

MARITIME BOUNDARY WITH INDIA

VERDICT FROM THE PERMANENT COURT OF ARBITRATION

M. INAMUL HAQUE

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 given 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.

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). Indian claims overlapped some of our shallow and deep sea blocks within and beyond 200 nm from our baselines. The Permanent Court of Arbitration (PCA) gave verdict on July 7, 2014 on maritime disputes between India and Bangladesh.

Law of the Sea

The present 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 & 15, every State has the right to establish the breadth of its Territorial Sea up to a limit not exceeding 12 nautical miles, 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 nautical miles called Contiguous Zone. Article 55 allows an Exclusive Economic Zone, an area beyond and adjacent to the territorial sea, where the coastal

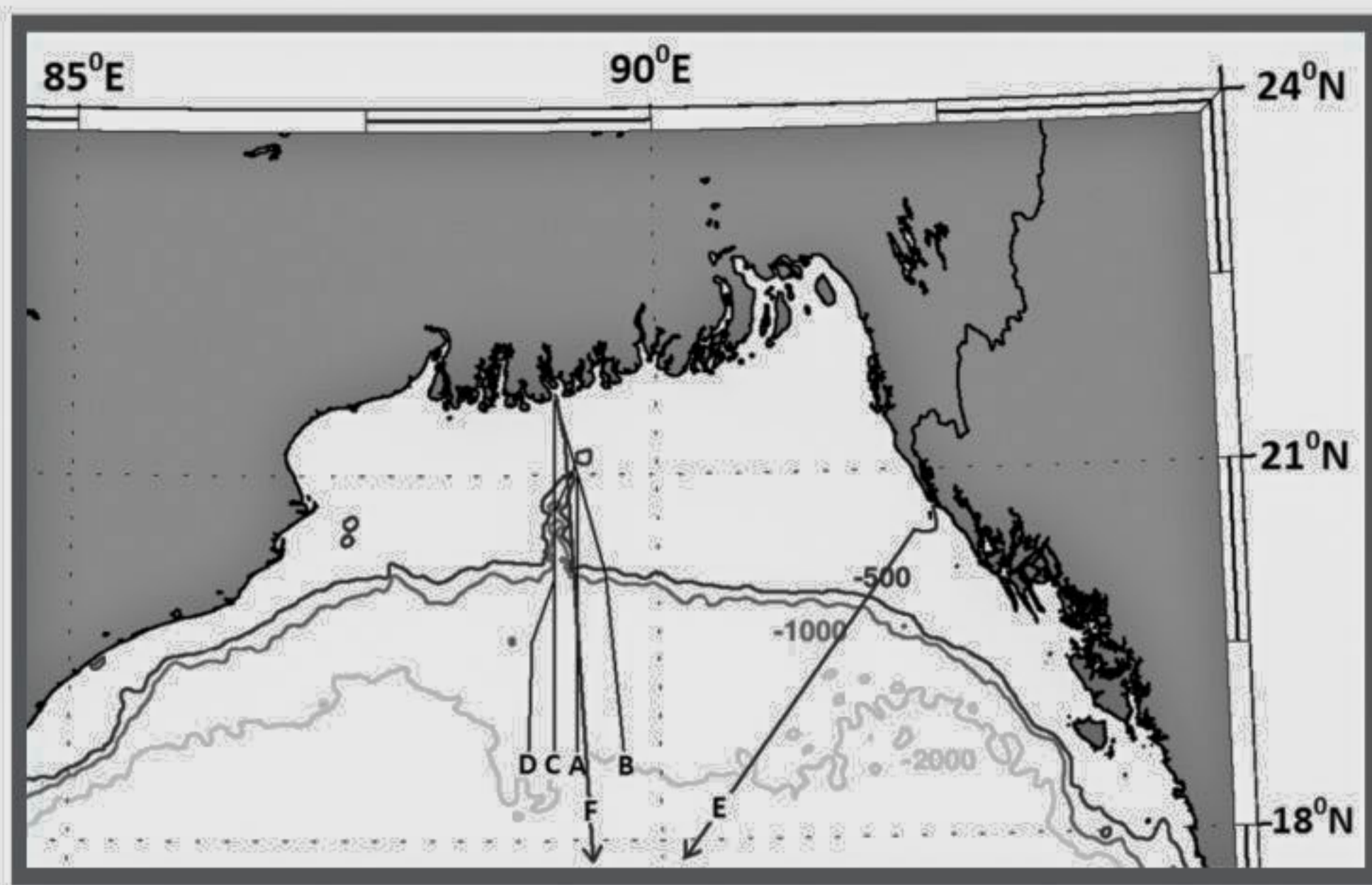


Figure 1: Bathymetry of the Bay of Bengal (Smith & Sandwell 1997) with Demarcation Lines

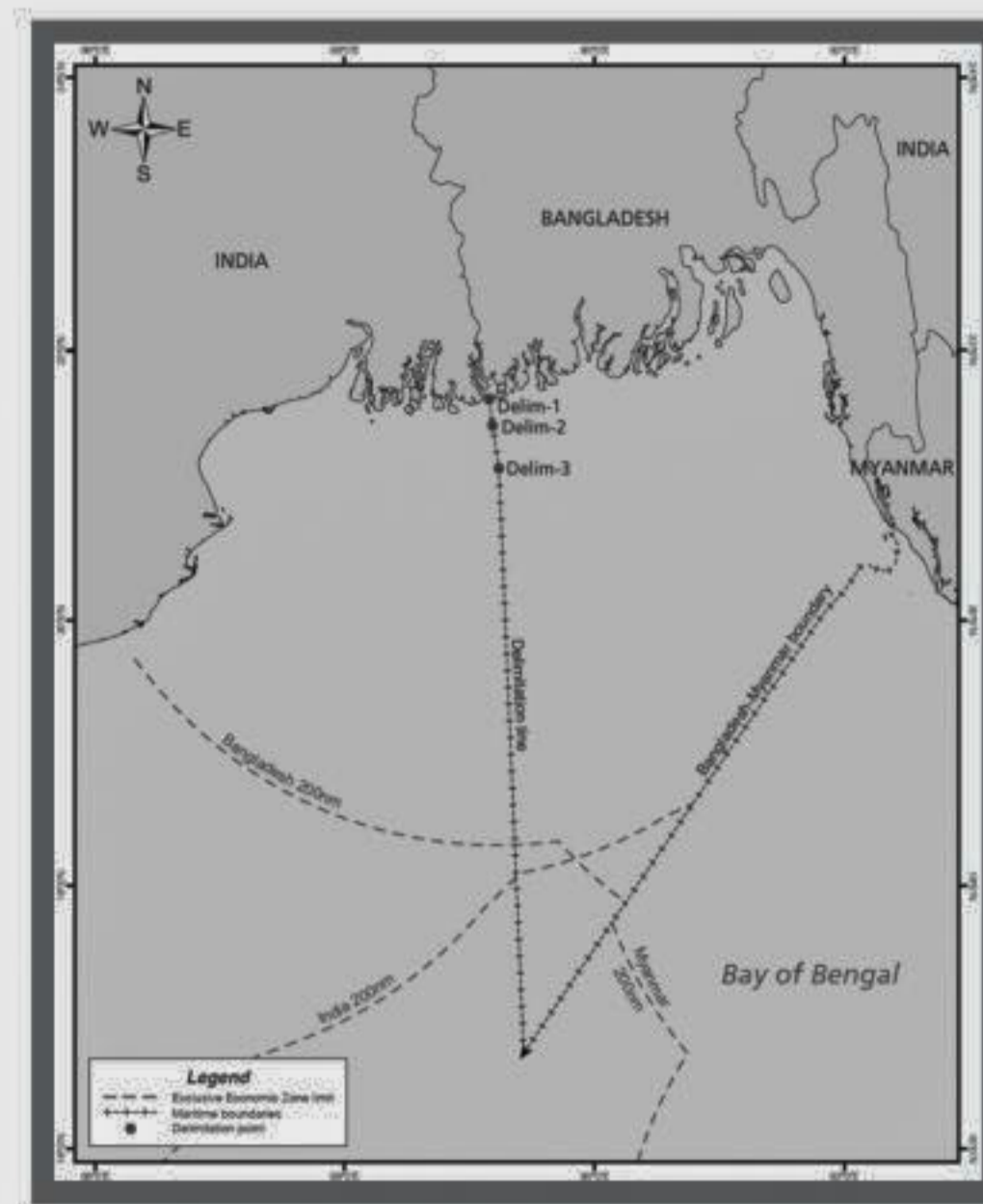


Figure 2: PCA & ITLOS Delimitation Lines

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 nautical miles from the baselines. UNCLOS III of 1982 in its 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 during 1980s 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 (Line A Figure 1). India wants to continue the silt flow line southward from Hariabhanga, which cuts across some exploration blocks of Bangladesh in the shallow and deep seas (Line B Figure 1). 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 (Line C Figure 1).

The Tribunal for Bangladesh & 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). The western boundary of the relevant area was drawn by a straight line from the Mandarbaria point towards south along 180 degree azimuth (Line C Figure 1). The relevant area was 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 & 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 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 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 (Line E Figure 1).

Maritime Boundary with India

Though the Tribunal in Hamburg awarded 111,631 sq km area of the Bay of Bengal to Bangladesh, some part of it was claimed by India. We argued on natural prolongation stated as per Article 76 of UNCLOS III on the basis of bathymetric map of the Bengal depositional system. On that argument, India has no right anywhere to the east of Swatch of No Ground (Line D Figure 1), as sediment from Indian Territory does not reach there.

The verdict given by the PCA in The Hague on maritime disputes between India and Bangladesh is roughly shown by the line F in Figure 2. This verdict (Article 509) has fixed three delimitation points from the land boundary terminus: (1) 21°38'40.2"N, 89°09'20.0"E (2) 21°26'43.6"N, 89°10'59.2"E & (3) 21°07'44.8"N, 89°13'56.5"E. From the third point it will be along a geodetic line that has an initial azimuth of 177°30'00" until it meets the Bangladesh Myanmar delimitation line. According to media reports, Bangladesh could keep 19,467 sq km out of India's claim of 25,602 sq km of area. The verdict arrived with four votes to one as Dr. P.S. Rao concurring in part and dissenting in part.

Though this verdict (Figure 2) has given an equitable solution to the conflicting parties, it has led Bangladesh to a sea lock position somewhere beyond 200 nm of its Continental Shelf. In that case we have to go to the high seas through neighbour's waters. 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 UNCLOS II.

The writer is Chairman, Institute of Water & Environment, Email: minamul@gmail.com

Universally accessible pension system

MOHAMMAD TOWHIDUL ISLAM

THE fear of losing his pension was one of the two concerns that led Krishnadayal not to reveal the identity of his adopted son in Rabindranath Tagore's *Gora*. Krishnadayal's concern for his hard-saved pension was not atypical among the elderly people of Bengal since in many cases it was the only source of earning for ageing educated parents in those days. In fact, his concern is timeless. To get rid of the concern, pension offers indispensable financial assistance to people in the post-employment period of their life. To magnify the importance of pension, Thomas Piketty even claimed that "[a]long with access to education and health, public pensions constitute the third social revolution...." (Thomas Piketty, *Capital in the Twenty First Century*, 2014, HUP).

Though our elderly people are concerned about their savings and pensions, our pension system does not attract much attention from policy makers. In 1997, the Asian Development Bank (ADB) report on Bangladesh pension system concluded that the pension sector in Bangladesh was "in a nascent stage of development with a weak regulatory

and operational framework." The neglect in development and renovation of the old pension system is due to our ignorance about gaining the benefits that a modern, professionally run pension fund can offer to our economy and society. The country's limited economic and institutional capacity is also a hurdle in exploitation of pension benefits.

Our fossilised regulatory framework for pension system dates back to 1871 when the Indian Pension Act was passed to give native employees of the British government pension upon their retirement. This Act was carefully crafted to fit with the peculiar situation of British India. It provided no system at all for the people in general nor ever intended to form the basis for a modern pension system. But unfortunately, our whole pension system is built upon the foundation it provided and all subsequent laws were passed without even feeling the necessity to review its operational merits in a changing society.

Traditionally, the pension system of many developed countries is divided into three pillars: public pensions, occupational pensions and individual pensions. As a shift from this categorisation, the World Bank proposed a different pension system also named as 'three pillars' in its 1994 report *Averting the Old Age Crisis*. The three

pillars include mandatory publicly managed pillar, mandatory privately managed pillar and voluntary pillar. One of the fascinating features of this system is that it applies equally to public and private sector employees.

The first pillar of this multi-pillar system is an anti-poverty pillar which is financed by the government from tax revenue, and its benefit goes directly to the people with low income and little assets. This pillar is aimed at achieving redistributive and reinsurance goal at the lowest cost. However, the plausibility of such a fund may raise a debate in Bangladesh where a vast majority of people will seemingly be eligible for this scheme, which would require the government to build a preposterously big fund.

The second pillar is the most important among the three, and it prompts most controversies too. It is also a mandatory pillar but unlike first pillar it is fully funded and privately managed, though extensive government regulation is also present. This pillar assumes a 'capitalised system' in which the contributions of the participants are invested, preferably in financial market, to get a higher rate of return and to replace the pay-as-you-go system. But Thomas Piketty warns that the return on capital is too volatile in real world scenario. (See his illuminating discussion in *Capital in the 21st*

Century, pp. 487-90). Also, one might question the possibility of better performance of such a privately managed fund in a country where scarcity of skilled fund managers is apparent, and orchestrated market booms and crashes are easily possible. The World Bank report, however, vaguely addressed this issue by presuming that "extensive regulatory capacity" can or may "keep the investment companies financially sound." The third is more of a supplementary savings pillar voluntarily participated by those who want to save more for their unforeseeable future. Self-employed people also can contribute in this fund. The World Bank report prescribes that the multi-pillar system "should have better-targeted redistributions, more productive savings, and lower social costs." Creating three different pillars for pension is like putting apples in different baskets to reduce the risk in an uncertain world.

To face the uncertain world challenge, Bangladesh has already secured some certainty by providing a limited 'safety net' fund, a pension fund system predominantly for public sector employees. However, no voluntary pension fund as such exists in Bangladesh to offer more choices as mentioned above covering private and informal sectors. The Constitution of Bangladesh contains fundamental responsi-

bilities encompassing economic, social and cultural rights. Amongst them, Article 15(d) has made it a fundamental responsibility of the State to secure citizen's right to social security." But with a rudimentary pension system that already exists and extends its service only to a limited class of employees, it is not possible to ensure social security.

To establish social security, the fundamental responsibility provisions of the Constitution and the traditional wisdom can be taken into consideration. Traditional wisdom tells us that a pension is "the fortune of those who have no fortune." In a country where most people live in poverty, a capacious pension system is needed to give them the blessings of "fortune." Further, in considering the essentiality of pension, Article 15(d) of the Constitution can be interpreted to cover pension as a basic human right. This can help introduce compulsory private pension funds by assimilating largely utilitarian commercial funds management with the philosophical foundations underlying human rights law. Given this, the State can design and ensure a pension system universally accessible to every citizen, and based on traditional wisdom and human rights.

The writer is Associate Professor, Department of Law, University of Dhaka.

CRYPTOQUOTE 5-30
K ZGVQVHXG TGTRZS
TKS FG K URRC VNHQU,
FLV VNG KEHOVS VR
PRZUGV HD VNG VZLG
VRBQG RP UZGKVGDD.
- GFGZV NLFKZC

Yesterday's Cryptoquote: OUR GREATEST GLOR IS NOT IN NEVER FAILING, BUT IN RISING UP EVERYTIME WE FAIL.
- RALPH WALDO EMERSON.

A XYDLBAAXR is LONGFELLOW
One letter stands for another. In this sample, A is used for the three L's, X for the two O's, etc. Single letters, apostrophes, the length and formation of the words are all hints. Each day the code letters are different.

NORTH SOUTH UNIVERSITY
The first private university in Bangladesh

TENDER NOTICE
Tender no. : NSU-14-06

North South University is inviting sealed offer from the bonafide / reputed organization / distributors / business partners / agents for supplying Laboratory Instruments / Materials for the Department of Civil and Environmental Engineering (CEED) as mentioned below:

SL. No.	Description of items	Quantity
Lot- 01	Strength of Material Laboratory	6 items
Lot- 02	Fluid Mechanics Laboratory	4 items

Interested bidders may collect schedules of tender from United Commercial Bank Ltd. Bashundhara Branch during banking hour on all working days till July 22, 2014 by paying non refundable taka 1000.00 (one thousand) only for each schedule.

The bidders must submit **earnest money @ 2.5%** of quoted price in the form of pay order issued from any scheduled bank drawn in favor of North South University along with their offer. The sealed offer must be submitted on July 23, 2014 within 1.30 p.m. at the office of the undersigned. Bidders can bid for all or any of the Lot or any of the item mentioned in the lot. The offers will be opened at 1:45p.m. on the same day. Representatives of the participating bidders may remain present at the time of opening the bids. NSU authority reserves the right to accept or reject any or all the tenders without showing any reason.

Director (Logistics & Resources)
NORTH SOUTH UNIVERSITY
Bashundhara, Baridhara, Dhaka-1229
Phone: 8852000, Ext. 1204 & 1213
Fax : 8852016 & 8845165

www.northsouth.edu

CROSSWORD by Thomas Joseph

ACROSS

- 1 Nick and Nora's dog
- 5 Swiss watch parts
- 10 Replay feature
- 12 Concur
- 13 Black-headed bird
- 15 Boxing great
- 16 Greek vowel
- 17 Fellows
- 18 Fertilizer ingredient
- 20 Gasp for air
- 21 Brainy group
- 22 Regarding
- 23 Sponge gently
- 25 Stir up
- 28 Church sight
- 31 A long time
- 32 Pizzeria units
- 34 Day light
- 35 Motel freebie
- 36 Much of N. Amer.
- 37 Biennial sporting event
- 40 Battery end
- 41 Makes smooth
- 42 Touches down
- 43 Tennis star

DOWN

- 1 Song writers' org.
- 2 Ski run
- 3 This evening in ads
- 4 "I-Rock"
- 5 Crazy
- 6 Sense of self
- 7 Scents
- 8 Bristle at
- 9 Handled
- 11 Black Sea port
- 14 River and lake of Alberta
- 19 Peruvian peaks
- 20 Singer Page
- 24 Claim
- 25 Knave
- 26 Large lizard
- 27 "Imagine" singer
- 29 Insight
- 30 Mail over
- 33 Pert
- 35 March time
- 38 Throw in
- 39 Gardner of film

Yesterday's answer

T	A	M	S	S	W	E	A	T	
O	B	O	E	C	E	L	L	A	R
D	O	R	A	R	E	M	A	K	E
A	D	A	P	T	E	D	R	E	P
Y	E	L	L	O	W	S	M	O	O
				A	D	S	C	E	N
P	I	A	N	O	L	O	D	E	S
I	N	M	E	S	O	N			
E	V	E	S	P	A	T	I	A	L
C	A	R	C	A	D	E	N	Z	A
E	D	I	T	O	R	S	T	U	N
S	E	C	U	R	E	S	O	R	E
R	A	G	E	D	A	W	E	S	