 4, para. 2, allows the parties to establish, within their territorial waters, one or more reserved or protected zones for marine flora and fauna. Within these zones, the nationals of both countries enjoy the same rights and are subject to the same obligations.

Despite the narrowness of the Monegasque corridor, there are no provisions in the convention on the exploration and exploitation of deposits straddling the delimitation lines. There are no provisions for the settlement of disputes.

3 *Economic and Environmental Considerations*

There are no mineral or hydrocarbons of interest in the narrow strip delimited by the convention. Such considerations did not apparently influence the location of the boundary line.

The provisions on the respective traditional fishing activities and on environmental protection zones (see Political, Strategic, and Historical Considerations) show that while fishing and the environment were taken into consideration by the parties, they did not influence the actual delimitation. The parties were already bound by the agreement between Italy, France, and Monaco on the protection of the waters of the Mediterranean shore, signed in Monaco on 10 May 1976 and entered into force on 1 March 1981. It applies to the territorial sea and internal waters of the continental shores of the parties included within the meridians 6° 7' and 9° 8' E long. It provides for the establishment of an international commission.

One of the objectives of the negotiations was to provide ships navigating to and from Monaco with direct access to the high seas without passing through the territorial sea of other states (see Geographic Considerations).

² *Id.*

³ *Id.*

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4 *Geographic Considerations*

A *Delimitation of the Territorial Sea*

The very short Monegasque coastline is located in a concavity enclosed by the coasts of France and, to a minor extent, of Italy. After the territorial seas of the parties were enlarged from 3 to 12 n.m., an equidistant boundary would have resulted in converging boundary lines that intersect less than 12 n.m. from Monaco. This would have meant cutting off the Monegasque territorial sea from the high seas. Such a disadvantaged situation, which however is not explicitly prohibited by international law, prompted Monaco to seek the negotiation of the convention in order to avoid a situation that was regarded also by France as 'uncomfortable.'⁴

In order to avoid cutting Monaco off from the high seas, the parties agreed to attribute to Monaco a full 12-mile corridor of territorial sea. Points A2 and B2 mark the 12-mile limit from Monaco, which is thus given the area of territorial sea between points A0-A1-A2-B2-B0, much more than it would have been given according to equidistance. A precedent for such a corridor can be found in the maritime boundary agreement between Gambia and Senegal (No. 4-2).

B *Delimitation of the Continental Shelf*

~~Under equidistance, Monaco would not have any continental shelf.~~ In consideration of the Monegasque request to have its own zone of 'economic' sovereign rights, the convention attributed to Monaco a corridor of continental shelf between the points A2-A3-B3-B2. Segments A2-A3 and B2-B3 do not correspond to equidistance since their points are closer to France than to Monaco. The terminal segment A3-B3, however, is on the equidistant line between the coasts of Monaco and the French island of Corsica (Article 2, para. 2).

5 *Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

The only island in the region, the big French island of Corsica (8681 sq km), was given full weight in the delimitation. Segment A3-B3, which closes the corridor, is equidistant from the coasts of Monaco and of Corsica.

6 *Baseline Considerations*

France has a straight baseline system (Decree of 19 October 1967), in the region in the vicinity of Monaco. Monaco has no straight baselines. The French

⁴ *Id.*

straight baselines and, in particular, the segments between Point Saint-Hospice and Cape d'Ail and between Point de la Veille and Cape Martin did not influence the delimitation, which primarily utilizes criteria different from the distance from baselines. It is to be added that the French straight baseline system is not applied in a manner as to cut off from the high seas the territorial sea of Monaco (Article 4, para. 5, of the 1958 Convention on the Territorial Sea and the Contiguous Zone, and Article 7, para. 6, of the 1982 UN LOS Convention).

7 Geological and Geomorphological Considerations

The area of continental shelf which was delimited exceeds in general a depth of 2000 meters. The isobaths run in a direction roughly parallel to the coastline and thus are cut by the boundary corridor. The delimitation does not seem to take account of geological or geomorphological considerations.

8 Method of Delimitation Considerations

~~For both the territorial seas and the maritime spaces beyond it the parties sought to reach an equitable result in relation to the peculiar geographic situation of Monaco. This was achieved by agreeing to establish a corridor.~~

9 Technical Considerations

The boundary lines are defined by loxodromic arcs joining seven points, whose coordinates are indicated in the convention (Articles 1 and 2) and are 'computed in accordance with the compensated European geodesic system (Europe 50)' (Article 3, para. 1). The lines are drawn on the map annexed to the convention, at a scale of 1 : 250,000, Mercator projection.

10 Other Considerations

None.

III CONCLUSIONS

The convention is an interesting example of the establishment of a corridor, that seems to be an equitable solution in the case of a state with a short coastline that is enclaved by the coasts of another state. The corridor allowed Monaco to have its own access to the high seas and to have its own zone of 'economic' sovereign rights.

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IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

France: Not party to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone or to the 1982 UN LOS Convention, party to the 1958 Continental Shelf Convention, to which it acceded on 14 June 1965 with some reservations

Monaco: None

B *Maritime Jurisdiction Claimed at the Time of Signature*

France: 12-mile territorial sea (Law No. 1060 of 24 December 1971)

Monaco: 12-mile territorial sea (Ordinance No. 5094 of 2 February 1973)

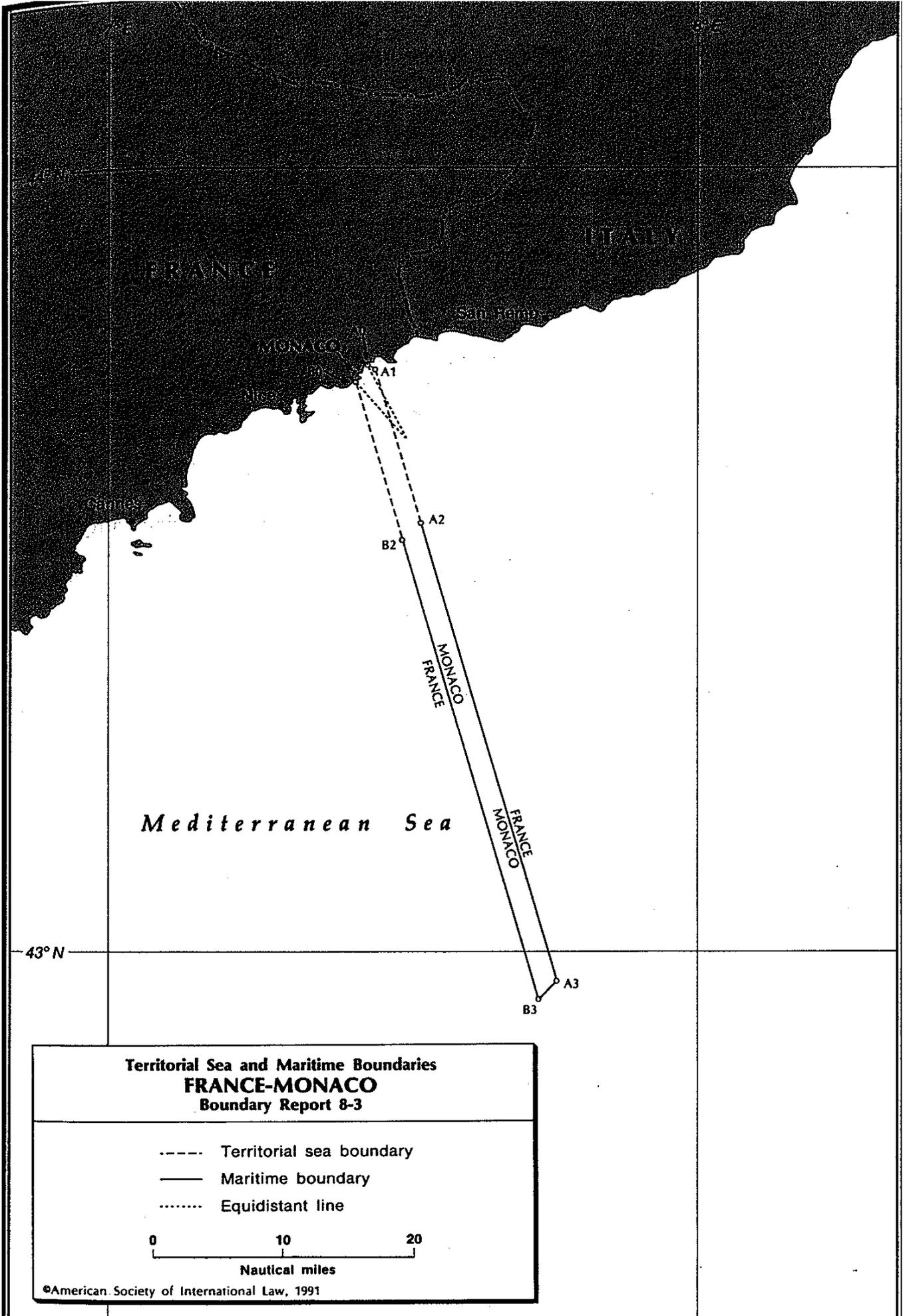
C *Maritime Jurisdiction Claimed Subsequent to Signature*

France has proclaimed a 24-mile contiguous zone (Law of 31 December 1987). The convention can probably be interpreted as preventing such a zone from extending the area of Monegasque maritime spaces. Neither France (in the Mediterranean) nor Monaco have proclaimed an exclusive economic zone.

V REFERENCES AND ADDITIONAL READINGS

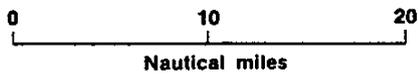
Righetti, *Accordo Intervenuto tra Francia e Monaco per la Delimitazione della Zona Economica Esclusiva*, in U. LEANZA, *Il Regime Giuridico Internazionale del Mare Mediterraneo* 61 (1987)

Prepared by Tullio Scovazzi (legal analysis) and Giampiero Francalanci (technical analysis)



**Territorial Sea and Maritime Boundaries
FRANCE-MONACO
Boundary Report 8-3**

- Territorial sea boundary
- Maritime boundary
- Equidistant line



Annex B48

David A. Colson, "The Delimitation of the Outer Continental Shelf between Neighboring States," *American Journal of International Law*, Vol. 97, No. 91 (2003)

NOTES AND COMMENTS

THE DELIMITATION OF THE OUTER CONTINENTAL SHELF BETWEEN NEIGHBORING STATES

Following the 1985 Judgment of the International Court of Justice in the *Libya-Malta* case,¹ the late Keith Highet gave a presentation entitled “Whatever Became of Natural Prolongation?” at a seminar at the University of Georgia.² It was a fair question from a man who had served as counsel in both the *Tunisia-Libya*³ and the *Libya-Malta* cases and had tried to make sense of the confusing statements by the Court in the *North Sea Continental Shelf* cases⁴ about the relevance of natural prolongation and geology and geomorphology to the bilateral delimitation of the continental shelf between neighboring states.

In *Libya-Malta*, the Court set aside the relevance of natural maritime boundaries, at least insofar as bilateral boundary delimitations are concerned within 200 nautical miles of the coast. The subject has not been heard of since. However, things have changed. Today Highet would surely be contemplating the subject anew and asking whether arguments based on the geomorphology of the seabed and geology of the subsoil might find their way into the maritime boundary cases once again in the context of the delimitation of the outer continental shelf beyond the 200-nautical-mile exclusive economic zone.

What has changed? First, the law and practice of maritime delimitation has matured, which in turn leads to a clearer understanding of how arguments concerning the physical features of the outer continental shelf might fit into any particular case. In a recent presentation to the Sixth Committee of the United Nations General Assembly, Judge Gilbert Guillaume, president of the International Court of Justice, reported on the advancement and consolidation of the law of maritime delimitation,⁵ reflected in the Court’s recent Judgment in the *Qatar-Bahrain* case,⁶ about which more will be said below. Second, bilateral delimitation questions pertaining to the outer continental shelf beyond the 200-nautical-mile zone no longer represent a problem for the distant future. Their immediacy is evidenced by the emergence of state practice consisting of seven bilateral delimitations addressed to the subject, and the submission,

¹ Continental Shelf (Libya/Malta), 1985 ICJ REP. 13 (June 3) [hereinafter *Libya-Malta*]; see Tullio Scovazzi & Giampiero Francalanci, *Libya-Malta*, Rep. No. 8-8, in 1 INTERNATIONAL MARITIME BOUNDARIES 1649 (Jonathan I. Charney & Lewis M. Alexander eds., 1993) [hereinafter Charney & Alexander].

² Keith Highet, *Whatever Became of Natural Prolongation?* in RIGHTS TO OCEANIC RESOURCES 87 (Dorinda G. Dallmeyer & Louis DeVorse, Jr., eds., 1989); see also Keith Highet, *The Use of Geophysical Factors in the Delimitation of Maritime Boundaries*, in 1 Charney & Alexander, *supra* note 1, at 163.

³ Continental Shelf (Tunisia/Libya), 1982 ICJ REP. 18 (Feb. 24) [hereinafter *Tunisia-Libya*]; see Mark B. Feldman, *The Tunisia-Libya Continental Shelf Case: Geographic Justice or Judicial Compromise?* 77 AJIL 219 (1983); Lawrence Herman, *The Court Giveth and the Court Taketh Away: An Analysis of the Tunisia-Libya Continental Shelf Case*, 33 INT’L & COMP. L.Q. 825 (1984); Robert D. Hodgson, *The Tunisia-Libya Continental Shelf Case*, 16 CASE W. RES. J. INT’L L. 1 (1984); Tullio Scovazzi & Giampiero Francalanci, *Tunisia-Libya*, Rep. No. 8-9, in 2 Charney & Alexander, *supra* note 1, at 1663.

⁴ North Sea Continental Shelf (FRG/Den.; FRG/Neth.), 1969 ICJ REP. 32 (Feb. 20) [hereinafter *North Sea*].

⁵ Gilbert Guillaume, Speech to the Sixth Committee of the General Assembly of the United Nations (Oct. 31, 2001), available at <<http://www.icj-cij.org/icjwww/ipresscom/iprstats.htm>>.

⁶ Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (*Qatar v. Bahrain*), Merits, 40 ILM 847 (2001) [hereinafter *Qatar-Bahrain*]; see David A. Colson, *Bahrain-Qatar*, Rep. No. 7-13, in 4 INTERNATIONAL MARITIME BOUNDARIES 2841 (Jonathan I. Charney & Robert W. Smith eds., 2002) [hereinafter Charney & Smith]; see also Glen Plant, Case Report: Maritime Delimitation and Territorial Questions Between Qatar and Bahrain, in 96 AJIL 198 (2002).

Thus, international maritime boundary law has accommodated itself to the need for rigor in its analysis so that the equitable solution it must find amounts to something more than an ad hoc perspective. By positing an initial reference to equidistance, followed by adjustments or modifications that are properly explained, the law has advanced substantially. The reasons for modification may be many, ranging from the effect of islands and/or rocks on the equidistant line, perceptions of nonencroachment,⁶² or considerations of coastal configuration, including disparities in coastal length,⁶³ to conduct of the parties.

The one thing missing from the picture is “natural prolongation”—the relevance of geological or geomorphological factors in a bilateral delimitation.

VI. THE PHYSICAL RELEVANCE OF NATURAL PROLONGATION TO OUTER CONTINENTAL SHELF DELIMITATION

It may be useful to recall that the outer continental shelf has been with us all along. It did not just appear with Article 76. Article 6 of the 1958 Continental Shelf Convention makes no distinction between broad continental shelves and narrow continental shelves, nor does the customary international law of maritime delimitation. Consequently, to think that the delimitation of the outer continental shelf arises only now in the context of Article 76 is a mistake.

What Article 76 brings to the table now is not so much the reminder that geology and geomorphology may be relevant to a delimitation beyond 200 nautical miles, just as geology and geomorphology were relevant in the days prior to adoption of the exclusive economic zone. What Article 76 provides that is new are agreed categories of geological and geomorphological facts that are legally relevant for the purpose of determining title to the outer continental shelf, and it establishes a commission to confirm those facts.

One reason, at least, for the early ambivalence in the cases concerning the facts relating to natural prolongation must be that the facts were impossible for a judge or arbitrator to determine in light of the competing factual presentations before them.⁶⁴ Judges and arbitrators were in no position to sort out the debate between competing scientists and lawyers with their competing natural prolongations. Now, however, there is Article 76, which identifies the facts of legal relevance for determining title to the outer continental shelf: points on the foot of the slope, depths of sediment, localized bathymetry, and so forth. These facts are legally relevant insofar as they pertain to title over the outer continental shelf, just as the facts of the coastline pertain to title over the exclusive economic zone. When the commission has done its work, the facts relevant to the outer continental shelf will be drawn as clearly as a coastline on a nautical chart.

Since the Court decided the *North Sea Continental Shelf* cases, the facts that serve to afford title and those that may be relevant to bilateral delimitation have been seen as interrelated. In *Tunisia-Libya* and *Gulf of Maine*, the effort by the parties to make geomorphological or geological facts relevant failed either because the facts alleged could not be proved or because their legal relevance was not obvious. Following the advent of the 200-nautical-mile

⁶² The principle of nonencroachment concerns how close the boundary line lies to each neighboring coast, and whether, in the circumstances of the case, that seems to be an equitable result. It has both a positive and a negative aspect. Each state is entitled to the projection of its coastal front, but the boundary must not “cut off” the projection of the neighbor’s coastal front. Accordingly, the principle of nonencroachment works hand in hand with special circumstances. It is really the nonencroachment perspective that comes into play in deciding that an equidistant line will cut off the extension of the coastal front of the neighboring country. Identifying the special circumstance that causes the equidistant line to do that, and adjusting for it, leads to a satisfactory sharing of the “cutoff” of projections of neighboring coastal fronts and thereby satisfies the principle of nonencroachment.

⁶³ Substantial differences in the lengths of relevant coasts may be a relevant factor in a delimitation, as was true in *Libya-Malta* and *Jan Mayen*.

⁶⁴ As Keith Highet said: “The Court was submerged beneath vast quantities of written material on tectonic plate theory, continental drift, rifting, uplifting, subsidence, horsts, and grabens.” Highet, *Whatever Became of Natural Prolongation?* *supra* note 2, at 88.

zone, *Libya-Malta* held that such facts are not relevant because they are unrelated to title in this zone, but it left open the possibility of their relevance to delimitation of the outer continental shelf. Such relevance does not mean that geomorphological or geological facts operate to the exclusion of other relevant facts in the delimitation of the outer continental shelf; nor does it mean that they cannot be assessed within the legal framework that has now emerged. Within that framework, sometimes facts pertaining to coastline are dominant; sometimes they are set aside in the search for an equitable solution. Sometimes facts pertaining to the conduct of the parties play a role, but often they do not. There is no reason why the facts pertaining to title over the outer continental shelf cannot find a place within this mix so as to achieve the equitable solution the law calls for.

A key problem in the use of geomorphological or geological facts in an outer continental shelf delimitation is which state may make use of such information. For instance, the normal maritime boundary situation concerns coasts and their relationship to maritime areas; for the most part, one knows which state is entitled to claim sovereignty over which coasts and much of the delimitation process is taken up with identifying the maritime areas that lie off the respective coasts. As regards the outer continental shelf, the situation is somewhat different: one might summarize the bilateral delimitation question in the first instance as being which state gets to use which part of the foot of the continental slope, or the 2,500-meter isobath, or the 350-nautical-mile limit to support its bilateral boundary position. The answer, it is suggested, entails the same process of evaluation of equidistance and the reasons for adjusting the equidistant line as is now common to the cases.

It may be useful to begin with a simple example. Assume that countries *A* and *B* are opposite and 500 nautical miles apart. Each maintains a 200-nautical-mile zone claim; thus, a 100-nautical-mile strip lies between these two zones. Furthermore, assume that country *A* has a very narrow continental shelf, which drops off to the deep seabed within 75 nautical miles of the coast. Country *B*, however, is a broad margin state. Its continental shelf (in the terms of Article 76) actually extends through its 200-nautical-mile zone, the entire 100-nautical-mile strip, and into the 200-nautical-mile zone of country *A*. In such a situation, in concept, the law seems to provide (1) that country *A* is entitled to its entire 200-nautical-mile zone, including the portion of outer continental shelf attributable to country *B* that intrudes into its 200-nautical-mile zone; but (2) that country *A* is not entitled to any of the outer continental shelf in the 100-nautical-mile strip, as that is attributable solely to country *B*. Let us call this example 1.

Next, for example 2, assume again that countries *A* and *B* are opposite states 500 nautical miles apart, each with a 200-nautical-mile zone claim. The 100-nautical-mile strip in the middle is a sedimentary basin whose entirety meets the depth-of-sediment test when measured from the foot of the slope of either country. Thus, it is legally outer continental shelf, but whose? All things being equal, it appears that an equidistant line, measured from the coasts of countries *A* and *B*, would be appropriate for an outer continental shelf boundary between these countries, which would divide the 100-nautical-mile strip in the middle.

For example 3, however, what if the foot of the slope of country *A* were located 220 nautical miles from the coast of country *A*, and the foot of the slope of country *B* were located 180 nautical miles from the coast of country *B*? Would this fact be relevant in dividing the sediment basin between countries *A* and *B*? Rather than an equidistant line as measured from the coasts, as in example 2, would a more equitable solution (in keeping with the basis of title over the outer continental shelf) be to establish a median line between two lines marking each foot of the respective continental slopes, which in this case would create an outer continental shelf boundary 270 nautical miles from country *A* and 230 nautical miles from country *B*?

This notion of an equidistant line based on the respective foot of each continental slope is not so far-fetched. Indeed, the same Dr. Hedberg that created the foot-of-the-slope plus 60 nautical miles test in Article 76(4)(a)(ii) for the outer limit of the continental shelf, strongly advocated the proposition that the Gulf of Mexico should be divided between the United

States and Mexico on the basis of a median line between lines marking each foot of the respective continental slopes.⁶⁵ This approach would have redounded substantially to the advantage of the United States, placing most of the western “doughnut hole” in the Gulf of Mexico on the U.S. side of such a line.

Hedberg did not prevail with this argument in U.S. political circles. One reason was that he believed the same formula could be used to divide the 200-nautical-mile zone. Another reason was that he did not appreciate the need for consistency in boundary practice between the United States and Mexico. However, was he so wrong to suggest that at least in some cases a median line between two lines marking the foot of two continental slopes might be a more equitable solution than a median line between two coasts? The fact that the United States and Mexico agreed to apply the traditional equidistance method using coastal base points to delimit the Gulf of Mexico, including the western “doughnut hole,” is a political fact, but it does not mean that Hedberg’s idea was ill-considered. In this regard, one may recall the Court’s reference to the Norwegian Trough in the *North Sea Continental Shelf* cases.⁶⁶ Just because the United Kingdom and Norway disregarded the Norwegian Trough in their agreed boundary did not mean that the Norwegian Trough might not have been relevant if presented to the Court at that time, if a case had been brought between the United Kingdom and Norway.

Another example, example 4, concerns the “grey zone.”⁶⁷ As used here, this term refers to the following situation. A maritime boundary that is not a precise equidistant line will meet the outer limit of a zone based on distance, such as the 200-nautical-mile zone, established by one state before it meets the outer limit of the zone established by the other. If a boundary has been established that ends on the outer limit of the first state, the grey zone is the area that is beyond the mileage limit of the first state, but within the mileage limit of the other, yet on the first state’s side of the natural extension of the boundary.

A perfect example is the United States–Canada maritime boundary in the Gulf of Maine area established by a chamber of the Court in 1984.⁶⁸ The boundary favors the United States more than an equidistant line would; thus, in a sense the boundary is closer to Canada than to the United States. The Chamber stopped the boundary at a point on the U.S. 200-nautical-mile limit, a point that is closer to Canada than to the United States. Seaward of that point there is area that Canada can claim as 200-nautical-mile zone but that the United States cannot claim as such because it is beyond 200 nautical miles from the U.S. coast.⁶⁹ Thus, as far as Canada is concerned, an area seaward of the end of the Chamber’s boundary and on the United States side of an extension of that boundary constitutes Canadian 200-nautical-mile zone. The United States would see that same area as its outer continental shelf.

This situation raises a number of questions. First, if one subscribes without reservation to example 1, one would argue that Canada is entitled to a full 200-nautical-mile zone even though the United States might claim the area as outer continental shelf. However, this argument confuses an outer limit question, which is what example 1 really illustrates, with a bilateral delimitation question. A delimitation often creates a situation where the jurisdiction on one side of a boundary is of a different legal character (for instance, territorial sea) from that

⁶⁵ Hollis D. Hedberg, *Ocean Floor Boundaries*, 204 SCIENCE, Apr. 13, 1979, at 135.

⁶⁶ *North Sea*, 1969 ICJ REP. 32, paras. 4, 45; see David H. Anderson, *Norway–United Kingdom*, Rep. No. 9-15, in 2 Charney & Alexander, *supra* note 1, at 1879.

⁶⁷ See David A. Colson, *The Legal Regime of Maritime Boundary Agreements*, in 1 Charney & Alexander, *supra* note 1, at 41, 67.

⁶⁸ *Gulf of Maine*, 1984 ICJ REP. 246.

⁶⁹ The boundary so established extends out to an endpoint that is 200 nautical miles from the United States coast but only about 176 nautical miles from Canada. Without doubt, there is outer continental shelf to be claimed by Canada and the United States further seaward of this endpoint for a considerable distance. While the outer continental shelf off this portion of the East Coast of North America may not be so broad as it is further to the north, the United States and Canada recognized that the continental shelf extends beyond the 200-nautical-mile limit in this boundary area and provided for its delimitation through negotiations or by binding dispute settlement. See Article VII of the Special Agreement of March 29, 1979, submitting the *Gulf of Maine* area maritime boundary dispute to a chamber of the International Court of Justice, *Gulf of Maine*, 1984 ICJ REP. at 255, para. 5.

of the jurisdiction on the other side (for instance, exclusive economic zone). This legal result of boundaries is often obscured because in most cases boundary lines are used for all purposes.

A recent and clear example is the award in the second phase of the *Eritrea-Yemen* case, where the arbitration tribunal truncated the territorial sea west of Yemen's Jabal Zuqar.⁷⁰ The practical effect was to create a boundary line that divided Yemeni territorial sea from Eritrean exclusive economic zone. Accordingly, by the boundary, marine area that lay within 12 nautical miles of Yemen's coast, and well beyond 12 nautical miles from Eritrea's coast, became Eritrean exclusive economic zone.

Thus, example 4 raises different issues than example 1. The grey zone example does not require that the Canadian 200-nautical-mile zone may not be truncated by a boundary that divides it from U.S. outer continental shelf.⁷¹ That being said, however, it does not answer the question how the United States-Canada boundary should be extended to the outer limit of the continental shelf: whether by reference to an equidistant line, by an extension of the seawardmost segment of the Chamber's line, or by some other method.⁷²

For further illustration, figure 2 is presented (p. 106). Figure 2 is based upon a popular diagram used to illustrate the application of Article 76; it was first published by the British Royal Society and has now appeared in several publications.⁷³ That diagram is replicated in figure 2a. A slight variation is used here in figures 2b, 2c, and 2d to illustrate bilateral delimitation questions in the context of specific Article 76 criteria.

In figure 2b, assume that countries *A* and *B* concluded a prior agreement for an all-purpose maritime boundary extending northward on the meridian of their land boundary terminus as shown. The shaded area in the illustration, which is on country *A*'s side of the maritime boundary, cannot be claimed by country *A* as outer continental shelf with reference to geology and geomorphology on its side of the boundary line. Country *A* may reach to the shaded area on the basis of Article 76 only if it refers to the foot of the continental slope on *B*'s side of the boundary. Is that possible?

In figure 2c, countries *A* and *B* have a prior agreement (equidistance) that extends only to the 200-nautical-mile limit. *A* argues that the outer continental shelf boundary should be continued as an equidistant line; *B* argues that natural prolongation is relevant. In country *B*'s argument, since the foot of the slope is on its side of an extended equidistant line seaward of the 200-nautical-mile limit, the continental shelf boundary should attribute to *B* all of the outer continental shelf that is based upon the foot of the slope in front of its coast.

For figure 2d, if the land boundary met the coast as shown, and an equidistant boundary extended to the 200-nautical-mile limit as shown, and the equidistant line were extended onto the outer continental shelf, country *B* would be disadvantaged on the outer continental shelf. Given the overall symmetry of the coast, of the bathymetry, and of the sediment fan, all corresponding to coastal configuration, would country *B* have an argument based on natural prolongation that the equidistant line ought to be adjusted, to the left in this example, to provide it with a reasonable proportion of the outer continental shelf?

⁷⁰ *Eritrea-Yemen*, 40 ILM 983 (2001). This matter is addressed in paragraphs 160-62 of the award in that case. The boundary cuts off the territorial sea west of Jabal Zuqar at about 10 nautical miles from the island, whereas the opposing Eritrean mainland is about 22 nautical miles west of the boundary.

⁷¹ The Venezuela-Trinidad & Tobago boundary is another illustration of this point. For the Treaty and commentary, see note 22 *supra*.

⁷² At this date, more than twenty years after the United States and Canada agreed by treaty to submit the case to a chamber of the Court, it may be useful to recall that the pertinent treaty provisions would allow either country to reinstitute proceedings before a chamber of the Court to address the boundary of the outer continental shelf. See note 69 *supra*.

⁷³ ROYAL SOCIETY, A GUIDE TO THE PROVISIONS OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA RELATING TO MARINE SCIENTIFIC RESEARCH 25 (n.d.), reprinted in INTERNATIONAL HYDROGRAPHIC ORGANIZATION, A MANUAL ON TECHNICAL ASPECTS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982, at 110 (2d ed. 1990); see also UN HANDBOOK, *supra* note 10, fig. 8, at 24; CONTINENTAL SHELF LIMITS, *supra* note 10, fig. 3.1, at 22.

FIGURE 2. BILATERAL DELIMITATION OF OUTER CONTINENTAL SHELF UNDER ARTICLE 76

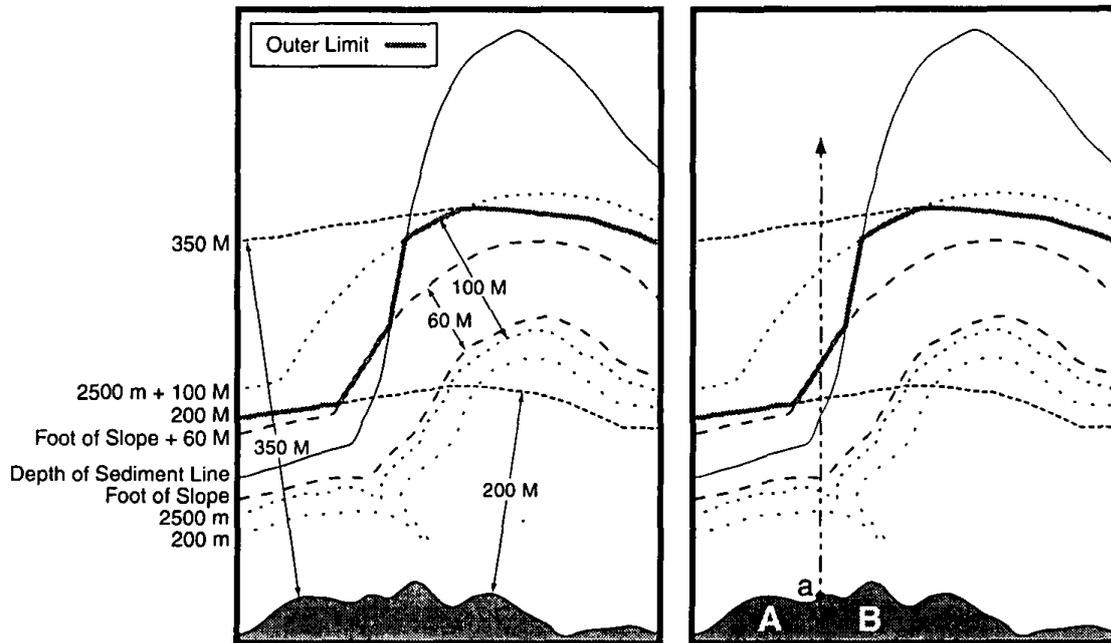


Figure 2a

Figure 2b

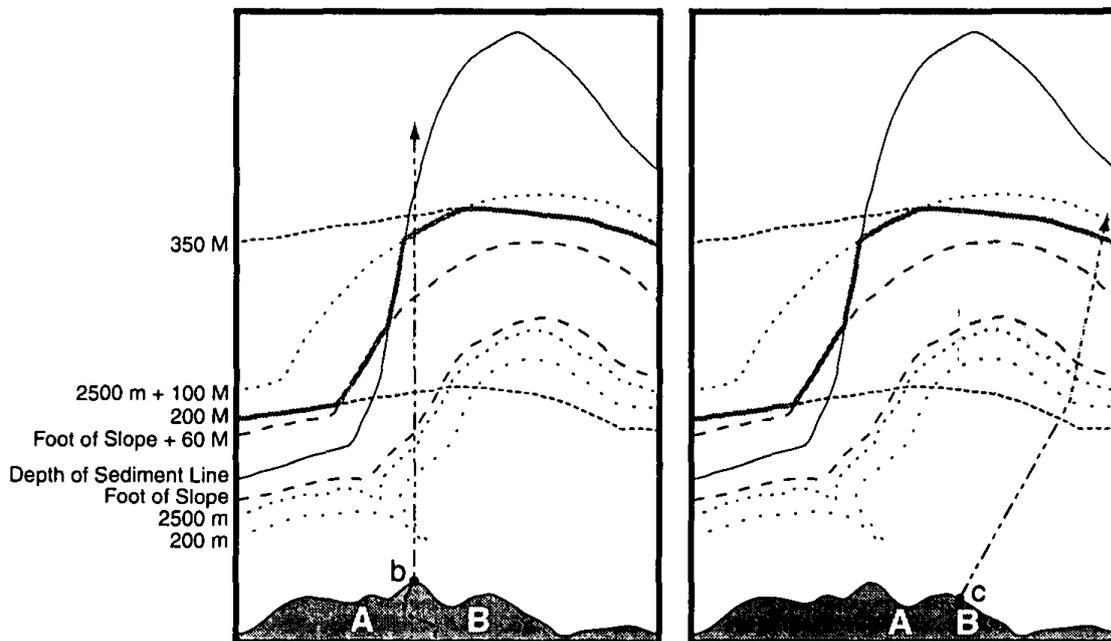


Figure 2c

Figure 2d

Figures 2b, 2c, and 2d are just three hypothetical examples based upon one stylized representation of the application of Article 76 criteria. Surely, in bilateral delimitation situations on the outer continental shelf, when confronted with real and complex facts verified by the Commission on the Limits of the Continental Shelf, many possibilities will present themselves. No effort is made here to identify the answers, but can there be any question that geological and geomorphological features will once again enter the universe of relevant circumstances in a boundary case pertaining to outer continental shelf delimitation? Whether they will be found to be legally compelling is another matter.

In conclusion, it is suggested that positing the equidistant line as a starting point in the analysis of a delimitation of the outer continental shelf is a useful tool. The effect of geographical features, such as islands, rocks, and coastal configurations, on the equidistant line will remain a matter for close examination. In addition, the principle of nonencroachment, however hard that may be to articulate, will probably remain a key feature of outer continental shelf cases. No state practice is likely to be so compelling as to suggest a modification of the line, unless states fail to protect their interests in response to the outer continental shelf claim of neighboring states. Also, it seems safe to predict that the proportionality test will continue to slide toward obscurity. Thus, the consolidated law of maritime boundary delimitation is secure, but after a hiatus since 1985, geological and geomorphological factors will reemerge in the law of maritime delimitation of the outer continental shelf. This time they will serve as specific facts deemed relevant for determining title, and they may be confirmed by the Commission on the Limits of the Continental Shelf. Presumably, they will work together with the other facts in the case, perhaps prominently or perhaps not, depending on the circumstances, to achieve an equitable solution.

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CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters to publish and to edit any letters printed. Letters should conform to the same format requirements as other manuscripts.

TO THE EDITOR IN CHIEF:

Ryan Goodman, in *Human Rights Treaties, Invalid Reservations, and State Consent* (96 AJIL 531 (2002)), advocates severance as the best remedy for incompatible reservations to human rights treaties. He contends that severance does not pose a real conflict with state sovereignty because many states would prefer severance to an alternative remedy of expulsion from the treaty. However, Professor Goodman resolves the narrow problem of state consent to severance as a remedy only by ignoring the broader problems of state consent to adjudication of reservations and to enforcement of human rights treaties generally.

The narrow sovereignty question addressed by Goodman's article is the concern that state sovereignty will be undermined if a state is bound to a treaty provision that it has expressly reserved. But this concern must be addressed in the context of the more fundamental debate over the extent to which ratifying states have consented to making human rights treaties legally binding and enforceable at all. Human rights treaties often establish only very limited legal adjudication and enforcement mechanisms, if any. Ratifying states often intend

* LeBoeuf, Lamb, Greene & MacRae, L.L.P. During his United States government career, the author served on U.S. delegations to the Third United Nations Conference on the Law of the Sea from 1976 to 1982, and was Deputy Agent for the United States in the U.S.-Canada *Gulf of Maine* case before a chamber of the International Court of Justice. He wishes to express his appreciation to Coalter Lathrop of Sovereign Geographic, Inc., for his assistance with the two figures that accompany this Note.

Annex B49

Geoffrey Lean, "Disappearing world: Global warming claims tropical island", *The Independent*, 24 December 2006 (available at <<http://www.independent.co.uk/environment/climate-change/disappearing-world-global-warming-claims-tropical-island-429764.html>>).

Independent.co.uk

Disappearing world: Global warming claims tropical island

For the first time, an inhabited island has disappeared beneath rising seas. Environment Editor Geoffrey Lean reports

Sunday, 24 December 2006

Rising seas, caused by global warming, have for the first time washed an inhabited island off the face of the Earth. The obliteration of Lohachara island, in India's part of the Sundarbans where the Ganges and the Brahmaputra rivers empty into the Bay of Bengal, marks the moment when one of the most apocalyptic predictions of environmentalists and climate scientists has started coming true.

As the seas continue to swell, they will swallow whole island nations, from the Maldives to the Marshall Islands, inundate vast areas of countries from Bangladesh to Egypt, and submerge parts of scores of coastal cities.

Eight years ago, as exclusively reported in The Independent on Sunday, the first uninhabited islands - in the Pacific atoll nation of Kiribati - vanished beneath the waves. The people of low-lying islands in Vanuatu, also in the Pacific, have been evacuated as a precaution, but the land still juts above the sea. The disappearance of Lohachara, once home to 10,000 people, is unprecedented.

It has been officially recorded in a six-year study of the Sunderbans by researchers at Calcutta's Jadavpur University. So remote is the island that the researchers first learned of its submergence, and that of an uninhabited neighbouring island, Suparibhanga, when they saw they had vanished from satellite pictures.

Two-thirds of nearby populated island Ghoramara has also been permanently inundated. Dr Sugata Hazra, director of the university's School of Oceanographic Studies, says "it is only a matter of some years" before it is swallowed up too. Dr Hazra says there are now a dozen "vanishing islands" in India's part of the delta. The area's 400 tigers are also in danger.

Until now the Carteret Islands off Papua New Guinea were expected to be the first populated ones to disappear, in about eight years' time, but Lohachara has beaten them to the dubious distinction.

Human cost of global warming: Rising seas will soon make 70,000 people homeless

Refugees from the vanished Lohachara island and the disappearing Ghoramara island have fled to Sagar, but this island has already lost 7,500 acres of land to the sea. In all, a dozen islands, home to 70,000 people, are in danger of being submerged by the rising seas.

Annex B50

Achintyarup Ray, "Lohachara rises from waters again", *The Times of India*, 4 April 2009 (available at <<http://timesofindia.indiatimes.com/city/kolkata-/Lohachara-rises-from-waters-again/articleshow/4352475.cms>>).

RELATED KEYWORDS: [Satellite](#)

Lohachara rises from waters again

Achintyarup Ray, TNN, Apr 3, 2009, 05:46am IST

KOLKATA: 2007. Kodak Theatre, Hollywood. The list of Oscar presenters includes Jack Nicholson, Meryl Streep, Leonardo DiCaprio, Jennifer Lopez. Instead of the usual million-dollar goodies, each of them receive a small glass model called the Lohachara sculpture after an island which "in December, 2006, became the first inhabited island to be lost to rising sea levels caused by global warming".

A little more than two years later, Lohachara island is emerging again. This was first noticed by Jadavpur University scientists in satellite images. This island in the western part of the Sunderbans it was claimed was the first inhabited one in the world to be inundated because of global warming. Along with this to go under water was the nearby island of Suparibhanga or Bedford, a land mass which was uninhabited, officially.

According to Tuhin Ghosh, senior lecturer, School of Oceanographic studies, JU, "Lohachara and Bedford were there in 1975 satellite data. In 1990 pictures, a small portion of Lohachara is visible. There's no sign of Bedford. In a 1995 satellite picture, Lohachara had vanished. But in satellite pictures of 2007, you can see Lohachara coming back... It's a revelation."

An on-the-spot survey showed that the vanished islands are indeed emerging. One can walk around on it during low tide and just before high tide, the land mass rises around three feet above the water.

The emergence of this island is such a new phenomenon that even many residents of Ghoramara don't know about its existence. "You will find nothing. Lohachara is not there. It has been eaten up by the river," says Arun Pramanik.

But hiring a trawler to around one kilometre south-west of Ghoramara gives a different picture. The island is there in front of one's eyes. Says boatman Mukunda Mondal (41), "Yes, the island is emerging. I have noticed it for the past one year. It's clearly visible in winter."

Judhisthir Bhuian, now a resident of Jibantala colony on the Sagar island, had his home on the Lohachara. He still goes back to the place where their house once stood. "A huge landmass is coming up, covering Lohachara and Bedford," he says.

According to Tuhin Ghosh, it is not unlikely. "The island can reappear because of different geomorphic reasons," says Ghosh, who has worked in the area for around nine years and done his PhD on the Ghoramara island, around a kilometre north of Lohachara.

Annex B51

M. Shah Alam and A. Al Faruque, “The Problem of Delimitation of Bangladesh’s Maritime Boundaries with India and Myanmar: Prospects for a Solution”, *International Journal of Marine and Coastal Law*, Vol. 25, No. 3 (2010)

The Problem of Delimitation of Bangladesh's Maritime Boundaries with India and Myanmar: Prospects for a Solution

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Abstract

The sea areas of Bangladesh are reportedly rich in straddling fish stocks and mineral resources, including hydrocarbons. But a long-standing dispute over maritime boundary delimitation with India and Myanmar remains a major stumbling block in exploration of these resources. The overlapping claims of these three countries over the maritime zones in the Bay of Bengal need to be settled for peaceful exploration of natural resources. While India and Myanmar want to delimit the maritime boundary on the basis of the equidistance principle, Bangladesh demands that delimitation should be based on the equitable method. The special geographical circumstances of the coastal zones of these countries warrant that any delimitation, whether agreed or determined by a third party, must result in an equitable solution. The decisions of the international courts and tribunals, state practice, and the Law of the Sea Convention clearly demonstrate that there has been a shift from the equidistance principle to the equitable principle of delimitation and strongly indicate that the equitable principle is the preferred method of delimitation.

Keywords

Bangladesh; India; Myanmar; Bay of Bengal; South Talpatty Island; equitable principle; delimitation; equidistance principle; maritime boundary

Introduction

The sea areas of Bangladesh are reportedly rich in straddling fish stocks and mineral resources, including hydrocarbons. As Bangladesh's dependence on

* The authors are grateful to Commander Yadul Islam for providing assistance in conducting this study.

hydrocarbons and marine fisheries for energy and food security will further increase in the future, sovereignty over maritime zones should clearly be established for protection, conservation and rational exploitation of these marine resources.¹ Bangladesh needs to exercise a lawful claim to gain access to these resources in order to accelerate its economic development. But a long-standing dispute over maritime boundary delimitation with India and Myanmar remains a major stumbling block to exploration of these resources.

Several issues arise under the overall problem of delimitation of Bangladesh's maritime zones, such as the issue of sovereignty over South Talpatty Island, and the demarcation of the territorial sea, the Exclusive Economic Zone (EEZ) and the continental shelf, all of which need to be examined to obtain a clear picture of the disputes. The overlapping claims of these three countries to the maritime zones in the Bay of Bengal need to be settled in order to permit the peaceful exploration for hydrocarbons. Bangladesh has been deprived of her legitimate claim over maritime resources for a long time due to the uncertainty created by the absence of an agreed boundary. When there is no agreed boundary, exploration for hydrocarbon reserves can be delayed throughout a considerable area in and around the disputed maritime zones.²

With the adoption of the Law of the Sea Convention (LOSC or the LOS Convention) in 1982,³ Bangladesh received a unique opportunity to exploit a vast sea area beyond her coastal waters. The LOSC provides a framework and detailed provisions and principles for demarcation of maritime boundaries and international cooperation on exploration for living and non-living marine resources. The LOSC extends the EEZ to 200 nautical miles (nm), and the limits of the continental shelf to 350 nm, where this latter extension is possible under the terms of the LOSC. These extensions were provided to enable exploration for the living and non-living resources of the zones exclusively by the coastal states. Both the EEZ and the continental shelf give the coastal state sovereign rights to explore and exploit the natural resources of a sea area adjacent to its coast. It is claimed that the total area of the sea under the resource jurisdiction of Bangladesh would be approximately 207,000 km², which is

¹ See generally on the importance of maritime boundary delimitation in accessing offshore hydrocarbons, G. Blake, M. Pratt, C. Schofield and J. Brown (eds.) *Boundaries and Energy: Problems and Prospects*, Kluwer Law International, London (1998).

² G. Blake and R. Swarbrick, 'Hydrocarbons and International Boundaries: A Global Overview', in: Blake *et al.*, *op. cit. supra* note 1, pp. 3–28.

³ United Nations Convention on the Law of the Sea (done at Montego Bay), 10 December 1982, in force 16 November 1994, 21 *International Legal Materials* 1261 (1982).

about 1.4 times greater than the total land area of Bangladesh if her maritime boundaries were delimited as set out under the LOSC.⁴

However, India and Myanmar are demanding the application of the equidistance principle for delimitation, while Bangladesh is seeking to resolve these disputes on the basis of the application of the equitable principle. It is anticipated that the delimitation of the maritime boundary on the basis of the equidistance principle will result in the annexation of much of the sea area of Bangladesh by India and Myanmar. Since all three countries have ratified the LOSC, the problems of maritime delimitation should be resolved in accordance with the principles laid down in the LOSC and customary international law. In particular, the requirement of maritime boundary delimitation needs to be addressed when coastal states have enacted claims to maritime zones which overlap with each other.

The legal concept of the international maritime boundary is firmly established in international law. But the process by which these boundaries are determined in concrete situations will always have a *sui generis* character.⁵ As such, in their search for an appropriate solution, states are not obliged to reach their outcome by subjecting them to purely legal considerations.⁶ Rather, many relevant circumstances should be taken into account in delimiting a maritime boundary.

Issues of Delimitation of Maritime Boundaries

Bangladesh, as a geographically disadvantaged country, is heavily dependent on the sea. But due to the conflicting claims by her neighbours, Bangladesh could not realize her claims over various maritime zones. After independence in 1971, Bangladesh took a major initiative and designated her maritime zones through the Territorial Waters and Maritime Zones Act of 1974 (the 1974 Act). Bangladesh was the first South Asian country to enact a law for that purpose. But other than the enactment of this 1974 Act, the successive governments of Bangladesh did not take any meaningful steps to resolve the problems of delimitation of the maritime zones of Bangladesh. Indeed, it was a neglected issue for a long time, to the peril of Bangladesh.

⁴ Commodore Md. Khurshed Alam, 'Delineation of outer limits of the continental shelf', *The Daily Star*, 15 September 2006, available at: <http://www.thedailystar.net/strategic/2006/09/02/strategic.htm>.

⁵ G. Tanja, *The Legal Determination of International Maritime Boundaries*, Kluwer Law and Taxation Publishers, Deventer (1990), p. 306.

⁶ *Ibid.*

The issue of delimitation of maritime zones came into the forefront when, on 1 November 2008, four drilling ships from Myanmar started exploration for oil and gas reserves within 50 nm southwest of St. Martin, an island territory of Bangladesh. The government of Bangladesh claimed that Myanmar's unilateral action to explore for hydrocarbons in these disputed waters is a clear violation of the LOS Convention. A Korean oil company deployed a drilling rig in disputed waters under the watchful eye of three warships of Myanmar. A tense standoff ensued, with Bangladesh deploying five warships of its own. The rig was finally withdrawn after intense diplomatic parleys involving Bangladesh, Myanmar and South Korea.⁷ Previously, Bangladesh had raised objections when, in 2006, India and Myanmar floated an international tender for exploring offshore, accusing these countries of overlapping Bangladesh's territory.

Thus the boundary issue becomes important in the context of both sharing fish resources and exploiting hydrocarbons. The Bay of Bengal has become very important, especially after India's discovery of 100 trillion cubic feet (tcf) of gas in 2005–2006 and Myanmar's discovery of 7 tcf gas at the same time.⁸ According to various sources, two main basins in the Bay of Bengal, namely the Krishna-Godavari and the Mahanadi basins, both located in the Indian maritime zone, have shown a potential of nearly 18 billion barrels of oil-equivalent gas in place. Bangladesh opened bids for exploration for hydrocarbons in the offshore areas. On 7 May 2008, in Bangladesh, seven oil and gas companies submitted their bids for 15 offshore blocks out of a total of 28 blocks. However, this bidding was postponed due to vehement opposition from India and Myanmar. This is mainly due to the fact that international oil companies who would be likely to commit to a significant investment, seek certainty as to the legal rights for mineral development in maritime zones. It must be remembered that in view of the massive exploration activities conducted by India and Myanmar in close proximity to the coastal zones of Bangladesh, including many disputed zones amongst them, it has become imperative for Bangladesh to conduct her own exploration work, with or without foreign companies. This will improve her claims over these zones and strengthen her negotiating position in the effort to resolve the disputes with

⁷ Sayed Zain Al-Mahmood, 'Troubled Waters', *The Daily Star Weekend Magazine*, Vol. 8, Issue 94, 13 November 2009, p. 4, available at: http://www.thedailystar.net/magazine/2009/11/02/current_affairs.htm.

⁸ See report, 'Sea border talks start today after 28 years: Energy-rich Bay of Bengal makes Dhaka-Delhi talks crucial', *The Daily Star*, 15 September 2008, p.1, available at: <http://www.thedailystar.net/story.php?nid=54877>.

India and Myanmar. Recently the government of Bangladesh constituted a high-powered expert committee to settle the dispute with her neighbours.

The problem of maritime boundary delimitation with neighbouring India and Myanmar requires an effective and equitable solution for harnessing mineral resources, including oil and gas, for the sustainable development of Bangladesh. Recent incidents over exploratory moves by India and Myanmar in the Bay of Bengal and their claims over maritime zones of Bangladesh have added complexity to the problem. It should be mentioned that India has concluded a treaty on the maritime delimitation of the Andaman and Nicobar Islands with Myanmar. India has also made similar arrangements with Sri Lanka, Thailand, Malaysia, and Indonesia. In order to justify its legal claim to maritime zones, Bangladesh has to carry out a survey of her continental shelf, redraw the baseline consistent with the LOSC and prove the existence of special geological and geomorphological features of her maritime zones to reach an equitable solution. However, such a solution cannot be effected unilaterally, but should be achieved by means of negotiation in good faith with the genuine intention of all disputing parties to achieve a positive outcome, followed by an agreement.

Special Geographical Features of the Maritime Zone of Bangladesh

Many conflicting territorial claims arise from the tendency of states to expand by acquiring additional territory through creeping annexation. The conflicting claims should be resolved through negotiation and mutuality of interests. This becomes especially important when each delimitation problem involves a situation that has its own unique characteristics to be taken into account. India, Bangladesh and Myanmar have many variations in their coastal configurations, as well as in their geographical, geological and topographical situations.

The southern half of Bangladesh is the joint delta of three major rivers, namely the Ganges, the Brahmaputra and the Meghna. These rivers run from the Himalayan Ranges to the Bay of Bengal through Bangladesh. Bangladesh's coastline is 310 nm long, allowing seawater to pour into the country; tidal surges range from 2.5 to 5.5 meters. Bangladesh is virtually the midpoint of two inverted funnels. One inverse funnel drains millions of tons of silt through the rivers on the mainland from the top, and the other funnel pushes all the cyclones from the Bay of Bengal onto the deeply indented, concave coast of Bangladesh. All these features have made Bangladesh a geographically disadvantaged country. The geomorphological features of Bangladesh's coastline

create difficulties in fixing the baseline from which the maritime zones can be measured. The coastline of Bangladesh has the following geographical characteristics:

- Deltaic coastline, which is deeply indented.
- Erosion and sedimentation continuously affect adjacent coastal waters.
- A highly unstable coastline is evident at low tide.
- Navigable channels in the coastline change continuously, requiring frequent surveys and demarcation.

In practice, in determining maritime boundaries, geographical considerations play a predominant role. Other factors, such as economic, ecological, security and geomorphological factors, are taken into account, but are given relatively less weight. Articles 74 and 83 of the LOSC contain no reference to the equidistance principle, which may be applied only insofar as it leads to an equitable solution. A boundary that might be equitable for EEZ purposes may not be equitable for continental shelf purposes. Because of the different considerations that are relevant to achieving an equitable solution in each case, such as, for example, the location of fish stocks in the case of the EEZ, and the geological characteristics, the sea bed and the location of sea-bed mineral deposits in the case of the continental shelf, each maritime boundary dispute is unique. The existing maritime dispute between Bangladesh and her neighbours is also unique and requires solution on the basis of application of equitable principles, taking into consideration a variety of factors.

Bangladesh has a concave coast. Countries with concave coasts require unconventional solutions. Therefore rules for special circumstances, as per LOSC Art. 15, should be applied for delimitation of a maritime boundary. The special geographical circumstances warrant that any delimitation, whether agreed or determined by a third party, must result in an equitable solution. Although there is in principle no limit to the factors relevant to the determination of such an equitable demarcation, there are some established criteria for such a demarcation.

The Law of the Sea Convention *vis-à-vis* the Position of Bangladesh

Baseline

The baseline is the line from which the outer limits of the territorial sea and other coastal zones (the contiguous zone, the EEZ) are measured. Thus, it is the foundation for claiming subsequent maritime zones. As per the LOSC,

the normal baseline for measuring the breadth of the territorial sea is the low-tide waterline along the coast. Such a method of demarcation of the baseline is comparatively easy, and accordingly determination of subsequent maritime zones also becomes easier. Another method of drawing the baseline is the straight-baseline approach. According to LOSC Art. 7, a straight baseline can be drawn in two situations: first, where the coastline is deeply indented or if there is a fringe of islands along the coast in its immediate vicinity; second, where because of the presence of a delta and other natural conditions, the coastline is highly unstable. In both cases, the appropriate points may be selected along the furthest seaward extent of the low-water line for the purpose of drawing the straight baseline.

The 1974 Act adopted the ‘depth method’ for determining the baseline of Bangladesh. Bangladesh, as a deltaic state with an unstable coastline, adopted this method of drawing the baseline from the straight lines drawn by joining certain outer points at a depth of 60 feet (10 fathoms). Because of the deltaic and unstable nature of the coast, the application of the normal baseline seems to be most disadvantageous for Bangladesh. This ‘depth method’ of drawing baselines had been opposed vehemently by India and Myanmar from the very beginning.

But this ‘depth method’ of measuring the baseline is not wholly inconsistent with the provisions of LOSC Art. 7, because LOSC Art. 7(2) makes an exception from a normal baseline (low-water mark) where the coastline is highly unstable because of the presence of a delta and ‘other natural conditions.’⁹ The ‘depth method’ (as from the depth of 10 fathoms) adopted by Bangladesh conforms to the expression, ‘other natural conditions’. International law also does not prohibit delimitation of a sea area by taking into account the ‘local requirements’. Bangladesh’s depth method is neither ‘normal’ nor ‘straight’, but it is somewhat an isomer of a straight-baseline method that is not prohibited by international law, even if it is not expressly mentioned in LOSC Article 7(2).¹⁰ It is suggested that the term ‘other natural conditions’ refers to the processes affecting the size and configuration of deltas. The coastline of Bangladesh is highly unstable due to the cumulative effects of river floods, monsoon rainfall, cyclonic storms and tidal surges which have contributed to a

⁹ LOSC Art. 7(2) provides that “where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line.”

¹⁰ S. M. Masum Billah, ‘Delimiting Sea Boundary by Applying Equitable Principles’, *The Daily Star*, 17 October 2009, available at: <http://www.thedailystar.net/law/2009/10/03/index.htm>.

continuous process of erosion and shoaling.¹¹ However, it is suggested that in view of some ambiguities in the present depth method, Bangladesh should adopt the straight-baseline method by selecting appropriate points along the furthest seaward extent of the low-water line, while considering the special geographical circumstances. Adoption of such a method is also supported by LOSC Art. 14, which provides that the coastal State may determine baselines by any of the methods provided for in the LOS Convention to suit different conditions.

Territorial Sea

Article 3 of the LOSC defines the breadth of the territorial sea as a limit not exceeding 12 nm from the baseline. Article 15 of the LOSC makes provision for delimitation of the territorial sea. It stipulates that where the coasts of the two states are opposite or adjacent to each other, neither of the two states is entitled to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points of the baseline of both the states. According to the second paragraph of LOSC Art. 15, however, a departure can be made from the provision of the median line if it is necessary by reason of historical title or other special circumstances.

The government of Bangladesh, as per the 1974 Act, declared a 12-nm territorial sea from a straight baseline as mentioned earlier. While this claim of the territorial sea of Bangladesh is consistent with the provision of the LOSC, the only difficulty remains in establishing the claimed baseline as valid.

Continental Shelf and Exclusive Economic Zone

Articles 74 and 83 of the LOS Convention, which provide mechanisms for the delimitation of the EEZ and continental shelf, respectively, use identical language, in that delimitation of boundaries with opposite or adjacent states should be effected by agreement on the basis of international law in order to achieve an equitable solution. Bangladesh claimed the breadth of her EEZ as 200 nm from the straight baseline under the 1974 Act.

The LOS Convention introduced both geographical criteria (natural prolongation) and distance criteria (legal) into the definition of the continental shelf. Article 76 of the LOSC defines the continental shelf as:

¹¹ See R. Platzoeder, *Third United Nations Conference on the Law of the Sea: Documents*, Oceania, New York, vols. 3 and 4 (1984).

the sea bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

According to the first part of paragraph 1, the natural prolongation of the land territory is the main criterion. In the second part of that paragraph, the distance of 200 nm is in certain circumstances the basis of the delimitation of the continental shelf. The criteria of natural prolongation have been endorsed by the International Court of Justice (ICJ) and an arbitral tribunal in the *Continental Shelf* case,¹² the *Anglo-French* case¹³ and the *Gulf of Maine* case.¹⁴ However, in its landmark judgement in the *Libya-Malta* case, the ICJ decided to do away with geophysical arguments, at least in relation to those areas within 200 nm of the coast.

The ICJ found that:

... since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding seabed and subsoil, there is no reason to ascribe any role to geological or geographical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims.¹⁵

Thus, within 200 nm of the coast, natural prolongation has no direct role to play in the delimitation of maritime boundaries as far as courts and tribunals are concerned. But the role of geomorphological and geological factors in the context of third-party delimitation of international maritime boundaries will therefore be vital factors in overlapping continental shelf areas beyond 200 nm from either party's coastline. Such factors are also of crucial importance in relation to defining the outer limits of the continental shelf as provided for in LOSC Art. 76.¹⁶

Much of the continental shelf of Bangladesh is the result of silt deposits from the rivers running through her. The continental shelf is not steep but

¹² *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)* [1969] ICJ Reports 4 at 42.

¹³ *Anglo-French Continental Shelf Case* (1977) 18 ILM 397 (1979).

¹⁴ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. U.S.)*, 1984 ICJ Reports 246 (Judgement of Oct. 12), reprinted in 23 ILM 1197 (1984).

¹⁵ *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)* 1985 ICJ Reports at 55.

¹⁶ See V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World*, 2nd ed., Martinus Nijhoff Publishers, Leiden (2005), p. 303.

runs in a steady and gradual slope from the coast of Bangladesh. Therefore, the continental shelf is arguably a natural prolongation of the landmass of Bangladesh in the southeast direction.¹⁷ The natural prolongation of the landmass of Bangladesh, i.e., her continental margin, is known as the Bengal Fan; its orientation is perfectly north-south.

In many areas of sea, the continental shelves are shared between two or more states. This can occur where states share a land border running to the sea—i.e., adjacent states—or where states share a shelf because it runs under the sea which divides them, i.e., opposite states. In the case of the continental shelf bordering Bangladesh, India and Myanmar, these countries are adjacent states.

Bangladesh ratified the LOSC in 2001. One of the implications of ratification is that Bangladesh is required to revise and amend her existing laws in order to make them consistent with the LOSC. According to the LOSC, Bangladesh can claim 24 nm as a contiguous zone instead of the current 18 nm under the 1974 Act. However, Bangladesh has claimed a continental shelf up to the last point of the continental margin, which exceeds 200 nm. Bangladesh has to submit sufficient evidence in favour of her claim by 27 August 2011 to the Commission on the Limits of the Continental Shelf (CLCS). The CLCS is responsible for examining the claims by individual states to an outer continental shelf. India and Myanmar filed their claim with the CLCS in 2009 pursuant to the LOSC. However, claims submitted by any country would not be accepted for final consideration before settling the objection raised by a neighbouring country which might have overlapping claims.

Problem Areas between Bangladesh and India

There are two main sources of dispute between these two countries: first, the method of delimitation, and second, the contested claim of sovereignty over South Talpatty Island.

Method of Delimitation

The contested claim of sovereignty over maritime zones arises due to the dispute over the appropriate method of delimitation of those maritime zones. India is a big country with a very large and convexly configured coast. On the other hand, the configuration of the coast of Bangladesh is concave. India has

¹⁷ Harun Ur Rashid, 'Law of maritime delimitation', *The Daily Star*, 10 May 2008; available at: http://www.thedailystar.net/pf_story.php?id=35825.

settled her maritime boundaries with Myanmar at the Andaman & Nicobar Islands according to both the equitable and equidistance methods. India wants the maritime boundary with Bangladesh to be demarcated according to the equidistance method. But Bangladesh, as a geographically disadvantaged country, wants to delimit the maritime boundary on the basis of the equitable principle, which can establish her legitimate claim over maritime resources and ensure an equitable result. Bangladesh's position is that if delimitation is done on the basis of the equidistance principle, it would be contrary to the spirit of the LOS Convention, which puts emphasis on an equitable solution. Delimitation of the maritime boundary by the equidistance principle would result in a significant encroachment on the maritime zone of Bangladesh by India and Myanmar.

South Talpatty Island

The problem of delimitation of the maritime boundary with India was exacerbated by the formation of a new island, named South Talpatty Island by Bangladesh, near the mouth of the border river Hariabhanga. This new island is around 5 km² in area. The disputed South Talpatty Island is supposed to have emerged after the 1970 cyclone. India named this island New Moor Island. Both countries were basing their arguments on the legal basis of the 'Thalweg' or the mid-channel formula, as applied to the border river Hariabhanga.

The ownership of the island became controversial, as it is difficult to decide whether the stream of the river flows through by the eastern or western side of the island as per the river's demarcation. If the stream flows through by the eastern side of the island, then India becomes the owner of the island and, as such, can claim an EEZ that is greater than her original claim. But if the stream flows through by the western side of the island, then the ownership remains with Bangladesh. India claimed this island in her territorial sea in 1971 on the basis of the principle of discovery. Bangladesh claimed that the island is within her territorial waters. Bangladesh claimed that the mid-channel flows to the west of the island, while India claimed that it flows to the east of the island. Bangladesh issued a white paper justifying her claims and proposed a joint survey to establish the rightful ownership of this island and to seek a peaceful solution of the problem. But India never agreed to a joint survey of the island. The conflicting claims of sovereignty over the island should be determined by the 'thalweg' principle (deepest navigable channel).¹⁸

¹⁸ See Tanja, *op. cit.*, *supra* note 5, p. 19.

The solution of the problem also has far-reaching implications for the issue of maritime delimitation between the two countries. This point is succinctly stated below:

The dispute over this island has more to do with the extent of the maritime zone to be potentially acquired in the oil-rich delta of the Bay of Bengal than the island itself. Given sovereignty over the island, India can claim an equidistant line claiming more EEZ and additional areas in the Continental Shelf. For Bangladesh the sovereignty over the island, will enable it to draw the maritime boundary line west of the *South Talpatty* in the north-south natural prolongation of our land mass, its adjacent historic fishing areas, its territorial sea and ensure safe entry to the major port of *Mongla*...¹⁹

The fact is that South Talpatty Island has been created as a result of siltation of the Raimangal River—an internal river of Bangladesh—and the Hariabhanga river- a boundary river between India and Bangladesh.²⁰ But this island cannot be characterised as more than a low-tide elevation, as it does not remain above water during high tide. Thus, it is only visible during low tide. The deeper channel of the Hariabhanga creates a boundary between Bangladesh and India. South Talpatty Island is located on the eastern side of the deeper channel. This means that the island is located in the territorial sea of Bangladesh. Bangladesh can legitimately claim sovereignty over South Talpatty Island as this island has formed in the estuary of the Raimangal River, which is an internal river of Bangladesh. On the other hand, India claims that the island is located on the western side of the deeper channel. India's contention that the deeper channel passes east of South Talpatty Island does not hold good as the streams of the Raimangal river, when they meet with the remaining flow of the Hariabhanga, will no doubt create a deeper channel than the channel flowing west of South Talpatty Island. Consciously or unconsciously India claims this joint stream as the deeper channel of the Hariabhanga, which is her internal river. Therefore, India's claim over the island as a natural prolongation of her territory cannot be justified. The legality of the conflicting claims can be only determined by a joint survey and negotiation, which India has purposefully avoided since the problem arose.

¹⁹ Commodore Khurshed Alam, 'The issue of South Talpatty', *The Daily Star*, 12 May 2006, p. 13, available at: <http://www.thedailystar.net/>.

²⁰ *Ibid.*

Problem Areas between Bangladesh and Myanmar

Myanmar, like India, is a country with a long convex coastline in the Bay of Bengal, as opposed to Bangladesh, whose coastal configuration is concave. Immediately after promulgation of the 1974 Act, Bangladesh started negotiations with Myanmar for delimitation of the maritime area. Myanmar proposed application of the equidistance line from St. Martin's Island (Bangladesh) to Oyster Island (Myanmar), whereas Bangladesh proposed application of the equitable principle. Bangladesh and Myanmar have no agreement on delimitation of maritime boundaries. The border river Naff flows into the sea between Shahpuri Island and cypress sands. Moreover, St. Martin's Island, surrounded by shallow water, complicates delimitation. Myanmar proposes the delimitation of the EEZ as per the equidistance method, but if this proposal is implemented, Bangladesh will lose almost half of her EEZ.

If the dual claims of both India and Myanmar are implemented as per the equidistance method, then Bangladesh will lose two-thirds of her total EEZ and will lose virtually all of her continental shelf. In this situation, Bangladesh has to delineate her maritime zones as soon as possible. In recent years, Bangladesh has been desperately seeking petroleum in offshore areas to meet her burgeoning energy needs. The demarcation problem will be exacerbated if hydrocarbon resources were discovered in the disputed areas.

It can be proposed that Bangladesh can claim straight baselines joining low-water marks from St. Martin's Island to Kutubdia Island and then from Kutubdia Island to South Talpatty Island to form a baseline. From these baselines, Bangladesh can claim 12 nm as territorial waters according to LOSC Art. 7, para. 2.

The Equidistance vs. the Equitable Approach

It is well settled that application of the principle of equidistance, which is more formal and mechanical in nature, does not always ensure justice. A median line based on the equidistance principle can be drawn on the basis of coastal geography and is controlled by the relevant points on the territorial sea baseline. On the other hand, the equitable principle is more flexible and open-ended. It is generally accepted that median-line delimitation on the basis of the equidistance principle between opposite coasts results in an equitable solution, particularly if the coasts in question are nearly parallel. On the other

hand, in the case of adjacent coasts, the application of the equitable approach is usually employed for delimitation in order to ensure an equitable solution.²¹ The LOSC and existing judicial decisions also endorse the equitable principle. Although the LOSC sets no criteria to be used to determine an equitable delimitation, existing state practice and judicial decisions suggest that the equitable principle of delimitation always takes relevant circumstances into consideration. The relevant circumstances can include any or all of the following:

political, strategic and historical considerations; legal regime considerations; economic and environmental considerations; other geographic considerations; the use of islands, rocks, reefs and low tide elevations; baseline considerations; geological and geomorphological considerations; proportionality of the area to be delimited including coastal front considerations; and different technical methods that could be employed.²²

However, amongst these relevant circumstances, special circumstances of coastal geography have a fundamental role in arriving at an equitable solution of maritime delimitation problems.²³ Thus, the application of the equitable principle should be warranted by the existence of special circumstances. In the *Anglo-French* case, the tribunal unambiguously stated:

the appropriateness of the equidistance or any other method for the purposes of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each case. The choice of the method or methods of delimitation in any given case, whether under the 1958 Convention or customary law, has therefore to be determined in the light of those circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principles.²⁴

As mentioned earlier, the existence of relevant circumstances is one of the factors considered by the courts in deciding on the basis of the title of the coastal state. Another factor is that a boundary line should not be drawn in such a way that encroaches on or cuts off areas that more naturally belong to one

²¹ See S. Jagota, *Maritime Boundaries*, Martinus Nijhof, Dordrecht, 1985, p. 208; see also *Eritrea vs. Yemen Maritime Delimitation Arbitration Award* of 1999, PCA, available at: www.pca-cpa.org; *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark vs. Norway)*, 1993 (ICJ) available at: <http://www.icj-cij.org/docket/index.php?sum=401&code=gjm&p1=3&p2=3&case=78&k=e0&p3=5>.

²² Prescott and Schofield, *op. cit.*, *supra* note 16, pp. 220–21.

²³ *Ibid.*, *op. cit.*, *supra* note 16, p. 222.

²⁴ Para. 97.

party than the other.²⁵ The concavity and/or convexity of the coast is considered as an important example of special or relevant circumstances in equitable delimitation.²⁶ For instance, maritime agreements between the Federal Republic of Germany and the Netherlands (1971), and Denmark and the German Democratic Republic (1988), (where one coast is convex and the other concave); Colombia-Panama (1976), (where convexities and concavities on the two coasts are different), and France-Spain (1974), are based on the equitable principle.²⁷ It has also been observed in the *Libya/Malta* case:

Since the equidistance line is based on a principle of proximity and therefore controlled only by salient coastal points, it may yield a disproportionate result where the coast is markedly irregular or markedly concave or convex. In such cases, the raw equidistance method may leave out of the calculation appreciable lengths of the coast, while at the same time giving undue influence to others merely because of the shape of the coastal relationships.²⁸

If the coast of one country is concave or recessive with respect to the other, the application of the equidistance method would draw the boundary line inwards in the direction of concavity, thus disproportionately reducing the legitimate sea area of one country at the expense of the other.²⁹ Bangladesh's delimitation problems qualify for the application of equity because of the special circumstances. Bangladesh's mostly adjacent rather than opposite location of maritime borders, together with the concave, unstable and broken nature of her coastline, her historical title in the Bay of Bengal and dependence of her coastal people on living and non-living resources of the sea—all these special circumstances and relevant factors support the basis of the claim of Bangladesh for the delimitation of maritime boundaries on the equitable principle.³⁰ In such a case, therefore, according to LOSC Art. 74, “the equidistance principle is not applicable and the boundary lines in question are to be drawn by agreement between the parties on the basis of international law in order to

²⁵ R. Churchill and A. Lowe, *The Law of the Sea*, 3rd ed., Manchester University Press, Manchester (1999), p. 187.

²⁶ Jagota, *op. cit.*, *supra* note 21, p. 276.

²⁷ P. Weil, ‘Geographic Considerations in Maritime Delimitation’, in: J. Charney and L. Alexander (eds.), *International Maritime Boundaries*, The American Society of International Law (1993) pp. 115–130.

²⁸ ICJ Reports (1985), p. 44.

²⁹ Badrul Imam, ‘Why Bangladesh should win the arbitration’, *The Daily Star*, 28 October 2009, available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=111566>.

³⁰ M. Shah Alam, ‘Maritime border delimitation’, *The Daily Star*, 9 February 2009, p. 11, available at: <http://www.thedailystar.net/>.

achieve equitable solution taking into account the configuration of the coast, the length of the coast and other relevant factors.”

The principle of equitable demarcation is firmly rooted in international law of the sea and emanates from the idea of uniqueness of each boundary. This uniqueness is the result of a great variety of geographical features of the continental shelf, which indicates that it is very difficult to posit any fixed rule governing the establishment of maritime boundaries between states.³¹ It is correctly stated that delimitation is a practical exercise, despite the amount of theoretical study which both surrounds and obfuscates the subject.³² The idea of the uniqueness of each boundary finds significant support in the jurisprudence of the ICJ and arbitral tribunals dealing with maritime boundary disputes.

In the *Tunisia/Libya* case, the ICJ declared:

Clearly each continental shelf case in dispute should be considered and judged on its own merits, having regard to its peculiar circumstances; therefore, no attempt should be made here to over conceptualize the application of the principles and rules relating to the continental shelf.³³

In the *Anglo-French Award*, the court of arbitration noted that: “the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case.”³⁴

The tribunal in the *Guinea/Guinea-Bissau* arbitration took up the theme:

The factors and methods referred to result from the legal rules, although they evolve from physical, mathematical, historical, political, economic or other facts. However, they are not restricted in number and none of them is obligatory for the Tribunal, since each case of delimitation is a *unicum*, as has been emphasized by the International Court of Justice. the Tribunal will come back to the question of methods. Where factors are concerned, the Tribunal must list them and assess them. They result from the circumstances of each particular case and in particular, from characteristics peculiar to the region.³⁵

In this regard, Judge Waldock remarks aptly:

³¹ L. Nelson, ‘The Roles of Equity in the Delimitation of Maritime Boundaries’, 84 *American Journal of International Law* (1990), pp. 837–858.

³² M. Evans, *Relevant Circumstances and Maritime Delimitation*, Clarendon Press, Oxford, 1989, p. 63.

³³ 1982 *ICJ Reports* 18 at 92, para. 132.

³⁴ 18 *ILM* (1979) 397 at 426, para. 97.

³⁵ 25 *ILM* (1986) 251 at 289–90, para. 89.

The difficulty is that the problem of delimiting the continental shelf is apt to vary from case to case in response to an almost infinite variety of geographical circumstances. In consequence, to attempt to lay down precise criteria for solving all cases may be to chase a chimera; for the task is always essentially one of appreciating the particular circumstances of the particular case.³⁶

The ICJ and arbitral tribunals dealing with the delimitation of maritime boundaries have consistently held that the equidistance principle is not a mandatory rule of international law and that it does not enjoy any priority or preferential status. In fact, the principle of equidistance has been unable to attract a consensus among members of the international community due to its rigidity.

Conclusion

Delimitation of maritime boundaries necessarily involves cooperation by coastal states to accommodate their shared interests and goals. A bilateral agreement remains the most important strategy and framework for such cooperation. In fact, most maritime boundaries so far have been settled by agreement rather than by a judicial or arbitral body. The existing dispute regarding the delimitation of maritime boundaries of Bangladesh with India and Myanmar also should be resolved through constructive engagement with each other in the light of principles established under the LOS Convention and by concluding bilateral agreements to channel the conflicting claims over maritime boundaries. The decisions of the international courts and tribunals, state practice, and the LOS Convention clearly demonstrate that there has been a shift from the equidistance principle to the equitable principle of delimitation and strongly indicate that the equitable principle is the preferred method of delimitation.

Usually, the delimitation of a maritime boundary takes a long time and if there is an issue of overlapping maritime areas that remains disputed and unresolved, state practice suggests that cooperative arrangements can be undertaken for the exploitation and management of the resources of the delimitation area. Four types of such arrangements may be distinguished:

³⁶ H. Waldock, 'The International Court and the Law of the Sea', T.M.C. Asser Institute, The Hague (Cornelis van Vollenhoven Memorial Lecture, University of Leiden, 22 May 1979), 17 p.

- (i) co-operative arrangements for the exploitation of the sea-bed and/or fishing resources in place of a boundary line;
- (ii) the establishment of a joint exploitation zone for sea-bed and fishing resources which straddles the boundary;
- (iii) arrangements for the exploitation of oil and gas fields found to be lying across the boundary line; and
- (iv) co-operative arrangements to facilitate the management of trans-boundary fish stocks.³⁷

However, in the absence of agreement on permanent boundary delimitation, joint development remains one of the most viable options for the parties in the disputed area if it is thought to be prospective for hydrocarbons. But the joint development option is not itself an easy one to achieve. First, parties must reach an agreement as to the area of joint development. In a situation where the relevant criteria for delimitation have not been agreed, each side will be concerned to ensure that any interim arrangement does not prejudice its long-term interests in reaching the most favourable permanent delimitation. For each side, joint development involves sharing with the other side those resources to which it believes it has a good claim. Agreement on joint development therefore requires compromise and good will on both sides.³⁸ Such a zone, if agreed upon, would enable shared exploration and exploitation of sea-bed resources to proceed, pending agreement on permanent delimitation. Under the joint development method, both parties put aside their contested positions for maintaining the *status quo*. Examples can be found in the Japan-South Korea Agreement of 1974 in relation to part of the East China Sea, the Malaysia-Thailand Agreement of 1990 in relation to the Gulf of Thailand, the Thailand-Vietnam Agreement of 1992, and the Saudi Arabia-Kuwait Agreement of 1965 on Joint Development Zones.³⁹ Similar arrangements might be considered for agreements for Joint Development Zones between India, Bangladesh and Myanmar for exploration for petroleum in disputed areas pending the resolution of the boundary dispute.

If three states fail to reach bilateral agreement or to adopt provisional arrangements, they can refer their claim to the international judicial bodies or tribunals or arbitral tribunals for the settlement of maritime disputes. How-

³⁷ Churchill and Lowe, *op. cit.*, *supra* note 25, p.198.

³⁸ E. Smith, J. Dzienkowski, O. Anderson, G. Connie, J. Lowe, B. Kramer, *International Petroleum Transactions*, 2nd ed., Rocky Mountain Mineral Law Foundation, Denver, CO (2000), pp. 312–13.

³⁹ Harun Ur Rashid, 'Law of Maritime Delimitation', *The Daily Star*, 10 May 2008, <http://www.thedailystar.net/>.

ever, this should be the last option. In this case, the three littoral states can resort to the various provisions of the LOS Convention.⁴⁰

Since all three countries have ratified the LOS Convention, the legal framework for dispute settlement is already agreed. What is needed is to transform the legal consent into a strong political will to resolve this issue by peaceful means. This is necessary because “political considerations are fundamental to the maritime boundary delimitation, as this process deals with the highly sensitive issues of sovereignty and sovereign rights which touch on core national concerns of security, vital economic interests, and integrity and legitimacy for the states concerned.”⁴¹

Bangladesh has consistently argued for application of the equitable principle as the basis of the delimitation, while India and Myanmar insist that equidistance should be the guiding principle. Failing to reach an agreement through negotiations, Bangladesh has recently gone for arbitration under the LOS Convention for the resolution of the dispute. Bangladesh argues that both her neighbours have extended their respective maritime boundaries into her offshore areas, depriving her of her legitimate right to the sea.⁴² Bangladesh has opted for this dispute settlement by arbitration because the problem of unsettled maritime boundaries has hampered her efforts to explore for marine resources for a long time, due to extensive and overlapping claims by her neighbours.

⁴⁰ See LOSC Art. 74(1) under which, when failing to reach an agreement, the states concerned shall resort to one or more of the following means for the settlement of disputes:

- a) the International Tribunal for the Law of the Sea;
- b) the International Court of Justice;
- c) an arbitral tribunal;
- d) a special arbitral tribunal.

⁴¹ Prescott and Schofield, *op. cit.*, *supra* note 16, p. 246.

⁴² Badrul Imam, *op. cit.*, *supra* note 29; Sayed Zain Al-Mahmood, ‘Troubled Waters’, *The Daily Star Weekend Magazine*, Vol. 8, Issue 94, 13 November 2009.

