

Maritime boundary with India: Tough days ahead

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THE International Tribunal for the Law of the Seas (ITLOS) in Hamburg, Germany, gave its judgment on the maritime boundary dispute between Bangladesh and Myanmar (Case 16), on March 14, 2012. The judgment was according to Article 287 of the United Nations Conference on the Law of the Sea of 1982 (UNCLOS III), which states that member states can settle their disputes through any of the following means:

- (a) The International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) The International Court of Justice;
- (c) An arbitral tribunal constituted in accordance with Annex VII;
- (d) A special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

The judgment given according to Article 287(a) was binding to both the conflicting parties. The tribunal's judgment settled disputes with Myanmar; but with India the matter is yet to be settled. India's claim overlaps some of our shallow and deep sea blocks within and beyond 200 nautical miles (nm) from our baselines. Bangladesh's objection to Indian claim was filed with the UN's Permanent Court of Arbitration based in The Hague, Netherlands as per Article 287(c). The arbitration with India is expected to be settled in 2014; but to obtain a just solution to the disputes Bangladesh faces very tough days ahead.

Law of the Sea

The present day Law of the Sea is the outcome of United Nations Conference on the Law of the Sea of 1958 (UNCLOS I), UNCLOS II of 1960 and UNCLOS III of 1982. According to the UNCLOS III, Articles 3 and 15, every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nm, measured from baselines in the line of low water tide along the seashore of a state. As per Article 17, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea. Article 33 gives authority of a state on certain other matters to further 12 nm called Contiguous Zone. Article 55 allows an Exclusive Economic Zone, an area beyond and adjacent to the territorial sea, where the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources. As per Article 57, this exclusive economic zone shall not extend beyond 200 nm from the baselines. UNCLOS III of 1982 in Article 76 gives rights to the coastal states to own some more areas

beyond the exclusive economic zone, called the Continental Shelf.

Bangladesh baselines:

The Bangladesh coast from its boundary with India on Hariabhanga estuary to Kutubdia consists of many rising islands of mud. This is because about 1,400 million metric tons of silt is being carried down annually by the Bangladeshi rivers from their upper catchments, of which the major amount is deposited into the sea. As there is no definite shoreline, Bangladesh drew its boundary limits with India by following the silt flow line from Hariabhanga estuary to the Swatch of No Ground, and then another line along the 180 degree azimuth southward. India wants to continue the silt flow line southward from Hariabhanga, which cuts across the exploration blocks of Bangladesh in the shallow and deep seas. It may be mentioned that maritime cartographer V.L. Forbes drew the maritime boundary of Bangladesh with India by one straight line from Hariabhanga estuary along 180 degree azimuth southward.

The Tribunal for Bangladesh and Myanmar drew (para 202, 204) baselines for both the countries. For Bangladesh, one line was from Mandarbaria Island (east of Hariabhanga estuary) to the Kutubdia Island and the other from Kutubdia to Naf River (land boundary terminus with Myanmar). Figure 1 shows the baselines and the sketch map of the relevant area under dispute drawn by the tribunal. The western boundary of the relevant area is drawn by a straight line from the Mandarbaria point towards south along 180 degree azimuth. The relevant area is estimated 283,471 sq km on the sea, of which Bangladesh was awarded 111,631 sq km and Myanmar 171,832 sq km areas.

Exclusive economic zone and continental shelf:

Bangladesh argued in ITLOS Case 16 that (para 213), on account of the specific configuration of its coast in the northern part of the Bay of Bengal, and of the double concavity characterising it, the Tribunal should

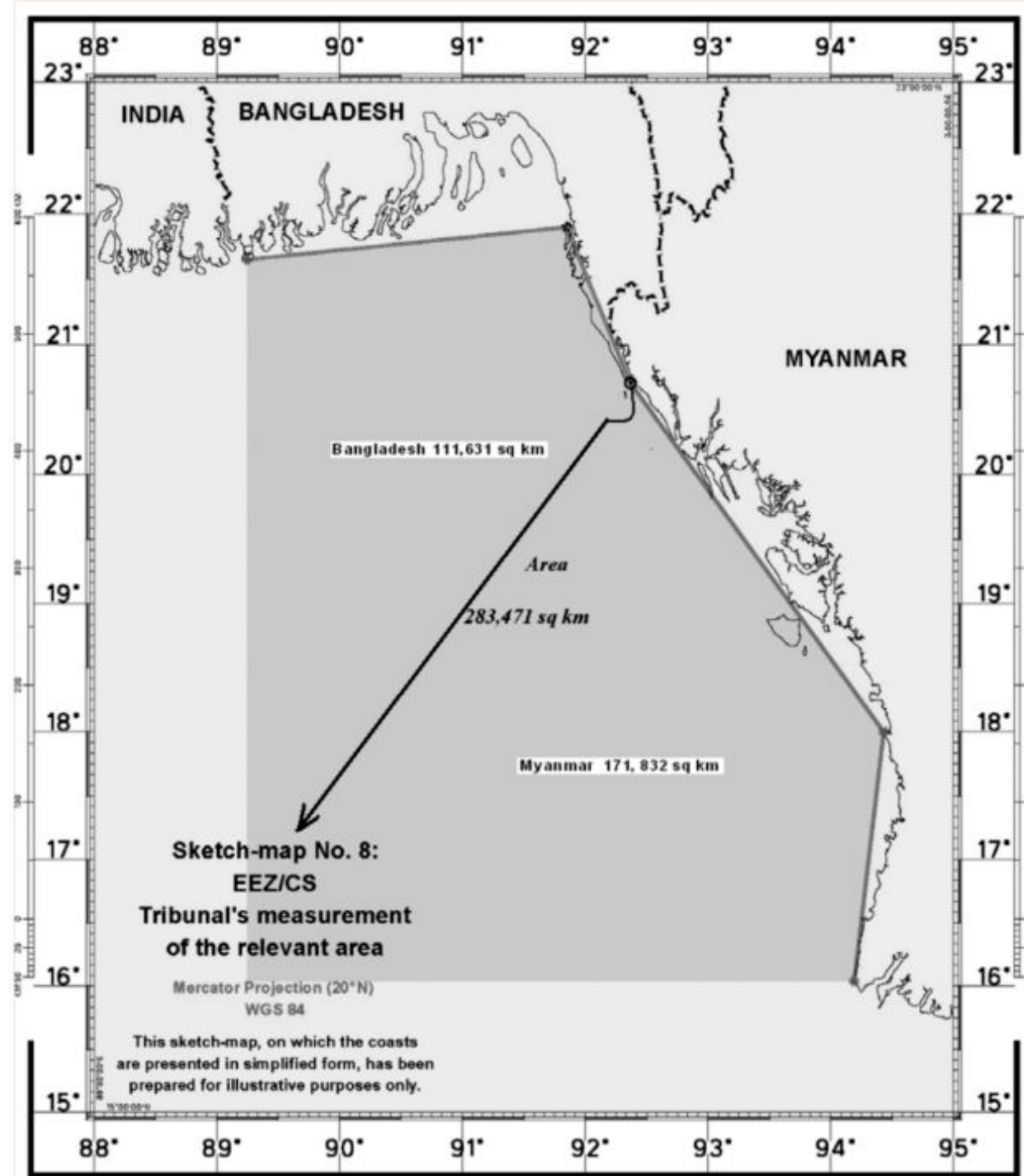


Figure 1: ITLOS Delimitation Line & Relevant Areas

however decided to deflect the equidistance line (para 340) for delimitation of the continental shelf, in view of the geographic circumstances of the case (para 329), to 215 degree azimuth to the southwest. The tribunal's final judgment (paragraphs 500-505) states that the delimitation line along 215 degree azimuth shall continue until it reaches the area where the rights of third states may be affected.

Delimitation of maritime boundary with India:

Comparing Figures 1 and 2 we can see that, though the Tribunal awarded 111,631 sq km area to Bangladesh, some part of it is claimed by India. How can we tackle this situation? Claiming on the basis of angle-bisector method, i.e., bisecting the angle formed by Indian coastline from Hariabhanga to Debi Point and Bangladesh coastline from Hariabhanga to Naf River, we shall arrive on the same line of India's claim. So to arrive at an equitable solution, we must argue on the basis of natural prolongation (Article 76 of UNCLOS III).

To arrive at an equitable solution to the maritime boundary disputes with India and to get entry to the high seas from our own waters, we have to produce a correct bathymetric map of the Bengal depositional system. Not only that, we should argue that India has no right anywhere to the east of Swatch of No Ground, as sediment from Indian territory does not reach there. If we miss this line, any solution, either on a compromise with the Indian claim or keeping the boundary line drawn by ITLOS, shall lead us to a sea lock position somewhere within or beyond 200 nm of our continental shelf. But however, use of the superjacent waters of one country by another country for some specific purposes, i.e., navigation and over-flight, laying of submarine cables and pipelines, etc., remain allowed as per articles 56, 58, 78 and 79, and in some other provisions of the UNCLOS III. As per ITLOS judgment, use of the "Grey Area" inside Bangladesh sea is similarly provided to Myanmar by its observations made in para 475. These provisions do not allow extraction or use of the resources by Myanmar or any other country [Art 79(4)] either under the bed or in the superjacent waters of the "Grey Area."

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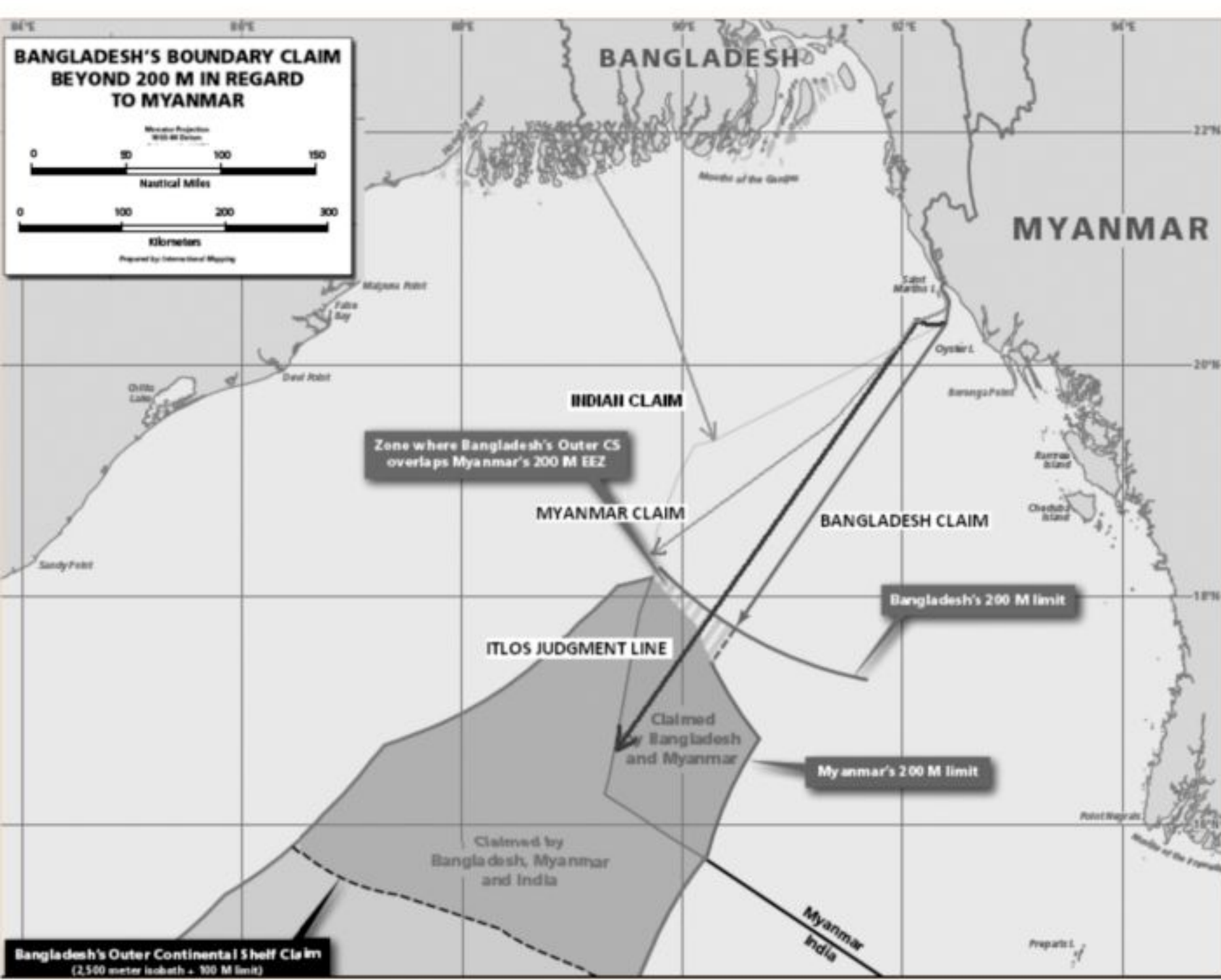


Figure 2: India, Bangladesh and Myanmar's Claims and the Delimitation Line

apply angle-bisector method in delimiting the maritime boundary between Bangladesh and Myanmar. Bangladesh claimed (para 217) its exclusive economic zone (EEZ) and the continental shelf (CS) by a delimitation line through the angle-bisector method, specifically through 215 degree azimuth line from 12 nm south of the St Martins Island. The tribunal, limiting to 12 nm Territorial Sea around St Martins Island (para 337), shifted the end of Bangladesh baseline at the outfall of Naf River. The tribunal

SHIFTING IMAGES

"Oh, the *thinks* you can think"



MILIA ALI

AS I mentally sieved through topics for an appropriate New Year column, an interesting idea came to my mind. Rather than follow the common practice of recapping the pivotal events and occurrences of the past year, why not provide the readers with an untrammelled wish list for 2013?

Here are some of my favourite items on the list:

At the global level, I would want President Obama to end all wars and engage the "adversaries" in a substantive dialogue leading to durable peace. There is also the wish that the Palestine-Israel conflict is resolved amicably. This may seem like wishing for an elephant to pass through the eye of a needle. But, as I noted at the outset, we are treading the land of imagination that permits us the possibility of thinking the impossible!

It's my fervent desire that in 2013 terrorism and religious violence ends, or at least begins to wind down significantly. This would permit the Malalas of the world to attend school without the fear of being killed by fanatics. Women would become productive members of society, and minorities would begin to enjoy full rights as citizens. Obviously, these are lofty goals with no concrete actions tied to them. May be, but isn't it true that all practical initiatives are spawned by an inner desire for change?

High on my 2013 wish list is the expectation that the world becomes a more equitable and fair place. The yawning gap between the haves and have-nots should narrow. We need more jobs created for the youth and effective social programmes for the economically vulnerable. At the same time, I wish that private charitable contributions should surpass all previous records in a bid to alleviate poverty: an indication that there is more empathy flowing between the imbalanced social segments.

I also have a few New Year wishes for Bangladesh. My most ardent wish is that in 2013 we rekindle the true spirit of 1971, which caters to serving the masses not only the elites, which promises equality before the law, accountability at all levels, and freedom to practice one's religion. More specifically, it is my prayer that there will be no more workers burnt to death in unsafe factories, citizens will not be murdered in full public view without any "real" consequences for the perpetrators of these heinous crimes, and that places of worship will not be desecrated like the unpardonable violence in the Buddhist temples.

It's my ardent wish that in the coming year Bangladesh politicians will forsake their petty wrangling and focus their energy on serving the people who elected them. We all know that the extreme polarisation and divisiveness in the country are sapping the energy and talent of the nation. Can I aspire for the "unimaginable?" That in 2013 there will be a moratorium on hartals, political mudslinging and tit-for-tat actions?

Another 2013 wish is that Bangladesh's economic prosperity accelerates. This is not mere wishful thinking since this year Bangladesh has been identified as an "emerging economy" with strong business potential. It's heartening that the hard work and entrepreneurial talent of Bangladeshis have begun to make a dent in the world perception of a country, which started off as a "basket case." I hope that in 2013 the country reaps its full economic potential.

Of course, we all wish that 2013 will be the year when work on the much-awaited Padma Bridge will begin. To make this a reality the political leadership needs to drop its posturing and become more transparent, committed and accountable.

Oh, but how can I forget the cultural scene which defines the Bangladeshi identity? I hope that in 2013 Bangladesh is recognised as a cultural leader in South Asia. Great progress was made in 2012 when the Bengal Foundation replicated the Kolkatta Dover Lane experience by organising a superb music festival in Dhaka. It enabled music lovers from all strata of society to enjoy classical music, unfettered. Similarly, the Dhaka Hay Festival matched the literary events in Jaipur, Hong Kong and Karachi. Let's build on this success and put Bangladesh on the cultural map of the world.

As an avid cricket fan, I sincerely want 2013 to be the Year of the Tigers. The phenomenal progress that the talented team has made over the last two years must be sustained. Also, the nation's youth need their cricket team to give them a sense of pride in a country that has disappointed them in some ways.

Finally, it's my ardent wish that in the coming year politicians will forsake their petty wrangling and focus their energy on serving the people who elected them. We all know that the extreme polarisation and divisiveness in the country are sapping the energy and talent of the nation. Can I aspire for the "unimaginable?" That in 2013 there will be a moratorium on hartals, political mudslinging and tit-for-tat actions?

Bangladesh, we fought for you when you and your people were ravaged by a foreign enemy. Please don't let your home-grown problems destroy you! Let 2013 be the year for recharging the ideologies based on which this nation was created.

The writer is a renowned Rabindra Sangeet exponent and a former employee of the World Bank.

The world nearly ended



DID you know the world nearly ended last week? Two submarines carrying nuclear bombs crashed into each other. Luckily, the bombs didn't go off. Had they exploded, there was a good chance they would have triggered a war which would have destroyed the world. Which would have put a dent in my plans for a weekend of major vegging-out. "Even cars have collision detectors," I mused out loud. "So how can submarines collide in a space as big as an ocean?" My mentor paused in his glass-polishing to share my puzzlement. "It does seem odd," he agreed.

"Especially since the Atlantic Ocean is 82 million square kilometres in size."

I blinked. Eighty-two million square kilometres! That's bigger than my apartment. It's bigger than my boss's desk. It's bigger than Russia and Canada and China and the US put together. It's bigger than my ego, possibly.

Imagine the whole of Asia cleared of buildings and turned into a massive flat plain. (I believe several property developers are actually planning to do this.) Put two tricycles on it, one in Siberia, and the other in south India, and tell them to ride around at random. Now imagine the two trikes colliding. Bump! "Oops, sorry, didn't see you there."

It's rare to see my mentor flummoxed, so I decided to track down some answers.

There are more than a dozen submarine drivers (pilots? skippers? admirals?) living in Asia, so it didn't take me long to find one. He was a surprisingly short British gentleman who didn't wish to give his full name, but said I could refer to him as Lieutenant Commander S (Ret'd) of the British Royal Navy. He'd read the same article about the British and French subs colliding.

"Interestingly, the French surfaced immediately and went back to France for lunch, thus rendering

their secret nuclear deterrence a little redundant," he said. "The Atlantic is a very big pond and it was exceptionally unlucky for the boats to be in the same space of water. There again, one-in-a-million shots seem to come up nine times out of ten."

His words reminded me that one often comes across coincidences at sea. Anyone remember "Futility" by Morgan Robertson? It was a 1898 novel in which a state-of-the-art ocean liner on its way to New York hits an iceberg on a calm April night. Many die because of a shortage of lifeboats. In the book, the ship is called The Titan. Yes, it's the story of the Titanic, minus Kate and Leonardo (and much better for it).

Incidentally, Morgan later wrote a book about a war which starts with a Japanese sneak attack in Hawaii. I'm hoping that one day a third novel by him is discovered, about a non-entity working on newspapers in Asia who becomes incredibly rich.

In the meantime, there's a second-hand Mercedes with a collision detector in the car lot near my house. If the British or French navies would like it, just give me a call. I'll get you a good price.

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