



Bay of Bengal maritime delimitation cases: Upholding the Rule of law in international relations

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ABSTRACT

At a time when there are instances of lack of participation in binding dispute resolution mechanisms under the UNCLOS, the Bay of Bengal Arbitrations provide a ray of hope and adherence to the rule of law. The three Bay of Bengal States: Bangladesh, India and Myanmar settled their long standing disputed claims over the maritime zones in the Bay of Bengal in a peaceful manner. These cases represent that States relatively stronger on the political level as compared to others are willing to compromise their positions and adhere to the outcome of dispute resolution proceedings under the UNCLOS. These cases involved sensitive issues such as the determination of the land boundary terminus, based upon the reports and other proceedings relating to the partition of India. There were other controversial claims over certain islands, which too were presented for adjudication and the decision was thereafter complied with all the parties to the dispute. These cases thus constitute a prime example of the importance of adherence to a rule based system for maritime claims.

Differences in perception and interpretation, especially in relation to the use of oceans and the regulation of their use through the United Nations Convention on the Law of the Sea (UNCLOS), may result in disputes. Indeed, in an interconnected world, disputes are an inevitable reality. What is important is how states address them. The UN Charter¹ and various subsequent resolutions of the UN General Assembly, such as the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations”² and the “Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States”,³ reflect agreement between nation-states on how differences between them need to be addressed. The principles contained therein have been declared as customary international law by the International Court of Justice.⁴ When disputes between sovereign nation-states cannot be resolved through bilateral or multilateral discussion, international adjudication is resorted to. Adjudication is recognised as being an important method of peaceful settlement of disputes⁵ and, as such, has been given a special position in the architecture of UNCLOS.

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China's failure to participate in and comply with the decision of the arbitral tribunal in the South China Sea dispute is regularly mentioned as an instance of non-compliance with international law and the framework of UNCLOS. Offsetting this, however, is another example from Asia, which shows that states with relatively more power are willing to adhere to a third-party binding dispute-resolution process and comply with the decisions arrived at by the adjudicating body, even though they may, in the process, have to surrender all or part of their maritime claims. Such instances deserve to be celebrated as examples of the manner in which the rule of law is to be upheld in international relations. This article dwells upon two such telling examples, both of which are worthy of high praise and emulation. The examples being referred to are those of the maritime-delimitation disputes in the Bay of Bengal between Bangladesh and India on one hand, and Bangladesh and Myanmar on the other.

The Bay of Bengal is situated in the Northeastern Indian Ocean. The northern part of the Bay of Bengal, which was a subject of conflicting maritime claims, is shared by Bangladesh, India and Myanmar. The three states resolved a complex and long-drawn dispute regarding overlapping maritime claims between them by resorting to and complying with international adjudication within the UNCLOS framework. There were two independent cases relating to different parts of the Bay of Bengal, one between Bangladesh and India and the other between Bangladesh and Myanmar. These cases are collectively referred to as the "Bay of Bengal Maritime Delimitation Cases".

The legal framework

UNCLOS contains a mandatory dispute-resolution clause, under Article 287. The dispute-resolution clause is an inseparable part of the scheme of the UNCLOS, meaning a state that has ratified UNCLOS cannot opt out of the dispute-resolution provisions. This mandatory framework for compulsory dispute resolution, which was unique at the time when the UNCLOS was negotiated, was described as a "package deal" by the President of the Third United Nations Conference on the Laws of the Sea.⁶ The consequence of the "package deal" approach is that all aspects of UNCLOS are integral and binding. States cannot "cherry-pick", i.e. they cannot rely on a few articles while withdrawing from others. This is particularly so in respect of provisions relating to compulsory dispute-resolution.⁷ Article 287 allows states to choose from one of three modes: proceedings before the International Tribunal for the Law of the Sea (ITLOS), proceedings before the International Court of Justice (ICJ), or *ad hoc* arbitration proceedings under Annex VII of UNCLOS. The parties involved must either choose the same forum for dispute resolution, or, if such agreement cannot be reached, the arbitral tribunal constituted under Annex VII of UNCLOS serves as a "default option". In the examples under consideration, Bangladesh and Myanmar agreed to refer the dispute to ITLOS⁸. India and Bangladesh, on the other hand, neither made any declarations regarding jurisdiction nor opted for either ITLOS or the ICJ. The India-Bangladesh dispute thus went automatically for *ad hoc* arbitration under Annex VII of UNCLOS. Although the proceedings between Bangladesh and India commenced before those between Bangladesh and Myanmar, the Bangladesh Myanmar proceedings finished sooner. The Annex VII tribunal deciding the Bangladesh-India case took 53 months, whereas the ITLOS took just 27 months to decide upon the Bangladesh-Myanmar case.

The Bay of Bengal cases involved overlapping claims over four areas: the Territorial Sea, the Exclusive Economic Zone (EEZ), the continental shelf up to 200 NM, and the continental shelf beyond 200 NM (also called the “extended continental shelf”). Overlapping claims over the Territorial Sea are regulated by Article 15, while Articles 74 and 83 regulate overlapping claims over the EEZ and continental shelf within and beyond 200 NM, respectively. Claims over the extended continental shelf are determined by the “Commission on Limitation of Continental Shelf” (CLCS) under Article 76. Since there is no provision that has a direct reference to overlapping claims over the extended continental shelf, Article 83, which is the basis for delimitation of the continental shelf, was used. All three states had made claims before the CLCS for an extended continental shelf. Yet in both cases, the tribunal decided to proceed and delimit rights over the extended continental shelf.⁹

The rules on maritime delimitation in the EEZ and continental shelf are the same, but they are different from those on the delimitation of the Territorial Sea. There are two common features about the delimitation rules in respect of all the zones. First, the coasts must be adjacent or opposite each other. In the Bay of Bengal cases, the coasts of all three states are adjacent. Secondly, the legal provisions would not operate if there was an agreement to the contrary between the parties. In the case of the EEZ and the continental shelf, there is an additional requirement that the agreement has to be as per international law specified in Article 38(1) of the ICJ Statute. This provision arises from the fact that all agreements have to be in accordance with law and, in the case of international law, all sources are comprehensively noted in Article 38(1) of the ICJ Statute. In both cases, the arguments made by the parties to the effect that there was an agreement delimiting the maritime zones were rejected. This is discussed in detail below.

The other aspects of rules on maritime delimitation of different zones differ. The difference is due to the nature of rights that are exercisable in these areas. The rights of coastal states over the Territorial Sea are “territorial”. As a consequence, they enjoy sovereignty over the seabed, superjacent waters, and the air column.¹⁰ Rights on the EEZ and continental shelf, on the other hand, mostly relate to the exploitation of natural resources.¹¹ The focus of delimitation in the Territorial Sea is on an equidistance line, whereas in the case of other zones, it is on an equitable solution. Therefore, unlike in the case of the Territorial Sea, no precise methodology is provided for delimitation of the EEZ and the continental shelf.¹²

As explained above, the maritime delimitation of the Territorial Sea is based upon an equidistance line, which is a median line, every point on which is at an equal distance from the two coasts. The equidistance line rule would not apply in the Territorial Sea in case of a “historic title” or “other special circumstances”. In the Bay of Bengal cases, claims of historic title were not involved.¹³ However, the parties argued that there were, indeed, “special circumstances” (discussed in detail below). In the EEZ and the continental shelf, different methods for finding an equitable solution for delimitation have been developed and the parties to the disputes relied upon them (discussed in detail below).

The following section focuses on the legal arguments of the parties and the conclusions of the tribunals. The discussion showed that the arguments were purely technical in nature. There were some sensitivities regarding the legal issues involved in the case, yet the analyses and conclusions were strictly legal. They represent the neutrality of the

legal rules that flow from technicality, and show that that these legal rules are insulated from political underpinnings and consequences.

The land boundary terminus

A particularly sensitive issue, in the Bangladesh India case, was the determination of the land boundary terminus. The land boundary terminus is a point on land from which the maritime delimitation line between the states is drawn. The parties agreed on the role and importance of the land boundary terminus in law but disagreed about its precise location,¹⁴ thus, in effect, disagreeing on the precise location of the land boundary between them. As it is, the determination of land boundaries is a sensitive issue between states. What aggravated this sensitivity was that the determination of the land boundary terminus required interpretation and application of two critical awards: the “Bengal Boundary Commission” (popularly known as the “Radcliffe Award”), and the “India–Pakistan Boundary Disputes Tribunal” (popularly known as the “Bagge Tribunal”). The Radcliffe Award is particularly infamous on the subcontinent and is politically emotive since it formed the basis of the partition of India and Pakistan in 1947, which resulted in significant loss of human life and property.¹⁵

The Radcliffe Award declared the land boundary between India and East Pakistan (which became Bangladesh in 1971) to be a line that ran southwards along the districts between Khulna and 24 Parganas, where it met the Bay of Bengal. This line was specified in detail in the notification of 1925. India argued that the line contemplated under the 1925 notification was fluid and that this had been agreed by both countries, as was evident from correspondence between officials of India and the erstwhile East Pakistan. Bangladesh, on the other hand, argued that the line was fixed, and had been recognised as being so in the Radcliffe Award and reaffirmed in the Bagge Award. According to India, the line was to be decided on the date of demarcation and not as had been decided by Radcliffe in 1947. The two parties presented several arguments, along with evidence in the form of maps and other government records, to support their respective positions. The tribunal determined that the land boundary terminus was, indeed, finalised in the Radcliffe Award and thus was the one noted in 1947. The interpretation of the Radcliffe Award and Bagge Award left no doubt that Bangladesh’s argument was correct. The line was not fluid, as India had been arguing, but rather was fixed and had been defined in the Radcliffe Award and confirmed in the Bagge Award.¹⁶ Furthermore, the tribunal ruled that the correspondence between two officials of India and East Pakistan, which was relied upon by India in support of its position in the case, could not undo the boundary as determined in the Radcliffe Award and confirmed in the Bagge Award.¹⁷

Base points and the delimitation of the Territorial Sea

The first stage in maritime delimitation is the determination of base points, since it is based on these base points that the maritime zones are measured. In situations where there are no conflicting claims, base points of coastal states are not normally under challenge. However, in situations involving maritime delimitation, they could be a very controversial matter. In the Bangladesh–India case, this was a technically complex matter of political significance.

There were several challenges to the choice of base points, but the important one regards two islands. Bangladesh objected to two base points: South Talpatty and New Moore Island. According to Bangladesh, these islands had disappeared in the late 1980s or early 1990s, and satellite images after 1989 did not show these islands.¹⁸ India maintained that these islands were visible during low tide even though they could not be spotted during the site visit because the weather had been bad on the day of the visit.¹⁹ The tribunal did not accept the base points of South Talpatty and New Moore Island because they did not fall on the coastline and did not constitute a protuberant coastal point.²⁰ *The effect of the award is that it negates the relevance of islands that are alongside the coast.*

This notwithstanding, the conclusion of the tribunal that the South Talpatty and New Moore Islands be excluded remains unconvincing. If a low-tide elevation is situated within the claimed area of the Territorial Sea then it may be used as a baseline for measuring the Territorial Sea.²¹ The islands in question were low-tide elevations, and since they fell within the Territorial Sea, there was no reason to exclude them as base points for drawing the baseline. If not base points, they certainly qualified as a “special circumstance” for India to adjust the equidistance line. The tribunal could, instead, have considered the evidence of the latest satellite imagery to determine whether the islands did, in fact, exist or not. Baselines are to be essentially identified based on the maps produced by the coastal state and deposited with the Secretary General of the United Nations.²² These islands were, indeed, represented in the maps deposited with the UN.

Regarding the methodology for delimitation within the Territorial Sea, Bangladesh argued that “special circumstances” play an important role and have been expansively interpreted in recent jurisprudence.²³ India argued that “special circumstances” were an exception and could not be treated as a rule.²⁴ The tribunal did not accept Bangladesh’s argument that there were “special circumstances”, because the geographical peculiarity noted was the Raimangal estuary, which was common to both states. It could not, therefore, constitute a “special circumstance”.²⁵ Additionally, the concavity of the coastline of Bay of Bengal did not produce any significant cut-off of the Territorial Sea. Therefore, no adjustment of the median line was necessary.²⁶

The next question was that of the relevant coast for delimitation. Since the land dominates the sea, the seaward projection of the coast that could generate entitlement for the Territorial Sea is the relevant coast. There was an agreement between the parties regarding the relevant coast for Bangladesh and this was based on the decision of ITLOS in its ruling on the dispute between Bangladesh and Myanmar.²⁷ Bangladesh disputed India’s claims of the “relevant coast”. The tribunal accepted India’s claim that the relevant coast of India would be from the land boundary terminus to the north of Devi Point since it could generate projections that overlapped the claims of Bangladesh up to 200 NM.²⁸

In the Bangladesh–Myanmar case, there had been long negotiations between the parties (the most recent one being in 2008), which continued unaffected by the pending judicial proceedings. This showed that the parties were still trying to resolve their dispute bilaterally, even though the matter was, at the same time, being considered by a judicial body. The issue was whether the parties had already delimited the Territorial Sea through agreement minutes of 1974 and 2008 or by a tacit agreement. While the negotiations continued to be cordial,²⁹ according to Bangladesh, the dividing line between Bangladesh and Myanmar had been agreed in 2008.³⁰ Myanmar, on the other hand, contested this position

and argued that there was only a conditional agreement and that a final agreement had not yet been reached.³¹ It was a record of minutes of the meeting rather than an agreement.³²

The tribunal was thus required to first determine whether there was an agreement for maritime delimitation under Article 15 of UNCLOS. The tribunal observed that for Article 15 to apply, the agreement had to be a legally binding one.³³ It found that the agreed minutes of 1974 were only a conditional understanding during the course of negotiations, rather than a final agreement under Article 15.³⁴ The circumstances in which the minutes were agreed did not suggest that the Territorial Sea was intended to be comprehensively delimited. Myanmar had always wanted a comprehensive agreement on all zones: the Territorial Sea, the Continental Shelf, and the EEZ.³⁵ The Myanmar official who had been engaged in the proceedings did not have the authority to bind the Government of Myanmar.³⁶ Thus, the 1974 “agreed minutes” did not amount to an agreement and were not binding. The same problems persisted with the conclusions of the meeting in 2008. Hence this meeting was not binding either.³⁷

In the absence of an express agreement, Bangladesh argued that there was a tacit agreement, because the parties had behaved in accordance with the agreed minutes for more than three decades. Bangladesh fishermen had been fishing in those waters and naval vessels had been patrolling those areas.³⁸ The tribunal, however, did not accept the argument of a “tacit agreement”, because the standard of evidence for a tacit agreement has to be compelling and this was not so in this case.³⁹ Since there was an absence of sufficient evidence to show that the parties had administered the sea in accordance with the agreed minutes of 1974, it could not be said that estoppel⁴⁰ was proved or that Myanmar could not challenge the recorded minutes of 1974.⁴¹

Since the presence of actual or tacit agreement or estoppel was not proven, the tribunal proceeded to delimit the Territorial Sea. In the Territorial Sea, the only controversial aspect was the importance to be given to St Martin’s Island. Myanmar argued that since St Martin’s Island was located immediately off its coast, but belonged to Bangladesh, this was a “special circumstance” that required adjustment of the median line.⁴² Bangladesh argued that since it is an island, it should be given the full effect.⁴³ If the island was treated as a “special circumstance”, Myanmar would have received a large section of the Territorial Sea. If, however, it was given full effect as an island, it would have its own Territorial Sea of 12 NM, and would, thus, further reduce Myanmar’s entitlement.

The tribunal ruled that the effect to be given to an island would depend on whether the delimitation concerned the Territorial Sea, or the EEZ, or the Continental Shelf.⁴⁴ St Martin’s Island was a significant geographical feature with a significant population, and economic and other activities. It could not be treated merely as a “special circumstance” but had to be given full effect as an island.⁴⁵ St Martin’s Island bordered the Continental Shelf and the EEZ of Myanmar, thus cutting off Myanmar’s access to these areas. It was essential that Myanmar should have the free and unimpeded right to navigate through the Territorial Sea around St Martin’s Island. Bangladesh made a statement that it had accepted that Myanmar would have free and unhindered access to navigation around the Territorial Sea of St Martin’s Island.⁴⁶ This was, indeed, an expression of a spirit of goodwill and concession of states in dealing with each other.

Unlike the Bangladesh–India case, there was no dispute regarding the land boundary terminus for maritime delimitation in the case of Bangladesh and Myanmar.⁴⁷ Further, there was hardly any disagreement regarding the base points, thus making the process

of delimitation simple.⁴⁸ Nevertheless, the outcome of delimitation of the Territorial Sea depended on the cooperation and goodwill of the parties.

Overlapping claims over the exclusive economic zone and the continental shelf within 200 NM

As was discussed in the section relating to the legal framework, the principles of delimitation in the Territorial Sea are different from those that apply to the EEZ and the Continental Shelf. While the “equidistance line” is the pivotal criterion for delimitation of the Territorial Sea, an equitable result is the objective in the delimitation of EEZ and the Continental Shelf.

Bangladesh argued that since an equitable outcome was desired, the equidistance rule had no role to play.⁴⁹ It therefore argued that the tribunal should apply the angle-bisector method, especially since the coast was unstable.⁵⁰ According to the angle-bisector method, a line bisecting the general direction of the coast or perpendicular to the straight line joining the coastline is to be drawn.⁵¹ This line need not correspond to the line emanating from an application of the “equidistance method”, since each point on this line need not be at an equal distance from coasts of both states. The consequence of the angle-bisector method in the present case is that a straight line would have to be drawn that would be perpendicular to the coastline. Such a line would have given more area to Bangladesh, unlike what it would have obtained if an “equidistance line” had been drawn. India argued that, although an equitable solution was, indeed, the objective, the methodology adopted in the jurisprudence ought to be a three-stage one: first, the establishment of a provisional equidistance line; second, the determination of any special or relevant circumstances that need to be taken into account and, if there are such compelling reasons, then the equidistance line could be abandoned; and, third, if there are no reasons to abandon the equidistance method, then the provisional equidistance line could be adjusted depending on the special circumstances.⁵²

In exceptional situations, the angle-bisector method could be used, but it does not represent transparency and, therefore, the tribunal declined to apply it.⁵³ Further, the tribunal noted that the methodology for delimitation in the EEZ and continental shelf was different from that in the Territorial Sea because there was no obligation to follow the equidistance rule.⁵⁴ Yet equidistance constitutes the first stage in delimitation and has to be employed, unless there are supervening factors by way of special circumstances that dictate the adoption of another approach.⁵⁵ As a general principle, there is a single line of maritime delimitation and, hence, the relevant base points and coasts remain the same and it is only the delimitation line in the territorial sea that is to be further extended and altered based on the rules regulating the EEZ and continental shelf. The tribunal accordingly drew a provisional equidistance line.⁵⁶

The tribunal did not accept Bangladesh’s argument that the instability of the coast was a relevant circumstance for adjusting the equidistance line.⁵⁷ However, regarding the concavity of the coast, the tribunal found that the equidistance line would result in a cut-off of the seaward projections of the Bangladesh coast and hence adjusted the equidistance line to avoid the cut-off effect,⁵⁸ thereby reducing the area of the EEZ and the continental shelf that India was claiming.

Bangladesh also insisted that its population depended upon fishing and that this, too, should be considered as a relevant factor in adjusting the equidistance line for an equitable result. The tribunal noted that although fishing interests were taken into consideration for establishing delimitation in the Jan Mayen case, Bangladesh had not produced sufficient evidence, and therefore ruled that the equidistance line need not be adjusted.⁵⁹

Against Myanmar, too, Bangladesh argued that the angle-bisector method ought to be used, due to the specific configuration of the coast the concavity of the coast.⁶⁰ However, as in the Bangladesh–India case, the tribunal declined to apply the angle-bisector method since it would not have resulted in an equitable solution. Also, the equidistance method is a settled method in jurisprudence.⁶¹ The tribunal followed the three-stage method that was followed by international courts and tribunals in relation to the delimitation of the EEZ and continental shelf.⁶²

The concavity of the coast does not by itself amount to a special circumstance, but if it results in a cut-off effect then it does. In this case, it resulted in a cut-off for the maritime entitlements of Bangladesh; therefore, it was deemed to be a “special circumstance”.⁶³ St Martin’s Island was not a “special circumstance” for delimitation in the Territorial Sea because it was an island, and it continued to not be a “special circumstance” for adjustment of the equidistance line for the EEZ and continental shelf delimitation. The reason was that if it were to be considered a “special circumstance”, this would result in blocking the seaward projections of Myanmar’s coast, leading to unwarranted distortions in the delimitation line – hence, it was best ignored.⁶⁴ The depositional system of Bangladesh due to the physical, geological and geomorphological connection between Bangladesh’s land mass and the Bay of Bengal Sea floor was, once again, not a “special circumstance” that might warrant readjustment of the equidistance line.⁶⁵ The provisional equidistance line was adjusted at relevant points so as to avoid the cut-off effect for Bangladesh due to the concavity of its coast.⁶⁶

Delimitation of the extended Continental Shelf is complex. In the absence of any precise rules in this regard, the tribunal relied on Article 83 of the UNCLOS, since the entire Continental Shelf within or outside 200 NM is continuous.⁶⁷ The claims of all three states for extended Continental Shelf claims were pending with the CLCS. The CLCS is a body consisting of experts in geology, geomorphology, bathymetry, etc., who are better qualified in technical areas than the lawyers who adjudicate delimitation disputes. The issue of determination of the Extended Continental Shelf was left by UNCLOS to the CLCS. Since CLCS rules provide that CLCS cannot proceed in cases of conflicting claims, ITLOS concluded that it needed to take over this function because the disputes would otherwise remain unresolved. It is important to note that the CLCS is not prevented from proceeding if the parties so agree. In other words, if parties intend to resolve their conflicting claims over the extended Continental Shelf then they need to agree to these claims being decided by the CLCS. In any event, the CLCS does not actually decide conflicting claims; it only determines whether, geographically, the extended continental shelf claim is sustainable. It is possible that CLCS may conclude that the claim of the coastal state is unfounded or much less than claimed, thus reducing the overlapping claims. By usurping the functions of CLCS, the tribunals – purportedly relying upon expert evidence in both cases – determined the validity of the claims over the Extended Continental Shelf. This keenness to

decide has resulted in a new “grey area”, where one state has Continental Shelf claims and the other has Extended Continental Shelf claims. Both tribunals held that it was possible for states to concurrently exercise rights over those areas.

In the Bangladesh–India case, this was an area that fell within 200 NM of India but beyond the 200-NM continental shelf of Bangladesh. According to the tribunal, in this “grey area”, the right of Bangladesh over the seabed and subsoil, as a part of its Extended Continental Shelf, could co-exist with the right of India over the superjacent waters.⁶⁸ According to the tribunal, there were several instances in which states enjoy shared rights under UNCLOS, and hence, India and Bangladesh, too, could have a shared area.⁶⁹ In his dissenting opinion, Mr Rao disagreed with the conclusions of the majority, stating that there was insufficient basis for the tribunal to declare a “grey area”. The disputes were, thus, not conclusively decided.⁷⁰ In the Bangladesh–Myanmar case, too, a “grey area” was declared – an area beyond 200 NM of the baseline of Bangladesh but within 200 NM of that of Myanmar.⁷¹ Since the rights in question differ in nature, the tribunal ruled that both states could exercise their rights concurrently.⁷²

Thus, in both cases, despite the fact that proceedings were pending before the CLCS, the tribunal proceeded to delimit the Extended Continental Shelf.⁷³ Concavity continued to be a relevant circumstance for claims beyond 200 NM.⁷⁴

Conclusion

These two cases show that the domain of law is distinct from that of politics. Cases of maritime delimitation are purely technical in nature. The change of methodology adopted by Bangladesh underscores this. Such application of legal rules may result in a party winning a certain issue but losing on another. It is difficult to assert in these proceedings that one party has won and the other has lost, even if the practical effect might well be better for one party than the other. International adjudication, in a sense, removes the outcome of the controversy from the paradigm of success or loss.

Far more importantly, these cases also represent the willingness of states to undertake mandatory dispute-resolution after a failure to reach a peaceful settlement through negotiations. States prefer to leave complicated questions to be decided by an independent judicial body that commands respect. It is thus better to resolve disputes on purely legal grounds than by seeking political solutions. This shows the willingness of states to leave certain complex and politically difficult questions to an international court or tribunal. Also, it is easier for states to comply with such decisions, on the grounds that the state wants to be seen as a responsible entity willing to comply with international law.

These cases involved states with asymmetrical power. India was and remains a geopolitically strong and an influential player in the SAARC region. Bangladesh was and, arguably, remains less powerful in comparison to India. A similar asymmetry of power is to be seen between Bangladesh and Myanmar. Although Bangladesh and Myanmar are more comparable in terms of comprehensive national power, at the time of the dispute under reference, Myanmar had only recently emerged from a protracted period of political turmoil and uncertainty. Economically as well as geopolitically it was – and remains – weaker than Bangladesh (Bangladesh has a Gross Development Product (GDP) of

\$221.4 billion,⁷⁵ while that of Myanmar is \$67.4 billion.⁷⁶ Further, the value of Bangladesh's exports is around \$36 billion, and imports are worth around \$48 billion,⁷⁷ compared to \$11.7 billion and \$16 billion, respectively, for Myanmar⁷⁸). Yet the asymmetry of power did not stop these states from taking their disputes to international adjudication, participating in and complying with the judicial process. These are excellent and laudable examples of compliance with a rule-based order. The stronger party lost to the weaker party. In the India–Bangladesh case, India did not get all the area it claimed since Bangladesh was awarded a total area of 19,467 km² out of 25,602 km² of the disputed area.⁷⁹ In the Bangladesh–Myanmar case, of a total relevant area of 283,471 km²,⁸⁰ Bangladesh was awarded 111,631 km², while 171,832 km² were awarded to Myanmar.⁸¹ The size of the disputed area should not undermine the value and importance of the decision. Indeed, if the issue between the states had been trivial and one state was willing to throw it away in favour of another, they would have simply negotiated and agreed to a settlement to that effect. The states concerned had attempted negotiations several times. Between 1974 and 2010, India and Bangladesh held 11 rounds of negotiations, while Bangladesh and Myanmar held 14 rounds.⁸² The parties could not agree on a solution and chose to refer the matter to arbitration, and one of the parties invoked the binding dispute-resolution provision under UNCLOS. This demonstration of respect for the rule of law is in sharp contrast with some other states that have been at loggerheads on trivial issues but have declined to participate in or comply with international law. Indeed, the role of important and influential powers in upholding the rule of international law is crucial. If they comply with their obligations, they set a powerful precedent for others to follow.

These decisions are very important for stable long-term international relations. In the words of the Bangladesh–India tribunal: “The Tribunal notes that maritime delimitations, like land boundaries, must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term”.⁸³

International law is sometimes decried as being ineffective. What is forgotten is that a law is effective only if its users want it to be. It is necessary for rising powers such as India and China, which intend to assume a significant and perhaps determining role in international relations and global institutions, to demonstrate their commitment towards international law and particularly the Law of the Sea. It is only if they lead the way that the rest will follow and, in the process, make international law and particularly UNCLOS an effective instrument for stability in the future world order and value-based international relations.

Notes

1. United Nations Charter, Article 2(3) and Chapter VI.
2. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UNGA Res 2625 (XXV), October 24, 1970, <http://www.un-documents.net/a25r2625.htm> (11 November 2018).
3. Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, UNGA Res 2131 36/103, December 9, 1981, <http://www.un.org/documents/ga/res/36/a36r103.htm> (11 November 2018).
4. Case Concerning Military & Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*, Judgment of June 27, 1986, para. 187; *Armed Activities on the*

- Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, para. 162.
5. United Nations Charter, Article 33.
 6. “A Constitution for Oceans”, Remarks by Tommy T.B. Koh, President of the Third United Nations Conference on the Laws of the Sea, December 6, 1982, http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf (11 November 2018).
 7. H. Caminos and M.R. Molitor, “Progressive Development of International Law and the Package Deal” (1985) 79 AJIL pp. 871–90; Yoshifumi Tanaka, *The International Law of the Sea*, 2nd edn (Cambridge: Cambridge University Press), pp. 28–32.
 8. Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh v Myanmar*) Merits, Judgment of 14 March 2012 [2012], ITLOS Reports 4, para. 3, 4 and 47.
 9. *Ibid.*, para. 369–94; Bay of Bengal Arbitration (*Bangladesh v India*) Award of 7 July 2014, Case No. 2010-16 PCA, para. 76–83.
 10. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v Bahrain*), Merits, Judgment, ICJ Reports 2001, p. 93, para. 173–4, referring to Delimitation of the Maritime Boundary in the Gulf of Maine Area, ICJ Reports 1984, p. 327, paragraph 194.
 11. *Report of the International Law Commission to the General Assembly on the Work of its Eighth Session*, 11 UN GAOR, Supp. No. 9 at UN Doc (A/3159) reprinted in [1956] 2 Yearbook of the International Law Commission; Tanaka, *International Law of the Sea*, pp. 128–31, 142–4.
 12. *Bangladesh v Myanmar*, para. 225.
 13. *Bangladesh v India*, para. 227; *Bangladesh v Myanmar*, para. 130.
 14. *Bangladesh v India*, para. 58–9.
 15. See Larry Collins and Dominique Lapierre, *Freedom at Midnight* (Simon & Schuster, 2017), New Delhi.
 16. *Bangladesh v India*, para. 137.
 17. *Ibid.*, para. 165.
 18. *Ibid.*, para. 197.
 19. *Ibid.*, para. 205.
 20. *Ibid.*, para. 261–3.
 21. United Nations Convention on the Laws of the Sea (UNCLOS), Article 13.
 22. *Ibid.*, Article 16.
 23. *Bangladesh v India*, para. 228–31.
 24. *Ibid.*, para. 232–3.
 25. *Bangladesh v India*, para. 248.
 26. *Ibid.*, para. 272.
 27. *Bangladesh v India*, para. 26–8.
 28. *Ibid.*, para. 301.
 29. Agreed Minutes between the Bangladesh Delegation and the Burmese Delegation Regarding the Delimitation of the Maritime Boundary between the Two Countries, para. 58.
 30. *Bangladesh v Myanmar*, para. 60–4.
 31. *Ibid.*, para. 66
 32. *Ibid.*, para. 76–8.
 33. *Ibid.*, para. 89.
 34. *Ibid.*, para. 92.
 35. *Ibid.*, para. 92–3.
 36. *Ibid.*, para. 96.
 37. *Ibid.*, para. 98.
 38. *Ibid.*, para. 101–3.
 39. *Ibid.*, para. 117–8.

40. Estoppel refers to the principle that precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination.
41. *Bangladesh v Myanmar*, para. 125.
42. *Ibid.*, para. 131.
43. *Ibid.*, para. 140–2.
44. *Ibid.*, para. 148.
45. *Ibid.*, para. 151–2.
46. *Ibid.*, para. 170–6.
47. *Ibid.*, para. 157.
48. *Ibid.*, para. 161–2.
49. *Bangladesh v India*, para. 314–9.
50. *Ibid.*, para. 323–9.
51. *Ibid.*, para. 427–8.
52. *Ibid.*, para. 319–21.
53. *Ibid.*, para. 345.
54. *Ibid.*, para. 339.
55. *Ibid.*, para. 341–5.
56. *Ibid.*, para. 368–70.
57. *Ibid.*, para. 399.
58. *Ibid.*, para. 408.
59. *Ibid.*, para. 422–4.
60. *Bangladesh v Myanmar*, para. 213.
61. *Ibid.*, para. 235–9.
62. *Ibid.*, para. 240.
63. *Ibid.*, para. 290–7.
64. *Ibid.*, para. 317–9.
65. *Ibid.*, para. 321–2.
66. *Ibid.*, para. 329–30.
67. *Ibid.*, para. 454–5.
68. *Bangladesh v India*, para. 505.
69. *Ibid.*, para. 507.
70. Bay of Bengal Arbitration (*Bangladesh v India*) Award of 7 July 2014, Case No. 2010-16 PCA, Concurring and Dissenting Opinion of Dr P.S. Rao, para. 10–3, 24–37.
71. *Bangladesh v Myanmar*, para. 463.
72. *Ibid.*, para. 474–6.
73. *Bangladesh v India*, para. 458, 509–510; *Bangladesh v Myanmar*, para. 410.
74. *Bangladesh v Myanmar*, para. 461.
75. World Bank Open Data, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=BD> (11 November 2018).
76. *Ibid.*, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=MM> (11 November 2018).
77. UNDATA, http://data.un.org/Data.aspx?q=bangladesh±Imports&d=ComTrade&f=_l1Code%3a1%3brtCode%3a50 (11 November 2018).
78. *Ibid.*, http://data.un.org/Data.aspx?q=myanmar±Imports&d=ComTrade&f=_l1Code%3a1%3brtCode%3a104 (11 November 2018).
79. Rupak Bhattacharjee, “Delimitation of the India Bangladesh Maritime Boundary”, August 19, 2014, https://idsa.in/idsacomments/DelimitationofIndo-Bangladesh_rbhattacharjee_190814 (11 November 2018).
80. *Bangladesh v Myanmar*, para. 496.
81. *Ibid.*, para. 499.
82. *Ibid.*, para. 36.
83. *Bangladesh v India*, para. 215.