



**ITLOS's approach to the delimitation of the continental shelf  
beyond 200 M in Bangladesh/Myanmar: Theoretical and  
practical difficulties**

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**Panel 3: Recent developments in maritime boundary delimitation**

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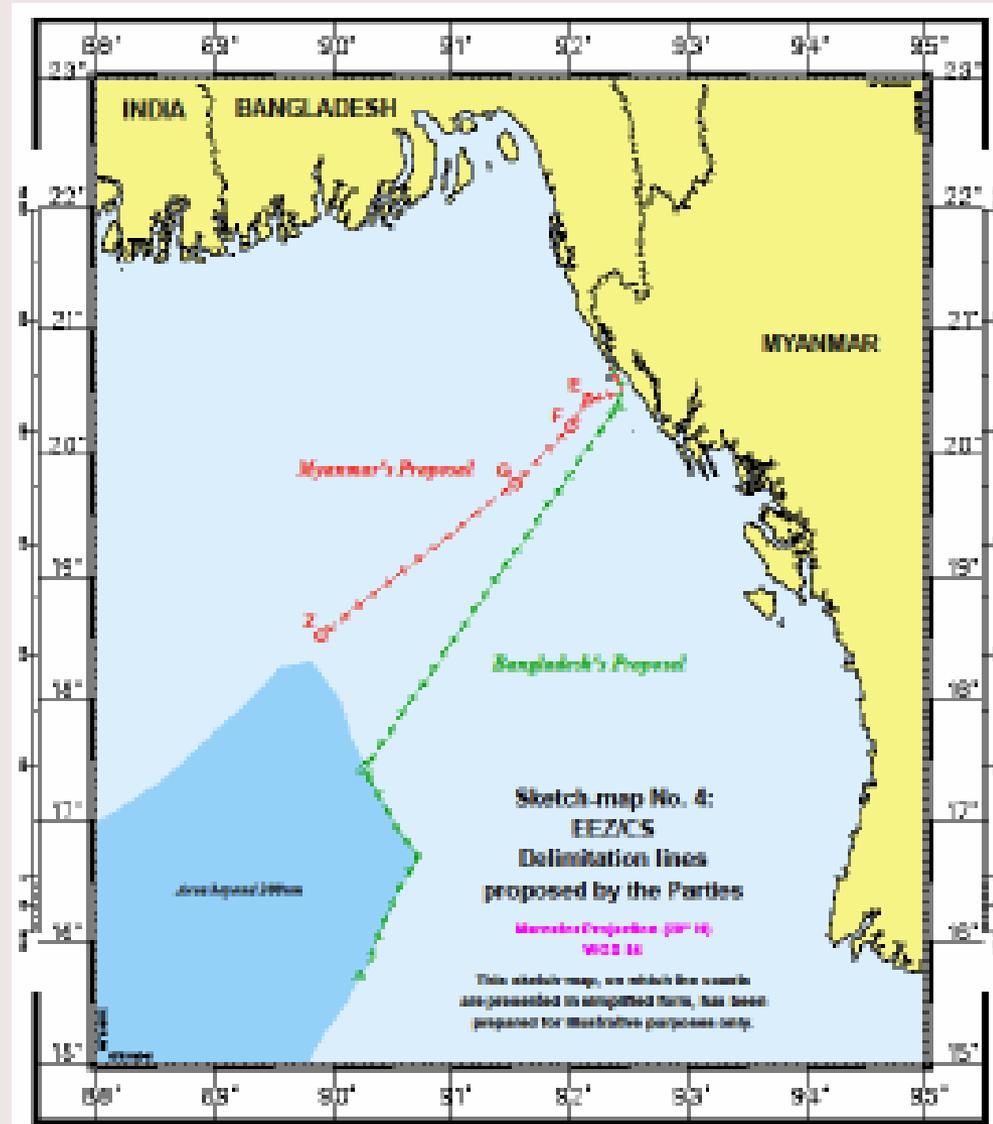


## Topics

- Judgment of ITLOS of 14 March 2012
- Background to the delimitation of the continental shelf beyond 200 M in Bangladesh/Myanmar
- The Tribunal's delimitation of the continental shelf beyond 200 M
- Evaluation of the Tribunal's approach
- The difficulty of applying equidistance as a provisional line: example Denmark/Greenland and Iceland
- Alternatives to the equidistance/relevant circumstances method?



- Location of the continental shelf beyond 200 M (area in darker blue)
- Boundaries proposed by Bangladesh (green line) and Myanmar (red line)





## Positions of the parties

- Myanmar
  - Bangladesh not entitled to a continental shelf beyond 200 M
  - Such an entitlement would be against the rights Myanmar enjoys automatically to a continental shelf within 200 M Myanmar's right to extend its exclusive economic zone to the outer limit of 200 M
  - Position based on the view that the continental shelf beyond 200 M of one coastal state cannot extend into the 200-M of another coastal state
  - Maritime boundary stops within 200 M
- Bangladesh
  - Bangladesh is entitled to a continental shelf beyond 200 M
  - Natural prolongation of Myanmar does not extend beyond 200 M
  - Maritime boundary follows the 200 M limit of Myanmar

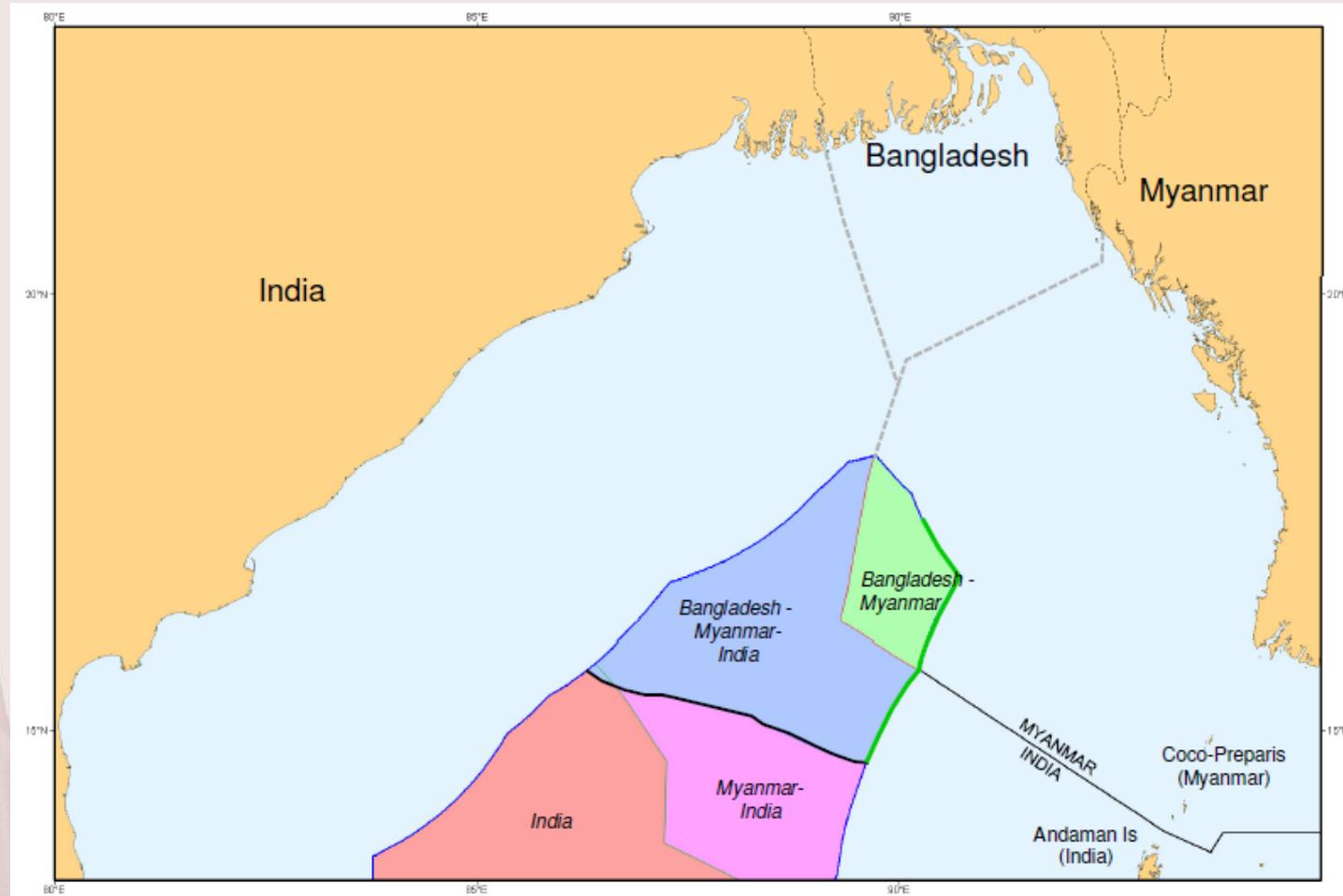


## Continental shelf beyond 200 M

- Bangladesh and Myanmar are parties to the United Nations Convention on the law of the sea (Convention)
- Article 76 requires coastal states to make a submission on the outer limits of their continental shelf beyond 200 M to the Commission on the limits of the continental shelf (CLCS)
- Myanmar made a submission to the CLCS on 16 December 2008
- Bangladesh made a submission to the CLCS in February 2011
- Large area of overlapping continental shelf beyond 200 M on basis of submissions
- No recommendations of Commission to either state; no certainty about extent of continental shelf



## Outer limits of the parties submitted to the CLCS



Adapted from R. Cleverly “Bisectors and Equidistance: Technical Aspects of Bangladesh-Myanmar” (ABLOS Conference 2012)

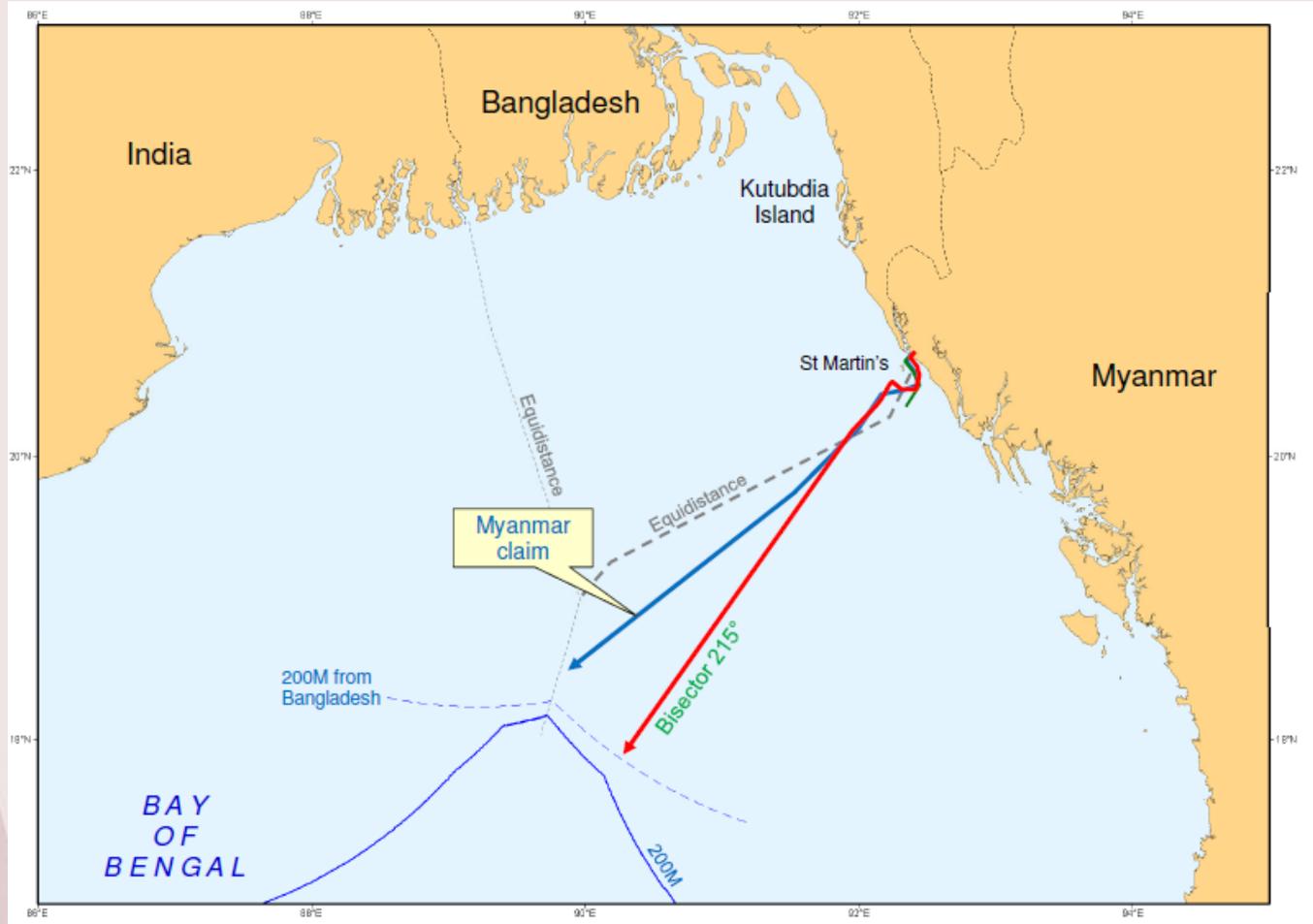


## Issues decided prior to ITLOS's addressing the delimitation beyond 200 M

- Location of the boundary within 200 M allows to also delimit a boundary beyond that distance
- 200-M zone does not take precedence over continental shelf beyond that distance
- Interpretation of article 76 indicates that both states have a natural prolongation beyond 200 M
- Absence of recommendations on outer limits beyond 200 M by CLCS does not prevent Tribunal from delimiting that area



# Delimitation line within 200 M



Adapted from R. Cleverly “Bisectors and Equidistance: Technical Aspects of Bangladesh-Myanmar” (ABLOS Conference 2012)



## The Tribunal's delimitation beyond 200 M (1)

- Article 83 of the Convention provides the applicable law:
  - “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.”
- “Article 83 applies equally to the delimitation of the continental shelf both within and beyond 200 [M]” (Judgment of 14 March 2012, para. 454).



## The Tribunal's delimitation beyond 200 M (2)

- Delimitation method to be employed: same as within 200 M
- Equidistance/relevant circumstances method
- Justifications:
  - Appropriate in the specific case
  - Linkage to basis of entitlement:

“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. This *should be distinguished from* the question of the object and extent of those rights, be it the nature of the areas to which those rights apply or *the maximum seaward limits specified in articles 57 and 76 of the Convention*” (Judgment of 14 March 2012, para. 455; emphasis provided).

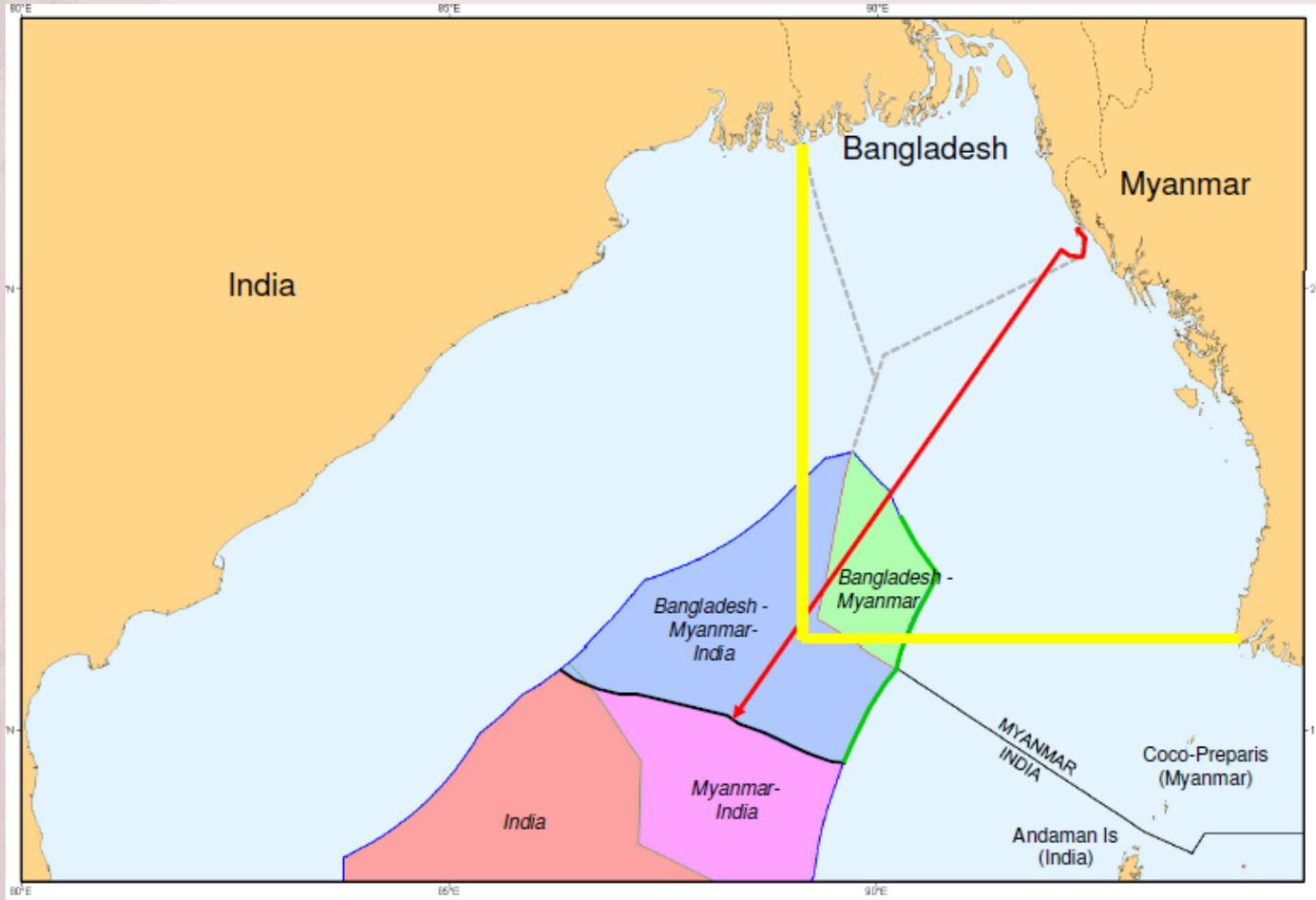


## The Tribunal's delimitation beyond 200 M (3)

- Examination of relevant circumstances presented by Bangladesh:
  - “Most natural prolongation” argument rejected
  - Continued impact of concavity of coast of Bangladesh accepted
  - Tribunal extends the boundary within 200 M along the same azimuth beyond that distance
- Proportionality test: no disproportionality between ratios of relevant coasts and division of the relevant maritime area



# Relevant area, boundary and extent of continental shelf



Adapted from R. Cleverly “Bisectors and Equidistance: Technical Aspects of Bangladesh-Myanmar” (ABLOS Conference 2012)



## An evaluation of the Tribunal's approach (1)

- Findings on article 83 of the Convention:
  - Article 83 of the Convention is silent on the content of the substantive rules to be applied, but only refers to the result that is to be achieved.
  - The attainment of this result may require applying different principles and rules within and beyond 200 nautical miles.



## An evaluation of the Tribunal's approach (2)

- Findings on method (equidistance/relevant circumstances):
  - Appropriate for the specific case – why this emphasis in light of general applicability of the method because of it being rooted in basis of entitlement?
  - Approach to linkage to entitlement different from that of ICJ. ICJ in *Libya/Malta* justified use of equidistance line because of its linkage to the *specific* basis of entitlement in that case, distance from the coast
  - Tribunal severs this specific linkage and does not focus on equidistance in itself but on the combined rule of equidistance/relevant circumstances
  - Is that combined rule really linked to the basis for entitlement as defined by the Tribunal in a way that other methods are not?



## An evaluation of the Tribunal's approach (3)

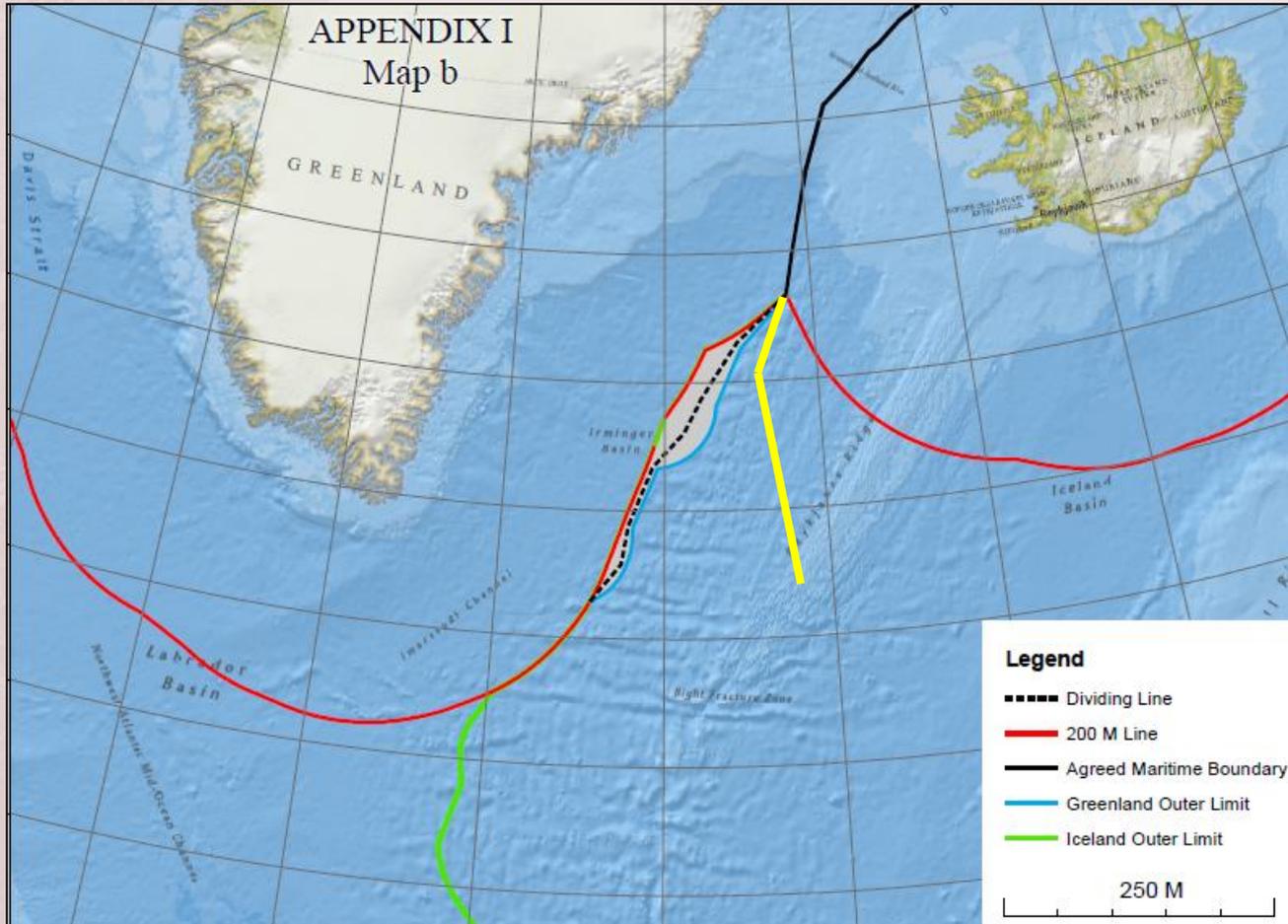
- Evaluation of relevant circumstances by Tribunal:
  - Rejection “most natural prolongation”: entitlement exists or not
  - Acceptance of relevance of concavity: logical as geography within and beyond 200 M does not change; extent of adjustment of provisional equidistance line would seem to raise some questions



## An evaluation of the Tribunal's approach (4)

- Proportionality test
  - Tribunal's approach based on broader context – consequences of equidistance line caused by fact that Bangladesh's coast forms a concavity in between two other States
  - In carrying out proportionality test Tribunal may have lost broader context from view:
    1. Extent of continental shelf beyond 200 M of the parties
    2. Potential cut-off of the continental shelf beyond 200 M of Myanmar

## Equidistance may not provide an appropriate starting point



Dividing line is provisional; final outcome depends on outcome of article 76 process

Source: Agreed Minutes on the delimitation of the continental shelf beyond 200 nautical miles between Greenland and Iceland in the Irminger Sea of 16 January 2013 (equidistance line (yellow; approximate) added)



## Alternatives to equidistance/relevant circumstances method?

- “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” (*North Sea continental shelf* cases, judgment of 20 February 1969, para. 101(C)(1))



## Implications of applying the “North Sea” rule

- In specific cases equidistance may still provide a starting point
- Otherwise consider other provisional method or proceed directly to balancing all relevant circumstances
- Extent of continental shelf beyond 200 M needs to be taken into account
- Uncertainty about extent of continental shelf:
  - Order parties to agree to the CLCS considering their submissions
  - Formulate applicable rules/identify relevant circumstances without establishing delimitation line
  - Apply “Nordic solution” (applied between Denmark/Greenland and Iceland and between Norway, Iceland and Denmark/Faroe Islands)