

Controversy in the Bay of Bengal: Issues surrounding the Delimitation of Bangladesh's Maritime Boundaries with India and Myanmar

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Controversy in the Bay of Bengal: Issues surrounding the Delimitation of Bangladesh's Maritime Boundaries with India and Myanmar

- Introduction and disclaimers
- Background to the disputes
- Procedural overview of the two proceedings
- Substantive overview of the two proceedings
- Some (tentative) concluding remarks...

Background

- The Bay of Bengal lies at the mouth of the Bengal Delta, which forms c. 60% of the Bangladesh coastline
- The Bay of Bengal is believed to be rich in undersea deposits of oil and natural gas
- The maritime delimitation of the Bay forms the subject of a long running dispute between three states: India, Bangladesh and Myanmar



Background

Myanmar and Bangladesh

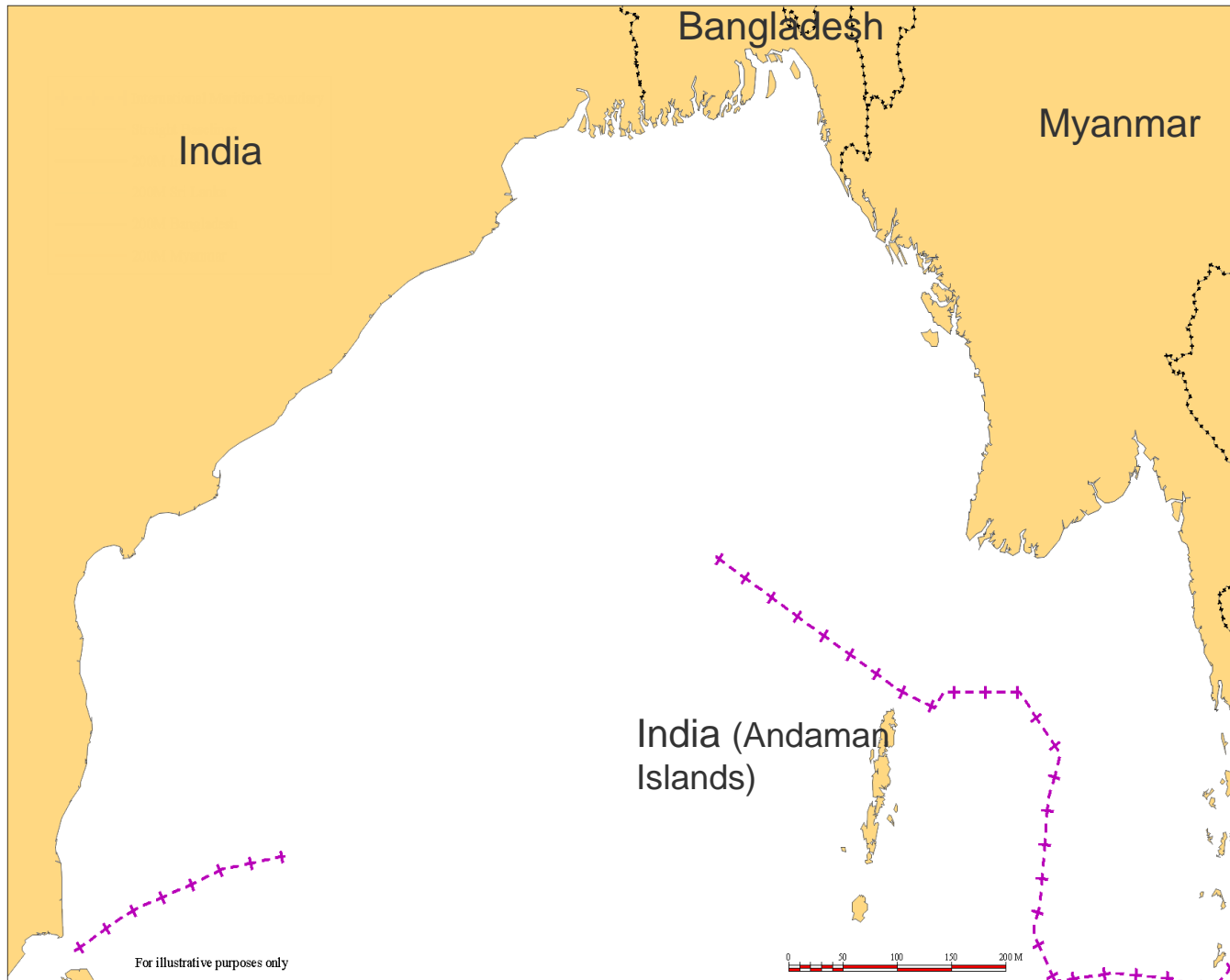
- In 1974, the Myanmar and Bangladesh signed “Agreed Minutes” delimiting the maritime boundary in the territorial sea. Bangladesh submits that the Parties have conducted themselves in accordance with that boundary since then
- In 1974, Bangladesh also passed legislation delimiting territorial sea, EEZ and continental shelf boundaries with India and Myanmar constituted by parallel lines extending southward along meridians of longitude
- “Friendship Line” - Bangladesh submits that between 1979 and 2005, Myanmar’s conduct was in accordance with a proposed EEZ and continental shelf boundary in the Bay of Bengal

India and Bangladesh

- Negotiations initially took place in 1982 but without success. Bilateral talks were revived in 2008 but the Parties have yet to agree on a maritime boundary

Background – the catalyst for legal proceedings

- A growing demand for resources/ energy crisis
- Accompanying advances in technology
- Competing oil concession activities, particularly since 2008 between Bangladesh and Myanmar on the Bangladesh side of the so-called “Friendship Line”
- CLCS submissions made by India and Myanmar denying Bangladesh any OCS entitlement
- New Moore Island/South Talpetty Island has disappeared



Procedural overview

- India, Bangladesh and Myanmar are all signatories to the United Nations Law of the Sea Convention 1982 (UNCLOS)
- Under Part XV of UNCLOS, states are free to choose one or more of the following means for the settlement of maritime boundary delimitation disputes :-
 - The International Tribunal for the Law of the Sea (ITLOS)
 - The International Court of Justice (ICJ)
 - An arbitral tribunal constituted in accordance with Annex VII

Overview of Proceedings

- On 8 October 2009, Bangladesh instituted arbitral proceedings against both the Myanmar and India pursuant to Annex VII of UNCLOS
- India consented to arbitration with Bangladesh under Annex VII (the default option under UNCLOS)
- Myanmar proposed that its dispute with Bangladesh be submitted to ITLOS. On 4 November 2009, Myanmar transmitted a declaration consenting to the jurisdiction of ITLOS. On 12 December 2009, Bangladesh reciprocated this declaration
- Myanmar and India are both represented by Sir Michael Wood and Prof Alain Pellet: potential conflict of interest? Collusion between India and Myanmar?

ITLOS Proceedings: Myanmar and Bangladesh

- This dispute between Bangladesh and Myanmar is the first maritime delimitation case to be heard by ITLOS
- The Tribunal's mandate is to delimit the territorial sea, EEZ and continental shelf (including beyond 200M) boundary between the two countries in the Bay of Bengal
- Expedited time-limits (set by agreement)
 - 1 July 2010 – Filing of the Memorial by Bangladesh
 - 1 December 2010 – Filing of the Counter-Memorial by Myanmar
 - 15 March 2011 – Filing of reply by Bangladesh
 - 1 July 2011 – Filing of Rejoinder by Myanmar

India and Bangladesh

- Each Party appoints one member of the arbitral tribunal with the other three members being appointed by agreement between the parties
- Bangladesh appointed Vaughan Lowe Q.C (since resigned) and India appointed P. Sreenivasa Rao. The Parties were unable to agree upon the other members of the tribunal
- The President of ITLOS was required to appoint the remaining three members and, on 12 February 2010, appointed Rüdiger Wolfrum (as president) (Germany), Tullio Treves (Italy) and Ivan Shearer (Australia) to the arbitral tribunal

Annex VIII Arbitration: India and Bangladesh

- The Tribunal's mandate is to delimit the territorial sea, EEZ and continental shelf (including beyond 200M) boundary between the two countries in the Bay of Bengal
- The Parties have fixed a substantially slower timetable for first round in written submissions:
 - Bangladesh will file its Memorial in May 2011
 - India will file its Counter-Memorial in May 2012

Substantive overview: Bangladesh's straight baseline system

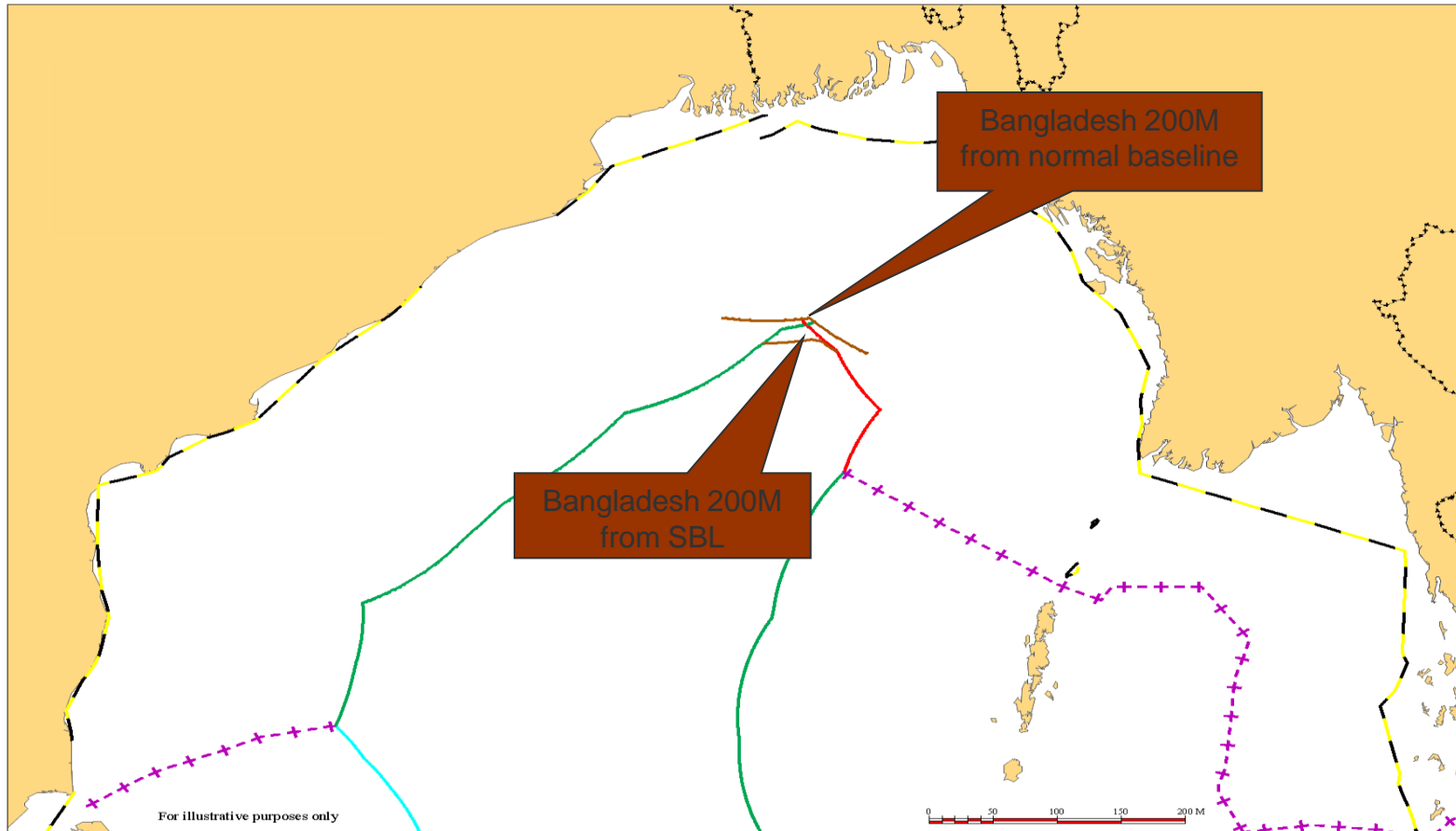
- Bangladesh's coastline is highly dynamic/unstable and fluctuates back and forth continuously
- Bangladesh claims straight baselines based on depth criteria; selecting eight base points following a 10-fathom (60 feet) line - *Territorial Waters and Maritime Zones Act 1974*
- Bangladesh's straight baseline system is controversial and has been challenged by both India and Myanmar

Straight Baselines – UNCLOS Art 7

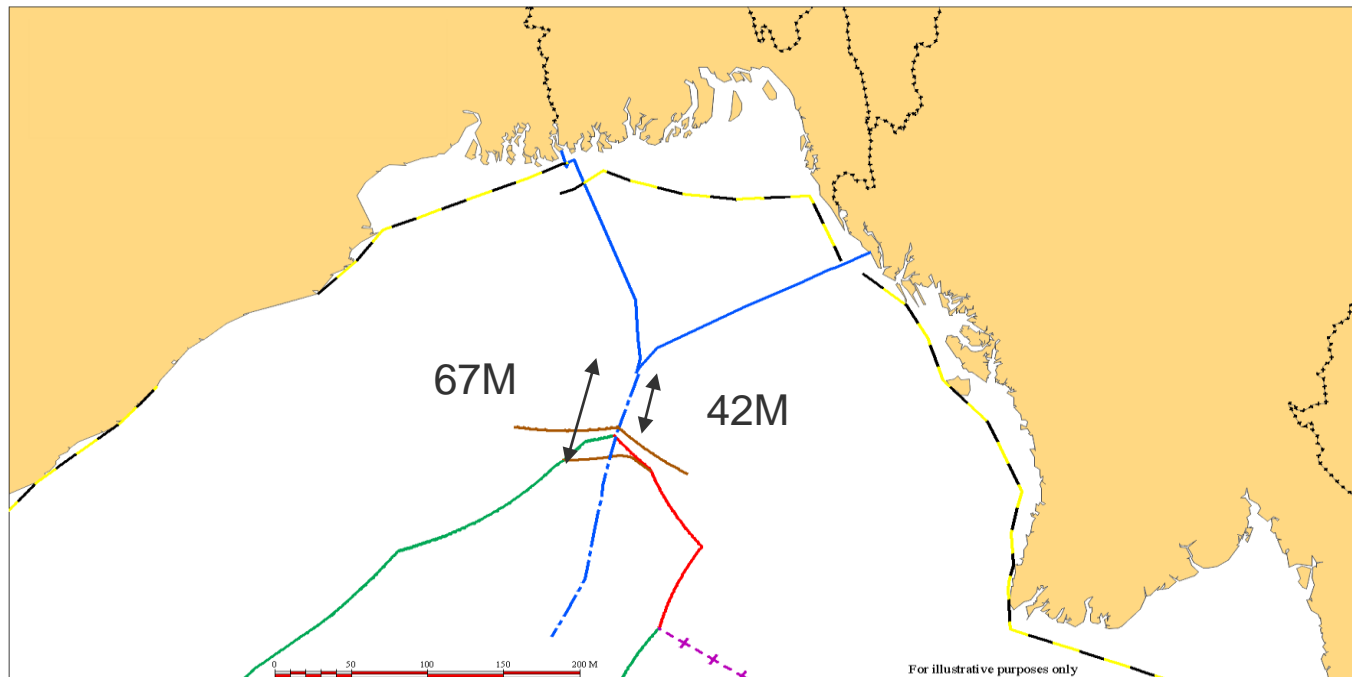
Article 7(2)

- Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line, and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention
- Does Bangladesh meet these requirements?
- Will Bangladesh even rely upon its straight baselines in a legal forum regulated by UNCLOS?

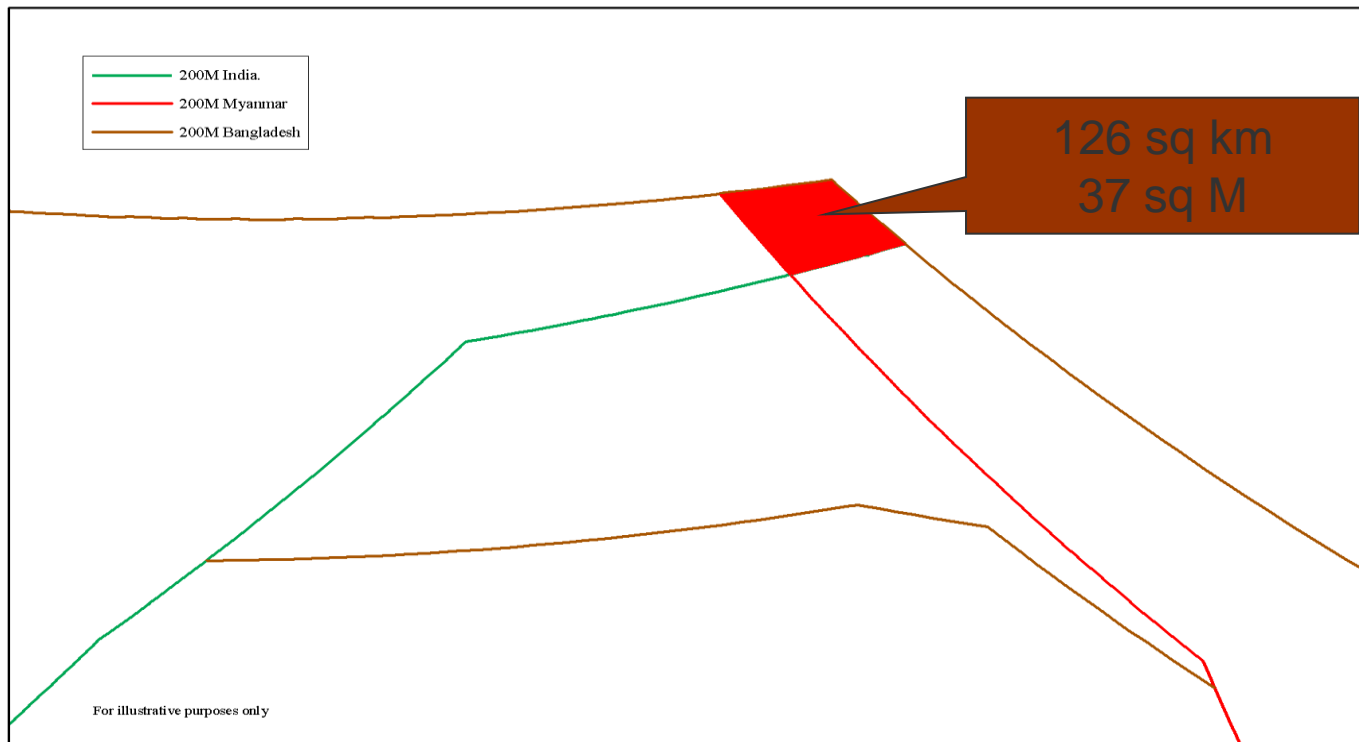
Bangladesh - Baselines



Bangladesh - Baselines



Convergence of 200m Zones; possible convergence of OCS/EEZ areas



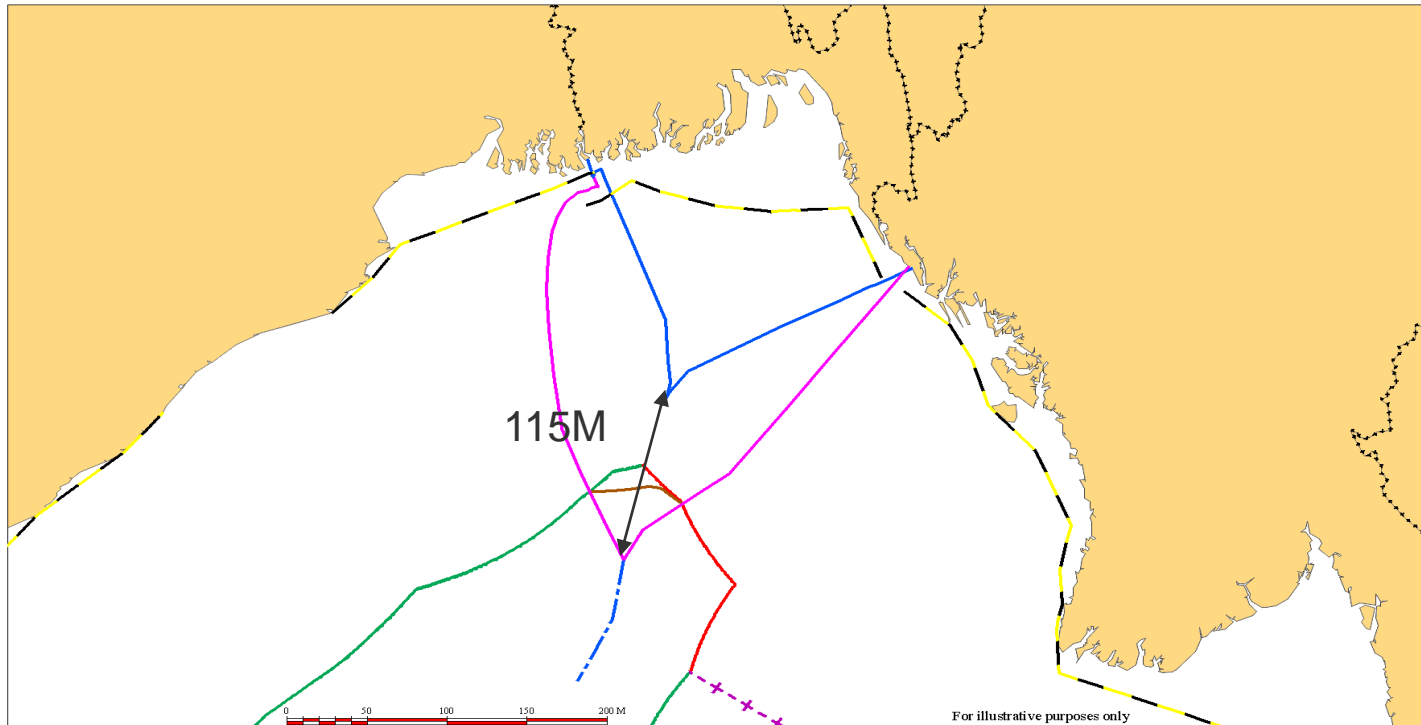
Possible Positions of the Parties – India & Myanmar

- India and Myanmar are both expected to claim a maritime delimitation with Bangladesh based on the application of an equidistance line, discounting any disadvantages Bangladesh may suffer due to its geography
- The “normal” methodology for modern maritime boundary to limitation

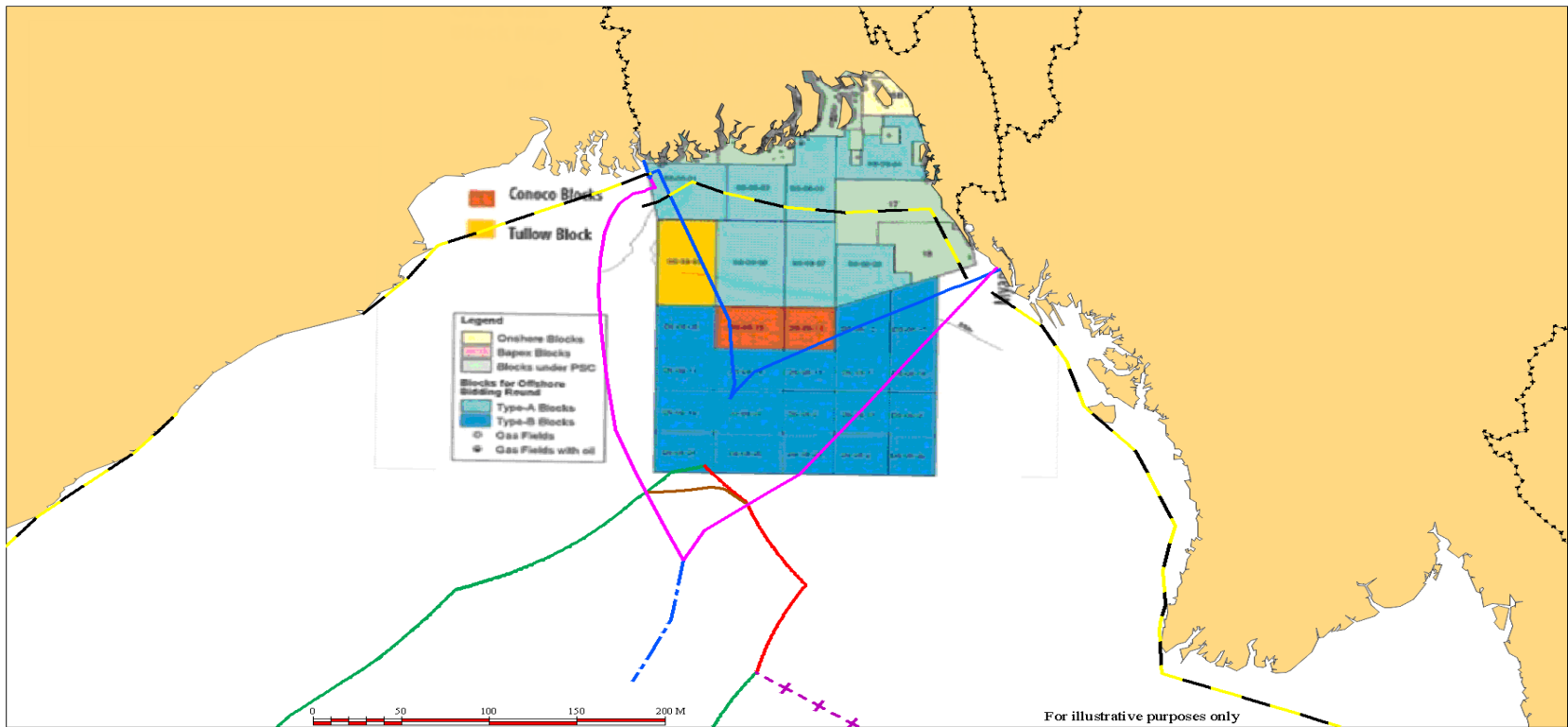
Possible Positions of the Parties - Bangladesh

- Bangladesh will argue that the adoption of any equidistance-based methodology would be inherently unsafe and inequitable, and thus contrary to UNCLOS
- Prevent “cut-off” of coastal projection onto the Bay of Bengal that would follow from an equidistance line boundary. Eg - *North Sea Continental Shelf Cases: West Germany-Netherlands/Denmark* ICJ 1969; *Guinea-Guinea Bissau*, Arbitral Award, 1985; *Barbados-Trinidad and Tobago*, Arbitral Award, 2006
- Bangladesh may claim a territorial sea boundary with Myanmar on the basis of the 1974 “Agreed Minutes” and an EEZ/continental shelf boundary based upon the so-called “Friendship Line” (BUT note high legal threshold - *Nigeria-Cameroon*; *Guyana-Suriname*; *Nicaragua-Honduras*)
- Bangladesh also claims a violation by Myanmar of its obligation to make every effort to reach a provisional arrangement pending delimitation (Articles 74(3) and 83(3))

Bangladesh – effect of normal and straight baselines upon an equidistance line



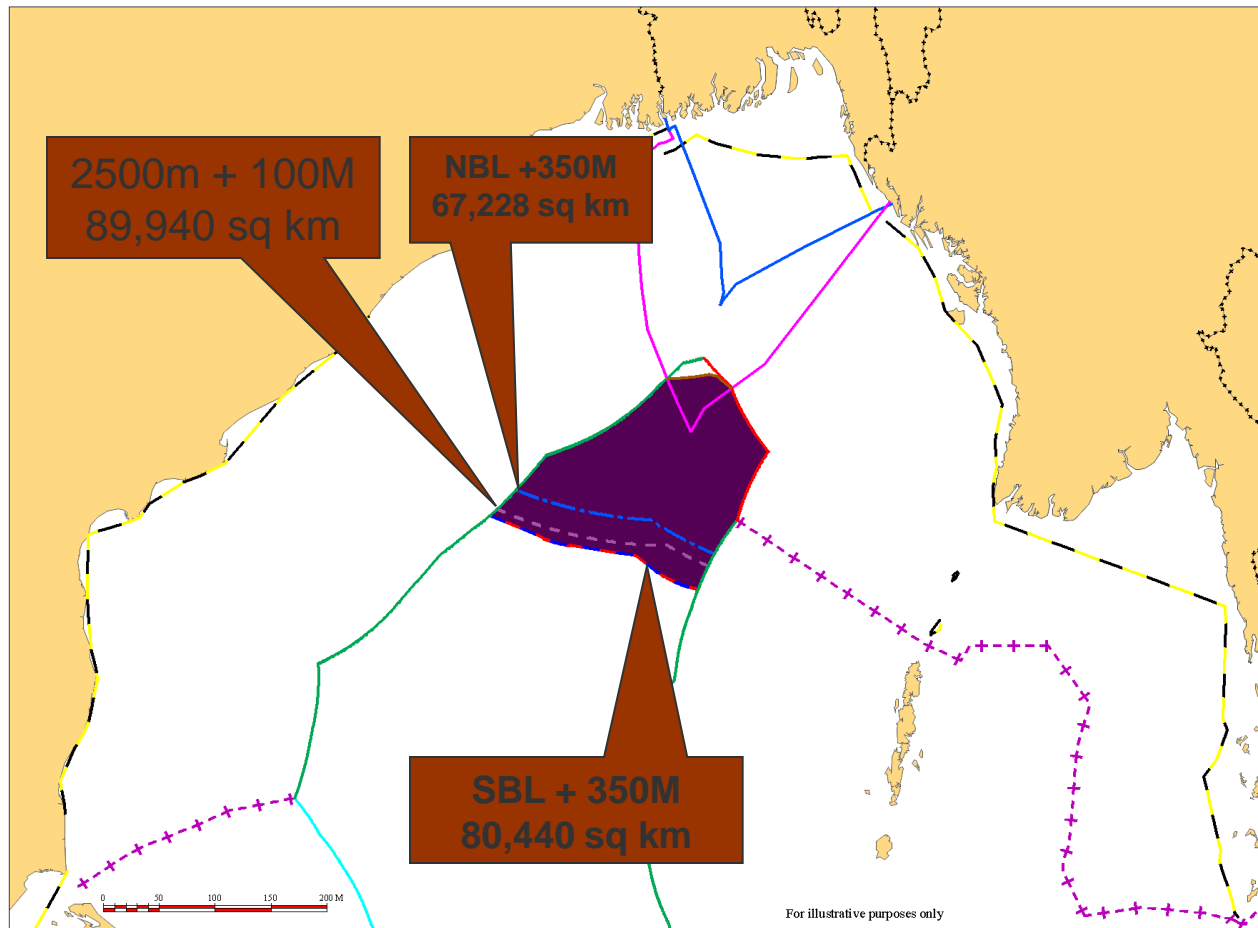
Offshore blocks – Oil and Gas exploration



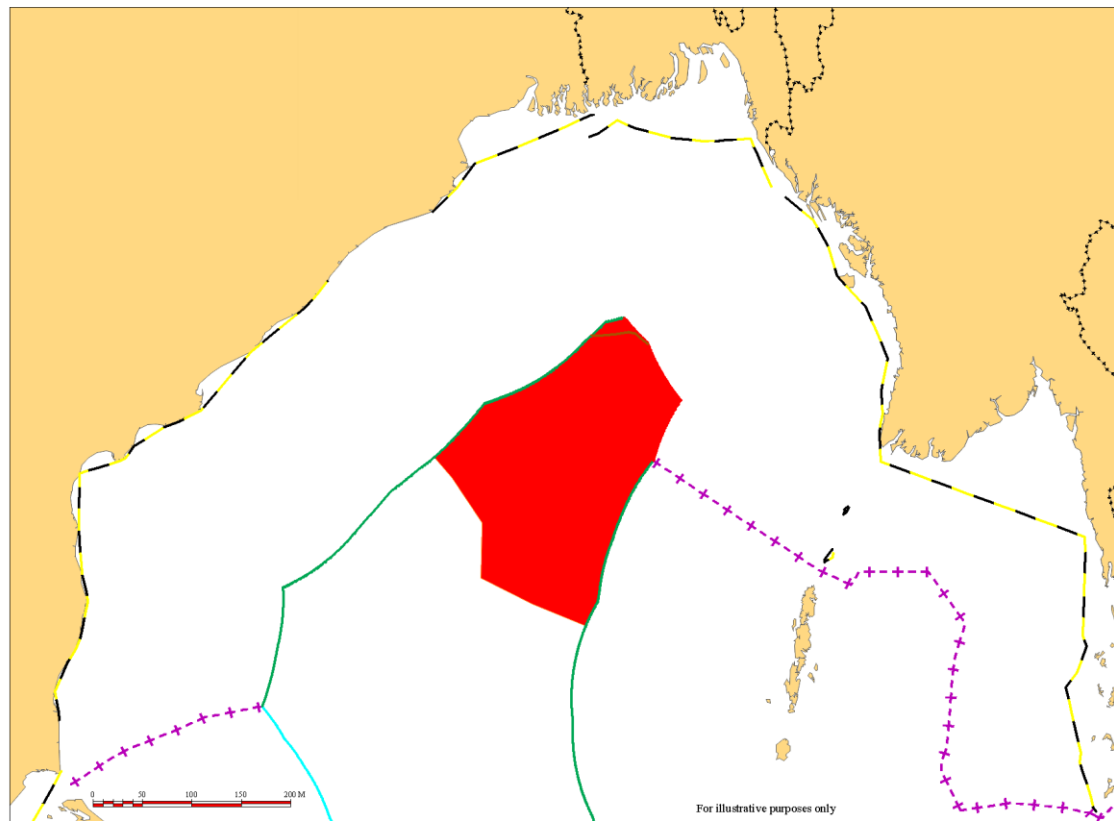
Outer Continental Shelf – Overlapping CLCS Submissions

- 16 December 2008 - Myanmar submitted information regarding the outer continental shelf in the Bay of Bengal to the Commission on the Limits of the Continental Shelf (CLCS)
- 11 May 2009 - India submitted its own information regarding the outer continental shelf in the Bay of Bengal to the CLCS
- Bangladesh will submit its CLCS claims by July 2011
- ITLOS and the Annex VII Tribunal are mandated with the delimiting any outer continental shelf boundaries between Bangladesh-Myanmar and Bangladesh-India in the Bay of Bengal
- Will there be any OCS boundary to delimit? If so, what methodology will be used?

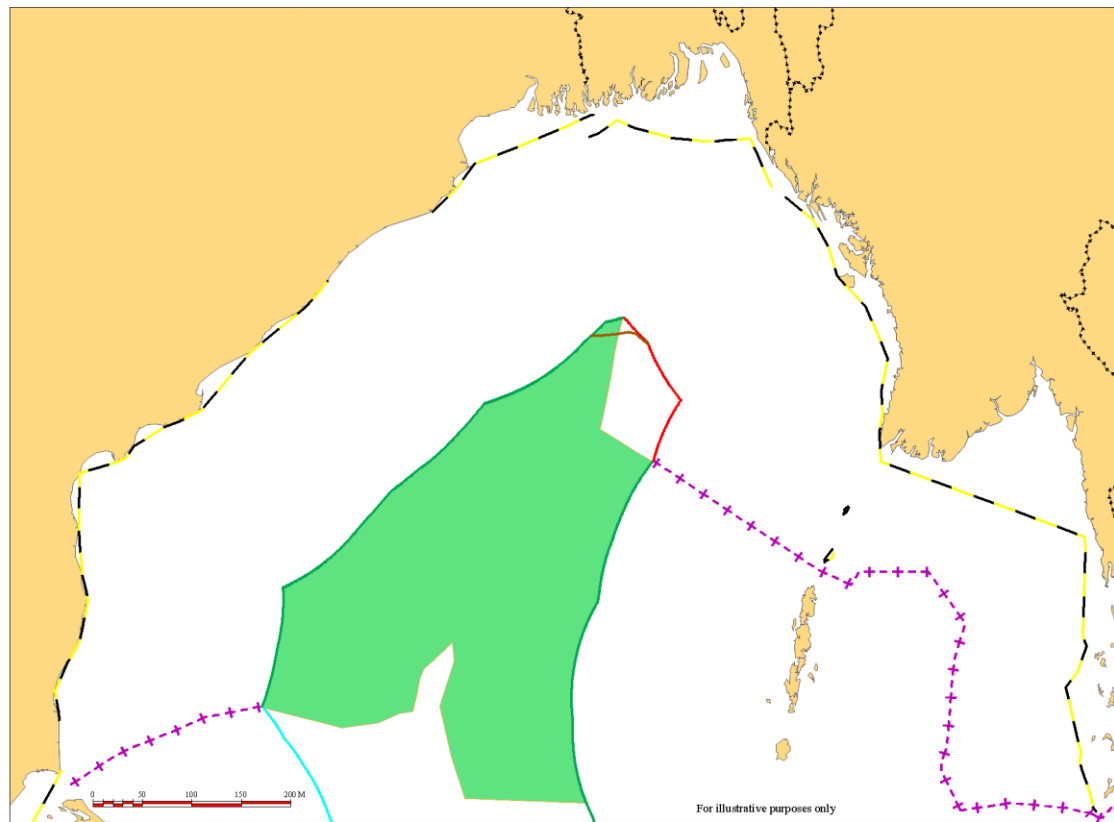
Bangladesh – Potential Outer Continental Shelf claim



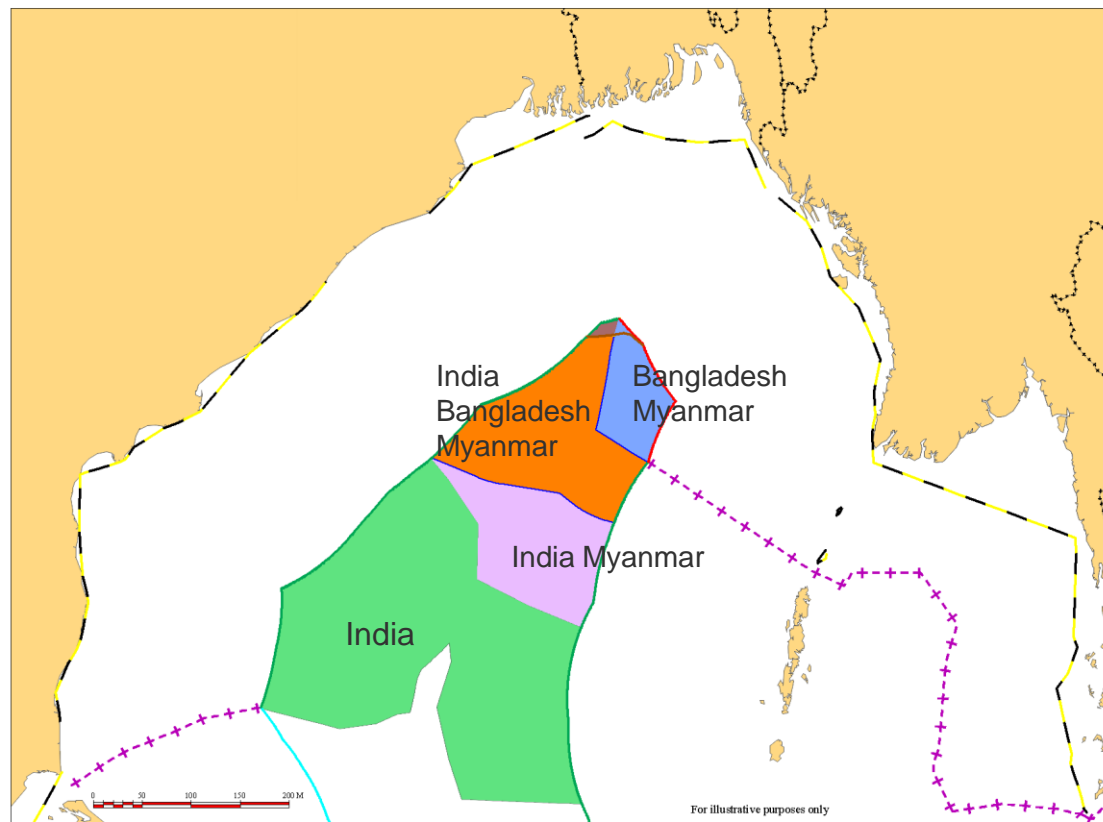
Myanmar – Outer Continental Shelf Claim



India – Outer Continental Shelf Claim



Competing Outer Continental Shelf Claims



Conclusion

- Fascinating and important cases raising many novel issues of substance and procedure
- So many outstanding questions:
 - How will delimitation be effected within the territorial sea/EEZ? Will equidistance/historical/other factors play a role?
 - What will be done about the Bangladesh straight baseline?
 - Will there be a need for any delimitation beyond 200M?
 - If so, what methodology will be used? And will there be an overlap between Bangladesh OCS and India/Myanmar EEZ?
 - Will ITLOS award compensation?
 - Will the two tribunals coordinate? Will they successfully resolve all outstanding delimitation issues in the Bay of Bengal?
 - How will ITLOS perform?