Navigating between Consolidation and Innovation: Bangladesh/Myanmar (International Tribunal for the Law of the Sea, Judgment of 14 March 2012)

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INTRODUCTION

The International Tribunal for the Law of the Sea (ITLOS) is open for real business. For years its docket had been restricted to a meager diet of prompt release litigation, provisional measures, and not much else. But recent developments might suggest that members of the international community are gradually finding their way to Hamburg for resolving other maritime qualms. After a recent advisory opinion on the Area given at the behest of the International Seabed Authority in 2011, the Tribunal entered a novel chapter in its institutional history with its first maritime delimitation decision, rendered on 14 March 2012.

The present case finds its origin in a dispute in the Bay of Bengal that has bedeviled relations between Bangladesh and Myanmar for quite some time. Known as

2. Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), 2011 ITLOS Case No. 17, available online: <http://www.itlos.org/index.php?id=109>.  
4. Bangladesh also has an unresolved dispute with India in the Bay of Bengal. On 8 October 2009, the former took the case to arbitration pursuant to Article 287 and Annex VII,
the planet's largest bay, its general location is the eastern sector of the Indian Ocean, an area otherwise characterized by few undelimited maritime boundaries thanks to “negotiators [who] have been innovative and conciliatory in efforts to create equitable maritime boundaries.” The Bay of Bengal, rich in straddling fish stocks and thought to hold considerable hydrocarbon reserves, has led to standoffish behavior, and on occasion even military action as both economies are anxious to engage in the peaceful exploration and exploitation of their resources at sea.

On 8 October 2009, Bangladesh initiated arbitral proceedings against Myanmar under Annex VII of the UN Convention on the Law of the Sea (1982 Convention), with a view “to secur[ing] the full and satisfactory delimitation of Bangladesh’s maritime boundaries with (...) Myanmar in the territorial sea, the exclusive economic zone (EEZ) and the continental shelf in accordance with international law.” This step constitutes a watershed moment after more than three decades (1974–2010) of bilateral negotiations, which generated two significant documents, i.e., the procès-verbaux (Agreed Minutes) of talks held in 1974 and 2008. Shortly thereafter, on 13 December 2009, Bangladesh, eager to transfer the proceedings to Hamburg, asked ITLOS to exercise jurisdiction over the dispute, noting that both Myanmar and itself had made declarations, pursuant to Art. 287 of the 1982 Convention, recognizing the Tribunal’s jurisdiction over their contentions in the Bay of Bengal. The Tribunal agreed on these grounds to hear the case.

Article I of the UN Convention on the Law of the Sea. It is worth noting that four of the five Members of the Arbitral Tribunal (including the President) were Judges in Bangladesh/Myanmar, n. 3 above. In a similar vein, the legal teams defending Bangladesh and India are very similar in composition to those acting on behalf of Bangladesh and Myanmar respectively in the present case. See Bangladesh v. India (pending), Annex VII Tribunal, available online: <http://www.pca-cpa.org/showpage.asp?pag_id=1376>.


8. Bangladesh/Myanmar, n. 3 above, para. 1.

9. Agreed Minutes between the Bangladesh Delegation and the Burmese Delegation regarding the Delimitation of the Maritime Boundary between the Two Countries, 23 November 1974 (hereinafter cited as 1974 Agreed Minutes); Agreed Minutes of the meeting held between the Bangladesh Delegation and the Myanmar Delegation regarding the delimitation of the Maritime Boundaries between the two countries, 1 April 2008 (hereinafter cited as 2008 Agreed Minutes). Bangladesh/Myanmar, n. 3 above, paras. 36–39.

10. Bangladesh/Myanmar, n. 3 above, paras. 1–6. After Bangladesh had instituted arbitral proceedings against Myanmar pursuant to Annex VII of the 1982 Convention, n. 7 above,