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# AN ANALYSIS OF THE MARITIME BOUNDARY DELIMITATION BETWEEN BANGLADESH AND INDIA: LEGAL, GEOPOLITICAL, AND ECONOMIC IMPLICATIONS

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## ABSTRACT

The subject matter of the current study is the verdict made in the case of Bangladesh v India and the implications of the verdict both in respect of legal and socio-economic development. As the verdict has made so many impacts on the law of maritime delimitation, the verdict has also made impacts on the concept of blue economy and security issues in respect of Bangladesh. The findings under the study reflect that the outcome of the case has been accepted as a win-win situation for both the parties and Bangladesh acquiring huge maritime areas has become entitled to explore and exploit marine resources in a greater area. The verdict has also settled the long-standing dispute between the parties and extends the door to mutual understanding. Apart from the socio-economic aspects of development, the verdict has also made some impacts on the laws regarding the maritime delimitation, such as interpretation of the certain provisions, principles of equity, non-cut-off principle as a requirement to delimit maritime boundary. The potentiality, capability and problems of the study have been identified some recommendations have been made in line with this study. As the verdict made so many positive forces to Bangladesh, it has brought so many challenges as well in respect of state policy, marine security and economy. In order to overcome the challenges, the country needs to empower the Bangladesh Navy and Coast Guard, development of maritime fields through marine education and training, implement state policy keeping the maritime laws and policies in considerations and so on.

**Keywords:** Law of the Sea; Maritime Boundary Delimitation; UNCLOS; Permanent Court of Arbitration; Maritime Zones; Continental Shelf; Equidistance Method; Equitable Solution; Bangladesh v India

## 1. Introduction

Maritime boundaries are crucial in shaping the relationships between nations, particularly those with shared coastlines. These boundaries not only define the territorial limits of a state but also determine the extent of its jurisdiction and sovereignty over marine resources. Proper delimitation of both land and maritime boundaries is essential for the enforcement of rights and obligations, ensuring security, and fostering peaceful relations between neighbouring countries. The significance of maritime boundaries has grown with the increasing reliance on marine resources and the expansion of commercial activities at sea. The World Ocean comprises various maritime zones, each with its legal framework under international law, particularly the United Nations Convention on the Law of the Sea (UNCLOS)<sup>1</sup>. However, the geographical complexities of coastal states often lead to disputes over the proper delimitation of these zones. Such disputes arise when the sovereign jurisdictions of two or more coastal states overlap, necessitating clear guidelines and legal mechanisms to resolve them. Over time, international courts and tribunals have played a pivotal role in developing the laws governing maritime boundary delimitation. The case of *Bangladesh v. India*,<sup>2</sup> resolved under Annex VII of UNCLOS facilitated by the Permanent Court of Arbitration, serves as a significant example of such a dispute. The judgment delivered in 2014 marked a turning point in the maritime relations between the two countries, particularly concerning the Bay of Bengal, a region believed to be rich in deep-water deposits of oil and natural gas, as well as fish stocks crucial to the economies of both nations.

Before the *Bangladesh-India* case, Bangladesh had successfully resolved a similar dispute with Myanmar through the International Tribunal for the Law of the Sea (ITLOS) in 2012.<sup>3</sup> Both cases involved complex questions regarding maritime delimitation, particularly beyond 200 nautical miles, where jurisdiction over continental shelves and Exclusive Economic Zones (EEZs) often overlaps. Bangladesh initiated arbitration proceedings against India on October 8, 2009, under Article 287 of UNCLOS and Annex VII, seeking delimitation of boundaries in the territorial sea, EEZ, and continental shelf. The Arbitration Tribunal

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<sup>1</sup> Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397. Entered into force as the "United Nations Convention on the Law of the Sea" on Nov. 1, 1994.

<sup>2</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Bangladesh v India*, Final Award, ICGJ 479 (PCA 2014), 7th July 2014, Permanent Court of Arbitration (PCA)

<sup>3</sup> *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Bangladesh v Myanmar*, Judgment, ITLOS Case No 16, 52014XC0830(01), ICGJ 448 (ITLOS 2012), 14th March 2012, International Tribunal for the Law of the Sea (ITLOS)

delivered its decision on July 7, 2014, awarding Bangladesh a significant portion of the contested area in the Bay of Bengal. This judgment had far-reaching implications for Bangladesh, including access to marine resources vital for economic development and its evolving blue economy strategies.

The analysis in this paper explores the legal and socio-economic impacts of this award, particularly in terms of its effect on Bangladesh's relationship with India and its resource exploitation in the Bay of Bengal. It also addresses the broader implications for international law, focusing on the role of UNCLOS in facilitating peaceful dispute resolution. The dissenting opinions in the case, such as those raised by arbitrator P.S. Rao regarding the application of equidistance and equitable principles in delimiting the continental shelf, provide further insights into the complexities of maritime boundary delimitation. This study is critical not only from a legal standpoint but also for its socio-economic ramifications. The verdict's interpretation is crucial to guide future maritime disputes in South Asia and other regions with similar geographic and legal challenges.

## **2. Background and Context**

Maritime boundary disputes often arise from overlapping claims by coastal states, particularly in regions where geography creates challenges in delineating clear boundaries.<sup>4</sup> In the case of Bangladesh and India, the Bay of Bengal, a strategically significant and resource-rich region, became the focal point of a protracted dispute over maritime boundaries.

### **2.1 Importance of Maritime Boundary Delimitation**

The delineation of maritime boundaries is not only a matter of territorial sovereignty but also a critical component of international relations. Relationships between countries, particularly neighbouring states, are deeply influenced by economic, political, and security considerations. Security is an integral aspect of these relationships, especially in regions where maritime boundaries determine the extent of a state's control over its territorial waters,

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<sup>4</sup> Md Kamrul Hasan Arif, "Bangladesh-Myanmar Maritime Boundary Delimitation in the Bay of Bengal: An Analysis on the Development of International Law" [2018] Kathmandu School of Law Review 53 <<https://doi.org/10.46985/jms.v6i2.210>>.

exclusive economic zones (EEZs), and continental shelves.<sup>5</sup> In the context of Bangladesh and India, the proper delimitation of maritime boundaries in the Bay of Bengal was crucial for several reasons. First, it would allow both countries to enforce and exercise their sovereign rights and obligations within their respective maritime zones.<sup>6</sup> Second, the region's commercial activities, particularly in shipping, fishing, and the exploration of natural resources, are heavily dependent on clear and legally recognized boundaries.<sup>7</sup> Without such clarity, disputes could disrupt economic activities and strain bilateral relations. Moreover, as global attention shifts towards the blue economy which according to World Bank means "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystems"<sup>8</sup>, the importance of maritime boundaries has become even more pronounced. For Bangladesh, with its long coastline and dependency on the Bay of Bengal, securing a favourable maritime boundary was essential for harnessing the potential of the blue economy.

## 2.2 Legal Framework: UNCLOS and Annex VII Arbitration

UNCLOS provides the primary legal framework for resolving maritime boundary disputes. Article 279 of UNCLOS obligates state parties to settle disputes by peaceful means, following the procedures outlined in the convention. When parties fail to settle through negotiations, Article 286 allows the dispute to be submitted to a court or tribunal with jurisdiction subject to Section 3 of Part XV of UNCLOS. UNCLOS offers several options for dispute resolution, including the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and arbitral tribunals constituted under Annex VII or VIII of the convention. In the case of the Bangladesh v. India dispute, both parties opted for Annex VII arbitration, which is significant due to its flexibility and the ability to tailor the tribunal to the specific needs of the case. Annex VII of UNCLOS prescribes the proceedings, constitution, functions, and other details related to arbitration. This mode of dispute resolution has been used

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<sup>5</sup> Aniruddha Rajput, "Bay of Bengal Maritime Delimitation Cases: Upholding the Rule of Law in International Relations" (2018) 14 *Maritime Affairs Journal of the National Maritime Foundation of India* 24 <<https://doi.org/10.1080/09733159.2018.1478432>>.

<sup>6</sup> Md Mostofa, Dewan Md Al-Amin and Kaniz Tania Bint-E-Basar, "Delimitation of Maritime Boundary with India and Bangladesh's Rights over the Sea" (2018) 2 *American International Journal of Social Science Research* 108 <<https://doi.org/10.46281/aijssr.v2i1.172>>.

<sup>7</sup> Andreas Østhagen, "Maritime Boundary Disputes: What Are They and Why Do They Matter?" (2020) 120 *Marine Policy* 104118 <<https://doi.org/10.1016/j.marpol.2020.104118>>.

<sup>8</sup> "What Is the Blue Economy?" (*World Bank*, June 6, 2017) <<https://www.worldbank.org/en/news/infographic/2017/06/06/blue-economy>>.

in several notable cases, such as the Southern Bluefin Tuna Case (2000, Australia and New Zealand v. Japan)<sup>9</sup> and the Land Reclamation by Singapore in and around the Straits of Johor Case (Malaysia v. Singapore)<sup>10</sup>. The choice of Annex VII arbitration in the Bangladesh v. India case underscores its importance in resolving complex maritime disputes.

### 3. Analysis of the Verdict

The arbitration process between Bangladesh and India was conducted under Annex VII of UNCLOS, following unsuccessful negotiations with both India and Myanmar. Bangladesh initiated the proceedings on October 8, 2009, and the tribunal was composed of five arbitrators, including Judge Rüdiger Wolfrum as President.<sup>11</sup> The arbitration process involved the submission of memorials by both parties, who presented their arguments supported by maps, charts, and expert testimony. Key arguments from Bangladesh included the need for an equitable adjustment due to the concave coastline and the potential negative socio-economic impacts.<sup>12</sup> India emphasized the importance of adhering to pre-existing agreements and maintaining regional stability. Bangladesh also argued that the concave nature of the Bay of Bengal's coastline required adjustments to the equidistance line to avoid an inequitable "cut-off" effect.<sup>13</sup> It claimed that applying the equidistance principle strictly would unfairly limit its access to the EEZ and continental shelf resources.<sup>14</sup>

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<sup>9</sup> Southern Bluefin Tuna Case (Australia and New Zealand v Japan) (Jurisdiction and Admissibility) (Arbitral Tribunal constituted under annex VII of the United Nations Convention on the Law of the Sea) (Award of 4 August 2000)

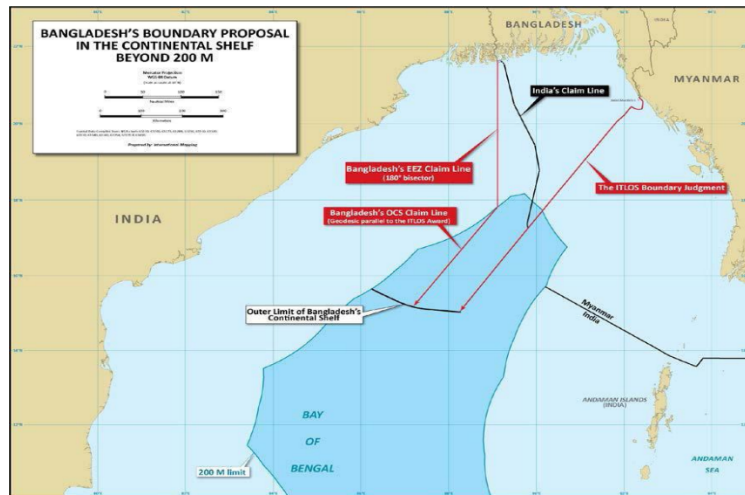
<sup>10</sup> Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v Singapore) (2005) XXVII RIAA 133

<sup>11</sup> N 2, available at <https://pca-cpa.org/en/cases/18/>

<sup>12</sup> N 2 at para 381 and 382

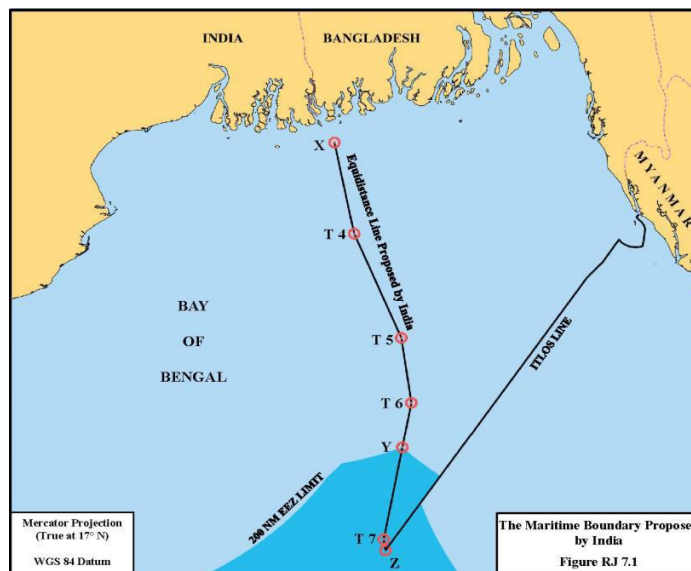
<sup>13</sup> Marcin Kałduński, "A Commentary on Maritime Boundary Arbitration between Bangladesh and India Concerning the Bay of Bengal" (2015) 28 Leiden Journal of International Law 799 <<https://doi.org/10.1017/s0922156515000436>>.

<sup>14</sup> N 2 at para 314



Map 1: Map Depicting Bangladesh’s Claim.<sup>15</sup>

In contrast, India advocated for the strict application of the equidistance principle, arguing that it provided a clear, objective basis for delimitation and that the geographical features did not justify significant adjustments.<sup>16</sup> The tribunal held hearings, deliberated on the evidence, and appointed independent experts to address technical aspects of maritime delimitation.



Map 2: Map Depicting India’s Claim.<sup>17</sup>

<sup>15</sup> N 2

<sup>16</sup> “Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India” (2017) 167 International Law Reports 1 <<https://doi.org/10.1017/cbo9781107416192.001>>.

<sup>17</sup> N 2

On July 7, 2014, the arbitral tribunal delivered its decision, marking a pivotal moment in the resolution of the longstanding maritime dispute between Bangladesh and India. The award addressed the delimitation of the territorial sea, EEZ, and continental shelf, including areas beyond 200 nautical miles in the Bay of Bengal. The tribunal's decision held significant implications, not only for the two countries but also for the development of international law.

Central to the ruling was Bangladesh's argument that applying a strict equidistance line would result in a disproportionate reduction of its maritime entitlements due to the concave nature of its coastline.<sup>18</sup> The tribunal's adjustments to the equidistance line aimed to mitigate this effect, ensuring an equitable distribution of maritime zones. A key component of the tribunal's ruling was its recognition of the geographic realities of the Bay of Bengal, particularly the concavity of Bangladesh's coastline, which would have created a "cut-off" effect if the equidistance principle had been applied rigidly.<sup>19</sup> This would have limited Bangladesh's access to both the EEZ and continental shelf. By adjusting the equidistance line, the tribunal sought to rectify this potential inequity. The tribunal applied the equidistance/relevant circumstances method in delimiting both the territorial sea and the EEZ. This approach, prescribed in Articles 74 and 83 of UNCLOS, requires that special circumstances, such as geographic peculiarities, be taken into account to avoid unjust outcomes.<sup>20</sup> The tribunal's careful consideration of these factors demonstrates the importance of balancing geographical features with legal principles to achieve fairness in maritime boundary delimitation.<sup>21</sup>

In terms of the continental shelf beyond 200 nautical miles, the tribunal rejected Bangladesh's argument based on the principle of natural prolongation. Instead, the tribunal applied the equidistance/relevant circumstances method to address overlapping claims on the continental shelf. The shift in international jurisprudence has moved away from natural prolongation, as prescribed under UNCLOS. Instead, the equidistance/relevant circumstances method has become the preferred approach for maritime boundary delimitation. This method emphasizes fairness and equity rather than geological continuity. International courts, such as

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<sup>18</sup> Notes 12 and 14

<sup>19</sup> N 2 at paras 345, 404 and 407

<sup>20</sup> Yoshifumi Tanaka, *The International Law of the Sea* (2019) <<https://doi.org/10.1017/9781108545907>>.

<sup>21</sup> *ibid*

the ICJ and the ITLOS, have increasingly favored this equitable approach, as seen in precedents like the North Sea Continental Shelf cases<sup>22</sup>.

Scientifically, the evidence presented by Bangladesh did not support the claim of natural prolongation beyond the 200-nautical-mile limit. The tribunal found that the area in question was part of the Bengal Fan, a significant underwater sedimentary basin, rather than an extension of Bangladesh's continental landmass.<sup>23</sup> Additionally, the geological formations between Bangladesh and India, including the Bengal Fan and Ninety East Ridge, did not align with the criteria required for natural prolongation.<sup>24</sup> This lack of supportive geological evidence, combined with the stipulations of Article 76 of UNCLOS which governs the delimitation of the continental shelf beyond 200 nautical miles led the tribunal to favor the equidistance/relevant circumstances method for boundary delimitation. This approach aligns with international legal standards and scientific assessments, reinforcing the shift from geological arguments to equitable methods.

International precedents, such as the Libya/Malta case (1985)<sup>25</sup> and the Gulf of Maine case (1984)<sup>26</sup>, further reinforced the shift away from natural prolongation. These cases emphasized equitable delimitation based on relevant circumstances rather than geological arguments, aligning with the broader trend in international maritime law. In summary, the rejection of Bangladesh's natural prolongation claim was due to the legal evolution favoring equitable methods and the lack of scientific evidence supporting the extension of Bangladesh's continental shelf beyond 200 nautical miles.

However, the tribunal also made further adjustments to ensure a fair distribution of the seabed areas, reflecting its commitment to the principle of equity. While Bangladesh was awarded significant access to the extended continental shelf, the tribunal did not grant it full access to all areas it claimed, underscoring the importance of proportionality in balancing the

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<sup>22</sup> North Sea Continental Shelf, Germany v Denmark, Merits, Judgment, (1969) ICJ Rep 3, ICGJ 150 (ICJ 1969), 20th February 1969, United Nations (UN); International Court of Justice (ICJ)

<sup>23</sup> Joseph R Curray, "The Bengal Depositional System: From Rift to Orogeny" (2014) 352 Marine Geology 59 <<https://doi.org/10.1016/j.margeo.2014.02.001>>.

<sup>24</sup> *ibid*

<sup>25</sup> Continental Shelf, Libya v Malta, Merits, Judgment, [1985] ICJ Rep 13, ICGJ 118 (ICJ 1985), 3rd June 1985, United Nations (UN); International Court of Justice (ICJ)

<sup>26</sup> Delimitation of the Maritime Boundary in the Gulf of Maine Area, Canada v United States, Merits, Judgment, [1984] ICJ Rep 246, ICGJ 121 (ICJ 1984), 12th October 1984, United Nations (UN); International Court of Justice (ICJ)



entitlements of both countries.<sup>27</sup> This aspect of the ruling highlights the tribunal's nuanced approach to reconciling competing claims while maintaining adherence to the principles of international law.

The tribunal's decision was grounded in a thorough application of established legal principles of maritime delimitation. The use of the proportionality principle was critical in ensuring that the adjusted equidistance line did not disproportionately affect the maritime rights of either Bangladesh or India. The tribunal's emphasis on proportionality is consistent with international jurisprudence, which seeks to avoid delimitation outcomes that overly favour one party due to geographic configurations.<sup>28</sup> The decision was not only legally sound but also aimed to prevent future conflicts by ensuring that both parties retained access to maritime resources in a fair and balanced manner.

The impact of the tribunal's ruling on regional stability and cooperation cannot be overstated. For Bangladesh, the decision secured access to vast areas of the EEZ and continental shelf, rich in marine resources, including fisheries and potential oil and gas reserves. This was particularly important for Bangladesh's economic development, as access to these resources forms a cornerstone of its blue economy strategy.<sup>29</sup> Bangladesh's rights to the continental shelf beyond 200 nautical miles were also cemented, securing access to potentially lucrative energy reserves. For India, while the award did not fully align with its arguments, the ruling provided a clear and stable boundary, crucial for long-term resource management and planning.<sup>30</sup> Moreover, India's acceptance of the tribunal's decision reflects its commitment to upholding international legal processes, reinforcing the legitimacy of peaceful dispute resolution mechanisms under UNCLOS.

Beyond the immediate interests of Bangladesh and India, the tribunal's decision has broader implications for international law and the resolution of maritime disputes. By adhering to the principles of equity, proportionality, and relevant circumstances, the tribunal demonstrated that even complex and contentious maritime boundary disputes could be resolved

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<sup>27</sup> N 2

<sup>28</sup> Yunus Emre Acikgonul and Edward R Lucas, "Developments in Maritime Delimitation Law over the Last Decade: Emerging Principles in Modern Case Law" (2020) 57 Canadian Yearbook of International Law/Annuaire Canadien De Droit International 156 <<https://doi.org/10.1017/cyl.2020.9>>.

<sup>29</sup> Moin Ghani, "A 'Great Win' for Bangladesh" *The Daily Star* (March 26, 2012) <<https://www.thedailystar.net/news-detail-227828>>.

<sup>30</sup> Bateman Sam, "Resolution of Bangladesh-India Maritime Boundary : Model for South China Sea Disputes?" [2014] RSIS Commentary <<https://dr.ntu.edu.sg/bitstream/10356/103079/1/RSIS1582014.pdf>>.

through legal frameworks that prioritize fairness and stability. This ruling sets a precedent that may encourage other states engaged in similar disputes to seek resolution through arbitration or adjudication. The tribunal's application of Articles 74 and 83 of UNCLOS also reinforced the legitimacy of the convention as a comprehensive legal framework governing maritime boundaries, enhancing its authority as a tool for ensuring peaceful and equitable resolutions of disputes.

The tribunal's decision shares notable similarities with previous cases, such as the Bangladesh/Myanmar (ITLOS 2012) case<sup>31</sup>, which also addressed the concave shape of Bangladesh's coast. Both cases utilized the equidistance/relevant circumstances method, although the Bangladesh-India case uniquely extended to the continental shelf beyond 200 nautical miles. Other parallels can be drawn with the ICJ's 2012 Nicaragua v. Colombia case<sup>32</sup> and the 2014 Peru v. Chile decision<sup>33</sup>, which similarly emphasized flexibility in the application of equidistance and relevant circumstances to achieve equitable solutions.

Scholars have further dissected the tribunal's findings. Marcin Kaldunski (2017) praised the tribunal's contributions, particularly its nuanced handling of coastal concavity and the creation of a "grey area" for overlapping maritime zones.<sup>34</sup> Conversely, Dr. P. S. Rao critiqued the grey area creation, arguing it lacked solid justification under UNCLOS provisions.<sup>35</sup> Further scholarly contributions, such as those by Suarez (2016)<sup>36</sup>, examined the tribunal's reasoning, suggesting missed opportunities to enhance international maritime boundary law.

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<sup>31</sup> N 3

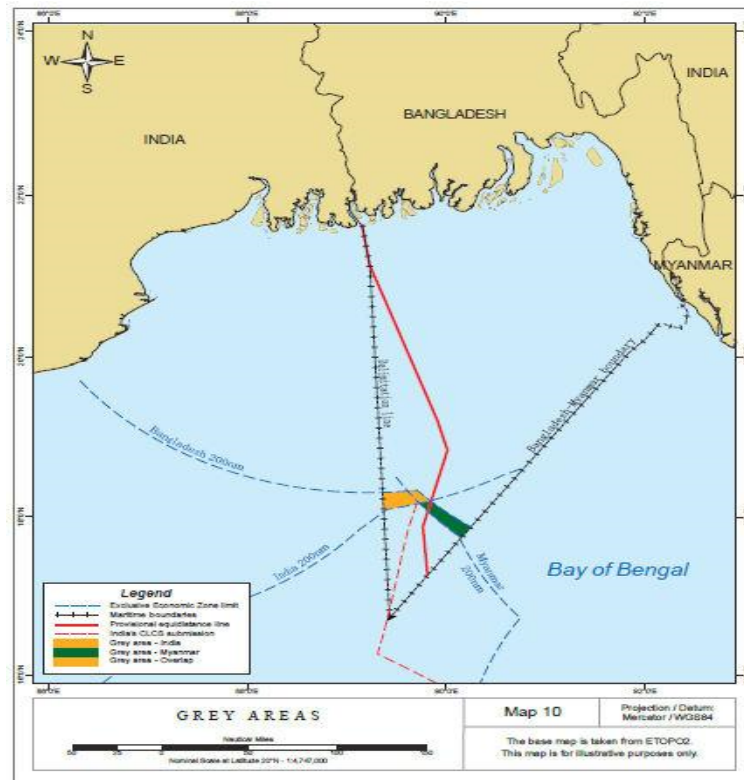
<sup>32</sup> Territorial and Maritime Dispute, Nicaragua v Colombia, Judgment, ICJ GL No 124, ICGJ 436 (ICJ 2012), 19th November 2012, International Court of Justice (ICJ)

<sup>33</sup> Maritime Dispute, Peru v Chile, Judgment, ICJ GL No 137, [2014] ICJ Rep 4, ICGJ 473 (ICJ 2014), 27th January 2014, International Court of Justice (ICJ)

<sup>34</sup> N 13

<sup>35</sup> N 2, Concurring and Dissenting Opinion of Dr. P.S. Rao, <https://pca-cpa.org/en/cases/18/>

<sup>36</sup> By Suzette V Suarez, "The Arbitral Award in the Bangladesh-India Maritime Delimitation in the Bay of Bengal and Its Contribution to International Maritime Boundary Law: A Case Commentary - Maritime Safety and Security Law Journal" (*Maritime Safety and Security Law Journal*, October 10, 2016) <<https://www.marsafelawjournal.org/contributions/the-arbitral-award-in-the-bangladesh-india-maritime-delimitation-in-the-bay-of-bengal-and-its-contribution-to-international-maritime-boundary-law-a-case-commentary/>>.



Map 3: Map Depicting the Creation Gray Area.<sup>37</sup>

Despite divergent scholarly views, the decision stands as a milestone in resolving a long-standing dispute, offering both Bangladesh and India a clear delineation of their maritime entitlements. The award provides an opportunity for the nations to develop their offshore resources, potentially spurring economic development. However, successful implementation will require careful management of the “grey area” and other practical challenges in the Bay of Bengal.<sup>38</sup> The tribunal’s visit to the disputed areas also set a significant precedent in maritime boundary arbitration, underscoring the importance of on-site assessments in achieving an accurate and equitable resolution.<sup>39</sup> Moving forward, the case serves as a reminder of the evolving complexities in maritime boundary delimitation, where geographical, legal, and socio-economic considerations must all be delicately balanced.

The 2014 arbitral award in the Bangladesh v. India maritime boundary delimitation case has played a pivotal role in shaping subsequent jurisprudence on maritime disputes. Its application of the equidistance/relevant circumstances method and the tribunal’s decision to

<sup>37</sup> N 2

<sup>38</sup> N 13

<sup>39</sup> N 2, Award section E, <https://pcacases.com/web/sendAttach/383>

adjust the equidistance line to account for Bangladesh's concave coastline have been referenced and followed in several key cases. For instance, the ICJ's decision in *Somalia v. Kenya* (2021)<sup>40</sup> employed a similar methodology, reflecting the Bangladesh-India tribunal's approach to balancing geographic and equitable considerations. Likewise, the *Ghana v. Côte d'Ivoire* (2017)<sup>41</sup> case before ITLOS referenced *Bangladesh v. India*, particularly regarding relevant circumstances that justify deviation from strict equidistance. While academic literature and comparative case analysis, such as *Peru v. Chile* (2014)<sup>42</sup>, highlight its contribution to discussions on coastal concavity and equitable delimitation. These references underscore the award's lasting influence on the development of maritime boundary jurisprudence, particularly in its nuanced handling of geography, equity, and UNCLOS provisions.

The tribunal's ruling has the potential to positively influence regional dynamics in the Bay of Bengal. By establishing clear, legally binding maritime boundaries, the decision reduces the likelihood of future conflicts between Bangladesh and India over maritime zones and resource exploitation.<sup>43</sup> This clarity encourages cooperation in key areas such as environmental protection, maritime security, and joint resource management, further promoting stability in the region.<sup>44</sup> Additionally, the peaceful resolution of this dispute serves as a model for other countries in South Asia, such as Myanmar and Sri Lanka, who may have pending or future maritime disputes.<sup>45</sup> The tribunal's approach, especially in dealing with the complex geography of the Bay of Bengal, offers valuable insights for future negotiations.

On the international stage, the tribunal's award contributes to the development of jurisprudence in the law of the sea. It adds to the body of case law that future tribunals and courts may draw upon when adjudicating similar disputes. The tribunal's nuanced reasoning, especially regarding the application of the natural prolongation principle and the proportionality test, will likely influence future maritime delimitation cases. Furthermore, the decision underscores the importance of international cooperation in resolving disputes, thereby

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<sup>40</sup> Maritime Delimitation in the Indian Ocean (*Som. v. Kenya*), Judgment (Oct. 12, 2021), <https://www.icj-cij.org/en/case/161/judgments>

<sup>41</sup> Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte d'Ivoire in the Atlantic Ocean (*Ghana v. Côte d'Ivoire*), Case No. 23, Judgment of Sept. 23, 2017.

<sup>42</sup> N 31

<sup>43</sup> Andrew Serdy, "Seabed Boundaries in the Northern Bay of Bengal: The Unclear Role of the Commission on the Limits of the Continental Shelf in Paving the Way to Resource Exploitation" (2021) 11 *Asian Journal of International Law* 118 <<https://doi.org/10.1017/s2044251320000302>>.

<sup>44</sup> Alik Naha, "Geostrategic Significance of the Bay of Bengal in India's Maritime Security Discourse on JSTOR" [www.jstor.org](http://www.jstor.org) <<https://www.jstor.org/stable/48684188>>.

<sup>45</sup> *ibid*

contributing to the broader goal of maintaining peace and stability in the global maritime domain.

Finally, the tribunal's ruling has had a profound impact on bilateral relations between Bangladesh and India. The peaceful resolution of this long-standing dispute through international arbitration reflects positively on their diplomatic relations.<sup>46</sup> It highlights both countries' commitment to resolving contentious issues through dialogue and legal means, which is crucial for maintaining good neighbourly relations.<sup>47</sup> While the adjustment of the equidistance line in favour of Bangladesh may have been met with mixed reactions in India, the resolution of the dispute allows both countries to shift focus towards other areas of mutual interest, such as trade, security, and environmental cooperation.<sup>48</sup> The award also establishes a foundation for how both countries may approach future maritime disputes, both bilaterally and with other states, encouraging the use of international legal frameworks for resolving such issues.

#### **4. Critical Evaluation**

The Tribunal's decision in the Bangladesh-India maritime boundary dispute has been widely acclaimed for its adherence to key legal principles under the UNCLOS. One of the key strengths of the award lies in its rigorous application of the equidistance/relevant circumstances method, proportionality principle, and the natural prolongation concept, ensuring that the delimitation followed established international law. This adherence not only reinforced the decision's legitimacy but also underscored the centrality of legal norms in settling maritime boundary disputes.

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<sup>46</sup> Rebecca Strating, "The Rules-Based Order as Rhetorical Entrapment: Comparing Maritime Dispute Resolution in the Indo-Pacific" (2023) 44 *Contemporary Security Policy* 372 <<https://doi.org/10.1080/13523260.2023.2204266>>.

<sup>47</sup> Md Abul Kashem and Md Shariful Islam, "Narendra Modi's Bangladesh Policy and India-Bangladesh Relations: Challenges and Possible Policy Responses" (2016) 72 *India Quarterly a Journal of International Affairs* 250 <<https://doi.org/10.1177/0974928416655409>>.

<sup>48</sup> *ibid*



Map 4: The Map depicting The Award of the Arbitration Tribunal.<sup>49</sup>

A notable aspect of the tribunal’s approach was its adjustment of the equidistance line to account for the concave nature of Bangladesh’s coastline. This adjustment prevented the ‘cut-off’ effect, which would have limited Bangladesh’s access to the EEZ and continental shelf.<sup>50</sup> This decision reflects the tribunal’s commitment to balancing fairness with strict legal principles. Additionally, its comprehensive reasoning, examining the geographical and geological factors in depth, lends the decision credibility and offers a robust precedent for future tribunals. Moreover, the Tribunal contributed significantly to international maritime jurisprudence by addressing complex issues such as the delimitation of the continental shelf beyond 200 nautical miles.<sup>51</sup> This ruling will undoubtedly guide future disputes involving extended continental shelf claims. However, certain limitations remain.

One notable criticism of the tribunal’s decision is its limited consideration of socio-economic factors, particularly in relation to the livelihoods of coastal communities that are

<sup>49</sup> N 2

<sup>50</sup> Matthew H Kirtland, “South Asia Maritime Disputes| Global Law Firm | Norton Rose Fulbright” <<https://www.nortonrosefulbright.com/en-hk/knowledge/publications/96ae2d84/south-asia-maritime-disputes>>.

<sup>51</sup> Øystein Jensen, “Maritime Boundary Delimitation beyond 200 Nautical Miles: The International Judiciary and the Commission on the Limits of the Continental Shelf” (2015) 84 Nordic Journal of International Law 580 <<https://doi.org/10.1163/15718107-08404001>>.

highly dependent on the marine resources within the disputed waters.<sup>52</sup> The tribunal primarily focused on the legal and geographic principles outlined in UNCLOS, such as the equidistance/relevant circumstances method and the natural prolongation principle, to achieve an equitable delimitation. While this approach aligns with international legal standards, it overlooks the direct impact the ruling may have on local populations, especially fishing communities along the coasts of both Bangladesh and India.<sup>53</sup> These communities rely heavily on marine resources, such as fish and other aquatic life, for their daily sustenance and economic survival.

In many maritime disputes, socio-economic considerations are essential in assessing the equitable use of maritime zones. The tribunal could have delved deeper into the socio-economic realities of these regions, ensuring that both states had equitable access to marine resources that sustain local economies.<sup>54</sup> For instance, a detailed examination of the fishing grounds, patterns of resource use, and economic dependency on the marine sector might have provided a more comprehensive basis for ensuring equity.<sup>55</sup> While the tribunal's ruling resulted in Bangladesh securing access to a significant portion of the EEZ, including resource-rich areas, the decision does not explicitly address how the boundary delimitation would affect the day-to-day lives of the coastal populations.<sup>56</sup> A more holistic approach that integrated these socio-economic factors could have strengthened the tribunal's claim of equitable delimitation by ensuring that the decision reflected not only geographical fairness but also the realities faced by the people living along the coast.

Additionally, there are concerns that even though both Bangladesh and India accepted the tribunal's verdict, the potential for future regional tensions remains.<sup>57</sup> This concern arises particularly from the possibility that the decision could be perceived as favouring one state over the other, especially in future negotiations involving resource management and bilateral

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<sup>52</sup> N 2; Md Mostafa Shamsuzzaman and others, "Assessing Fisheries Policies of Bangladesh: Need for Consistency or Transformation?" (2022) 14 *Water* 3414 <<https://doi.org/10.3390/w14213414>>; María Catalina García Ch and Joyeeta Gupta, "Environmental and Sociocultural Claims within Maritime Boundary Disputes" (2022) 139 *Marine Policy* 105043 <<https://doi.org/10.1016/j.marpol.2022.105043>>.

<sup>53</sup> *ibid*

<sup>54</sup> *ibid*

<sup>55</sup> Andrés M Cisneros-Montemayor and others, "Social Equity and Benefits as the Nexus of a Transformative Blue Economy: A Sectoral Review of Implications" (2019) 109 *Marine Policy* 103702 <<https://doi.org/10.1016/j.marpol.2019.103702>>.

<sup>56</sup> N 2

<sup>57</sup> Mark E Rosen and Douglas Jackson, "Bangladesh v. India: A Positive Step Forward in Public Order of the Seas" [2017] CNA <<https://apps.dtic.mil/dtic/tr/fulltext/u2/1040929.pdf>>.

cooperation.<sup>58</sup> While Bangladesh viewed the tribunal's decision as a significant victory due to the adjustment of the equidistance line and its access to areas beyond 200 nautical miles, India's reaction has been more measured. Although India has publicly accepted the ruling, the award granted Bangladesh access to maritime areas that India had sought to secure.<sup>59</sup> This result, coupled with growing economic interests in the Bay of Bengal, may strain relations if future negotiations on resource-sharing or maritime security arrangements do not progress smoothly.<sup>60</sup>

The Bay of Bengal has become an increasingly important geopolitical and economic zone, particularly due to its strategic location and the presence of valuable marine resources, including potential oil and gas reserves.<sup>61</sup> Both Bangladesh and India have begun to focus on harnessing the blue economy,<sup>62</sup> looking towards the sustainable exploitation of marine resources to drive economic growth.<sup>63</sup> As the competition for these resources intensifies, tensions could arise over their distribution and the management of overlapping interests. If either state feels that the tribunal's decision does not provide sufficient access to critical resources, it could lead to diplomatic friction or even re-negotiations of certain aspects of the boundary.<sup>64</sup>

Moreover, the tribunal's limited analysis of socio-economic factors may contribute to regional instability, particularly if the decision is seen as disproportionately benefiting one state over the other in economic terms. For example, if Bangladesh begins to capitalize on its

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<sup>58</sup> *ibid*

<sup>59</sup> Sonia Hukil, "India-Bangladesh: Can the Maritime Boundary Resolution Rebuild Faith? | IPCS" (July 24, 2014) <[https://www.ipcs.org/comm\\_select.php?articleNo=4589](https://www.ipcs.org/comm_select.php?articleNo=4589)>.

<sup>60</sup> Orf, "India, Europe, and the Bay of Bengal: Converging Maritime Security Interests" (*DRYAD Global*, April 13, 2023) <<https://channel16.dryadglobal.com/india-europe-and-the-bay-of-bengal-converging-maritime-security-interests>>.

<sup>61</sup> Smruti S Pattanaik, "Geo-Strategic Significance of Bay of Bengal and Andaman Sea: Leveraging Maritime, Energy and Transport Connectivity for Regional Cooperation" (2018) 25 *South Asian Survey* 84 <<https://doi.org/10.1177/0971523119835045>>.

<sup>62</sup> Patil PG, Viridin J, Colgan CS et al (2018) *Toward a blue economy: a pathway for Bangladesh's sustainable growth*. World Bank; Hein JR, Mizell K, Koschinsky A, Conrad TA (2013) *Deep-ocean mineral deposits as a source of critical metals for high-and green-technology applications: comparison with land-based resources*. *Ore Geol Rev* 51:1–14; Camilla Novaglio and others, "Deep Aspirations: Towards a Sustainable Offshore Blue Economy" (2021) 32 *Reviews in Fish Biology and Fisheries* 209 <<https://doi.org/10.1007/s11160-020-09628-6>>.

<sup>63</sup> Anasua Basu Ray Chaudhury and Harsh V. Pant, eds, *Anchoring the Bay of Bengal in a Free and Open Indo-Pacific*, (New Delhi: ORF and Global Policy Journal, 2024)

<sup>64</sup> Jonathan I. Charney, who extensively analysed how maritime boundary delimitation decisions affect state relations and resource access and discussed the implications of maritime boundary decisions, including how dissatisfaction with resource distribution can lead to further diplomatic negotiations - Jonathan I Charney, "Progress in International Maritime Boundary Delimitation Law" (1994) 88 *American Journal of International Law* 227 <<https://doi.org/10.2307/2204098>>.



newfound rights to marine resources, particularly in the extended continental shelf, it may trigger concerns in India over its own access to similar resources. Conversely, India's broader strategic interests in the Bay of Bengal, including its naval presence and regional influence, could create friction if Bangladesh perceives India's actions as infringing on its rights.<sup>65</sup> The evolving dynamics of resource exploration and environmental management in the Bay of Bengal thus carry the potential for future disputes, despite the legal clarity provided by the tribunal's decision.

Furthermore, broader regional dynamics in South Asia could also complicate the long-term stability of the tribunal's decision. Bangladesh and India share a history of cooperation but also of competition over various geopolitical and economic issues.<sup>66</sup> The Bay of Bengal, being rich in hydrocarbons and other marine resources, is likely to see increased exploration activities by both states, as well as by international actors. If resource exploitation becomes a point of contention or if environmental degradation occurs as a result of such activities, the delicate balance established by the tribunal's ruling could be destabilized.<sup>67</sup> Future bilateral negotiations on resource-sharing agreements, joint exploration projects, and environmental protections will be crucial in ensuring that the tribunal's decision remains a foundation for continued cooperation rather than a flashpoint for conflict.<sup>68</sup>

## 5. Conclusion

The arbitration process between Bangladesh and India under Annex VII of UNCLOS exemplifies the intricate application of international law principles in resolving boundary disputes. The tribunal successfully applied the principles of equity, proportionality, and relevant circumstances to achieve a fair and equitable solution, reflecting the unique geographical features of the Bay of Bengal. This case not only highlights the procedural flexibility and effectiveness of Annex VII arbitration but also underscores the nuanced

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<sup>65</sup> Darshana M. Baruah, 'Maritime Competition in the Indian Ocean', published by The U.S.-China Economic and Security Review Commission on May 12, 2022 (Carnegie Endowment for International Peace) <<https://carnegieendowment.org/posts/2022/05/maritime-competition-in-the-indian-ocean?lang=en>>

<sup>66</sup> Chulanee Attanayake, "Why Do Small States Matter in Bay of Bengal Geopolitics? The Case of Sri Lanka" [2023] Australian Journal of Maritime & Ocean Affairs 1 <<https://doi.org/10.1080/18366503.2023.2250609>>.

<sup>67</sup> The Economist, "The Bay of Bengal Should Be an Economic Superpower" *The Economist* (July 18, 2024) <<https://www.economist.com/asia/2024/07/18/the-bay-of-bengal-should-be-an-economic-superpower>>.

<sup>68</sup> "India-Bangladesh Shared Vision for Future: Enhancing Connectivity, Commerce and Collaboration for Shared Prosperity" (*Ministry of External Affairs, Government of India*) <[https://www.mea.gov.in/bilateral-documents.htm?dtl/37897/IndiaBangladesh\\_Shared\\_Vision\\_for\\_Future\\_Enhancing\\_Connectivity\\_Commerce\\_and\\_Collaboration\\_for\\_Shared\\_Prosperty](https://www.mea.gov.in/bilateral-documents.htm?dtl/37897/IndiaBangladesh_Shared_Vision_for_Future_Enhancing_Connectivity_Commerce_and_Collaboration_for_Shared_Prosperty)>.

interplay between legal principles and geographic realities in maritime delimitation. The tribunal's decision reflects a careful balance between the strict application of the equidistance principle and the need for adjustments based on relevant circumstances, such as the concave nature of the Bay of Bengal's coastline. This balance is crucial for ensuring that maritime boundaries are drawn in a manner that respects both the legal framework provided by UNCLOS and the practical, socio-economic implications for the affected states. The tribunal's approach to the delimitation in this case demonstrates how international law adapts to complex geographic and political contexts. By considering factors such as the natural prolongation of the continental shelf and the socio-economic impacts on coastal communities, the decision illustrates the importance of a flexible, equitable approach in resolving maritime disputes. Furthermore, this case contributes to the evolving jurisprudence on maritime boundary delimitation, providing valuable insights for future disputes and reinforcing the role of international arbitration in maintaining stability and cooperation in maritime relations. Although the ruling addressed the legal framework provided by UNCLOS, a more holistic approach considering socio-economic factors would have offered a more equitable resolution. As the Bay of Bengal continues to grow in geopolitical and economic importance, future cooperation on resource management and environmental protection will be key to maintaining stability and preventing tensions. While the tribunal's ruling in the Bangladesh-India maritime boundary dispute has been hailed as a success in terms of legal clarity and peaceful dispute resolution, its limited consideration of socio-economic factors leaves important questions unanswered. The livelihoods of coastal communities and the equitable distribution of marine resources are essential components of long-term regional stability, and these aspects were not fully addressed in the award. Moreover, the potential for future regional tensions cannot be discounted, especially if the decision is perceived as disproportionately benefiting one state in future negotiations over resources. As the geopolitical and economic significance of the Bay of Bengal grows, both Bangladesh and India will need to navigate these challenges carefully to maintain the peace and cooperation that the tribunal's ruling sought to establish.