

Segment 2

Governance of Resources of the Continental Shelf
(including extended continental shelf)

Introduction to the continental shelf regime:
focusing on differences in resource governance between the
continental shelf within 200nm and beyond

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- I The basis of the sovereign rights of coastal states over the continental shelf**
- II The nature of rights and duties of states in continental shelf areas**
- III The principles and Methods of delimitation of the continental shelf**

**Policy of the United States With Respect to the Natural Resources
of the Subsoil and Sea Bed of the Continental Shelf,
*September 28, 1945***

- • • 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 with the territory**, and since **self-protection** compels the coastal nation to keep close watch,
- • • 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.

Convention on the Continental Shelf

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

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

North Sea Continental Shelf Cases

19. . . . 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**, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here **an inherent right**. . . .

101. (C) (1) delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute **a natural prolongation** of its land territory into and under the sea, **without encroachment** on the natural prolongation of the land territory of the other;

United Nations Convention on the Law of the Sea

Article 76

1. The continental shelf of a coastal State comprises 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 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.

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.

Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal

435. . . . The Tribunal therefore finds it **difficult to accept that natural prolongation** referred to in article 76, paragraph 1, **constitutes a separate and independent criterion** a coastal State must satisfy in order to be entitled to a continental shelf beyond 200 nm.

437. For these reasons, the Tribunal is of the view that **the reference to natural prolongation** in article 76, paragraph 1, of the Convention, **should be understood in light of the subsequent provisions of the article** defining the continental shelf and the continental margin. Entitlement to a continental shelf beyond 200 nm should thus be determined by reference to the outer edge of the continental margin, to be ascertained in accordance with article 76, paragraph 4. To interpret otherwise is warranted neither by the text of article 76 nor by its object and purpose.

Rights and duties of coastal states in the continental shelf

Article 77

Sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources

Article 78(2)

Duty not infringe on navigation and other rights and freedoms of other States

→ Article 208(1)

Duty to prevent pollution from seabed activities subject to national jurisdiction

Article 79

Right to take reasonable measures concerning the laying or maintenance of cables or pipelines by other states

Article 79 (2)

Duty not to impede the laying or maintenance of such cables or pipelines

Article 80

Exclusive right concerning artificial islands, installations and structures

Article 60 (2)

Exclusive jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations

→ Article 60 (4)

Right to establish safety zones around such artificial islands etc.

Article 81

Exclusive right to authorize and regulate drilling on the continental shelf

Article 85

Right to exploit the subsoil by means of tunnelling

Article 246

Right to regulate, authorize and conduct marine scientific research

Revenue Sharing Scheme

Article 82

1. The coastal State shall make **payments or contributions in kind** in respect of the exploitation of the non-living resources of the continental shelf
2. The payments and contributions shall be made annually with respect to all production at a site **after the first five years of production** at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include **resources used in connection with exploitation**.
3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.
4. The payments or contributions shall be made **through** the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

Consent Regime on Marine Scientific Research

Article 246

2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with **the consent of the coastal State**.

3. **Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects** by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. . . .

5. **Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project** of another State or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State if that project:

(a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;

(b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;

(c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80;

(d) . . .

Special provision on MSR on the continental shelf beyond 200 nm

Article 246

6. Notwithstanding the provisions of paragraph 5, **coastal States may not exercise their discretion to withhold consent** under subparagraph (a) of that paragraph in respect of marine scientific research projects to be undertaken in accordance with the provisions of this Part **on the continental shelf, beyond 200 nautical miles** from the baselines from which the breadth of the territorial sea is measured, outside those specific areas which coastal States may at any time publicly designate as areas in which exploitation or detailed exploratory operations focused on those areas are occurring or will occur within a reasonable period of time. Coastal States shall give reasonable notice of the designation of such areas, as well as any modifications thereto, but shall not be obliged to give details of the operations therein.

Sedentary species on the continental shelf

Article 77

4. The natural resources referred to in this Part 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 68

This Part does not apply to sedentary species as defined in article 77, paragraph 4.

Applicable rules of the UNCLOS to the capture of hydrothermal vent organisms on the continental shelf beyond 200 nm.

	Marine scientific research	Exploration and exploitation of marine living resources
Non-sedentary species	<u>Part VII High Seas</u> Art.87(1)(f) Freedom of scientific research <u>Part XIII Marine Scientific Research</u> Art.257 Freedom of scientific research in the water column beyond the EEZ	<u>Part VII High Seas</u> Art.87(1)(e) Freedom of fishing → Art.116-119 Conservation and management of the living resources of the high seas
Sedentary species	<u>Part VI Continental Shelf</u> Art.77(4) Sedentary Species <u>Part XIII Marine Scientific Research</u> Art.246(6) Marine scientific research on the continental shelf beyond 200 nm	<u>Part VI Continental Shelf</u> Art.77(1)(4) Sovereign rights

United Nations Convention on the Law of the Sea

Article 83

1. The delimitation of the continental shelf 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**.

Delimitation methodology of the continental shelf

Case of Maritime Delimitation in the Black Sea

1st stage

to establish the **provisional equidistance line**

2nd stage

to consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result

→ application of the **equitable principles/relevant circumstances method**

3rd stage

to verify that the line does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line.

→ **proportionality test**

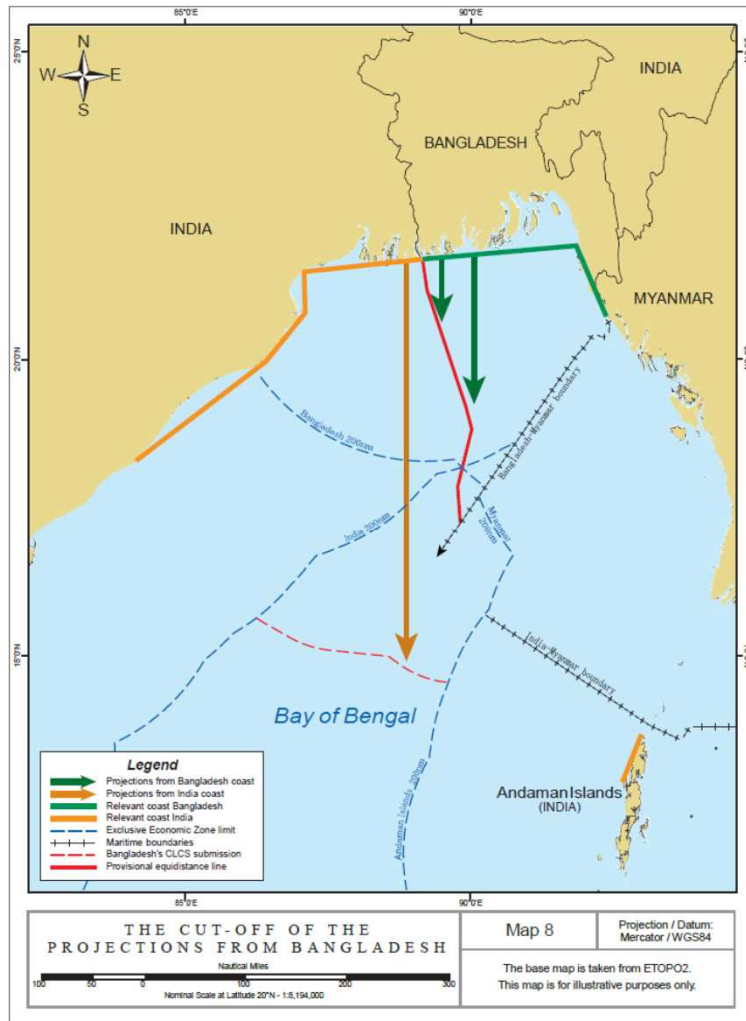
Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal

455. In the view of the Tribunal, the delimitation method to be employed in the present case for the continental shelf beyond 200 nautical miles should not differ from that within 200 nm. Accordingly, **the equidistance/relevant circumstances method** continues to apply for the delimitation of the continental shelf beyond 200 nm. This method is rooted in the recognition that **sovereignty over the land territory is the basis for the sovereign rights and jurisdiction of the coastal State with respect to both the exclusive economic zone and the continental shelf.** . . .

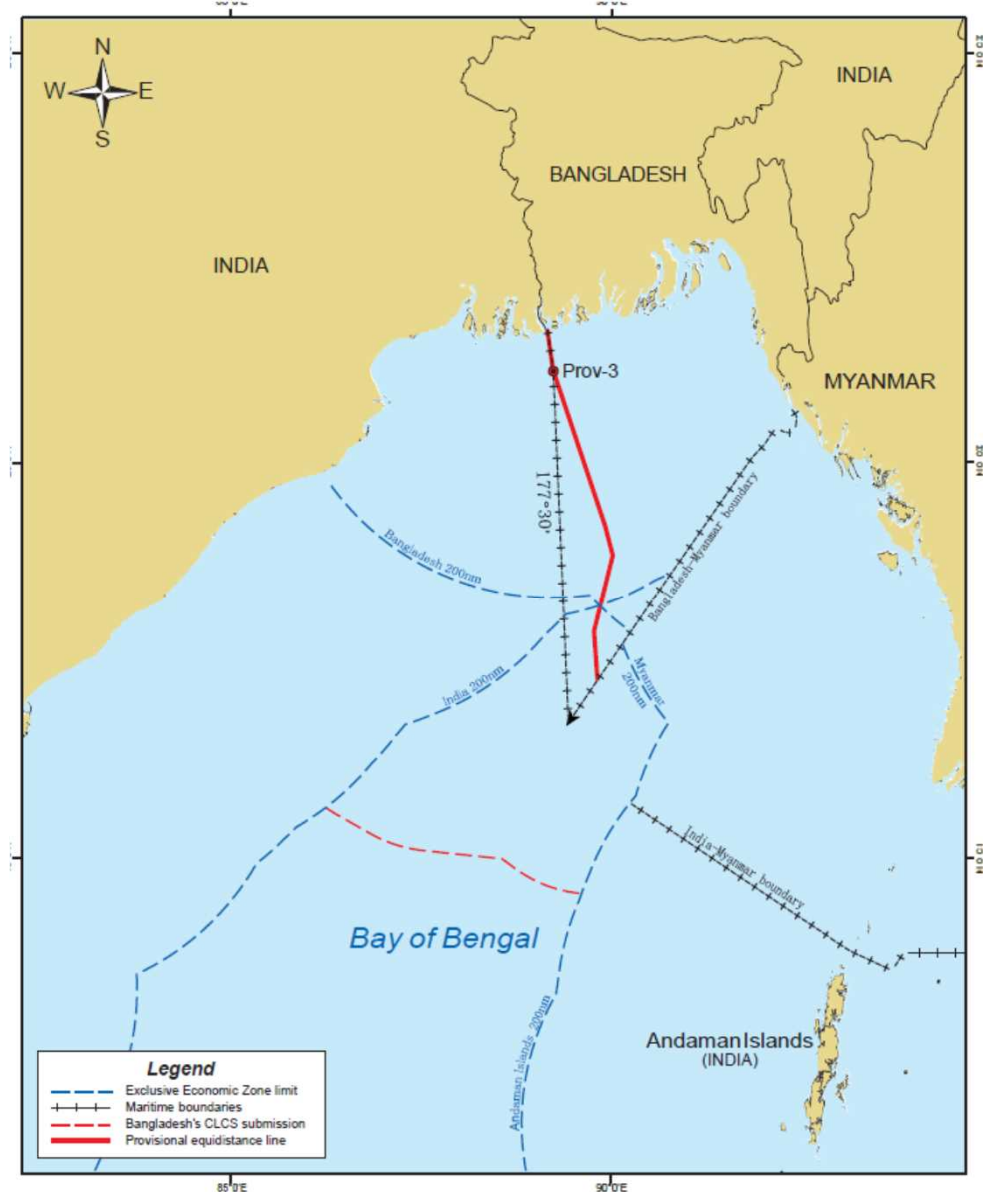
The Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)

465. The Parties and the Tribunal agree that there is **a single continental shelf**. The Tribunal considers that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200 nm. Having adopted the **equidistance/relevant circumstances method** for the delimitation of the continental shelf within 200 nm, the Tribunal will use the same method to delimit the continental shelf beyond 200 nm.

The Bay of Bengal Maritime Boundary Arbitration (Bangladesh / India)



判決145頁



判決149頁

