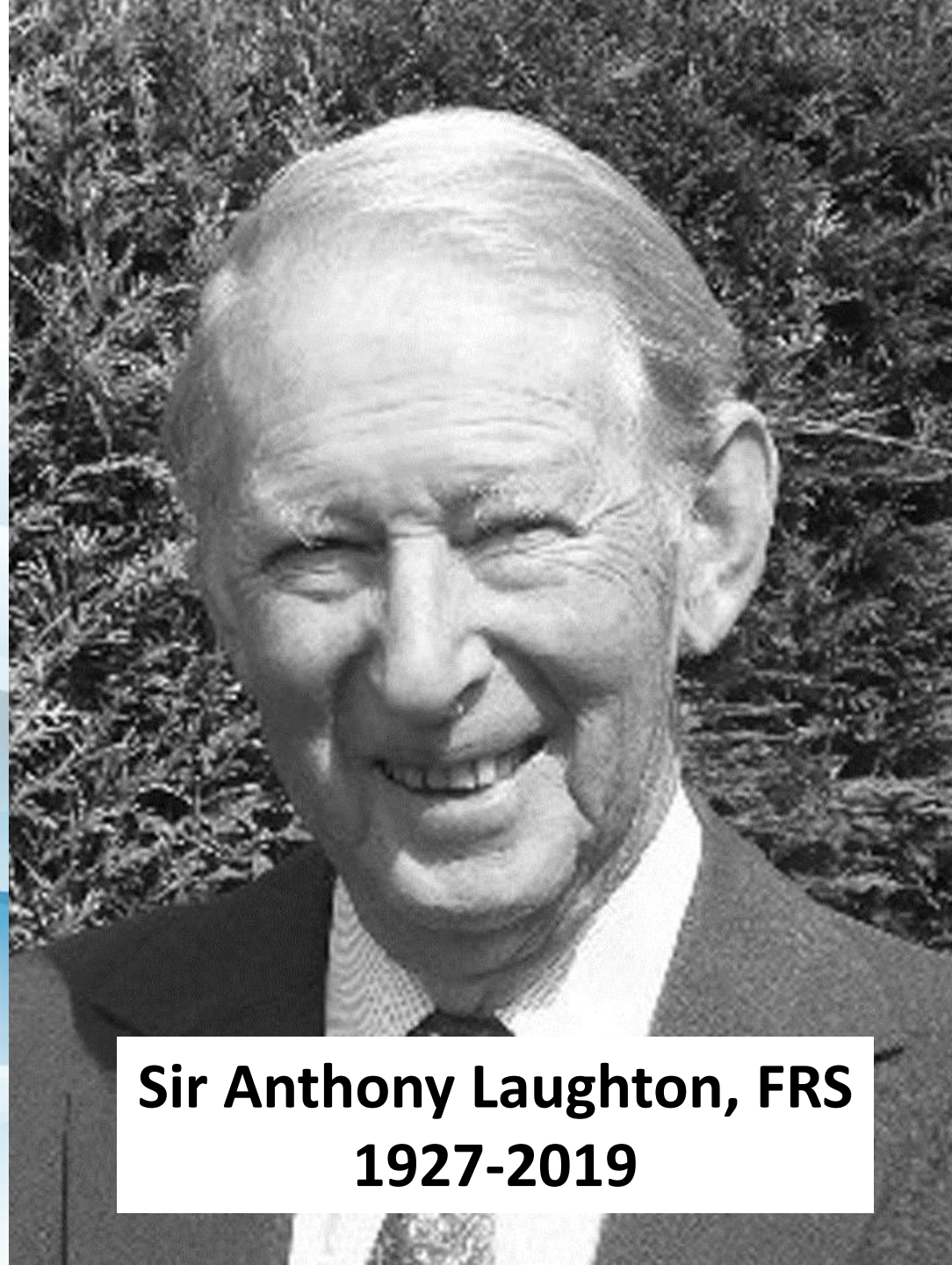


Maritime Delimitation beyond 200M: difficult new considerations

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(MZSL)**

ABLOS X - Opportunities and challenges in the governance of the planet ocean.
IHO, Monaco, 8-9 October 2019



**Sir Anthony Laughton, FRS
1927-2019**

Contents

- Jurisprudence
- Boundary Agreements
- Pending delimitations
- Summary

Article 83: Delimitation of the continental shelf between States with opposite or adjacent coasts

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.

...”but can there be any question that geological and geomorphological features will once again enter the universe of relevant circumstances in a boundary case pertaining to outer continental shelf delimitation”.

Colson, D. A. American Journal of International Law

January 2003 The Delimitation of the Outer Continental Shelf Between Neighboring States

Jurisprudence

Bangladesh - Myanmar (ITLOS, 2009-2012)

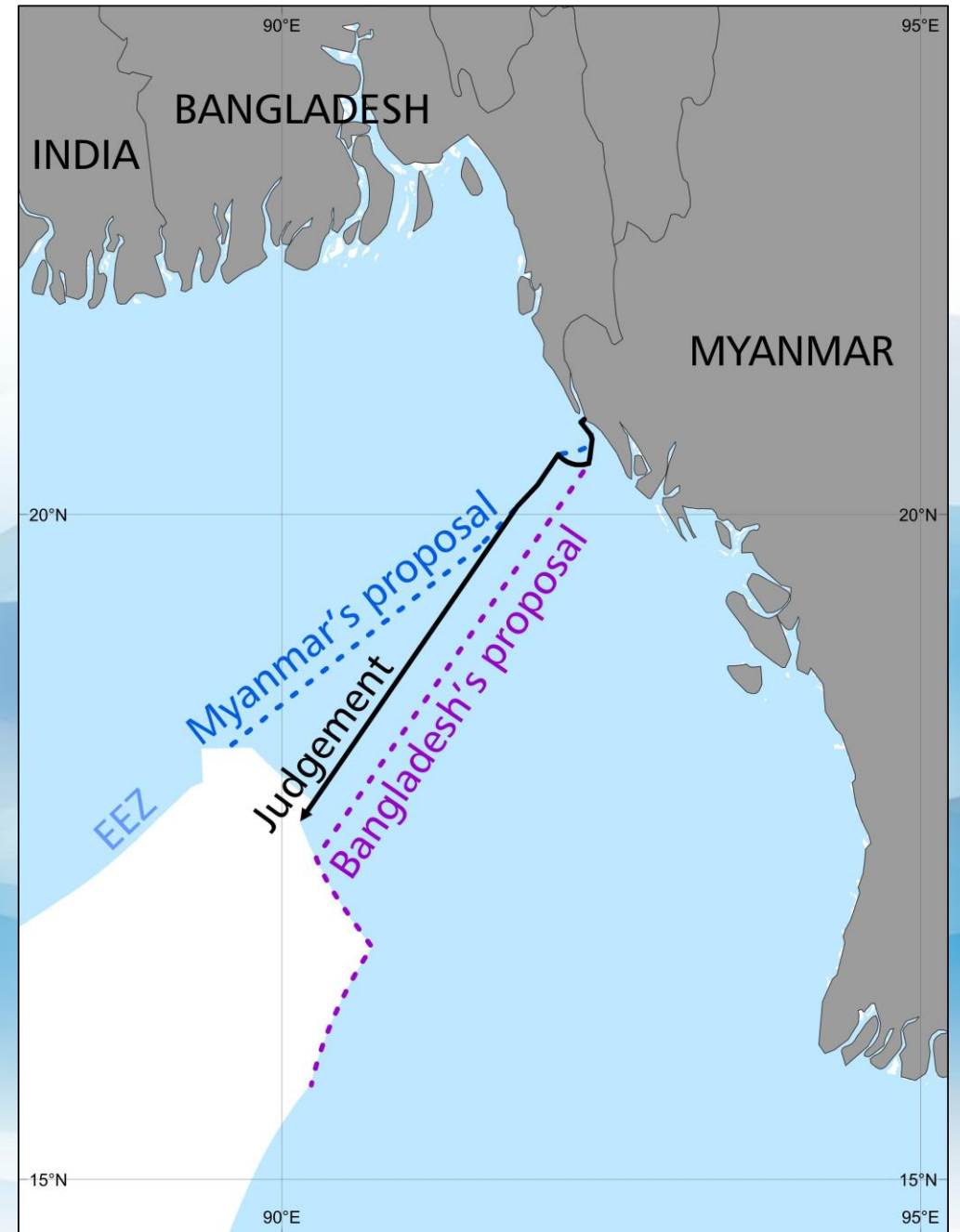
Bangladesh – India (PCA, 2009-2014)

Costa Rica – Nicaragua (ICJ, 2017-2018)

Côte d'Ivoire – Ghana (ITLOS, 2014-2017)

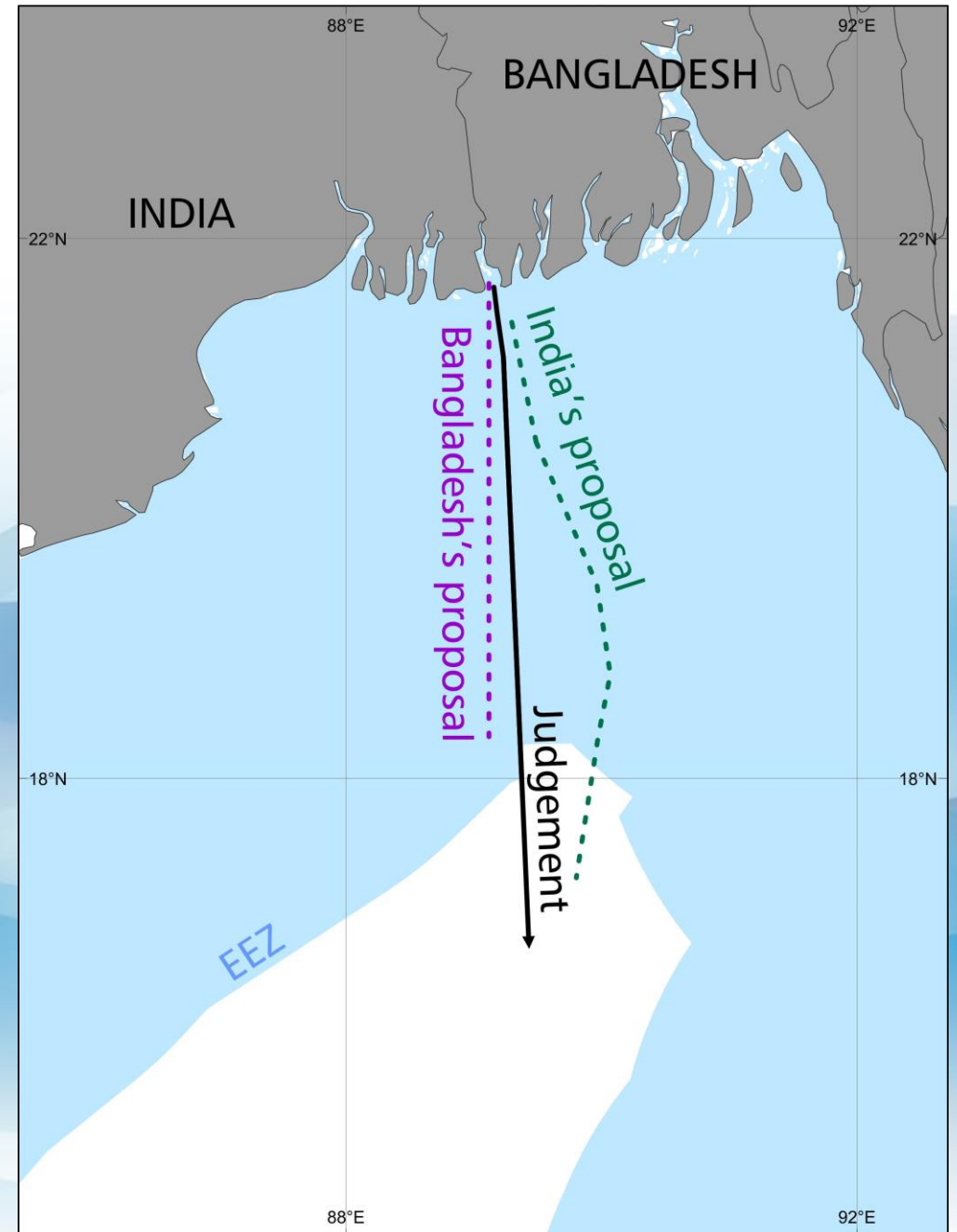
Bangladesh / Myanmar

- Bangladesh – bisector
- Myanmar – equidistance
- Provisional equidistance line
- Relevant circumstances
 - Concavity of Bangladesh coast -> cut-off effect
 - Geology – not accepted
- Adjusted equidistance line with an azimuth beyond 200M until 3rd party rights
- Significant that both sides had agreed that there was continental shelf beyond 200M

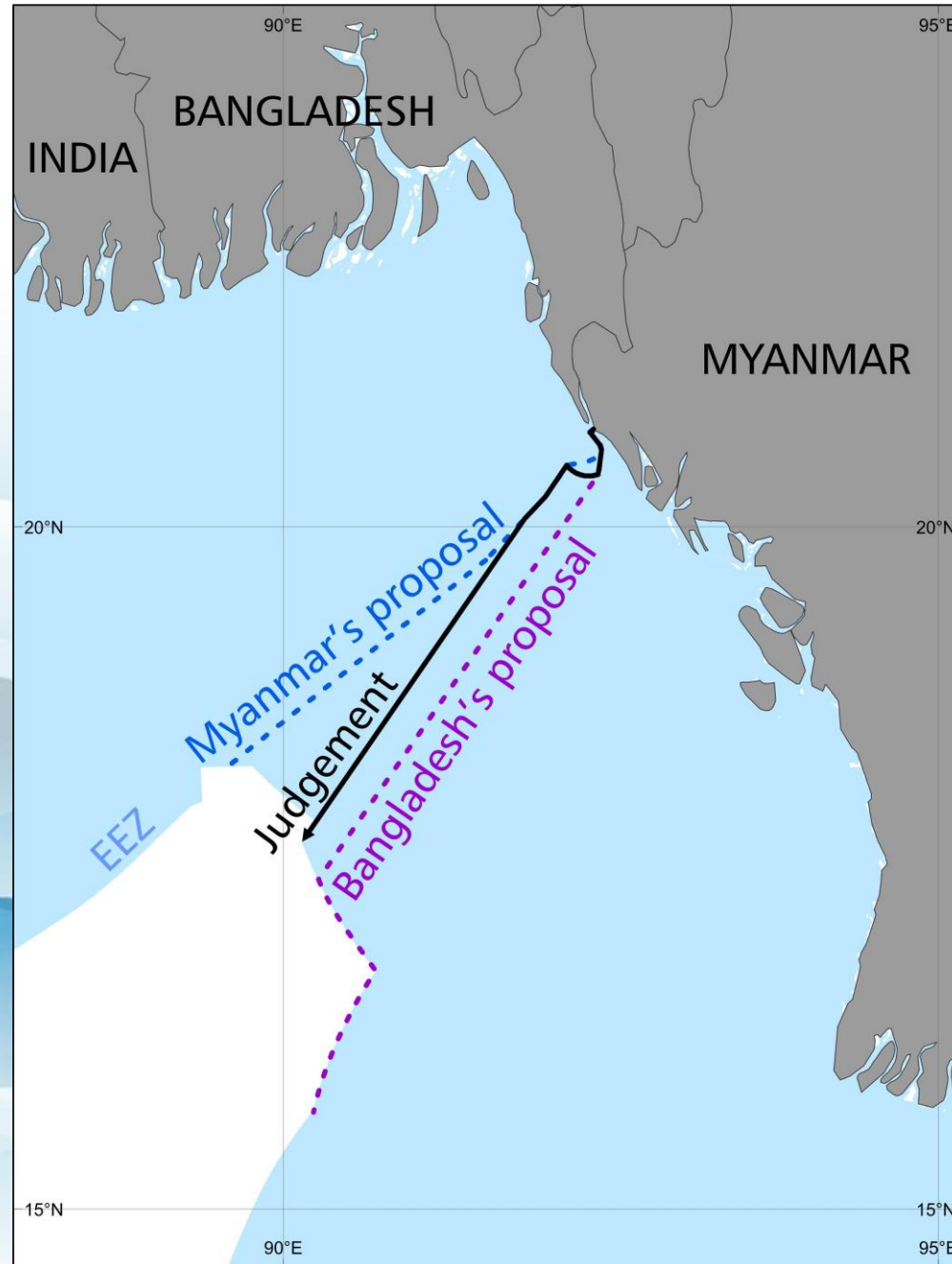


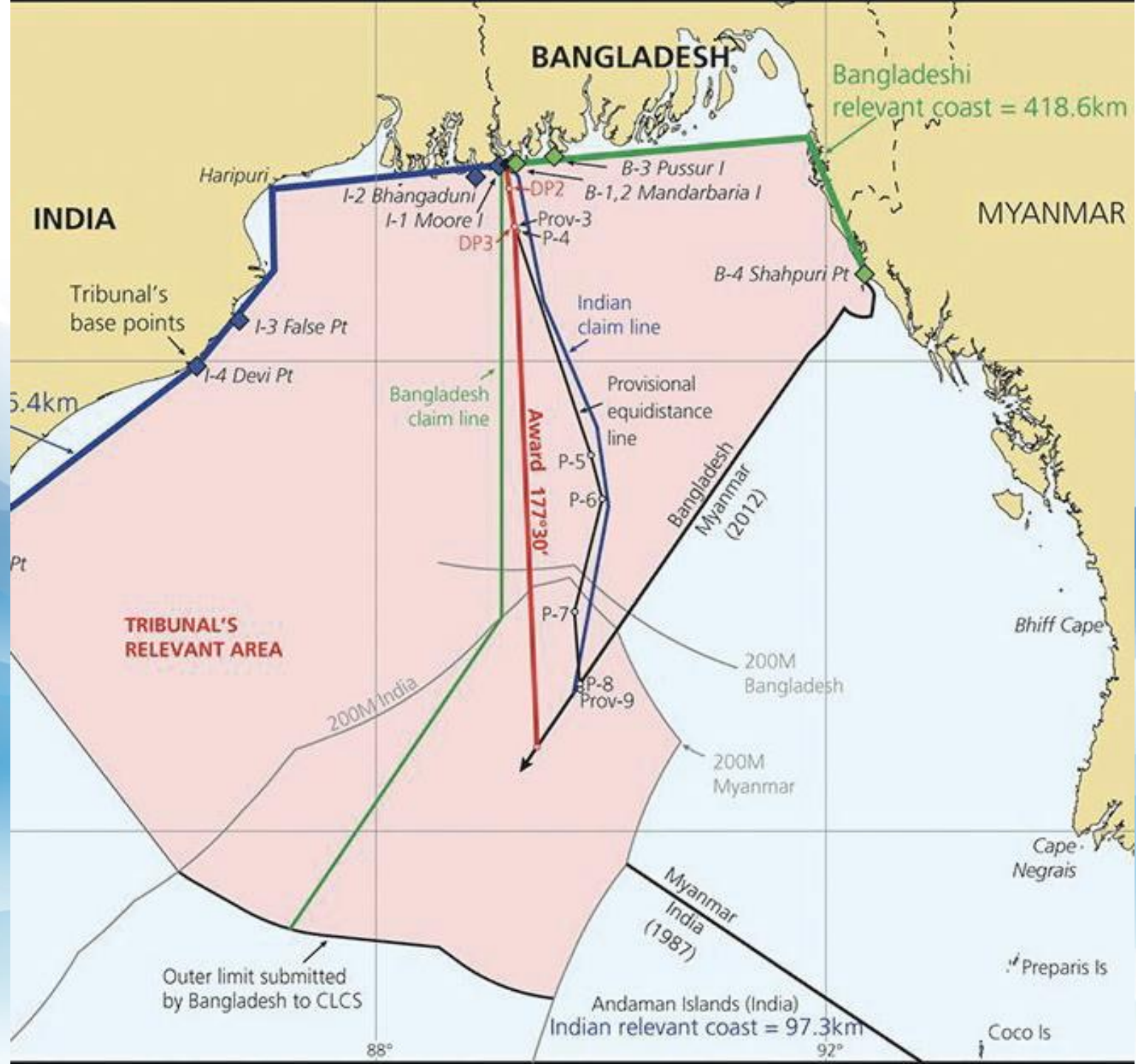
Bangladesh / India

- Bangladesh – bisector
- India – equidistance
- Provisional equidistance line
- Relevant circumstances
 - Concavity of Bangladesh coast -> cut-off effect
 - Geology – not accepted
- Adjusted equidistance line with an azimuth beyond 200M until ITLOS judgement line
- Significant that both sides had agreed that there was continental shelf beyond 200M



- What could have been different?

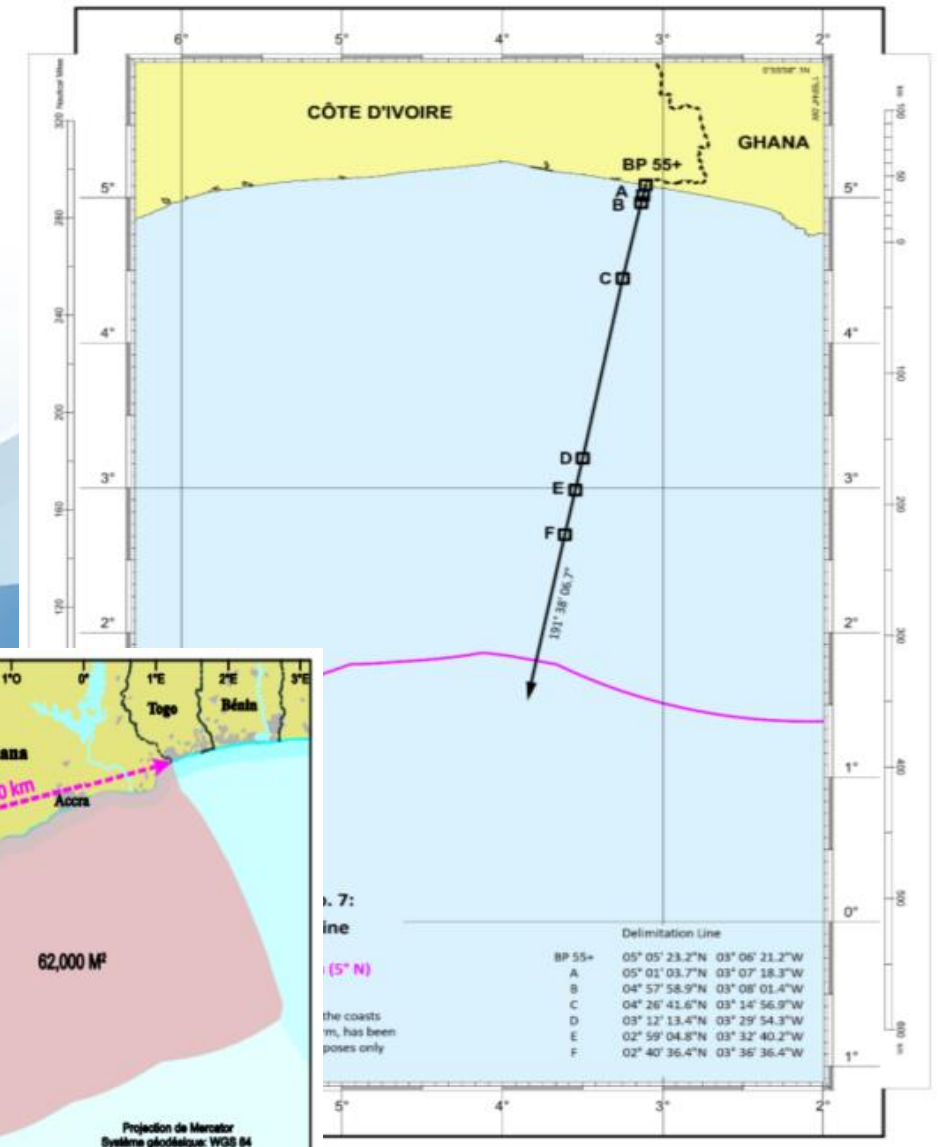
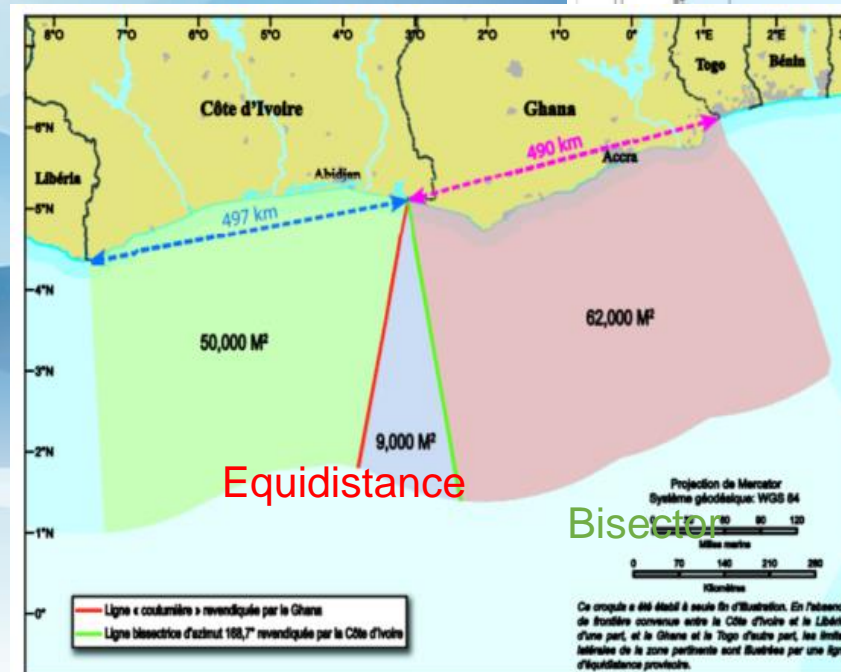




(Fietta & Cleverly 2016)

Cote d'Ivoire / Ghana

- Provisional equidistance line
- No relevant circumstances
- Same azimuth beyond 200M as singular continental shelf
- The Special Chamber's extraordinary statement



l. 7:
line

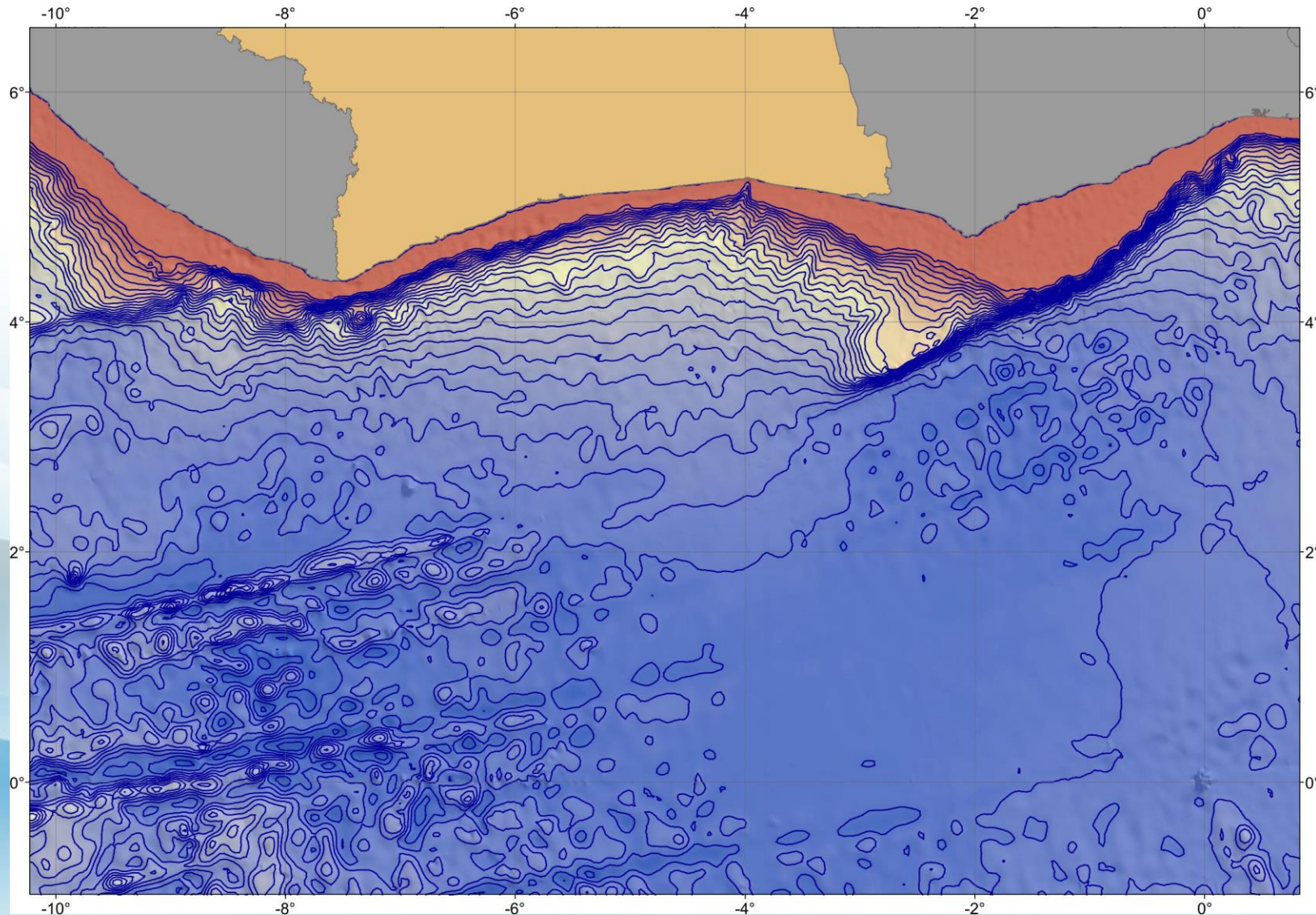
(5° N)

the coasts
m, has been
poses only

Delimitation Line			
BP 55+	05° 05' 23.2"N	03° 06' 21.2"W	
A	05° 01' 03.7"N	03° 07' 18.3"W	
B	04° 57' 58.9"N	03° 08' 01.4"W	
C	04° 26' 41.6"N	03° 14' 56.9"W	
D	03° 12' 13.4"N	03° 29' 54.3"W	
E	02° 59' 04.8"N	03° 32' 40.2"W	
F	02° 40' 36.4"N	03° 36' 36.4"W	

491. The Special Chamber can delimit the continental shelf beyond 200 nm only if such a continental shelf exists. There is no doubt about this in the case before the Special Chamber. Ghana has already completed the procedure before the CLCS. Côte d'Ivoire has made its submission to the CLCS and, although as yet the latter has not issued any recommendation, the Special Chamber has no doubt that a continental shelf beyond 200 nm exists for Côte d'Ivoire since its geological situation is identical to that of Ghana, for which affirmative recommendations of the CLCS exist.

But it became evident that in fact the “geological situation” of Côte d'Ivoire (whatever that is) is **not** identical to that of Ghana.



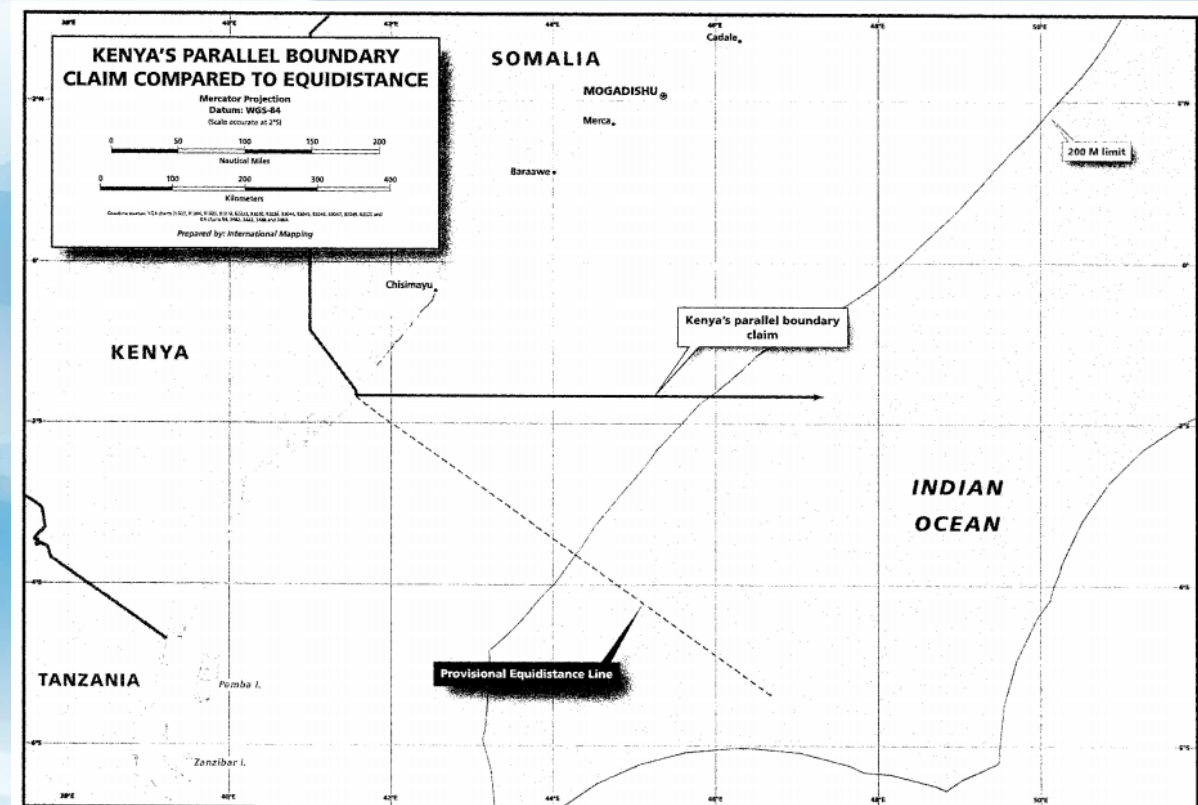
High risk strategy for Courts to assume an understanding of geological context and significance for shelf beyond 200M

Boundary Agreements

States	Date (agreed)	Date (entered into force)	Method	Opposite/ adjacent	CLCS recommendations (at date of agreement)?	Other comments
Argentina - Chile	1984			Adjacent	No	End of boundary terminates at Chile 200M but is beyond Argentina's 200M
Australia – Indonesia	1972, 1997		Geomorphology (NP)		No	
Australia – New Zealand	25 July 2004	25 January 2006	Geomorphology (NP)	Both	No	Allow for adjustment of MB following CLCS recommendations
Australia – PNG	1978		Not stated, BM says geoscientific factors		No	
Australia – Solomon Islands	1988		Modified equidistance		No	
Australia – France (Kerguelen & New Caledonia)	1982		Equidistant, modified equidistant		No	
Barbados – France (Martinique)	16 October 2009		Continuation (of equidistance within EEZ)	Adjacent	France – 2 Sep 2009	3 rounds of formal negotiation (May 2006 – November 2007)
Brazil – Uruguay	21 July 1972	12 June 1975	Azimuth	Adjacent	No	Neither State was a party to the 1958 GCCS. Small 'Grey Area' on Brazilian side
Denmark (Faroe Islands) – Iceland – Norway	21 September 2006		Portions of relevant area	Both	No	Allow for adjustment of MB following CLCS recommendations
Denmark (Greenland) - Iceland	2013		Portions of relevant area	Adjacent	No	Allow for adjustment of MB following CLCS recommendations
Gambia - Senegal	4 June 1975	27 August 1976	Lines of latitude & continuation	Adjacent		No terminus (may overlap with Cape Verde)
Indonesia - PNG	1980					
Ireland - UK	7 November 1988	8 December 1992	"modified" equidistant	Adjacent	No	geoscientific (licence blocks); ignored Rockall
Kenya - Tanzania		23 June 2009	Lines of latitude & continuation	Adjacent	No	Terminates at the 'outermost limits of the continental shelf'
Mexico – USA ('Western Gap')	9 June 2000	17 January 2001	Equidistance & continuation	Both	No	Final delimitation line – suggests confident of continental shelf. Negotiations took 2 years. Buffer zone of 1.4M either side of treaty (no hydrocarbon exploration for 10 years)
Russia - Norway	2010		not stated	Adjacent		
Trinidad and Tobago – Venezuela	18 April 1990	23 July 1991	Geoscientific	Adjacent		Negotiations began in 1942. Allow for adjustment of MB following CLCS recommendations
Uruguay – Argentina	19 November 1973	12 February 1974	equidistance	Adjacent		
USA - USSR	1988					

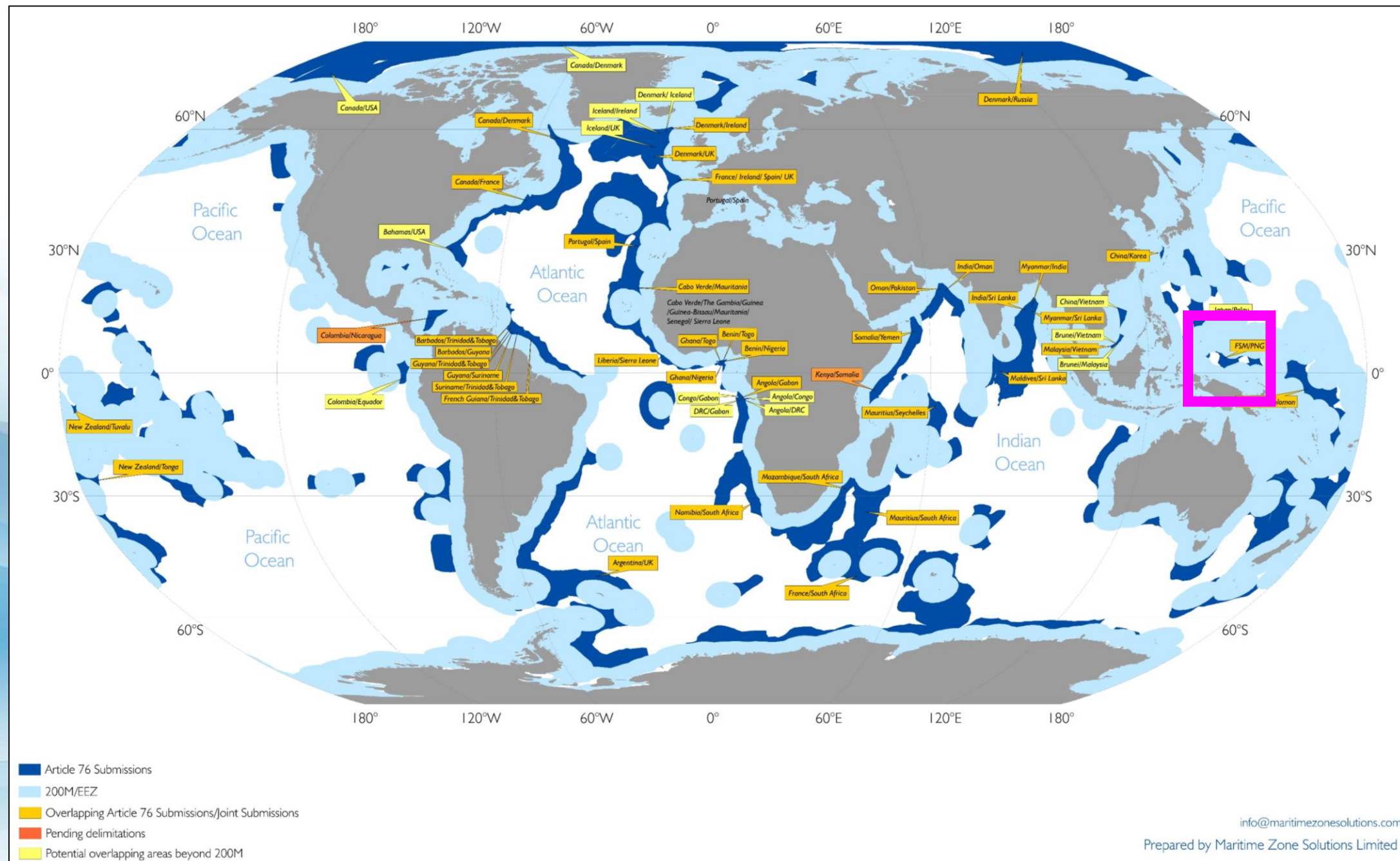
Pending Delimitations before a court

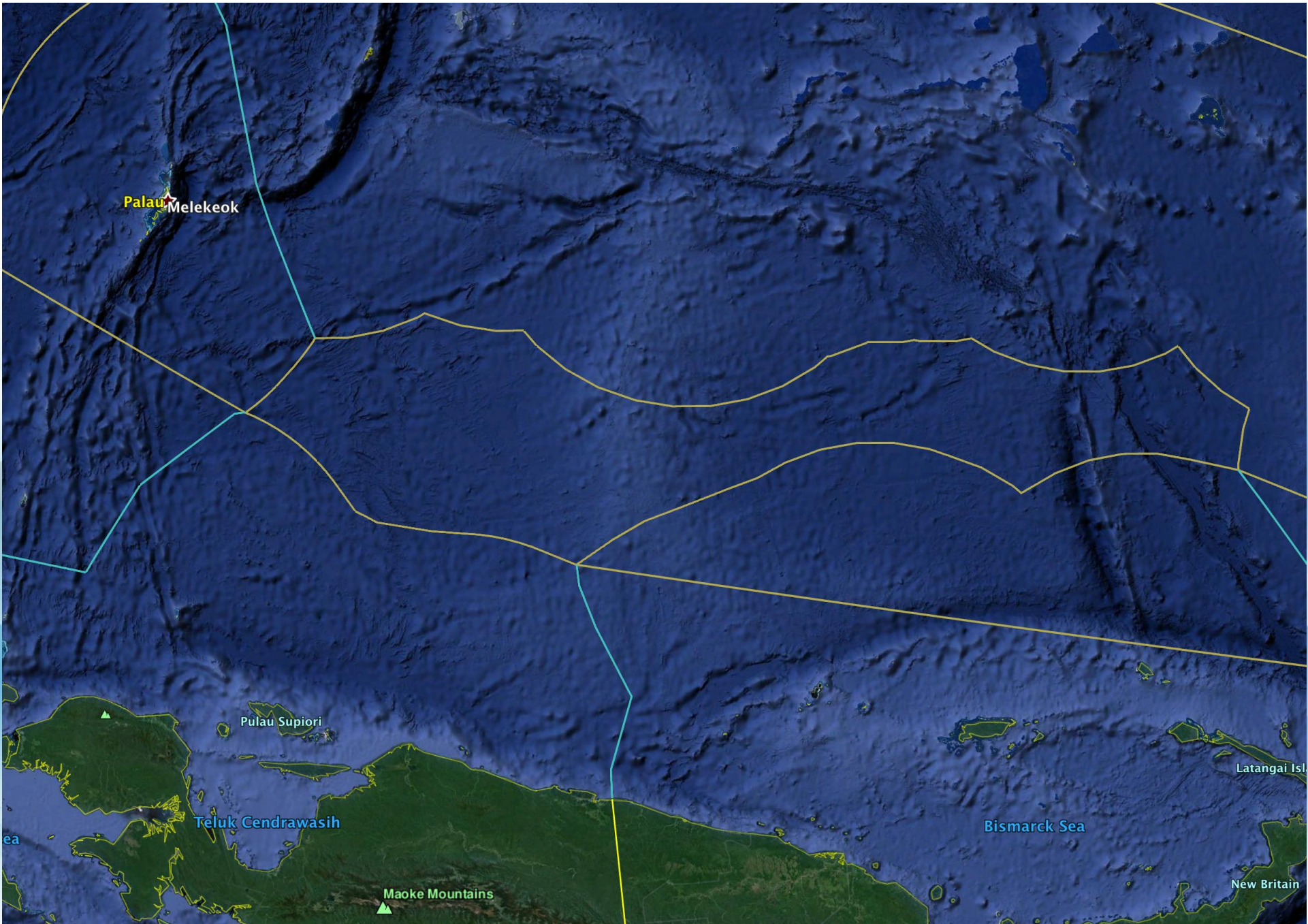
States	Date	Method	Opposite/ adjacent	Article 76 status?	Orals?
Kenya – Somalia	2014 - current	Kenya: parallel; Somalia: equidistance	Adjacent	Kenya and Somalia have deposited CLCS submissions	2020
Colombia – Nicaragua	2013 - current	Colombia: ...; Nicaragua: equidistance between C 200M and N OCS	Opposite	Nicaragua has deposited CLCS submission	2020



Opposite cases yet to be delimited: resolution options

- EQ from baseline
- EQ from FOS
- Natural prolongation
- Natural disruptions (e.g., Norwegian Trough)

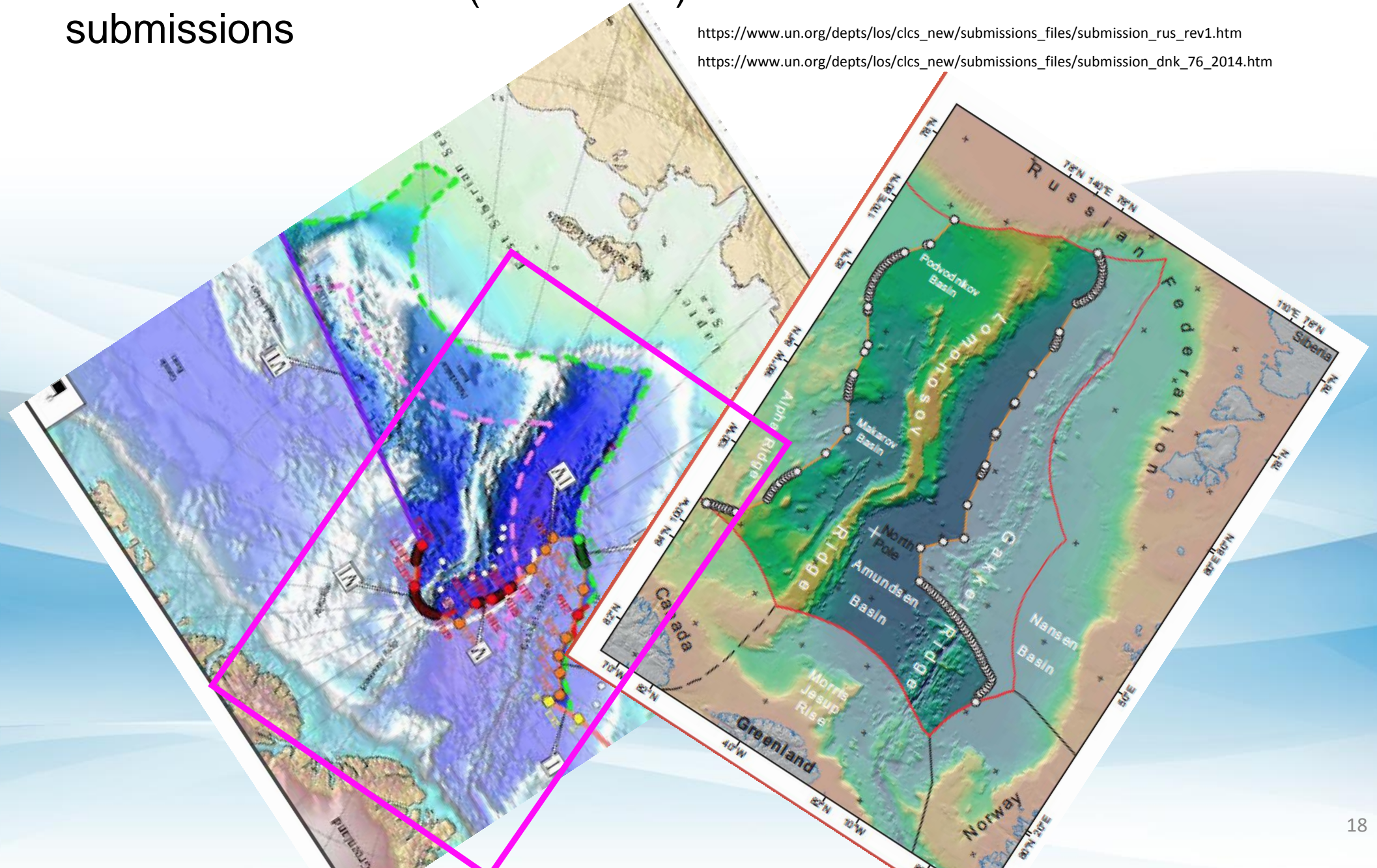




Russia and Denmark (Greenland) Arctic Article 76 submissions

https://www.un.org/depts/los/clcs_new/submissions_files/submission_rus_rev1.htm

https://www.un.org/depts/los/clcs_new/submissions_files/submission_dnk_76_2014.htm



Summary;

- First opposite state Court delimitation pending
- Inequitability potentially greater beyond 200M
- Risk in Court assuming technical understanding
- Geology successfully used in boundary agreements
- Highly unlikely that a unique solution available, or one without consideration of geology and geophysics.

