

ASEAN & BIMSTEC ISA Workshop, Myanmar

The International Tribunal for the Law of the  
Sea : **overview of decisions relating to the  
South Asia and South East Asia**

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# ITLOS

- Established in 1996
- Hamburg, Germany
- 21 Judges
  - Asian judges: Jin-hyun Paik (President, S Korea), Shunji Yanai (Japan), Zhiguo Gao (China), Neeru Chadha (India), Kriangsak Kittichaisaree (Thailand)
- One of 4 courts in Art.287 of the UNCLOS
- Annex 6 of the UNCLOS. Statute of the ITLOS
- Default court for Provisional measures and Prompt release cases



# List of the ITLOS Cases

No.	Name	States	Nature
1	The M/V "SAIGA" Case	Saint Vincent and the Grenadines v. Guinea	Prompt Release
2	The M/V "SAIGA" Case	Saint Vincent and the Grenadines v. Guinea	
3, 4	Southern Bluefin Tuna Cases	New Zealand v. Japan; Australia v. Japan	Provisional Measures
5	The "Camouco" Case	Panama v. France	Prompt Release
6	The "Monte Confurco" Case	Seychelles v. France	Prompt Release
7	Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean	Chile/European Union	
8	The "Grand Prince" Case	Belize v. France	Prompt Release
9	The "Chaisiri Reefer 2" Case	Panama v. Yemen	Prompt Release

No.	Name	States	Nature
10	The MOX Plant Case	Ireland v. United Kingdom	Provisional Measures
11	The "Volga" Case	Russian Federation v. Australia	Prompt Release
12	Case concerning Land Reclamation by Singapore in and around the Straits of Johor	Malaysia v. Singapore	Provisional Measures
13	The "Juno Trader" Case	Saint Vincent and the Grenadines v. Guinea-Bissau	Prompt Release
14	The "Hoshinmaru" Case	Japan v. Russian Federation	Prompt Release
15	The "Tomimaru" Case	Japan v. Russian Federation	Prompt Release
16	Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal	Bangladesh/Myanmar	
17	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

No.	Name	States	Nature
18	The M/V "Louisa" Case	Saint Vincent and the Grenadines v. Kingdom of Spain	
19	The M/V "Virginia G" Case	Panama/Guinea-Bissau	
20	The "ARA Libertad" Case	Argentina v. Ghana	Provisional Measures
21	Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)		Advisory Opinion
22	The "Arctic Sunrise" Case	Kingdom of the Netherlands v. Russian Federation	Provisional Measures
23	Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean	Ghana/Côte d'Ivoire	
24	The "Enrica Lexie" Incident	Italy v. India	Provisional Measures
25	The M/V "Norstar" Case	Panama v. Italy	
26	Case concerning the detention of three Ukrainian naval vessels	Ukraine v. Russian Federation	Provisional Measures
27	The M/T "San Padre Pio" Case	Switzerland v. Nigeria	Provisional Measures

No case is currently pending before the Tribunal.

## Recent Arbitration (Annex 7) cases

- 2017 Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)
- 2016 Conciliation between The Democratic Republic of Timor-Leste and The Commonwealth of Australia
- 2015 Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)
- 2015 The 'Enrica Lexie' Incident (Italy v. India) (on going)
- 2014 The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)
- 2013, The Arctic Sunrise Arbitration (Netherlands v. Russia)
- 2013 The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China) (Award in 2016)
- 2013 The ARA Libertad Arbitration (Argentina v. Ghana)

# Recently concluded ICJ cases regarding the law of the sea

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)	2018
<b>Application for revision of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Malaysia v. Singapore)</b>	2018
<b>Request for Interpretation of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Malaysia v. Singapore)</b>	2018
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)	2018
Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)	2018
Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)	2018
Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)	2014
Maritime Dispute (Peru v. Chile)	2014
Frontier Dispute (Burkina Faso/Niger)	2014
Territorial and Maritime Dispute (Nicaragua v. Colombia)	2012
Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)	2009
Maritime Delimitation in the Black Sea (Romania v. Ukraine)	2009
Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)	2009
<b>Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)</b>	2009

# ICJ pending cases regarding the law of the sea

- Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast ([Nicaragua v. Colombia](#))
- Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea ([Nicaragua v. Colombia](#))
- Maritime Delimitation in the Indian Ocean ([Somalia v. Kenya](#))
- Dispute over the Status and Use of the Waters of the Silala ([Chile v. Bolivia](#))
- Guatemala's Territorial, Insular and Maritime Claim ([Guatemala/Belize](#))



# Case no.12. Case concerning Land Reclamation by Singapore in and around the Straits of Johor

- **Malaysia v. Singapore**, Provisional measures
- Order: Oct. 8, 2003
- Malaysia requested provisional measures that Singapore shall **suspend all current land reclamation activities in the vicinity of the maritime boundary between the two States or of areas claimed as territorial waters by Malaysia.**
- **ITLOS**: Directs Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment, taking especially into account the reports of the group of independent experts.
- **2003 Settlement of the Dispute** : submitted to the Arbitration

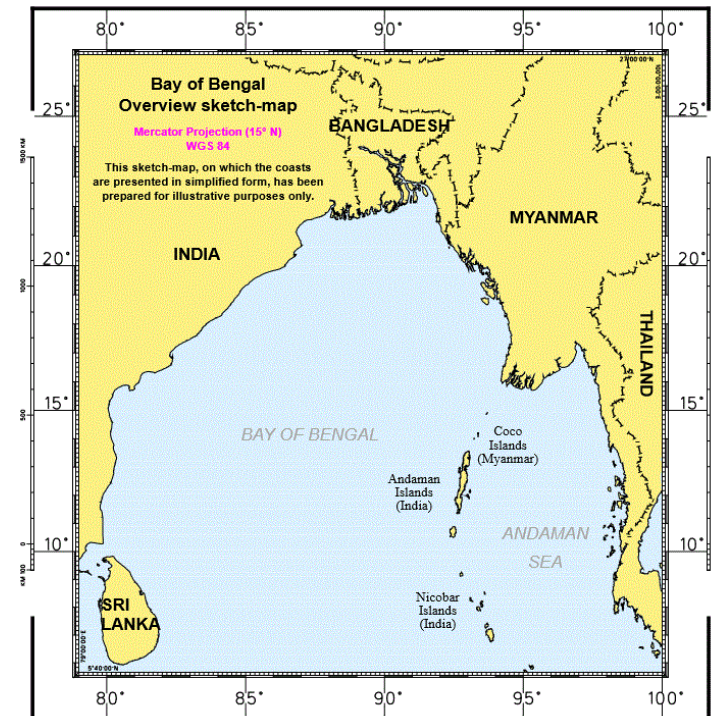


**Johor projects facing Singapore**



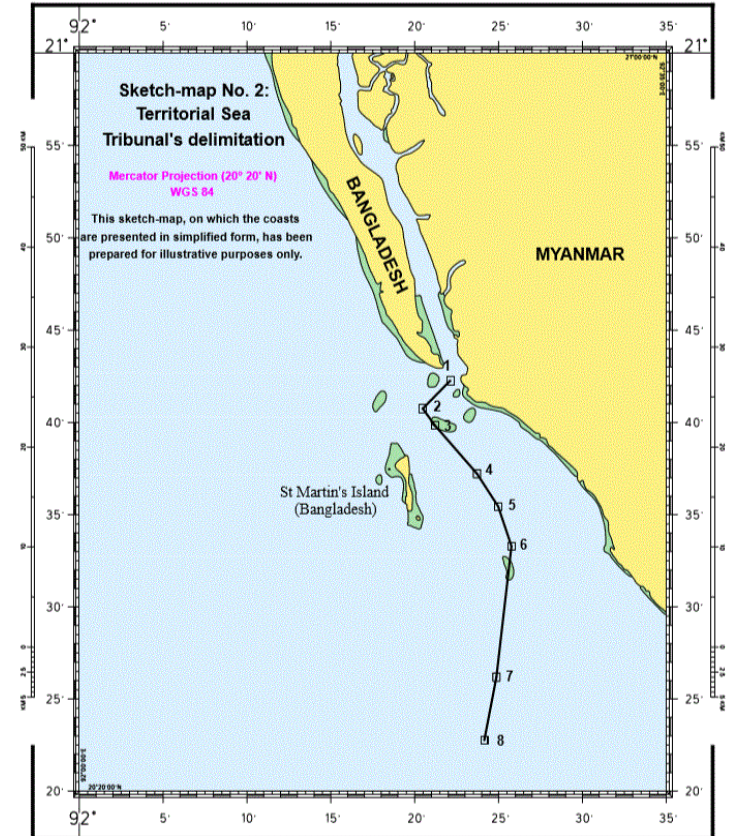
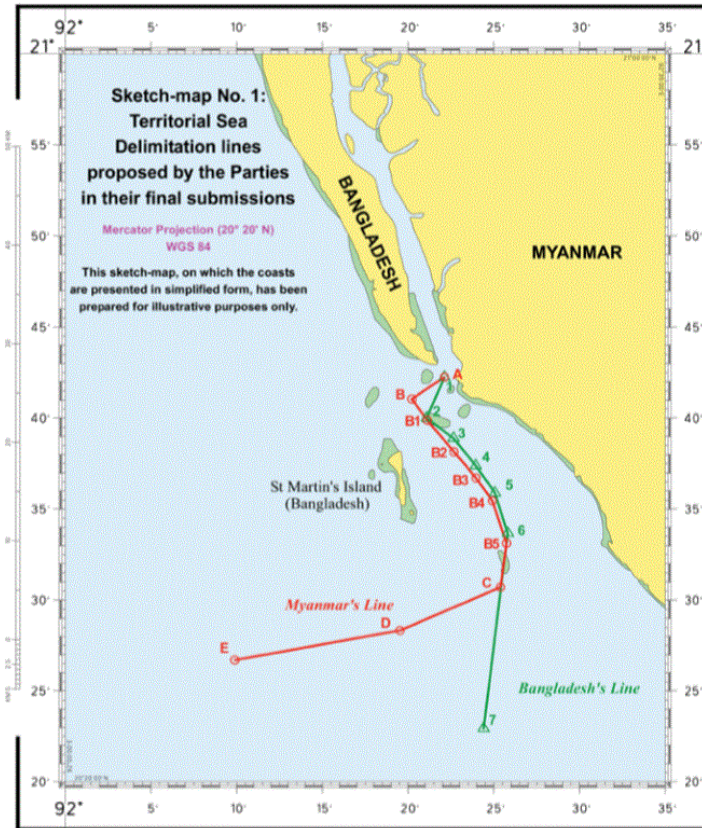
# Case no.16. Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal

- Bangladesh/Myanmar
- Judgment: March 14, 2012
- Negotiations
  - Negotiations on the delimitation of the maritime boundary were held from 1974 to 2010. Eight rounds of talks took place between 1974 and 1986 and six rounds between 2008 and 2010.
- Subject-matter: delimitation of the maritime boundary with respect to the **TS, EEZ and CS**.



# Delimitation on Territorial Sea

- Median/equidistance line
- St. Martin's Island
  - Full effect: Up to 12 nm (median line)
  - Zero effect: Beyond 12 nm



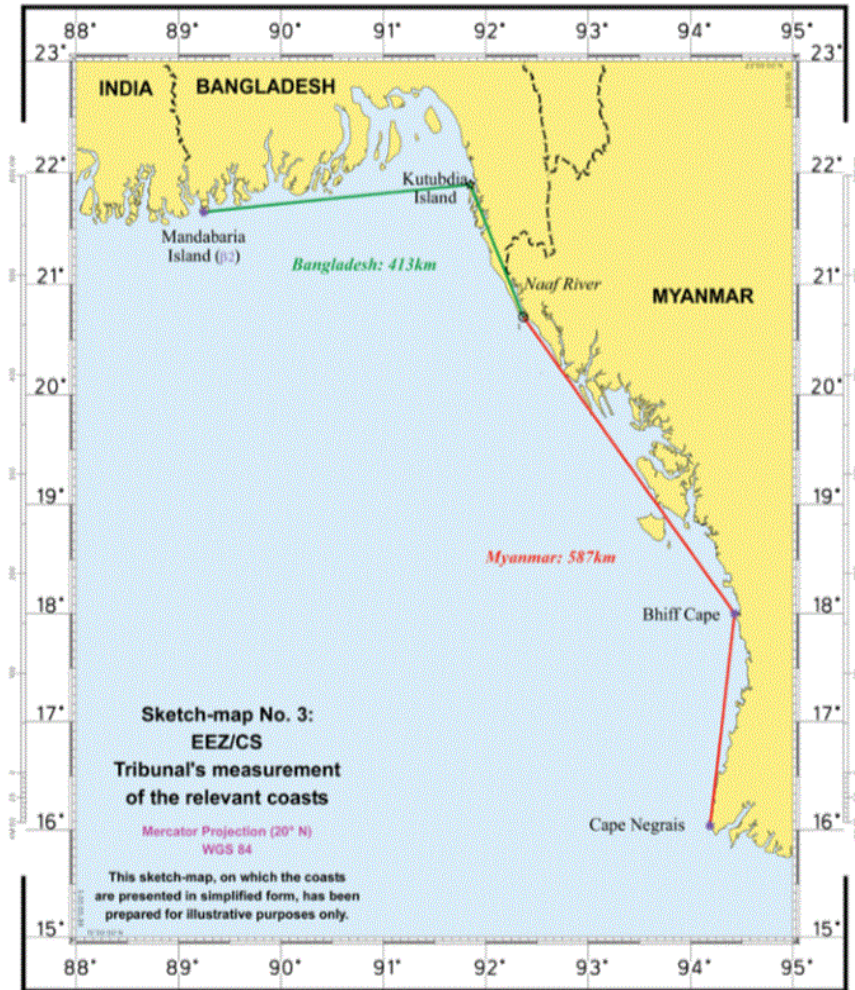
## Delimitation on EEZ and CS within 200nm

- Both agreed on the single delimitation line.
- Delimitation process
  - Measuring the length of the relevant coast
    - Bangladesh: 413km, Myanmar: 587km (1: 1.42 in favor of Myanmar)
  - Deciding the method of delimitation
    - Bangladesh points out that concave coasts like those in the northern Bay of Bengal are among the earliest recognized situations where equidistance produces "irrational results". It argues that the Tribunal should apply the angle-bisector method, specifically the 215° azimuth line.
    - Myanmar requests the Tribunal to "apply the now well-established method for drawing an all-purpose line for the delimitation of the maritime boundary between the Parties".
    - ITLOS notes that jurisprudence has developed in favour of the equidistance/relevant circumstances method. The Tribunal finds that in the present case the appropriate method to be applied for delimiting the EEZ and CS between Bangladesh and Myanmar is the equidistance/relevant circumstances method.

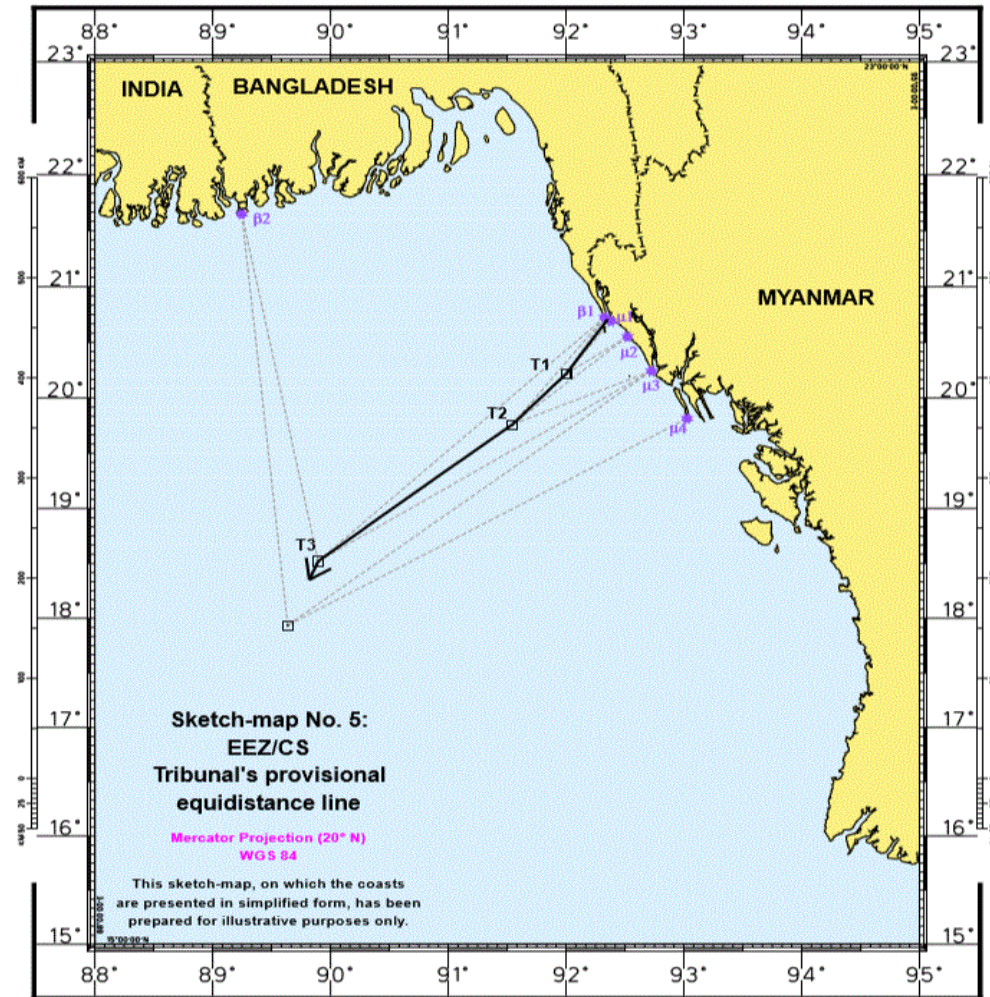
## Delimitation on EEZ and CS within 200nm

- 1) Establishment of the provisional equidistance line
  - Selection of base points
    - **St. Martin's Island:** The Tribunal is of the view that, because it is located **immediately in front of the mainland on Myanmar's side** of the Parties' land boundary terminus in the Naaf River, **the selection of a base point on St. Martin's Island would result in a line that blocks the seaward projection from Myanmar's coast.** In the view of the Tribunal, this would result in an **unwarranted distortion of the delimitation line,** and amount to "a judicial refashioning of geography"
  - Construct its provisional equidistance line from base points.

# Relevant coast lines

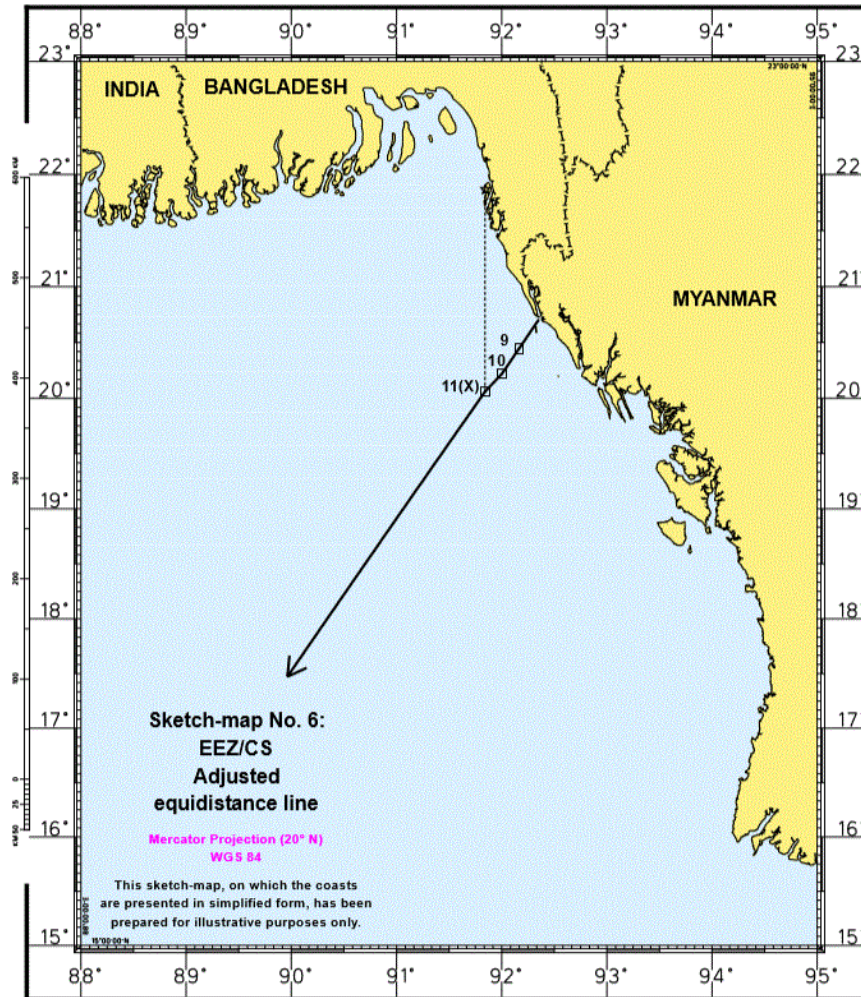


# Provisional equidistance line



- 2) Relevant circumstances and adjustment of the provisional equidistance line
- The Tribunal considers whether there are factors that may be considered relevant circumstances, **calling for an adjustment of that line with a view to achieving an equitable solution.**
  - Bangladesh claims three relevant circumstances.
    - **concave shape of Bangladesh's coastline: cut-off effect**
    - St. Martin's Island
    - Bengal depositional system
  - Myanmar claims there does not exist any relevant circumstances that may lead to an adjustment of the provisional equidistance line.
  - Tribunal accepted only concave shape of Bangladesh's coastline

# Adjusted equidistance line: delimitation

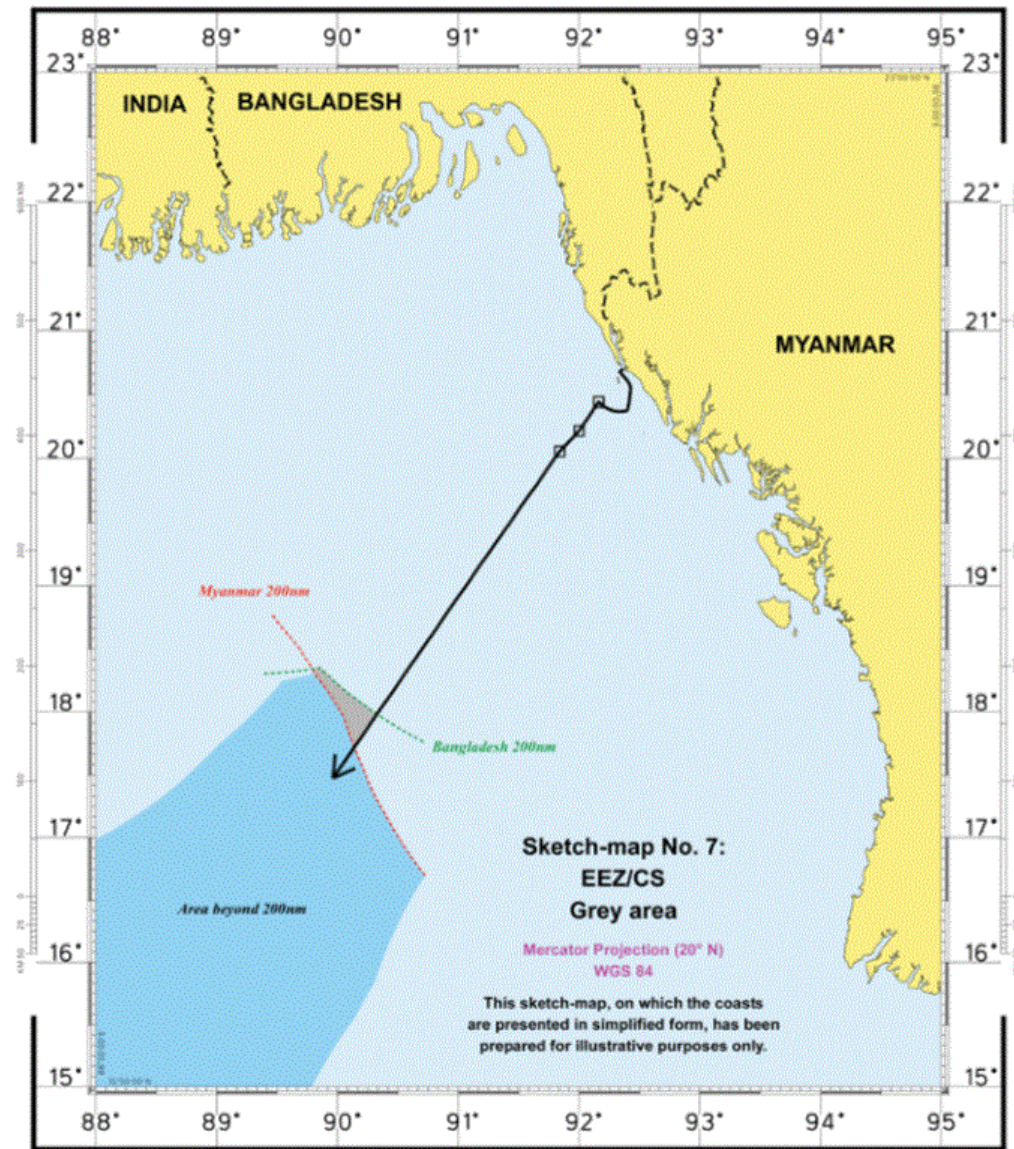




## Delimitation on the CS beyond 200 nm

- Question of jurisdiction
  - UNCLOS: no provision
  - No harm to the rights of third parties: "...can be determined without indicating its precise terminus, for example by specifying that it continues until it reaches the area where the rights of third parties may be affected."
  - No recommendation by the CLCS: The Tribunal points out that **the absence of established outer limits of a maritime zone does not preclude delimitation of that zone**. There is a clear distinction between the **delimitation** of the continental shelf under article 83 and the **delineation** of its outer limits under article 76.
- Grey area

Grey area

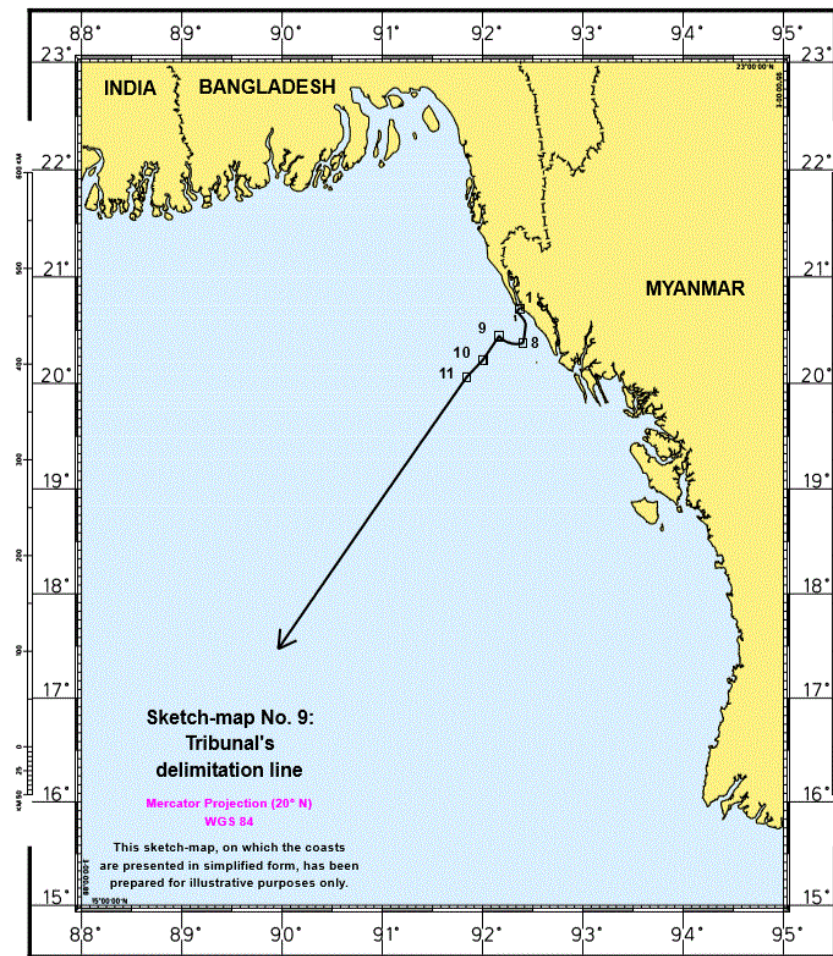
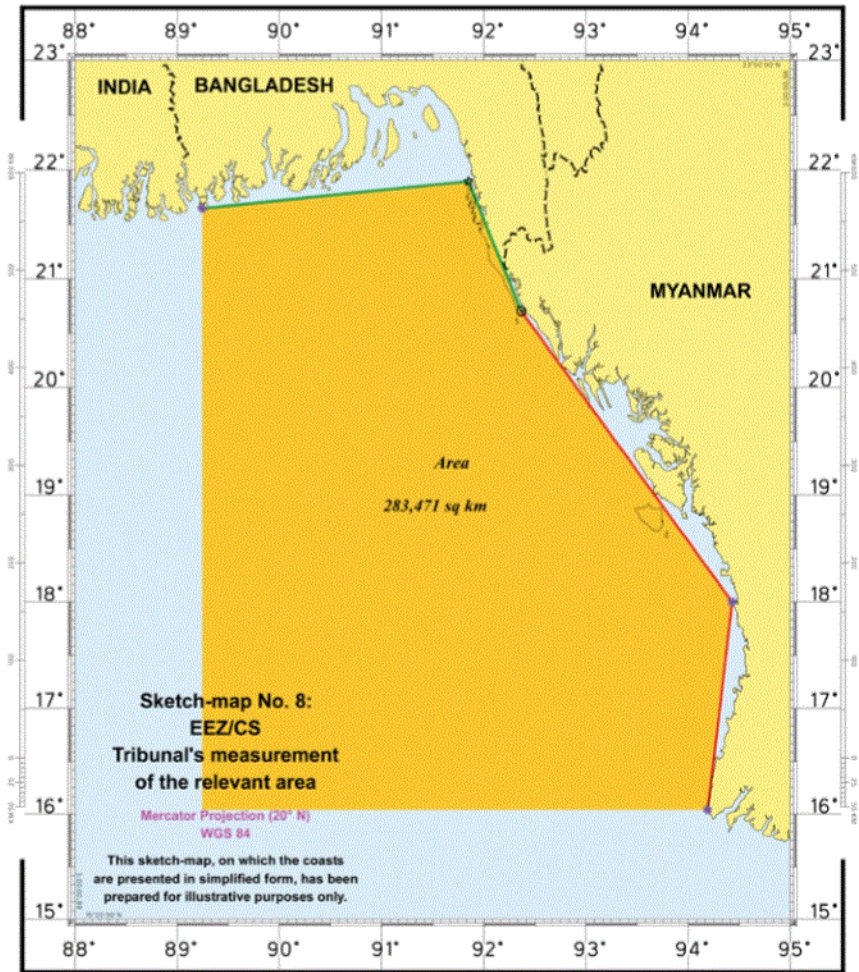


### 3) Disproportionality test

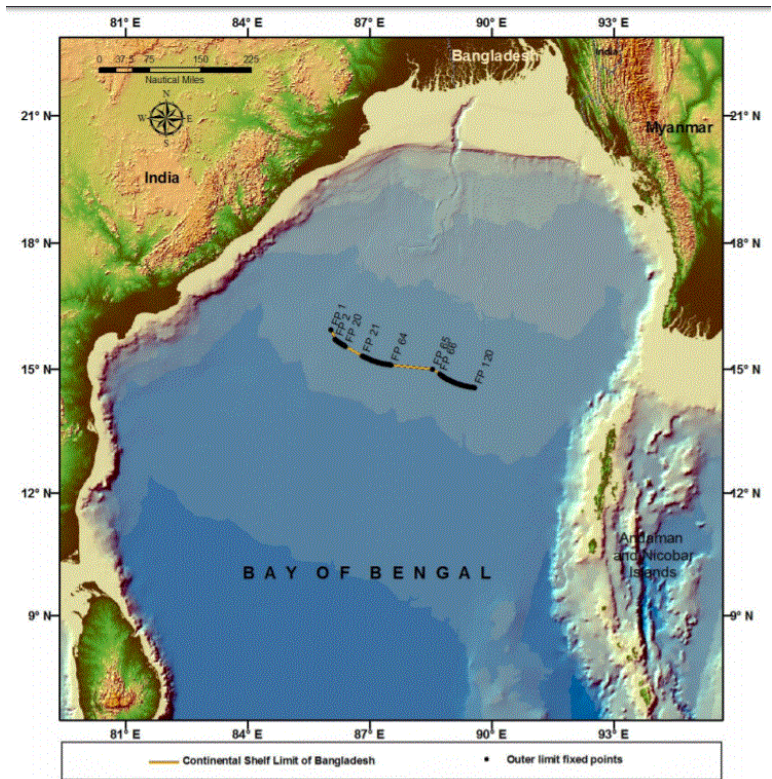
- The Tribunal notes that the **relevant maritime area** for the purpose of the delimitation of the EEZ and the CS between Bangladesh and Myanmar is that **resulting from the projections of the relevant coasts of the Parties**.
- The Tribunal notes that its adjusted delimitation line allocates approximately **111,631 square km** of the relevant area to Bangladesh and approximately **171,832 square km** to Myanmar. The ratio of the allocated areas is approximately **1:1.54** in favour of Myanmar.
  - \* ratio of the coast lines: **1: 1.42 in favor of Myanmar**

# Relevant area

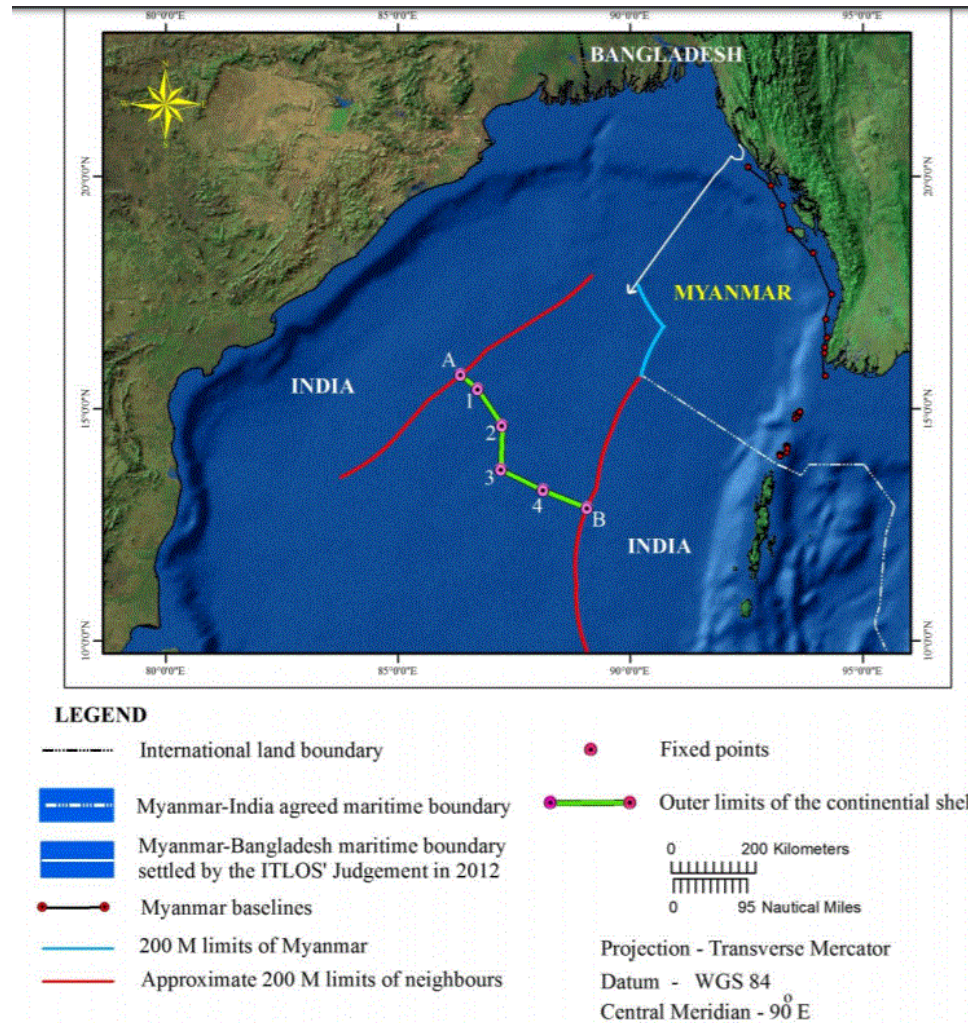
# Delimitation line



# CLCS submissions by Myanmar and Bangladesh

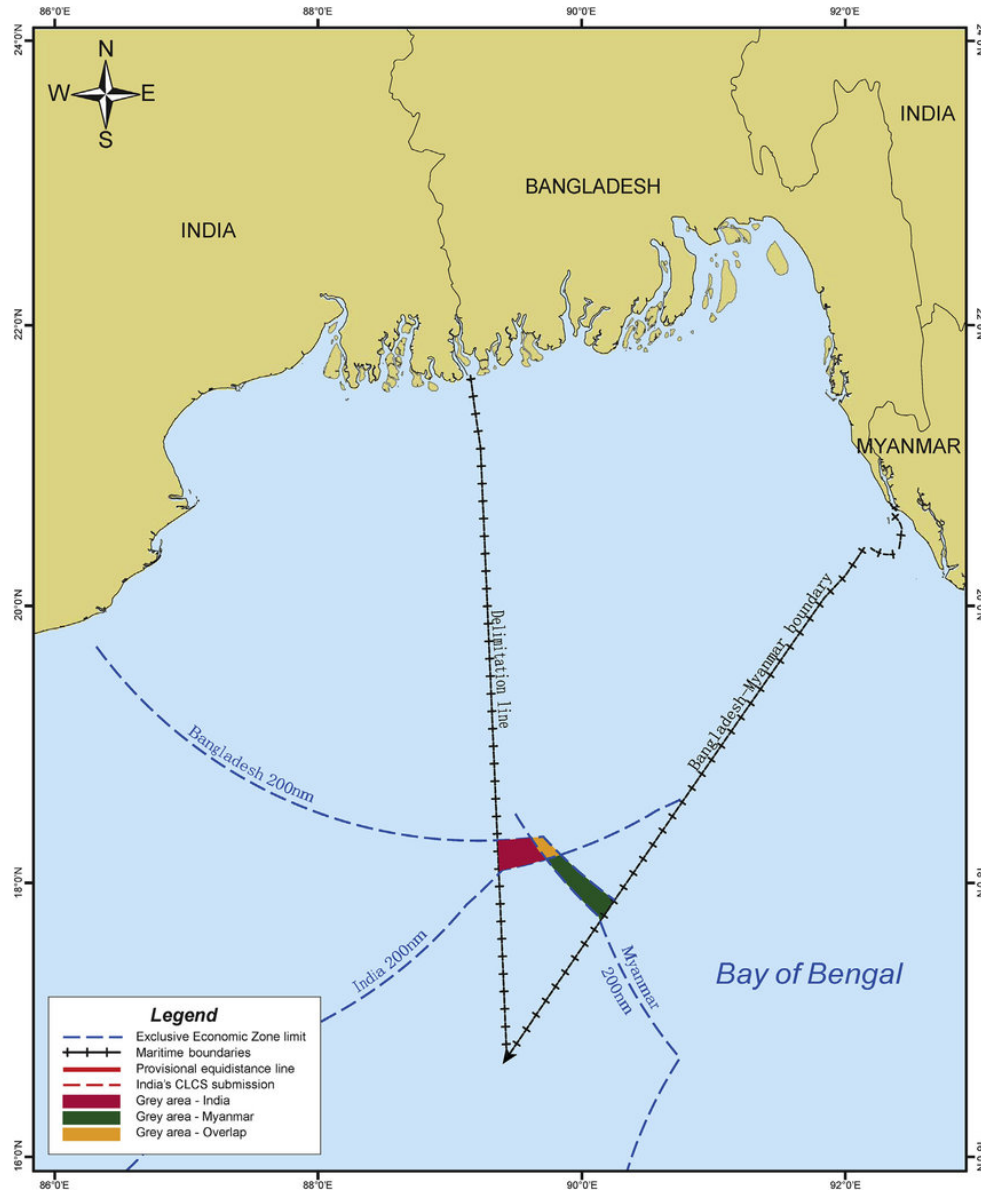


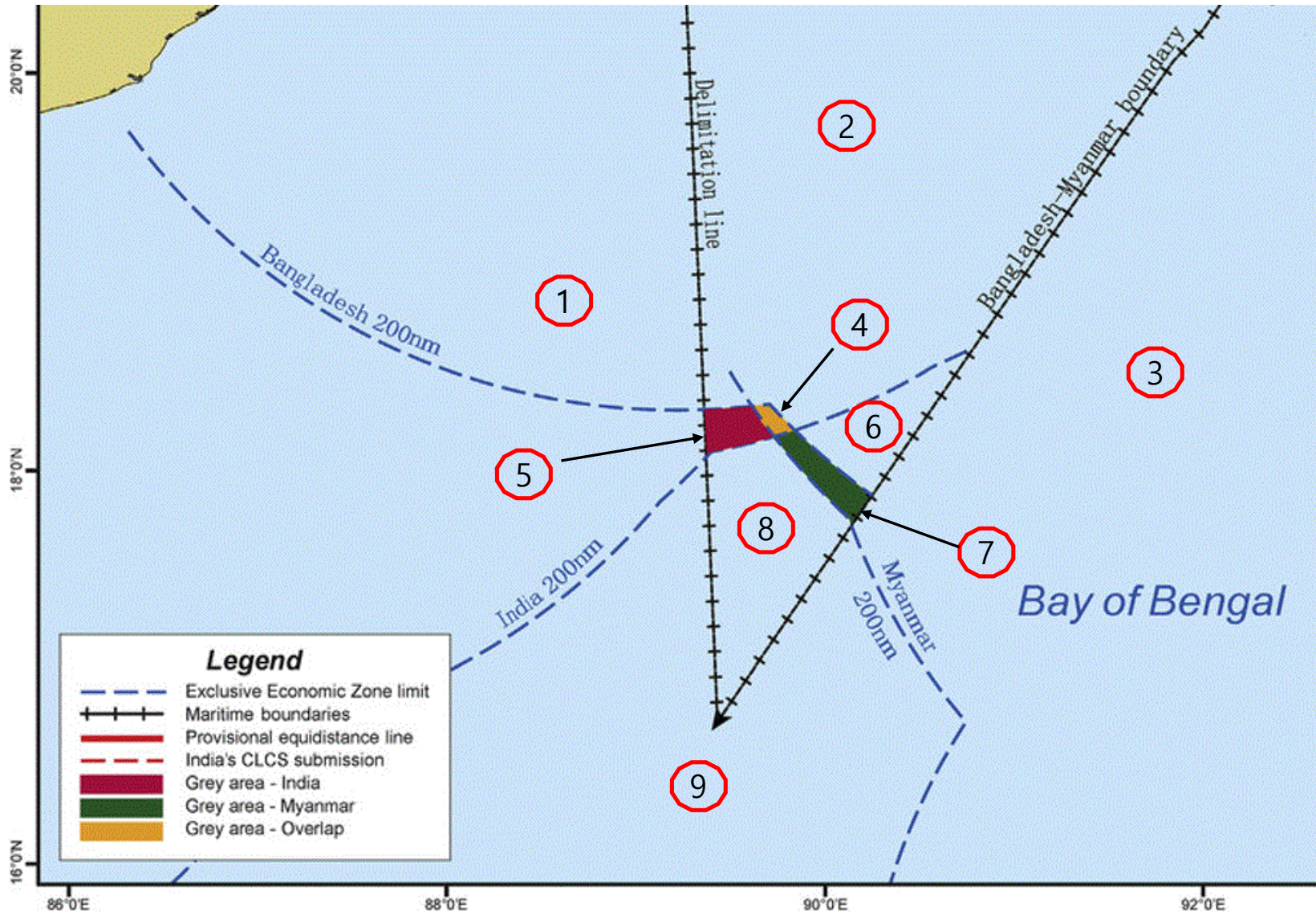
Bangladesh (2011)



Myanmar (2008, 2015)

# M Boundary among Myanmar, Bangladesh and India





## Implications

- ITLOS's first maritime delimitation case
- Confirmed three stage method (equidistance/relevant circumstance)
- Firstly conducted jurisdiction over CS beyond 200 nm even though the CLCS did not make a recommendation on the area.



## Case no.24. The "Enrica Lexie" Incident

- Italy v. India, Provisional measure, 2015
- On 15 February 2012 approximately 20.5 nm off the coast of India involving the "Enrica Lexie", an oil tanker flying the Italian flag, and India's subsequent exercise of criminal jurisdiction over the incident and over two Italian marines from the Italian Navy.
- According to India, the incident in question concerns the killing of two Indian fishermen on board an Indian vessel, and India's subsequent exercise of jurisdiction. It is alleged that the two Italian marines aboard the "Enrica Lexie" killed the fishermen.
- Italy requested the ITLOS to prescribe the following provisional measures: "India shall refrain from taking or enforcing any judicial or administrative measures against two Italian Navy officers in connection with the Enrica Lexie Incident, and from exercising any other form of jurisdiction over the Enrica Lexie Incident."
- ITLOS decides that Italy and India shall both suspend all court proceedings and shall refrain from initiating new ones which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal or might jeopardize or prejudice the carrying out of any decision which the arbitral tribunal may render.
- Arbitration: on going

# ကျေးဇူးအများကြီးတင်ပါတယ်

제조미아 치친바레