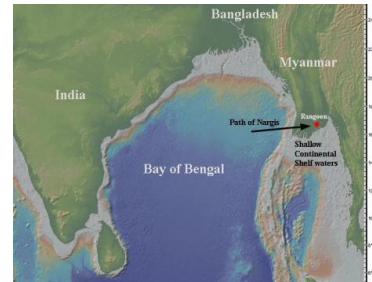


Maritime delimitation Case study

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The delimitation of the maritime boundaries between BanglaDesh, India and Myanmar.



The delimitation of the maritime boundaries between BanglaDesh, India and Myanmar.

- I. Factual background
- II. Legal Background
- III. Procedural aspects of the disputes
- IV. Substantive aspects of the disputes
- V. Conclusive remarks.

II. Legal Background of the dispute

- 1) Unilateral delimitations by the three states of their maritime zones in the Bengal Bay
 - - 1974 : Bangladesh legislation
 - - 1976 : India act
- 2) Agreements between states
 - Agreement between India and Burma of 23 December 1986 on the delimitation of the maritime boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal.
 - Minutes of agreement between Bangladesh and Burma of 1974.
 - 1979 « Friendship line »

I. Factual background of the dispute

- 1) Geographical aspects of the Bay of Bengal
 - The Gange and Brahmapoutre Delta
 - The general orientation of the relevant coasts
 - Islands
 - The existence of an extended continental shelf
- 2) Economic aspects
 - Fish straddling stocks
 - Deposits of oil and natural gas

3) Relevant rules of the UNCLOS

• Territorial sea : art. 15

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 above provision does 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 therewith.

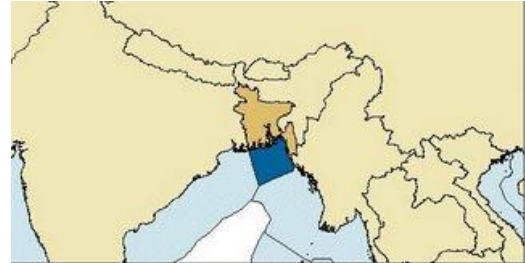
• EEZ : article 74 and CS : article 83

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected 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.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned,

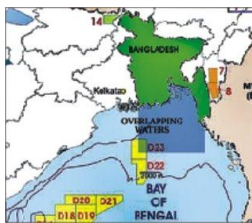
Burma India agreement



India EEZ delimitation



Bangladesh EEZ delimitation



Emergence of the disputes

- **1) Dispute relating to the EEZ Bangladesh/ Myanmar :**
- Myanmar 2005/06 discovery of 7 trillion cubic feet of gas
- Incident about the exploration campaign launched in November 2008 by Myanmar 50 nm south of St. Martins Island (Bangladesh)
- Dispute about the EEZ.

2) Disputes related to the claims on the extended continental shelf

- Myanmar submission of December 2008
- India's 2009 submission to the CLCS

On 11 May 2009, the Republic of India submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the Convention, 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.

- This submission triggered the dispute between Bangladesh and Myanmar
- Bangladesh submission of 27 February 2011

III. Procedural aspects of the disputes

- 1) General obligation to settle disputes by peaceful means.
- Article 279 of UNCLOS :

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 and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

2) Role and primacy of the Parties to the Dispute

- Settlement by means chosen by the parties
- Article 281

Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice.

Compulsory dispute settlement procedures under Part X section 2 of UNCLOS

Basis of the compulsory settlement : Art. 286

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

Choice of procedure : article 287

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- the International Court of Justice;
- an arbitral tribunal constituted in accordance with Annex VII;
- a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

Determination of the procedure to be used

- Article 287 §4

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

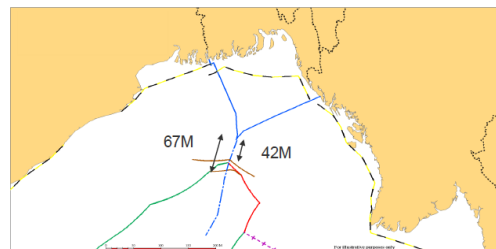
Two procedures for parallel issues.

- 1) Bangladesh v/Myanmar
 - First step : October 2009 : request of arbitration under Annex 7 along with art. 287.3
 - Second step : agreement of the parties on ITLOS jurisdiction along with art. 287.4
- 2) Bangladesh v/India
 - October 2009 : Request of arbitration along with art.287.3.

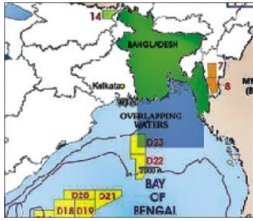
IV. Substantive aspects of the disputes

- 1) Determination of the baseline
- 2) Delimitation of the territorial sea
- 3) Delimitation of the EEZ : principles of delimitation : equidistance/equity
- 4) Delimitation of the extended continental shelf.
- 5) Incidence of the island of South Talpatti (Bangladesh/India)

Drawing of baselines



Bangladesh Claim

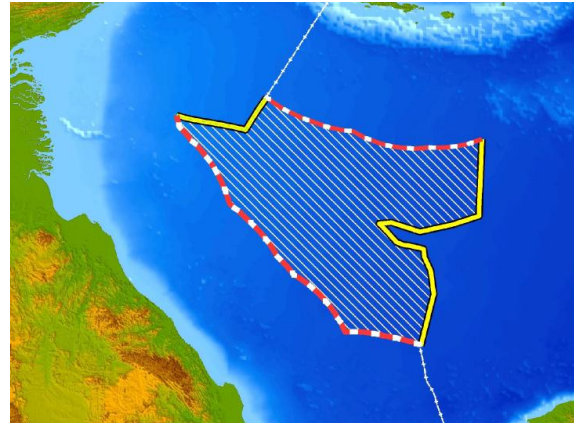
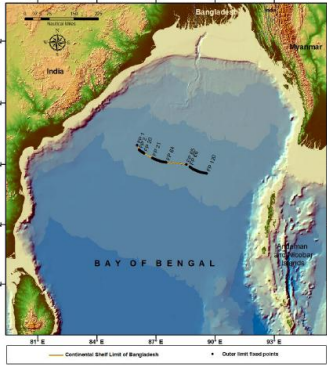


Articulation of the respective jurisdiction of ITLOS, the arbitral tribunal and the CLCS

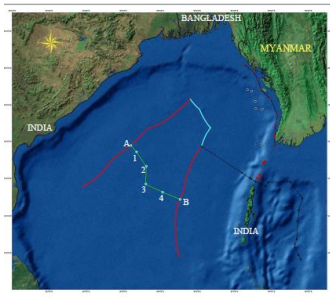
Rule 45 of the rules of procedure of the Commission on the limits of the continental shelf.

1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submissions may be made and shall be considered in accordance with Annex I to these Rules.
2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.

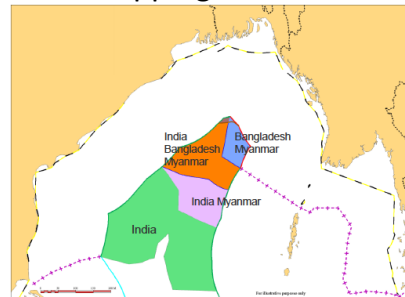
Bangladesh outer continental



Myanmar outer continental shelf submission



Overlapping OCS claims



Concluding remarks

- Importance of the case for the ITLOS
- Importance of the case for the CLCS
- The importance of the coherence of the solutions.
- The alternative way of resolving the difficulty:
 - An agreement before the CLCS
 - The issue of Joint exploitation.